



INTRODUCTION

For as long as international borders have existed, children have been crossing them to flee danger, disaster, to reunite with families, or start a new life. Here, we look at the processes and policies that shape the realities for unaccompanied children crossing international borders, with a focus on good practices and recommendations. Although data is scarce and fragmented, statistics on detention, deportation and shelter reports confirm alarming increases in children moving across international borders without their parents; these children face a perilous journey fraught with violence, danger and exploitation. We wish to focus attention on what happens at these borders because too often, quick assessments lead to detention, deportation, and an inability to petition for asylum. If children cross borders without documents or enter a destination country conditionally, the *border* actually accompanies them wherever they are, whether they are experiencing barriers to health care and education, or in their dealings with local law enforcement. It is important to remember that these are children first and foremost, who have journeyed alone through dangerous conditions taking tremendous risks in search of safety and a better life.

Children under the age of 18 traveling alone continue to cross international boundaries in search of refuge from disaster, conflict, pandemics, gang violence, domestic violence, or trafficking. Others seek to reunite with their parents or are looking for work to help support their families who are living in poverty. They travel unaware that they may be entering situations that are more dangerous than those they are attempting to escape. For example, unaccompanied children are at a heightened risk of being exploited for sex trafficking or child labor. For the situations these children face, several international documents outline appropriate protections.

The *Convention on the Rights of the Child*, along with General Comment number 6 (2005), states clearly that regardless of their migratory status, the standard treatment must be in the best interest of the child. This includes, but is not limited to the following:

- Children should not be detained because of legal status
- Children must have access to legal representation
- Children deserve an opportunity to be heard
- Children have a right to be with their families

The best interest of the child is echoed in OHCHR's recently launched *Recommended Principles and Guidelines on Human Rights at International Borders*, particularly in Section II A and in Guideline 6, #12-14 and Guideline 8, #6. UNHCR's report *Children on the Run* underscores the inherent vulnerability of children, especially those separated from their parents. These children have the possibility of applying for asylum in accordance with the status of having endured "child-specific forms of persecution that may give rise to a claim of refugee protection". UNHCR urges all States to offer child protection services. According to the UNHCR Report, 58% of the migrant children who were interviewed qualified for international protection. These children were fleeing harm, or potential harm, and did not receive protection from their home countries.

To fully understand the importance of rights for unaccompanied migrant children, it must be clarified that the term *refugee* has become a common term to describe any individual fleeing violence in their home

country. However, in a legal context, the designation of refugee affords a set of protections that only apply to those who fit the legal definition. The 1951 Convention relating to the Status of Refugees provides a narrow definition, stating that a refugee is a person who has fled their home country, “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.” While this definition seems broad, the requirement that one be “persecuted” for a specific set of reasons greatly reduces the number of protected persons, since immigration courts often interpret “persecution” very narrowly. Those who are threatened by general, untargeted violence are often not considered to be persecuted.

Many States have recognized the narrowness of the definition of refugee in the context of current international migration flows. While the U.S. and Western Europe use the refugee definition outlined in the 1951 Convention, States in other world regions have negotiated additional agreements such as the 1969 Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, which expands the definition of refugee to include anyone who has been displaced due to “external aggression, foreign domination, or events seriously disturbing public order”. Similarly, the Cartagena Declaration expands the refugee definition to include “persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order”. Despite the trend towards broadening the definition of refugee, given the limited scope of the traditional definition and the high bar for UNHCR resettlement it is estimated that only 1% of the 10 million refugees displaced worldwide will be resettled in safe, secure environments.

Significantly, non-refoulement, a principle of customary international law that is highly applicable to the protection of migrants, specifies that no one may be returned to a country where their life or liberty may be threatened. It is outlined in the 1951 Refugee Convention, as well as the Convention Against Torture, making it binding for all states that have ratified one or both of those Conventions. It applies to everyone, regardless of refugee or other status. Therefore many migrants find themselves in a legal void, protected from forcible return to their countries, and yet denied any legal protective status. The limits of the 1951 Convention, along with the limited resources of those countries implementing an expanded definition, results in the vast majority of migrants lacking international protection—including unaccompanied children.

UNIQUE ISSUES FACED BY UNACCOMPANIED CHILD MIGRANTS AND GAPS IN HUMAN RIGHTS-RESPONSIVE TREATMENT

- Oftentimes unaccompanied children are subject to unstandardized, inappropriate age determination techniques, which render them invisible within a system designed to protect the best interest of the child. Many young people have a right to seek asylum without realizing it and they are not necessarily advised of this at the border. Often immigration systems are not conducive to family unity.
- Most border officials are not well prepared to distinguish between refugees, asylum seekers, victims of human trafficking, and other persons on the move. Young migrants are more vulnerable than adult migrants and have fewer options to provide for themselves.
- Many countries do not have specific protocols for minors that provide for their distinct needs and protection.

ON THE GROUND REALITIES

The majority of unaccompanied child migrants entering the E.U. are fleeing conflict or persecution in African and Middle Eastern nations. Each year, many of these children are forcibly detained and deported, even though they could qualify as asylum seekers. The psycho-social impact of both detention and deportation must be recognized as extremely harmful, especially to children, after making a long and dangerous journey. Being minors without familial or legal representation, their agency is not taken seriously. In detention, they are often not given adequate information regarding their status. Upon deportation, not only are they at risk of psychological issues and possible exploitation, but are often disillusioned by the system and consider highly dangerous means of re-migration in the near future. The reality of re-migration is extremely frequent, especially among those fleeing economic hardship and war who feel they have no alternative (European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, 2010).

In the past few years there has been a surge of unaccompanied child migrants from Guatemala, El Salvador, and Honduras. The main factor forcing these children to flee is societal violence, often gang violence related to drug trafficking, combined with poverty and sometimes family violence. Honduras and El Salvador have some of the highest murder rates in the world. Gangs are terrorizing and displacing families; they recruit young men and rape girls, causing many families to encourage their youth to migrate to neighboring countries for safety since their governments cannot or will not protect them. The U.S. receives the majority of the asylum claims, but UNHCR has documented a 712% increase in the number of asylum applications received by Mexico, Panama, Nicaragua, Costa Rica and Belize. The number of unaccompanied child migrants attempting to cross the border into the U.S. from Latin America rose from 4,059 in 2011 to over 57,000 in 2014 (UNHCR, 2014). In the past, the trend was for unaccompanied children to be older boys but the situation has become dire enough that many girls are making the journey alone, as well children under twelve years of age (Pew Research Center, 2014).

GOOD PRACTICES

All over the world there are good practices that can serve as examples for the international community and individual states. These examples demonstrate continued instances in which the international community aids in the protection of unaccompanied children.

The UK has made large strides in protecting the rights and welfare of unaccompanied children. Efforts are directed toward ending the practice of detention of migrant children and centering policy and approach on human rights. Change takes time, but there is recognition that detaining children deprives them of their fundamental rights and that migrants crossing borders without accompaniment or documentation are not committing criminal acts. (Human Rights of unaccompanied migrant children and young people in the UK, 2014)

Over half of the Syrians fleeing their country are children and many of them are traveling alone (UNHCR, 2015). More than one thousand unaccompanied children have ended up in the Za'atari refugee camp in Jordan since 2012, some as young as nine years old. They leave because of violence and destruction of their homes, separation at the border, the hope of finding work to help support their families, risk of forced recruitment by armed groups, or fear of retaliation for family members' involvement in opposition forces. They are often not identified as traveling alone and this leaves them open to exploitation such as child marriage, prostitution and child labor.

UNICEF, in partnership with the Jordanian government and several NGO's, has a program to assist these children. Once they are identified and registered, they are provided with food, shelter, medical care, psychosocial care and school enrollment. Many of the children have witnessed or experienced violent situations due to the crisis in their country and/or the stress created by it, and all of them have been separated from their families. If relatives are found, they are reunited based on the best interest of the child. If no relatives are available, they try to offer them a foster family. If none are found, they live in assisted living facilities cared for by social workers (UNICEF, 2013a).

- Recognize the unique experiences of child migrants and prioritize their best interests and rights throughout the entire migration process.
- Increase accurate data and statistics, disaggregated by age and gender, easily accessible to the public.
- Implement specific protection measures to protect child migrants against violence and exploitation, such as gender-based violence, sexual exploitation, child labor and trafficking.
- Sensitize border patrol to the unique vulnerabilities of girls, including the possibility of coercion, forced prostitution, and child marriage.
- Guarantee children have full access to health care including basic medical care, clean water, nutritious food, mental health services, including trauma and psychological counseling.
- End detention of child migrants due to their migratory status.
- Increase access to legal representation, including the time necessary to examine each individual situation, so that the children know their rights and the possible ramifications for the decisions throughout the legal proceedings.
- Provide full access to economic, social and cultural rights including appropriate school enrollment and an adequate standard of living.
- Increase cooperation between states to actively address the root causes of migration, especially of forced migration.
- Promote capacity building of both Government and Civil Society by sharing information and best practices, locally, regionally, and globally.

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