



European Network of Ombudspersons for Children

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Position Statement

“Violations of the Human Rights of Children on the Move in the context of pushbacks”

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The European Network of Ombudspersons for Children (ENOC) has repeatedly and tirelessly expressed and addressed recommendations with regard to the situation of “children on the move” and the protection and promotion of their human rights at both national and European levels.

We recall the 2006 ENOC Position Statement on State Obligations for the Treatment of Unaccompanied Children¹, the 2013 ENOC Position Statement on “Children on the Move”², the 2019 ENOC Position Statement on the situation of children on the move on rescue vessels in the Mediterranean³, and the 2019 ENOC Position Statement on “Ending detention of children for immigration purposes”⁴.

ENOC members have continued to monitor developments concerning children on the move. Notwithstanding the efforts of International bodies, European institutions and national governments, updates received by national and regional Ombudspersons’ offices, combined with other factors, such as the fragile EU-Turkey 2016 Joint Statement and Action Plan, increased anti-migrant discourse and law, policies, procedures and practice that do not conform with international laws and standards, and recent developments in Afghanistan, systematically raise concerns regarding reported violations of the human rights of children on the move. More specifically:

- Persistent reports and evidence of inhuman and degrading treatment by Member States⁵ and their agencies using pushbacks (also called “hot returns”⁶): a

¹ <http://enoc.eu/wp-content/uploads/2015/01/ENOC-2006-Statement-on-Unaccompanied-Children.pdf>

² <http://enoc.eu/wp-content/uploads/2015/01/ENOC-2013-Statement-on-Children-on-the-Move-EN.pdf>

³ <http://enoc.eu/?p=2390>

⁴ <http://enoc.eu/wp-content/uploads/2019/10/ENOC-statement-on-ending-child-immigration-detention-FV.pdf>

⁵ Many countries have been criticized for the practice of pushbacks such as Spain, Greece, Italy, Poland, Hungary, Slovenia, Croatia, Romania, Serbia, Bulgaria et al.

⁶ The term “hot returns” (*devoluciones en caliente*) is used for the practice applied in the Spanish territory (namely Ceuta and Melilla). The Prosecutor’s Office in Spain has opened investigation proceedings on the

significant number of reports and statements⁷, as well as complaints submitted to independent authorities⁸ indicate that men, women and children (accompanied, unaccompanied, or separated) are being forced back to the country from which they attempted to cross or have crossed an international border without access to international protection or asylum procedures, or denied of any individual assessment on their protection needs⁹. Even in areas where the European Union border and coast guard agency, Frontex, operates, numerous issues have been reported including illegal pushbacks, violence, and obstruction to the asylum process¹⁰.

- Reports about not providing protection to those who are in distress at sea: There have been repeated allegations of States being unresponsive to asylum seekers, refugees, and migrants in distress at sea, responding very slowly, or even responding in ways that increased the risk to asylum seekers and migrants, including children, rather than protecting them from harm and respecting their human rights¹¹. This leaves asylum-seeking refugee and migrant children at risk of

⁷ Council of Europe, Pushback policies and practice in Council of Europe member States, 2019.

Dumbrava C., Screening of third-country nationals at the EU's external borders, EPRS, European Parliament, November 2020.

European Court of Human Rights, Collective expulsions of aliens, July 2020.

European Union Agency for Fundamental Rights, Migration: fundamental rights issues at land borders, 2020.

⁸ According to the Greek Ombudsman's special interim report (2021) titled "Alleged pushbacks to Turkey of foreign nationals who had arrived in Greece seeking international protection", many complaints have been submitted by NGOs but also by individuals describing similar patterns. Among these complaints there is a disturbingly significant number of pushbacks against minors. The report is available at <https://www.synigoros.gr/?i=human-rights.en.recentinterventions.791674>

⁹ This is the definition used by the Special Rapporteur on the human rights of migrants at the United Nations Human Rights Office of the High Commissioner that defines pushbacks as 'various measures taken by States which result in migrants, including asylum-seekers, being summarily forced back to the country from where they attempted to cross or have crossed an international border without access to international protection or asylum procedures or denied of any individual assessment on their protection needs which may lead to a violation of the principle of non-refoulement'.

¹⁰ <https://www.hrw.org/news/2021/06/23/frontex-failing-protect-people-eu-borders>

¹¹ The Council of Europe report titled "A distress call for human rights. The widening gap in migrant protection in the Mediterranean" mentions that "There have been repeated allegations, especially relating to Malta, of being unresponsive to refugees and migrants in distress or NGOs raising alarm. There have also been several reports of coastal states' authorities responding only very slowly, or simply issuing instructions to commercial vessels in the vicinity of a boat that may be in distress to stand by. Failures to respond and delays in attending to distress calls, or to provide information to relevant bodies that could conduct the rescue, have risked jeopardising the right to life of people at sea. There are also a number of highly concerning reports of situations in which state-led operations have resulted in increased risk to refugees and migrants at sea, rather than protecting them from harm". Available at [https://rm.coe.int/a-distress-call-for-](https://rm.coe.int/a-distress-call-for-human-rights-the-widening-gap-in-migrant-protectio/1680a1abcb)

severe injury, death, or return to countries where their human rights may not be respected, protected and fulfilled, and is contrary to the principle of non-refoulement. Furthermore, pushbacks have occurred at sea where states have been responsible for the deaths of many children when they refused to respond to distress calls of migrants at their borders¹².

- Significant delays and administrative setbacks in family reunification procedures: Some ENOC members report that, in some cases, the waiting period exceeds 18 months. This situation has severely harmful consequences on children's mental health and emotional state, well-being and development, as it triggers extreme stress and frustration. At the same time, it leaves them exposed to numerous risks, including violence, and without access to services such as education and health care during the waiting period as well as the possibility of turning 18 while waiting and no longer being entitled to the same protection.
- The consideration of Turkey and Morocco (as the two main external EU border-countries receiving migrants) as "safe third countries" raises serious concerns for the safety, well-being and human rights of children on the move whether accompanied, separated or unaccompanied. This concept should not be applicable when dealing with children and the principle of the best interests of the child and of non-discrimination should be given primary consideration in all decisions and actions taken by receiving countries.
- The impact of the Covid-19 pandemic crisis: Significant violations of the human rights of "children on the move" have been reported by ENOC members since the beginning of the pandemic crisis. ENOC has already urged for the immediate evacuation and relocation of migrant children from refugee camps on the Greek islands and at the border between Greece and Turkey to guarantee their safety and to ensure their protection from the inhumane and desperate conditions that prevail there¹³. While some progress has been noted, significant violations remain,

Furthermore, in March 2020, the Council of Europe Commissioner for Human Rights stated: "*regarding the situation in the Aegean Sea, I am alarmed by reports that some people in distress have not been rescued, while 421 others have been pushed back or endangered. I recall that the protection of the lives of those in distress at sea is one of the most basic duties which must be upheld, and that collective expulsions constitute serious human rights violations*".

¹² <https://undocs.org/en/A/HRC/47/30> ; See also ENOC Position Statement on the situation of children on rescue vessels in the Mediterranean: <http://enoc.eu/?p=2390>

¹³ <http://enoc.eu/?p=3283>

among others, the exclusion of children on the move from education.¹⁴ Unfortunately, the pandemic only exacerbated the existing, numerous obstacles “children on the move” experience regarding education and they were disproportionately barred from education during the pandemic. Economic inequality, discrimination, bureaucratic obstacles, language barriers, and isolation, combined with the pandemic have created an extremely dire situation in which the continuous deprivation of “children on the move” from accessing quality education will have serious repercussions on their future¹⁵.

- ENOC members systematically collect data and evidence that continue to raise serious concern regarding the precarious housing and living situation of children on the move. Accommodation and alternative care for children on the move continues to be an obstacle for their social inclusion.

In this context, we, members of ENOC,

Having considered States’ obligations

- to respect and ensure, in accordance with Article 2 of the UNCRC, all the human rights enshrined in the UN Convention on the Rights of the Child (UNCRC) “to each child within their jurisdiction *without discrimination* of any kind...”,
- to ensure that, in accordance with Article 3 of the UNCRC, “*the best interests of the child* are a primary consideration in all actions concerning children,”
- to ensure, in compliance with Article 6 of the UNCRC, “to the maximum extent possible *the survival and development* of the child.”
- to ensure to the child who is capable of forming his or her own views *the right to express those views* freely...” and provide him or her with the “opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law” in accordance with Article 12 of the UNCRC, and

¹⁴ The Greek Ombudsman issued a report (2021) titled “Educational Inclusion of Children living in hotspots and camps” highlighting that only a small percentage of minors (14,2%) living in those structures had access to school education during the previous year.

¹⁵ Human Rights Watch conducted a report (May 2021) based on 470 interviews of students, parents, and teachers from 60 different countries during the pandemic (April 2020 – April 2021) to understand how the pandemic affected children’s rights, specifically, education also considering children from the most vulnerable demographics. <https://www.hrw.org/report/2021/05/17/years-dont-wait-them/increased-inequalities-childrens-right-education-due-covid>

- to take appropriate measures, under Article 22 of the UNCRC, “to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, *receive appropriate protection and humanitarian assistance* in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.”

Taking into account additionally (or following interpretation of)

- General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration,
- General Comment No. 6 (2005) of the Committee on the Rights of the Child on treatment of unaccompanied and separated children outside their country of origin,
- Joint General Comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration,
- Joint General Comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in the countries of origin, transit, destination and return.

Understanding that children on the move are *children* first regardless of their immigration status. Children on the move deserve the highest level of protection and the best interests of the child must be ensured from the very first contact with competent authorities. Accordingly, the fundamental principles regarding children’s rights need to be mainstreamed into the development, implementation and monitoring of laws, policies, procedures and practices affecting “children on the move” to ensure their protection.

Agree that the following measures and recommendations should be endorsed, implemented and supported at European, national and local levels:

- 1) **Children, whether unaccompanied, accompanied or separated, should never be refused entry to a country** in accordance with the *non-refoulement obligations* and the prohibition of collective expulsions deriving from international human rights, humanitarian and refugee law. The principle of non-discrimination should be at the centre of all migration policies and procedures, including border control measures, and regardless of the migration status of children or their parents. Pushbacks are illegal under international human rights, humanitarian and refugee law. ENOC calls Member States to refrain from such practices and to launch an in-depth investigation of the extent of such practices. Furthermore, Frontex must ensure that its operations at the EU external borders comply with the principle of *non-refoulement* and with the international duty¹⁶ to rescue persons in distress at sea.
- 2) It should always be guaranteed that an assessment of the best interests of the child is realised and applied as a pre-eminent criterion at all stages of all procedures, measures, decisions and actions concerning “children on the move”. As stated in the General Comment n°14 of the Committee on the Rights of the Child, the decision-making process must include an individual assessment of the needs and circumstances of every child including the right to be heard, as a “rule of procedure”. The best interests of the child principle should not be used as a mere principle inspiring other procedures.
- 3) States should strengthen policies, laws and procedures to ensure fast and efficient operational measures for early identification of children seeking asylum (with attention to the protection of personal data), and assessment of their needs, upon their arrival. States should ensure effective reception procedures, access to independent legal advice and child-sensitive administrative and legal processes, especially regarding children in the most vulnerable situations (e.g., unaccompanied, separated and trafficked ones), including access to effective remedy, in line with article 13 of the European Convention on Human Rights.
- 4) From the very first contact with authorities upon arrival and while the process of evaluation of the best interests of the child is being carried out, children on the

¹⁶ [International Convention for the Safety of Life at Sea \(SOLAS\), 1974](#)
[The United Nations Convention on the Law of the Sea of 10 December 1982](#)

move should be immediately provided access to legal advice, health, education, social services and other protection measures as required.

- 5) All children should be guaranteed unobstructed access to a child friendly, age-appropriate asylum procedure. Appropriate child-friendly reception conditions should be ensured for all “children on the move”. States shall provide suitable¹⁷ facilities for quarantine in the context of the Covid-19 pandemic, as well as provide children with appropriate care in the event of a health emergency. Children should be provided with clear and comprehensive information on their human rights and options in language they can understand, through processes adapted to their age and maturity, with support from appropriately trained cultural mediators. Access to education and health care should be guaranteed on an equal basis to other children within the jurisdiction of the receiving State.
- 6) Age assessment should be conducted with a primary aim to ensure that the child is granted the human rights and protection to which he/she is entitled. It should be conducted through multidisciplinary procedures, guaranteeing the right to participation of the child in every stage of the procedure and in accordance with the principle that, in case of doubt, migrants should be considered as minors until their age is ascertained.
- 7) Children have the right to live with their family and to have their family bonds restored, thus avoiding separation from their caretakers in the process of identification. To this effect, States should take steps to improve identification and registration policies, laws and family reunification procedures, while ensuring the protection of their personal data. States should enhance cooperation with children’s countries of origin, transit or residence of their families.
- 8) Detention is an extreme measure with long-term harmful effects on children’s mental and physical health and well-being and lifelong developments, and the detention of children because of their or their parents’ migration status constitutes a violation of children’s rights and contravenes, in particular, the principle of the best interests of the child. No child, accompanied or not, shall be detained in whatever procedure he/she is subject to (whether asylum or return to their home country or the first point of entry in Europe), not even as a last resort. In line with

¹⁷ Alternative care for Children as regarded at by A/RES/64/142* and A/RES/74/133 Resolution adopted by the General Assembly on 18 December 2019

international obligations, the abolition of this practice and implementation of alternative child friendly and non-coercive measures that respect children's rights and needs and take into account the best interests of the child should be a key priority for national and European decision-makers.

- 9) Children's right to be heard and to participate should be ensured in all legal and administrative procedures and their opinions should be taken into account. An independent guardian should be appointed promptly to support, advise and promote the child's best interests at all stages. Furthermore, through all administrative and judicial procedures, every child should have access to interpreters and to appropriately trained independent legal advisers, as well as access to a complaint procedure before an Ombudsperson whenever available.
- 10) Community child protection systems should be reinforced. States must take into account the human right of children on the move to protection from any form of violence, abuse and neglect, and enhance the capacity of local child protection services and networks to prevent and combat trafficking and unsafe or exploitative migration. States should fully implement international and European Union instruments and standards concerning children victims of trafficking.
- 11) States should provide adequate resources for the social inclusion of children on the move. Targeted projects and measures must provide concrete opportunities for integration in the receiving State or for transfer to another Member State, according to the best interests of the child. Special attention should be given to the accommodation needs of children on the move in general and family-centered alternative care for unaccompanied children in particular.
- 12) States should ensure mutual cooperation in the light of the principles of solidarity and fair sharing of responsibility in relation to immigration and asylum policies concerning "children on the move". The establishment of a long term stable and sustainable allocation mechanism for accompanied, unaccompanied and separated minors across all EU Member States would be a significant step for the protection of their rights, and should be examined in the light of the reform of Dublin III Regulation and the new EU Pact on Migration and Asylum.