

## European Network of Ombudspersons for Children

### Ad-hoc Position Statement on the protection of children on the move<sup>1</sup> at EU borders in light of the adoption of the EU Pact on Migration and Asylum

\*Adopted by the ENOC extraordinary General Assembly, 13 December 2024

#### Introduction

The European Network of Ombudspersons for Children (ENOC) has repeatedly and persistently expressed their concern and addressed recommendations concerning “children on the move”, the protection of their rights at the national and European levels, and the need for increased protection and rights safeguards in accordance with international and regional standards.

We recall the 2006 ENOC Position Statement on State Obligations for the Treatment of Unaccompanied Children, the 2013 ENOC Position Statement on “Children on the Move”, the 2019 ENOC Position Statement on the situation of children on the move on rescue vessels in the Mediterranean, the 2019 ENOC Position Statement on “Ending detention of children for immigration purposes”, the 2020 ENOC Open Letter on the emergency situation of migrant children trapped in camps at the border between Greece and Turkey and on the Greek Islands, the 2021 Position Statement on “Violations of the Human Rights of Children on the Move in the context of pushbacks”, and the 2022 ENOC statement on the protection of the rights of children fleeing the war in Ukraine.

Since 2015, millions of children have arrived in Europe seeking safety and protection. More than 800,000 new asylum applications by children have been registered in EU+ countries since 2020, of which more than 113,000 by unaccompanied or separated children.<sup>2</sup> With European Union (EU) Member States preparing to implement the Pact on Migration and Asylum, effective safeguards need to be put in place to ensure the rights of these children are effectively protected.

#### Framework

The EU has a strong obligation to effectively protect the rights of children under Article 3 of the Treaty of the European Union (TEU), Article 24 of the Charter of Fundamental Rights of the EU (CFREU), the UN Convention on the Rights of the Child (UNCRC), General Comments No. 6 (2005) regarding the Treatment of Unaccompanied and Separated Children Outside their Country of Origin, and No.14 on the Right of the Child to have his or her Best Interests taken as a primary consideration, as sources of authoritative guidance to States/EC when implementing the Pact in relation to children on the move.

<sup>1</sup> As defined in the ENOC position statement on [“Children on the move”](#), adopted at the 17th ENOC Annual General Assembly held on 27 September 2013 in Brussels.

<sup>2</sup> UNHCR, UNICEF and IOM, [Refugee and Migrant Children in Europe - Accompanied, Unaccompanied and Separated](#) – 2021 (<https://www.unicef.org/eca/media/23466/file/Refugee%20and%20Migrant%20Children%20in%20Europe%20.pdf>; *Ibidem* – 2022.; *Ibid* – 2023).

## Cases of serious child rights violations at European borders

Violence against children at EU border crossings is well-documented. Children have been summarily subjected to beatings, intimidation, property theft, arbitrary detention, pushbacks, and other forms of abuse.<sup>3</sup> Violence and inhuman and degrading treatment are in direct contravention of European States' international obligations stemming from the provisions of the Convention on the Rights of the Child, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the European Convention on Human Rights and Fundamental Freedoms, and other international legal instruments.

Children are often violently and collectively subjected to pushbacks without consideration for their safety and well-being, and without access to an individual asylum procedure or other forms of protection. This practice has been widely documented around Europe.<sup>4</sup> “The prohibition of refoulement, encompassed by Articles 2 [...] and 3 [...] of the European Convention on Human Rights (ECHR) is absolute”<sup>5</sup> and any collective expulsion of migrants as defined in Article 4 of Protocol 4 of the ECHR must be discontinued, particularly in relation to especially vulnerable categories of refugees and migrants such as children.

In addition, at European borders as well as in many States' territories, children are being routinely subjected to migration-related detention.<sup>6</sup> In May 2024, the Chair-elect of the UN Committee on the Rights of the Child and other treaty body monitoring mechanisms and UN special procedures have called upon EU Member States to ban immigration detention of children in the context of the EU Migration Pact. They state that in the absence of a unified regional prohibition, EU Member States should explicitly prohibit immigration detention of children in their national legislation.<sup>7</sup> The best interests of the child and the principle of presumption of minority in respect of unaccompanied migrant children *must* be respected from the very first contact with State authorities<sup>8</sup>, while the child's extreme vulnerability should be a decisive factor and should take precedence over considerations relating to his or her status as an irregular migrant.<sup>9</sup>

## The EU Pact on Migration and Asylum raises concerns about the treatment of children at European borders

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<sup>3</sup> Council of Europe, [Pushed beyond the limits: Four areas for urgent action to end human rights violations at Europe's borders](#).

<sup>4</sup> UNICEF statement, [UNICEF deeply concerned about instrumentalisation and pushbacks of children on Europe's borders](#).

<sup>5</sup> Council of Europe, [Letter to the Prime Minister of Poland by Michael O'Flaherty, CommHR/MoF/sf 074-2024](#).

<sup>6</sup> IOM, UNHCR and UNICEF, [Safety and dignity for refugee and migrant children: Recommendations for alternatives to detention and appropriate care arrangements in Europe](#).

<sup>7</sup> United Nations, [Child immigration detention must be prohibited following adoption of EU migration and asylum pact, UN experts say | OHCHR](#), Press release, May 2024 ; *M.H. and Others v. Croatia*, nos. [15670/18](#) and [43115/18](#), § 236, 18 November 2021; European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), [Report to the Greek Government on the visit to Greece carried out by the CPT from 20 November to 1 December 2023, CPT/Inf \(2024\) 21](#).

<sup>8</sup> *Darboe and Camara v. Italy*, no. [5797/17](#), §§ 139 and 153, 21 July 2022.

<sup>9</sup> *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, no. [13178/03](#), § 55, ECHR 2006-XI; *Darboe and Camara*, § 173; *Muskhadzhiyeva and Others v. Belgium*, no. [41442/07](#), §§ 55 and 63, 19 January 2010; *Kanagaratnam v. Belgium*, no. [15297/09](#), § 62, 13 December 2011; and *Popov v. France*, n. [39472/07](#) § 91, 19 January 2012; *N.T.P. and Others v. France*, no. 68862/13, § 44, 24 May 2018, and more.

The EU Pact on Migration and Asylum (the Pact), adopted on 10 April 2024, introduces several measures that, while intended to manage migration more effectively, may inadvertently lead to an increase in pushbacks and violence at European borders, affecting children on the move, including unaccompanied and separated children. The emphasis on stronger external border controls and rapid border procedures could pressure Member States to address irregular crossings more aggressively, potentially turning forcibly displaced children away without allowing them to apply for asylum. The Pact also focuses on enhancing the efficiency and number of returns of migrants to their countries of origin or transit countries. This emphasis might push Member States to engage in pushbacks as a way to sidestep the complex processes involved in formal returns.

Moreover, while the Pact aims to distribute asylum seekers more evenly across Member States through responsibility-sharing mechanisms, the challenges in implementing these mechanisms may lead first-arrival states to resort to pushbacks to avoid being overwhelmed by large numbers of arrivals. Additionally, the Pact expands the application of the "safe third country" concept, which allows for the return of asylum seekers to countries deemed to be providing "effective protection". However, States might broadly interpret this to justify returns to neighboring countries without proper assessments of the child's best interests and of their age and, in doing so, violate the obligation to ensure the child's safety and right to survival and development to the maximum extent possible.

The lack of clear enforcement mechanisms in the Pact raises concerns about the protection of human rights at borders. Without strong oversight and accountability, Member States might engage in pushbacks with little consequence. Moreover, the Pact's focus on rapid asylum and return procedures at borders might compromise the thoroughness of asylum assessments, leading to situations where individuals – including children - are deported before their claims are adequately considered. Accelerated procedures with more limited safeguards apply depending on the applicants' nationality, migration route or point of entry, making the right to appeal unrealistic for asylum seekers, including children, with the potential to compromise chances of a fair hearing and further threats to children's rights.

In situations of crisis, instrumentalisation or *force majeure* is left at the discretion of the Member States, allowing them to derogate from the rules of the Pact under specific conditions and their own interpretation. It is unclear what procedures will be applied instead, but these might include denying access to people, including children, at the borders, or operating a different type of regime by processing all people arriving through a border asylum procedure, with limited procedural guarantees, and reduced material conditions.

These aspects of the Pact contribute to the likelihood of more pushbacks and increased reliance on immigration, or *de facto* detention, as Member States may prioritise deterrence, border closures and swift returns over the protection of migrant children's rights and access to asylum procedures.

### **The EU Pact on Migration and Asylum has the potential to worsen the situation of unaccompanied children at borders for several reasons**

The processes and structures established by the Pact are set to protect unaccompanied children but are actually unlikely to prevent human rights violations of children seeking safety and protection in Europe. The Pact introduces accelerated border procedures

intended to quickly process and return migrants. These expedited processes may not adequately account for the identification of unaccompanied children and the assessment of their age, and therefore of their specific needs and vulnerabilities, leading to inadequate consideration of their asylum claims and protection needs, or even their exclusion from family reunification. The emphasis on screening at the borders and swift processing can result in increased detention, including of unaccompanied children.<sup>10</sup>

As countries of first entry are likely to remain exposed to the “pressure” of arrivals, until and unless the new responsibility-sharing and solidarity mechanisms are fully and effectively operationalised, a risk remains that the persistent reports of pushbacks and rights violations at borders will continue, and potentially increase.

Unless the responsibility-sharing and solidarity mechanisms as envisaged by the Pact are truly efficient, the Pact will not resolve the “pressure” on the states of first entry. To mitigate the risks of raising human rights violations at borders and further erosion of the right to seek asylum, sufficient human rights safeguards, including effective and independent monitoring mechanisms, careful vulnerability assessments and swift referral to tailored services (such as protection and healthcare), critical information provision and legal assistance, systems for prompt and effective national investigations of alleged ill-treatment, must be in place. The EU and its Member States should prioritise financial and operational investments to adequately resource national asylum and reception systems. Rather than seeking to deter people from reaching Europe at all costs, the states should focus on upholding individuals’ fundamental rights and dignity.

Notwithstanding, **when aligning national legislation with the requirements of the Pact, States must ensure that the following principles on the protection of children on the move at borders are upheld:**

- **The rights of all children should be respected, protected and fulfilled, regardless of their status, without discrimination of any kind.** This includes equal access to territory, asylum, reception services and protection under the law.
- **The best interests of the child must be the primary consideration in all actions concerning children on the move,** including unaccompanied and separated children. This principle should guide all decisions, including those related to border control, treatment by border officials, asylum procedures, and returns.<sup>11</sup>
- **The right to identity must be respected,** ensuring all children crossing European borders are identified, documented, and registered.
- **Children on the move deserve a chance to live in a welcoming and inclusive environment.** Therefore, all receiving states, while respecting one’s right to

<sup>10</sup> In this respect, [General Comment No. 6 on the Treatment of Unaccompanied and Separated Children Outside Their Country of Origin \(2005\), CRC/GC/2005/6](#) must be taken into consideration by EU Member States as a source of authoritative guidance when implementing the Pact in relation to unaccompanied children.

<sup>11</sup> In this regard, it is imperative that [General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration \(2013\), CRC/CG/14](#) be taken into consideration by EU Member States as a source of authoritative guidance when implementing the best interests’ principle/right in the context of the EU Pact.

identity, should take the necessary steps to implement effective and inclusive policies.

- **All children have an inherent right to life, survival, and development. States must refrain from taking actions that would jeopardise this right or expose children to conditions that could lead to its violation**, including through illegal pushbacks or deportation to third countries where this right could not be guaranteed.
- **Children have the right to express their views in all matters affecting them** and to have those views given due weight in accordance with their age and maturity. Procedures at borders should be child-sensitive and facilitate child participation in a meaningful way.
- **Children must be protected from torture, inhuman, or degrading treatment at all times**, in accordance with international human rights standards. Any form of violence, abuse, or coercion against children on the move must be rigorously prevented and punished, in accordance with States' obligations to respect and protect the rights of *all* children.
- **States must ensure that all children on the move with the experience of trauma and ill-treatment** are effectively identified and provided with medical and psychological care tailored to their specific needs.
- **Migrant children should never be detained** and should not be deprived of liberty for migration-related reasons, including due to their or their parents' immigration status. Detention of migrant and asylum-seeking children because of their or their parents' migration status is never in the best interests of a child and always a violation of children's rights.<sup>12</sup> Policies and practices resulting in displaced children's immigration detention (including *de facto*) should be eradicated. Alternatives to detention must be sought, and children and families should be placed in safe environments, separate from non-family adults, ensuring proper care, nutrition, and access to services, including education.
- **Children on the move must never be subjected to pushbacks or refoulement.** Every child must be allowed to enter a territory, apply for asylum, and have their case individually assessed and given due consideration. All operations at the EU's external borders must comply with the principle of non-refoulement and the international duty to rescue persons in distress at sea.<sup>13</sup>
- **Efforts should be made to keep families together and reunite unaccompanied children with their families whenever it is in the child's best interests.** Efforts should be made to identify all children and those claiming to be as soon as possible, and respect the obligation for a multidisciplinary approach to age assessment, the right not to be separated from families, the minimisation of the use of intrusive medical examinations and the obligations to ensure that all unaccompanied children have a qualified representative appointed at point of

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<sup>12</sup> *Ibidem*.7

<sup>13</sup> [International Convention for the Safety of Life at Sea \(SOLAS\), 1974](#); and [The United Nations Convention on the Law of the Sea of 10 December 1982](#)

arrival, without delay or precondition, as a fundamental step for protecting their rights.

- **Foster care systems** should be efficient and fully prepared to address the specific needs of children on the move.
- **Additional protections must be in place for particularly vulnerable children, such as, but not limited to, unaccompanied and separated children, children with disabilities, victims of trafficking, or those in need of special medical care.** Their specific needs must be assessed, identified and addressed promptly, safely and effectively. Unaccompanied children below the age of 18 should not be placed in adult accommodation centres, including while going through a process of age assessment.
- **Children should have timely and effective access to accurate and child-friendly information about their rights, available remedies,** duration and place of any procedure, what a procedure entails, the availability of support mechanisms, the possible outcomes and consequences of a procedure, the availability of protective measures, review mechanisms available, the availability of reparation mechanisms, and the availability of any other services during the proceedings.<sup>14</sup> Interpreters or cultural mediators should be engaged to ensure that children receive all the necessary information in a manner that is comprehensible to them and adequate to the child's age and maturity, while free legal assistance/advice and representation should also be made available. Effective mechanisms must be in place to monitor the treatment of children on the move at borders, ensuring compliance with international and regional human rights standards.
- **Independent bodies should have the authority to investigate, refer and address violations of children's rights through independent border monitoring mechanisms during screening and border procedures.** The UNCRC and other UN experts have stated that they stand ready to assist Member States with the prompt establishment of these independent mechanisms and to collaborate with them.<sup>15</sup> States should ensure that children have access to justice and effective remedies regardless of their status and invest efforts to end impunity for rights violations.
- **Each Member State should provide adequate means and relevant support to human rights monitoring bodies at borders<sup>16</sup>,** whether these are new or already existing ones, to ensure compliance with the best interests of the child principle and effective safeguarding during screening and asylum border procedures.
- **Border guards, immigration officials, social services and all personnel involved in the reception and processing of children on the move must receive training on child-friendly information provision, children's rights and protection standards to ensure they handle cases appropriately and humanely.**

<sup>14</sup> Council of Europe, [Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, 2011](#).

<sup>15</sup> *Ibid.* 7

<sup>16</sup> [Article 10 of Regulation \(EU\) 2024/1356](#) and [Article 43\(4\) of Regulation \(EU\) 2024/1348](#).