

## **ENOC Position statement on "Children on the move"**

### "Children on the Move: Children First"

❖ Adopted at the 17<sup>th</sup> ENOC Annual General Assembly held on 27 September 2013 in Brussels

1

We, European Independent Children's Rights Institutions (ICRIs), members of ENOC, express our deep concern regarding the position of "children on the move" in our respective countries and the notable deficiencies in European, national and local policies in responding to their needs and interests.

"Children on the move" covers all children who migrate from their country of origin to and within the territory of a European country in search of survival, security, improved standards of living, education, economic opportunities, protection from exploitation and abuse, family reunification, or a combination of these factors. They may travel with their family, or independently, or with non-family members. They may be seeking asylum, victims of trafficking, or undocumented migrants. The status of children on the move may differ at various stages on their journey and they may encounter many differing situations of vulnerability<sup>1</sup>.

We strongly stress the need for full compliance of existing laws, policies and practices across Europe with the United Nations Convention on the Rights of the Child (UNCRC) and its optional protocols, as well as with other relevant international instruments and standards, particularly in regard to "children on the move".

We recall the 2006 ENOC Statement on State Obligations for the Treatment of Unaccompanied Children, the UNCRC'S General Comment n°6 (2005) on the treatment of unaccompanied and separated children outside their country of origin, as well as the report of the 2012 Day of General Discussion of the Committee on the Rights of the Child on "the rights of all children in the context of international migration".

Recognising the significant challenges presented by the current economic crisis, ENOC recalls that pressures on public budgets should not prevent member states from complying with their international legal obligations in relation to children, especially "children on the move" who are particularly vulnerable.

ENOC understands that the circumstances in which "children on the move" find themselves and the challenges they face are diverse and complex, requiring multilateral, comprehensive and holistic approaches. In this context, the members of ENOC agree that the following measures and recommendations should be endorsed, implemented and supported at European, national and local levels:

1. "Children on the move" are children first. Accordingly, fundamental principles with regard to children's rights need to be mainstreamed into the development, implementation and monitoring of laws, policies, procedures and practices affecting "children on the move".

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<sup>1</sup> Definition drawn from background paper of European Forum on the Rights of the child (2012) - [http://ec.europa.eu/justice/fundamental-rights/files/background\\_cps\\_children\\_on\\_the\\_move\\_en.pdf](http://ec.europa.eu/justice/fundamental-rights/files/background_cps_children_on_the_move_en.pdf)

The key principles in this regard as set out in the UNCRC are: children's right to non-discrimination; children's right to have their best interests treated as a primary consideration in all actions and decisions affecting them; children's right to life, survival and development; and children's 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.

In particular, the right of "children on the move" to express their views freely should be ensured in all relevant procedures and decision-making processes, and where needed, he/she should be assisted by an independent interpreter. These views should be given due weight in accordance with the child's age and maturity.

2. Appropriate child-friendly reception conditions should be ensured for all "children on the move", even in the case of intra-European migration. This is a necessary prerequisite for the realization and the protection of all the other rights of these children.

In particular, from their arrival, all children should be provided with specific and comprehensive information on their rights in language they can understand, as provided in international and national legislative provisions. They also should have access to education and health services on an equal basis to other children within the jurisdiction of the receiving State. Giving access to all of these rights is crucial for the integration of children in the receiving society.

Migration policies in relation to "children on the move" require a range of measures that go beyond border controls and action against irregular migration. States should find durable solutions which respect human rights and the rights of children, using holistic, personalised and flexible tools and respecting their best interests as determinate through formal processes.

3. Personnel dealing with "children on the move" (law enforcement authorities, judicial authorities, interviewers, interpreters, social and youth workers, health professionals, guardians, legal representatives, police officers and border guards, amongst others) should be properly trained to respect children's rights, understanding these children's particular communication and cultural needs and able to respond appropriately to signs of fear or distress.
4. Age assessment should be made in the child's best interest, with the primary aim to ensure that the child is granted the rights and protection he/she is entitled to. Age assessment should primarily take place on the basis of documentary evidence. When documentary evidence is not sufficient, and in cases of serious doubt about the age of the child, further examination may be conducted as a measure of last resort. It should be carried out as quickly as possible, in the presence of a guardian and processed by independent medical as well as social care experts. Until the age assessment is completed, each person claiming to be a child should be considered and treated as a child.

Age assessment should include a combination of physical, social and psychological maturity assessments. The techniques used should respect the child's culture, dignity

and physical integrity. The fact that some physical assessments may be particularly stressful, invasive or traumatic for children should be taken into consideration. ENOC expresses grave concerns about the use of X-ray in view of adverse effects on the child's health, negative judgements by medical authorities on appropriateness and effectiveness and questionable reliability and accuracy.

The child should be fully informed about the process of age assessment and its consequences. The child's views should be given due weight in accordance with his/her age and maturity and informed consent should be requested and obtained when medical/physical investigations are considered necessary.

Refusing to undergo an age assessment procedure should not lead to an immediate assumption of adulthood. Authorities should assess whether the refusal is motivated by reasons other than presumed adulthood.

In any case, age assessment should be open to legal remedy and there must be a reasonable period of time to ensure the individual can provide all necessary evidences for proving he/she has not reached adulthood. During the procedure, full protection should remain until a final decision is taken.

Given the variety of techniques related to age assessment, ENOC calls upon European authorities (EU/Council of Europe) to develop and promote good practices. In any instance where practices lead to conflicting results, the benefit of the doubt and the most favourable determination should always prevail. As a further step, on the basis of identified good practices, the EU may consider the adoption of a rule on the mutual recognition of age assessment decisions between the EU member states.

Given the potential impact of age assessment decisions on the child's status - from full protection for children, to basic or no protection for adults - States should adopt appropriate measures to organise a smooth transition.

5. Immediately after the arrival of any unaccompanied/separated child, a skilled independent guardian should be appointed to support, advise and protect him/her until he/she is reunited with his/her family or receives an appropriate care placement. The guardian, who is appointed to serve the child's best interests, should ensure that responsible agencies safeguard the child's rights and meet the welfare and care needs of the child. The guardian should have the authority to represent the child in all decision-making processes, if the child gives his/her consent.<sup>2</sup>

For all administrative and judicial procedures every child should receive, free of charge, the support of interpreters and independent legal advisers trained in working with children and young people.

6. Unaccompanied and separated children should never be refused entry to a country in accordance with the non-refoulement obligations deriving from international human rights, humanitarian and refugee law.

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<sup>2</sup> The child should be given the right to refuse/change the assigned guardian. The child should freely express motivated objections for such a refusal.

Any decision taken under the Dublin II and III regulations and concerning unaccompanied children seeking asylum should comply with the recent jurisprudence of the Court of Justice. The latter underlined that the child's best interests must be a primary consideration in all decisions adopted by the Member States on the basis of the Dublin regulation. As a consequence, the Court states "where an unaccompanied minor with no member of his family legally present in the territory of a Member State has lodged asylum applications in more than one Member State, the Member State in which that minor is present after having lodged an asylum application there is to be designated the 'Member State responsible' " for examining the asylum application (European Court of Justice, 6 June 2013, C-648/11).

7. Right to protection from physical and mental violence, abuse and neglect, as well as from all forms of sexual and all other forms of exploitation, must be carefully taken into account when protecting "children on the move".

On arrival specific care should be ensured, in regard to the specific needs of "children on the move" in all educative, psychological and health aspects.

Child victims of trafficking are a particularly vulnerable group of "children on the move". The response of many States to the issue of child trafficking, however, remains focused on the immigration status of the child and on their asylum application - the need to protect child victims often comes secondary.

Return to countries of origin without offering adequate support and without consideration for their best interest often results in putting children at risk of re-trafficking.

Relevant instruments and standards (at Council of Europe and EU level) concerning trafficking in human beings, especially child victims of trafficking, should be ratified, transposed and fully implemented without delay.

8. As a principle, ENOC reaffirms its firm opposition to any form of detention of children, be they accompanied or not, and whatever procedure they are subject to (whether asylum or return to their home country or the first port of entry in Europe).

ENOC invites all relevant European and international stakeholders and jurisdictions to exchange information and good practice on alternatives to detention. The development and implementation of alternative measures should be a key priority for national and European decision-makers.

ENOC stresses its concern about policies aiming at criminalising migration and underlines that in this regard, "children on the move" should never be subject to criminal procedure for reasons solely related to their immigration status or where their involvement in criminal activity has been caused by exploitation.

**ENOC calls on European States and Institutions to ensure their policies, laws and practices are compliant with the relevant instruments on the protection of children, with particular attention to the UN Convention on the Rights of the Child.**

**ENOC underlines that in this framework “children on the move” should benefit from specific attention and enhanced protection given their vulnerability, particularly those separated from their family and unaccompanied.**

**Within the framework of the European Union, ENOC invites all institutions, in their respective competences, to pay due attention to the rights and protection of the child.**

**In this context, ENOC underlines the key role played by the European Commission in its duty to monitor the implementation of EU rules by member states. ENOC urges the European Commission to launch infringement procedures whenever children’s rights are violated.**