

## **Always a Child : a vision on how to fulfil the rights of children in migration**

### Background

Children migrate from their countries of origin or residence for a variety of reasons, and often because of a combination of factors. They may be seeking safety, stability, asylum, decent income and living standards, freedom from discrimination, family reunification, economic or educational opportunities, amongst others, and often a combination of these. Some are trafficked. They may travel with family groups, with other adults or peers, or they may be unaccompanied. Some are separated from family members on route. Some undertake very perilous journeys while trying to reach the EU or move within it, and some die during their journey.

Regardless of a child's reasons for being in migration, their situation or status (or that of their parents), they all have rights as children, first and foremost according to the UN Convention on the Rights of the Child (CRC) and in line with the Lisbon Treaty and the EU Charter of Fundamental Rights).

However, these rights are not always reflected in law, policy or practice. Children face discrimination in access to their rights as children, on the basis of their residence or migration status (or that of their parents). Rather than considering first their status as children, their entitlements to services (such as health and shelter) are often governed by different laws or policies that focus primarily on their immigration status (e.g. undocumented, trafficked, asylum seeking, unaccompanied or separated). Indeed, access to necessary services for them may fluctuate, as different regimes come into application if their immigration circumstances change as they often do (for example, from trafficked to undocumented to children who are subject to return orders). This can lead to serious gaps in protection and enjoyment of children's rights.

Consequently, many actors, including the UN Committee on the Rights of the Child, and organisations contributing to the Initiative for Children in Migration, have been calling for a comprehensive and rights-based approach to all children in the context of international migration. The European Commission has also recently adopted a Communication addressing the protection of all children in migration.

**This statement sets out our vision of what a comprehensive and rights-based approach to all children in migration actually means.** When you think *comprehensive*, think "*all*": all children, all aspects of their situation, all actions, all actors. When you think *rights-based*, think of *obligations* to children, not of discretionary welfare interventions.

The statement is the result of a collective effort of many organisations involved in the Initiative. The Initiative invites organisations working with children in migration to promote this vision and its recommendations.

- Using the vision will help make our collective advocacy more effective through consistent calls for action at different levels, locally, nationally and at European level.
- The vision and the background paper will support joint advocacy in your country with stakeholders from different interests or backgrounds (including child rights organisations,

migration organisations, human rights organisations, youth networks, social welfare organisations).

Organisations are invited to sign on to the vision statement and make it visible on their own website as well as including it in their advocacy. The online platform of the Initiative will include a list of organisations that have endorsed.

## Vision

A wide range of international organisations and civil society actors call on the EU, its Member States and stakeholders to ensure the rights of all children in migration are fulfilled. We urge the EU and member states to adopt **a comprehensive rights-based approach** which:

1. Respects, protects and fulfils the rights of **all children in migration, without any discrimination**.
2. Addresses **all their rights, and all aspects of their situation**.
3. Takes account of children in **all actions**, throughout policy areas and stages of policy-making.
4. Involves **all relevant actors** working together.

### **1. Respects, protects and fulfils the rights of all children in migration, without any discrimination:**

Children's rights, in particular as set out in the CRC, apply equally to all children, without any discrimination on the basis of their migration, residence or citizenship status, as well as other grounds (age, national or ethnic origin, religion, gender identity, sexual orientation, disability, etc.). This means that:

- **EU and national policies should seek to fulfil the rights of all children in migration, regardless of their status, or the status of their parent(s) or primary caregiver(s), and without discrimination.**
- **Migration policies should identify and address the specific rights and needs of children, including where they are in families/accompanied. Children are often barely visible in migration policy or treated only as part of an adult family member's situation.**
- **Child rights and other public policies should fulfil the rights of children in migration, alongside those of national children. Children in migration should be equally covered by general measures concerning national children, such as access to health and education services, birth registration and child protection systems.**
- **Specific rights and needs, rather than their status, should be the starting point of all actions regarding children. Where children in migration have particular needs and require support, they should be treated in the same way as national children with the same needs, e.g. alternative care services should be available to all children without parental care. Specific needs should also be catered for through targeted services.**

## **2. Addresses all their rights, and all aspects of their situation**

All aspects of the situation of children in migration, at every stage of migration, should be addressed, in full respect of their rights.

This means that:

- **Procedural safeguards, including access to child-friendly information, adapted to the child's age and level of maturity, free, quality legal assistance and representation and effective remedies, should be in place to ensure children's rights are fulfilled across all of the different procedures in which they are concerned, and children should be empowered, supported and assisted to access and participate in judicial and administrative processes. This includes special safeguards for unaccompanied and separated children, including guardianship and appropriate age assessment processes.**
- **Children in migration should have the right to appropriate and quality care, housing and services, without discrimination and with necessary firewalls from migration control measures.**
- **Durable solutions should be identified and implemented for all children in migration, having their best interests as a primary consideration. This includes clear and accessible status determination and durable solution procedures, including pathways to secure residence status or to transfer to another country, where this is in their best interests.**
- **Cross border cooperation between EU Member States should be strengthened to address situations where children in migration are of concern to more than one country, including family tracing and reunion, relocation, transnational child protection, allocation of responsibility for examining an asylum application, disappearances and trafficking.**
- **Cooperation between EU and third countries on development and migration policies should uphold the rights of children in migration.**

## **3. Takes account of children in all actions, throughout all policy areas and stages of policy-making**

Children's rights should be systematically considered and addressed across all the different laws and policies that affect them. Policy makers should take stock of how children in migration affected by different policies and actions, and ensure that their rights are respected, protected, and as far as possible fulfilled.

- **The rights of children in migration should be addressed in all relevant EU and national laws and policies. These include policies on migration (admission channels and immigration procedures, border control, return, (re)integration, cooperation with third countries), international protection, nationality laws (legal safeguards to prevent childhood statelessness), anti-trafficking, education, health, social, youth and children's rights policies, amongst others. This should be facilitated through**

institutional structures, and systematic and timely processes that foster consultation of, and coordination between, stakeholders, as well as accountability.

- Children in migration should be taken into account across the whole process of taking action: from drafting and development of laws, programmes, policy and guidelines, to implementation, allocation of resources, monitoring and evaluation.
- Dedicated resources should be in place to tackle issues affecting all children in migration through specific budgetary commitments and promoting better accountability in the use of funds for fulfilling the rights of children, including use of EU funds to support national implementation.
- Available tools at EU level, including mechanisms for monitoring, evaluation and infringement proceedings should be used effectively to ensure compliance with child rights obligations by all EU member states and facilitate access to justice where needed.
- Child participation should be promoted. Children in migration should have a voice in contributing to policies and actions in their regard and in participating in all decisions affecting them; they should be informed, supported, empowered and engaged, with due account being taken of their views.

#### **4. All actors**

Many different actors work with children in migration, including a range of public bodies and agencies, IGOs, NGOs, children and youth led organizations, professionals, private companies and the voluntary sector. Inter-agency and multidisciplinary approaches are critical to achieving effective responses to the situation of children.

- **EU and national measures need to properly involve all actors working with children at regional, national, local and municipal level. This means that the development and implementation of EU and national measures concerning children in migration should involve not only migration actors, but also child protection and welfare actors and children in migration themselves. The latter should have primary responsibility for the reception and care of children in migration, within the general national child protection system applying to all children in the State.**
- EU and national actions should support effective collective action of relevant stakeholders, for example, to ensure proper case management, carry out multi-disciplinary individual needs' assessments and to identify and implement durable solutions.
- EU and national action should resource training to equip professionals working with children in migration and support them to work together to fulfil children's rights (e.g. funding for guides, training, learning exchanges, monitoring etc.).