

RECOMMENDATIONS

Safeguarding and protecting the rights of children on the move: The challenge of social inclusion

Regional Meeting of European Children's Ombudspersons
Athens, 13 November 2017*

Children on the move are children first and should be considered as such. As rights holders, they should benefit from comprehensive efforts to ensure the protection and enjoyment of their rights and their social inclusion, across Europe.

All actions concerning children on the move should be informed by children's rights and fundamental human rights principles including:

- The right to non-discrimination;
- The right to have their best interests treated as a primary consideration in all actions and decisions affecting them;
- Their right to express their views freely in all matters affecting them and to have their views taken into account, in accordance with their age and maturity;
- Their right to survival and development;
- The right to protection from all forms of violence

These are the recommendations of 23 Independent Children's Rights Institutions from Council of Europe Member States, who participated in a working group of the European Network of Ombudspersons for Children (ENOC) to monitor the fulfillment of the rights of children on the move. The recommendations are grounded in the UN Convention on the Rights of the Child (UNCRC) and other relevant international legal instruments. They build on the call by ENOC members to implement a child rights perspective in the reception of migrating children (January 2016) as well as on the direct experience of child rights ombudspersons in meeting with children on the move, listening to them, dealing with specific cases, promoting their rights and monitoring their situation.

European States have a key duty to ensure and protect the rights of all children on their respective jurisdiction, regardless of their legal status. While some progress has been made in this area, violations of the rights of children on the move continue. Governments must take more concrete steps to meet their obligations. This includes protecting children's rights and enabling their **social inclusion** and full participation.

As Independent Child Rights Institutions, we commit ourselves to advocate and to monitor the implementation of these recommendations.

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The drafting process included the contribution of ENOC members from Albania, Belgium/Flanders, Belgium/French, Bosnia and Herzegovina, Cyprus, France, Georgia, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Moldova, The Netherlands, Norway, Poland, UK/Scotland, Serbia, Spain/Catalonia, Spain/ the Basque country, Sweden, as well as of independent authorities for children rights from Germany and Austria, and the advice by Marta Santos Pais, Special Representative of the UN Secretary General on Violence against Children and Gehad Madi, member of the UN Committee on the Rights of the Child.

1. PROTECTION OF CHILDREN UPON ARRIVAL AND EARLY RECEPTION STAGE

- a. **Procedural safeguards and standardized protocols** integrating child specific and age- and gender-sensitive considerations should be established and implemented throughout reception procedures.
- b. **Detention** of children accompanied or unaccompanied should not be permitted solely on the basis of their migration status. Immigration detention is a child rights violation and always contravenes the principle of the best interests of the child. Children must be protected, including through non-custodial solutions established by law, safeguarding their right to liberty at all times.
- c. The **length of stay** of children, including unaccompanied children, in reception and identification centres should be limited to the time that is necessary for initial registration and evaluation of their cases and no more than the maximum duration foreseeing by the law.
- d. Children's **access to asylum** applications cannot be prohibited.
- e. All **staff** of first arrival and first reception should be appropriately **trained** to respect the rights and basic needs of children. Training should sensitise professionals and officials of the risks and incidents of violence, such as exploitation and trafficking, and how to interview and communicate with possible victims and support them.
- f. Child protection staff should be present at border controls, with the power to make **referrals to specialised** staff for further assessment.
- g. At first arrival (ports, airports, borders) and identification points, all newly arrived children (accompanied or unaccompanied) should be **informed** about their rights in the country of reception in a language that they can understand and in an age appropriate way. This should include information about legal proceedings and safeguards, and about asylum, family reunification and other forms of international protection.
- h. Children should be free to **express their views**, and be able to address a **complaint** to a competent authority, if their rights are violated.
- i. At first reception centres, all children should be **assessed**, through interviews with trained multi-disciplinary teams of professionals, with the assistance of interpreters, regarding their needs in terms of reception/ accommodation/ placement. There should be particular examination of their possible **victimization** (violence, abuse, neglect, exploitation, child/underage/forced marriage), of the needs of disabled children and specific needs or other issues which may increase a child's vulnerability. Children should be given the opportunity - if it is in their best interest - to talk privately without the presence of parents/caregivers/adults.
- j. Reception and asylum authorities should carefully consider any **documentation** submitted by families or unaccompanied children. In case documentation is deemed invalid the decision must be justified and grounded.
- k. Standard Operating Procedures should be developed for the identification, referral and assistance of children who are **victims or at risk** of violence, including exploitation and trafficking, as well as for children who are missing from care and reception centres. Standard operating procedures should also be developed to ensure individual best interests' determination, inclusive of the child's right to be heard.
- l. Mechanisms and guidelines for determining the child's **relation and bonds** with accompanying adults should be developed, and for frequent checks of children well-being and protection needs. Special attention should be given to mechanisms and guidelines for identifying and dealing with underage and/or forced marriages.
- m. When children are identified as possible **victims of violence, abuse, neglect, exploitation and trafficking**, they should receive specialized care and should not be

removed from the protective framework of child welfare, even in the case they have committed offences connected to their exploitation.

- n. Child-appropriate **asylum procedures** should be established and asylum cases involving children (including accompanied and unaccompanied children) should be prioritised. A deadline should be established by which the asylum procedures begin, especially in cases involving children.
- o. Conditions in first reception facilities should be child friendly and should guarantee **free access to services**, including age- and gender-appropriate health care, protection, legal aid, education and recreation activities (*as described in detail in Section 2*).
- p. Child- and gender-friendly **safe spaces** should be made available in reception centres and camps while ensuring prompt referral and families to specialise child-friendly accommodation. **Age assessment** should be implemented only when there is a considerable doubt about the age of a child, in due time and with the support of a legal representative or guardian. Age assessment procedures should be age-, gender- and culturally sensitive, dignified, safe and reliable and should be carried out by a multi-disciplinary team using the least invasive approaches. Medical exams should be used as a last resort. The benefit of the doubt should be always given in favour of the child and a right to appeal should be guaranteed.
- Appropriately trained **guardians** should be promptly appointed for unaccompanied and separated children, who should be placed in a proper, safe and caring environment, preferably in foster families, when this is applicable, or other appropriate non-custodial community-based care. **Adequate resources** should be allocated to ensure effective guardianship, including ensuring that recruited guardians are **qualified, trained and supported** to safeguard children's best interests at all times.
- q. Personal information **files** should be transferred along with a child, and be made available to social services providing care for the child in the new location, in line with appropriate data protection and confidentiality considerations.
- r. First reception responsible bodies and/or child protection authorities, should be **accountable and supervised** for ensuring that reception guidelines are applied consistently, timely and with legal certainty.

2. RECEPTION IN LATER STAGES, ACCESS TO RIGHTS TOWARDS SOCIAL INCLUSION

2.1 Cross cutting issues

- a. Socio-educational **assessment and care** must be **individualized** for all children, including an assessment of their needs and best interests taking into account the child's right to be heard in the choice and care of living arrangements.
- b. All children on the move should enjoy **access to quality services** available within the national system for their effective protection.
- c. Children on the move should participate in **violence prevention** and response and in **social inclusion** programmes.
- d. **Social support networks** should be set up to help children feel safe, gain confidence and build resilience and to promote children's participation in play, social and cultural activities and sports.
- e. **Staff** of all involved agencies should be specially qualified and trained to deal with the issues concerning children on the move.

2.2 International protection - Legal status

- a. Proper processing of the **asylum requests** along with the provision of other legal options for access to **humanitarian status** should be safeguarded for all children and their families. To determine whether a child qualifies for a permit a best interest assessment should be carried out.
- b. **Family reunification** should be guaranteed by law. It should be considered in a positive humane and expeditious manner, linked to child's best interest and its right to grow up in a family. It should be proceeded in due time, in order to avoid uncertainty and stress, followed by support to the family and the child, including provision of clear and timely information about its process.
- c. Special provisions should be enacted for the renewal of **legal status documents of children**, who have been already involved in an integration process for a considerable time in the host country.
- d. Children should be eligible to qualify for **regularisation of their stay**, if they live for an **extended period** in the host country, considering the bonds they have developed and their best interests.
- e. **Birth registration** should be ensured for all children born in the jurisdiction of European States, regardless of the child's or the parents' legal status.

2.3 Accommodation facilities and housing

- a. The size of **residential** facilities for children should be restricted to small family-like arrangements or group homes, so that it can allow communication and collaboration among residents, while ensuring children's safety and well-being.
- b. The consideration of the **child's needs, best interests, and its right to be heard** is crucial for a long term and safe placement. Policies and procedures for child safeguarding should be in place in all residential facilities.
- c. The placement of children in accommodation with **relatives**, should be assessed in due time. Both the child and the family must be regularly supported.
- d. In the event of a **change of placement**, the best interests of the child must be taken into particular consideration, including ensuring time for support and adjustment. The child must participate in all decisions taken, in line of its developmental capacities.
- e. Accommodation **facilities for families** with children must be appropriate to children and be intended exclusively for families.
- f. **Unaccompanied** children should be housed separately from adults to ensure their safety and should be provided with appropriate care.

2.4 Health

- a. All children shall be given timely access to available **physical and mental health public services** in line with their needs, including care and treatment for chronic diseases and disabilities, sexual and reproductive health, psychological counselling and treatment and prevention of self-harm and suicide.
- b. **Interpreters and cultural mediators** should be employed to assist children's access to health services.
- c. **Vaccination** of all children should be organised according to national programmes and standards.
- d. **Periodic doctor visits** should be organised to camps, residential centres and shelters where children on the move live with their families or unaccompanied, assess their physical and mental health and provide checks for early detection of disabilities,

diseases and incidents of violence and advice for proper prevention and response. Perinatal care should also be provided as part of a preventive health strategy.

- e. Children and their families need clear information and mental health support to cope with the effects of **trauma and stress** they may have experienced. Therapeutic and supportive services should become available to them with the assistance of interpreters.
- f. **Therapeutic** facilities for children with substance abuse addictions should become available. Intensive residential centres, therapeutic centres and assisted nursing homes should become available for children with similar needs, making it possible to apply the most appropriate protective measures for them.
- g. **Staff** of centres and shelters for all children should be specially trained and supervised to cope with mental health needs, in collaboration with public mental health services, in compliance with personal data protection.

2.5 Education

- a. All children, whether in transit or destination shall have access to **formal and informal education** (nurseries, pre-school, primary, secondary and third level education, and vocational training), regardless of their legal status and without any discrimination and/or segregation. **Within one month** from the time of arrival, children should be given the opportunity to attend language classes and enroll in **formal education**.
- b. Children who have no knowledge of the language of the host community, should be given the opportunity to attend **preparatory language courses**, while they should also be able to regularly **mix and associate** with local children at school.
- c. Tailor made well-structured **activities** should be provided continuously to children as an additional educational support and means of social integration.
- d. Children should be assisted to maintain their cultural values and to develop their **native language**.
- e. Authorities should take specific measures to **prevent absenteeism, dropping out** and exclusion from school of refugee and migrant children, regardless of their legal status.
- f. **Teachers** should be trained and supported on how better to respond to the learning needs of the children on the move.
- g. **Parents** of migrant and refugee children should be informed and become aware of the local educational system as well as of the existing laws on parental responsibilities.
- h. School curriculum should include **human rights education**, promoting values such as peace, tolerance, equality and friendship among all ethnic, national and religious groups. Specific measures should be taken to combat and prevent xenophobia, bullying and other forms of violence against children.

2.6. Social services

- a. Appropriate social services and assistance should be made available for children and their families, taking account their **vulnerability and needs**.
- b. It is necessary to develop more tailor-made social services for children on the move, including children **victims** of abuse, neglect, violence and exploitation, as well as for children with **disabilities**.
- c. Municipal authorities should facilitate access of children and their families to **local services**.
- d. Comprehensive **multi-disciplinary and interagency services** under one roof should ensure the safety and well-being of children on the move, and enable access to justice, including for child victims of violence. All processes should be documented to secure evidence that informs the asylum procedure or other relevant proceedings.

2.7 Legal aid

- a. Free legal aid and representation shall be provided to children on the move in all proceedings affecting their lives.
- b. Free interpretation should be available in all legal aid services and administrative and court procedures.

2.8 Transition to adulthood

- a. When children reach adulthood, sustainable options should be available for the issuance and renewal of their **legal status documents**, especially for those who have been already engaged in an integration process.
- b. Sustainable **programmes** should be established for the monitoring and support of adolescents who reach adulthood, specifically focusing on:
 - post-18 education
 - community based inclusion programs
 - access to the labour market
 - specialized interventions for addressing the needs of those belonging in extremely vulnerable groups, such as youth with disabilities and those suffering from traumatic experiences and mental health problems
- c. The continuum of care for **unaccompanied** and separated **children** should be ensured through their engagement in projects for their gradual and smooth transition to autonomous and independent living, and transition to adulthood should be a part of the life project of the child that should be prepared in advance and it would allow for the implementation of individualised plans on the basis of their specific needs and best interests.
- d. All the competent agencies that are involved in the support of children, accompanied and unaccompanied, should develop a **stable referral and cooperation system** so as to cover more effectively the multi-faceted needs of children upon the transition to adulthood.

3. MECHANISMS FOR THE SAFEGUARDING OF CHILDREN'S RIGHTS AND THE PROMOTION OF THEIR INCLUSION

3.1 Monitoring mechanisms

- a. The competent observatories and monitoring mechanisms should include **specific aspects and indicators** that would allow for the collection of **concrete and disaggregated data** for the situation of children towards the planning of coherent and durable policy measures for children's protection and inclusion.
- b. Considering the additional needs of **unaccompanied and separated children**, it is important to establish data protected national **records**, that would allow for their prompt identification and the effective follow up and support of their cases, with due respect of sensitive data.
- c. The child protection authorities should be in constant **communication and cooperation** with the agencies that are involved in data collection and monitoring of the situation of children on the move.
- d. Data collected should be unhinderedly and regularly available to **Independent Children's Rights Institutions** towards the most effective implementation of their mandate. Alongside, the Institutions should be consulted on the indicators that are applied for the monitoring of children's situation.

3.2 Complaint mechanisms

- a. Complaint mechanisms should be independent and legally enshrined, while their decisions and recommendations should be respected by public authorities.
- b. **Children's accessibility** to complaint mechanisms should be strengthened by:
 - safeguarding access regardless of the children's status, through a simple and child friendly process without complex procedural requirements
 - addressing language barriers that prevent children's access (including child friendly info material in various languages, support by interpretation and cultural mediation services)
 - implementing actions for reaching out children in need of protection, such as targeted site visits and ex officio investigations
 - strengthening cooperation between competent authorities and field services' actors in order to get timely and reliable information about children's complaints.
- c. Independent children's rights institutions, in particular Ombudspersons for Children with their specialized expertise and devoted mandate to safeguard children's best interest at all times, should have the right to access receptions centres and institutions where children are placed, including through unannounced visits. They should:
 - access any needed information,
 - request reports before, during and after the inspection and receive a prompt response;
 - receive complaints directly from children
 - have the authority to make public the results of their inspections and recommendations
 - while preventing the public disclosure of information that may place a child at risk.
- d. Independent institutions for children's rights should be provided with sufficient resources to safeguard their independence and develop their functions with high-quality standards.

3.3 Coordination – cooperation mechanisms

- a. The establishment of coordination mechanisms targeted on children on the move should be promoted, with the **participation of all the involved public and civil society actors** at national level, including migrants' associations, to facilitate the social inclusion of children and families in the local society.
- b. The stable and smooth cooperation between the **guardians / legal representatives and the competent child protection authorities** is of major importance for the effective support of unaccompanied children.
- c. Competent public authorities should capitalize and develop the experience and achievements by several informal cooperation – coordination platforms towards the **establishment of central and coherent coordination mechanisms** that would include all the involved public and civil society stakeholders with a national geographical coverage
- d. The coordination of transnational cooperation, especially in the context of family reunification and family tracing procedures, as well as the implementation of relocation programmes, needs to be better established and promoted, in order to:
 - ensure a continuum of care and protection of the rights of children on the move
 - harmonise and speed up procedures for family reunification.
- e. **Cross-border cooperation** should be strengthened in preventing, investigating, prosecuting and punishing violence against children on the move, including trafficking for the purpose of sexual or economic exploitation, child- and forced marriage and other harmful practices, drug trafficking, extortion, abduction, torture and ill-treatment.