

## Protecting the rights of all migrant children\*

### *Vulnerability*

A **composite form of vulnerability** can be identified regarding migrant children (Beduschi, 2017). First and foremost, they are children and as such they need special treatment; additionally, they are migrants and as such they have specific needs and experiences.

This **composite form of vulnerability is further demonstrated by the fact that every child may have to face a different range of specific issues while being on the move**: a migrant child might be traveling alone, without being accompanied by an adult; a migrant child might be travelling together with his or her parents but who, for various reasons, may not be able to address his or her needs; a girl travelling alone may be exposed to greater risks such as falling victim of traffickers or sexual exploitation.

The vulnerabilities of all migrant children – unaccompanied and separated children, children accompanied by their parents, girls and boys – should be taken into proper consideration in order to ensure their wellbeing and the adequate protection of their rights.

### *Non-discrimination*

Article 2 of the Convention on the Rights of the Child establishes the principle of non-discrimination, according to which **States shall respect and ensure the rights enshrined by the Convention to each child within their jurisdiction without discrimination of any kind.**

Therefore, **the enjoyment of these rights is not limited to children who are citizens of the State concerned and must also be available to migrant children** (Committee on the Rights of the Child, General Comment N°6 (2005) Treatment of Unaccompanied and Separated Children outside their country of origin).

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Any discrimination relating to the child's status (as migrant, refugee, asylum-seeker, unaccompanied or separated, accompanied by his or her parents), race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, or birth is prohibited.

### *The right to life, survival and development*

Article 6 of the Convention on the Rights of the Child refers to the **inherent right to life** that every child has and provides that States shall ensure to the maximum extent possible his or her survival and development.

Therefore, according to article 6, **migrant children should be protected from violence and exploitation** such as trafficking or involvement in criminal activities which could harm them or even lead them to death. (Committee on the Rights of the Child, General Comment No 6 (2005) Treatment of Unaccompanied and Separated Children outside their country of origin)

Moreover, **measures should be taken in order to ensure adequate nutrition for migrant children of every age, from babies to adolescents, and deal with preventable diseases;** however, even if ensuring survival and physical health are priorities, States should never forget that **article 6 CRC encompasses all aspects of development and that a migrant child's health and psychosocial wellbeing are interdependent;** both may be put at risk by adverse living conditions, neglect and abusive treatment.

Furthermore, it should be pointed out that the **migrant children's right to survival and development can only be implemented in a holistic manner,** through the enforcement of all the other provisions of the Convention (Committee on the Rights of the Child, General Comment No 7 (2005) Implementing child rights in early childhood).

### *The right to be heard*

Article 12 of the Convention on the Rights of the Child provides that **States shall assure to the child, who is capable of forming his or her own views, the right to express those views freely in all matters affecting him or her; these views should be taken into consideration in accordance with the age and the maturity of the child.**

Article 12 further specifies that **the child shall be provided the opportunity to be heard in any judicial or administrative proceedings affecting him or her.**

In its Committee on the Rights of the Child, General Comment No 12 (2009) The right of the child to be heard, the Committee on the Rights of the Child observes that:

- Migrant children are in a particularly vulnerable situation and, for this reason, it is urgent to fully implement their right to express their views on all aspects of the immigration and asylum proceedings
- Migrant children have to be heard on their educational expectations and health conditions in order to integrate them into school and health services
- In the case of an asylum claim, the children must additionally have the opportunity to present their reasons leading to the asylum claim

Consequently, while adopting measures regarding migrant children, their views and wishes should be elicited and taken into account. **To allow for a well-informed expression of such views and wishes, it is necessary that the children are provided with all relevant information, in their own language, on their entitlements and services available, including the immigration and asylum process.** As participation is dependent on reliable communication, **where necessary, interpreters should be made available.** According to the Committee, particular assistance may be needed for **children formerly involved in armed conflict** to allow them to pronounce their needs.

## *Rights of children seeking refugee status or that are considered to be refugees*

Article 22 of the Convention on the Rights of the Child focuses on the children who are seeking refugee status, or who are considered to be refugees.

These children, whether unaccompanied or accompanied by their parents or by any other person, should receive appropriate protection and humanitarian assistance:

- States should contribute to the tracing of the parents or other family members of any refugee child in order to obtain information necessary for reunification with his or her family;
- In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child deprived of his or her family environment for whatever reason.

## *Family reunification*

Article 10 of the Convention on the Rights of the Child underlines that applications by a child or his or her parents to enter or leave a particular country for the purpose of family reunification **shall be dealt with in a positive, humane and expeditious manner.**

## *Right to privacy*

Article 16 of the Convention on the Rights of the Child guarantees the right of the child to privacy.

In order to safeguard the right of migrant children to privacy:

- States must protect the confidentiality of information received in relation to the children.
- This obligation applies in all settings, including health and social welfare.
- Care must be also taken that information sought and legitimately shared for one purpose is not inappropriately used for that of another.

### *Prevention of deprivation of liberty*

In the Committee on the Rights of the Child, General Comment N°6 (2005) Treatment of Unaccompanied and Separated Children outside their country of origin, it is clear that:

- In application of article 37 of the Convention on the Rights of the Child and the principle of the best interests of the child, unaccompanied or separated children should not, as a general rule, be detained
- Detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack of this status
- Where detention is exceptionally justified for other reasons, it shall be conducted in accordance with article 37 (b) of the Convention that requires detention:
  - To conform to the law of the relevant country
  - And only to be used as a measure of last resort and for the shortest appropriate period of time.

Unfortunately, very often, not only unaccompanied or separated children are being detained, but also children accompanied by their parents. These children are detained together with their parents. **Detention is an absolutely unsuitable method of addressing the children's needs.**

*Right to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health*

Article 24 of the Convention on the Rights of the Child protects the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. When implementing this right:

- States should ensure that migrant children have the same access to health care as children who are nationals
- States must take into consideration the vulnerabilities of these children
- States should take into account that many migrant children, in particular those who are refugees, have experienced violence and stress associated with a country afflicted by war; additionally, girls are particularly vulnerable and many may have experienced gender-based violence in the context of armed conflict (Committee on the Rights of the Child, General Comment No 6 (2005) Treatment of Unaccompanied and Separated Children outside their country of origin).

Article 39 of the Convention on the Rights of the Child provides that States shall provide physical and psychological recovery and social integration services to children who have been victims of any form of abuse, neglect, exploitation, torture, cruel, inhuman and degrading treatment or punishment, armed conflicts. These services should be provided to migrant children in a culturally appropriate and gender-sensitive context.

Article 23 of the Convention on the Rights of the Child, protects the rights of mentally or physically disabled children which is also applicable to migrant children (Committee on the Rights of the Child, General Comment No 6 (2005) Treatment of Unaccompanied and Separated Children outside their country of origin).

In its General Comment No 9 The rights of children with disabilities, the Committee on the Rights of the Child observes that **migrant children with disabilities are vulnerable to multiple forms of discrimination**, particularly girls with disabilities, who are more often than boys subject to abuse; the Committee emphasizes that **migrant children with disabilities should be given high priority for special assistance and access to adequate health services**.

### *Right to education*

Article 28 of the Convention on the Rights of the Child guarantees the right of the child to education.

Article 29 (1) (c) of the Convention on the Rights of the Child specifies that the education of the child shall be directed to the development of respect for his or her parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own.

Article 30 of the Convention on the Rights of the Child provides that a child belonging to an ethnic, religious or linguistic minority shall not be denied the right to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Furthermore, according to article 32 of the Convention on the Rights of the Child, States should guarantee the right of the child to be protected from economic exploitation and from performing any work that is likely to impede his or her education.

**Every migrant child shall have full access to education during all phases of the displacement cycle** in line with the Convention on the Rights of the Child. Girls, in particular, shall have equal access to education. Access to quality education should also be ensured for children with disabilities. All migrant children should be allowed and encouraged to maintain their cultural identity, values and native language. **If detained, during the detention period migrant children should enjoy their right to education** and this should ideally take place outside the detention premises in order to facilitate the continuation of their education upon release (Committee on the Rights of the Child, General Comment No 6 (2005) Treatment of Unaccompanied and Separated Children outside their country of origin).

### *Right to an adequate standard of living*

According to [article 27 of the Convention on the Rights of the Child](#), every child has the right to a standard of living adequate for his or her physical, mental, spiritual, moral and social development. It is further stressed that States shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

Therefore, **appropriate measures should be taken in order to secure an adequate standard of living for migrant children** ([Committee on the Rights of the Child, General Comment No 6 \(2005\) Treatment of Unaccompanied and Separated Children outside their country of origin](#)).

### *Right of the child to rest, leisure, play, recreational activities, cultural life and the arts*

[Article 31 of the Convention on the Rights of the Child](#) guarantees the right of the child to rest and leisure, to play and recreation, to cultural life and the arts.

**Migrant children should be able to enjoy this right during all phases of the displacement cycle, even when they are being detained** ([Committee on the Rights of the Child, General Comment No 6 \(2005\) Treatment of Unaccompanied and Separated Children outside their country of origin](#)).

- Migrant children face profound challenges in realizing their rights under article 31 as they often experience both dislocation from their own traditions and culture, and exclusion from the culture of the host country.
- Efforts must be made to ensure that these children have equal opportunities with children from the host country to enjoy the rights provided for in article 31 CRC.

- Migrant children **should be allowed to preserve and practice their own recreational, cultural and artistic traditions**
- Opportunities for rest, leisure, playful, recreational and cultural activities can have a significant therapeutic and rehabilitative role in **helping migrant children recover a sense of normality and joy after their experience of loss, dislocation and trauma, helping them to overcome emotional pain and regain control over their lives**
- **Special attention should be paid to girls**, as a combination of significant burdens of domestic responsibilities, siblings and family care, protective concerns on the part of parents and cultural assumptions imposing limitations on their behaviour can result in diminishing their opportunities to enjoy the rights guaranteed by article 31 CRC.
- Similarly, **migrant children with disabilities should be protected**, as cultural attitudes and negative stereotypes are hostile to these children. Detention facilities and hosting structures are usually not friendly to migrant children with disabilities. Communication barriers, failure to provide interpretation and lack of accessible transport may create extra obstacles to their access to play and recreational activities.



**Committee on the Rights of the Child, General Comment No 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31).**

### ***Prevention of trafficking, sexual exploitation and other forms of abuse***

**Article 19 of the Convention on the Rights of the Child** provides that **States shall take all appropriate measures to protect children from all forms of physical, mental or sexual abuse**

**Article 36 of the Convention on the Rights of the Child** imposes that **States shall protect children against all forms of exploitation.**

Article 34 of the Convention on the Rights of the Child emphasizes that children should be protected from all forms of sexual exploitation and sexual abuse.

Article 35 of the Convention on the Rights of the Child underlines that States shall take all appropriate measures to prevent the abduction of, the sale of or traffic in children.

Additionally, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, aims at protecting children from these practices.

Migrant children are particularly vulnerable to exploitation and abuse; girls are at particular risk of being trafficked, including for purposes of sexual exploitation. There is also a high risk of trafficking and exploitation for unaccompanied and separated children.

### *Child soldiers*

European countries may have to address the needs of migrant children who might have served as child soldiers in armed conflicts (for example the so-called Islamic State recruits children into its armed forces). If some of these children manage to somehow arrive in Europe, they will be in need of special protection and assistance.

Article 38 of the Convention on the Rights of the Child provides that States shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39 of the Convention on the Rights of the Child underlines that States shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of armed conflicts.

Additionally, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, aims at fighting against the phenomenon of child soldiers.

- Specific measures shall be taken in order to **prevent the re-recruitment of children who had served as child soldiers in armed conflicts. Child soldiers should be considered primarily as victims of armed conflict.**
- **Former child soldiers, who often find themselves unaccompanied or separated at the cessation of the conflict or following defection,** shall be given all the necessary support services to enable reintegration into normal life; such children **shall be identified on a priority basis** during any identification operation.
- **Migrant children who had served as child soldiers should benefit from special protection and assistance measures.**
- **Particular efforts must be made to provide support and facilitate the reintegration of girls who have been associated with the military,** either as combatants or in any other capacity, such as providing sexual services or being forcibly married to the military.

(Committee on the Rights of the Child, General Comment No 6 (2005) Treatment of Unaccompanied and Separated Children outside their country of origin).

*The right to freedom of religion and the right to preserve one's identity*

Article 14 of the Convention on the Rights of the Child protects the right of the child to freedom of religion.

Article 30 of the Convention on the Rights of the Child establishes that children belonging to religious minorities shall enjoy the right to profess and practice their own religion.

Article 8 of the Convention on the Rights of the Child guarantees the right of the child to preserve his or her identity.

According to these articles, **all migrant children should be able to practice their religion.** The practice of religious and ritual activities can help the children stay in contact with their culture and maintain their identity. **The importance of such activities to children's mental health should not be underestimated** (UNCHR Refugee Children: Guidelines on Protection and Care).