

## Spotlight on fulfilling the rights of migrant children in EU external action

**Fulfilling the rights of migrant children in EU external action:****WHAT'S AT THE HEART OF THE MATTER?**

Across the globe, human mobility is at significant levels<sup>1</sup>. However, migration to the EU represents only a small part of the overall global migration. According to the compilation of available data from national authorities and IOM offices, a total of 144,166 migrants and refugees arrived in Europe between January and December 2018, 23 per cent less than the 186,788 recorded in 2017, and 63 per cent less than the 390,456 in 2016. On average, one in every four was a child. This included 34,200 children, over a third of whom (12,000) were either making the journey alone or become separated from their families while en route<sup>2</sup>.

There is growing international consensus that concerted and coordinated actions among countries of origin, transit and destination are needed to enable safe and regular migration, protect children along migratory routes and ensure a non-discriminatory access to services, as well as to find alternatives to unsafe migration. Increasingly migration is a key issue in the EU's actions concerning countries outside of the EU (EU external action). In relation to children in migration, this encompasses a wide range of different measures with different purposes, including addressing the factors driving forced migration, actions which can promote legal migration, actions to strengthen child protection for children in transit, and measures to find durable solutions for children.

There are a huge range of challenges to address in external action, given that children move for a variety of different reasons. And while migration can bring safety and often can be an empowering experience and a driver of inclusive, economic and social development, it can often be unsafe, in particular, when children move against their will, when they move through irregular pathways or when they move alone. In these cases, children may be exposed to human rights violations and violence (including during migration enforcement or detention by States). They may experience discrimination, abuse, exploitation, and trafficking including for sexual exploitation or labour exploitation. Children may suffer from physical, psychological and mental health problems during their journey. Restrictions on family migration can also lead to family separation and children travelling independently of their family to rejoin them.

Many children undertake very perilous journeys while trying to reach Europe and some die along the migratory routes. In 2016, there were an estimated 700 child deaths on the Central Mediterranean route. According to IOM data, in 2018, 2,275 deaths have been recorded in the Mediterranean, many of which were child deaths. Migrants traversing the Sahara get stranded in the desert because they are abandoned by smugglers and left in the excruciating heat, with little food or water. In 2017 more than 1,700 migrant deaths have been recorded while travelling within Africa, with over 690 reported

<sup>1</sup> The number of international migrants worldwide has continued to grow in recent years, reaching 258 million in 2017, up from 220 million in 2010 and 173 million in 2000. Nearly 15 per cent of migrant flows is made by children (below 18 years) and young migrants (15 to 24 years) (UN DESA 2017 figures). UNHCR estimates that, at the end of 2016, those under 18 years of age constituted roughly 51 per cent of the global refugee population.

<sup>2</sup> [https://www.unicef.org/eca/sites/unicef.org.eca/files/2019-02/Refugee%20Migrant%20Crisis%20Europe%2030%20Dec%202018\\_0.pdf](https://www.unicef.org/eca/sites/unicef.org.eca/files/2019-02/Refugee%20Migrant%20Crisis%20Europe%2030%20Dec%202018_0.pdf)

in the Sahara desert (IOM 2017 figures).

Children sometimes are returned from the EU to countries which do not have sufficient child safeguards in national legislation and policies to deal with their individual needs (such as health or training and education) or the difficult situations in which children may find themselves (e.g. at risk of re-trafficking). They may also be returned to countries where they may face discrimination or limited access to essential services. Often children are returned without any best interests' determination and without proper coordination with the country to which they are returned. In many cases children are returned to or disembarked in (e.g. after a search and rescue operation in the Mediterranean sea) third countries in which they face a real risk of human rights abuses and violations.

Many countries lack formal procedures to determine statelessness, while not all stakeholders, such as asylum officials or border guards, have the capacity or knowledge to identify statelessness or nationality. That means that stateless children travelling through Europe may have their nationality registered incorrectly or their risk of statelessness not identified, which in turn leads to difficulties accessing appropriate protections and assistance or processes such as facilitated naturalisation.

EU policies, agreements, measures and programmes in cooperation with partner countries have the potential to improve the protection of children from unsafe migration and to uphold the right to liberty of movement of children and their families to leave any country, including their own, as recognized by Art.12 of the International Covenant on Civil and Political Rights and its CCPR , General Comment 27, Art.12 (Freedom of movement).

#### WHAT CHILD RIGHTS ARE AT STAKE?

**CRC rights are organised by the UN Child Rights Clusters used for country reporting to the Committee on the Rights of the Child (periodic review).** These Clusters are used by national governments when reporting to the UN Committee on the Rights of the Child and are a useful point of reference. The following clusters are relevant for the protection of children's rights in the EU external migration policy: *general measures of implementation, definition of the child, general principles, civil rights and freedoms, violence against children, family environment and alternative care, basic health and welfare and special protection measures.*

Guidance of particular relevance can also be drawn from the **General Comments of the UN Committee on the Rights of the Child** and concretely:

**General comment No. 2 (2002):** The Role of Independent National Human Rights Institutions in the Protection and Promotion of the Rights of the Child

**General Comment No. 6 (2005):** Treatment of Unaccompanied and Separated Children Outside Their Country of Origin

**General Comment No. 8 (2006):** The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment

**General Comment No 12 (2009):** The right of the child to be heard

**General Comment No 13 to Article 19 CRC:** The rights of the child to freedom from all forms of violence

**General Comment No. 14 (2013):** The right of the child to have his or her best interests taken as a primary consideration

**General comment No. 15 (2013)** on the right of the child to the enjoyment of the highest attainable standard of health

**General Comment No.19 (2016):** Public budgeting for the realization of children's rights

**Joint General Comment No. 3 of the CMW and No. 22** of the CRC in the context of International

Migration: General principles

**Joint General Comment No. 4 of the CMW and No. 23 of the CRC** in the context of International Migration: States parties' obligations in particular with respect to countries of transit and destination

## WHAT EU POLICIES & INSTRUMENTS ARE RELEVANT?

### Key legal provisions for children in EU external policy

- **Treaty on the European Union** (Art.3): *"In its relations with the wider world, the Union shall uphold and promote its values and interests and shall contribute to peace, security, the sustainable development, eradication of poverty and the protection of human rights, in particular the rights of the child (...) as well as to the strict observance (...) of international law"*.
- **EU Charter on Fundamental Rights** (Art.24): *"(...) children shall have the right to such protection and care as is necessary for their well-being and that the best interests of the child must be a primary consideration in all actions relating to children"*.
- **Treaty on the Functioning of the EU** (Art.208): states that Union policy in the field of development cooperation shall be conducted within the framework of the principles and objectives of the Union's external action; that EU development cooperation policy shall have as its primary objective the reduction and, in the long term, the eradication of poverty and the EU shall take account of the objectives of development cooperation in the policies that it implements which are likely to affect developing countries.

### EU overarching policy framework on external action relevant to children in migration

- **Global Approach to Migration and Mobility (GAMM)**:(November 2011): The framework defines how the EU conducts its policy dialogues and cooperation with non-EU countries and embedded in the EU's overall external action, including human rights and development cooperation policy. According to the GAMM: *"The European Union's dialogue and cooperation with non-EU countries should aim at implementing a series of priority activities (...) This approach includes protecting the human rights of all migrants in transit by focusing on protecting vulnerable migrants (unaccompanied minors, asylum-seekers, victims of trafficking, stranded migrants, etc.) (...); supporting capacity building for law enforcement forces and referral systems; supporting prevention, protection and prosecution of criminal acts and human rights violations committed against migrants, including those travelling irregularly; and guaranteeing decent living conditions for migrants in reception centres in non-EU countries"*.
- **EU Action Plan on Human Rights and Democracy 2015-2019**: *"Support improved access to justice and health for migrants in countries of origin and transit; promote improved conditions of detention for detained migrants and alternatives to the use of detention for irregular migrants in third countries; pay particular attention in this regard to vulnerable migrants including unaccompanied minors"*.

### Key EU policies on cooperation with third countries relevant to children in migration

- **Valletta Declaration and Action Plan** (November 2015): A political agreement among EU

and African leaders, in which they agreed to manage migration flows in all their aspects together, guided by the principles of solidarity, partnership and shared responsibility. As an example of actions that promote protection of children in migration, EU and African leaders commit to:“(…) *Support regional initiatives on children at risk, in order to ensure comprehensive and sustainable child protection to prevent and to respond to violence, abuse, neglect and exploitation of children (para 3).*”

- **EU Emergency Trust Fund for stability and addressing root causes of irregular migration and displaced persons in Africa (EUTF)** (November 2015): it is the main financial instrument for EU’s political engagement with African partners in the field of migration and for the implementation of many of the Migration Compacts under the New EU Partnership Framework (see below). The EUTF aims to support the most fragile and affected African countries’ in addressing the causes of destabilisation, displacement and irregular migration.
- **New EU Partnership Frameworks on migration** (June 2016): adopted as part of the EU Agenda on Migration, under this Framework, the EU agreed on tailoring ‘migration compacts’ with countries of transit or origin of migrants with the aim of sustainably managing migration flows<sup>3</sup>.
- **EU resettlement scheme** provides the possibility for children outside of the EU in need of international protection to be granted it in the EU. *There is also a proposal under negotiation for a Regulation establishing a Union Framework for Resettlement.*

#### **Key EU policies on the protection of children in migration**

- **European Commission Communication on the protection of children in migration** (April 2017): states that the Commission and the Member States should step up efforts to address unsafe migration and protect children along the migratory routes by: *“prioritising actions aimed at strengthening child protection systems along the migratory routes, including in the context of the implementing the **Valletta Summit political declaration and Action Plan** and the **Partnership Framework**, as well as in the framework of development cooperation; supporting partner countries in developing strong national child protection systems and civil registration services as well as cross-border cooperation on child protection; supporting projects targeting the protection of unaccompanied children in third countries along migratory routes, in particular to prevent child trafficking or smuggling; actively implementing the **EU Guidelines on the Promotion and Protection of the Rights of the Child**”* (...) *The Commission and Member States should support partner countries in developing strong national child protection systems and civil registration services as well as cross-border cooperation on child protection”.*
- **Council Conclusions on the protection of children in migration** (June 2017): recalls the objectives of addressing the root causes of migration, the fight against smugglers and traffickers so that migrant children, including unaccompanied minors, do not move irregularly to Europe; underline that the best interests of the child must be a primary consideration in all actions or decisions concerning children and in assessing the appropriateness of all durable solutions depending on the specific situation and needs of children.

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<sup>3</sup> The Framework includes partnerships (so called Migration Compacts) with Lebanon, Jordan, Niger, Nigeria, Senegal, Mali, Ethiopia, Tunisia and Libya.

- **EU Guidelines on the Promotion and Protection of the Rights of the Child** (March 2017): renew the **EU's commitment to comprehensively promote and protect the indivisibility of the rights of the child in its relations with third countries, including countries of origin or transit**. They underline the need to further strengthen their cooperation with international and civil society organisations. In the Guidelines, the EU reaffirms its commitments on promoting the General Measures of Implementation (GMI) of the UNCRC as set out in its **General Comment No. 5**. Strong references to **2030 Agenda for Sustainable Development**, the **European Consensus on Development** and the **New York Declaration for Refugees and Migrants**, containing commitments to protect the human rights of all refugees and migrants, regardless of status, have been included in the Guidelines.

### EU Funding

- Various EU funding instruments can be used by governments to advance the rights of children in migration. Ahead of the 2016 EU Forum on the rights of the child, which was dedicated to children in migration, the European Commission prepared a **background document** (revised on 5 of February 2018) with an overview of the different EU funds, including for the external action, and their scope with examples of recent EU contributions. These funds are undergoing changes, however the document provides a useful illustration of projects to date.

### Global overarching policy framework on migration relevant to the protection of children in migration

- **UN Global Compact for Migration** (GCM): adopted by the UN General Assembly (UN GA) in December 2018 and endorsed by the EU and the majority of its Member States, the GCM is the first global agreement proposing a common approach to international migration in all its dimensions. The political agreement has child rights and best interests as a cross-cutting and guiding principle and outlines a series of practical measures for improved cooperation on key issues affecting children in migration. These measures include addressing the issues which force people to migrate, improving the identification of children and ensuring they are referred to adequate social services, and strengthening cooperation on child protection across borders. Particularly relevant to the issue, are the actions included under objectives 2, 4, 5, 7, 8, 9,10, 14 and 21.
- **UN Global Compact on Refugees** (GCR): adopted by the UN General Assembly in December 2018, the global compact has four main objectives: easing the pressures on host countries; enhancing refugee self-reliance; expanding access to third-country solutions; and supporting conditions in countries of origin for return in safety and dignity. The GCR aims at strengthening the international response to movements of refugees and protracted refugee situations, building on international law and standards, including the 1951 Refugee Convention and human rights treaties, while better defining responsibility sharing at international level.

### Key EU legal provisions related to cooperation with third countries and impacting on children in migration

- **EU Return Directive** (2008/115/EC): see in particular recital 7 and 19 enhancing the need for cooperation with third countries and between the institutions involved at all stages of the return process. Currently the recast of the Return Directive is the subject of a Commission **proposal** under negotiation. See also **Spotlight Procedural Safeguards**.

- **EU Anti-Trafficking Directive** (2011/36/EU):“(…) actions should be pursued in third countries of origin and transfer of victims, with a view to raising awareness, reducing vulnerability, supporting and assisting victims, fighting the root causes of trafficking and supporting those third countries in developing appropriate anti-trafficking legislation”.
- **EU Regulation on the European Border and Coast Guard (Regulation 2016/1624)**: Chapter III, Section 1, General rules - Article 34 Protection of fundamental rights and a fundamental rights strategy: (…)*In performing of its tasks, the European Border and Coast Guard shall ensure that no person is disembarked in, forced to enter, conducted to, or otherwise handed over or returned to, the authorities of a country in contravention of the principle of non-refoulement, or from which there is a risk of expulsion or return to another country in contravention of that principle (para 2); In performing of its tasks the European Border and Coast Guard shall take into account the special needs of children, unaccompanied minors, persons with disabilities, victims of trafficking in human beings, persons in need of medical assistance, persons in need of international protection, persons in distress at sea and other persons in a particularly vulnerable situation (para 3). The European Border and Coast Guard shall in all its activities pay particular attention to children's rights and ensure that the best interests of the child are respected*. (…)*Article 54 “Cooperation with third countries” (para 1): “In matters covered by its activities and to the extent required for the fulfilment of its tasks, the Agency shall facilitate and encourage technical and operational cooperation between Member States and third countries, within the framework of the external relations policy of the Union, including with regard to the protection of fundamental rights and the principle of non-refoulement. The Agency and the Member States shall comply with Union law, including norms and standards which form part of the Union acquis also when cooperation with third countries takes place on the territory of those countries. (…)*”. Particular relevant to the issue is also Recital 49.

The Regulation establishing the European Border and Coast Guard is currently under revision, based on a **proposal** from the European Commission.

### **International Agreements between the EU and non-EU countries**

A wide variety of agreements exist between the EU and non-EU countries to address migration, including **readmission agreements**, **visa facilitation agreements**, **Mobility Partnerships** and **Partnership Frameworks on migration**, and which impact children in migration.

### **WATCH THIS SPACE**

#### **In a nutshell:**

- The European Commission is making efforts to follow up on the general implementation of the Communication on the protection of children in migration, though it remains somewhat marginal to the overall **EU agenda on migration**.
- There is no coordinated and full strategy for external EU action which would contribute to the protection of all children along the migratory routes outside of Europe, and which mirrors the internal comprehensive approach introduced by the EC Communication on the protection of children in migration, which focuses on the protection and integration of all children in migration from their arrival in Europe.

- More EU development aid for third partner countries is increasingly made conditional on their compliance with returns and readmissions, migration management, border control and fighting terrorism in order to meet the EU's security and migration objectives rather than to support partner countries in achieving their own development priorities and reducing poverty to leave no child behind according to the [2030 Agenda for Sustainable Development](#). As example, the EU Trust Fund for Africa makes predominant use (90%) of Official Development Assistance (ODA) mainly for border control and migration management. Its aim then is in itself quite different from the main goal of EU development cooperation, as formulated in the Lisbon Treaty, which is the reduction and, in the long term, the eradication of poverty, guided by the key principles of development effectiveness.
- The [Partnership Frameworks on migration](#) raise concerns regarding impacts on children including: measures to enhance border management, increase rates of return to countries of origin and transit, and the mix of positive and negative incentives foreseen to be used with third countries to reward those countries willing to cooperate effectively with the EU on migration management and ensure there are consequences for those who refuse. These incentives are to be integrated into the EU's development and trade policies.
- The [EU-Turkey Statement](#): agreement between Turkey and the EU aimed at stopping the flow of irregular migration via Turkey to Europe. As consequence, a European policy of blocking asylum seekers in the EU hotspots in the Greek islands has been implemented. Currently, around 12,000 people are still forced to live in inadequate reception and identification centers and often exposed to violence, harassment and exploitation, amid high tensions, lack of security and minimal protection.
- The EU has proposed the setting up of [regional disembarkation arrangements](#) in third countries, and [controlled centers](#) in the EU. These platforms would have the objective of quickly identifying migrants rescued in the context of search and rescue operations and distinguish between irregular migrants, who will be returned, and those in need of international protection (understood as per the Geneva Convention definition). Both measures, if agreed, would be developed in parallel and raise serious concerns from a child/human rights and development perspective.
- The EU political dialogues and agreements on migration with third countries do not yet include adequate human rights and child protection safeguards.

## RESOURCES FOR ADVOCACY

The EU-UNICEF [Child Rights Toolkit: Integrating child rights in development cooperation](#) explores how we can realise child rights across all development sectors and aid modalities. It looks at all sectors of development cooperation - beyond traditional child focused sectors - such as nutrition, health and education, and includes some recommendations and indicators related to migrant children.

**9 Recommended Principles to Guide Actions Concerning Children on the Move and Other Children Affected by Migration**, following a consultative process by a large number of experts from UN agencies, academics, donor agencies and civil society organisations, were adopted in Geneva in May 2016. They set out fundamental principles that should underpin all migration-related policies applicable to children who migrate or are otherwise affected by migration. They are derived from existing international human rights law, humanitarian law, and refugee law and take note of the recommendations set out in the Committee on the Rights of the Child's 2012 [Day of General Discussion Report on "The Rights of All Children in the Context of International Migration"](#). The « Principles » and their explanatory comments are available [here](#).

The [Initiative for Child Rights in the Global Compacts](#), co-led by Terre des Hommes and Save the

Children and made up of CSOs, UN bodies and agencies, is working to ensure that the rights of children in migration are fully respected and fulfilled through the Global Compact for Safe, Orderly and Regular Migration and the Global Compact for Refugees. The Initiative produced **recommendations** to UN Member States during the negotiations, including a **Statement** regarding the Global Compact on Migration and a **Response** to the final draft of the Global Compact on Refugees. The Initiative has also produced “**Explore, engage, act**” a **briefing** for young people on the adopted Global Compacts for Refugees and on Migration. The aim is to enable children and young people to know what the two Compacts say about migrant and refugee children and adolescents looking at ways in which children and young people might want to work with others and take action. The briefing also contains inspiring examples of groups of young people working to support migrant and refugee children and youth.

**Destination Unknown network** led by Terre des Hommes has produced a new booklet, ‘**Making life better for children on the move: Promising practices for working with and supporting children on the move**’ presenting eight examples of inspirational work undertaken by Destination Unknown members such as: 1) developing services and creating opportunities to reduce the pressure for children and their families to migrate and: 2) working with children and their communities to raise awareness about risks, and possible opportunities for safe migration.

**In an open letter to European leaders**, Terre des hommes Hellas and its partners in Greece challenged the EU-Turkey deal on its third anniversary for leading to short-sighted and dangerous migration policies and called on European leaders to urgently take action to end the humanitarian and human rights crisis at Europe’s borders.

**“Partnership or conditionality – Monitoring the Migration Compacts and EU Trust Fund for Africa”**, a report produced by **Concord Europe**. It is based on three country case studies (Libya, Niger and Ethiopia) to assess the nature of the EU’s partnerships with African countries in the field of migration and whether the Fund is used to divert development assistance to meet EU security objectives. There is an increasing concern that the EU Trust Fund (EUTF) is a political tool focusing on quick-fix projects with the aim to stem migratory flows to Europe. This strategy risks to fail as addressing the drivers of forced migration requires a long term, coherent and sustainable approach, respecting the basic principles of development aid. Accordingly, in the report CONCORD suggests several recommendations that concern specifically the three key countries analysed but that have also general validity for the EUTF and Migration Compacts.