



CHILDREN ON THE MOVE

An Urgent Human Rights and Child Protection Priority

A report by the FXB Center for Health and Human Rights at Harvard University



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CHILDREN ON THE MOVE FRAMING REVIEW

A Map of Existing Protection Frameworks, Overarching Issues, and Areas for Improvement



CHAPTER

INTRODUCTION

Children have migrated for centuries to escape conflict and persecution at home; to leave behind destitution and unemployment; for purposes of exploitation, for family reunion, and for a better life. Today, children are an important part of large-scale population movements involving millions of people. They will likely be increasingly affected in coming decades as a result of globalization, socioeconomic transformation, and climate change. Despite increasing attention to the vulnerabilities of these “children on the move,”¹ existing legal and policy instruments to protect their fundamental rights have not been thoroughly examined. This review provides a map of the relevant frameworks to protect children on the move and outlines the shortcomings of these frameworks. It makes recommendations for a more comprehensive approach that protects children’s fundamental rights and prioritizes their needs, irrespective of their immigration, nationality, or documentation status.

Although there is an authoritative international definition of a child — “every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier”² — there is no comparable definition of a migrant child. The Inter-Agency Working Group on Children on the Move has described this population as: “Children moving for a variety of reasons, voluntarily

or involuntarily, within or between countries, with or without their parents or other primary caregivers, and whose movement, while it may open up opportunities, might also place them at risk (or at an increased risk) of economic or sexual exploitation, abuse, neglect and violence.”³

As the former Special Rapporteur on the Human Rights of Migrants Jorge Bustamante has noted, migration laws, policies, and programs lack specific provisions on children on the move: children are often invisible, seen as appendages to the family unit. Additionally, “public policies aimed at protecting child rights in general . . . have not yet taken into account the specific condition and needs of migrant children.”⁴ Where the law does address this population, it considers only discrete subpopulations of exploited and abused children on the move (trafficked, refugee, smuggled). As a result, children whose lived experiences fit within multiple categories are often denied protection and basic services, and the very real needs of other child migrants are overlooked. Analysis of children on the move has in large part focused on the issue of trafficking.⁵ Yet this is not synonymous with all children’s movement, and the focus on criminality has had unintended, sometimes negative impacts, for other children on the move.⁶

More recent discourse has examined the needs and vulnerabilities of “unaccompanied alien children” or “independent child migrants” with the rationale that they are “least catered to by specific child migration measures, [so], a fortiori, legislative provisions that apply to them apply to the other groups of child migrants too.”⁷ However, there has been no equivalent surge in con-

cern for preventing avoidable separation of families: indeed, approaches focused on deterring family separation are broadly lacking in child migration legislation and policy. Families are also conceived narrowly by much international and domestic migration law, within a restrictive and traditional idea of a nuclear family.⁸ This approach fails to reflect children’s culturally diverse realities and excludes the global prevalence of “functional families”: configurations “in which . . . relatives and non-relatives, live in the household, either in addition to or instead of the expected nuclear family members.”⁹ The attached Serbia case cites research showing that these individuals often provide support to children during migration planning and journeys. As a result of this failure of law to reflect reality, millions of children are separated from support networks whose potential protective role remains untapped.

These siloed legislative frameworks fail to cover the lived circumstances of most child migrants and are therefore radically incomplete. They are also ineffective because their implementation is erratic, supported by underfunded and ill-equipped legal services and by fragmented bureaucracies that have been structured to cope with a much smaller demand for protective care than exists. Finally, there is no international body or senior official; no United Nations department, institute, or treaty body charged with responsibility for migrant children per se.

This framing review outlines the body of applicable legislation and its limitations. It then identifies several overarching issues with current approaches, and, finally, makes concrete recommendations for a more effective “horizontal” approach to children on the move.

CONCEPTUAL MAP: LEGAL FRAMEWORKS AND DEFINITIONS

There is no single piece of legislation that systematically and comprehensively addresses the issue of children on the move. As a result, the extensive relevant international, regional, and domestic law has an inconsistent and incomplete impact on child migrants. For clarity, the following analysis of the body of applicable legislation is divided according to the three principal approaches to child migration: regulatory, criminalizing, and protective.¹⁰ These are not discrete categories. For example, much regulatory migration law criminalizes children’s movement across borders, trafficking law serves to protect children

as well as punish traffickers, and refugee law can be both protective and punitive.

Regulatory Approach

Regulation is the primary goal of most domestic and regional migration-related law. This legislation largely assumes that children are dependents of the family unit, without autonomous agency: “It does not deal with the needs and circumstances of most children who travel independently of their families.”¹¹ Independent child migrants have very limited ability to move legally. They can use established education and training schemes

Table 1.1 Legal Frameworks for Children on the Move

Regulatory Approach	Most domestic and regional immigration law	
	Assumes traditional family unit	
Criminalizing Approach	Smuggled children [UN Smuggling Protocol, 2000]	
	Trafficked children [UN Palermo Trafficking Protocol]	
Protective Approach	International and regional human rights bills	UN Universal Declaration of HR, 1948
		UN Intl Cov’t on Econ., Soc., & Cult. Rights, 1966
		UN Intl Cov’t on Civil & Political Rights, 1966
	Convention on the Rights of the Child	
	Children in specific situations	Working children (ILO; Migrant Workers Rights)
		Refugee children (UN Refugee, 1951, 1967)
		Internally displaced children (Guiding Principles)
Stateless children (UN Reduct. of Stateless, 1961)		

(generally not available to the most needy), inter-country adoption procedures, or family reunion procedures.

Although the right to family life is recognized as a “crucial bedrock of a just migration policy,”¹² a child’s legal right to migration for family reunification is incomplete and inconsistently applied. It is traditionally a unidirectional principle that assumes the movement of child to parent, not parent to child.¹³ It is often contingent on proof of the parent-child relationship, thus excluding the reunification of nontraditional functional families, and on proof of the child’s dependency. For example, the European Union (EU) Council Directive on the Right to Family Reunification only requires member states to admit children for family reunion without additional qualifications if they are below the age of 12,¹⁴ and in the United States, children granted permanent legal residence through the “Special Immigrant Juvenile Status” on account of abuse or neglect can never exercise family reunion rights.¹⁵

More generally, increasing the barriers to international migration limits opportunities for legal movement. These include “legislation that criminalizes irregular emigration, age and sector-specific bans on the movement of potential migrants and the externalization of migration control, which can be manifested in obstacles such as carrier sanctions and onerous visa requirements.”¹⁶ The attached US/Australia case describes how the United States is funding increased immigration controls in Mexico to create a “buffer state” against migration from Central America: Mexico now returns more Central Americans, including children, to their countries than the United States does.¹⁷ Another increasingly common strategy for “extraterritorialisation” is interdiction at sea. The practice enables

destination states to avoid legal guarantees and protections otherwise potentially available to newcomers, such as rights of appeal or *non-refoulement* (the right of a persecuted person not to be sent back to a place where his or her life or freedom would be threatened).¹⁸ The official Australian policy of intercepting and turning back boats carrying asylum-seekers is described in detail in the attached case. Deportation and detention policies have also become harsher in recent times.¹⁹ These practices constitute a common theme across many of the cases presented here — in Southeast Asia, the United States, Australia, and Europe — and starkly illustrate the precedence of security interests over concern for children’s rights.

Stringent migration controls, coupled with a lack of regular migration channels for work, family reunification, education, and humanitarian reasons, often compel children to move through irregular routes.²⁰ These controls also increase the likelihood that children will remain in countries of origin after their parents have migrated, with reduced access to rights and opportunities: thus, migration policy impacts a much broader cohort of children than those who are “on the move.”

Criminalizing Approach

This approach focuses on penalizing and preventing exploitative child migration. It is, by definition, punitive instead of facilitatory. This strain of legislation dates back to prohibition of the so-called “white slave trade” in the nineteenth century. In its contemporary form, it includes conventions criminalizing trafficking and smuggling in persons.

Smuggled children

Child smuggling is defined as facilitated migration arranged to secure a non-exploitative objective, typically an immigration advantage such as family reunification. The UN Protocol against the Smuggling of Migrants by Land, Sea and Air, which entered into force in 2004, aims to prevent and combat the smuggling of migrants while protecting the rights of smuggled migrants and preventing the worst forms of their exploitation. It does not specifically reference children, but requires that States Parties take account of “the special needs of women and children,” to protect smuggled persons from violence, and to assist those whose lives or safety are in danger.²¹ The Protocol’s definition of smuggling relies on a clear distinction between non-exploitative and exploitative objectives for migration: without an exploitative objective, a child is not entitled to special protections. Yet this binary view does not reflect the complex realities of children on the move, and means that many children in need of protection are criminalized, detained, and deported. It is well documented that smuggled children can later become victims of trafficking-related exploitation such as extortion, forced labor, and sexual abuse.²² For example, the Rohingya case describes the situation of Rohingya children initially smuggled out of Myanmar, then detained by criminal traffickers in Thailand in an attempt to extort money from their relatives as a condition precedent to delivering them to Malaysia. The Smuggling Protocol also fails to articulate the important concept that, in cases of age uncertainty, a victim of smuggling should be presumed to be a child, and treated as such, until that presumption is rebutted.²³

Trafficked children

The term “trafficking” refers to a complex set of interrelated activities that encompass

migration and exploitation. It is based on a dichotomy between criminals (traffickers) and victims (trafficked persons). The primary purpose of international legislation on this subject is to criminalize those facilitating trafficking. A secondary goal is to “provide protections for those who are trafficked and to establish that they are not prosecuted or penalized for their irregular entry.”²⁴

The definition of this phenomenon was agreed upon in 2000 with the UN Convention against Transnational Organized Crime (Palermo Convention) and its supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Trafficking Protocol). The Trafficking Protocol defines child trafficking as “the act of recruitment, transportation, transfer, harboring or receipt” of a child “for the purpose of exploitation,” either within or outside a country.²⁵ Although a third element (coercion) is required to establish trafficking in adults, this requirement is irrelevant in the case of children, who can never consent to exploitative migration facilitated by intermediaries.²⁶ This recognizes “that force exercised through abuse of a position of vulnerability may be an act of coercion as decisive as a physical kidnapping.”²⁷ Although exploitation is not defined, it covers forced movement for both sexual and labor purposes.²⁸

In general, the Palermo Convention applies when the offences are transnational in nature and involve an organized criminal group.²⁹ However, the Trafficking Protocol applies to the protection of victims regardless of whether they have crossed a border and whether or not an organized criminal group was involved. Any offence or offences established by a state in order to criminalize trafficking in persons as required by the Protocol are automatically included within the scope of the

basic provisions of the Palermo Convention governing forms of international cooperation such as extradition and mutual legal assistance.³⁰

The Trafficking Protocol's references to children "are vague and non-substantive,"³¹ requiring states to take into account the "special needs of children."³² The Protocol does not require states to provide permanent residence or long-term protection to trafficking victims, or treat them the same as refugees. It weakly encourages states "to endeavour to provide for the physical safety of victims" while they are within its territory, and to "consider implementing measures to provide for [their] physical, psychological, and social recovery."³³ This includes appropriate housing, counseling, and information in a known language; medical, psychological and material assistance; and employment, educational, and training opportunities. Guidelines for the Trafficking Protocol's implementation underline a general agreement on states' special obligations with regards to child trafficking victims.³⁴ For example, a smuggled child who may be a trafficking victim should be presumed to be so.³⁵ Similarly, in cases where a trafficking victim's age is in dispute, the presumption should be that he/she is a child until verified otherwise.³⁶ This is important given that someone who consents to migration for exploitation is not considered to have been trafficked unless they are under 18. The European good practices case outlines the significant barriers to accurate, holistic age verification: inexact medical assessments of age are widely used throughout the region, in many cases resulting in the treatment of minors as adults.

The child-trafficking lens dominates current policy responses to the exploitation of children on the move; it mobilizes some pro-

tections and human rights entitlements for certain vulnerable minors.³⁷ Yet the focus on child trafficking as a criminal act has also had unintended effects. For example, in the India case of internal trafficking of boys for forced labor, anti-trafficking policies result in a focus on removal or "rescue" from exploitation and then reinsertion in home communities, without substantive engagement with the root causes of vulnerability that led to exploitation in the first place or with the risk factors for potential future harm. The trafficking approach can also result in penalizing children because of their irregular entry and cause additional obstacles at borders.³⁸ In some countries, access to protection is conditional on a child's agreement to testify against the trafficker in court, which can be detrimental for the child and their relatives.³⁹ Prosecution can also lead to false criminalization of children's family and support systems that are key resources for sustainable change.⁴⁰

There are rarely bright lines between consensual and coercive child migration; accompanied and unaccompanied children; or exploited workers and youthful economic migrants.⁴¹ Yet the trafficking framework relies on these classifications, causing ambiguity at the legal and practical levels. This approach can therefore lead to interventions that do not reflect the child's best interests, such as return to his or her place of origin.⁴² This may run counter to children's expressed wishes and inhibit their opportunities for decent work, education, and development.

Relevant law confirms the existence of certain obligations placed on states to prevent trafficking. First, states are required to address the vulnerability to trafficking: the Trafficking Protocol requires states "to alleviate the factors that make persons, especially women or children, vulnerable to trafficking, such as

poverty, underdevelopment and lack of equal opportunity.⁴³ The Protocol also requires countries to address the adverse social and economic conditions thought to contribute to the desire to migrate and thus leading to the vulnerability to trafficking. It underscores the need for education, awareness raising, and mobilizing of community support for anti-trafficking initiatives.⁴⁴ Second, states are required to reduce the demand for trafficking: though it does not specify exact actions required,⁴⁵ the Protocol requires States Parties to address the discriminatory attitudes shaping demand; to increase labor protections; to investigate, prosecute, and punish traffickers.⁴⁶ Third, states are required to identify and eradicate public sector involvement in, and corruption related to, trafficking.⁴⁷

While they target important factors precipitating child vulnerability to exploitation by traffickers, the Protocol's provisions, like international law more generally, ignore the powerful factors driving children's own demand for mobility – a “search for exit” from poverty and violence.⁴⁸ The provisions also fail to engage with the critical need for long-term investment to prevent child exploitation. The India case, which describes the “rescue and reintegration” model of anti-trafficking policy targeted at the removal of children from exploitative workplaces, is an example. The Indian government's initiatives focus on short-term, high profile raids which attract public attention and temporarily removed children from exploitative contexts. But they do little to generate effective deterrent mechanisms for the exploiters or sustainable alternatives for the families whose destitution precipitates trafficking of children in the first place. Other “preventative” measures may also have an adverse impact on individual rights, for example where they result in the detention of trafficked children, or in the de-

nial of entry or exit visas to facilitate child mobility. These measures violate established rights, affirmed by the non-discrimination clause in the Trafficking Protocol, by international and regional instruments, by pronouncements of human rights treaty bodies, and by human rights mechanisms.⁴⁹ In short, despite the broad legal obligations on states to prevent trafficking, there is little effective policy that addresses the root causes of the problem. Assistance for trafficked children “is typically short-term, victim oriented, and remedial in nature. It aims to make good the damage done by the trafficking experience . . . rather than engage with long-term survival and empowerment options.”⁵⁰

Protective Approach

A third legal approach to children on the move is protective. It includes the core set of universally applicable human rights treaties, as well as laws directed at the protection of specific groups of children on the move, including migrant workers and their families, victims of the worst forms of child labor, refugees, and internally displaced persons. These international standards are complemented by regional human rights bodies and instruments, more directly addressed in the attached cases describing the treatment of children on the move. These include, for example, the Inter-American Court and Commission on Human Rights and the American Convention on Human Rights;⁵¹ the African Charter on Human and Peoples' Rights, the African Charter on the Rights and Welfare of the Child, and the African Commission on Human and Peoples' Rights;⁵² the European Convention on Human Rights, the European Court of Human Rights, and European Union regulations and directives.⁵³ Regional groupings of nongovernmental organizations

(NGOs), such as End Child Prostitution, Pornography and Trafficking (ECPAT) in Asia and the European Network of Ombudspersons for Children (ENOC), have also developed recommendations for protection of migrant children, making up a growing body of “soft law.”⁵⁴

The International Bill of Human Rights

The rights of children on the move are broadly enshrined in three UN agreements: the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR).⁵⁵ These set out a range of basic human rights that apply to all, irrespective of nationality, legal status, or age. The most fundamental principle is the non-discrimination principle, which prohibits all distinctions between people that are arbitrary, disproportionate, or unjustifiable in nature.⁵⁶

Under these instruments non-citizens are guaranteed freedom from arbitrary killing, inhuman treatment, slavery, arbitrary arrest, unfair trial, invasions of privacy, refoulement (return to a place of persecution), forced labor, child labor, and violations of humanitarian law.⁵⁷ They also have the right to education; an adequate standard of living (including housing, food, water, and sanitation); the protection of health, safety, and other labor regulations; and consular protection.⁵⁸

States may however draw distinctions between citizens and non-citizens with respect to freedom of movement and political rights explicitly guaranteed to citizens. The ICCPR grants “the right to liberty of movement and freedom to choose [one’s] residence” only to persons who are “lawfully within the territory of a State.”⁵⁹ The UDHR likewise does not include a “right to migrate.” It does, however,

enshrine the right to “freedom of movement and residence within the borders of each state” as well as “the right [for a person] to leave any country, including his own, and to return to his country.”⁶⁰ The ICCPR permits exceptions to this only if required as a matter of “national security, public order (*ordre public*), public health or morals or the rights and freedoms of others.”⁶¹ The contested implications of this “right to exit” are highlighted by the recent EU/Turkey policy, enacted in March 2016, which requires the removal of all refugees and migrants entering Greece back to Turkey, regardless of whether they have legitimate asylum claims.⁶² The Lesbos case describes the unsatisfactory and dangerous living conditions of those approximately 10,000 migrants (4,000 of which were children) who until the late spring of 2016 were camped at the makeshift Idomeni camp along the sealed Greece-Macedonia border, prior to their forcible removal further inland by the Greek authorities.

The Convention on the Rights of the Child

The Convention on the Rights of the Child (CRC) is the most comprehensive compilation of existing international legal standards for the protection of the human rights of children. It deepens the protective impact of human rights for children through an implementation structure that includes reporting obligations to and scrutiny by its overseeing treaty body, the Committee on the Rights of the Child. In 2002, the CRC was strengthened with Optional Protocols on the involvement of children in armed conflict and on the sale of children, child prostitution, and child pornography (Protocol on Sale of Children).⁶³ In 2005, the Committee issued General Comment no. 6, which specifically and holistically addressed states’ obligations towards unaccompanied and separated children outside their country of origin.⁶⁴

Underlying the CRC are four main principles: non-discrimination (article 2), the best interests of the child (article 3), the right to participation (article 12), and the right to life, survival, and development (article 6). The principle of non-discrimination ensures ratifying states are bound to respect and ensure the rights of all children within their jurisdiction, “including asylum-seeking, refugee and migrant children – irrespective of their nationality, immigration status or statelessness.”⁶⁵ It notes that this does not preclude “differentiation on the basis of different protection needs such as those deriving from age and/or gender.”⁶⁶

The CRC also requires states to prioritize or give primary consideration to the best interests of the child in relation to all actions and decisions affecting that child.⁶⁷ General Comment no. 6 states that, in the context of migration, this principle must be “respected during all stages of the displacement cycle,” and based on a “comprehensive assessment of the child’s identity . . . particular vulnerabilities and protection needs.”⁶⁸ The best interests principle “is not a mere resonance box of the more substantive provisions of the CRC.”⁶⁹ Many considerations are relevant to a child’s best interests, including the expressed wishes of the child; the child’s identity (including factors such as sexual orientation and cultural identity); the child’s right to an education; the interests of the parents;⁷⁰ and a prioritization of the child’s interests over other considerations of the state, including those related to immigration control or public order.⁷¹ However, as noted by the UN High Commissioner for Refugees (UNHCR) in its 2008 Guidelines, “international law provides limited guidance on how to operationalize the best interests principle.”⁷²

As a result, the best interests principle is implemented with varying efficacy in regional

and domestic legislation. For example, it is nearly absent from US immigration and refugee law.⁷³ European directives and other provisions addressing unaccompanied children are explicitly guided by the best interests principle.⁷⁴ The Serbia case illustrates how the best interests of migrant children can sometimes be at odds with domestic child protection legislation: “the common situation in which it is in the best interests of unaccompanied children to allow them to continue their journey, even though national regulations prohibit children from traveling without a legal guardian.”

The CRC enshrines the right of a child “capable of forming his or her own views to express those views freely in all matters affecting the child,” given due weight according to the child’s age and maturity.⁷⁵ General Comment no. 14 also underscores the “essential role of children in all decisions affecting their lives.”⁷⁶ This principle encourages treatment of children on the move as agents and social actors in their own right. From this perspective, “vulnerability and the need for protection are only one element of the social policy agenda; the other is facilitation, nondiscrimination, inclusion, the promotion of opportunity and the acknowledgement of capacity for autonomous responsible action, and for child participation in policy formation.”⁷⁷

The CRC reaffirms children’s basic human rights to life, survival, and development. It also guarantees children the right to a name and the right to acquire a nationality, particularly in cases where a child would otherwise be stateless.⁷⁸ It enshrines children’s right to health, shelter, and education, and it requires states to protect children from violence, abuse, neglect, exploitation, and sexual abuse.⁷⁹ It states that no child is to be deprived of his or her liberty unlawfully or

arbitrarily.⁸⁰ This statement does not prohibit detention, but requires that this measure be used only as a last resort and for the briefest period possible.⁸¹ The CRC and the Protocol on Sale of Children also impose conditions on the conduct of detention, including separation of children and adult detainees, unless such separation is not in the child's best interests;⁸² the right to prompt access to legal and other appropriate assistance;⁸³ the right to challenge the legality of a child's detention before a competent court and to a prompt decision;⁸⁴ and the right to support for physical and psychological recovery and social reintegration.⁸⁵ The Committee has explicitly rejected the use of detention for children in need of protection.⁸⁶

The CRC places special emphasis on safeguarding family unity and the reunification of families.⁸⁷ It requires states to deal with family reunion applications "in a positive, humane and expeditious manner." Because the Convention does not specify which parties in a family provide the location where reunification takes place, it can be interpreted as allowing for reunion of parents to join a child who migrated first.⁸⁸ General Comment no. 6 addresses the contexts in which unaccompanied migrant children can be returned to their home states: the critical rule is that return must not be carried out if there is a "reasonable risk" that this would result in the violation of fundamental human rights of the child,⁸⁹ or a real risk of irreparable harm.⁹⁰

Working children

A large proportion of children on the move are involved in work. The UN Convention for the Protection of the Rights of Migrant Workers and their Families, less comprehensively ratified and so less significant as a practical policy instrument than the CRC, provides a robust protective framework for migrant

workers. It covers undocumented and irregular workers as much as legal workers in most of its provisions, and calls for cooperation and consultation between states to promote sound, equitable, and humane conditions in connection with international migration.⁹¹ The Convention adopts an age-neutral definition of migrant worker, yet its definition of family members reflects the view of migrants as adults.⁹² The Convention's only explicit mention of child migrants' rights covers the situation where criminal charges are brought against juveniles: states parties are required to separate juvenile from adult offenders,⁹³ to treat them appropriately considering their age, and to promote rehabilitation where possible.⁹⁴

The International Labour Organization (ILO), a UN agency, has been at the forefront of labor rights legislation and standard setting since the early twentieth century. Its conventions and recommendations protect the rights of all workers, including children, irrespective of citizenship. Of particular relevance to the situation of children on the move are the conventions on forced labor and on child labor. The Convention on Forced Labor⁹⁵ and the Abolition of Forced Labor Convention⁹⁶ call on all states to eliminate "all work or service which is exacted from any person under the menace of any penalty, and for which the said person has not offered himself voluntarily." The Minimum Age Convention establishes 15 as the minimum age for employment, except for potentially hazardous work where the minimum age is 18, or for "light" work not likely to be harmful to health or prejudicial to school attendance.⁹⁷ The Convention on the Worst Forms of Child Labor emphasizes the subset of worst forms of child work requiring priority action: slavery or slavery-like practices, including trafficking; prostitution or pornography; illicit activities, in particular drug

production or trafficking; and work that, “by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.”⁹⁸

These conventions describe the situation of many children on the move. The conditions under which children decide to migrate make them especially susceptible to child labor;⁹⁹ the risks of labor exploitation during migration journeys are considerable;¹⁰⁰ and many work long hours within the family or in the informal economy due to lack of access to government services and protection at their destination.¹⁰¹ Evidence also suggests that the conditions in which migrant children work are worse than those of local child laborers.¹⁰² However, implementation of these conventions is weak and children’s alternatives are often non-existent. As a result, the impact of labor law regulation on the working lives of child migrants is generally minimal.¹⁰³ Existing protections are particularly ineffective for girls involved in hidden and underreported forms of child labor, such as domestic work.¹⁰⁴ Current international standards do not address the unique circumstances of these youth, the conditions in which child domestic work is performed, and the specific vulnerabilities to serious abuse these situations can create.¹⁰⁵

Refugee children

The refugee protection regime derives its legal force and international legitimacy from the 1951 United Nations Convention Relating to the Status of Refugees (as amended by the 1967 Protocol). The Convention defines a refugee as someone displaced from their country because they have been “persecuted” on the grounds of their “race, religion, nationality, membership of a particular social group or political opinion,” and because they are “unable or unwilling” to gain protection from their home state.¹⁰⁶ Despite the

common sense expectation that separated asylum-seeking children, some of the most vulnerable children on the move, would be treated generously, there are significant challenges to their inclusion within the protective scope of refugee law.¹⁰⁷

Children constitute over half of the world’s refugees, but make up less than a third of asylum claims in developed states.¹⁰⁸ Many of those left “in transit” live in overcrowded and impoverished refugee camps and settlements that exist largely outside of the law.¹⁰⁹ Even though many of these camps are provided for by the UNHCR, they are sites where epidemics, depression, and violence are endemic, education opportunities limited, and employment unavailable.¹¹⁰ The Lesbos case illustrates the serious deficiencies experienced by minors stranded for months at frontline reception centers in Greece, lacking safe housing, basic food, water, sanitation and hygiene, health care, and education. Those that leave these liminal spaces to actively seek out protection face considerable risks during the migration journey: the increasingly militarized exclusion systems already described generate a smuggling industry that exacerbates child migrants’ vulnerability.

The obligations of states towards asylum-seeking children after they have reached their destination are clearer, though no more consistently delivered. The CRC provides that states must guarantee child asylum-seekers special protection and care; avoidance of detention; and access to legal and psychological assistance.¹¹¹ In particular, General Comment no. 6 notes the importance of “the appointment of legal guardian as expeditiously as possible ... as a key procedural safeguard.”¹¹² Such children should not be placed in institutions that are not equipped to

provide the specialized care they require.¹¹³ They should not be the subject of discrimination in the enjoyment of economic, social, and cultural rights such as access to education, health care, and social services.¹¹⁴ Unlike adults, children may not be returned to transit countries to have their cases processed.¹¹⁵

Nevertheless, as clearly demonstrated in the cases, child asylum seekers rarely benefit from all or even most of these measures. Procedures vary significantly between different states. As the case study of Rohingya children on the move notes, for example, “since none of the destination countries in the [Southeast Asia] region have ratified the 1951 Refugee Convention, there is little if any legal protection for Rohingya child migrants.”¹¹⁶ As another example, only 179 unaccompanied children out of 1,637 arriving in the United States from Central America during the three-month period from July through October 2014 were allowed to stay.¹¹⁷

Children fleeing without their families face significant legal challenges in proving that the human rights violations they face amount to “persecution.” Child-specific forms of persecution have traditionally been excluded from the ambit of the five grounds of the basis of possible persecution (race, religion, nationality, social group membership, or political opinion). Bhabha distinguishes three different forms of persecution of children.¹¹⁸ The first has no particular relationship to its subject’s age — a child may, for example, be persecuted for his or her political opinion just like an adult. The second is persecution specific to children — such as infanticide, bonded/hazardous child labor, or child soldiering — or to girls in particular — such as child marriage or female circumcision. The last type of persecution of children is con-

duct that might not be sufficient to constitute persecution for an adult but gives rise to a well-founded fear of persecution for children: for example, family separation following war, forced displacement, or homelessness. In practice, however, children face pervasive disbelief regarding their vulnerability to harm.

Although it is now commonplace to realize that children who may need to flee persecution do so through the manipulations of traffickers, trafficked children face difficulty gaining refugee protections. This is because the central element in the trafficking definition — exploitation by an external actor — is not easily mapped onto the central element of the refugee definition — persecution experienced by the child.¹¹⁹ It is also significantly harder for children fleeing criminal violence to gain protection than those fleeing political violence: youth who are fleeing gang-related activity are not considered to constitute a “particular social group.”¹²⁰ Thus, as described in the US/Australia case, despite the overwhelming evidence of extreme violence and persecution within gangs in Central America, especially against any who attempt to leave or reject membership, these children are generally not eligible for asylum elsewhere.¹²¹ This is in large part the result of a hostile political climate towards immigrants in the United States, and the large scale of the population of children affected: the boundaries of the particular social group category are carefully policed for fear of “opening the floodgates.”¹²²

In recognition of the inadequacy of the 1951 Convention and its Protocol to fully protect those displaced by a broad range of rights violations, regional legal instruments such as the 1969 Organization of African Unity Refugee Convention and 1984 Cartagena Dec-

laration for Refugees in Latin America have adopted definitions of “refugee” that encompass persons fleeing violent conditions or disturbances in public order, such as civil conflicts and natural disaster.¹²³ However, both documents are non-binding, include no burden-sharing mechanisms, and states have been slow to incorporate them into their domestic law.

States have used several other measures to expand legal migration of persons with humanitarian needs. Some have adopted temporary protection procedures in response to humanitarian emergencies, though these are applied haphazardly and arguably have been used by some countries to avoid obligations under the 1951 Convention.¹²⁴ As shown in the European good practices case, several EU countries have amended their law to allow for “subsidiary protection” for minors who do not otherwise qualify for refugee status, if they face a real risk of suffering serious harm upon return. Sixteen EU States also currently have or have previously had schemes for issuing humanitarian visas.¹²⁵ The example of the Serbia case indicates that the implementation of a “highly organized, state-run migration route [and] organized safe traveling methods, with free transportation and information sharing mechanisms” for refugee children can significantly reduce “traditional trafficking and smuggling schemes.”

Internally displaced children

The 1951 Refugee Convention requires refugees to leave their countries of origin in order to be eligible for the protections accorded by the Convention. This leaves people displaced internally without access to international protection. To address this gap, between 1992 and 1998 the Representative of the UN Secretary for Internally Displaced

Persons (IDPs), Francis Deng, backed by a small number of states, identified existing lacunae in protection and drew on international human rights and humanitarian law norms to draft a set of Guiding Principles on Internal Displacement. These Principles apply to all regardless of age. They highlight the specific needs and additional protective measures relevant to displaced children during all stages of their displacement.¹²⁶ The Principles pay particular attention to issues of sexual exploitation, forced labor, and recruitment and participation in armed hostilities, as well as to the rights of internally displaced children to family unity, education, and training opportunities.¹²⁷

The Guiding Principles are a nonbinding, unenforceable framework, designed to assist states in interpreting their obligations toward internally displaced people and adopting policies and case law that enhance the protections available to this population.¹²⁸ Because the Guiding Principles are nonbinding, their impact is of necessity limited; robust protections, such as those enumerated, remain a distant aspiration for very large populations of IDPs globally. Nevertheless, the development of this framework provides a model to address specific gaps in international protection for children on the move.¹²⁹ Over time, this soft law has begun to evolve into hard law: national IDP laws and policies have been developed in over 30 countries, as well as the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention).¹³⁰ The Guiding Principles also “apply to, and have increasingly been recognized by, not just states but also non-state actors in conflict, law-makers and jurists, civil society activists, and peace mediators.”¹³¹

Stateless children

Despite the optimistic rhetoric of human rights law, the enjoyment of human citizenship and its associated benefits is largely contingent on legal identity, nationality, or a regular immigration status. The CRC states that every child has the right to acquire a nationality, to be registered immediately after birth, and to preserve his or her identity, including nationality.¹³² Yet there are an estimated six million stateless children around the world and many of these are migrants or the children of migrants.¹³³

A stateless person is defined by the 1954 Convention relating to the Status of Stateless Persons as “a person who is not considered as a national by any State.”¹³⁴ The 1961 Convention on the Reduction of Statelessness establishes rules on acquisition, renunciation, loss, and deprivation of nationality.¹³⁵ A key provision requires states to confer nationality to children born on their soil who would otherwise be stateless.¹³⁶ More recent analysis has identified two categories of stateless children. The first is children without a legal identity: this encompasses both *de jure* statelessness (those without the nationality of any state) and also *de facto* statelessness (those who have a nationality but do not have legal status where they reside because they are illegal, irregular, or undocumented migrants in their current location). The second category is effective statelessness, which applies to children who are legal citizens but lack the documents necessary to assert their legitimate claim to state services, such as birth registration and birth certificates.¹³⁷ This applies in the case of many indigenous populations, and also in cases where citizen children are displaced or migrate internally and lack the means to claim rights they are entitled to.

The unenforceability of fundamental rights related to nationality impinges on a diverse group of children on the move, including undocumented immigrants, trafficking victims, children born to irregular migrants, and children whose birth has never been registered.¹³⁸ Access to birthright citizenship is increasingly qualified by conditions relating to length and status of parents’ residence. The risk of detection and deportation also deters irregular migrants from registering their newborns. As clearly demonstrated by the example of the Rohingya, statelessness in children is a key indicator of vulnerability, and a significant barrier to essential resources, services, and protections.

Summary

The discrete legislative categories discussed in this conceptual map do not adequately address the complex realities of child migration, or cater to the protection needs of significant groups of children on the move. Many children on the move occupy multiple legal statuses, either simultaneously or in succession. Child migrants may be smuggled initially but then end up trapped in situations of trafficking; stateless children may seek asylum as a means of securing state protections; an irregular child migrant may also be a bonded laborer. Frameworks generally treat children as a homogeneous group: yet girls and boys ought in some cases to receive disaggregated treatment according to their different vulnerabilities; similarly, older children have different needs, expectations, and vulnerabilities from younger children. None of the above frameworks address the isolation and invisibility of children in transit, although this is often the stage of migration where conventional child protection systems are weakest.

Although international human rights law requires states to provide each child with a basic level of care and protection, this is too often contingent upon a determination of legality or status. The protection of these individual rights is also impacted when the numbers of children on the move are particularly great. For example, the Lesbos case documents widespread violations of children's rights during the recent migration crisis, in part due to overwhelmed and poorly prepared child protection systems. Similarly, the Serbia case study highlights how several individual country and EU measures taken during this time "have in effect temporarily suspended States' obligation to fulfill international and European human rights and refugee protection standards." None

of the legislative frameworks discussed above specifically addresses how the size and rate of arrival of populations of children on the move impacts the delivery of these rights and obligations, or how practical preventative measures can be instituted to better ensure individual child rights enforcement in times of mass migration.

In short, for children on the move, current law fails to operationalize the rights and entitlements envisioned by international human rights law. The wide gap between the aspirational rhetoric of this protective legislation and the realities experienced by children on the move illustrated in the attached cases underscores huge challenges in enforceability.

OVERARCHING ISSUES WITH EXISTING FRAMEWORKS

- **Fragmentation of law into different legislative instruments for different groups of children.** Existing siloed legislation does not reflect the complex lived experiences of children on the move. The plethora of relevant laws leads to gaps in responsibilities (such as access to lawyers) and in service provision (for example, different provisions on access to accommodation, material support, education, and training) for some groups of children.
- **Insufficient legal routes for migration.** Children compelled to take illegal migration routes are highly vulnerable to abuse and exploitation, and increasing barriers to entry leave many children stranded in transit. Those with legitimate claims to protection are often seen with suspicion and ambivalence because of their irregular, even criminalized, journeys.
- **Lack of protection for children in transit.** Migration provisions are primarily targeted at borders. Children in transit within state borders risk a range of human rights violations and abuses: they can become destitute or stranded in the transit country; many travel alone; many lack legal protection; and many are unable or unwilling to seek the protection of the authorities in the country of transit.
- **Inadequate first-instance decisions and funding.** Limited funding for front-line reception systems, poorly trained personnel, and a pervasive climate of disbelief (reflected in the proliferation of age-disputed cases and rejection of children's testimony) all result in high levels of inaccurate first-instance decisions for children on the move. This outcome generates violations of children's rights, as well as significant costs to the state through appeals and ju-

dicial reviews. Hasty refusals of protection on the basis of inadequate information are difficult to correct.

- **Arbitrary detention in inadequate conditions and arbitrary deportation.** Despite clear limitations on the use and nature of detention under international law, immigration concerns continually take precedence over the rights of children on the move.
- **Failure to provide guardians and legal representation.** Unaccompanied and separated children are often unable to claim their rights in complex legal and administrative systems because they lack effective adult support. Particularly true in times of mass distress migration, this failure exemplifies the absence of an integrating set of policies oriented to the migrant child as a child first and foremost. Free and low-cost legal representation is in scarce supply: formal advice or even basic information on the child's rights and the applicable processes is non-existent for most children.
- **Lack of prioritization of “best interests” principle.** The best interests of the child are not incorporated as a matter of binding obligation into most regional and national legislation. Routinized responses such as repatriation are often carried out without regard to the child's best interests, and these responses regularly ignore child specificities, including the particular circumstances of older adolescents, for example, where the benefits of migration should be factored into decision making.
- **Inadequate collaboration among domestic child protection actors.** A wide range of stakeholders is typically implicated in the care of children on the move. Yet policy makers and implementers tend to be limited by discrete departmental mandates. They have specific tasks to execute and are accountable along vertical lines of reporting – limiting flexibility, collaboration, and creative exercise of discretion. Thus, basic service provision and tracking of children in care suffer, with the result that many children disappear from state protection.
- **Lack of cross-border collaboration.** There is a clear need for increased international cooperation for the purposes of family reunification, reintegration, age determinations, and background information for asylum claims: instead existing communication channels are informal and largely ineffective. This deficient situation translates into uneven and incomplete responsibility sharing at both regional and national levels. This problem is particularly acute when migration flows are high: some countries by virtue of their geographic position along migration routes are particularly affected by the high demand for services to meet the needs of children on the move.
- **Lack of focus on root causes.** Although many legal frameworks outline states' obligations to invest in measures to prevent exploitative migration, in practice these measures are routinely reduced to the creation of deterrents to movement. Responses to children on the move focus on those already exploited, and rarely engage with the demand for exit that drives so many young people into abusive migration. This minimizes

the importance of targeted income generation, secondary and tertiary education access, and other development and infrastructure enhancement projects.

- **Absence of preventative measures that reduce harm caused by migration controls themselves.** Existing legislative frameworks largely set out criteria for the individual determination of migration status for children on the move, and they specify the content and provision of subsequent protective services. Yet there is no guidance on how migration systems should themselves be structured to fulfill these diverse obligations, particularly in times of mass migration. As a result, child protection systems quickly become overburdened, provide ineffective protection to vulnerable children, and inflict additional harm through practices such as detention and separation of families.
- **Lack of research, data, and monitoring.** The absence of reliable, disaggregated or coordinated statistics is emblematic of the failure to prioritize the development of adequate tools for addressing the needs of children on the move. This lack of reliable data impedes both service provision and funding efforts and should be addressed, despite the methodological barriers.

RECOMMENDATIONS

These recommendations are intended to provide clear, practicable ideas for improvement of the current protection system for children on the move. At their core, they involve a return to prioritizing the basic human rights principles outlined in the CRC – non-dis-

crimination, the best interests of the child, the right to participation, and the right to life, survival, and development – over concerns relating primarily to immigration and national security.

Prevention

1. Addressing the factors that increase vulnerability to exploitative or forced movement.

- Child protection imperatives for children on the move should be integrated into the advocacy surrounding the UN Sustainable Development Goals (SDGs), the ambitious set of goals the United Nations adopted in 2015 and is working worldwide to implement.¹³⁹
- Targeted anti-poverty strategies, employment support, and access to quality education should be provided in areas of high out-migration. SDG 4b, which calls for increases in funding support for adolescent secondary and tertiary education, should be leveraged to support this set of initiatives.
- Community-based child protection mechanisms must be supported, and not imposed by external actors. Information campaigns and pre-departure orientation would dissuade some children from making dangerous journeys and protect those who still choose to migrate.
- Protection responses for children on the move should be integrated into National Plans of Action on child labor, trafficking, orphans, and vulnerable children, as well as into policies on poverty reduction and development. This should be achieved

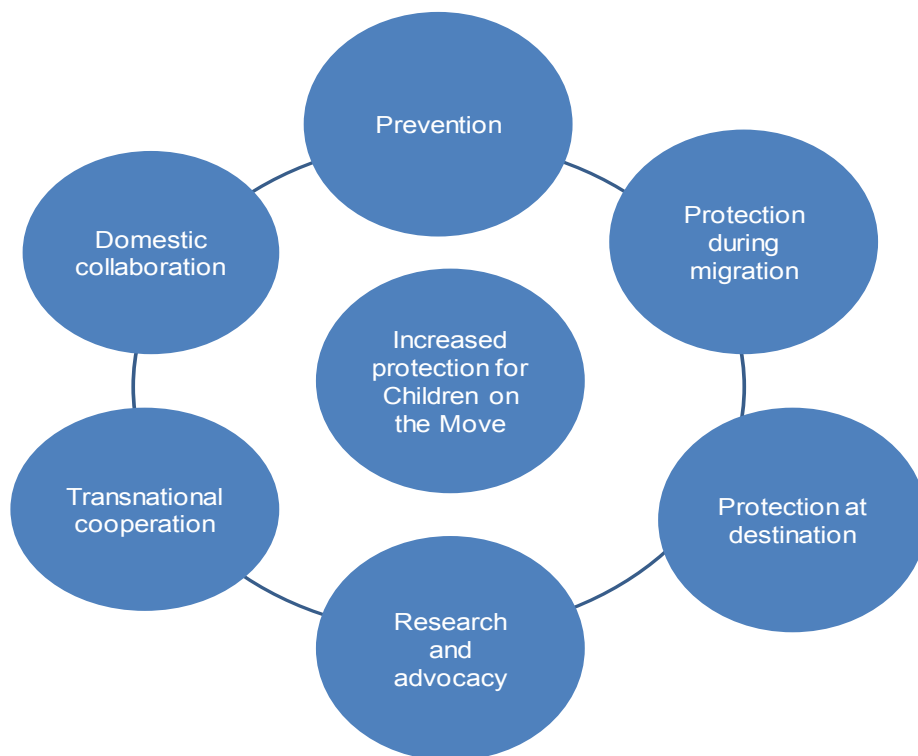


Figure 1.1 Recommendations for increased protection for children on the move

through consultation with diverse stakeholders including child rights experts, nonprofits, and children’s organizations. For example, in 2009 a working group of child protection specialists and experts from related areas from nine Caribbean Community (CARICOM) states, as well as the International Organization for Migration (IOM) and UNICEF, convened to exchange practical experiences, identify national strengths and weaknesses, and develop recommendations to improve policies for children affected by migration in the Caribbean region.¹⁴⁰

2. Addressing the demand for exploitation of children on the move.

- Safe, legal methods for children to migrate will minimize the market for exploitative smugglers. This includes work schemes linked to accessible, fast, and affordable job and education opportunities; more flexible Humanitarian Visas, Temporary Protection Visas; family reunification; and increases in resettlement quotas.

3. Addressing the facets of border control and migration systems that cause harm to children on the move.

- States and regions should formulate preparedness plans to effectively cope with periods of large-scale distress migration while upholding rights obligations towards children. At the national and regional level, this involves the prior identification of resources and personnel that can be called upon, following the model of pandemic preparedness.
- Develop family-based alternatives to detention and institutional care, such as foster care for unaccompanied children, both during and after status determination (as described in the Europe good practices case). Children on the move, whether accompanied or unaccompanied, should not be detained pending initial registration and processing of their claims for protection.

Protection during migration

- Increase opportunities for safe and legal access to countries of destination, either on a short- or long-term basis (see above). These initiatives should be related to the measures covered by SDG 8.7 that calls for immediate action to eradicate human trafficking and the worst forms of child labor, including the recruitment of child soldiers.
- Fund initiatives to protect children while they move, in particular information and support services along migration routes, and hotline services with trained staff and referral services.

Protection at Destination

- Frontload holistic advice and legal support. This is crucial to establishing trust and quality first-instance decisions, thereby reducing appeals and judicial reviews. Research into the economic case for this investment is an essential step to get policymakers on board.
- All unaccompanied and separated children on the move should be appointed a legal guardian. Guardianship systems should be centralized through a searchable database (to facilitate, for example, matching of guardians with appropriate language skills) and supported by training. The European good practice case provides a positive example in the guardianship system in Sweden.
- Develop a Child Protection Plan for the education sector, with special attention to children affected by migration, and include modules on migration in teacher training curricula.
- Develop public awareness and education programs on available resources for protection of child migrants, and relevant immigration policies and procedures. Publicize national policies on child migrants' rights to access and use basic services free from discrimination and threat of deportation.

Domestic collaboration

- Identify and/or strengthen a focal point/Child Development/Protection agency or unit that is responsible for and can coordinate matters pertaining to children affected by migration and encourage/enhance

multi-sectoral agency collaboration with clearly defined roles and responsibilities.

- The responsibility for children on the move should rest on social protection actors and not migration agencies, in particular when it comes to the cases of separated or unaccompanied children.
- The above agency or unit should develop clear guidelines and training programs to guide actors in child protection, immigration control and law enforcement for assisting children on the move.

Transnational cooperation

- Transnational cooperation must go beyond the cooperation of judicial or police authorities. When necessary for the child's best interests, this cooperation should extend across national child protection authorities, including guardianship authorities. Such cooperation should not be limited to only certain categories of children.
- One international body or senior official at the UN level should be appointed to monitor the protection of children on the move, raise awareness about rights violations, and establish international guidelines for their reception, processing, and protection.
- Develop regional training programs and materials on child rights and working with migrant children. These programs could build, for example, on the experience of the European Asylum Curriculum.¹⁴¹
- Bi-national or regional joint processing arrangements could help improve asy-

lum systems. These arrangements could range from the provision of support teams to other reception countries, to unified regional processing systems. The European Asylum Support Office (EASO) has developed pilot projects relating to different steps of the asylum process that provide an important basis for assessing the potential for future expanded joint activities.

- Paths for mutual recognition of positive asylum claims should be developed both regionally and globally. This is particularly important in times of mass migration from one particular source state.
- Support and develop regional groups of child rights experts and activists such as the European Network of Ombudspersons for Children (ENOC). These have an essential role in policy advocacy, research, and public awareness-raising.

Data collection, research, and advocacy

- Develop a national protocol on the regular collection, analysis, and dissemination of data regarding children affected by migration.
- Provide yearly reports on migration trends and on the impact and effects of migration on children at the national and regional levels.
- Integrate broader data sources regarding children on the move into current data collection regarding vulnerable children, and into national and regional efforts to collect data on migration. Such data should be disaggregated across relevant

categories, particularly gender, age, and country of origin.

- Invest in research and data collection on children “in transit,” which involves the collaboration of national governments, UN agencies, nonprofits, and local community structures, and the creative use of mobile technologies.
- Develop mechanisms, involving all relevant actors, for the exchange of information and good practices on the identification, reception, and assistance of children on the move. These should also map existing protection resources such as guardians, shelters, and vocational training programs. Examples such as ENOC provide a model.

ENDNOTES

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- 70 Parents (or, as the case may be, members of the extended family or community or legal guardians), have primary decision-making responsibility on behalf of their children (Articles 5 and 18(1)), but, if they fail to make the child's best interests a basic concern the state may intervene to protect those interests (see Article 9(1), for example). See Gallagher, *International Law of Migrant Smuggling*, 571.
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LEARNING REVIEW RELATED TO SEXUAL ABUSE OF CHILDREN ON THE MOVE

Risk Factors, Responses, and Recommendations



CHAPTER

INTRODUCTION

The aim of this review is to examine what is known about multi-level risk factors for sexual abuse/exploitation of children along the trajectory of the migration experience and then identify promising strategies, policies, and services that promote child protection and prevent maltreatment. Throughout the review, case examples of sexual abuse and exploitation of migrating children in diverse contexts and settings are used to illustrate the needs of youth and promising directions for CoM policy and programming.

Children on the move (CoM) may be traveling alone or with family members, and include youth identified as refugees, internally displaced persons, unaccompanied children/minors, and voluntary migrants.¹ Although accurate statistics on the number of children on the move are difficult to obtain, in 2013 the United Nations estimated that roughly 15 percent out of 232 million international migrants were under the age of 20.² The circumstances of children on the move render them particularly vulnerable. Compared to the general population, these children are at elevated risk for a variety of adverse exposures, including sexual exploitation and abuse.³ While data on the burden of sexual exploitation and abuse in this population is extremely limited, meta-analyses indicate

that prevalence of sexual abuse among all youth ranges from 8 to 31 percent for girls, and 3 to 17 percent for boys worldwide, with estimates varying by region.⁴ Based on work by the Interagency Working Group on Sexual Exploitation of Children, this report uses the following definitions of sexual violence, sexual abuse, and sexual exploitation:

- Sexual violence against children encompasses both sexual exploitation and sexual abuse of children and can be used as

an umbrella term to refer jointly to these phenomena.

- Child sexual abuse is a broad category that, at its core, defines the harm caused to children by forcing or coercing them to engage in sexual activity, whether they are aware of what is happening or not.
- Child sexual exploitation is a type of sexual abuse which happens when a child is performing, and/or another or others is/

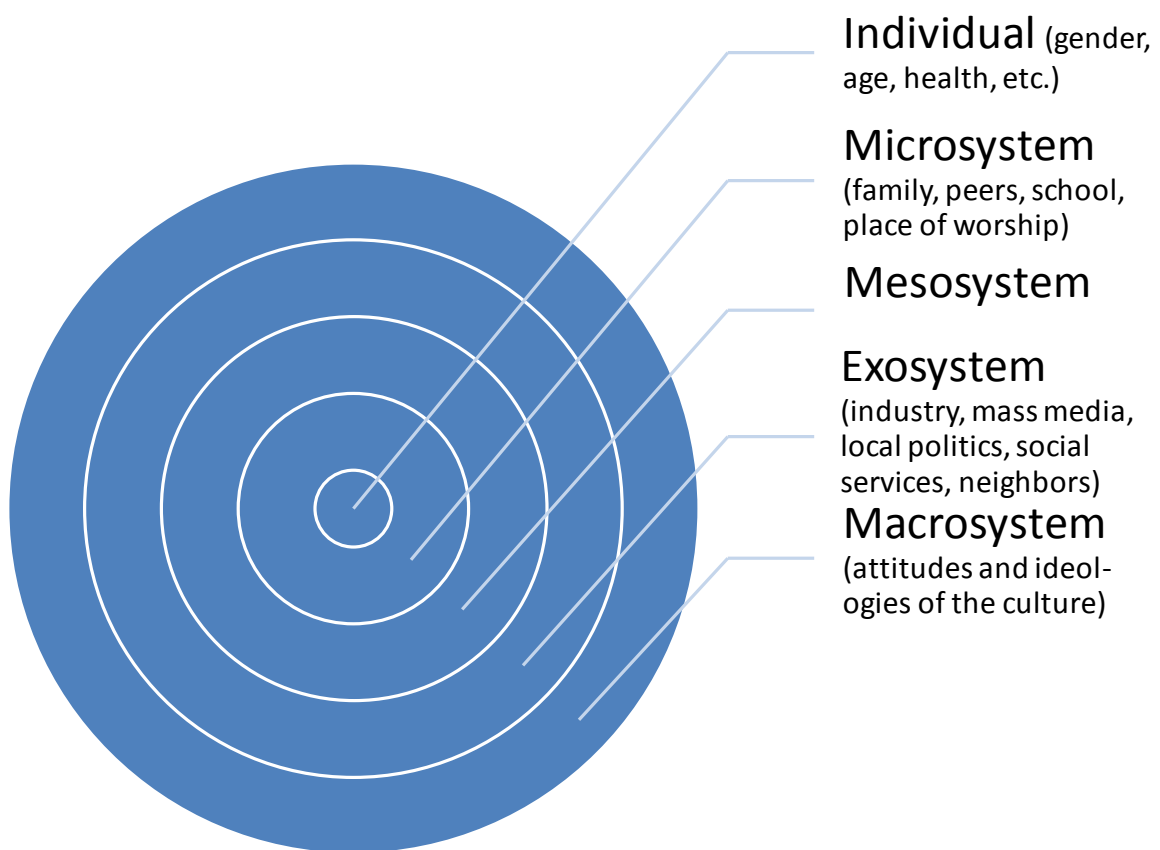


Figure 2.1: Simplified version of Bronfenbrenner’s Model of Human Development (Influences flow in and between systems). Based on model in Urie Bronfenbrenner, “Toward an experimental ecology of human development,” *American Psychologist*, 32(7), 1977.

are performing on the child, sexual activities in exchange for something.⁵

There are different contexts in which children on the move become sexually abused and exploited. For instance, for some children, migration is a consequence of sexual exploitation, and occurs when the children are forced into child prostitution and become victims of national and international child trafficking.⁶ A different scenario occurs when adolescents leave home alone in search of economic opportunity and become coerced into situations of sexual exploitation and abuse because of a lack of adult protection or because of financial desperation.⁷ Still other children, migrating with or without families because of war and political unrest, experience sexual violence embedded within the context of armed conflict and/or as a result of separation from caregivers during flight or social and economic marginalization.⁸

This review examines sexual exploitation and abuse of children on the move through a social ecological framework that takes into consideration important migratory time axes.⁹ Bronfenbrenner's widely invoked model of human development¹⁰ (see Figure 2.1) posits that both risk and protective factors to child well-being exist throughout the spheres that impinge on children on the move, from the individual to the macrosystem levels. Certain characteristics including gender and socioeconomic status may make specific children on the move more likely to experience or be more vulnerable to sexual exploitation than others.¹¹ But because stages of the migratory cycle differ along relevant risk-related dimensions, it is important to examine these multi-level risk and protective factors along the continuum of the migration experience. The circumstances operating at each stage of migration, from pre-departure at the place

of origin to resettlement in a new location or return to the country of origin can increase or decrease youth vulnerability to sexual exploitation and abuse.¹²

The report will suggest that prevention of sexual exploitation and abuse of migrating children requires more robust and consistent linkage between human development and migration spheres in order to generate vibrant and protective environments for young people at risk.

INTERSECTING RISKS

In recent years, there has been an emphasis on highlighting the human agency of children and moving beyond the perspective that considers them primarily as victims of broader social, economic, and political forces outside of their control.¹³ Identifying and acknowledging the decision-making capacity and autonomy of children on the move is certainly an important step in developing meaningful policies and programs that reflect the participation of the children themselves.¹⁴ However, exploring sexual exploitation and abuse of children on the move also entails jettisoning the dichotomy of “voluntary” vs. “involuntary” child migration and instead viewing children as operating within systems riddled with power imbalances that constrain the choices and options available to them.¹⁵ The causes of sexual exploitation and abuse of migrating children can be best understood as a complex network of individual, family, community, and societal factors that, both by themselves and in interaction with one another, promote the co-occurrence of child migration and sexual violence.

These risks intersect with multiple levels of Bronfenbrenner's model. For example, demographic shifts affect not only the mi-

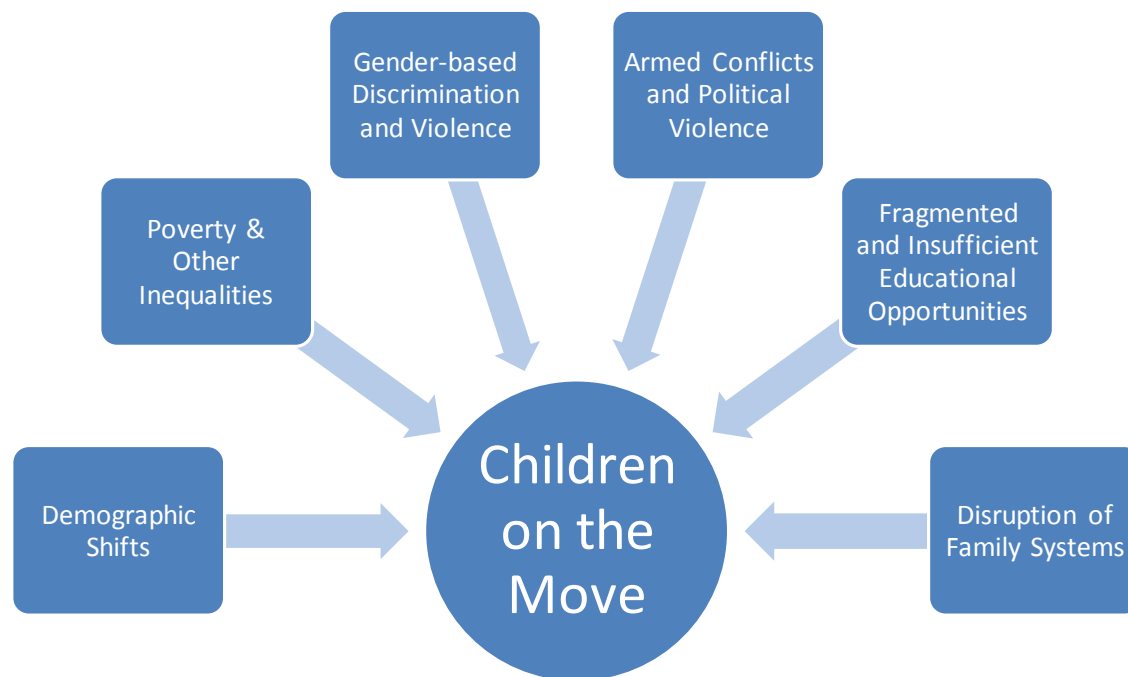


Figure 2.2: Children on the move face intersecting risks within national, regional, and global contexts

cosystem of societies as a whole, but also the microsystem of individual family sustainability and related migratory pressures. Similarly, gender-based discrimination and violence span the gamut of spheres inhabited by migrating children from their sense of self and confidence as individuals to their experiences in school, community, or other aspects of the mesosphere, to the opportunities afforded them before, during, and following migration within the macrosystem they have to navigate.

Additionally, these risk factors exert their influence at all stages of the migratory process. For instance, exposure to armed conflict increases risk of sexual violence in the pre-migratory phase preceding flight and elevates the vulnerability of youth in transit because of social and economic pressures experienced in refugee camps and lack of adult protec-

tion. Likewise, poverty and other inequalities act as major push factors for youth migration and make youth vulnerable to sexual exploitation both while they are in transit and at the place of resettlement due to lack of employment opportunities and financial desperation.

Demographic Shifts

In many regions of the world the population of children and youth has grown at a pace disproportionate to the size of the adult population. Africa is an excellent example of this phenomenon. It is notably the world's youngest continent, with a population that is growing faster than that in any other part of the world. Half of Africa's citizens – roughly 477 million individuals – are under the age of 18.¹⁶ In countries such as Uganda, Nige-

ria, and Kenya, for instance, children aged 0 to 14 comprise over 40 percent of the total population of the country, compared to a worldwide average of 26.1 percent.¹⁷ These demographic shifts frequently result in high unemployment and a lack of opportunities for youth trying to enter the workforce.

In some regions, overall economic growth has faltered or failed to keep pace with the demands created by demographic growth.¹⁸ Elsewhere, countries have invested in economic growth primarily in urban centers, shifting access to jobs and demand for labor from rural settings to large cities.¹⁹ This has been the case in East and Southeast Asia, with thousands of individuals migrating nationally and internationally to meet labor demands in major urban centers throughout their region or in other parts of the world.²⁰ For youth in particular, the demographic shift means that migration becomes the primary means to improve their financial situation, with the result that youth leave home alone to pursue employment elsewhere.²¹ The combination of financial desperation and an absence of social support renders youth prime targets for sexual exploitation during their journey or once they arrive at their destination.

Poverty and Other Inequalities

Along with demographic shifts and diminishing employment opportunities, poverty persists and economic inequalities continue to grow. For example, in Southeast Asia, poorly regulated economic growth, coupled with low prioritization of even income distribution, has led to an estimated half a billion people living on \$2 a day despite an overall reduction in the proportion of people living in poverty.²² Although Africa has experienced dramatic economic growth in recent

decades, poverty rates have not declined; in fact, according to the World Bank, the total number of poor people in sub-Saharan Africa has increased.²³ Poverty and income inequalities come into particularly sharp focus in urban areas. Though major cities tend to have greater employment options than rural communities, the economic growth of large towns and cities cannot keep pace with the dramatic population shift into these areas. In Africa, over 60 percent of the urban population lives in slums.²⁴ Child migrants around the world often end up homeless, in poor quality housing, or in institutions once they arrive at urban destinations.²⁵

For many children, economic inequality is deeply intertwined with discrimination, heightening the risk of both migration and sexual abuse. Research in Southeast Asia, for instance, indicates that low caste is a risk factor for sexual exploitation and trafficking, with “daughter-selling” a common practice among the lower castes because family members cannot find work.²⁶ Indigenous populations and individuals of African heritage often have reduced educational opportunities and thus, more limited employment options in Latin America.²⁷ In Europe, marginalization of Roma communities results in poor access to much needed services and employment, children living on the streets or in institutionalized care, and increased vulnerability to trafficking and exploitation.²⁸ The Rohingya case in this report highlights this intertwining of discrimination and inequality, with heightened risk of migration and sexual abuse. The lack of opportunity for Rohingya in Myanmar including their displacement into internal camps has led to widespread migration, with youth held in detention with adults and with many youth victims of sex trafficking, particularly in Thailand and Bangladesh.

Gender-Based Discrimination and Violence

Sexual exploitation and abuse of children is a deeply gendered issue,²⁹ with females being at much greater risk than males.³⁰ As mentioned earlier, statistics on sexual abuse and exploitation of children on the move is sparse and unreliable, with variations based on geographical and migratory contexts. A detailed discussion of this data is beyond the scope of this review. What is known, however, is that in many developing countries, adolescent girls migrate in greater numbers than boys.³¹ Reasons for migration vary, ranging from seeking out economic opportunities to marriage. Issues of gender-based discrimination and violence frequently underlie both voluntary and involuntary movement. For instance, sexual abuse and violence often act as a catalyst for girls to leave their communities, with female youth identifying escaping sexual abuse by family members, child marriage, or female genital cutting as reasons for fleeing their home.³² Like boys, migrant girls are also searching for employment and educational opportunities; however, the experience of having limited options may be more acute for girls than for boys given well-established gender norms and expectations concerning the role of females in society.³³

Marriage remains one of the primary reasons why female youth migrate in developing countries.³⁴ For instance, child marriage is widely practiced in countries in South Asia, the region with the highest number of child brides in the world.³⁵ Regardless of whether or not a girl perceives the marriage itself as a choice, child marriage is a violation of human rights and is considered a form of sexual exploitation and abuse. The Rohingya case discusses how many girls in the Thai camps end up being sold as brides—in some cases by

prearrangement before the journey. Practices of child marriage are embedded in cultural norms that devalue girls; these same norms and attitudes also serve to make the forced trafficking of female youth for purposes of prostitution a profitable business.³⁶

Camps and detention centers often contain danger of sexual abuse for women and girls. For example, the Lesbos case reports that women and children at the Moria camp hesitate to use sanitation facilities located in the same areas as that of men, for fear of sexual harassment or abuse. As mentioned in the US and Australia case, the housing of children, unaccompanied or with their families, with adult strangers in US detention centers has led to reports of sexual abuse;³⁷ similar practices in Mexico and Australia may well lead to similar outcomes.

Armed Conflict and Political Violence

There are over 50 million persons worldwide currently displaced due to military conflict and persecution, with roughly a half of this number comprised of children and youth.³⁸ In some regions of the world, armed conflict is the primary reason children and youth make the decision or are forced to migrate.³⁹ Although all displaced youth are at heightened risk of sexual exploitation and abuse compared with non-displaced populations,⁴⁰ youth who are unaccompanied and separated from caregivers; in detention; child soldiers; adolescents; or disabled are particularly vulnerable.⁴¹ Sexual violence regularly occurs at all points along the displacement continuum — from the pre-flight situation in the country of origin, through temporary stays in internally displaced persons (IDP) or refugee camps, and to resettlement contexts in a new country or back in the country of

origin. Sexual violence is a tool of war, and prior to and during flight, political groups, organized crime and gangs, and armed militia often victimize women and children.⁴²

As the good practices, Lesbos, and Serbia cases all discuss, the conflicts in Afghanistan, Iraq, and Syria have pushed a tidal flow of migrants to Western Europe, with 54 percent of unaccompanied minors applying for asylum in the European Union in 2015 identifying their country of origin as Afghanistan.⁴³

Children continue to be vulnerable to exploitation and abuse once they have left their homes; indeed, many women and children in male-dominated societies flee conflicts after losing male family members and enter detention or refugee camps unaccompanied by men.⁴⁴ Once in camps, youth are at increased risk of violence both within their communities and families via mechanisms such as domestic violence and child marriage⁴⁵ as well as sexual exploitation by aid workers and peacekeepers.⁴⁶ Among Syrian refugees, child marriage is on the rise, as it is viewed both as a way to protect girls from sexual violence and as a mechanism to ease financial pressures on the family.⁴⁷ There are additional pathways to sexual abuse for refugee youth working to support their families. Refugees often have limited access to legal employment, and children who do find work are vulnerable to sexual abuse by their employers or are only able to support themselves by directly engaging in prostitution.⁴⁸

Fragmented and Insufficient Educational Opportunities

Educational pressures (whether opportunities or lack thereof) often act as a catalyst for youth to leave home and play a significant

role in pathways to sexual exploitation and abuse. In many regions of the world, overall access to education has improved dramatically over the past few decades; however, many of the registered gains relate to primary school enrollment rates and not to school completion, let alone access to and pursuit of higher education. In some countries in Africa, for instance, less than 50 percent of youth complete primary school;⁴⁹ in other regions of the world completion of primary education has increased, but the number of youth attending secondary school is extremely low.⁵⁰ Access to safe schools is also of concern, with sexual abuse and exploitation of children widespread in some parts of the world.⁵¹

Seeking out educational opportunities is a major reason youth migrate to large urban areas, in hope that the quality and kind of education they could receive would be better than that available in many rural communities.⁵² This may be particularly the case for girls, who are forced or pressured to drop out of school at much higher rates than boys.⁵³ In many developing countries, cultural practices favor the education of boys over girls, and include expectations that the education of girls will not lead to financial gains. Some migrant girls leave home with the intention of both working and advancing their education.⁵⁴

The Rohingya case points out the very limited education opportunities for the Rohingya in Myanmar, and how that continues in camps once Rohingya youth have left the country, increasing their vulnerability to sex trafficking.

The relationship between education and sexual exploitation and abuse of migrant children is also frequently mediated by child labor. Children who are poor and from rural com-

munities are at greatest risk of dropping out of school, typically with the goal of finding jobs and supporting their families financially.⁵⁵ As outlined earlier in this report, finding jobs in turn often means migrating to larger urban areas with more employment opportunities. Research indicates that children engaged in work are at heightened risk factor for future sexual exploitation, even if their initial employment is legal.⁵⁶ Conversely, youth who cannot find legal employment become easy prey for child sex trafficking once they get to their destination.⁵⁷

Disruption of Family Systems

Breakdowns and disruptions of family systems can increase the risk of child migration and also of ensuing sexual exploitation. In Africa in particular, death of one or both parents to HIV/AIDS often forces young people to leave home.⁵⁸ They frequently move to join relatives who then foster them. While this can be beneficial to the youth, it may also make them economically dependent upon extended family members and increase vulnerability to exploitation or abuse within the new home.⁵⁹ Youth may also migrate in order to escape dysfunctional family dynamics. Many migrant children report that parental breakups, sexual abuse, and domestic violence played a role in their decision to leave.⁶⁰ Violence in the home may make youth particularly susceptible to sexual exploitation because of heightened desperation to flee dangerous circumstances.⁶¹

Disruption of families is a particularly salient issue for movement by youth affected by armed conflict. In qualitative studies with unaccompanied minors, separation from parents or death of one or both parents is frequently cited as the catalyst for youth leaving their country of origin.⁶² Additionally, many

unaccompanied minors report being separated from families during the migration process and struggle with family reunification.⁶³ While experiencing violence or the loss of a parent is in itself traumatic and detrimental to the well-being of youth, the absence of a strong social support system makes refugee children on the move more vulnerable to unsafe secondary migration, trafficking, and smuggling.⁶⁴

Migration itself tends to disrupt the family system, particularly for refugees. As the Lesbos, US/Australia, and Rohingya cases suggest, conditions in most camps or detention centers are not adequate to meet children's needs. The Lesbos case notes that "the lack of available resources, squalid living conditions, and the trauma experienced make it almost impossible" for parents and caretakers to meet their responsibilities of insuring their children's safety and well-being. The US/Australia case cites a report by the Australian Human Rights Commission on children in detention, which found that almost all parents reported symptoms of depression and anxiety.⁶⁵ One mother summed up her feelings of powerlessness, "Enough is enough. I have had enough torture in my life. I have escaped from my country. Now, I prefer to die, just so my children might have some relief."⁶⁶

The Serbia case alludes to a reversing of roles for some families, "While families with children move to the European Union to improve future prospects for their children, children traveling alone to Europe are often moving to improve future prospects for their family, with the hope of paving the way for the family's move via family reunification regulations in the European Union."⁶⁷ The good practices case discussion of Sweden touches upon how this can lead to child exploitation, increasing the likelihood of abuse, sex-

ual and otherwise—and as discussed below, often these children do not understand the dangers they face.

RESPONDING TO ABUSE AND EXPLOITATION

As has been illustrated, sexual exploitation and abuse of children on the move is a multifaceted issue with many contributing factors operating on both micro- and macro- system levels. Combating the problem entails addressing both root and proximate causes of abuse. This requires coordinated responses across government and nongovernment entities and between different systems of care, operating on multiple levels ranging from local to international efforts. The remainder of this report will highlight different dimensions of a coordinated response and identify challenges and successes in preventing sexual exploitation and abuse of migrating children.

Economic Growth and Development

A key imperative for governments is to address the larger economic context promoting the co-occurrence of migration and sexual exploitation of youth.⁶⁸ As noted throughout this report, a primary reason children migrate is to pursue employment opportunities in larger cities. The correlation between rural to urban migration and increasing economic well-being is illustrated by the fact that an estimated 75 percent of the world's poor reside in rural areas; the incidence of severe poverty is greater in rural than in urban communities.⁶⁹ Investing in government and nongovernment initiatives to promote economic growth in rural communities will benefit youth as well as overall national economies.⁷⁰ In turn, greater economic opportunities in local communities

can lead to less youth migrating for employment reasons and thus reduce their risk for sexual exploitation and abuse.

Organizations such as the World Bank and the International Labour Office have identified several initiatives around the world that generate overall improvements in rural employment opportunities and focus on particularly vulnerable populations such as women and youth.⁷¹ In West Africa, for instance, the nongovernmental organization Songhai uses training and research centers to develop agricultural, agribusiness, and handicraft entrepreneurship in rural areas. The organization started as a national initiative in Benin but has expanded to other countries including Nigeria, Liberia, and Sierra Leone.⁷² Linking activities of nonprofits such as this with national and international policymakers can serve to disseminate successful practices to a wider audience, potentially leading to the scaling up of best practices related to economic growth and development and improved access to employment for youth.

Access to Education

The links between child labor, school dropout, child migration, and sexual exploitation are clear.⁷³ Thus, improving youth employment opportunities must not come at the expense of children's education.⁷⁴ Ensuring universal access to quality safe education is fundamental for ending sexual exploitation of children. A substantial body of data suggests that while access to basic education has improved,⁷⁵ there are many factors that make school completion challenging for youth and families. For instance, a study in Bangladesh found that, because of indirect or "hidden" costs such as books and lunch, allegedly "free" education was financially dif-

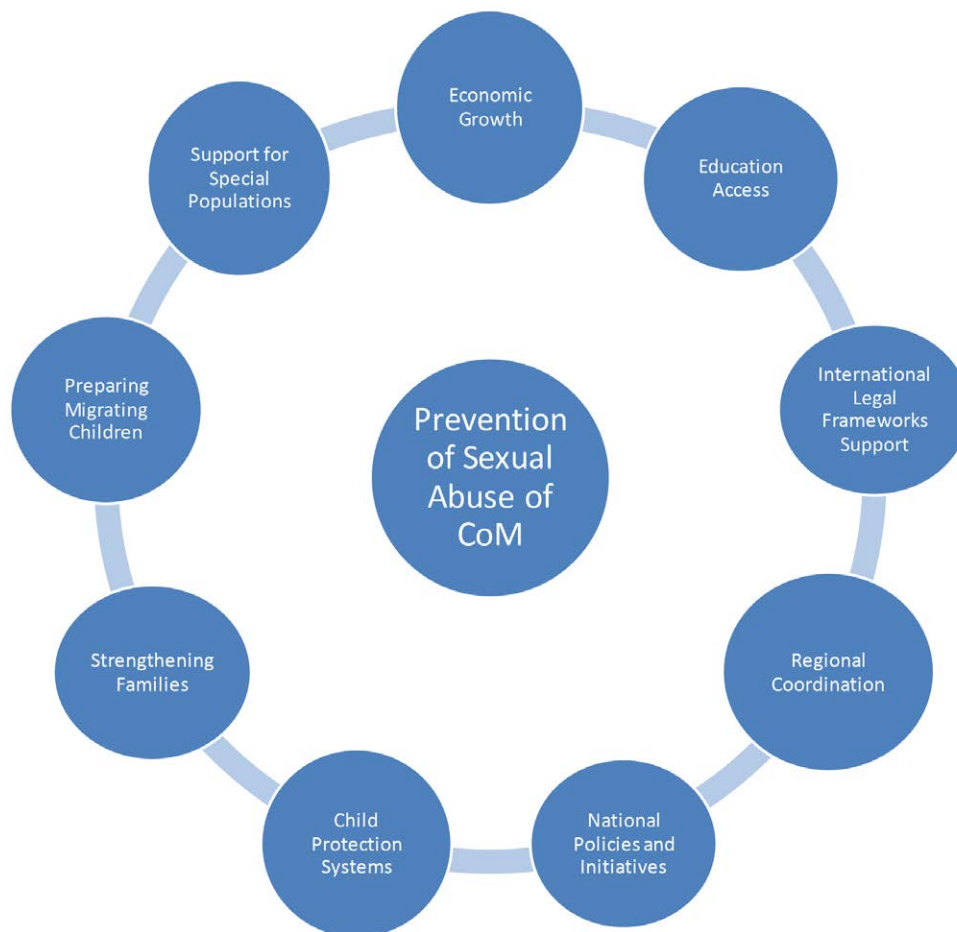


Figure 2.3: Children on the move need coordinated responses for protection

difficult for families. The distance and time to get to school were also factors driving families to pull children out of school, particularly in rural areas where youth were needed during harvesting seasons.⁷⁶ As noted earlier, the benefits of girls' education in particular are often questioned due to cultural attitudes and norms.

Ensuring that children engage in education requires measures that go beyond the availability of schools. Changes in family, community, and national attitudes towards the importance of education are essential.⁷⁷ A

pilot program in rural Ethiopia exemplifies a program that engaged in community awareness building to alter traditional practices. Along with financial incentives to encourage families not to marry off their daughters, the *Berhane Hewan* project (2004-2006) engaged in bimonthly neighborhood meetings with members of the community to discuss the importance of education and the harmful effects of child marriage.⁷⁸ Similar programs are being recommended to address child marriage among Syrian refugees.⁷⁹

Another promising strategy is to develop partnerships among government, labor in-

dustries, and local communities communicating a unified message: that an educated and skilled workforce obtained by completing children's educations will ultimately be of greater benefit to the economy than shorter-term gains achieved through child labor.⁸⁰ The Community-based Innovations to Reduce Child Labor through Education (CIRCLE) project has found innovative ways to target and provide support for some of the most at-risk youth. In Mali, the ENDA project funded the establishment of schools and literary centers in rural areas for children who worked in the rice fields; these educational opportunities facilitated the transition of youth to formal education institutions.⁸¹

As stated earlier, pursuit of educational opportunities is also a major reason some youth make the decision to migrate. In addition to improving education in rural areas to prevent migration, developing quality education opportunities at points of transition or migration destination is important. As discussed in the good practices case in response to the 2015-2016 flood of immigrant children, Germany has made a major effort to increase the number of teachers and to provide educational opportunities for child migrants. Funding vocational education such as apprenticeships and skills training programs can better link education with local labor-market demands and reduce vulnerability to sexual exploitation.⁸² Developing quality education systems at points of transition is particularly important for youth migrating due to war and political conflict. *No Lost Generation* is an initiative launched in 2013 by UNICEF, UNHCR, Save the Children, World Vision, Mercy Corps, and other partners to address this issue. One of the primary goals of the initiative is to provide both formal and non-formal learning opportunities for the estimated 2.1 million

Syrian youth still in Syria and 700,000 Syrian refugee youth in other countries that are not in school.⁸³ In prolonged refugee crises such as this, education interventions cannot wait until children and families have achieved third-country resettlement or returned home. Additionally, these interventions can reduce the prevalence of child marriage and other forms of sexual exploitation of refugee youth.⁸⁴

International Legal Frameworks

This learning review only touches on the international legal frameworks available to address child migration and sexual exploitation; the framing review provides greater detail. In addition to the Convention on the Rights of the Child,⁸⁵ child labor regulations and standards established by the International Labour Organization (ILO) with the Convention on the Worst Forms of Child Labor and the Minimum Age Convention, as well as the UN Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons (2000) have generated mechanisms to protect migrating children from sexual exploitation and abuse.⁸⁶ Most countries have signed and ratified these legal instruments, with a few exceptions.⁸⁷

The exceptions can create great hardship and risk for migrant children, even when the law involved does not directly address sexual abuse. For example, as the Rohingya case points out, Malaysia, along with other countries in Southeast Asia, is not a signatory to the 1951 UN Convention Relating to the Status of Refugees and so makes no distinction between economic migrants and asylum seekers.⁸⁸ Thus all Rohingya arriving in Malaysia are automatically detained until their cases are dealt with by UNHCR (a process that may take months),⁸⁹ and Rohingya youth

face the additional risks of sexual abuse that arise in overcrowded detention centers.

Even more variable, however, is the extent to which countries are in compliance with these standards, and to which domestic laws keep pace with international regulations. Research indicates a large disconnect between ratification and implementation; prevention and mitigation of sexual exploitation and abuse of children can only be achieved through multi-level buy-in and support.⁹⁰

Regional Coordination

Child migration and sexual exploitation are phenomena that transcend national borders and require collaboration between countries on a regional level. It is important to take into consideration country-level specificities that impinge on the degree to which a pressure to migrate exists;⁹¹ however, a siloed, country-level approach to prevention will not address both push and pull factors that motivate youth to cross national boundaries. Regional efforts can serve to address issues that arise at points of origin, transition, and destination that increase vulnerability of youth to sexual abuse.⁹²

Coordination at the regional level includes the development and ratification of regional standards related to sexual exploitation. South Asia is one example of this, with the South Asian Association for Regional Cooperation (SAARC) ratifying the Convention on Preventing and Combating Trafficking in Women and Children for Prostitution and the Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia in 2002.⁹³ This level of organization helps to codify standards across countries in the region, but also points to another characteristic of legislation pertaining to child welfare and

sexual exploitation – a siloed approach to dealing with the issues, as opposed to the development of an integrated response. Legal standards on trafficking typically focus on adults and fail to address child trafficking as a distinct issue that requires more coordination between legal, child protection, and development departments and competences.

Regional efforts vary greatly in terms of success, with challenges similar to those experienced in international efforts – failure to implement, operationalize, and enforce multi-country agreements at the national level. The work of the Regional Conference on Migration (RCM), a forum on child migration that includes representatives from Central America, North America, and the Caribbean, illustrates some of these shortcomings. The RCM agenda focuses on three issues: migration policies, human rights, and migration and development.⁹⁴ Progress on protecting human rights of migrants in the region has gained little ground. Oral commitments by individual countries have not been backed by enforced human rights instruments or mechanisms by which these commitments can be operationalized. Indeed, analysts point to examples in the region of policies adopted by individual countries that directly contradict the RCM agenda.⁹⁵ Other regions of the world, such as Europe, have been more successful in using fora such as the European Union and the Council of Europe to fund regional-level programs to protect children from trafficking and abuse.⁹⁶ However, as the Serbia case notes, ensuring the safety of children crossing multiple borders requires much greater regional coordination among states focused on child migration in its entirety and not simply on trafficking.

National Policies and Initiatives

End Child Prostitution, Pornography and Trafficking (ECPAT) International identifies the development and ratification of national plans of action to combat sexual exploitation of children as an important step in securing the welfare of children on the move. Implementation of such plans varies widely.⁹⁷ In Africa, for instance, coordinated national-level responses are rare; few countries in the region have any national legislation related explicitly to sexual exploitation of children.⁹⁸ A major priority for the region is to strengthen legal frameworks nationally and regionally to be aligned with international standards.⁹⁹ Other countries have been more successful in this regard. In India, the National Commission for Protection of Child Rights was established in 2007 after legislation passed in 2005.¹⁰⁰ The Commission is charged with producing and disseminating information on child rights, investigating complaints and violations, and reviewing existing policies and programs for implementation and effectiveness.¹⁰¹ More recently, the Indian government's Ministry of Women and Child Development spearheaded the enactment of the 2012 Protection of Children from Sexual Offences Act.¹⁰²

International support and guidance for national strategic plans is of critical importance to humanitarian intervention in the Syrian refugee crisis. UNHCR and the International Organization for Migration, in conjunction with other parties, recently developed and published regional and national responses addressing the needs of refugees migrating through Eastern Mediterranean and Western Balkan countries.¹⁰³ These plans include identifying the unique humanitarian needs and vulnerability of refugees in each country and developing concrete strategies directed

at impinging on a variety of issues ranging from the provision of necessities such as food and shelter to outreach activities to enhance community support and acceptance of refugees.¹⁰⁴ Ensuring safe migration and protecting women and youth from sexual exploitation and abuse are also identified as national-level priorities.¹⁰⁵

Child Protection Systems

Because of their marginalized status, children on the move often fall through the cracks of child protection systems.¹⁰⁶ There is a need for child protective services specifically designed for children on the move, as well as the extension of existing services to meet the distinctive needs of this population. While comprehensive systems of care are ideal, priority can be given to subgroups of children that are particularly vulnerable to sexual exploitation because of their specific circumstances. For example, one study in sub-Saharan Africa highlighted the need for more robust child protective services in border towns.¹⁰⁷ The highly transitory nature of migrating children in border towns increased the likelihood that local governments had an inadequate investment in and accountability for the well-being of migrating youth; at the same time, children in border towns are often on the cusp of either embarking on unsafe international migration or trying to find ways to return to their countries of origin.¹⁰⁸ The Serbia case criticizes the current Serbian model of decentralized child protection systems based in local municipalities, as being inadequate to the needs of children on the move for precisely these reasons. The individual circumstances of youth, combined with fragile local economies, lack of access to safe housing and education, and the presence of

unscrupulous employers, renders migrating children in border towns particularly at risk for exploitation and abuse.

The cases in this report also suggest that guardianship, a major tool for protection of unaccompanied minors, needs careful scrutiny. The Lesbos case points out the dysfunctionality of the current Greek system of giving the responsibility to the Public Prosecutor of Minors; the Serbia case calls for selecting independent guardians for minors. The description of Swedish practice highlights their work in recruiting independent guardians, although the system has experienced high-volume recent migration. An important factor in keeping children on the move safe is speed in delivering services and explaining options. The good practices case reports that one very positive aspect of the UK's multi-agency safeguarding hubs (MASHs), local multi-agency bodies connecting the core services required for child protection, is that it reduces time waiting for social services, "and as a result, the time in which a child could go missing."

In more recent years, there has been increased attention to the potential for community-based child protection networks to play a role in overseeing the well-being of children on the move.¹⁰⁹ This approach emphasizes a bottom-up strategy to developing, implementing, and sustaining child protection efforts, with local community groups collaborating and linking with formal systems of care.¹¹⁰ The rationale for such an approach is that for many contexts in which migrating children exist, such as armed conflict and refugee situations, local and national governments may be unable or unwilling to play a role in safeguarding these children.¹¹¹ One example of a successful bottom-up child protection system can be found in Southern

Sudan, where Save the Children Alliance facilitated the development of over 100 community-based child protection networks.¹¹² These local groups advocate for the rights of children in their communities, conduct trainings on child protection, and identify vulnerable children that need assistance.¹¹³

A rigorously coordinated, systems approach is also needed to protect children on the move.¹¹⁴ The UNHCR's "Live, Learn and Play Safe" Initiative in Africa strives to address this issue with the implementation of more comprehensive services that address child protection and development.¹¹⁵ In Ethiopia, for instance, UNHCR is working in collaboration with the Ethiopian Government's Administration for Refugee and Returnee Affairs (ARRA) to improve the access of refugee children to schools, health care, and the judicial system in the country. Cross-organization collaboration is being promoted with the development of a Child Protection Working Group that includes representatives from UNHCR, UNICEF, government agencies and local NGOs, and that meets monthly to address child protection issues.¹¹⁶

Concerted efforts are also being made to improve social services such as case management for youth living in refugee camps. Thanks to this initiative, the number of Best Interest Determination assessments conducted on behalf of unaccompanied and separated children has increased.¹¹⁷ These assessments facilitate the identification of interventions that will best meet the children's individual needs and respond to their preferences or fears. They help children understand options for family reunification and develop plans to safely move onward beyond the camps. Work is also being done to create alternative living arrangements for unaccompanied youth. These interventions some-

times rely on institutionalization in group care facilities. By contrast, the “Live, Learn and Play Safe” Initiative promotes kinship care, foster care, and independent living options for youth, with social workers assigned to monitor the well-being of children in these care arrangements.¹¹⁸

Strengthening Families

Addressing family-level factors and dynamics that increase the risk of child migration and sexual exploitation is of critical importance. As discussed earlier, parental violence, abuse and neglect are commonly cited by youth as reasons inducing them to leave home.¹¹⁹ Even if youth are migrating with parents and other family members, the strains generated by the migration experience can increase the risks of maladaptive family functioning and of abuse, as recent studies and the Lesbos case suggest.¹²⁰ Family-level and parenting interventions can be instrumental in preventing violence and promoting positive youth development.

Family strengthening interventions have been developed to meet the unique needs of at-risk families in low- and middle-income countries. Several such interventions have been effective in reducing harsh parenting and improving positive parent-child relationships.¹²¹ Such interventions are critically important for families in refugee camps as well as after third country resettlement.¹²² UNHCR has implemented positive parenting classes in group or individual family-level formats for Syrian refugees in Lebanon, Egypt, and Jordan.¹²³

Preparing and Equipping Migrant Youth

While primary prevention efforts to curb the migratory pressures on youth represent a critical strategy to protect them from harm, many risk factors precipitating exposure of children on the move to sexual exploitation, such as armed conflict and poverty, will not disappear. Given that some children and youth will continue to be forced into migration, it is not realistic to focus exclusively on macrosystem levels to combat exploitation. Individual-level interventions targeting youth themselves can serve to reduce the risk of sexual abuse both in transit and when they reach their destinations.

Participatory research with children on the move has been a useful strategy for identifying opportunities for intervention. Youth are often ignorant about migration-related risks and about strategies for protecting themselves. In one study of migrating youth, only 20 percent of the sample knew what exploitation was; less than half felt they were adequately informed about dangers and risks such as trafficking and sexual violence, while 38 percent felt confident that they could protect themselves from these dangers.¹²⁴ Children themselves have recommended that they be provided with access to information about what to expect when they embark on international migration so that they are adequately prepared. Particular attention has been paid to educating youth about the documentation they should bring with them, including birth registration or identification papers, in order to facilitate access to a range of services, including education and employment opportunities in transit and at their final destination.¹²⁵ As the good practices case mentions in its discussion of Sweden, countries are tightening regulations to push back the high volume of migrant youth arrivals. Sweden has start-

ed requiring youth to show identification at the border and turning them back if they lack it. For children unable to get identity papers, such as the Rohingya, these measures will cause additional hardship and increase the likelihood of their being trafficked.

Another promising strategy is to promote and improve connections between children on the move and family/friends in the country of origin or at their final destination, as well as a related strategy of developing informal and formal peer networks among migrating youth. In one survey of youth, 100 percent thought that maintaining contact with family was “very important” when they were migrating, and they recommended that something as simple as creating a small phone book including numbers of contact people would be useful.¹²⁶ The Serbia case cites a recent study in which unaccompanied children on the move named local communities and ethnic and peer groups as key supports for their safe journey.

Upon arrival at their destination, many youth are isolated, a situation which increases the risk for their exploitation.¹²⁷ Improving young people’s awareness of community groups and organizations designed to promote connections among migrating children helps to build social capital.¹²⁸ Recent initiatives have focused on utilizing information and digital technologies to support children on the move. Although access to mobile phones and other devices varies widely between children, in part related to differences between the child migrants and stages of migration or economic background, research suggests that overall mobile phone usage is on the rise.¹²⁹ These technologies are a promising way to help child migrants keep in contact with family and friends, obtain information about migration, and access services.¹³⁰

Special Populations

More research, advocacy, and programming are needed to support particularly vulnerable groups of children on the move, such as those with disabilities. The World Health Organization estimates that persons with disabilities make up between 7 and 10 percent of the world’s population.¹³¹ Research indicates that youth with disabilities are 3.7 times more likely to be exposed to violence than those without such disabilities.¹³² There is a dearth of quality data on the migration of individuals with disabilities,¹³³ data that are essential to promote a more comprehensive understanding of the needs of child migrants with disabilities.¹³⁴ Even less is known about sexual exploitation and abuse of children on the move with disabilities. The Women’s Refugee Commission conducted fieldwork with displaced populations in seven countries. Their research revealed that women and girls with disabilities felt more vulnerable to gender-based violence than their peers without disabilities. They reported being abused in their own homes by family members, as well as being sexually exploited by community members.¹³⁵ Unfortunately, gender-based violence prevention and response programs often overlook individuals with disabilities.¹³⁶ More concerted outreach to migrating youth with disabilities is necessary; this population needs to be consciously addressed and included in generic CoM programs.¹³⁷

Another marginalized population is comprised of lesbian, gay, bisexual, transgender, intersex, and queer (LGBTIQ) children on the move. As is the case for children with disabilities, there is a dearth of information on the number of LGBTIQ youth in transit and their experiences of sexual exploitation and abuse.¹³⁸ What is known is that LGBTIQ youth, whose migration is often prompted

by abuse and/or persecution in the home or community,¹³⁹ are at heightened risk of sexual exploitation and abuse throughout the migration process. The legal process for LGBTIQ youth trying to obtain asylum can be particularly challenging,¹⁴⁰ and qualitative research indicates that LGBTIQ youth face discrimination in places of resettlement and experience difficulties in securing housing and employment, all factors that increase vulnerability to exploitation.¹⁴¹ The organization *Belong To* is an LGBT advocacy and services organization based in Ireland that has developed best practice guidelines for working with LGBTIQ youth on the move within their specialized Asylum Seekers and Refugees Project.¹⁴² Overall, this project emphasizes the need for the development of networks between LGBTIQ and CoM experts and service organizations in order to provide specialized care that meets the unique needs of this population.¹⁴³

CONCLUSION

This review has explored current knowledge about sexual abuse and exploitation of children on the move with special attention to factors that promote and precipitate enhanced risk for particular groups of children, both prior to the start of migration in a child's original or previous environment, during the different phases of the migration journey and then during arrival, resettlement, and integration. It documents the impact of available services as well as of immigration insecurity, power imbalances, socio-economic distress, absence of family care, and lack of viable survival options on the probability of exposure to sexual exploitation and abuse. Based on these precipitating vulnerabilities, the report identifies policies, practices, and strategies

that may be scalable for future interventions and institutional and legal reforms.

We are at a critical point in which the intersection of mass migration, global inequality, and child violence is increasingly under public scrutiny. There is overall a call for the integration of developmental and humanitarian perspectives when it comes to children on the move and greater focus on child protection in response to the sexual exploitation and abuse risks specific to the migration cycle. Development work building educational, skill training, and employment opportunities as well as incentives for developed country stakeholders to invest in such opportunities are important components in combating sexual exploitation and abuse of children on the move. Much work needs to be done to combat harmful gender-based discrimination and violence on family, community, and national levels. Additionally, there are promising scalable individual and family-level interventions that can serve to prevent and mitigate the risk of sexual abuse. Ultimately, only a coordinated, multi-level response will effectively increase protective environments for young people at risk of exploitation and abuse and promote their healthy growth and development into adulthood, whether or not they migrate.

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APPENDIX

Case studies about Children on the Move



EXAMPLES OF GOOD PRACTICE

Germany, Sweden, and the United Kingdom

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The movement of children to and within Europe is an enduring aspect of migration, covered by international, regional, and domestic law. Children seeking asylum are entitled to protection and humanitarian assistance, but they are also entitled to the same rights as all children under the United Nations Convention on the Rights of the Child.¹ In addition to these international provisions, European Union (EU) law requires all EU Member States to comply with minimum requirements for the reception and care of children, though in practice the experiences of asylum-seeking children vary significantly between EU countries. In 2015, close to 1.3 million migrants crossed the Mediterranean to seek asylum in Europe; at least 29 percent, or one in three, were under the age of 18.² Migration to Europe last peaked at around 672,000 asylum applications in 1992 due to the war in former Yugoslavia. No country was prepared to handle the effective doubling of asylum applications that has occurred since. While some EU countries have sound policies and high-quality infrastructure for child migrants, even these were put to the test by the recent upsurge in child migrant arrivals. Addressing the urgent needs of children on the move during the crisis of 2015 has required across the board innovation fueled by the political will of governments, non-governmental organizations, and civil society.

This case study is a rapid assessment of good practices in three EU countries, Germany, Sweden, and the United Kingdom, for the protection and integration of child migrants to the European Union. For Germany the case study focuses on the school education of migrant children. In Sweden, it analyzes policies and institutions for unaccompanied minors seeking asylum. Finally, the UK section of the study considers holistic age assessment procedures and multi-agency safeguarding hubs.

GERMANY

Research Findings

There is no national education policy in Germany—the Länder (the sixteen federal states) regulate culture and education.³ Each state has its own mechanism for integrating asylum-seeking children into the school system, although most have one or another version of German-language classes for the first few months. In Berlin, these are referred to as “welcome classes”; in Hamburg, they are referred to as “international preparatory classes”; for the sake of simplicity, this report refers to them as transition classes. It focuses on secondary education since very young children in many states (for example, in Berlin, those below the age of seven years) are directly enrolled in regular classes at a primary school.⁴

Regardless of their immigration status or length of stay, all asylum-seeking children are guaranteed access to school education; indeed, school attendance is compulsory.⁵ In practice, however, not all asylum-seeking children receive school education upon their arrival in Germany for several reasons: there may be a waiting period for up to a few weeks before a school place becomes available; children and/or their parents may not be aware of the right to education; children living in reception centers—temporary accommodation to house newly arrived asylum seekers—may not have access to a school.

A detailed discussion of the German school system is beyond the scope of this report, but in most states, students are effectively tracked into a *Stadtteilschule* (a district secondary school) or a *Gymnasium* (a more academically oriented secondary school).⁶ Mi-

grant children also attend vocational schools in many states. Most of these states offer a two-year course (one year of German-language education, and a second year of language and practical training) before students can enter proper vocational training.⁷ In most cases, transition classes are run at regular secondary schools, ensuring the integration process begins even while children are acquiring language skills and before they attend regular classes.

The objective of the transition class is to ease integration into regular classes once children have basic command over German. Children are then “mainstreamed” between one to two years after their enrollment in the transition class on the basis of their age and progress. Transition classes are also intended to assist with the social and cultural transition to life in Germany, and include components of practical training, such as how to buy groceries at the supermarket. Although some states (like Bremen) require all secondary schools to run transition classes,⁸ in practice the district schools tend to bear a disproportionate responsibility of running transition classes.⁹ Migrant children almost always integrate into the same school where their transition class took place, and therefore predominantly end up in district schools instead of in the academically oriented gymnasiums.

Good Practices

- 1. School education as an effective integration mechanism for children:** The system of enrolling children in transition classes and subsequently integrating them into mainstream classes is effective, provided that children do not spend too long in separate classes, and are not excluded from school and extracurricular activities.¹⁰ Faced with an unprecedented

Case Table 1.1 Germany: Good Practices and Challenges for Education of Children on the Move

GERMANY: EFFECTIVE EDUCATION FOR CHILD MIGRANTS	Good Practices	Integration through education
		Mass recruitment of new teachers
	Challenges to Integration	Delays in mainstreaming migrant children
		Providing quality age-level education
		Lack of coordination between German states
		Declaring dangerous countries “safe”
		Inability to offer bilingual classes

number of new students, the resolve of government officials, schools, and individual teachers to support migrant children is commendable. Credit is also due to the students themselves, who endure extreme hardship in their quest for a better, safer life. At integration classes observed in Berlin and Hamburg in May 2016, boys and girls of eight or nine nationalities sat together and displayed a remarkable eagerness to learn German.

- 2. Mass recruitment of new teachers:** The Standing Conference of the Ministers of Education and Cultural Affairs estimated around 325,000 recently arrived children needed to be integrated into the school system as of the end of 2015 (including those who arrived in 2014). The expected annual cost is 2.3 billion euros, largely devoted to the hiring of 20,000 new teachers.¹¹ Recruiting teachers has been

one of the biggest challenges, and in most states ministries of finance have allocated funds for the hiring of additional teachers. States have made a concerted effort to hire teachers with expertise in teaching German as a second language and sensitivity to cultural differences.¹² Many teachers hired in 2015 were retired teachers, social workers, volunteers, or other educated persons with some interest and/or experience in teaching. Many of those recruited are motivated by an interest in migration and a sense of social responsibility. Many also serve as de facto counselors to students, and are a vital source of support, particularly for unaccompanied children. Since there is almost no funding for schools to hire additional support personnel, this mentorship substitutes for full-time mental health professionals and social workers to help migrant children with

the challenge of integration.¹³ Teacher recruitment is not without challenges—some full-time German teachers are reluctant to take on these classes, either as a matter of workload or status. Because many of the new teachers do not have the training required of full-time German teachers, they are placed on short-term contracts and paid less than regular teachers; given the magnitude of the crisis and the sustained need for migrant children to have supportive teachers, it would seem advisable to raise salaries over the coming period.

Challenges to Integration

1. Constraints on space and resources lead to delays in getting migrant children into mainstream classrooms:

Due to the overwhelming demand for language teachers, space, and other resources, not all migrant children have access to high-quality education. A large-scale expansion of the existing infrastructure for the education of non-German speaking children is required to cope with the ongoing migration crisis. Transition classes that previously catered to children who did not speak German (a system that has been in place for decades) have not been able to absorb the large number of refugee children arriving in 2015; although more transition classes have been started in most states, these are still inadequate.

- While children are waiting for school enrollment, some reception centers—depending on the school regulations of that specific state—hold classes on their premises. Asylum seekers are required by German law to live for at least six weeks but no longer

than three months at these centers; in practice, however, many have to spend several months at such centers. Classes at reception centers help to prepare children for transition classes at school. Concerns about future integration arise when children spend too long in reception school classes; generally and where possible, it is considered preferable for children to commute via public transport or school bus to school. In accordance with the German axiom, “short legs, short distance,” classes at transition centers are best suited to serving the needs of the youngest children.¹⁴

- Students waiting to be placed in a transition class may experience isolation; when such transitional placements last for a prolonged period of time, students may find integration more challenging. Children who remain in transition classes once they have acquired enough German to attend regular classes are deprived of the right to level-appropriate education.
- In Berlin, migrant children separated into transition classes have greater difficulty finding space in regular classes once they have acquired proficiency in German. Particularly in gymnasiums, where German children themselves compete for space, migrant children are treated as a lower priority. They may have to wait several months before they are admitted into regular mathematics or English classes. The timeliness of this transfer depends, in part, on the willingness and capacity of individual teachers or school principals to support migrant children.

2. Providing quality age- and level- appropriate education: Providing quality education for children on the move is challenging for numerous reasons: typically these children do not speak the language and enter the classroom with lower education levels (some have little or no prior education).¹⁵ In some secondary schools in Hamburg, in addition to transition classes, children begin to study Mathematics, English, Art, and Sport. Given the varying ability of students, this is beneficial to those who already have substantial prior education, but places an additional burden on those with little or no previous educational experience.¹⁶

3. Lack of coordination between states: Germany's federal nature has both positive and negative implications for the education of child migrants. While states have the capacity to learn from the good policies and practices of others, in the absence of a uniform policy, some states have adapted more rapidly, reflecting factors including population size, material resources, and the number of asylum seekers in that particular state. The distribution of asylum seekers is uneven for two reasons: (1) unequal distribution by the federal border police; (2) movement of people who choose to live in a location other than the one to which they have been assigned.¹⁷ The disadvantage of the federal system is that there is poor coordination across states and as a result, great variance in the education accessible to asylum-seeking children.

4. Declaration of potentially dangerous countries as "safe countries of origin": Like most European countries, Germany is seeking to stem the flow of migrants through its borders. It expanded the list

of countries it declares to be countries of safe origin in 2014 and 2015 to include Albania, Bosnia-Herzegovina, Ghana, Kosovo, Macedonia, Montenegro, Senegal, and Serbia.¹⁸ In 2016, the lower house of parliament approved a proposal to add Tunisia, Morocco, and Algeria to the list. The objective is to speed up the process of sending asylum seekers back to these countries of origin. Returning asylum seekers to a country that has a poor human rights record is particularly dangerous for children. As the experience of deportation of Kosovar child asylum seekers in Germany following the end of the Balkan war demonstrates, this removal process is disruptive to the education of children who begin learning German and are then abruptly removed from school and transported to another location where they may need to adapt to a different education system, or may not have access to education at all.¹⁹

5. Inability to offer bilingual education: The right to education is enshrined in numerous international law instruments, including Article 26 of the Universal Declaration of Human Rights, and Article 28 of the Convention on the Rights of the Child. Article 29 (c) of the Convention further states that education of the child should be directed to "the development of respect for the child's 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." Given the diversity in the countries of origin of migrant children, as well as the resource constraints on offering even German-language education, bilingual or bicultural programs seem unfeasible in

the short- or medium-term. Further, education is the single most important measure for integration of children,²⁰ and if migrant children are to be granted asylum and remain in Germany, it is imperative for them to learn German and be mainstreamed into the education system. This process of integration needs to be combined with sensitivity to and recognition of the importance of the language and culture of the country of origin.

Conclusion

The migrant children who are enrolled in transition classes and are able to attend regular classes once they learn German are well positioned for integration if they do receive refugee status and remain in Germany. Though this process of integration is not without challenges — integration into a different culture takes more than language acquisition — education is the best starting point, even for older children. The success of integration programs depends, in large part, on the commitment of individual teachers and schools to be inclusive of migrants, and on the commitment of policymakers in each of the states to stretch existing resources in order to expand and reform the education system as needed.

SWEDEN

This section of the report draws on the following definitions provided in General Comment No. 6 of the UN Committee on the Rights of the Child:²¹

Unaccompanied children (also called unaccompanied minors) are children who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.

Separated children are children who have been separated from both parents, or from their legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.

Research Findings

Historically, Sweden has been one of the main receiving countries for unaccompanied minors from war-torn countries. Unaccompanied children pick Sweden over other EU countries for several reasons, including: (1) High-quality reception conditions, accommodation and social services; (2) A relatively child-friendly asylum process; (3) A relatively generous and expedient process for granting unaccompanied minors permanent residency. Sweden received approximately 4,000 asylum applications from unaccompanied minors in 2013, and almost 7,000 applications (29 percent of the total number to Europe) in 2014. The applicants were mostly boys, between the ages of 16 and 17, from Afghanistan, Somalia, and Syria.²² In 2015, this number increased five-fold, and Sweden received over 35,000 asylum applications from unaccompanied minors; the largest number (more than 23,000) came from Afghanistan.²³

Sweden has a well-developed system in place to address the needs of unaccompanied minor children throughout the asylum process. The system includes the appointment of a lawyer and a separate individual as a custodian (legal guardian) for each child, the provision of accommodation, and of social services (including health and education). Sweden grants asylum to unaccompanied children on one of three grounds: (1) because they are refugees with a fear of persecution; (2) because they are children

in need of “subsidiary protection” who are afraid to return to their home country for fear of being sentenced to death, torture or inhumane treatment, or because they are at risk due to armed conflict; (3) because they are children who have experienced “particularly distressing circumstances,” such as a health issue or the situation in their home country.²⁴ While (1) is a minimum requirement under EU law, (2) and (3) are particular to Swedish law.²⁵ A proposal to drastically alter this system is under debate, and new asylum regulations will likely go into force in 2016. Please see the section entitled “New Asylum Law” for a detailed discussion.

The first point of contact for all asylum seekers (including unaccompanied minors) is the application unit of the Swedish Migration Agency, which handles the legal aspect of the asylum application. Unaccompanied minors receive a guide available in multiple languages about how to apply for asylum; this guide may be a valuable resource throughout the asylum process, except for children who cannot read. Children are placed in temporary accommodation at a transit home near the unit where the asylum application must be lodged.

Once the Agency chooses the municipality to send the child to pending the asylum decision, the child is transferred to the care of that municipality. The number of children each municipality is responsible for is determined on the basis of population and current numbers of asylum seekers hosted.²⁶ The municipality provides accommodation and care for the child, including education and other social services. Municipalities also appoint an adult custodian for each child to accompany him or her to asylum proceedings, and to ensure the child is receiving the care to which he or she is entitled.

Asylum decisions for unaccompanied minors have typically taken one year, but wait times are likely to exceed one year for the large number of children who applied in the fall of 2015. The Migration Agency is unable to provide an estimate of exactly how long the process will take.²⁷ If an unaccompanied minor’s asylum application is approved, he or she receives a residence permit (usually permanent, but in some cases, temporary) to stay in Sweden. Unaccompanied minors with permanent residency are entitled to care from the municipality until the age of 21, including an allowance, education, healthcare, and accommodation at a home intended to help them transition to life in Sweden. Until the 2016 change in the law is enacted, unaccompanied minors may also bring their parents and siblings to Sweden under the right to family reunification.²⁸ Refused applicants have the right to enter into an appeals process at the Migration Court; if the final appeal is denied, the unaccompanied minor is transferred to his or her country of origin or to an alternative country. Minors do not travel unless someone is able to receive them at their point of arrival.²⁹ In the event that this is not possible, a minor must wait in Sweden until he or she turns 18 and can then travel as an adult.

Good Practices

- 1. An independent guardian for each child:** Appointing a guardian for asylum seekers is widely regarded as a best practice for protecting the best interests of unaccompanied minors. An adult who is external to the asylum decision (therefore separate from the appointed legal counsel), and is not directly responsible for care provision, can advocate for the child. Custodians in Sweden are paid a

small fee (around 2000-2500 Swedish Krona, or \$250-300 per month) but the expectation is that adults take on this position as a part of a broader commitment to civil society.³⁰

- Under the Convention on the Rights of the Child, an unaccompanied child seeking refugee status is entitled to the same protection as any other child deprived of his or her family environment. Scotland and Northern Ireland in 2015 passed legislation to appoint independent guardians for unaccompanied children as well as those suspected of being trafficked. England and Wales are still to pass a similar law; the biggest obstacle seems to be the high cost of running such a program.³¹ Given the financial constraints on the various agencies that provide care and support to children, and the time constraints on social workers, who often do not have expertise in the complexities of migration law, it is imperative to have an independent person to advocate for the best interests of the child.³² In Sweden, while the system of appointing a custodian for each child works effectively, the attentiveness varies based on the individual's commitment to the child.

2. Safe accommodation: While an unaccompanied minor awaits the asylum decision in Sweden, he or she attends school and lives in an HVB (Hem för Vård eller Boende, homes for care or residence) or with a foster family. Separated children may live with relatives other than their parents if the municipality determines that the living conditions are safe. The municipality-operated HVB homes aim for high standards: children almost always

have a private room, there are separate bathrooms for girls and boys, and there are high staff-to-child ratios and staff on duty at night. In practice, however, many homes do not meet these standards: in some cases, girls have been placed in homes predominantly housing boys, and have had to share bathrooms with boys.³³ The Swedish media has reported cases of alleged rape and sexual violence in residential homes. There is variance in the quality of both at foster homes and at the homes of relatives; a social worker from the municipality is expected to visit the child once every six weeks at a minimum.³⁴

- The difficulty in ascertaining an unaccompanied minor's welfare at such a home poses a constant challenge to social workers and nongovernmental organizations. A safe and supportive foster family can provide a better environment for an unaccompanied minor than a group home, but a negligent one is particularly detrimental to his or her well-being.³⁵ Social workers make it a point of visiting children in such accommodation one on one, in a safe environment, in order to make the best possible assessment.³⁶

3. Adaptability in a time of crisis: The crisis in the fall of 2015 put a major strain on the existing infrastructure for unaccompanied minors. It was impossible for Sweden to maintain the high quality of its accommodation and services in the face of a five-fold increase in the number of unaccompanied minors from the previous year.

- The positive nature of Sweden's response should not be minimized —

Case Table 1.2 Sweden: Good Practices and Challenges for Protection of Unaccompanied Minors

<p>SWEDEN: CARE AND PROTECTION FOR UNACCOMPANIED MINORS SEEKING ASYLUM</p>	<p>Good Practices</p>	Independent guardian for each child
		Safe accommodation
		Adaptability in time of crisis
		Contingency planning for the future
	<p>Challenges to Child Protection</p>	Division of responsibilities between central and municipal authorities
		Lower standards in reception and transit
		Lower standards in residencies and monitoring foster care
		Deficiencies in the guardianship system
		Lack of prioritization of most vulnerable
		Opportunities for child exploitation
		Stricter border controls and anti-immigrant policies

the municipalities as well as ordinary citizens exhibited both the will and the capacity to provide children with the highest level of possible, given available time and resources. The Migration Agency employed new staff and redeployed other staff to handle the volume of asylum applicants arriving on a daily basis. Swedes came out in large numbers to state their willingness to accept refugees, attended training sessions to learn about volunteer opportunities, and donated food as well as warm clothes.

- New homes needed to be opened at short notice. In Mölndal, a munic-

ipality near the city of Gothenburg, when almost 100 children arrived in a single day, children were housed on mattresses on the floor of school gymnasiums.³⁷ In Malmö, which received the highest volume of asylum applications, the premises of an old mental hospital that had been closed for several years were rapidly turned into 15 transit centers for unaccompanied minors, and other unused public buildings were converted into transit homes. Municipalities ordered hundreds of Ikea mattresses and laid them on the floor of school gymnasiums to create makeshift transit homes when existing ones were full. The liv-

ing conditions in these accommodations did not meet previous Swedish standards, but every child had a roof over his or her head, a mattress, access to food, water, and a toilet, and round-the-clock staff.³⁸

- 4. Contingency planning for the future:** Some municipalities are developing systems that rapidly expand and adapt to unpredictable situations. The municipality of Gothenburg entered into a “Voluntary Sector Organization Public Partnership” in May 2016.³⁹ Nongovernmental organizations with expertise in different areas, such as Save the Children, the Red Cross, and Stadsmissionen (an NGO that traditionally provides accommodation and care for the homeless) will provide integrated services for child migrants. Under this agreement, Stadsmissionen has set up a new home capable of accommodating 20 children.⁴⁰ As of June 2016, plans for the home included a staff of 15 (with two awake throughout the night) and separate rooms for each child. A similar agreement is under consideration in the municipality of Malmö.⁴¹

Challenges to Child Protection

- 1. Allocation of responsibilities between central and municipal authorities:** The clear division of responsibility between the Migration Agency and the municipalities has both positive and negative implications for child protection. Separation of the legal aspects of the asylum process (including age assessment, discussed in detail in the next section of this report) from social services makes it easier for

the child to develop trust with adults who are tasked with his or her care. It may however be overwhelming for the child to interact with such a large number of adults; more importantly, dispersed responsibility may lead to some key protection issues being overlooked or to poor communication between various agencies. Further, local authorities may have different resources and methods of allocating responsibility,⁴² and the absence of an integrated data system makes coordination difficult. The Swedish government and Migration Agency should ensure greater oversight and evaluation of municipalities. This action could help address current deficiencies in access to social services, education, healthcare, and housing.⁴³

- 2. Lower standards of reception and transit housing conditions:** Available transit homes filled up rapidly due to the unprecedented numbers of unaccompanied minor arrivals. The homes are designed to house children for no more than 48 hours,⁴⁴ but in 2015, children spent a few weeks—and sometimes months—at such homes. Many children did not receive education or other services while at a transit home, a particular challenge given the length of time some children were compelled to spend there.⁴⁵
- 3. Difficulty in maintaining standards of residence homes and monitoring foster care:** Once children were transferred to the designated municipality, the challenge of finding housing continued. Residence homes intended to sleep one child per room were filled beyond capacity. Typically, these homes are operated

by the municipality or by private owners, but private owners undergo a lengthy approval process by the Health and Social Care Inspectorate, which may take up to six months. This approval process was dramatically sped up out of necessity, leading to deterioration in the operating standards of some homes, most critically with respect to the child/staff ratio. Visits to unaccompanied minors placed in the homes of adult relatives could not be carried out as regularly as deemed necessary.

- 4. Deficiencies in the guardianship system:** The effectiveness of guardianship rests on each municipality, and even more so on the performance and commitment of each guardian. Better training and monitoring of guardians could help to reduce the disparities in guardianship. Not all municipalities offer training for guardians, and even those that do were not always able to provide timely training.⁴⁶ The increase in the number of unaccompanied children led to delays in appointing a custodian for each child, sometimes for more than a month.⁴⁷ Further, custodians took on more than the standard number of children (typically 1-4, with a maximum of 10), and were unable to provide effective care to each child.⁴⁸
- 5. Lack of prioritization of the most vulnerable unaccompanied children:** The increase in the number of asylum applications led to significant backlogs in the asylum system. As a result, particularly vulnerable unaccompanied children, including victims of trafficking, those who had experienced sexual violence, and those with physical or mental health needs were not prioritized. The asylum applications of girls, children who have

experienced trauma, and those at risk of experiencing abuse must be handled with greater sensitivity and urgency, and access to psychiatrists and mental health professionals must be increased.⁴⁹

- 6. Opportunities for child exploitation:** Sweden's liberal policy for unaccompanied minors has created loopholes for child exploitation, including but not limited to the following:⁵⁰ Parents may force a child to undertake the dangerous journey to Sweden in the hope that he (or she) will get permanent residency and therefore bring the family over. Children may be compelled to lie that they are traveling alone in order to avail of the benefits that come with unaccompanied minor status when in fact they have traveled with family members. Unaccompanied children are particularly susceptible to trafficking.⁵¹ From a child protection perspective the benefits of a generous policy far exceed the costs of the loopholes, but these cannot be disregarded altogether.
- 7. Stricter border controls and anti-immigrant policies:** While recognizing the very substantial obligations for Sweden arising out of the current migration crisis, given the failure of responsibility-sharing across the EU member states, it is nevertheless disappointing to witness the restrictive political response promulgated by the Swedish authorities at the time of this writing. The response significantly shrinks the likelihood that unaccompanied minors will continue to receive asylum in Sweden, despite their eligibility for such protection as a matter of international law. As of November 2015, Sweden introduced greater security at the border; and as of January 4, 2016, unaccompanied minors seeking

asylum are required to provide a valid form of identification when traveling on transport vehicles to Sweden and upon arrival at the reception center of the Migration Agency. Many asylum-seeking unaccompanied minors (particularly from Afghanistan, the largest source country) do not carry such identification. As a result, although asylum-seeking children already in Sweden will continue to have access to safe accommodation, education, and other integration services, regrettably extremely vulnerable children arriving at the borders are being turned away, and risk being sent back to potentially dangerous circumstances if, as is likely, they do not receive asylum in another European country.

New Asylum Law

A proposal to bring Swedish rules of asylum in line with the minimum EU law standards is under discussion in Sweden. The proposed legislation will apply for three years, and imposes the following key restrictions:⁵²

1. It introduces temporary residence permits, rather than the permanent ones: asylum seekers who are granted refugee status will receive a three-year permit, and those who are eligible for subsidiary protection will receive a 13-month permit. When the permit expires, it will be reviewed and extended if the grounds for protection still exist. Permanent residence may be granted in some cases, but for persons under 25, this is only granted if the person has completed secondary education or the equivalent. A child may be granted a permanent residence permit based on his or her health.

2. It limits the right to family reunification: children who applied for asylum after November 24, 2015, and are granted subsidiary protection, will not have a right to family reunification, in violation of the family unity provisions of the CRC. Children who are granted refugee status will have the right to be unified with their parents.
3. It does not grant asylum to persons in particularly distressing circumstances unless their deportation is in contravention of Sweden's convention obligations.
4. It seeks to make medical age assessments of asylum-seeking youth mandatory, in order to resolve cases of unaccompanied minors whose age is under question.

Conclusion

While Sweden is better prepared to care for a large number of unaccompanied minors should they arrive later in 2016, at present the number of arrivals is relatively low due to border control.⁵³ Without underestimating the strain the Swedish system faced in 2015, it is important to note that makeshift accommodation in Gothenburg or Malmö is likely to be safer for unaccompanied children than anything available to the same children in countries such as Afghanistan, Syria, and Eritrea. The sense of panic over the large influx of asylum seekers in 2015 and growing anti-immigrant sentiment in some parts of Sweden are significant obstacles to effective child protection. The government claims that the border controls and new legislation are necessary because Sweden needs “breathing space,” and that its “limit has been reached”; however, Sweden is far better equipped to address the needs of asylum-seeking chil-

dren than their home or their neighboring countries.⁵⁴

THE UNITED KINGDOM

Age Assessment

Age assessment is one of the most controversial challenges that arise in handling the asylum applications of children and young people, particularly if they are unaccompanied. This case uses the term *child* to refer to those clearly under 18, and *young person* to refer to those who may be under the age of 18. Many asylum applicants claiming to be children lack documentary evidence to prove it. Even if a young person has documentary evidence of age, this may be fabricated, particularly if the young person is a victim of trafficking. While some young people are clearly children and others are clearly adults, there is significant scope for doubt.⁵⁵ The challenge is particularly acute when the asylum applicant's credibility in response to questions about age is in doubt. Applicants may dishonestly assert their age to take advantage of child-specific benefits associated with the asylum process in some jurisdictions.

UK statutory guidance on the care of unaccompanied children states, "Age assessments should only be carried out where there is significant reason to doubt that the claimant is a child. Age assessments should not be a routine part of a local authority's assessment of unaccompanied or trafficked children."⁵⁶ The assessment should not be an administrative process or conducted to determine the exact age of the child; rather the purpose of the assessment should be to en-

sure that "the child or young person receives the appropriate services and educational support for their age and development."⁵⁷

Since there is little agreement about what constitutes "significant" doubt, in practice, age assessments are carried out with greater frequency than child rights experts believe necessary.⁵⁸ This is because casting doubt on the age of a young person may be difficult and upsetting, generating distrust between asylum applicants and distrust in the individuals conducting the assessment (in the UK, the responsible official is a trained social worker, but in other EU countries, like Sweden, it is an official of the Migration Agency). The assessment may also increase the risk of disappearance, because a young person may see repeated questioning as an attempt to send them back to their country of origin or another unsafe environment. Once again, trafficked children and young people are at particular risk because many go missing within 48 hours of being cared for.⁵⁹

Given how contentious the conduct of age assessments is, why should they be conducted at all? The answer is that, from the perspective of child protection, taking a young adult into a residence or other facility intended for children and placing him or her in close contact with vulnerable children, poses a risk to both the adults and the children concerned, risks that must be minimized. The question then arises as to the best methods for conducting an age assessment.

Good Practices

- 1. Holistic age assessment procedures:** The European Network of Ombudspersons for Children has stated that an age assessment should involve physical, so-

cial, and psychological evaluation, should be open to appeal, and that every person claiming to be a child should be treated as one until a final decision is made.⁶⁰ Giving the benefit of the doubt to a young person claiming to be a child is also a central tenet of a set of guidelines with step-by-step instructions on how to conduct an age assessment published by the Association of Directors of Children's Services (ADCS) in the UK in October 2015.⁶¹ It is important to note that a young person above the age of 18 may still be in need of care and protection, even if he or she is not actually entitled to the rights to which children are entitled.⁶²

- 2. Preparation and research before the assessment:** There is no prescribed way in which an age assessment should be carried out, but the assessment should exhaustively draw on all sources of information available. In the UK, if conducted with sensitivity and adherence to ADCS guidelines, interviews by trained social workers are regarded as a good practice for assessing the age of a young person. Prior to the interview, the social worker should gather as much information as possible to assess the specific case of the young person, including but not limited to: whether the young person has been trafficked, the young person's needs, and the young person's accommodation and living conditions before and after the interview. Under UK law, a suspected victim of trafficking must be presumed to be a child and accorded special protections pending any age assessment.⁶³

- 3. Timely age assessment to enable children to participate:** No attempt should be made to carry out the age assessment when a young person first initiates his or her application for asylum. In Sweden, the age the child provides when initiating the application is almost always accepted. In cases in which a young person is obviously above 18 but claiming to be a child at the time of application, the Migration Agency changes this age.⁶⁴ If there is doubt about the young person's age, he or she is registered as a minor, and an age assessment is carried out later in the asylum process. Similarly, in the UK, a young person's age assessment is not conducted upon arrival. Rather, the policy provides that young people should be placed in suitable accommodation to "recover from the experiences they had before they left their home country and whilst on their journey."⁶⁵ Adequate food and rest has a significant impact on a young person's capacity to participate in any age assessment.

- 4. Open communication before, during, and after the assessment:** The purpose of the interview must be explained to the child, and the interview should take place in a venue where the child feels safe and in the presence of an interpreter if he or she does not speak the language of the interviewer. Once an assessment is complete, the young person should be informed of the decision at the earliest, in the presence of an interpreter. The young person should be given an opportunity to respond to the decision, and also made aware of his or her options to challenge the decision. For this reason, he or she should receive a full copy of the assess-

Case Table 1.4 United Kingdom: Good Practices and Challenges for Age Assessment of Children on the Move

UNITED KINGDOM: AGE ASSESSMENT OF CHILDREN ON THE MOVE	Good Practices	Holistic age assessment procedures
		Research before assessment
		Assessment timed to enable child to participate
		Open communications throughout
		Merton guidelines for age assessment
	Challenges in Age Assessment	Continued use of medical assessments
		Poor adherence to guidelines

ment. If the young person is determined to be a child, his or her care should continue in accordance with the care of unaccompanied children. If the young person is determined to be an adult, he or she should receive support in the transition to adult asylum services.⁶⁶ If an age assessment needs to be conducted for an “accompanied” young person, in the care of his or her relatives, the assessment must proceed with the same benefit of the doubt given to the young person as in an unaccompanied case.

5. The Merton guidelines for age assessment: A 2003 UK High Court judgment in an age determination case concerning the London Borough of Merton offers detailed guidelines. The key points are noted below:⁶⁷

- Age must not be determined solely on the basis of the appearance of the applicant.

- The decision maker must seek to elicit the general background of the applicant, including family circumstances and history, educational background, and activities during the previous few years. Ethnic and cultural information may also be important.
- Local social services cannot simply adopt a decision made by the Home Office. The onus is on them to decide whether an applicant is a child.
- If the decision maker forms the view that the applicant is lying as to his or her age, the applicant must be given the opportunity to address the matters that have led to that view, so that he or she can provide an explanation.
- It is not necessary for there to be a verbatim note of the interview; but such a note would enable the court to be more confident of its accuracy and to address any suggestion that the in-

interviewer put words into the mouth of the applicant by asking leading questions that led the young applicant to accept what was suggested.

- The UK uses a standard form for recording the outcome of an age assessment, but the purpose of the form is not to adhere to it; rather the assessment should take place as a semi-structured discussion.
- The judgment takes note of the guidance set out in draft guidelines issued by the London Boroughs of Hillingdon and Croydon.⁶⁸
- It is beneficial to have two assessing workers.
- Age assessment is best undertaken over a period of time, involving other professionals, such as residential social worker staff, teachers, and other young people.
- It is very important to ensure that the young person understands the role of the assessing worker, and comprehends the interpreter. Attention should also be paid to factors such as the level of tiredness, trauma, bewilderment, and anxiety that may affect the young person undergoing the assessment.

Challenges

- 1. Continued use of medical assessments:** Medical age assessments are rarely used in the UK but widely used in the EU. Medical assessments may involve a pediatrician's report or a skeletal examination of the wrist, collarbone, and/

or dental X-ray imaging. "Age determination is an inexact science and the margin of error can sometimes be as much as five years either side," according to the 1999 guidelines of the Royal College of Paediatrics and Child Health in the UK.⁶⁹ Dental examinations have a margin or error of around two years, according to the Royal College. Further, using radiation for non-medical reasons is regarded as a poor and unnecessary practice.⁷⁰ Medical examinations therefore could lead to wildly inaccurate conclusions about the age of a young person. Even if they are one part of the overall process, these become a barrier to child protection, and should not be privileged over interviews and the gathering of other information.

- 2. Poor adherence to guidelines:** An age assessment that is conducted in violation of any of the good practices listed above can be detrimental to a young person's well-being. In particular, if social workers are dismissive of a young person and focus on ascertaining the exact age rather than prioritizing care and protection, the assessment turns into an accusation and a trial.

Conclusion

Not every assessment will be accurate, and for this reason, decision makers should bear in mind that treating a child as an adult is far worse than treating an adult as a child. An asylum-seeking child in the UK has a right to the support of a social worker, safe accommodation, and access to education and healthcare. Further, his or her application is processed differently from an adult's: children are not subject to detention, nor are they sent back to another country on their own unless it is deemed safe.

Case Table 4.4 United Kingdom: Advantages and Limitations of Multi-Agency Safeguarding Hubs

<p>UNITED KINGDOM: MULTI-AGENCY SAFEGUARDING HUBS (MASHs)</p>	<p>Advantages</p>	More accurate risk assessment
		More thorough case management
		Multipractitioner approach improves standards and understanding
		More efficient processes and resource use
		Reduced time of child waiting for social services
	<p>Limitations</p>	Misunderstandings about information sharing
		Cultural barriers often overlooked
		Lack of clarity about accountability

Multi-Agency Safeguarding Hubs

The UK is also in the process of establishing multi-agency safeguarding hubs (MASHs), local multi-agency bodies that connect the core services required for child protection and care. MASHs, developed at the local level, function differently from one another, but the central principle of the MASH model is that it enables various agencies to communicate, share information, and make decisions in a timely manner. The following agencies should be involved in a MASH: children’s social care, police, health, education, probation, housing, and youth offending service.⁷¹ Coordination and virtual information sharing are also effective ways for multiple agencies to work together, but co-location is the most thorough way of integrating agencies and allowing for the rapid processing of information. MASHs have the following advantages:⁷²

- The assessment of risk is more accurate, because it is based on coordinated intelligence;
- Cases are managed more thoroughly;
- Bringing practitioners together improves understanding as well as standards;
- Processes and resources are used more efficiently; and
- The time children must spend waiting for social services, and as a result, the time in which a child could go missing, is reduced.

While all agencies are not trained to address the needs of trafficked young people, the close relationship between agencies at

a MASH may help to identify cases of trafficking.⁷³ If a child is not able to access the services he or she needs at the hub, he or she should be referred to a “specialist” non-governmental organization.⁷⁴

Despite their advantages, MASHs also have some limitations worth briefly noting:

- Misunderstandings can take place about what and how much information needed to be shared;
- MASHs address the structural barriers that prevent children from receiving care, but cultural barriers tend to be overlooked; and
- There is often a lack of clarity about who is accountable for what at the hub.

CONCLUSION

The protection and integration of children seeking asylum poses numerous and complex challenges even to countries with a long-standing commitment to human rights and social welfare. From interviews with public officials and nongovernmental actors in Germany, Sweden and the UK, it became apparent that even when the best interests of the child are treated with the utmost care, every contingency cannot be accounted for. “We need to be prepared to be a country of immigration,” a German advisor on education and refugee management noted. “We need to find a solution for every possible situation. The authorities need to learn to be adaptive,” said a Swedish social worker for unaccompanied asylum-seeking minors. Adaptation, however, should not come at the cost of child rights—bureaucratic timelines need to be relaxed, but standards of care should not

be compromised. In both Germany and Sweden, innovative, on-the-spot solutions were required when established systems choked in 2015. In the short term, this is critical in order to prioritize the needs of children on the move; in the medium to long term, resilience needs to be built into systems so that crises are better managed and fewer children slip through the cracks.

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IN TRANSIT

On and Through Lesbos, Greece



BACKGROUND

From the beginning of 2015 through mid-March 2016, more than one million refugees and migrants have crossed from Turkey, through the Aegean Sea, into Greece and other Balkan countries in search of asylum in Europe.¹ This flow arises from the worst humanitarian crisis since the Second World War, with hundreds of thousands exposed to hardship and basic human rights violations and many European countries forced to act as transit or temporary reception sites for this massive influx of people. Children and youth make up a major and well-documented portion of those migrating, with 38 percent of arrivals, or approximately 382,725, believed to be minors.² By September 2015, the number of child asylum applications had reached 214,355,³ with the greatest number of applicants originating from the conflict countries of Syria, Afghanistan, and Iraq.⁴

Two categories of children can be found crossing the borders: those who travel with family members and those who travel unaccompanied, having either started the journey alone or becoming separated from their families during their journey.⁵ As of September 2015, approximately 1,200 unaccompanied minors were registered in in the small island of Lesbos (Lesbos) alone,⁶ with approximately 500 more registered in the remaining islands of the Aegean Sea. However, as of late November 2015, the former Yugoslav Republic of Macedonia (henceforth fYRoM) had registered 15,000 unaccompanied minors crossing the border from Greece,⁷ while for the whole of 2015, 88,245 unaccompanied minors applied for asylum in all 28 European Union (EU) countries.⁸ As Lesbos is widely considered the main entry point for the over one million who have entered Europe thus far, the registration discrepancies reveal a significant challenge in the accurate identification and registration of unaccompanied minors. The statistical disparities also raise questions regarding the risks and dangers that these unaccompanied minors, unregistered and effectively unseen, are exposed to. Given the high mobility of refugee and migrant populations and the delays in the mechanisms in place to relocate unaccompanied minors, many minors actively avoid registration in an attempt to continue their journey without un-

due delay. Moreover, according to the Director of the First Reception Center in Moria, “If someone was presenting himself as a relative of a child [without proof or the proper documentation], he would be considered as the guardian of the child and would not be questioned further, even though this is against the law.[...] This [approach has] caused the loss of 3,000 to 5,000 unaccompanied minors from the system.” According to observations by the United Nations High Commissioner for Refugees (UNHCR) and local authorities, the number of unaccompanied girls and minors under the age of 12 continues to rise.

Recent developments in Eastern and Central Europe have had wide-ranging repercussions on the well-being of refugees and migrants travelling towards Europe, putting vulnerable populations at higher risk. The effective closure of the Balkan route, the increasing tightening of “Fortress Europe,” and the implementation of the March 2016 EU-Turkey agreement have forced Greece to implement new laws for the treatment of refugees, often leading to their prolonged detention.⁹ Ironically, Greece now finds itself implementing the very measures that it was called to change in 2010 when it was criticized for systemic deficiencies in the asylum system, measures that lead to the violation of the fundamental rights of those seeking international protection¹⁰ and the detention of asylum seekers.¹¹

The present report, focusing primarily on refugee children on the move, accompanied and unaccompanied, aims to establish an overview of the risks and dangers that these children face during their time in Greece and the challenges that need to be addressed to ensure that their rights are upheld and that they are protected. It also aims to survey the general legal and policy context which informs the strategies and mechanisms in

place to protect refugee children, highlighting, where applicable, good practices that have been adopted to strengthen the protection of children and their integration into society. Three main considerations have led to the delimitation of the scope of this report: firstly, the vulnerability of refugee minors due to their age and the trauma they have endured during their journey; secondly, the current developments in Europe that affect the mobility of the refugee and migrant population, introducing new and more severe risks to their well-being; and thirdly, the inability of Greece to manage this influx due to its economic crisis, a lack of support from Europe, and the sheer magnitude of the crisis itself.

METHODOLOGY

The current research was conducted in May of 2016 after the implementation of the agreement between the EU and Turkey. The agreement stranded 54,496 refugees and migrants in Greece, about 40 percent of whom, or close to 22,000, are minors.¹² The research focused on two critical areas along the refugees and migrants route as they moved within Greece. The first area is Lesbos (called henceforth by its Greek name, Lesvos), an island of 86,000 inhabitants which received the bulk of refugees and migrants. According to the authorities, 597,027 refugees and migrants arrived between the beginning of 2015 and mid-May 2016.¹³ Lesvos is also home to the first so-called EU “hotspot,” Moria camp. Moria became the first detention center in Greece as a result of the EU-Turkey agreement. Research on Lesvos focused on the Moria hotspot, the two second-line reception facilities of Kara Tepe and PIKPA which host vulnerable populations, and the third-line transit accommodation facilities for unaccompanied refugee minors. The sec-

ond area of focus is the makeshift camp in Idomeni, located on the border with fYRoM, along with smaller, informal camps close by, where 14,251 refugees and migrants settled in the hopes of one day being able to cross the border into fYRoM. These areas are informal sites, completely unsuitable for living; at the time of this research in early May, approximately 6,412 refugee children were settled there.¹⁴

Given its limited geographic scope, the current report does not exhaustively represent the range of risks that refugee minors face nor does it analyze all the practices implemented in camps throughout Greece. The areas studied were chosen specifically for their large concentration of refugee minors and for their central role in the main migration route used by refugees and migrants throughout their journey.

The findings of this report are based on a thorough desk review and on data collected during field research. Information was collected from, and interviews were conducted with the director of the First Reception Center in Moria, the director of Kara Tepe Camp, the International Relations Senior Advisor at the Mayor's Office of the Municipality of Mytilene, pediatricians in the local Hospital of Mytilene, two lawyers with expertise on refugees and unaccompanied minors, UNHCR staff, a member of the International Organization for Migration (IOM), two coastguards, as well as members of the NGOs Hliaxtida,¹⁵ Arc of the World,¹⁶ Samaritan's Purse, Lesvos Solidarity,¹⁷ Eurorelief, and other NGOs.¹⁸

RESEARCH FINDINGS ON THE TREATMENT OF REFUGEE CHILDREN

First-line reception facilities: Moria Hotspot

Upon arrival, all refugees and migrants are expected to register at first-line reception centers, also known as “hotspots.” Hotspots are areas located at key arrival points in Greece and Italy and are designed to manage migration by ensuring the proper identification and registration of all migrant arrivals.¹⁹ The European authorities describe hotspots thus: “Hotspots were conceived as an emergency policy response to the crisis and their location within frontline states is simply a reflection of the geographical reality and the need to establish some degree of orderly migration management.”²⁰

The European Asylum Support Office (EASO), EU Border Agency (Frontex), and EU Police Cooperation Agency (Europol) work in tandem, along with country authorities on the identification and fingerprinting of migrants to ascertain their status in an effort to identify those eligible for asylum and relocation, while also creating an effective method for returning those who are not in need of international protection.²¹ In early February 2016, serious identification and registration process deficiencies were identified, largely due to infrastructure shortcomings, forcing Greece to implement additional actions. In early May 2016, significant progress had been made in terms of the registration process of migrants at the hotspots; however, deficiencies still remained and need to be addressed.²²

Prior to the EU-Turkey agreement, the average length of stay in reception centers was seven days, with refugees and migrants receiving the necessary papers to continue their travel within Greece towards other parts of Europe. After the new agreement, however, arrivals are forced to remain within the hotspots while their applications are processed, depriving many of their liberty through detention for prolonged periods of time. Given the increased number of refugees and migrants and a shortfall in the number of trained staff, the average length of stay has increased dramatically, leading to overcrowding and seriously impeding the ability of authorities to meet the basic needs of those forced to wait.

Risks for all refugee children

Housing

As of mid-May 2016, at the Moria hotspot, 4,207 people (including families and unaccompanied children) were detained and held under police guard.²³ The facility is surrounded by a thick concrete wall around its perimeter and a double barbed-wire fence, while the entrance is under constant 24-hour police guard. According to the testimonies of volunteers working inside the camp, the majority of detainees have been held for more than two months, an unacceptably lengthy detention in a facility that was not designed for even short-term detention. Unfortunately, only 900 parents and children in Moria have the benefit of being housed in a protected area specifically designed to accommodate families. Surrounded by metal bars and fences, this area offers families a sense of safety as no one is allowed to enter without proper identification during the night. The remaining families, however, have no choice but to live outside of this protected area in tents where children are commingled with unrelat-

ed adults, with the potential threat of physical or sexual abuse to children, especially during the night.

Water, Sanitation, and Hygiene (WASH)

Sanitation facilities are poor and severely limited in number. Even though there are separate toilets for men, and women and children, privacy is not guaranteed. The shower facility is routinely out of order and its location near other tents raises concerns about the safety of vulnerable populations while using the facility. According to volunteers, women and children hesitate to use sanitation facilities out of a concern for their safety and fear of sexual harassment or abuse. Concerns about poor drinking water have been raised by pediatricians in the local hospital, as many cases of dehydration have been documented. Many parents complain to doctors that the water quality in the camp is poor and that they do not have access to bottled water.

Health care

Efforts have been made to offer healthcare to children detained in Moria but these efforts are not always sufficient. The doctors located within Moria do not always have the expertise necessary to treat children, leading to incorrect diagnoses or to unnecessary referrals to an already crowded local hospital. “The doctors that work in the camps are not pediatricians. They are orthopedics, gynecologists... they do not have the proper expertise. [...] In some cases, they will send the minor to the hospital, even if the situation does not require it,” says a pediatrician at the local hospital.

According to hospital records, in 2015 and the first three months of 2016, 937 children were examined and 379 were hospitalized. The majority suffered from respiratory tract infections (ARTs), 73 from intestinal infections, 6 from Hepatitis A, and 2 from mening-

gitis.²⁴ During the summer months, doctors expect to diagnose many dermatological problems due to continuous exposure to the sun without proper clothing or sunscreen. Because of the limited healthcare offered inside the camps, minors are transferred to the local hospital in cases of emergency where they receive proper medical treatment. Pediatricians have also expressed concern about receiving accurate information, citing instances when they have been misinformed and at times misled by parents. One doctor states, “Many times, the parents present the situation of the child as worse than it is, or the child as younger than it is, in an attempt to be considered more vulnerable and moved outside of Moria to a better facility. [For example] a mother told me that her child was 10 when it was clear from the examination that the girl was at least 15. Many times there is no consistency between the information gathered during their official registration, the information given by the doctors in the camps and the information we get [from the parents] with the help of the translator.”

Furthermore, the provision of psychological care to minors and their families is limited, though critical given the trauma experienced through war or persecution in their countries of origin, through beatings during their journey, or as a result of the death of loved ones during the sea crossing. Previous reports highlight the impact of these traumatic experiences on the psychological well-being of children, with bedwetting, nightmares, fear, and attachment being some of the most common symptoms.²⁵ In addition to this already fragile psychological state of refugees, their exposure to prolonged detention and their complete uncertainty about the future makes psychological help essential, both for children and for their parents or other caretakers. The level of acute distress caused

by prolonged exposure to trauma has led to a range of serious child protection risks, including child abuse and other forms of aggression and mistreatment of children.

The form that health care provision takes is of critical importance in the extreme situations occurring in Lesvos. Disrespectful treatment, poor communication, or ignorance of important cultural characteristics has threatened the already dented self-confidence and dignity of refugee families, leading many to refrain from seeking or asking for help altogether.²⁶ Because of the overwhelming demand for care, doctors have tended to focus on immediate medical emergency responses, neglecting professional respect or compassion for patients. Furthermore, the lack of properly trained staff equipped to work with traumatized children and children from different cultural backgrounds, in combination with the lack of proper psychological education, has led to inappropriate treatments²⁷ and inadequate or misconceived responses to mental health needs, especially in cases where cultural issues are not factored into treatment.²⁸

Nutrition

Access to food has improved dramatically since the Hellenic Army began distributing food within Moria. Three free meals per day are distributed to those detained within Moria and efforts have been made to ensure that all have access to food, with volunteers providing additional cooking services and extra meals within the facility. However, despite these positive changes, volunteers working within the facility raised two main concerns. Firstly, because of the absence of an age-differentiated menu, it was not clear that the nutritional needs of all detainees were served, especially young children and babies. NGOs located inside the facility distributed milk formula to mothers, but there were concerns

about whether the quantity of formula given was sufficient for the nutritional needs of the babies.²⁹ Secondly, the manner in which food was distributed raised concerns. Because young, strong, and healthy detainees could stay in line for hours or rush to the front, they tended to get priority and benefit from the haphazard distribution method. Some parents used their children as a way of getting priority in the line: according to one Moria volunteer, “they always carry the children with them, especially if they are babies [and] use them as a leverage in order to get priority,”

Child-friendly area

A significant improvement was the creation of a child-friendly area. Led by NGOs responsible for child protection, these specially designed areas offer minors a safe place to engage in activities during the day and reflect an effort to offer traumatized children a respite from stress and uncertainty.³⁰ Additionally, because of the average length of stay, educational courses have been offered teaching English, German, and Greek languages to children in an attempt to better prepare them for future integration in their final destination country. However, because the detention center is a temporary transit center, no other form of education is offered to minors. Many had been out of school for as long as a year and a half, while some children had never attended school at all.³¹

Growing frustration

Conditions in Moria have deteriorated rapidly due to overcrowding, fear, and frustration caused by delays in processing and cultural differences among inhabitants, at times leading to verbal and physical conflicts. After the EU-Turkey agreement with the resulting formal detention of refugees and migrants, many riots have broken out in Moria, requir-

ing the intervention of the police to put out fires or break up fights among inhabitants. This behavior is expected to continue, placing refugee minors in further physical and psychological danger. In an attempt to reduce the frustration associated with long detention, the government allows refugees and migrants detained for more than 25 days in Moria to leave the hotspot during the day and visit surrounding areas. Despite this concession, as noted by advocates from Human Rights Watch, the “blanket detention, unjustifiable on legal, humanitarian and practical grounds [...] constitutes arbitrary detention under international law.”³² This criticism was dismissed by a senior Greek police officer, according to whom Greek officials “are acting in line with the EU agreement and with Greek law which allows for pre-removal detention, which is an internationally established practice.”³³ The Framing Review at the outset of this report discusses in some detail the severe restrictions placed by international law on the detention of those not charged with criminal offences, and particularly highlights the unsuitability of detention in the case of children.

Criminal activity

Informal reports of refugees and migrants engaging in criminal activities within Moria have circulated. They relate to drug trafficking and prostitution, and may in some cases be motivated by an effort to gain money or protection. Reliable data on the economic circumstances of migrants residing in the hotspot are not available, as this information is not gathered or required during the registration process, but refugees’ testimonies indicate that the majority have borrowed money from family and friends in order to pay smugglers,³⁴ with many having spent most of their money during the journey to reach Greece. Even though within the hotspot refugees and

migrants do not have to pay for health care or food, uncertainty about the future prompts many to seek some form of financial security.

Concerns have been raised regarding the degree of coercion used to recruit participants in criminal activities, particularly as regards women and children. Several respondents reported instances of rape and the guilty silence surrounding the topic. There are reports of cases of sexual exploitation of refugee children in Greece,³⁵ raising serious concerns about the fate of children who continue to be locked up with adults. Respondents also discussed cases of bullying by young adults towards more vulnerable populations such as families, raising questions regarding their safety during the night. “The volunteers assign specific people to one tent and the next morning they find different people inside the tent,” noted a volunteer working inside Moria. However, the director of the facility rejected these claims, indicating that “the center is closed and protected. There is official supervision and control, and many NGOs are active in the center.” Local doctors report the allegations but have yet to document a case of rape. They do recall an instance of a young girl who was transferred to the hospital from Moria and whose behavior raised serious suspicions of potential sexual abuse.³⁶

Additional risks for unaccompanied refugee children

The exact number of unaccompanied children is unknown but has been estimated at 10 percent of the total child refugee and migrant population.³⁷ Between March 18 and mid-May 2016, approximately 150 unaccompanied refugee children age 12 to 17 years old were registered at the facility in Moria.³⁸ These children were placed in a separate area surrounded by barbed wire in an effort to separate them from the adult population.

This area was designed to host minors for only a short period of time, with the idea that placing them under administrative detention would guarantee their safety, an approach that is widely criticized (see Framing Review above).³⁹ Despite efforts to decrease the detention time of children, the new EU agreement with Turkey has resulted in increased detention periods, at times exceeding two months; this constitutes a de facto deprivation of freedom and a violation of Article 37 of the UN Convention on the Rights of the Child (CRC).⁴⁰ The lack of an alternative to detention reveals a failure by the Greek authorities to uphold international standards regarding the detention of children,⁴¹ as well as a failure to provide an adequate number of facilities to deal with the problem. “There are only 420 available spots for unaccompanied refugee and migrant children throughout Greece; this is a drop in the ocean,” said the director of the reception facility in Moria. With a 530 percent increase in the number of unaccompanied children in 2016 alone, the number of currently available spots within existing permanent accommodation facilities for unaccompanied children is completely inadequate to meet current needs.⁴²

Special efforts have been made to improve the living conditions of detained minors by offering three meals per day, access to proper health care, and English courses and books for creative leisure. However, the detention of a large number of teenagers from different cultural backgrounds leads to rapidly deteriorating living conditions. In April 2016, a riot broke out in the facility as minors protested their detention, which they felt was punitive and unjust. The riot resulted in serious injuries. According to pathologists at the local hospital, 25 refugee minors were admitted and diagnosed with bone fractures. The frustration of minors may have been exacerbated

Case Table 2.1 Failures in Child Protection at First-line Reception

<p>Inefficient screening system for vulnerable populations</p> <ul style="list-style-type: none">• The registration center at the Moria hotspot fails to consistently screen new arrivals for vulnerabilities, leading to the detention of many families alongside adults.• Though significant improvements have occurred with families resettled to second-line facilities on the island, the continued detention of families in Moria and the under-utilization of vacancies available for resettling families in safe areas, such as Kara Tepe, constitute missed opportunities.
<p>Prolonged detention under poor living conditions</p> <ul style="list-style-type: none">• Cases of families and unaccompanied minors being held in detention for periods of over two months are rampant. This continuing situation reveals the failure of the Greek government to abide by its obligations under the CRC, according to which detention of minors is a measure of last resort, to be used only when no alternatives exist, for the shortest possible amount of time, and only when each individual case is justified.• Though alternatives to detention do exist, the significant delay in their implementation continues to deprive many families and minors of their freedom. While many unaccompanied minors have been transferred to transit accommodation facilities where living conditions are much improved and where workers have adopted a child-rights perspective, many families and unaccompanied children unjustifiably remain in detention.
<p>Lack of systematic information provision and long wait times</p> <ul style="list-style-type: none">• Though the First Reception Center in Moria is tasked with providing information regarding the rights and obligations of refugees and migrants, the current relocation scheme, family reunification, and the asylum process in Greece, this information is not consistently or systematically provided.* This lack of detailed information, along with long wait times, increases frustration and anxiety and leads to tension and violent behavior.• Many NGOs have attempted to fill this gap but, as they lack systematic access to new arrivals, they are unable to ensure that everyone receives the necessary information. Only identified unaccompanied minors have systematic access to information concerning their rights and alternatives, access that continues when they are transferred to third-line transit accommodation facilities. The Greek authorities have an urgent obligation to address this failure to provide essential information. <p style="text-align: right;"><small>*Amnesty International, "Trapped in Greece: An avoidable refugee crisis"</small></p>
<p>Needs of accompanied refugee children are not always identified</p> <ul style="list-style-type: none">• Even though special efforts have been made to ensure child-friendly spaces in first-line facilities, the special needs of minors living with families or other carers are not always identified.• The prolonged detention of families inside the Moria hotspot makes it difficult for parents to insure children's needs are met.

by the behavior of a small number of officials who treated them more as prisoners than as minors under protection. A pediatrician at the local hospital said, “I was in my office when two policemen from Moria Center informed me that they were bringing two prisoners for examination. When I asked them why they were bringing them [to the pediatric department], they asked me ‘to whom else should we take them?’ [..]. Then, one of them told me that the prisoners were minors [..].” Informal testimony confirms that prolonged detention of such a large number of minors of different ages and cultural backgrounds inevitably leads to increased tension,⁴³ sexual harassment, and abuse. Volunteers claim that it is well known that there are cases of sexual abuse among unaccompanied minors, though official sources reject these claims.

The authorities were criticized for the delay in implementing relatively simple measures to secure the safety and well-being of the vulnerable group of people within their custody, particularly since the UNHCR and other NGOs monitoring the situation closely, had been reporting on violations for months. “We were not prepared and we did not predict what would happen. We tried to follow the events and give solutions afterwards. We are never effective as reality is unpredictable,” said the director of the center in Moria. Eventually, under pressure and in response to developments following the EU/Turkey agreement, the Greek government — in cooperation with UNHCR, the Public Prosecutor for Minors, and NGOs — decided in early May to move the majority of the minors detained in Moria to temporary facilities while they await placement in special permanent reception centers in mainland Greece. The greatest number of minors (74) were moved to the Mandamados site, an area managed by Praksis, Save the Children, and MSF, and

specially designed as a temporary facility for unaccompanied children. In addition, 32 minors were transferred to temporary houses managed by Hliaxtida and 25 to a house run by Metadrasis. Arrangements also began to be made for the transfer of the remaining minors in detention in Moria. These efforts have been well received and reflect well on the ability of parties to cooperate and find solutions, though the delay in implementing them is regrettable.

Second-line reception facilities: Kara Tepe and PIKPA

The second-line reception facilities are transit camps that host the most vulnerable populations while they wait for their asylum claim to be determined. These facilities were initially meant to host refugees for no more than a week, and conditions were unsuitable for longer stays. However, the EU/Turkey agreement has led to urgently needed infrastructure improvements, with the result that both the Kara Tepe and PIKPA Centers have made substantial progress towards fulfilling the requirements and standards for refugee housing.

Kara Tepe is run by the municipality of Lesvos and hosts 1,100 vulnerable refugees, the majority of whom are single mothers with children, a separation that reflects the effort to segregate women and children from the adult refugee and migrant population. The management of the camp, with the help of NGOs, has provided families with prefabricated containers allowing for some measure of privacy. Three free meals per day are served to each of the families, brought by volunteers to each of the containers to avoid the chaotic situation caused by uncontrolled food distribution lines. There are sanitation facilities for men separate from those for women and children,

along with paved walkways for wheelchairs. People still have freedom of movement; they are free to visit the city of Mytilene by taxi, by bus, or on foot, with the only barrier to their mobility the geographical boundaries of the island. According to the mayor of Mytilene “Kara Tepe is a village and the travelers here are our guests.”⁴⁴ The director of Kara Tepe said, “We have 1,100 guests and we treat them accordingly.” There is daily access to medical care, while in case of emergency there is a private ambulance that drives patients to the local hospital, usually with the escort of a member of an NGO who is able to facilitate dialogue between doctors and patients. According to the director of the camp, “fights among the ‘guests’ exist, as they exist in villages. [...] Inside our community, we have created smaller communities based on the nationalities. We do not mix nationalities [in order to avoid tension]. Our good relationship with our guests helps us solve any tension very easily.”

The most important change, however, is the design and implementation of integration and educational programs, a development that reflects the island’s change from a short-term transit site for refugees and migrants to one which now hosts long-term-resident refugee and migrant populations. As many families face wait times of more than four months, their integration into society and access to education is prioritized. “We have created a small school here, from morning to evening the children are taught German, English, Greek and French. Also, we offer swimming classes at our natural swimming pool [the sea] with lifeguards, a kind of drama-therapy, crafts and sports activities. For now, children learn the language and the European culture,” says the director of the camp.

PIKPA Center, on the other hand, is run by volunteers and funded by donations. It hosts the most vulnerable cases such as the disabled and sick, those with psychological problems, pregnant women, and families of victims of shipwrecks. As of early May 2016, the camp hosts 62 adults and 18 children, including babies. It provides them with humane living conditions, daily meals, privacy, safety, and continuous access to medical and psychological care, specifically designed for the needs of each individual. The camp also offers integration activities for children, including language courses.

Third-line reception facilities for unaccompanied children and families

These facilities are located in dedicated community-based shelters, such as houses and converted hotels, and were initially designed to host very vulnerable families. In response to prolonged detention times, some of these facilities began to host unaccompanied children. In early May 2016, 52 unaccompanied boys age 12 to 17 were transferred to three different community-based houses run by Metadrasis and Hliaxtida. Five unaccompanied girls were transferred to another house.⁴⁵

These transit accommodation facilities offer a safe, suitably equipped living environment for minors. They are not detained but have the option to socialize by participating in organized trips within the island under the escort of NGOs, engaging in athletic activities or attending language courses. These facilities also provide legal support to the minors to inform them of their rights during the documentation and asylum/relocation process, as well as the dangers they could face during their journey. From here, minors are eventu-

ally escorted to one of the Permanent Hospitality Centers for Unaccompanied Minors that exist throughout Greece. However, as most of these third-line facilities were created under extreme pressure, they prioritized the opening of the facility over the hiring of adequately trained staff. In most cases, staff members have a degree in social work but no specific training to work with children from different cultural backgrounds or those exposed to trauma. “The facilities opened very fast, in order to avoid [keeping] children detained [..]. The staff should be trained [on child trauma and different cultures], at least some of them. But when you are forced to do something fast, how can you find a trained person?” says a volunteer working in these facilities.⁴⁶

Inadequate child protection system

Even though these facilities were created to address the needs of minors for only a short period of time, it is still unknown how long minors will remain there. “At the beginning they told us that the facility will be open for a month. Then, they told us until the end of July. They do not know and we do not know also,” says a volunteer. Even though minors enjoy some freedom, they express frustration regarding delays and the lack of information regarding the status of their cases. “As a lawyer, I face their impatience, distrust, complaints [...]. Minors know that the borders are closed and that there is no other legal way to leave but the process takes too long. They do not understand that the process takes time,” says a lawyer working with minors at one of the transit facilities. Many cases have been documented of minors leaving the centers in mainland Greece to continue their trip.⁴⁷ Now that the Balkan route is closed, the risk of falling victim to human trafficking chains has increased.

“Children have ways to communicate with people [..], there are many ‘friends’ who want to help the children, especially the Pakistani,⁴⁸ even though the borders are closed...” says one volunteer. “Many minors talk about ‘relatives.’ When we ask for more information, they do not say. When we tell them that there is no legal way to leave, other than this, they say to us ‘they have told me that there is and I will go very soon,’ ” reports a lawyer working with unaccompanied youth. Moreover, due to the lack of available space in permanent centers, minors will be forced to remain in temporary transit facilities for longer and longer periods of time, increasing the likelihood that many will attempt to leave. If the system does not work effectively and hurry to prioritize and secure the protection of these minors, they will be forced to seek increasingly dangerous means to complete their journey, likely becoming victims of human trafficking.

Ineffective legal guardianship system

The lack of an effective legal guardianship system to secure a minor’s right to protection and to facilitate access to legal counsel and representation is one of Greece’s most egregious failures in its response to the crisis. According to Greek legislation,⁴⁹ the Public Prosecutor for Minors is appointed as provisional guardian to unaccompanied minors and is responsible for assigning each unaccompanied minor to a guardian. However, the process is not always effective given the overwhelming workload of the prosecutors. The lack of resources necessary to manage the very large number of cases, along with the lack of trained personnel qualified to be assigned as permanent guardians, makes the system effectively dysfunctional.⁵⁰ In some cases, the Public Prosecutor for Minors delegates the responsibility of provisional guardianship to the managers of the reception centers or to social workers but in the majority

Case Table 2.2 Failures in Child Protection at Second- and Third-line Reception

Lack of space in permanent hospitality centers for unaccompanied minors

- The continued arrival of unaccompanied minors, coupled with the existing number of unaccompanied minors already in Greece, overwhelmed existing accommodations, resulting in a complete lack of availability in the specially designated permanent hospitality centers designed to host unaccompanied minors.
- Compounding the problem, a serious lack of funding has prevented the creation of new centers, leading to the prolonged detention of minors or to longer stays in what were meant to be temporary transit centers, not long-term residences.

Lack of effective legal guardianship system for unaccompanied children

- The appointment of a legal guardian is a crucial step in ensuring that the best interests of unaccompanied minors are served. However, in practice, the legal guardianship system has not fulfilled this responsibility due to a lack of necessary resources to handle the large number of unaccompanied minors, including a shortage of appropriate people available to be appointed as legal guardians.*
- Currently, the Guardianship Network for Unaccompanied Minors project, run by the NGO Metadrasis, has succeeded in appointing legal guardianship to some unaccompanied children, though a large number remain under the legal guardianship of the Public Prosecutor for Minors.

*Greek Council for Refugees, "Age assessment and legal representation of unaccompanied children."

Inadequately trained staff working with refugee children

- This crisis created an unprecedented need for large numbers of specially trained personnel to be deployed almost instantly to manage the urgent needs of a growing child refugee and migrant population. Unfortunately, this urgency combined with the need to release minors from detention, in some cases led to the hiring of personnel untrained to deal with children or those suffering from trauma. Though well intentioned, these efforts were not always successful in addressing the unique set of needs faced by refugee children on the move.

Needs of accompanied refugee children are not always identified

- Even though special efforts have been made to ensure child-friendly spaces in first-line facilities, the special needs of minors living with families or other carers are not always identified.
- Though parents and caretakers have an obligation to secure a minor's safety and to ensure that the child receives the assistance he or she needs, the lack of available resources, squalid living conditions, and the trauma experienced make it almost impossible for them to meet these responsibilities.*

*Fagerholm and Verheul, "Safety and fundamental rights at stake for children on the move."

of cases there is little to no contact between the legal guardian and the child.⁵¹ Given the need for the guardian’s consent for most of a minor’s daily activities, the absence of an effective guardianship system has deep repercussions. “The transit centers have limited decision-making ability. They do not have authority as a legal guardian and don’t have the right to make any major decisions and must seek the approval of the Public Prosecutor for Minors,” says one lawyer.

In an effort to reduce the length of a minor’s stay under detention, the Public Prosecutor for Minors is working with the Municipality of Lesvos and NGOs to create additional transit accommodation facilities. The NGO Metadrasis has begun to operate the innovative Guardianship Network for Unaccompanied Minors. This project appoints specially trained individuals with authority granted by the Public Prosecutor for Minors but without guardianship per se. This allows staff members some flexibility in deciding on daily

Case Table 2.3 Failures in Child Protection at Informal Camps

Refugee minors are exposed to dangerous conditions and great risk
<ul style="list-style-type: none"> • Idomeni and camps like it are a humanitarian crisis. • Basic needs are barely met; psychosocial ones are not.
Failure of responsibility-sharing: Greece’s disproportionate share of camp management
<ul style="list-style-type: none"> • Greece lacks the capability to manage this level of migration alone. • The lack of effective management has led to serious violations of human rights, exposing vulnerable populations to severe risks, multiplying as spontaneous, decentralized settlements such as Idomeni spring up without essential infrastructure or local authority coordination. • The EU-Turkey agreement with its accompanying shutting of borders exacerbated existing failures, helping to create informal camps such as that at Idomeni.
Needs of accompanied refugee children are not always identified
<ul style="list-style-type: none"> • Special needs of minors living with families or other carers are not always identified, as the perilous living conditions for minors in Idomeni and surrounding areas illustrate. • Though parents and caretakers have an obligation to secure a minor’s safety and to ensure that the child receives the assistance he or she needs, the lack of available resources, the squalid living conditions, and the trauma experienced make it almost impossible for parents to meet these responsibilities.*
<p>*Fagerholm and Verheul, “Safety and fundamental rights at stake for children on the move.”</p>

activities for minors, allowing for closer supervision of minors. Even though measures are underway and progress has been made towards ensuring the safety of these minors, the guardianship system has not yet reached a satisfactory level of functionality.

Informal camps: The Idomeni Site

The Idomeni camp is located next to the tiny village of Idomeni, along a railway station linking Greece and Macedonia, blocking the country's main train line with the Balkans.⁵² This camp is the outcome of the abrupt sealing of the borders, resulting in large-scale human rights violations.⁵³ The closing of the border near Idomeni stranded approximately 10,000 refugees and migrants, 4,000 of whom are believed to be children — the majority under the age of 5.⁵⁴ In March 2016, the situation in Idomeni was characterized as “the definition of a humanitarian crisis” by the Greek Health Minister,⁵⁵ who described the living conditions as deplorable and recommended gradual evacuation as the only solution to avoid loss of human life. However, despite the efforts of the Greek government to transfer these people to official transit camps farther inland in Greece, many have refused to leave the borders, driven by the fear of deportation or by the hope that the borders will open again. Instead, they relocate to informal camps nearby, located at gas stations close to Idomeni.

Risks for refugee children

Some families and children are settled in small tents, exposed to the elements, while others are settled in old train cars wholly inappropriate for housing. Respiratory infections were routine during the winter months, exposing children to serious health risks as access to healthcare is extremely limited and only offered by NGOs. Cases of fever,

pneumonia, septicemia, and skin infections have also been reported by health workers. With the capacity of the camp stretched to the limit, these small tents do not guarantee even a minimum amount of personal safety to vulnerable populations. The lack of sufficient sanitation facilities is another factor that threatens personal health and safety. With 170 unisex toilets and 24 showers with hot water for a total of 10,000 inhabitants, the personal safety of many children and women is severely compromised.⁵⁶

Even though four free meals are served daily, concerns abound about the distribution process as people have to wait in lines for hours to get food portions insufficient to meet the nutritional needs of the different age groups. NGOs have managed to secure some safe spaces for children but educational activities are not easily offered due to the large number of children, the lack of translators, and the lack of infrastructure. Furthermore, psycho-social services are lacking, increasing the risk of psychological breakdown for either caretakers or children as a result of trauma experienced, loss, inhumane living conditions, and uncertainty about the future, factors well known for their link to adult substance abuse or violent behavior.⁵⁷ Studies have also documented the prevalence of PTSD among refugee children,⁵⁸ along with learning disabilities, memory loss, and emotional and behavioral problems, including aggression and affective disorders.⁵⁹ These conditions can be worsened by the lack of psychological support or the psychological breakdown of their caretakers.

The most severe risk to physical harm for minors is the increased tension between inhabitants.⁶⁰ The increased level of anxiety and disappointment surrounding the future, in

combination with a lack of information, perilous living conditions, and the co-existence of many culturally diverse groups have caused many incidents of violence among adults. The existence of criminal activity has also been documented as the informal camp is open and entry is unrestricted, allowing for access to anyone.⁶¹ The limited police presence does not deter clandestine criminal activity linked to drug trafficking, prostitution, human trafficking, and smuggling. The involvement of minors in these criminal activities remains unclear, though many reports allege their involvement.⁶² Given the multiple risk factors minors face in Idomeni, the probability of becoming involved in criminal activities is unacceptably large. According to the volunteers at the site,⁶³ many unaccompanied minors have vanished and are feared lost to the smuggling industry as a result of the criminal smuggling within the camp which promises minors assistance in their efforts to cross the sealed borders.⁶⁴

The Idomeni camp and surrounding areas embody the inability of Europe to manage the worst humanitarian crisis since the Second World War and the crumbling of the founding principles of Europe. Greek authorities, in cooperation with the rest of the European Union, must improve conditions on the ground and bring them in line with international standards, prioritizing the care and well-being of vulnerable populations and the provision of basic services to all those in need. “We really cannot meet their needs in Idomeni and that’s why we are calling on them to go to the more organized camps,” said Greece’s Public Order Minister.⁶⁵ In line with this sentiment on May 24, 2016, Greek police evacuated the Idomeni camp, attempting to relocate refugees and migrants to organized camps, and to unblock the country’s train line with the Balkans. According to news reports, many

refugees refused to join the government’s operation and decided instead to walk to other nearby, unofficial camps in order to remain closer to the borders.⁶⁶ The main challenge now is the ability of those camps to host this increased population and the fear of another “Idomeni” being created.

FAILURE OF CHILD PROTECTION IN GREECE, EXACERBATED BY INTERNATIONAL AND EU STRUCTURAL FAILURE

In 2015, a migration crisis unprecedented since the end of World War Two began unfolding in Europe. The magnitude and breadth of the flow of desperate migrants defied the coping or management capacities of any single member state of the European Union or the European Union as a whole. The governance challenge was particularly severe for the poorer member states of the Southern Mediterranean, Greece among them, already reeling from severe domestic pressures and fiscal crises.

A radical failure of EU responsibility-sharing and member-state solidarity aggravated the humanitarian emergencies with months of leadership and coordination failure at the EU level. As a result, recent political developments led to grave human rights violations inflicted on extremely vulnerable, often traumatized populations. The violations included prolonged detention of asylum seekers and other distress migrants, including among them children and other particularly vulnerable populations. The developments also included dangerous outbursts of intolerance and xenophobia, fueled by the opportunistic rhetoric of some irresponsible European leaders, placing at increased risk the lives of

Case Table 2.4 International and EU Structural Failures in Child Refugee Protection

<p>Lack of funding in combination with the ongoing economic crisis in Greece</p> <ul style="list-style-type: none">• Already in severe financial crisis, with historic austerity measures in place before the 2015-2016 migrant crisis, Greece struggles to fulfill its obligations not only towards refugees and migrants but also to its citizens and European and international financial institutions.• EU emergency funding does not cover Greece's current costs, let alone pay for the systemic changes needed in its management of migrants and refugees.• EU failure to create effective policy solutions or to provide adequate assistance raises concerns about Greece's ability to continue to manage the crisis.
<p>Failure of responsibility-sharing: Greece's disproportionate share of camp management</p> <ul style="list-style-type: none">• Greece has been unable to manage the unprecedented flow of refugees effectively, leading to serious violations of human rights, exposing vulnerable populations to severe risks.• These risks multiply in spontaneous, decentralized settlements without essential infrastructure or local authority coordination.• The EU-Turkey agreement with its concomitant shutting of borders exacerbated existing failures, making for longer stays in transit camps such as Moria and helping to create the Idomeni camp.
<p>Failure to institute an effective and speedy relocation scheme</p> <ul style="list-style-type: none">• The EU relocation scheme calls for the relocation of asylum seekers from Greece to other EU member states—160,000 through September 2017. As of mid-May 2016, only 970 of the 160,000 asylum seekers from Greece had been relocated.• Refugees lack information about the relocation scheme.• They also would not choose to live in many of the countries, as there are others in which they have existing connections.• The well-being of unaccompanied minors is not prioritized.• Countries delay and place many hurdles.• Some politicians have made racist statements and their countries have very narrow selection criteria, based on race and religion.
<p>Failure of international response</p> <ul style="list-style-type: none">• This is not only a European issue, but a global humanitarian one.• UN organizations and NGOs can only do so much; individual countries need to provide more assistance and resettlement opportunities.

many. Refugee and migrant children, a particularly vulnerable population, have faced severe fundamental rights violations as states fail to abide by international obligations to ensure “the best interest of the child.” Greece, overwhelmed by the influx of the migration flow, underfunded, and in the middle of its own catastrophic financial and political crisis, finds itself attempting to accommodate 55,000 people stranded in its country with little assistance or support.

Lack of funding in combination with the ongoing economic crisis in Greece

Greece has received much criticism for its handling of the crisis, for its inability to meet the needs of refugees and migrants in a consistently satisfactory manner and for being unable to systematically guarantee the rights of refugees and migrants. It is widely understood that Greece is among the least economically equipped nations to handle a humanitarian crisis of this magnitude. In the midst of a severe financial crisis, with historic austerity measures in place since 2010, an official unemployment rate among the highest in Europe and with household incomes drastically reduced, the country struggles to fulfill its obligations not only towards refugees and migrants but also to its citizens and the European and international financial institutions responsible for ensuring Greece’s continued liquidity. Greece has received 27.8 million euros in emergency funding from the European Commission with an additional 474 million euros in assistance for the period 2014 to 2020. Though this assistance is far below the levels received by other nations, it has had a significant impact in the context of the ongoing financial crisis.⁶⁷ However, these funds are insufficient to cover current needs

or to address the systemic changes that Greece needs to undergo to ensure just and humane treatment of refugees and migrants. Europe’s failure to provide and implement an effective policy solution or to provide adequate funding and assistance raises concerns about Greece’s ability to continue to manage the crisis, while at the same time ensuring that the anti-refugee and far-right sentiments plaguing the majority of Europe do not take hold in Greece.

Failure of responsibility-sharing: Greece’s disproportionate share of camp management

Greece has been unable to manage the unprecedented flow of refugees effectively. The lack of effective management has led to serious violations of human rights, exposing vulnerable populations to severe risks, multiplying as spontaneous, decentralized settlements spring up without essential infrastructure or local authority coordination. As mentioned above, the EU’s intervention with the Turkey agreement and the stopping of passage of refugees out of Greece into elsewhere in Europe has severely impinged on the human rights situation of refugees in Greece.

There are some positive aspects of the decentralization of approaches for refugees in Greece. In Kara Tepe on Lesbos, the local municipality, in cooperation with NGOs, managed to create a child-friendly camp, ensuring opportunities for play, leisure, and education, while at the same time guaranteeing the personal safety and access to health-care of its inhabitants. In the meantime, the local municipality, in cooperation with a well-known, internationally established football club is working to open a sports camp for ref-

ugee children where they will have the opportunity to prosper and develop, while integrating with the local society. “We are planning to create a football camp [...] Through sports, we want to integrate refugee children into the society. The unaccompanied children will stay in the camp, while the local children will go to train with them. Our purpose is to bring them closer to each other through their common love of the sport,” says the International Relations Senior Advisor at the Mayor’s office. Another successful example is third-line accommodation for unaccompanied minors, which are run by different groups of NGOs and focus strictly on meeting the needs of unaccompanied minors. The assumption of responsibility by different authorities allows for the flexibility to implement innovative methods and individual approaches to care, as the management of smaller groups is easier than managing thousands at a time.

Failure to institute an effective relocation scheme

The EU relocation scheme calls for the relocation of asylum seekers from Greece to other EU member states.⁶⁸ However, as of May 13, 2016, only 970 refugees (out of 160,000 that EU member states pledged to receive through September 2017) had been relocated from Greece to 14 EU member states.⁶⁹ Of the relocated refugees, 246 were minors and 14 were unaccompanied minors.⁷⁰

The small number of asylum seekers relocated is due to many problems in the implementation of the scheme. Firstly, the lack of quality information about the scheme, combined with the desire of many refugees and migrants to reunite with their relatives in countries of their choice instead of being

sent to a country where they do not want to live, discourages them from participating in the scheme. Secondly, despite the risks that vulnerable populations like unaccompanied minors are known to face, the scheme does not appear to prioritize their needs or well-being. Additionally, several member states actively delay relocation, posing a series of logistical, bureaucratic, and even political and societal obstacles. Some states cite difficulties in securing appropriate housing or educational opportunities, while others have introduced protracted security checks on asylum seekers, invoking national security in light of recent terrorist attacks in Europe and elsewhere. Other countries have expressed openly racist and anti-refugee sentiments and cite a long list of restrictive selection criteria based on religion and racial characteristics, leading to further delays.⁷¹ Further, many member states have declared that they will restrict the possibilities for family reunification, infringing on the rights of minors to be with their families or close relatives. All of these are significant factors that lead minors to seeking alternative, irregular routes, exposing them to the risks of smuggling and trafficking.

Failure of International Response

The factors which have caused the 2015-2016 surge of refugees to leave their war-torn countries are not only a European responsibility, but also a global one. All of the major global powers have contributed through action or inaction to the conditions leading up to and continuing the violence in Afghanistan, Iraq, Libya, and Syria, to name just some of the relevant refugee-producing countries of origin. In any case, the comparison with the World War II refugee

situation is apt; such a magnitude of crisis requires a response from all the global powers. Although the United Nations (and in particular the UNHCR) and many NGOs have acted, individual countries, with the exception of Canada (which agreed to take 25,000 refugees), have done little by way of resettlement.⁷² In the United States, President Obama's promise to take in 10,000 Syrian refugees (2 percent of the estimated 480,000 Syrian refugees in need of resettlement) by September 2016 was met with resistance from several governors and many congresspeople.⁷³ Individual countries and their leaders need to step up to their moral obligations to assist in this crisis so that the well-being and care of the vulnerable, particularly children on the move, can be guaranteed along with their human rights.

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- Christou, Valantoula. Lawyer working with unaccompanied refugee children, Lesvos, Greece. May 11, 2016.
- Kourtis, Spyros. Director of the First Reception Center in Moria Hotspot, Lesvos, Greece, May 13, 2016.
- Latsoudi, Efi. Member of the “Lesvos Solidarity Network,” PIKPA Camp, Lesvos, Greece. May 13, 2016.
- Livaditou, Zwi. Emergency MD cooperating with IOM, Smile of the Child, Medical Association of Lesvos and Greek Coast Guard, Lesvos, Greece. May 6, 2016.
- Maxaira, Molu. Pathologist, Vostaneion Hospital of Mytilene. Lesvos, Greece. May 6, 2016.
- Murogiannis, Stauros. Director of Kara Tepe Camp, Lesvos, Greece. May 7, 2016.
- Papaiwannou, Leuteris. Retired Major General, Hellenic Army, Lesvos, Greece. May 9, 2016.
- Pothas, Stratis. Director of “Synuparksi” Initiative, Lesvos, Greece. May 11, 2016.
- Tagaris, Nikos. Special pedagogue, responsible person for the NGO “Arc of the World,” Chios, Greece. May 10, 2016.

List of Interviewees that requested anonymity

- Pediatrician, Vostaneion Hospital of Mytilene. Lesvos, Greece. May 6, 2016.
- Pediatrician, Vostaneion Hospital of Mytilene. Lesvos, Greece. May 7, 2016.
- Nurse, Vostaneion Hospital of Mytilene. Lesvos, Greece. May 7, 2016.
- Volunteer cooperating with local NGO in third-line facilities for unaccompanied children, Lesvos, Greece. May 12, 2016.
- Volunteer cooperating with NGO within Moria Hotspot. May 8, 2016.
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Information collected during the workshop “Refugee Crisis: Challenges and Measures”*

from:

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- Cheshirkov, Boris. Communications and Public Information Officer, UNHCR Lesvos, Greece. May 12, 2016.

*The workshop was organized by Athens Network of Collaborating Experts at the University of the Aegean. Even though personal interviews were not conducted, the nature of the workshop allowed for questions and the collection of specific information.

EN ROUTE THROUGH EUROPE

On the Western Balkan Route via Serbia

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Due to the armed conflict in Syria and Iraq, an unprecedented number of refugees moved through the Balkans and Central Europe to reach Western Europe during the summer and autumn of 2015. The refugee flow has continued in 2016. As of May 2016, the United Nations High Commissioner for Refugees (UNHCR) estimated that Serbian law enforcement agencies had officially registered over 650,000 people during this wave of migration, even though official registration of refugees in Serbia only started in late September 2015.¹ This case study provides a brief overview of the Western Balkan route and then delves deeper into the particular situation of children on the move in Serbia, with an emphasis on the period of expedited travel in 2015 and early 2016.

3

THE WESTERN BALKAN ROUTE: TEMPORARILY LEGALIZED “FAST TRANSIT”

The organization of recent migration flows through the Balkan countries has been unique and deserves special attention from policy makers involved in migration issues, from border control agencies to service providers. For people on the move, the Western Balkan countries are seen as waystations to Western Europe. In 2015, the Western Balkan route generally started with a sea voyage to Greece, then switched to overland travel through Greece, the former Yugoslav Republic of Macedonia (henceforth fYRoM), and Serbia, at which point some went on to Hungary until that border closed, others through Croatia and Slovenia to Austria, with the majority of Syrian refugees seeking to reach Germany.²

Before the Crisis

Migration is not a new phenomenon in the Balkan region. Because of its geographical position and its recent history of political crises and wars, the region has long been affected by large-scale movements of people, and has to a considerable extent exhausted its capacity

to deal with migration effectively.³ In Serbia, the large number of internally displaced persons from Kosovo (still more than 200,000 in June 2016), the close-to-30,000 refugees from the earlier conflict in the 1990s, and the so-called “returnees,” refugees who migrated to Western Europe during the 1990s or later during the Kosovo crises and were, in many cases, forcibly returned, have put enormous pressure on Serbian authorities.⁴ While still focused on long-term solutions for their own migrant population, Serbia and other Balkan countries began receiving a constant increase of migrants from Northern Africa and the Middle East – mostly in transit.

Before 2015, the majority of migrants were male and most unaccompanied minors were adolescent boys. Families who chose the Balkan route before the 2015 crisis were mainly lower income and were usually unable to finance their journey to the European Union (EU) easily. Traveling with the help of traffickers and smugglers, they would unwillingly stay in Serbia longer than intended – usually from six to nine months – as the prospects to earn money and fund the rest of their journey were very limited.

Gathering Crisis and Individual Country Responses

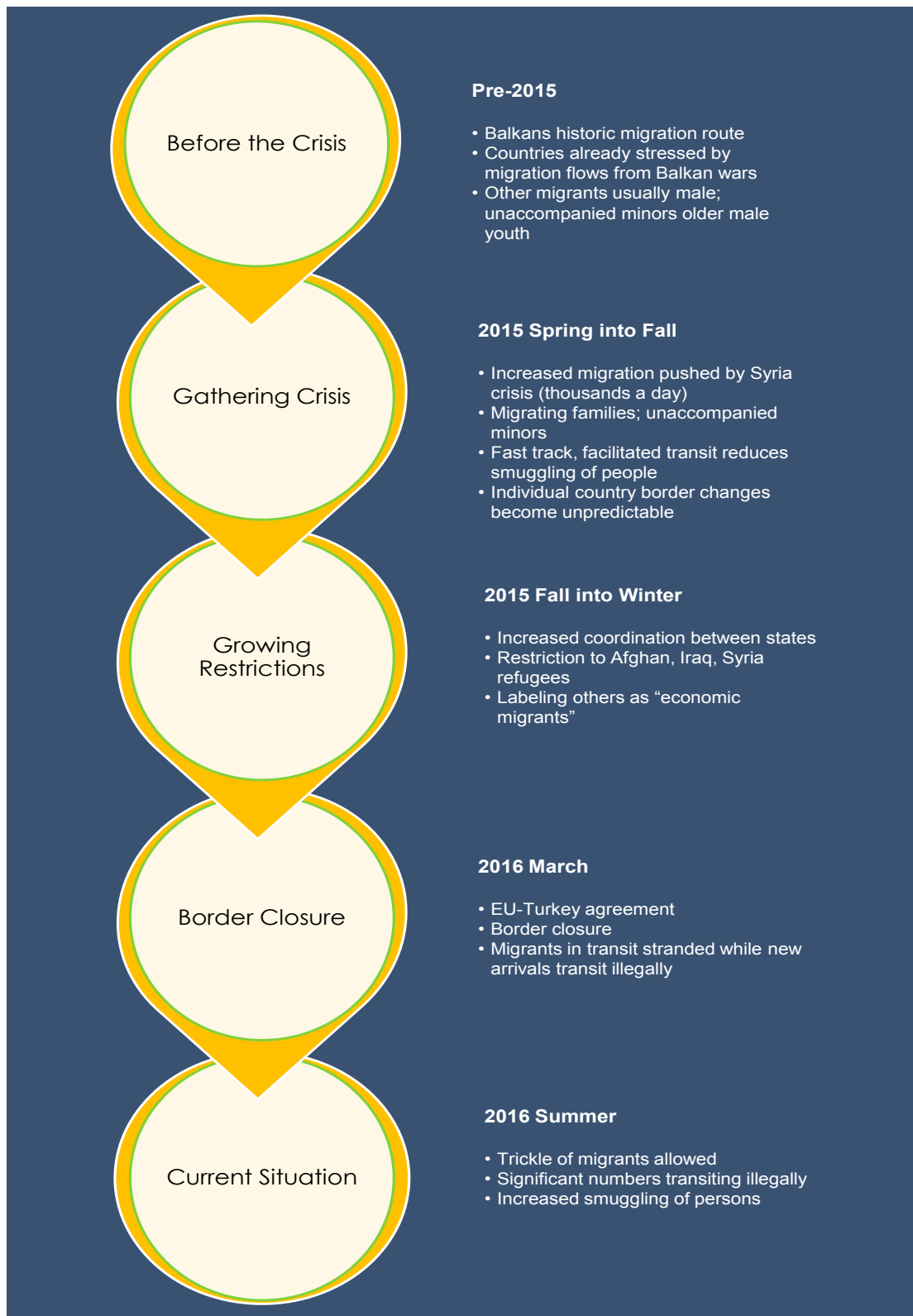
The European migrant crisis of 2015-16 has changed these parameters dramatically. In the first part of 2015, many more migrants began to take the Western Balkan route, with many of them fleeing the war in Syria. The profile of migrants has changed. This movement includes whole families, even villages; single men and women; boys and girls; pregnant and lactating women; babies and the elderly, and unaccompanied or separated children – all with different specific needs, of-

ten sick or injured, left without documents or money after being robbed on the way.

One of the key characteristics of this crisis has been a constant increase in the number of children, including unaccompanied minors, among the migrating population. Children have generally been traveling with one or both of their parents, mainly within their ethnic group, usually accompanied by relatives, family friends, and neighbors. Unaccompanied minors mainly gathered together in a peer group, alone or accompanied by one or two adults. They rarely started the journey from their homes with a precise plan of their destination country. In most cases, they met the group they were traveling with on the way and then continued the journey together, relying on each other’s support to reach Europe. During the journey, some children became separated from their parents for many reasons: by accident due to poor crowd control mechanism, due to a family agreement to make it easier to travel to Europe, due to an unfavorable set of circumstances, or due to the arrangement of field service support.⁵

In this phase, many countries on the route focused their efforts on facilitating fast transit of refugees through their territory, investing significant efforts and resources in strengthening border management. In June 2015, the fYRoM changed its asylum law to allow individuals to travel through the country for 72 hours: before that, entry had been illegal. Countries provided public transportation to help transiting migrants, in some cases at no charge—Croatia offered free train service from Northern Serbia across its country.⁶

As countries became increasingly overwhelmed, they began to try to block the flow. Routes as well as state procedures and bor-



Case Figure 3.1 Phases of Migration Crisis in Western Balkans

der policies constantly changed, rendering the movement of refugees unstructured and uncertain. Adjoining countries on the route took individual unilateral action, setting up fences and implementing strict border control checks. These measures have resulted in frequent changes in the direction of refugee flows, to new borders and countries. For example, in September 2015, the Hungarian government built a barbed-wire fence to close the border with Serbia, redirecting refugees to an alternative route through Croatia and Slovenia; a month later, Hungary closed its border with Croatia, forcing the entire flow to Slovenia.⁷ The migration wave increased political tensions, sometimes resulting in complete border closure between countries.⁸

Increasing Restriction

Meanwhile EU leaders worked to make various agreements. They began talking with Turkey about increased financial support for policing of refugees and other cooperative efforts.⁹ In October 2015, the European Commission arranged a meeting for leaders of Western Balkan countries, including various EU agencies and UNHCR. The outcome of that meeting was a 17-point agreement which provided for greater cooperation among the countries along the route and created greater restrictions on migrant movements.¹⁰

Towards the end of 2015, a phased introduction of more-or-less coordinated state policies and measures began, aimed at denying entry to individuals without valid entry documents, primarily targeting migrants from countries outside of Syria, Iraq, and Afghanistan.¹¹ Most of the unilateral decisions and the measures taken have in effect temporarily suspended states' obligation to fulfil international and European human rights and

refugee protection standards. In late 2015 and early 2016, countries intensified restrictive measures, including the arbitrary decision-making based on nationalities so as to push back those labeled “economic migrants.” When Austria imposed a daily quota at its border of 3,200 refugees in February 2016, both Serbia and fYRoM immediately adjusted their own procedures to match. Later in February, both countries added an additional regulation, denying entry to Afghan nationals. Five days later Slovenia and Croatia imposed a quota of 580 refugees per day.

Border Closure

The trend of restricting refugee movement climaxed with the deal between the European Union and Turkey, resulting in immediate border closure for refugees as of March 8, 2016.¹² The EU-Turkey agreement turns back migrants whose trip originates in Turkey; it includes a “one for one” principle (for each migrant returned to Turkey, the EU agrees to accept one Syrian refugee from Turkey).¹³ This agreement, aimed at stopping the arrival of refugees and migrants into the European Union from Turkey, has undermined EU refugee protection and influenced state policies in countries with large numbers of people stranded at border-crossing points. As a consequence, the migration route previously in existence across Europe fragmented again in the spring of 2016. In contrast to the stated intentions of the EU-Turkey deal (to stop illegal migration), the deal has actually paved the way for trafficking and smuggling activities, and an increase in people's vulnerability to risks en route.

CHILDREN IN TRANSIT THROUGH SERBIA: MISSED OPPORTUNITIES

To understand the position of migrants once they found themselves in Serbia, this case study focuses on the crisis at its peak: when the transit became fast-tracked, with an average of 7,000 arrivals registered on a daily basis. Though this phase was characterized by highly organized and structured transit, very limited resources were made available to capture those at high risk — in particular, children on the move. After the initial self-organized migrant movement during the summer of 2015, significant resources have been invested to set up a “one-stop” registration system to provide digital data registration of refugees. But, again, very little was invested in providing shelter, food, or medical support to those in need. The tide of refugees and migrants transiting through Serbia placed onerous pressure on fragile national child protection instruments, which collapsed under the surge of children.

As mentioned earlier, children are an increasing proportion of refugees in the 2015-16 crisis. In Serbia, the percentage of children grew from 27 percent of refugees and migrants in September 2015 to 35 percent in December 2015¹⁴ to more than 42 percent of the April 2016 monthly number of refugees registered in Serbia.¹⁵ Children on the move face a wide range of risks: from not being recognized as children (either explicitly or implicitly by restrictions and discrimination in exercising rights and accessing services) to the widespread and systematic violence, robbery, illegal detentions, and ill-treatment refugees face.

Minors traveling without adults are additionally vulnerable. As the Learning Review above notes in detail, children on the move face specific risks due to the lack of family emotional support, but also as a result of heightened risks of discrimination in access to water, shelter, or food; injuries; ordeals during the journey; infectious diseases; and gender-based violence. One positive note in the crisis is that because of its magnitude, authorities along the Western Balkan route at different points in time have legalized transit travel and provided some support for speedy transit, reducing traditional protection risks for children on the move, such as traveling illegally and relying solely on support of smugglers and traffickers.

Unlike other countries in the region, where law enforcement and border control take the lead in managing migration-related services, in Serbia responsibility for coordination and management of registration/reception centers rests with a social welfare ministry: the Ministry of Labor, Employment, Veteran, and Social Policy. This choice sends the message that the refugees are, first and foremost, people in need. Despite this positive stance, and despite the fact that those responsible for managing the migration crisis were primarily protection — rather than law enforcement — agents, the national child protection system as a whole failed to implement its obligations under the UN Convention on the Rights of the Child during this massive migration wave.¹⁶ This case study suggests that the reasons for failure go beyond a simple lack of capacity in the system to serve such large numbers of refugees.¹⁷ Rather, the system lacked the child-specific focus necessary to adequately address the specific needs of children on the move in this

refugee wave. Also, the multi-country nature of the migration flows (with children transiting through several countries within a few weeks) required a coordinated multi-national approach that transcended discrete national protection systems. In what follows, the case study identifies both positive and negative lessons for immediate implementation, as well as some conceptual misinterpretations that require further rethinking. To understand how the protection of refugee children was influenced by the concentration on facilitating rapid transit, it is helpful to identify typical movement scenarios in the Balkan route and the protection challenges to which they gave rise.

A typical journey during peak migration

Refugee informants report that the most difficult part of the journey was leaving their country of origin. They often spent months or even years living in fear, with bleak prospects and little hope, often displaced or separated from their family. The boat ride to the Greek islands, a calculated risk, comprised the greatest hazard on the journey. Once they reached the islands, the refugees took public ferries to mainland Greece and then buses to the town of Idomeni on the border with fYRoM. From Idomeni, refugees crossed over into fYRoM on foot. Once they entered fYRoM, they had to obtain registration papers at the Gevgelija temporary reception center using Greek registration papers. These documents allowed them to continue through fYRoM by train to reach Tabanovce temporary reception center on the border with Serbia.

On arrival at Tabanovce, refugees walked four kilometers through no man's land to Miratovac, a small village situated on the

Serbian side of the border.¹⁸ Although a small distance, the conditions on the route, in particular during cold winter months, with no electricity or support, created great hardship, almost as difficult as the sea crossing. This walk was exhausting, especially for those with burdens to carry, mothers with babies, small children, and the elderly. And it was almost impossible for disabled people, particularly when the temperature dropped below -20°C. At Miratovac village, refugees were counted and transported by bus to Presevo, the temporary reception center in southern Serbia. Here refugees received (conditional upon the correct Greek and Macedonian documents) a 72-hour pass, also called the intention-to-seek-asylum paper, which gave them legal grounds to be present in Serbia and allowed them to leave the country within 72 hours, or stay and seek asylum in Serbia.

Once in Presevo, refugees could choose between buses (35 euros, with frequent departures and taking about 7 hours), or trains (cheaper at 15 euros, but departing only once a day and taking 11 hours). For the onward journey north, the ticket from Presevo was the last payment they would have to make as the train from Sid (the Serbian city bordering Croatia) and the rest of the route was free of charge, with public transportation provided by the governments of Croatia and Slovenia. Depending on whether they travelled by bus or train, refugees would arrive in Belgrade (if they were waiting for someone), at the Adasevci motel on the highway near Sid, or at the Sid temporary reception center. From Sid they would take the train to Croatia within 24 hours.

Serbia has an additional entry to the Balkan route, the border crossing at the Bulgarian border. Significantly fewer refugees chose

this route, with an average of 300 people daily, even at peak. Serious abuse by smugglers and national police has been frequently reported by refugees arriving to Serbia via the Bulgarian border. The route through Bulgaria allowed refugees to avoid the treacherous sea crossing from Turkey to Greece, but led them to travel by foot through cold mountains and forest. Their journey was usually much harder before they reached Serbia than those taking the fYRoM route; it also took more time for them to get to Belgrade.

Regardless of the route they took, refugees were desperate to continue their journey as fast as they could. Those forced to stay usually needed medical treatment, funds, or documents to continue the journey, or had decided to pause their travel in order to reunite with members of their family or group. Once on the train from Sid to Slavonski Brod temporary reception center in eastern Croatia, they could finish registration in both Croatia and Slovenia within just few hours and be on the doorstep of a desired destination country.

Although the EU-Turkey deal has reduced the number of migrants significantly and blocked those known to be en route, stranding them temporarily, movement has not completely stopped. Crossing the border has once again been made illegal for irregular migrants: most have been considered economic migrants rather than refugees or have been turned back to apply for asylum in Greece.¹⁹ However, refugees are still arriving and transiting through the country, particularly through smuggling routes. The smuggling routes have remained operational throughout and

traffic on them intensified after the closure of the legal route.

Missed opportunities

The protection scheme for children transiting through the Western Balkans is predefined by the national child protection systems in place. The United Nations (UN) Convention on the Rights of the Child (CRC), ratified by the Republic of Serbia, affirms children's right to protection and recognizes the state's ultimate responsibility to respect, protect, and fulfil this right. However, the experiences of child protection actors, including national stakeholders, international agencies, and nongovernmental organizations (NGOs), reveal tremendous challenges in using national instruments for child protection in this context.

Serbia has adopted a "systems approach" to child protection standards, with a promising trend towards sensitization and special attention for children affected by migrations.²⁰ Moreover, a decade of sustained child welfare reforms combined with recent Serbian experience with its own forced migrant population have produced a robust foundation for Serbian child protection approaches to migrant children.²¹ The Ministry of Labor, Employment, Veteran, and Social Policy has acted proactively to develop tailor-made protocols and procedures for children affected by migration. In particular they had identified indicators to help frontline workers assess children's vulnerabilities. They also produced a handbook, *Instructions on Actions of Centres for Social Work*.²² However, the crisis had abated somewhat before the handbook's protocols were adopted in late June 2016.

The highly organized, state-run migration route through the Balkan region — with registration in each country, organized safe traveling methods, free transportation, and information sharing mechanisms — had an impact on the traditionally well-developed trafficking and smuggling business in this region. For example, the Presovo train (at 15 euros) or bus (at 35 euros), with thousands of people traveling on it every day, might bring close to a quarter of a million euros a day! Money now went to the state and private companies that would, at other times, most likely have been paid to smugglers. Traditional trafficking modalities and smuggling schemes were significantly reduced, but they still continued, even during the legal transit period. Clearly they were underreported: with more than 1.3 million asylum seekers reaching Europe in the 2015–2016 migration wave,²³ Serbia reported only one case of human trafficking,²⁴ likely a significant underestimate given the well-established human trafficking system in the region.

Given the visibility and accessibility of the refugees during this crisis, it should have been easy for frontline workers, police, migration authorities, and social workers to identify and assist those in need. Yet reports from NGOs have shown that the state failed to use the national child protection matrix, leaving frontline workers powerless when faced with the protection cases identified and referred to them. For example, a February 2016 child protection evaluation found significant gaps in the care and services available to children in need, including inconsistencies in formal referral mechanisms, lack of child-safeguarding standards in place, lack of appropriate alternative care arrangements, and lack of access to schooling and psychosocial support.²⁵ Some of those interviewed for

this case study noted the hazards of referring children to the rigid national child protection system rather than simply allowing them to continue their trip on their own.²⁶ Although not in agreement about whether those children were at risk and whether child protection authorities should intervene or let them continue with their trip, all interviewees agreed that the national system does not cater well to the needs of children on the move.

Protection of unaccompanied minors

The increased vulnerability generated by migration creates additional challenges in responding adequately to the protection and support needs of unaccompanied and separated children. Most of these children who pass through Serbia come from Afghanistan and Syria, with some from Iraq; smaller numbers also originate from Eritrea and Somalia. Children on the move through Serbia have been determined to proceed on to their final destinations as soon as possible and not to stay in Serbia.²⁷ For the majority, Germany and Sweden are the final destinations, but some youth want to go to Norway, Italy, Austria, and Belgium. While families with children move to the European Union to improve future prospects for their children, children traveling alone to Europe are often moving to improve future prospects for their family, with the hope of paving the way for the family's move via family reunification regulations in the European Union.²⁸ Serbia is neither an EU-member state nor a part of the Schengen zone (the area of free travel across national borders comprising the European Union). It is also not covered by the Dublin regulation (an EU law defining the country responsible for processing the claim of an asylum seeker, usually the country of first entry into the European Union). Thus Serbia can do little

to impact the legal status of children or advance their plan to enter the European Union, regardless of their country of origin. Consequently, children are either left to continue their trip independently or are stranded in the national child protection system with no action taken in regards to family reunification.

Article 12 of Serbian Family Law defines the assistance and protection necessary for unaccompanied minors and charges the network of centers for social work with performing this role. Serbia provides welfare services at the local level through more than 140 centers of social work.²⁹ In the area of social protection, centers for social work ensure the exercising of rights, the implementation of applicable provisions, and other activities.³⁰ When an unaccompanied child is identified, the relevant center for social work, with jurisdiction over the municipality where the child was found, is the key public authority to be immediately contacted. It is the agency empowered to make decisions concerning the child, including acting as the guardianship authority. A case manager is charged with ensuring protection and necessary assistance to the unaccompanied child.

Until 2015 legal guardians were hardly ever appointed for unaccompanied children. On the rare occasions when they were, the unaccompanied minor had usually long since traveled on beyond Serbia; as a result the majority of appointed legal guardians never met the children for which they were guardians. Even though Serbian regulations provide that only social workers can be legal guardians for unaccompanied minors, the complex and fast-moving situations of young migrants during the recent crises have put pressure on this system. In practice, and most unusually, the legal guardianship of unaccompanied minors travelling with a group of other migrants

has often been given to an older group member, without an appropriate assessment of the best interests of the child.³¹ As a result of these delays and informal arrangements, in practice only rarely and in very sensitive cases would the local center for social work actually appoint a legal guardian and refer the child to the state child protection system.

Another aspect of the system's ineffectiveness is the limited accommodation options available for children in need of care. Although local guardians have the formal option of placing the child in a foster family, in practice fostering resources are very limited and families are not able to accommodate unaccompanied minors.³² The other accommodation alternative is residential care for children, with a total capacity of twenty-two beds (two for girls).³³ The residential facility and most foster families are located far from the migrants' route through Serbia with entry/exit points in border regions. Because the municipalities on the border have small populations, their centers for social work have relatively few employees. The high influx of migrants, transiting in a very short period of time, generated protection challenges that exceeded realistic capacities. Overall, the centers for social work failed in their public duty to unaccompanied children: they proved unable to assess the risks, to ensure that actions taken were in the best interest of the child, or to appoint efficient and effective guardians.

PROTECTION RISKS IN SERBIA AND THE CONVENTION ON THE RIGHTS OF THE CHILD

All of the items discussed above contributed to the national child protection structure’s failure to ensure implementation of basic CRC principles.³⁴ The following section uses a matrix of core child rights principles to capture key protection lessons arising from the unique Serbian child migration context. It focuses on the needs of the most vulnerable

children on the move, unaccompanied boys and girls.

Age of a child

Article 1 of the Convention defines a “child” as a person below the age of 18, and the obligation of the state is to ensure protection for all children under 18. Serbia accepts this obligation and has incorporated it into domestic legislation. However, the failure to effectively assess age when doubts arose led to huge

Case Table 3.1 Protection Risks for Children on the Move in Serbia Related to CRC Principles

Age of Child	Misregistration of younger children as 18
	Insufficient process for recording age
	Some measures had unforeseen effects
	Unaccompanied boys under 18 treated as adults
Right to Non-Discrimination	Acceptance of migrants from only certain nationalities is discriminatory
	Particularly affected Afghan boys
	Selected aid to families is discriminatory
Best Interests of the Child	Legal complexities and international aspects obstacles to best interests
	National policies of legal guardianship not effective
	Best interests conflict with child protection policy
Child as Rights Holder	Migrating children often more mature
	Children want voice in process
	Independent guardian needed
Right to life, survival, development	Children supported by adults on journey, even smugglers
	Informal networks important
	Children often see protection authorities as barriers to journey

discrepancies between the official statistics for asylum seeking children passing through Serbia - 172,965 for 2015 – and the far larger confirmed number of children who reached Western Europe, according to field reports. Clearly the procedure for registering children was defective.³⁵ The only mechanism used to assess children’s age was taking a statement from any accompanying adult. Local NGOs reported cases of widespread misregistration of minors as adults, even when they were only 13 or 14 years old.³⁶ A worrying number of unaccompanied children received registration papers with a birth date of January 1, 1998—purporting to show that they had already turned 18 at the time of travel. While it is true that in some countries unaccompanied minors have been reluctant to claim they were under 18 (e.g. Italy) to avoid being sent back to their country of origin, those transiting through Serbia were generally aware that there would be no consequences for them if they claimed to be under 18. The local border police took on the responsibility of registering unaccompanied minors from mid-October 2015 and seemed to have reinforced the practice of children claiming to be 18: according to official Serbian statistics, the number of unaccompanied minors dropped significantly in October and November despite the scale of refugees crossing at that time. Minors were regularly accused by Croatian border officials of deliberately falsifying their papers as the age in the documents clearly contradicted the children’s physical appearance; this discrepancy resulted in many of these children being refused entry into Croatia.

These circumstances partly explain the ongoing controversies about official numbers of registered unaccompanied minors. While the European Asylum Support Office (EASO) and

Eurostat report that 88,245 unaccompanied minors applied for asylum in the 28 EU member states in 2015, Serbia only registered 10,642 unaccompanied minors in 2015, a figure similar to that provided by neighboring countries.³⁷

Even when age was not an issue, some well-intentioned measures targeting children generated negative consequences. Priority fast-tracking queues for women and children, intended to afford them enhanced protection, in fact sometimes led to accidental family separations, and the traumatic consequences flowing from them. On the other hand, the fast track procedure was not made available to all children - unaccompanied boys under 18 were often treated as military-age adults and tracked with single men and thus, de-prioritized for any services available, including food, clothes, and shelter.

Right to non-discrimination

A child’s migration status directly affects his or her ability to exercise rights and is pertinent to Article 2 of the CRC and *the right to non-discrimination*. The state is responsible for ensuring the rights of all children within its jurisdiction – including refugee, migrant, and asylum-seeking children, regardless of their or their parents’ citizenship or migrant status. The unilateral policy measures that the states along the route introduced during 2015–16 have particularly affected unaccompanied minors. The decision to accept migrants only from Syria, Iraq, and Afghanistan (excluding all others), followed by the later restrictions refusing Afghan refugees, affected a majority of unaccompanied minors; of the select group of unaccompanied minors who applied for asylum in the European Union in 2015, more than half were from Afghanistan.³⁸

Unaccompanied minors are not only affected by discriminatory measures introduced by states, but also by humanitarian interventions that restrict aid to adults and thus fail to help unaccompanied children. For example, cash vouchers introduced by humanitarian agencies were meant to allow stranded refugees to continue their trip, but did not cover unaccompanied children under 18.³⁹ This selective approach to aid exposed particularly vulnerable constituencies to enhanced risks of abuse and exploitation.

The best interests of the child

The principle mandating consideration of *the best interests of the child* has been particularly controversial over the past several months in Serbia, not only because of its critical importance for children on the move but also because of the complexity involved in implementing it. The principle requires a comprehensive but rapid analysis of the situation and circumstances of the child, including the child's perspective — an analysis complicated by limited resources, language barriers, and lack of means to verify information. The international nature of migration is not well addressed by national child protection authorities, whose capacities to make and act on informed decisions are limited to their own jurisdiction. In addition to the practical challenges just noted, there are frequently legal complexities that prevent child protection authorities from acting in the child's best interests and from providing the support children need.⁴⁰

This observation is exemplified by the common situation in which it is in the best interests of unaccompanied children to allow them to continue their journey, even though national regulations prohibit children from

traveling without a legal guardian. Even when there is an adult traveling with a child who could properly be appointed as a guardian (such as a relative or neighbor), a center for social work cannot officially endorse this appointment because Serbian law excludes non-nationals from acting as guardians. These challenges surfaced during the winter 2015 debates about the social protection system and its suitability for migrant children; some suggested that the Commissariat for Refugees and Migrants would be a more appropriate custodian of migrant children's protective needs than the centers for social work. These debates resulted in some policy revision, including a new Draft Asylum Law which stipulates placement of children over 16 in asylum centers.

The child as a rights holder

Article 12, which recognizes *the child as a rights holder* and agent in decision-making relevant to his or her interests, is directly linked to the best interests principle. Preconditions for exercising the right to participate are access to information and an effective channel for the child to be heard. In the case of unaccompanied minors, the concept of the child's evolving capacities should be carefully observed in the context of this crisis. Children who undertake such a long journey often have had to rely on themselves to act and behave in a much more mature manner than their actual age would warrant.

Consultations conducted with children have shown that children trust decisions made by their parents, but often consider decisions by the authorities or professionals as not being in their best interests.⁴¹ They believe their best interests were not taken into account primarily because in the decision-making process,

they did not have the opportunity to express their view of the best solution for them.

In the case of Serbia, social workers serve as the key actors in decision-making processes. The modern cornerstone and key protection instrument for unaccompanied minors is rooted in the concept of the legal guardian, which is mandated to social workers in Serbia. Olga Byrne, in her analyses of proven models of support for children on the move, finds the existing Serbian legal structure inappropriate. The appointment of professionals from the residential care institute or the local center for social work is not suitable for these children due to conflicts of interest. She instead advocates the concept of an independent guardian in a position to make an impartial assessment and decisions.⁴² A recent report from the EU Fundamental Rights Agency warns: “Children deprived of guardianship are particularly susceptible to being trafficked.”⁴³ The current migrant situation and rise in unaccompanied minors has exacerbated this situation, which local frontline workers in Serbia have confirmed.⁴⁴ Byrne advises exploring the Slovenian practice of appointing guardians from NGOs.⁴⁵ This practice has proven to be more advantageous than the model where guardianship has been granted exclusively to government agencies because it allowed for greater flexibility and better impact on children. The need for alternatives to the existing model is also explored in the analyses of implementation of the UN guide on alternative care for children in the West Balkans (including Serbia), where Nevenka Žegarac investigates a model of a national guardian institute for cases of unaccompanied minors.⁴⁶

Right to life, survival, and development

Article 6 represents one of the fundamental principles since it guarantees every child *the right to life, survival, and development*. It implies not only physical survival, but their right to develop their full capacity; it is one of the most sensitive when it comes to children on the move. Most of these children have left their home searching for safety, better living standards, and personal welfare. Being on the way to a better life, even if the final destination is unknown, brings relief. However, being on the move often entails a range of life-threatening experiences — in particular for those traveling through illegal channels. On this mission they often take on an adult role, supporting their siblings or themselves if left unaccompanied.

Save the Children research has established that, whether accompanied or unaccompanied, a child is usually strongly supported by some adult through the journey. Parents or family members are highly involved in migration planning and protection for a child. An assessment of unaccompanied minors in November 2015 confirmed this. When consulted on their support networks while being on the move, children named the role of local communities, ethnic or peer groups, and even smugglers as crucial for their safe journey.⁴⁷ Children may see protection authorities as a barrier for their movement, forcing them to seek even more hidden (and dangerous) routes. That is why it is critical to work on improving the protective role of these individuals rather than considering them only as risk factors. As Mike Dottridge described in his example of Western African children migrating from rural to urban areas in search of work,⁴⁸ children on the move mainly rely on someone from their ethnic group or commu-

nity. While the role of these individuals has often been questioned as exploitative, Dottridge tells of a study that shows that they do play an important role in assisting children and keeping them safe. Supporting children in transit requires a focus on building on and strengthening their resiliencies and existing survival strategies.

LESSONS LEARNED AND WAYS TO MOVE FORWARD

Both positive and negative lessons from this crisis confirm the need to consider carefully the role and responsibility of national child protection systems in responding to the situation of children in transit across borders. Serving the needs of people transiting through several countries within a few weeks requires a unified approach that cannot be derived only from national protection schemes. The responsibility of protecting children on the move, and in particular those separated from their families or traveling unaccompanied, must be shared among countries or mandated to an international or regional agency with the capability of ensuring safe passage for children on the move, including fast-tracking and family reunification. This paper calls for strong and integrated cross-country systems of identification, referral, and data management, including data on unaccompanied and separated children, that has to be put in place to ensure adequate and efficient protection which would allow access to individualized solutions for children rooted in their best interests. This is also not solely the responsibility of transiting countries, but also countries of origin and, even more importantly, countries of destination.

At the national level, the responsibility of children on the move should rest with social

protection agencies and not migration agencies, particularly when it comes to separated or unaccompanied children. Strong linkages need to be made between migration agencies and those with the mandate to guarantee protection of children on the move. The current Serbian model of a decentralized child protection system where responsibility and assistance is the responsibility of the social workers from local municipalities has proven to be dysfunctional and inefficient for children in transit. The guardianship concept, a major element for protection of unaccompanied minors, needs to be reconsidered; alternatives, such as independent guardians, should be explored to better serve the protection of unaccompanied minors.

Last but not least, it is an obligation of all the actors to step outside of traditional thinking and ensure that the resiliencies and strengths that children gain through the journey are acknowledged. Protection platforms should build on those strengths instead of insisting on upholding conservative protection approaches, since those approaches may no longer be functional and sometimes may even have an adverse effect on the well-being of a child.

ENDNOTES

1 United Nations High Commissioner for Refugees (UNHCR), “Daily Estimated Arrivals per Country - Flows through Western Balkans Route,” May 23, 2016, available at <http://data.unhcr.org/mediterranean/regional.php>. Note also that this figure does not capture those who have been transiting Serbia undetected, particularly before the September 2015 start of official registration.

2 REACH, “Migration trends and patterns of Syrian asylum seekers travelling to the EU,” Assessment Report, September 28, 2015.

3 This case study primarily explores the case of Serbia, although looking regionally is also important for understanding child protection implications for children on the move. Although this paper does not look at other countries in the region, other Western Balkan countries like Croatia and the former Yugoslav Republic of Macedonia (henceforth fYRoM) have inherited similar robust social protection system and have similar legislative and institutional solutions.

4 Serbian Commissariat for Refugees and Migrations (SCRM), Press statement issued on June 20 2016, available at <http://www.kirs.gov.rs/articles/navigate.php?type1=3&lang=SER&id=2551&date=0>.

5 Meeting notes from Serbia Child Protection Sub-Working Group, held on October 30, 2015.

6 Assessment Capacities Project (ACAPS), “The Balkan Migrant Crisis: An Introduction,” Geneva: January 2016, 2-3.

7 Fergal Keane, “Migrant crisis: Hungary’s closed border leaves many stranded,” BBC, September 15, 2015, <http://www.bbc.com/news/world-europe-34260071>.

8 In September 2015 tension escalated between Croatia and Serbia, reaching the lowest point in relations between the two countries since the end of the Balkan Wars, resulting in stoppage of movement for cargos and vehicles with Serbian license plates. A few weeks of tension followed with strongly worded mutual protest notes and blame for circumstances beyond individual country control. See Lyse Doucet, “Migrant Crisis: Croatia closes border crossing with Serbia,” BBC, September 18, 2015, <http://www.bbc.com/news/world-europe-34286432>.

9 See European Commission (EC), “EU-Turkey joint action plan” Fact Sheet (Brussels: EC, October 15, 2015).

10 See European Commission (EC), “Meeting on the Western Balkans Migration Route: Leaders Agree on 17-point plan of action,” Press Release (Brussels: EC, October 25, 2015) and “Leaders Agreement, Leaders’ Meeting on refugee flows along the Western Balkans Route,” October 25, 2015, http://ec.europa.eu/news/2015/docs/leader_statement_final.pdf.

11 On November 18, 2015 the fYRoM, Serbia, and Croatia only allowed refugees from Syria, Iraq, and Afghanistan to enter their territories. Soon after, fYRoM and Serbia denied entry to Afghans.

12 About the border closing, see Patrick Kingsley, “Balkan countries shut borders as attention turns to new refugee routes,” *The Guardian* online (March 9, 2016); for more about the agreement see European Union (EU), “EU-Turkey statement,” European Council: Press Release, March 18, 2016, <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/>; see also Jacqueline Bhabha and Vasileia Digidiki, “The Mean Bargain: The EU/Turkey Refugee and Migrant Deal,” FXB Center for Health and Human Rights at Harvard University website, April 18, 2016.

13 EU, “EU-Turkey statement”; see also Bhabha and Digidiki, “The Mean Bargain.”

14 UNICEF, “Call for Action: Protecting of the rights of refugee and migrant children arriving in

Europe” (New York: UNICEF, 2016), 2, <http://www.childrightsmanifesto.eu/palermo-call-for-action-for-the-protection-of-the-rights-of-refugees-and-migrant-children-arriving-in-the-eu>.

15 UNHCR, “Serbia Inter-agency Operational Update: May 2016,” (with monthly figures for April), May 31, 2016, available at <http://data.unhcr.org/mediterranean/regional.php>.

16 UN General Assembly, Convention on the Rights of the Child (henceforth CRC), 1577 UNTS 3, November 20, 1989.

17 Unless otherwise noted, the data and conclusions in this report are based on the experience of its primary author Nevena Milutinovic; her firsthand experience of working several years in this area in Serbia includes the refugee response crises in 2015 and 2016.

18 The walk was initially eleven kilometers until October 2015 when the UNHCR and other agencies started providing buses for part of the route.

19 Restriction of movement of refugees has also affected humanitarian actors on the ground. Croatia imposed new regulation criminalizing attempts to assist refugees (the Draft Law on Foreigners). Also, Hungarian law prohibits offering rides — even for free — to people who have entered the country illegally.

20 Stephanie Delaney et al, *Understanding and applying a systems approach to child protection: a guide for program staff* (Geneva: Terre des Hommes, 2014), 15-16.

21 European Commission, “Commission Staff Working Document: Serbia 2015 Report,” May 2016, http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_serbia.pdf.

22 Ministry for Labor, Employment, Veteran, and Social Policy, *Instructions on Actions of Centres for Social Work and Residential Social Security Institutions in the Provision of Care and Accommodation to Unaccompanied Underage Migrants* (in Serbian), No. 110-00-00469/2015-14 (Belgrade: Ministry for Labor, July 10, 2015).

23 In 2015, EU+ countries (EU member states + Norway and Switzerland) recorded 1,349,638 asylum applications with only 5 percent of repeated applicants in 2015, see European Asylum Support Office, “Latest asylum trends – 2015 overview,” May 24, 2016, more at <https://www.easo.europa.eu/information-analysis/analysis-and-statistics/latest-asylum-trends>; also European Union Agency for Fundamental Rights (FRA), *Separated, asylum-seeking children in European Union Member States, Summary Report*, 2010, http://fra.europa.eu/sites/default/files/fra_uploads/1693-SEPAC-summary-report_EN.pdf

24 FXB interview with Marijana Savic (Director, NGO Atina – Anti-trafficking Action) on May 3, 2016.

25 Gordana Ivkovic-Grujic, “Women and Children’s Protection Assessment Report: Serbia,” International Rescue Committee and Atina, February 2016, updated March 2016, http://www.atina.org.rs/sites/default/files/Women%20and%20Children%E2%80%99s%20Protection%20Assessment%20Report%20Serbia%20IRC_Atina.pdf

26 FXB interviews conducted with Marijana Savic (Director, NGO Atina), Vladimir Sjekoca (Coordinator, Asylum Info Centre), and Marko Sijan (Program Coordinator, Centre for Youth Integration) in April and May 2016.

27 “Only 3 percent Considering Asylum in Serbia,” in UNHCR-IOM, *Protection assessment in Presevo*, March 2016.

28 Save the Children, “Rapid Assessment on Unaccompanied and Separated children in transit in Serbia,” (Belgrade: Save the Children, November 2015).

29 International Monetary Fund (IMF), *Serbia and Montenegro: Poverty Reduction Strategy Paper*

and Progress Report, IMF Country Report 06/141 (Washington, DC: IMF, April 2006), 36.

30 Article 41 of Serbian family law says: A child may be a beneficiary of rights or services if the family circumstances or other living circumstances have jeopardized the child's life, safety and development, that is, if evident that the child cannot achieve a level of development without the social welfare support.

31 FXB interview with Vladimir Sjekoca (Coordinator, Asylum Info Centre and former employee of Commissariat for Refugees) May 14, 2016.

32 FXB interview with Dobrila Grujic (Director of Centre for Family Placement, Ministry for Labor, Veteran, Employment and Social Policy, Republic of Serbia) May 18, 2016.

33 Placement in the existing "Vasa Stajic Institute" in Belgrade is controversial because the same building also houses a correction facility for children in conflict with law. The residential care section is separate and is not locked, but it lacks capacity in terms of staff and in availability of services. It lacks translators and does not have Wi-Fi, a survival element for unaccompanied minors.

34 All further references to the Convention or the CRC in this paper refer to this convention; the framing review offers further discussion of the Convention.

35 *Protector of Citizens Ombudsperson (Serbia), Regular Annual Report of the Protection of Citizens for 2015* (Belgrade: March 16, 2016), 56, <http://zastitnik.rs/attachments/article/1431/Annual%20Report%202015.pdf>

36 This is particularly the case on the border with Bulgaria, where the Ministry of Interior manages the registration center. Evidence is available in Protection Coordination Meeting Notes and it has been documented in local CSOs report, more information available at <http://www.praxis.org.rs/index.php/en/reports-documents/praxis-reports>

37 European figures, see Eurostat, "Asylum applicants considered to be unaccompanied minors - annual data including 2015," tps00194 in Main Tables for Asylum and Managed Migration, reached from <http://ec.europa.eu/eurostat/web/asylum-and-managed-migration/data/main-tables>; Serbian figures, see Protector of Citizens, *Annual Report 2015*, 56; "neighboring countries" is an estimate taking into consideration other possible landing areas for asylum seekers such as Italy—in any case the figure is much higher than the official Serbian registration seekers.

38 EASO, "Latest asylum trends – 2015 Overview," 2016, <https://www.easo.europa.eu/sites/default/files/public/LatestAsylumTrends20151.pdf>

39 The program was implemented by NGO Philanthropy; it prioritized families with children, the elderly and disabled people, so it did also exclude adults not in those categories.

40 Daniela Reale, *Away from Home: Protecting and Supporting Children on the Move* (London: Save the Children UK, 2008), 20.

41 Aleksandra Galonja, Tijana Moraca, Masa Avramovic, and Tommaso Diegoli, *Children on the move: Status and programmes of support and protection of children on the move in the Republic of Serbia* (Belgrade: Atina, 2013), 64.

42 Olga Byrne, *Identifikacija dokazanih modela podrške za decu u pokretu sa preporukama za adaptaciju i primenu u Srbiji* [Identification of Proven Models of Support for Children on the Move with Recommendations for Adaptation and Implementation in Serbia, available only in Serbian] Sarajevo: Save the Children, 2016, 44-45.

43 European Union Agency for Fundamental Rights, *Guardianship for children deprived of parental care: A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking*, 2014, 54.

44 FXB interview conducted with Weihui Wang (Protection Specialist, World Vision in Serbia) April 26, 2016.

45 Byrne, [Identification of Proven Models], 53.

46 Nevenka Žegarac, *The child's rights to quality care – review of the implementation of the United Nation guidelines for the alternative care of children in Western Balkan countries* (Belgrade: Save the Children, 2014), 102.

47 In an assessment conducted on unaccompanied minors transiting through Serbia and as reported by frontline workers, children are relying on support from smugglers and the connections made with them. These people are often reported as the first point children would approach if in trouble. Save the Children, “Rapid assessment: Unaccompanied and Separated Children”; see also Galonja, *Children on the move*, 64.

48 Mike Dottridge, *What Can You Do To Protect Children on the Move?* (Geneva: Terre des Hommes, November 2012).

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EXCLUSIONARY PRACTICES

The Difficulty of Entering the United States and Australia

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INTRODUCTION

Around the world, children and families undertake perilous journeys to flee dangers in their countries of origin. Around the world, both liberal and conservative governments see these people as migration dilemmas to be solved through military enforcement and, where adequate documentation is lacking, through detention. The United Nations Committee on the Rights of the Child (CRC) has stated that children should not be denied their liberty or arbitrarily detained as a means of immigration control.¹ However, the United States, Mexico, Australia, and many other countries have created policies that allow officers to detain undocumented migrants who pass their borders. Many policies treat large migration flows as a national security threat that needs to be mitigated rather than as vulnerable populations who need protection.² As the framing review discusses, it can be an arduous task for asylum seekers to demonstrate they have “a well-founded fear of persecution” under the UN Convention on the Status of Refugees.³

Mountz and her coauthors have described detention as a physical demonstration of exclusionary state practices.⁴ Detention centers are mostly situated at the periphery of communities. Detainees are kept behind walls, and, within those walls, they are isolated from each other and under constant surveillance.⁵ Migrants crossing borders in search of asylum are perceived to be a national security threat; therefore, they are treated like criminals. Families and children are included in the potential threat and are detained on arrival. According to Mountz and her coauthors, “there is a circular rationale that legitimizes detention: migrants might be criminals, necessitating detention; migrants must be criminals because they are detained.”⁶

This case study explores how both the United States and Australia have used their economic power and other strategies to shift the burden of processing asylum seekers to smaller states in their region. It will first focus on US strategies to shift the burden of processing and screening asylum seekers to Mexico, then move on to discuss child protection failures for migrant children detained in the United States

and Mexico. The case then highlights similarities between US and Australian use of off-shore detention and discusses the treatment of children in Australian detention facilities. This case underscores the widely supported claim that the use of detention constitutes an abuse of children’s human rights.

THE US BORDER: DETENTION, DEPORTATION, AND EXCLUSION

The Obama administration and previous administrations have favored aggressive border enforcement strategies and policies. Since the early 1990s, US government leaders have focused on increasing border protection and security. After the September 11 attacks, political leaders have aimed to enforce rigorous immigration policies, and to strengthen their power to choose who enters and lives in the United States.

Over the past five years there has been an increase in the numbers of migrants primarily from El Salvador, Guatemala, and Honduras—the “Northern Triangle” of Central America—seeking asylum in the United States. In fiscal year 2014 (October 1-September 30), the United States apprehended 68,541 unaccompanied children and 68,445 members of families traveling together in the southwest border sectors of the country. Northern Triangle countries were the countries of origin for approximately 83 percent of those migrants.⁷ The language of crises determines the response and funding for support. This migration flow of families and children was first declared a “humanitarian crisis” and later became a “refugee crisis.” Advocates such as the United Nations High Commissioner for Refugees (UNHCR) have attempted to shift

the tone of public debate by highlighting reasons for supporting the arrivals as refugees.⁸ Families, including children, flee the Northern Triangle because of violence combined with economic and political instability. Many unaccompanied children (UAC) have crossed the border in an attempt to reunite with a parent in the United States (see Case Table 4.1).

There is expansive use of automatic and arbitrary detention of asylum-seeking families and children arriving in the United States as an explicit deterrence strategy to immigration.⁹

The United States, Mexico, and the Northern Triangle countries have colluded to block migration flows from the Northern Triangle. The Mexican-Guatemala border is often described as “porous”; therefore, the US government has bolstered funding and enforcement efforts at that border, developing the Southern Border Program (SBP). The aim is to block major migration routes through eastern Mexico towards Texas. Strengthening border enforcement and increasing deportations could leave vulnerable populations trapped in dangerous situations. Since the start of the SBP in 2014, Mexico’s apprehensions have more than doubled.¹⁰

Deportations from Mexico and the United States to the Northern Triangle

The flow of asylum seekers has continued to increase over recent years. This is shown in the number of deportations from Mexico and the United States, which has increased by 50 percent over the past five years. As legal scholar Daniel Fitzgerald has pointed out, the key difference is that the United States has shifted the burden of processing asylum seekers to Mexico.¹¹ Deportations from the

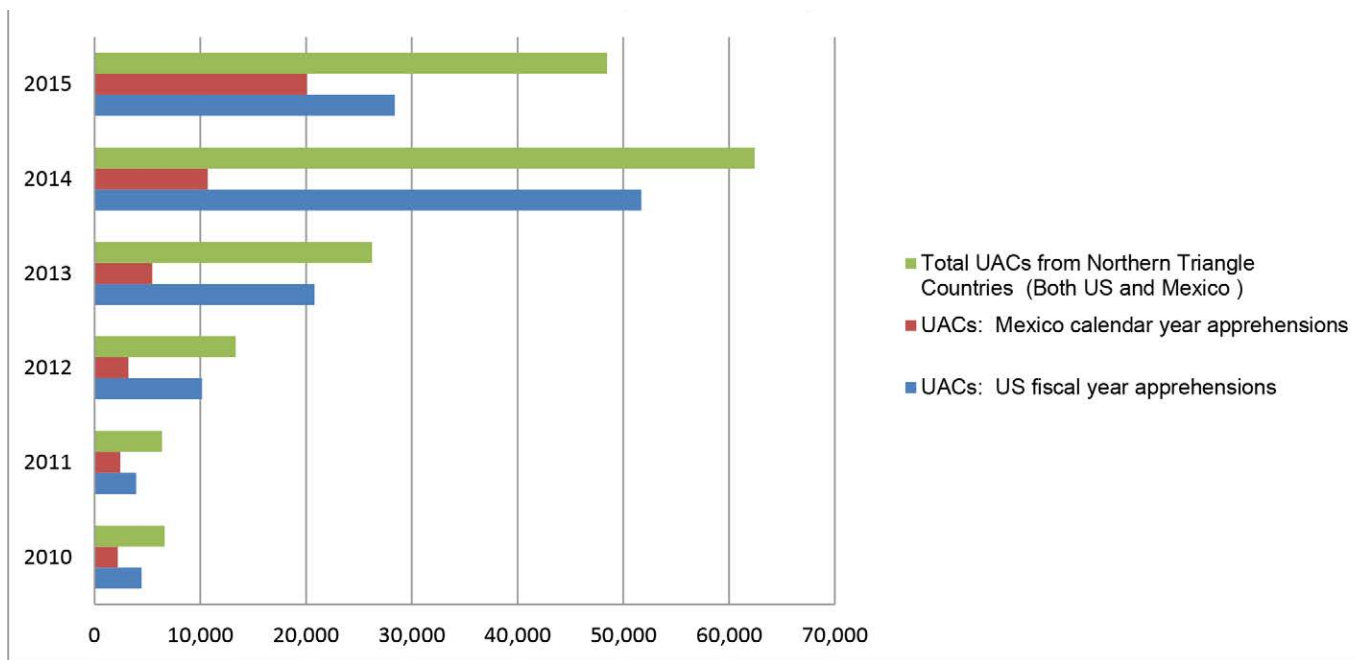
Case Table 4.1 Drivers of Migration from the Northern Triangle of Central America (El Salvador, Guatemala, and Honduras)

<p><i>"If you stay you will die, if you leave, you might...either way it's better to try."</i> —Child on the move*</p>		
<p>*Quoted in Jessica Jones and Jennifer Podkul, <i>Forced from Home: The Lost Boys and Girls of Central America</i> (New York: Women's Refugee Commission, 2012), 9.</p>		
Family reunification	Violence	Economic and Political Instability
<p>Approximately 49 percent of Salvadoran and 47 percent of Honduran unaccompanied children (UAC) report having at least one parent in the United States.*</p>	<p>The UNHCR interviewed 404 children from the Northern Triangle and Mexico to understand root causes for families and UAC fleeing their homes. Their data highlight that children are fleeing domestic violence, gangs, and general violence.* The Women's Refugee Commission found evidence that Mexican cartels are recruiting children from the Northern Triangle region. The cartels use children to smuggle drugs and to create havoc among rival gangs.**</p>	<p>Rosenblum and Ball point to the high levels of poverty, political instability and droughts as causes for children migrating.***</p>
<p>*UNHCR, <i>Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection</i> (Washington DC: UNHCR, 2014).</p>	<p>**Jessica Jones and Jennifer Podkul, <i>Forced from Home: The Lost Boys and Girls of Central America</i> (New York: Women's Refugee Commission, 2012).</p>	<p>***M. Rosenblum and I. Ball, <i>Trends in Unaccompanied Children and Family Migration from Central America</i> (Washington, DC: Migration Policy Institute, 2016).</p>

United States have decreased, while deportations from Mexico have increased dramatically, particularly in 2015.¹² As noted earlier, this is, in part, due to greater US support for immigration control on Mexico's southern border. Therefore, while fewer migrants are making it to the United States, the demand for resettlement in the United States has not decreased. Many advocates are troubled by high rates of deportation, low settlement rates, and limited protection offered to refugees in Mexico. Civil-society organizations in Mexico continue to make the case that high rates of deportation demonstrate limited humanitarian screening in Mexico.¹³ In their 2015 report, Villegas and Rietig of the

Migration Policy Institute raise similar concerns. They demonstrate a dramatic increase of total unaccompanied children apprehended in 2014 and 2015.¹⁴ Apprehensions in Mexico were on the rise while they fell in the United States in FY 2015 (Case Figure 4.1).

Many experts expected this trend to continue. However, thus far in 2016 apprehensions of unaccompanied minors have dropped in Mexico and increased in the United States. Case Figure 4.2 shows total unaccompanied minors apprehended in the United States and Mexico for the seven months from January through July 2016. In email correspondence with Ariel Ruiz Santo of the Migration



Note that US data are for the fiscal year (FY, October 1 through September 30) while Mexican data are for calendar year. Unaccompanied minors only (Mexico also reports data on accompanied minors; the US includes them as members of family units).

Source: US Border Patrol, Southwest Family Unit and Unaccompanied Alien Children Apprehensions Fiscal Year 2015, November 24, 2015, <https://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2015>; Unidad de Política Migratoria (Mexican Migration Policy Unit) SEGOB, "Eventos de menores extranjeros 2010-2015," http://www.politicamigratoria.gob.mx/es_mx/SEGOB/Series_Historicas.

Case Figure 4.1 Unaccompanied (UAC) minors from Northern Triangle countries (El Salvador, Honduras, Guatemala) apprehended in the US Southwest Border Region and in Mexico 2010–2015 (US numbers FY)

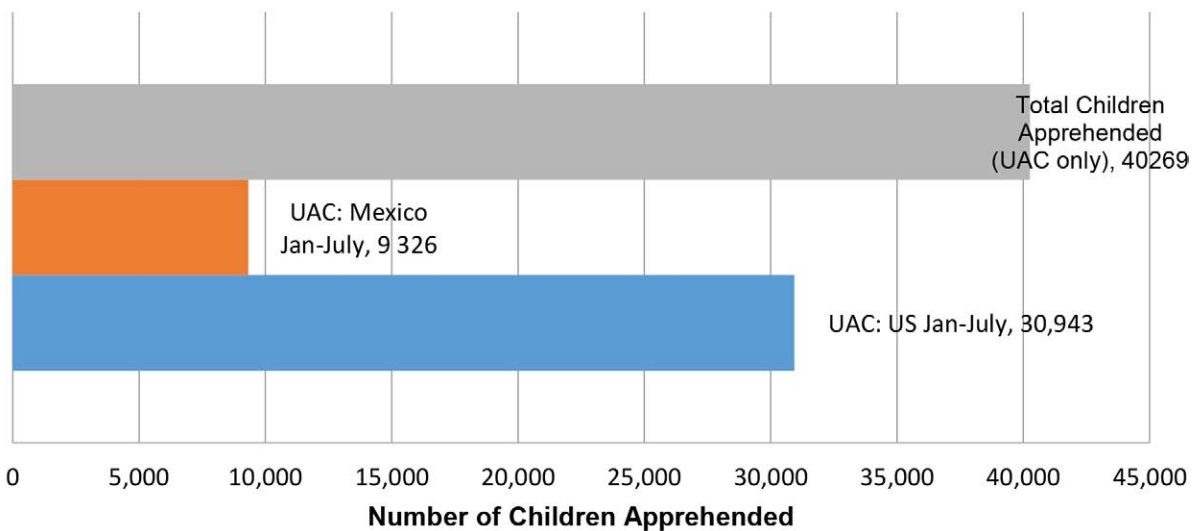
Policy Institute, he pointed out that although the number of apprehensions of unaccompanied minors will be less in Mexico than the extraordinary numbers of 2015 the total number of such apprehensions will be much higher than the number in 2014, before the Southern Border Program began.

For both the United States and Mexico, children from the Northern Triangle comprise by far the bulk of unaccompanied minors apprehended. As Case Figure 4.3 illustrates, children who originated from El Salvador, Guatemala, and Honduras made up 22 percent of minors apprehended in the Southwest Region of the United States in FY 2016 through

August. For Mexico, the percentage of child migrants from the Northern Triangle is even greater—they made up 97 percent of unaccompanied minors apprehended.¹⁵

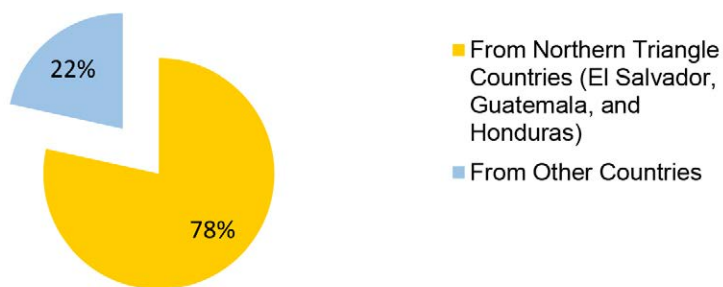
Authorities' actions differed greatly by location of apprehension. Mexico deported 77 percent of apprehended unaccompanied children in 2014; in contrast, the United States deported only 3 percent.¹⁶

One reason for lower rates of deportation in the United States is the long wait times to have an asylum case heard before a judge. The average wait time for all cases, including those of unaccompanied children, was esti-



Unaccompanied minors only. Source: FXB calculations for Jan-July 2016, based on figures from US Border Patrol, Southwest Family Unit and Unaccompanied Alien Children Apprehensions Fiscal Year 2016, <https://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2016> and Unidad de Política Migratoria (Mexican Migration Policy Unit) SEGOB, “Chart 3.1.5 Eventos de menores extranjeros,” Jan-July, http://www.politicamigratoria.gob.mx/es_mx/SEGOB/Extranjeros_presentados_y_devueltos.

Case Figure 4.2 All Children Apprehended, Mexico and US Southwest Border Region, first 7 months of 2016 January through July, unaccompanied children (UAC)



Source: Border Patrol, Southwest Family Unit and Unaccompanied Alien Children Apprehensions Fiscal Year 2016, <https://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2016>.

Case Figure 4.3 Countries of Origin of Unaccompanied (UAC) Minors, Apprehended in US in the Southwest Border Regions, FY 2016 Thus Far (Oct–August)
Total Children = 54502

mated in April 2016 to be 666 days, or more than one year and nine months.¹⁷ Rosenblum found that the US government has underfunded the immigration court. In 2014 funding for enforcement operations increased by 300 percent while immigration adjudication increased by only 70 percent.¹⁸ This has resulted in long judicial backlogs. Children in immigration proceedings have the right to legal representation but are not provided with it at government expense; there is a huge shortage of lawyers who are willing to represent these children for no or very little cost, so the majority receive no legal counsel at all.¹⁹ It is difficult to make an asylum claim without the assistance of an attorney; those who make claims without attorneys are more likely to be deported.²⁰ According to the Transactional Records Access Clearinghouse (TRAC), of those cases opened in 2014, 60 percent (53,616) involving unaccompanied children and 69 percent (51,786) involving

mothers with children were still pending in January 2016. From July 18 through October 14 in 2014, only 179 unaccompanied children were allowed to stay in the U.S. out of a total of 1,637.²¹ Creating a system that could promptly process asylum claims in the United States would be one method to remove children and families from detention.

Apprehended in the United States

Children and families have been travelling for weeks or months by the time they reach the United States-Mexico border. US immigration law requires that the Department of Homeland Security (DHS) detain most illegal migrants who arrive in the United States. Border apprehension appears to be one of the most traumatic points in the journey for children. Once apprehended at the border, most people are placed in cold cells called “las hieleras” or “iceboxes.” Lights are kept

on, and there are no beds. Only some facilities provide mattresses and thin blankets. Children interviewed complained about the cold, crowded, and unpleasant experiences they had in these facilities.²² There are no signs in the center explaining migrants' rights to just treatment, and there is no clear complaint system if they suffer abuse while in Customs and Border Patrol (CBP) custody.²³ The American Civil Liberties Union (ACLU) has filed lawsuits against the Border Patrol for the poor conditions and traumas that children have suffered at the border in these facilities.²⁴

US Border Patrol officers have been accused of human rights abuses, including persuading families not to apply for asylum. Human Rights Watch interviewed people who had their claims for asylum ignored, and were coerced into signing documents that they did not understand.²⁵ A woman with her child from Honduras recalled her experience in detention at the border: "They called me and they said that I had to sign this paper. They told me that it was for a judge to see my case. But I never saw a judge and they told me I had a deportation order. They told me I was already deported."²⁶

Children and families are briefly interviewed when apprehended at the border; judges will sometimes use information gained from those interviews to assess migrants' claims for asylum. Many asylum seekers have had officials record "no fear of persecution" and "travelled for work" as their reasons for crossing the border.²⁷ The credibility of these interviews came into question after the discovery of border officials recording "travelled for work" as the reason a three-year-old crossed the border.²⁸ Lawyer Barbara Hines, Co-Director of the Immigration Clinic at the University of Texas at Austin Law School, ar-

gues that greater oversight is needed in this part of the screening process, if judges will allow information gathered from the border interview into evidence for asylum claims.²⁹

The Border Patrol has not set clear standards or guidelines for how employees should interact with children in their custody. Christian Ramirez, Human Rights Director at Alliance San Diego, recently visited Ursula, a new border detention center in the Rio Grande Valley area. Ramirez described Ursula as "kennels for children."³⁰ He has been in dialogue with border agents for years, and has argued that people who are fleeing dangers from their home country should be able to expect, at a minimum, that border patrol officers will provide the same standards of care as those with charge over violent criminals. Until recently, the Border Patrol claimed that they were running processing centers, not detention centers, in an effort to excuse themselves of higher standards of care.³¹

The Border Patrol is supposed to quickly transfer unaccompanied children to the Office of Refugee Resettlement's (ORR) facilities. ORR facilities provide a space for children to be processed in a child-friendly environment with people who are trained to care for children. The Office of Refugee Resettlement was founded as a result of the Refugee Act of 1980. Most unaccompanied children are held in ORR facilities for approximately 20 days and are then released to a parent or guardian. The *Trafficking Victims Protection Reauthorization Act of 2008* (TVPRA) outlines conditions for the treatment of children in detention. The act mandates that unaccompanied children cannot be held in DHS facilities longer than 24 hours, and children from countries other than Mexico and Canada cannot be deported.³² Unfortunately, due to overcrowding in ORR

facilities, some children have waited weeks in border patrol facilities before being transferred.³³

People seeking asylum have to pass a “credible fear” interview to have their case heard before an immigration judge. If they do not pass this interview, they will be deported. This screening process can be difficult for children to navigate, especially for unaccompanied children who have suffered abuse, lack education, or may be unable to articulate important information that will demonstrate their credible fear. Children may be unable to express themselves like adults; therefore, they require people specifically trained to fairly evaluate their claim. The Office of Refugee Resettlement has established training and protocols for those who interact with children, creating child-friendly procedures for credible-fear interviews.³⁴

The settlement agreement from *Flores v. Meese* applies to unaccompanied children in the US, including their treatment, detention, and release. It ensures their treatment “with respect, dignity, and special concern for their particular vulnerability.”³⁵ As a result, unaccompanied children enjoy a number of additional safeguards and protections that adults and families arriving in the United States do not: unaccompanied children must be held in the least restrictive setting appropriate to their age and special needs, and released from custody “without unnecessary delay.”³⁶ The United States has also developed protective guidelines for child asylum seekers.³⁷ Children in the United States can apply for Special Immigrant Juvenile Status (SIJS), which provides a path to lawful permanent residence to children who cannot reunify with one or both parents due to abuse, abandonment, or neglect. SIJS is still a very

underutilized form of relief, and recent limitations on its scope have been introduced in Congress.³⁸ Trafficked children can also apply for a T-visa, which provides lawful immigration status for four years and can lead to permanent residence, though it is only very rarely granted.³⁹

Family Detention

In 2014 the Department of Homeland Security expanded its use of family detention to address the large number of women and children crossing the border. Before 2014, families were only in family detention center for a few weeks on average; by 2015 some families were being detained for over six months. As mentioned earlier, US law dictates that unaccompanied children can only be detained for a short time and then must be released to a guardian. However, if children arrive with a parent, the government claims it has the right to detain children for longer periods of time. After families have passed a credible-fear interview, they are placed in detention while they wait for their court hearing. The resurgence of family detention is believed to deter mothers from future migration to the United States with their children by making detention their final destination.⁴⁰

The use of family detention had decreased after 2006 when the Hutto Residential Center was shut down because of human rights abuses involving women and children. Within Hutto, children were dressed in prison uniforms; there were no toys; and families were kept in cells. Families looked and felt like prisoners.⁴¹ The 2015 expansion of family detention facilities resulted in the three current immigration detention centers holding families: Berks Family Residential Center in Pennsylvania (Berks), Karnes Residential

Center in Texas (Karnes), and South Texas Family Residential Center in Dilley, Texas (Dilley). The organization that managed Hutto is now running the Dilley center for families. While conditions in Dilley are better than in Hutto, Dilley is still like a prison: families are still under constant surveillance and unable to leave.

Families are held together, but they are often roomed with other families, resulting in a situation that is not ideal: children sleeping in rooms with unknown adults. Cases of sexual abuse have been recorded in these shared rooms.⁴² Children older than 12 are often separated into dorm-like accommodations with their gender and age group. However, this can increase children's anxiety through separation or leave younger children vulnerable to bullying and other mistreatment by older children.

Dr. Olivia Lopez, a professor of social work and formerly lead social worker at Karnes, now whistle blower, spoke to the US House of Representatives concerning the neglect to health and psychological services in Karnes. She witnessed children being turned away by medical staff until emergency surgery was needed and mothers being moved into isolation for punishment, with their children being left alone, unsure of their mothers' whereabouts.⁴³ Lopez claimed that she had been ordered to keep from recording any medical or mental health concerns so as to avoid a paper trail.⁴⁴

In 2015, 78 mothers in Karnes began a hunger strike. Many of these mothers had been in detention for over eight months while they waited to have their asylum cases heard before a judge and were desperate to be released into society. The mother who organized the strike was put into an isolation cell with her 11-year-old son. The one-room cell

has a small sink and toilet. They were treated like criminals and forced to use the bathroom in front of each other. Detention center managers have denied the existence and use of isolation cells. However, there are many stories by women who have been placed in an isolation cell within the center.⁴⁵

In 2015 a federal judge in California ruled that family detention should be shut down, saying that *Flores v. Meese* did apply to children migrating with their families and that if children are held they must be held in licensed facilities, per the *Flores v. Meese* agreement.⁴⁶ To remain open, Karnes and Dilley have pursued a childcare license in Texas. The Texas Department of Family and Protective Services has granted a childcare license to Karnes. However, many advocates do not believe Dilley or Karnes can claim to provide children with the standards of care expected of licensed childcare facilities within the community. The Texas department has been sued in an effort to halt other family detention centers from receiving a license.⁴⁷

To combat detention complaints, families have been released into the community at a faster pace, but mothers are typically required to wear ankle monitors. Burnet found that many families are now in detention for less than a month.⁴⁸ However, the bracelets are cumbersome, need to be charged often, and can infringe on the mothers' movements. Women are required to report to Immigration Customs and Enforcement (ICE) on a regular basis. Some women have worn the monitors for years. Therefore, many advocates argue this approach is still a human rights' abuse, depriving mothers of their liberty.⁴⁹

Apprehended in Mexico

There are approximately 60 immigration

detention centers in Mexico. The Mexican government would normally send unaccompanied children to the Agency for Integral Development of the Family (DIF) shelters. These shelters support Mexican children as well as migrants. Due to the influx of unaccompanied children in Mexico, these shelters have been unable to cater for all children who have been apprehended. Instead, children have been sent to migration stations or detention centers, which are less equipped to provide for children's needs. Human Rights Watch found many centers have not had enough beds, and children are sleeping in overcrowded rooms with adult strangers.⁵⁰ Andrew Schoenholtz and his co-authors found migrant children have no access to education while they are detained, and health provisions are minimal.⁵¹

Children and families living in migration stations are vulnerable to extortion, robbery, and other abuses. In a February 2014 fact-finding visit to the Mexico-Guatemala border, the human rights advocacy group Washington Office on Latin America (WOLA) discovered that police at all levels harass migrants about their immigration status and extort money.⁵² Their researchers also cited a 2013 survey with similar findings, by Red de Documentación de las Organizaciones Defensoras de Migrantes (the Documentation Network of Migrant Defense Organizations) and the Jesuit Migration Service, which analyzed responses from 931 migrants at seven shelters in Mexico. Fifty-two percent reported being robbed and thirty-three percent reported being extorted, predominantly by criminal groups.⁵³

Moreover, the process of applying for asylum can take months. Children have been given the option of applying for asylum and waiting for an unpredictable period of time to process the claim, or return to their home country and begin the dangerous journey again.

Many children are unaware of their rights, fear being detained indefinitely, and voluntarily leave. Karen Musalo, Lisa Frydman, and Pablo Ceriani Cernadas highlight the risk for children who leave detention and try crossing the border again.⁵⁴ They are vulnerable to becoming victims of trafficking or forced labor. Many children cannot access child protection programs and do not qualify for resident permits in Mexico.

The Mexican government cannot know if it is complying with its *non-refoulement* obligations under its current immigration practice. Schoenholtz and his co-authors found that many children are deported without meeting any officials trained to screen children for international protection needs.⁵⁵ Child protection officers (Oficiales de Protección de la Infancia, OPIs) are a group of officers trained to work with children and focus on the best interests of children, but they are part of the Mexican immigration authority. UNHCR interviewed 72 migrant children detained in Mexico in late 2013 and found nearly 80 percent had no knowledge of these child protection officers.⁵⁶ An interviewee in the Schoenholtz report indicated that the child protection officers may be too busy processing deportations to provide the child protection services necessary.⁵⁷

DETENTION IN AUSTRALIA

The primary route of undocumented migrants to reach Australia is by sea. The number arriving by boat peaked in 2013, at 20,587 people.⁵⁸ Successive Australian governments have created policies that punish asylum seekers who arrive by sea. The governments' messaging and policies are made to deter migrants and to demonstrate tight border security to Australian residents. Governments

who demonstrate they are tough on border control have tended to benefit politically.⁵⁹

Former Prime Minister John Howard introduced the “Pacific Solution” in early 2000. To prevent undocumented migrants arriving in Australia, the navy intercepted boats carrying refugees and transported them to the Republic of Nauru, a small, impoverished island in the Pacific Ocean, for processing. The Australian Government has paid Nauru to accommodate asylum seekers who have tried to reach Australia by boat. It is difficult for journalists, lawyers, or human rights monitors to gain access to the island. Migrants are isolated from community and advocacy. Australia has made a similar arrangement with Papua New Guinea to use Manus, one of its islands, as a detention site. By enforcing migration policy in others’ sovereign territory offshore, Australia is able to use its geography to subvert international refugee law.⁶⁰

Former Prime Minister Kevin Rudd promised “no advantage” for those who came by boat to Australia. In 2013 Rudd declared that those processed offshore on Manus and Nauru will never be settled in Australia; instead, they must settle in Cambodia and Papua New Guinea (PNG). Fiji’s Foreign Minister Ratu Inoke Kubuabola has accused Australia of using its “economic muscle” to persuade Papua New Guinea to accept thousands of people into its country.⁶¹ Cambodia and Papua New Guinea are poor countries, and many asylum seekers fear they cannot earn enough money to enable their family members to join them. This desire to earn money and to reunite families has given rise to the title “economic migrants” and influenced public opinion that those detained on these islands should not be allowed to settle in Australia.⁶²

“Operation Sovereign Borders” came into effect in late 2013, under then Prime Minister Tony Abbott. The policy allows authorities to use force to intercept and turn back asylum-seeker boats, shifting the burden onto nearby states to process asylum seekers. In 2013, 20, 587 undocumented migrants arrived in Australia via 300 boats; in 2014 only 160 arrived and via only one boat.⁶³ From December 2013 through August 2015, 20 boats with over 600 asylum seekers were turned back.⁶⁴ The Refugee Council of Australia has been very critical of this policy, arguing that asylum-seekers’ claims cannot be fairly assessed out at sea.⁶⁵

On April 26, 2016, Papua New Guinea’s Supreme Court ruled Australia’s detention of asylum seekers on Manus Island is illegal.⁶⁶ The five-man bench of the court ruled the detention breached the right to personal liberty in the PNG constitution. The current Turnbull government has refused to allow those in offshore detention to travel to Australia, and is under pressure to find another country in which to resettle them. The PNG Prime Minister, Peter O’Neill, believes the detention center has damaged their country.⁶⁷ He said Australia bore responsibility for the 905 men held within, while Australia argues the men are PNG’s responsibility. The detention center has opened its gates, so people can move around the island. However, many do not feel free and are still waiting to be granted asylum.⁶⁸

Indefinite detention for undocumented migrants is legal in Australia. The Australian high court has upheld the validity of the offshore centers in several cases.⁶⁹ The government affirms its right to detain people for national security and has chosen to ignore the United Nations interpretation of the International Covenant on Civil and Political Rights (IC-

CPR) and to ignore its recommendations to remove people from detention. The Australian government has continued to argue arbitrary detention is lawful.⁷⁰ The United Nations High Commissioner for Refugees (UNHCR) has criticized the existence of the offshore processing centers, along with their harsh conditions and indefinite detention.⁷¹ Professor Ben Saul describes indefinite detention as rapidly becoming Australia's Guantanamo Bay: "a legal black hole where we send people forever."⁷²

Apprehended in Australia and Surrounding Islands

In 2014 approximately 800 children were held in detention for an indefinite period of time. Australian detention centers have been described as crowded, unhygienic, and in appalling conditions. Employees of Save the Children report regular outbreaks of lice, gastro and other communicable diseases that are difficult to contain due to close living conditions, shared bathrooms and eating areas.⁷³ Children who are detained in Australia or offshore are held, on average, for one year and two months. Some children have been detained for longer than 27 months because Australian intelligence services believe their parent may pose a security threat. Almost all children in Australian detention centers either travelled to Australia by boat without a visa or were born in detention. Over 167 babies were born in detention between 2012 and 2014. Sometimes the nationality is left blank on the child's birth certificate when they are born to stateless parents.⁷⁴

A 2014 report by the Australian Human Rights Commission (AHRC) noted detention's significant negative impacts on the mental health and well-being of children.

Eighty-five percent of children and parents felt that their emotional and mental health had been affected by detention. In the first half of 2014, 34 percent of children in detention were assessed as having mental health disorders at levels comparable with children receiving outpatient mental health services in Australia, compared with less than 2 percent of children in the Australian population. The significance of children's mental health in detention is also demonstrated by high rates of self-harm. In the period of January 2013 to March 2014, 128 children aged between 12 and 17 engaged in actual self-harm while in detention, and 171 children threatened self-harm.⁷⁵

Further, children are exposed to danger through their close confinement with adults who suffer high levels of mental illness. Thirty percent of adults detained with children have moderate to severe mental illnesses. Mentally unwell adults can have negative impacts on the development of children. Children who have depressed parents are at a higher risk to suffer from depression or other mental health disorders than children from homes without mental illness.⁷⁶ An AHRC inquiry into Australian detention found almost all parents reported that they themselves had symptoms of depression, anxiety, or were on anti-depressant medication, and that their children had poor sleep, poor appetite, and behavioral problems. One mother said, "Enough is enough. I have had enough torture in my life. I have escaped from my country. Now, I prefer to die, just so my children might have some relief. I have reached the point I want to hand over my kids."⁷⁷

Two asylum seekers have set themselves on fire to protest their isolation and indefinite detention at Nauru. On April 27, 2016, a 23-year-

old man set himself alight. Before he set himself alight, it is believed the man yelled, “This is how tired we are; this action will prove how exhausted we are. I cannot take it anymore.” A few days later on May 2, 2016, a Somali woman on Nauru became the second person to light herself on fire. Refugee advocates believe she is 19 and came to Nauru at the age of 16 or 17. The Somali woman survived and is recovering in hospital. It is likely that she will be returned to Nauru once her health has improved. Peter Dutton, the Australian immigration minister, has stood firm that no action from advocates or those in processing centers will change government policies on border control and detention.⁷⁸

Australia has made some improvements for migrant families and children. Around 29,000 people have been granted temporary “bridging” visas and have been permitted to live in the Australian community.⁷⁹ This includes around 4,000 children. However, many people are on the visa for an indefinite time; are denied access to health care, work, and education; and are living in impoverished conditions. Gillian Triggs, the president of the AHRC said the holding of people for years on a succession of bridging visas was “a very significant breach of basic human rights.”⁸⁰ Moreover, as of February 2016, 115 children remained in detention.⁸¹

CONCLUSION

Many countries are prioritizing border protection over international human rights obligations. Both the United States and Australia have adopted strategies to shift the burden of processing undocumented migrants to smaller and poorer neighboring states. Increasing border enforcement and security in Mexico has decreased the number of mi-

grants arriving from the Northern Triangle into the United States. Offshore processing has almost stopped migrants arriving on Australia’s shores. Both strategies result in detention of families and children. Detention deprives them of their liberty, produces mental health issues, and can place children at serious risk. Moreover, families and children are often not adequately screened for international protection needs, and they are unable to access adequate support services. These border strategies do not address the root causes of people migrating. Instead they perpetuate grave human rights violations against children and their families, exposing already vulnerable and distressed communities to extreme hardship. The examples of the United States, Mexico, and Australia demonstrate that current border control strategies are impinging in serious and deleterious ways on children’s human rights.

ENDNOTES

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THE IMPACT OF PERSISTENT EXCLUSION

Rohingya Leaving Myanmar



INTRODUCTION

One of the world's most tumultuous places for children on the move over the past three decades is Southeast Asia, where hundreds of thousands of migrants from Myanmar have been displaced by conflict or have left their homes seeking a better life. For the Rohingya, an ethnic Muslim group residing primarily in Rakhine State in western Myanmar, increased levels of conflict in recent years have led to mass migration of historic proportions.

Of particular concern is the fact that most of the approximately one million Rohingya in Myanmar are stateless, with their lack of citizenship having been used as a mechanism for institutionalized discrimination and oppression since at least the 1960s. As a result of more than 50 years of policies designed to deny them their identity, public opinion is decidedly against the Rohingya. The majority of Myanmar's citizens concur with the official government declaration that "there are no Rohingya" in Myanmar and consider the Rohingya to be illegal Bengali immigrants.¹ Without legal recourse to address injustice at home, many Rohingya have felt their only choice is to flee the country. Unfortunately, those who make it to another country usually still find themselves in a hostile environment where they are unwelcome, lack access to basic services, and have little economic opportunity. Since none of the destination countries in the Southeast Asia region have ratified the 1951 International Refugee Convention,² there is little if any legal protection for Rohingya migrants.

Against this backdrop of statelessness and lack of legal protection, Rohingya children face significant obstacles from the moment they are born. Despite the fact that all countries in the region are States Parties to the Convention on Rights of the Child (CRC),³ albeit with some reservations,⁴ Rohingya children in Myanmar and in the Rohingya destination countries are systematically denied fundamental rights guaranteed by the CRC. They frequently grow up without access to education and adequate health care as they remain vulnerable to starvation, disease, trafficking, detention, and a wide range

of other abuses of their basic human rights. This paper seeks to understand the situation of Rohingya children on the move – including why, how, and where they move – and the child protection issues they deal with at each stage of their migration journey. It ends with a summary of rights-based recommendations to enhance protection for Rohingya children.

BACKGROUND

While the full history of the Rohingya is a hotly disputed topic, numerous historians agree that an ethnic group of Muslims has existed within Rakhine State for centuries.⁵ Although this original group probably incorporated later waves of Muslim immigrants during British rule, available evidence indicates that the Rohingya have lived in Rakhine State since long before the British colonial period. After British colonization of Myanmar began during the first Anglo-Burman war in 1824, the British encouraged Muslim migration into the territory from India and Bangladesh. Following Burma's independence from Britain in 1948, the Rohingya were not identified as one of the "indigenous races of Burma" automatically entitled to citizenship. However, the government allowed people whose families had lived in Myanmar for two generations to gain citizenship or identification cards. After a military coup in 1962, the new government denied citizenship to new generations by introducing a prohibition on the provision of documentation to Rohingya children.

In 1982 the country's military government passed a citizenship law that defined full citizens as members of ethnic groups that had "permanently settled within the boundaries of modern-day Myanmar prior to 1823." Despite the historical evidence of the Rohing-

ya's presence in Myanmar, the government failed to include the Rohingya on the list of 135 recognized ethnic groups. Additionally, Rohingya who had already been issued identification cards were forced to prove that their family had lived in Myanmar since before 1948. These combined policies resulted in the majority of the Rohingya population being denied citizenship and being effectively rendered stateless.

In the decades following the 1982 law, Rohingya rights have been systematically violated and stripped away by the Burmese government. The situation worsened after 1992 when the NaSaKa, an interagency border protection force, was established to help control Rohingya movement and activities in north Rakhine State, leading to the mass exodus of two hundred and fifty thousand Rohingya to Bangladesh.⁶ Thousands more left in subsequent years as oppression and conflict continued. The most recent wave of migration began in 2012 after ethnic conflict forced over one hundred thousand Rohingya from their homes.⁷ Although some hoped that the 2015 election victory of the National League for Democracy (NLD) party, led by human rights icon Aung San Suu Kyi, would be a turning point, it appears for now that the NLD government plans to stay the course of denying the Rohingya their rights and refusing to recognize them as citizens.⁸

RESEARCH FINDINGS

This section presents findings from a review of relevant literature, focused on reports from organizations that have conducted original research, and from interviews of a few key informants that have insight into the Rohingya migration crisis.⁹ This research aims to

understand the factors that lead Rohingya children to migrate, the challenges they face at each stage of migration, and the opportunities for intervention.

Why Rohingya Children Move

Rohingya children in Myanmar face an increasingly bleak situation. Over one hundred thousand displaced Rohingya are being forced to live in squalid conditions in internal displacement camps where the basic needs of food, water, and health care go largely unmet.¹⁰ Government officials and local communities of Buddhists have even prevented some humanitarian aid from reaching these camps while children die from severe malnutrition, diarrhea, and other preventable diseases.¹¹ Educational opportunities in the internment camps are nearly non-existent. Domestic violence, depression, and hopelessness are common, and children often work long hours farming or collecting firewood in order to help support their families.¹²

Rohingya living in their home villages also struggle with oppressive government policies, hostile neighbors, and much of the same hopelessness and denial of human rights as those who have been displaced. Health care and education are severely limited due to lack of citizenship and restrictions placed on movement. Scarce economic opportunities for adults result in the vast majority of Rohingya children growing up in extreme poverty. In addition to those living in official camps, an estimated thirty thousand displaced Rohingya have sought shelter in Rohingya villages, where they have even less

access to humanitarian aid.¹³

It is not surprising that so many Rohingya think their only viable option is to leave Myanmar. Families often separate as men seek employment in another country until they earn enough money for their wives and children to join them.¹⁴ Many child migrants are older teenaged boys who, with the future holding so little for them in Myanmar, are willing to risk danger and uncertainty to seek a livelihood outside their homeland.¹⁵

Migration appears to have slowed in recent months, due in part to a crackdown on smuggling in Thailand and harsher conditions for refugees in Malaysia, and also because the Rohingya are waiting to see how the new NLD government will address the situation. With little change on the horizon, some experts predict that migration from Myanmar will pick up again later in 2016 once the monsoon season passes and it becomes possible to travel again.¹⁶

How Rohingya Children Move

Since most Rohingya lack any official documentation, including birth records or identification cards, there is no legal path for them to leave the country. Thus, those who decide to leave are usually forced to place themselves in the hands of human traffickers who charge up to two thousand US dollars to transport migrants to Malaysia or Thailand by sea.¹⁷ An estimated one hundred and fifty thousand Rohingya and Bangladeshis have started this journey since 2012,¹⁸ with thirty-one thousand leaving between January and June of 2015 alone.¹⁹

This trip is full of peril. While it can be completed in as little as four days, it can take up to three weeks or more.²⁰ Crowded conditions and insufficient food and water on the boats often lead to severe cases of beriberi and other nutrition-related and infectious diseases.²¹ Children have starved to death after being refused opportunities for disembarkation by officials of neighboring countries.²² Criminal trafficking syndicates frequently detain the migrants in jungle camps in Thailand while attempting to extort money from the victims' relatives in order to deliver them to Malaysia.²³ The refugees that are intercepted by Thai authorities on their way to Malaysia are held in detention camps or shelters for victims of trafficking. Rohingya children as young as age 10 have been documented in these facilities with limited access to health care, physical activity, and fresh air.²⁴

The Rohingya's journey has been the source of significant international attention as recently as 2015 when eight boats carrying an estimated five thousand Rohingya and Bangladeshis were abandoned by smugglers and left adrift in the Andaman Sea.²⁵ Some of the boats were reportedly towed back to sea after being refused disembarkation by Malaysia, Thailand, and Indonesia.²⁶ They were all eventually rescued by Indonesian fisherman or allowed to disembark in Malaysia, but not until most had endured severe physical and mental suffering or even death. One investigation found numerous examples of children among these groups, including a three-year-old girl who died of tetanus shortly after being rescued.²⁷ It is estimated that up to one-third to one-half of those abandoned at sea were under 18 years of age.²⁸

The fatality rate for this journey has been estimated to be 1.1 percent, or three times

higher than that of refugees traveling via the Mediterranean.²⁹ Women and girls make up approximately 15 percent of all sea-bound migrants.³⁰ Recent years have seen an increase in the number of children, many of whom are unaccompanied, making this trip as they seek to be reunited with family members or escape poverty and oppression.

Where Rohingya Children Move

While most displaced Rohingya live in internal displacement camps, thousands of others, many of whom come from these camps, escape the country every year. Malaysia is usually the destination of choice since it is a relatively highly developed Muslim country with a large community of Rohingya. The route to Malaysia leads many refugees to Thailand and sometimes to Indonesia,³¹ but most have the goal of continuing on to Malaysia where they feel they have the best opportunities. Previous waves of migration in the 1990s saw thousands of Rohingya migrate across the border to Bangladesh, but this has been limited in recent years as Bangladesh has worked hard to create an unattractive environment for the Rohingya.³² A limited number are resettled outside the region, although some refugees have been known to turn down resettlement because they prefer to stay in a Muslim country or are seeking family reunification.³³

Malaysia

Malaysian migration policies are focused on border control, removal, and deterrence rather than protection,³⁴ meaning that Rohingya who make it to Malaysia continue to face countless challenges. Since Malaysia has not ratified the 1951 Refugee Convention, it makes no distinction between refugees, asylum seekers, and irregular migrants,³⁵ so

Rohingya migrants, all of whom have arrived illegally due to their lack of documentation, lack the legal protections provided to other refugees. All Rohingya, including children, face mandatory detention upon arrival until UNHCR is able to register them and secure their release, a process that has become increasingly difficult and can take months due to limited UNHCR capacity.³⁶ With an estimated three thousand Rohingya being detained as of March 2016,³⁷ detention centers are overcrowded and fail to provide sufficient basic necessities like food and water.³⁸

Refugees registered by UNHCR receive a UNHCR identification card that is supposed to protect them against detention and provide them with other benefits, such as a discount on health care rates for foreigners at government facilities.³⁹ In practice, however, even Rohingya with cards are commonly subjected to arbitrary detention and extortion by police.⁴⁰ Health care is still unaffordable to most Rohingya and education is usually limited to opportunities that are provided by the Rohingya community itself or by international aid organizations, which prevents integration with the public school system.⁴¹ Even registered refugees are not permitted to work in all sectors, so economic opportunities are extremely limited and poverty is rampant.⁴²

For the estimated seventy thousand Rohingya without any documentation in Malaysia, the situation is even grimmer.⁴³ While many migrants would like to register with UNHCR, they must wait for up to three years due to UNHCR backlogs; others avoid contact with any authority, including the UNHCR, out of fear of detention or harassment.⁴⁴ Lack of official registration is a major barrier to accessing public services. In addition to the exorbitant health care costs that non-registered refugees are required to pay, official policy

requires health providers to report unregistered refugees to immigration officials, so refugees seeking health care can find themselves placed in detention facilities when they seek medical attention.⁴⁵ Immigration bureaus have even been set up within hospitals to intercept refugees seeking care.⁴⁶

Thailand

Despite Thailand's "push-back" and "help-on" migration policies that seek to prevent illegal migrants from disembarking in Thai territory, it is common for Rohingya to be brought to Thailand by human traffickers who use Thailand as a staging area en route to Malaysia. Migrants that are intercepted by Thai authorities are usually held in detention facilities under harsh conditions. Rohingya that authorities determine to be victims of human trafficking are held in shelters that impose similar restrictions on movement and lack adequate services.⁴⁷ Detained Rohingya usually spend months in facilities until they are either resettled elsewhere or released into Thailand, at which time most attempt to continue their journey to Malaysia.⁴⁸

Many Rohingya are held in jungle camps in southern Thailand by traffickers until a ransom is paid by their relatives in Malaysia.⁴⁹ Mass Rohingya graves discovered in 2015 led the Thai government to crackdown on smuggling and, subsequently, led traffickers to abandon thousands of Rohingya at sea.⁵⁰ Investigations by the Thai government found evidence of collaboration between traffickers and Thai police, many of whom are now being prosecuted. The situation remains dangerous for Rohingya victims of trafficking as they wait in shelters with inadequate protection to testify against their traffickers.⁵¹

Bangladesh

Given its shared border with Rakhine State,

Bangladesh has been a popular destination for Rohingya migrants during past conflicts, including as recently as 2009 when eight thousand Rohingya fled to Bangladesh.⁵² However, after the Bangladeshi government stopped conferring refugee status on Rohingya in 1993, securing access to basic services and economic opportunities has been extremely difficult, and on occasion impossible. About thirty thousand Rohingya live in official UNHCR-run camps near the border, but over one hundred thousand more live in informal camps without UNHCR recognition.⁵³ Especially in the informal camps, Rohingya children are in extremely poor health due to lack of food, health services, and sanitation. One study found that large proportions of children in these settings experienced chronic malnutrition and that others had died due to starvation and various infectious diseases.⁵⁴ Children receive very limited education due to lack of school availability and to the need for even young children to help support their families by working in informal jobs like collecting firewood.⁵⁵ The local population is openly hostile to the Rohingya. It has prevented humanitarian aid from reaching the camps, formed resistance committees, and promoted anti-Rohingya propaganda in the media.⁵⁶ Of concern currently is a government census of Rohingya that is suspected of being an attempt to prevent Rohingya from blending in with the local population.⁵⁷ This could potentially spark another wave of mass migration if the census leads to additional persecution.⁵⁸

DISCUSSION

This section draws on the research findings to highlight some of the key child protection

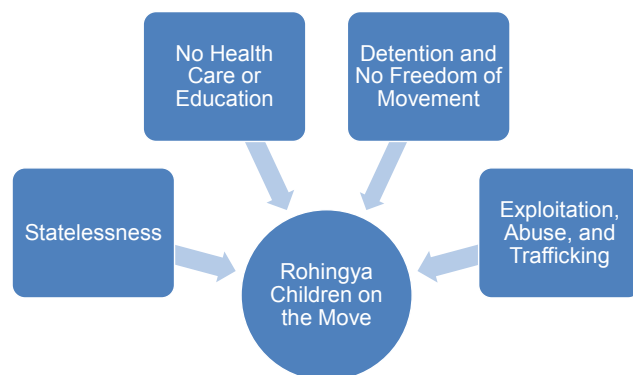
issues Rohingya children face and to suggest opportunities for intervention.

Key Child Protection Issues

Statelessness

The Rohingya's lack of citizenship and documentation has been a source of significant hardship that increases with each new generation. The CRC states that all children have the right to be registered immediately at birth and to acquire a name and nationality.⁵⁹ States are also required to take into account the exceptionally vulnerable position of stateless persons when making immigration determinations.⁶⁰ As the Equal Rights Trust has reported, in Myanmar, "The lack of citizenship became the anchor for an entire framework of discriminatory laws and practices that laid the context for coming decades of abuse and exploitation."⁶¹ After the government stopped issuing birth certificates for Rohingya children in 1994, many Rohingya were unable to receive any documentation at all.⁶² As a result, tens of thousands of unregistered Rohingya children do not exist administratively and must be hidden during population checks.⁶³ In some cases government officials have actively seized documentation from Rohingya that have already been registered.⁶⁴ Besides its detrimental effects on a child's mental well-being, statelessness creates practical challenges in Myanmar and elsewhere as citizenship determines in large part what rights, services, and opportunities are accessible.

The problem of statelessness appears to be worsening in Myanmar. Rohingya were not allowed to register as Rohingya for the 2014 census⁶⁵ and were denied the right to vote in recent elections.⁶⁶ After being displaced



Case Figure 5.1: Key Protection Risks for Rohingya Children on the Move

by the most recent waves of violence, some Rohingya have been promised resettlement assistance if they agree to officially register as Bengali.⁶⁷ Officials have used threats of physical violence to attempt to force this change.⁶⁸ As the report *Countdown to Annihilation* points out, this move appears to be a “blueprint for permanent segregation and statelessness” and a deliberate attempt to further institutionalize the state policies of systemic discrimination.⁶⁹ Until the statelessness issue is addressed, masses of oppressed Rohingya will likely continue to flee Myanmar.

Outside Myanmar, either registration by the state or recognition from UNHCR has an enormous impact on the Rohingya’s quality of life. Although the Malaysian constitution provides for citizenship to be granted to stateless children born in the country, this provision has not been put into practice;⁷⁰ thus, new generations of Rohingya remain stateless. Birth certificates of Rohingya children born in Ma-

laysia are stamped with the designation of “non-citizen,” which prevents them from attending government schools and receiving other public services.⁷¹ Non-registered Rohingya regularly fail to register their children’s births out of fear of detention or arrest.⁷²

Denial of Access to Health Care and Education

Article 24 of the CRC stresses the state’s responsibility to “ensure that no child is deprived of his or her right of access to...health care services” and recognizes the right of the child to “the enjoyment of the highest attainable standard of health,”⁷³ a right that is plainly denied to Rohingya children across the region. Rohingya are not able to access most basic health care services in Rakhine State due to their classification as illegal immigrants, limitations on freedom of movement, and government restrictions on humanitarian aid organizations. There is evidence that, as a form of population control,⁷⁴ officials have consciously neglected to pro-

vide health care in internment camps, even for fatally ill children and women.⁷⁵ Starvation and disease are common in these camps and usually continue for Rohingya children after they leave. Health care is non-existent for Rohingya during their migration journey, and continues to be widely inaccessible once they arrive in most destination countries.

The CRC sets out a child's right to education, including free and compulsory primary education.⁷⁶ For Rohingya children, access to education in Myanmar has become extremely limited since the outbreak of violence in 2012 and subsequent forced displacement. Displaced Rohingya children living in camps are usually confined to whatever makeshift schools may have been established by NGOs or the local community.⁷⁷ In Aung Mingalar, a section of Rakhine's capital city of Sittwe where four thousand Rohingya remain imprisoned in an urban ghetto, the only primary school has also been converted into a military base, which acts as a major barrier to school attendance.⁷⁸ In Rakhine State and in destination countries, the limited informal schools, or "learning centers," established by Rohingya communities or NGOs are not accredited by the government, a policy which severely limits higher education opportunities.⁷⁹ Higher education also requires documents, which most Rohingya do not have. Challenges with local languages in destination countries represent another major barrier to Rohingya integration into public school systems.

Detention and Denial of Freedom of Movement

In clear violation of the CRC, Rohingya children are routinely subjected to unlawful migration-related detention and limitations on freedom of movement.⁸⁰ Article 37 of the CRC clarifies that detention should only be used as a measure of last resort and that detained

children should be treated with dignity, be separated from unrelated adults, and receive prompt legal assistance; all of which are not standard practice for detained Rohingya children. Malaysia and Thailand routinely detain children in overcrowded conditions without access to sufficient health care, food, and recreation. In Malaysia, parents are sometimes separated from their children for placement in detention facilities.⁸¹ Researchers found that all children in one detention facility in Thailand were unaccompanied yet they were being detained with unrelated adults.⁸² Children can remain in detention centers for many months without adequate protection from traffickers.⁸³

In Myanmar, internal displacement camps and the urban ghetto of Aung Mingalar have effectively been turned into concentration camps where Rohingya are held as prisoners without access to basic services or livelihoods. Local police or military are strategically stationed within and nearby these camps to enforce restrictions on movement.⁸⁴ Even non-displaced Rohingya living in their home villages are subject to considerable limitations on freedom, both due to official policy and to fear of violence or harassment. Rohingya are regularly forced to pay costly fees, and often bribes. They must request permission from local authorities with advance notice to travel to neighboring villages or anywhere outside of Rakhine State.⁸⁵ Restrictions have worsened since 2012 and Rakhine State has become effectively segregated.

Vulnerability to Exploitation, Abuse, and Trafficking

Articles 34, 35, and 36 of the CRC require states to protect children from all forms of exploitation and abuse, including trafficking.⁸⁶ For Rohingya children, exploitation begins at the start of their migration since those

who leave Myanmar are usually forced to seek help from human smugglers. In some cases, young girls have been forced to make the journey against their will.⁸⁷ As discussed above, this journey is highly perilous as children are crowded onto boats without sufficient food or water. Many are then taken to Thailand where, if not intercepted and detained by Thai authorities, they are held in jungle camps until the traffickers receive a ransom payment to take them the rest of the way to Malaysia. Children, and particularly girls, in these circumstances are exceptionally vulnerable to violence and trafficking, both for sex and for manual labor.⁸⁸ Additionally, there are multiple reports of women and girls trafficked to be sold as brides to Rohingya men willing to pay their ransom.⁸⁹ Some of these marriages are pre-arranged by the girls' parents before starting the journey.⁹⁰ Women and children in detention in Thailand are especially vulnerable to sex and labor trafficking since the facilities where they are held do not provide adequate protection from traffickers.⁹¹ Rohingya girls in Bangladesh have also been exploited for work in the sex industry.⁹²

Best Practices

It is essential that the international community agree on a human rights-based approach to specific policies and interventions designed to address the child protection issues highlighted in this paper. While not a comprehensive list of solutions, this section draws on the research to provide suggestions for best practices that should be included in the international response.

Increase Access to Documentation

Documentation is critical for protection at all stages of migration. No matter where they are

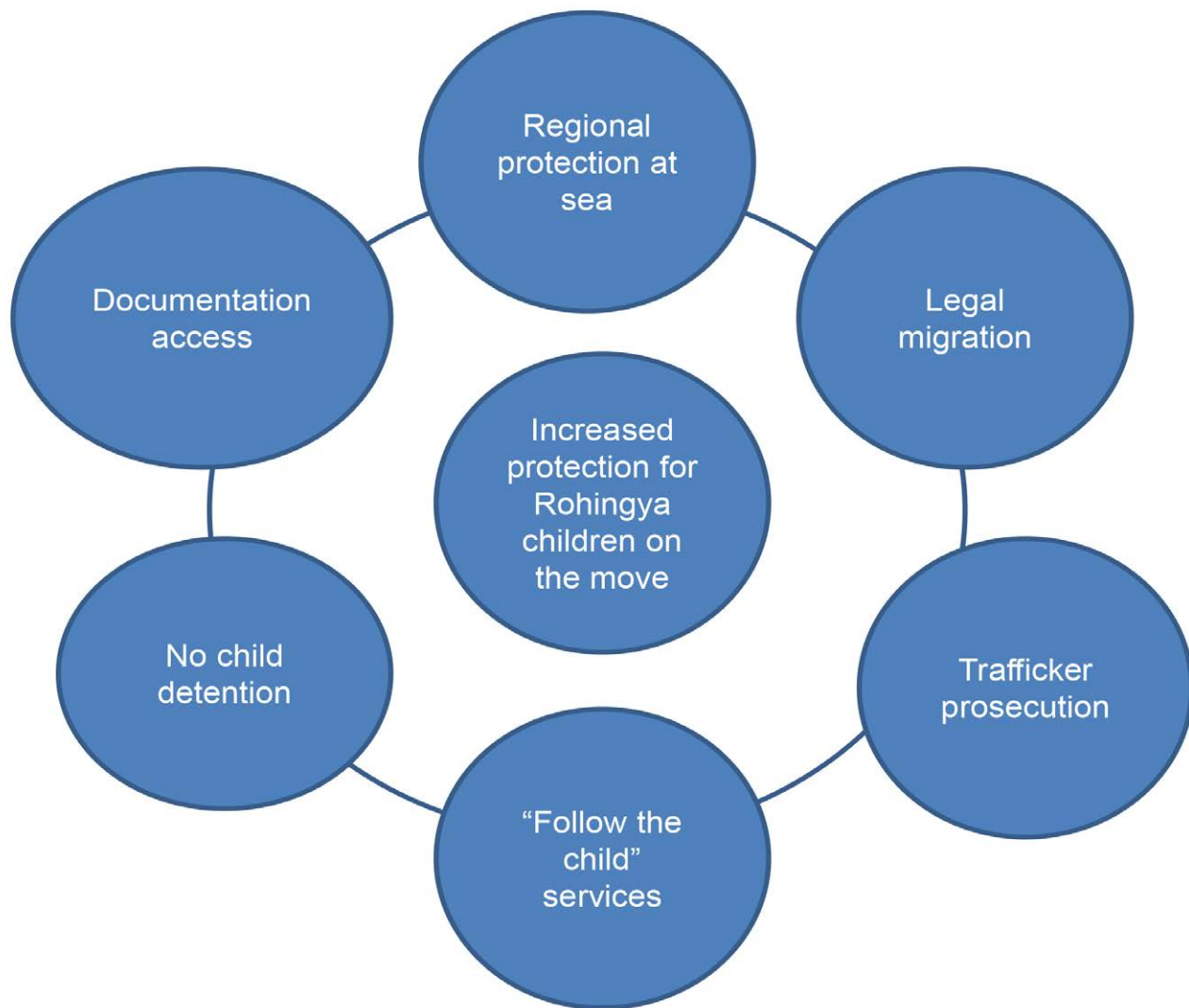
born, Rohingya children are entitled to a birth certificate and a legal identity. The governments of Myanmar and all destination countries must work together with international NGOs to ensure birth registration for all Rohingya children. UNHCR capacity should be increased in Malaysia so that newly arrived migrants receive registration documents without significant delay.

Enhance Regional Cooperation to Protect Migrants at Sea

The lack of enforceable legal frameworks in the region is a major cause of the protection problems faced by Rohingya children, including those who are forced to move. Though not a remedy, regional meetings on irregular migration, such as those hosted by Thailand in May and December of 2015, do provide a forum for exploring solutions or improvements to some of the most extreme protection challenges arising from the forced migration flows.⁹³ One recommendation stemming from these meetings is the establishment of a joint task force to administer and ensure necessary support to protect migrants stranded at sea.⁹⁴ So far no steps have been taken to implement this important recommendation. This task force should be created and implemented as soon as possible to assist future waves of ocean-bound migrants. One promising effort that could be expanded is the establishment of a Migrant Offshore Aid Station to monitor travel and assist with rescues.⁹⁵ These efforts must be accompanied by a change in “push-back or help-on” policies to allow for safe disembarkation.

Provide Avenues for Legal Migration

To allow for a safer journey, the Rohingya must be provided opportunities for legal migration which currently do not exist. Options that have been discussed at a regional level



Case Figure 5.2 Recommendations for Increased Protection for Rohingya Children on the Move

include seasonal working visas, humanitarian entry, temporary protective status, short-term visas, and temporary relocation.⁹⁶ Family reunification should be permitted to allow children to join their parents in Malaysia without being forced to be trafficked. High-income countries should consider increasing resettlement opportunities for refugees, with prioritization going towards the most vulnerable groups, such as stateless children.

Prosecute Traffickers

The impunity with which traffickers have operated has aggravated the dramatic rights violations facing Rohingya children on the move. In the absence of legal mechanisms for escaping persecution by the Myanmar government, desperate refugees will continue to use the services of professional transporters to escape harm. Current efforts by Thailand to crackdown on traffickers and corrupt government officials and police should be continued and enhanced. Special effort must be made to protect victims who are willing to testify against traffickers.

Incorporate “Follow the Child” Approach to Provide Services

In accordance with the CRC, Save the Children incorporates a “Follow the Child” approach to child protection that respects the child as an agent and seeks to understand the child’s perspective regarding his or her best interests.⁹⁷ This includes prioritizing family reunification as well as the provision of high quality services – such as health care, education, and recreation opportunities – at each stage in a child’s journey. To accomplish this, national policies must be changed to allow children to have unimpeded access to health care providers and facilities. Resources should be provided to train and support Rohingya teachers. Countries should develop an equivalency program, similar to

Thailand’s, in order to allow integration between educational opportunities available to migrants and the public school system.

Grant Access to Aid Organizations

Humanitarian aid organizations must be granted unencumbered access to Rohingya child migrants. This is currently a problem especially for those who are living in internment camps in Myanmar, informal camps in Bangladesh, and detention facilities in Malaysia. In Myanmar and Bangladesh, some aid groups have experienced success by ensuring their services are available to anyone in need living in the target area, regardless of whether they are Rohingya.⁹⁸ This has built trust with and prevented resentment from local communities, who sometimes perceive that the Rohingya are favored by international aid organizations.

Stop Harmful Policies of Child Detention

Children should never be detained for migration-related reasons. Destination countries should change their policies of detention and work together with international organizations and local communities to provide alternative care arrangements for child migrants that arrive in their territory. After a consultative process with several stakeholders, Jacqueline Bhabha and Mike Dottridge distilled a two-page set of recommendations for treatment of children affected by migration, which destination countries may find helpful as a tool.⁹⁹ Children and parents should be kept together and, for those children who are detained, living conditions should be brought up to a standard that respects their dignity and human rights.

CONCLUSION

The seriousness of the oppression faced by the Rohingya in Myanmar has sparked cries from human rights advocates and legal experts to investigate the situation as a genocide.¹⁰⁰ As long as statelessness, lack of legal protection, and the other root causes of Rohingya migration remain unaddressed, waves of migrants will likely continue to seek elusive refuge on foreign soil. As is the case in most humanitarian crises, children tend to experience a disproportionate share of the suffering. Thus, the international community must work together to protect the rights of Rohingya children on the move by implementing policies and programs that vigorously address harm prevention by improving the situation in the country of origin. It must also take urgent steps to provide for safer movement, and create better conditions for Rohingya child migrants in destination countries.

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- 29 Shum, Interview.
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- 31 Although groups of Rohingya have settled in Indonesia in the past, it is not a typical destination for Rohingya migrants. However, the Indonesian government agreed to open their borders to about one thousand Rohingya in 2015 after they were rescued from sea by Indonesian fisherman. As of March 2016, these migrants, including a significant number of children, were still being held in camps without freedom of movement or education.
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- 74 Green, MacManus, and de la Cour Venning, *Countdown to Annihilation*, 94.
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- 84 Green, MacManus, and de la Cour Venning, *Countdown to Annihilation*, 85.
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INTERNAL MIGRATION

From Bihar to Rajasthan, India



INTRODUCTION AND METHODOLOGY

Labor trafficking is a gross violation that affects hundreds of thousands of Indian children each year. The Indian government has developed an elaborate legal and policy apparatus to rescue trafficked children, then reintegrate them into families and communities. Yet these efforts currently fail to protect the rights of vulnerable children or to address the endemic causes of their abuse. This case study focuses on one substantial child trafficking nexus in India: rural children trafficked from the impoverished eastern state of Bihar to the western city of Jaipur, the tourist and production capital of India's largest state, Rajasthan. Although they do not cross national borders, these children on the move are highly vulnerable as a result of their migration. This case outlines several critical failures in prevention and protection, and highlights the need to think holistically about risk and sustainable remedies for the most vulnerable children on the move.

The following analysis examines how well the prevailing model of rescue and reintegration in India works from the standpoint of children on the move and their rights. It is based on several information sources — principally, a field research study carried out by FXB India Suraksha, a registered Indian NGO, between 2014 and 2015. The study involved extensive qualitative interviews with 49 key informants in the states of Bihar, Rajasthan, and New Delhi, including representatives of the Indian National Department of Labour, other federal and state government bodies, Child Welfare Committees (CWCs) in both destination and home states,¹ law enforcement, and national and local NGOs. The results of this field research are then compared with relevant Indian anti-trafficking laws, regulations, and protocols in order to identify gaps between law and implementation. This is complemented by a review of existing academic and gray literature on the rescue and reintegration of trafficked children. These sources were examined to address the following questions: Does the rescue and reintegration model in India work as envisioned? What do failures in the system tell us about the nature of the exploitation of this vulnerable population, and the effective delivery of protec-

tive services? Is this the best model for addressing the trafficking of children for labor exploitation?

While the pervasive issue of trafficking of girls for sexual exploitation and abuse in India has received considerable attention,² trafficking of children for forced labor is also a matter of grave concern. Government statistics indicate that over 126,000 cases of trafficking for child labor were registered during 2011-12. According to the National Crime Records Bureau, a further hundred thousand children go missing in India every year, many of whom are also thought to be trafficked for labor.³ The National Commission for the Protection of Child Rights has estimated that of children who are trafficked, 92 percent have not been rescued, 6 percent have been rescued once, and 2 percent have been rescued twice.⁴ A study by CARE of 85 child laborers rescued in 2008 from workplaces in Mumbai confirmed the prevalence of re-trafficking, finding no systems set up to help reintegrate these children, and that all but 4 out of the 85 returned to work.⁵ Considerable measurement challenges mean that these estimates grossly underreport the extent of the problem.⁶ Authoritative and credible sources estimating the annual numbers of children trafficked for labor, and re-trafficked following “rescue,” are not available.

In 2013, the United Nations Office on Drugs and Crime (“UNODC”) reported an increasing trend in migration and trafficking for labor across India:

A large number of children are migrating from economically backward areas to big cities for work. In many of these cases, children are being trafficked by middle men and agents who are bringing them to the employers in the city by extending meagre advances to the parents and giving false assurances of lucrative jobs etc.⁷

The majority of these children trafficked for labor are boys, set to work in the unorganized sector in industries such as carpet-making, gemstone-mining, jewelry units, *beedi* factories,⁸ brick kilns, *dhabas* (local highway restaurants), and tea stalls. These are often highly exploitative environments, where children work long hours in unhygienic and dangerous conditions. Children are often restricted to the confines of the work places and are highly vulnerable to abuse.

The Indian government has created a complex domestic legal framework for its anti-trafficking efforts.⁹ This includes the Indian Penal Code, 1860 (IPC), the Immoral Trafficking (Prevention) Act of 1956 (ITPA), the Juvenile Justice Act (2000), the Bonded Labor (Abolition) Act of 1976, the Child Labor (Prohibition and Regulation) Act of 1986 and the 2009 Right to Education Act, which provides that all children aged 6 to 14 years must receive free and compulsory education. In May 2016, the Ministry of Women and Child Development (MWCD) released a draft of a new Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill for comments.

In 2006, the Indian Ministry of Home Affairs established the Anti-Human Trafficking Units (AHTUs) to facilitate interagency coordination for the rescue of children and post-rescue care efforts; to monitor interventions and provide feedback; and also to collect and analyze trafficking data.¹⁰ However, until 2008 there were no consolidated guidelines for the rescue and reintegration of children trafficked for labor. That year, the Ministry of Labour and Employment published the Protocol on Prevention, Rescue, Repatriation and Rehabilitation of Trafficked and Migrant Child Labour (hereafter “the Protocol”) in order to provide “clearly laid out mechanisms and supporting

instructions, which could be relied upon by various stakeholders for taking all the necessary steps.”¹¹ The Protocol connects existing welfare schemes, such as the National Child Labour Project (NCLP), created in 1988 to “suitably rehabilitate children withdrawn from employment,”¹² the Sarva Shiksha Abhiyan (SSA) or Education for All program, the Scheme for Working Children in Need of Care and Protection, and the Integrated Child Protection Scheme.¹³

Police also inform [employers] before about rescue operation, and they carry away children from there. Recently we got informed about 250 children but we could get only 20 children. Rest have been sent to some other place. —NGO

Survey results show that nonprofits play a vital role in identification of potential victims through tip-offs and verification of information: local police, AHTUs, and Labor Department officials rarely assist in confirming a lead. Government stakeholders also rely heavily on NGOs to execute raids: one non-profit respondent stated that their organization had previously initiated rescue operations without informing local authorities at all.¹⁶ This means that raids are frequently conducted in an ad hoc manner, without accountability or monitoring. Raid teams are often not large enough to cope with the numbers of children in need, and also have inconsistent makeup: doctors and local government officials were reported to take part only sporadically, and only one of 18 NGO respondents stated that a police officer is always present during a raid. Poor organization by the raid team or direct action by the police can often alert employers to a rescue operation.

Survey responses reveal that raids are often carried out in a manner that does not adequately mitigate additional trauma to trafficked children. There are no robust limits on media involvement in rescue operations, which leads to the breach of child confidentiality and additional trauma. Multiple respondents noted that rescue operations can increase the risk of retaliation against children by the employer if the rescue is unsuccessful, as well as against non-profit representatives. Participants stated that operations are hampered by lack of resources, but also, more pressingly, by a lack of advance planning and clear operating guideline.

RESEARCH FINDINGS

Rescue Operations and Immediate Aftermath

UNICEF describes four primary methods for the withdrawal of children from harmful working conditions: rescue, negotiated withdrawal, escape/asylum, and unassisted exit.¹⁴ The Government of India’s policy response to children trafficked for labor focuses exclusively on rescue. The Protocol sets out recommendations for pre-rescue planning and execution; the collection of evidence for prosecution of employers; immediate post-rescue shelter, food and basic care for rescued children; presentation before the CWCs; and initiation of criminal proceedings. While the FXB survey shows that raids are often conducted with reasonable protection and care of the child,¹⁵ too frequently they are poorly planned and executed, leading to inconsistent filing by police of First Information Reports (FIRs) of crimes committed, low rates of prosecution, and inadequate delivery of post-rescue care for children.

Immediately following rescue, children are generally taken to a government shelter, but in some circumstances are taken to the police station, in contravention of the Protocol's guidelines, where respondents report that the "behavior of the police officials in most of the cases is not child friendly." Others have criticized this kind of detention of trafficking

Enforcement agencies are overloaded with work ... there is not a priority to intervene immediately.
— Law Enforcement

victims as unlawful and highly damaging.¹⁷ Survey respondents did not report the AHTUs as involved in any post-rescue care: transport, food, and general care needs fall to NGOs and the Labor Department.

While rescued children are fairly consistently presented before the CWCs for further protection, survey responses show that appropriate criminal action against employers or traffickers is not taken.¹⁸ Essential First Information Reports are not always filed and there is confusion about whose responsibility this is.¹⁹ Respondents stated that criminal prosecution or civil action against offending employers is rarely pursued, contributing to a wide culture of impunity. All but two study participants stated that employers are "rarely" or "never" arrested. Respondents stated it was even less likely that an employer be convicted of a crime. Additionally, rescued children are often not able to make one single statement regarding their trafficking experiences, and are compelled to recount their story for a "counseling report," used for creating a reintegration plan, and also for the criminal case. Strikingly, nearly all participants stated that the unavailability of an interpreter to understand a child's statement impedes the care and transfer plan of children after rescue.

Reintegration

Children who have been rescued from trafficking situations face a huge range of challenges in successfully reintegrating into society. While "reintegration" has no universally accepted definition, it should be understood as a long-term, holistic process. Surtees defines it as:

*A process of recovery and economic and social inclusion ... [which] includes settlement in a stable and safe environment, access to a reasonable standard of living, mental and physical wellbeing, and opportunities for personal, social and economic development, and access to social and emotional support.*²⁰

Existing Indian reintegration strategy focuses on the provision of "educational rehabilitation for the child and economic rehabilitation for the family."²¹ The Protocol requires that the CWCs determine appropriate accommodation for rescued children, tracing their families and thoroughly assessing the suitability of return. It provides that rescued children enter non-formal education in "bridge schools" to help them catch up on missed years before re-joining the formal school system. Programs for educational reintegration also serve as the principle vehicle for other important reintegration services, such as vocational training and health check-ups.²² Physical and psychological health needs of formerly trafficked children are otherwise not addressed. The Protocol states that the Labour Department must "take necessary action for

Every agency has its own statement recording process. They take statements separately from the child. In my view this process is not child friendly.
— Government Official

obtaining compensation/claim/wage arrears on behalf of the rescued child.”²³ Employers must deposit Rs. 20,000 per rescued child

Because people are not aware [of reintegration plans], they don't have sufficient knowledge about this. The matter passes through table-to-table and somewhere it gets dumped down. — CWC Official

into a special welfare fund, and one adult family member of the rescued child must be provided with employment; failing that, that the State Government

must make an additional contribution of Rs. 5000 to the welfare fund.²⁴

The FXB study demonstrates that these frameworks currently fail to protect children at risk, leaving “rescued” children exposed to the same structural vulnerabilities that led to their being originally exploited, with the predictable outcome that many of them are re-trafficked.²⁵ Relevant stakeholders are unaware of and/or do not implement existing reintegration policy. Participants stated that both short- and long-term reintegration plans for rescued children are “never prepared” or “never implemented.” Survey results also showed that reintegration services are provided to rescued children in an ad hoc, disjointed manner, not guided by any overarching holistic plan for the child’s recovery. Almost all the participants (96 percent) stated that individual cases are closed within four months, with no subsequent follow-up or monitoring of the consequences of return.

We don't have [the] human resources. We don't have proper coordination between different layers of our social structure like district, village or tehsil levels. Those who are living in the districts, have no way to check and verify the child's address. — CWC Official

Although the Protocol calls for a thorough assessment of the child’s family home to see if it is a safe environment for return, survey results show that such verification happens inconsistently, and thorough home assessments do not happen. This is partly due to the huge geographic and logistical barriers to such assessments: children are often trafficked over 1,500km from their homes. One NGO participant commented that after children “are reintegrated with their families, there is no follow up—nobody takes care of them.” In line with other reports, the FXB study shows that alternative accommodation options to family return, such as foster care or institutional care, are limited, underfunded, and not subject to adequate monitoring and evaluation.²⁶ Additionally, there is no clearly defined responsible party to make arrangements or carry out the transfer of the child back to his/her home state. This responsibility therefore largely falls on non-profits.

Although educational rehabilitation is central to the Indian government’s reintegration strategy, in reality, rescued children are not consistently enrolled in programs and there is no clear responsibility for the child’s educational enrolment. Survey results reveal poor coordination and communication between formal schools and bridge schools, which creates logistical barriers to the transfer of children into the formal system and to the provision of necessary specialized education and health services. Bridge schools also suffer from acute lack of human and financial resources: teaching staff are poorly remunerated and often under-qual-

ified.²⁷ The psychological, emotional, or physical health needs of rescued children are not satisfactorily addressed, either immediately following raids or in the long-term process of recovery. No health services are provided to meet the health needs of the returned children's families.

Study participants were almost uniformly aware that rescued children ought to receive Rs. 20,000 from their previous employer. Yet they acknowledged that, in practice, children rarely receive any compensation at all either from the state or from the employer. Survey results indicate that deficiencies in the government's economic reintegration programs are principally caused by technical and administrative failures, not a lack of resources.

PRINCIPAL CHILD PROTECTION ISSUES

Shortcomings of the rescue and reintegration model

At the macro level, official interventions in India affecting trafficked children are primarily considered a labor issue, not a human rights and child protection issue. Remedial measures focus on removing children from work, returning them to their pre-trafficking context, and criminalizing traffickers and employers. This de-emphasizes child-friendly interventions and ignores the broader welfare needs of children who have undergone traumatic experiences, as well as the structural factors that initially pushed them into exploit-

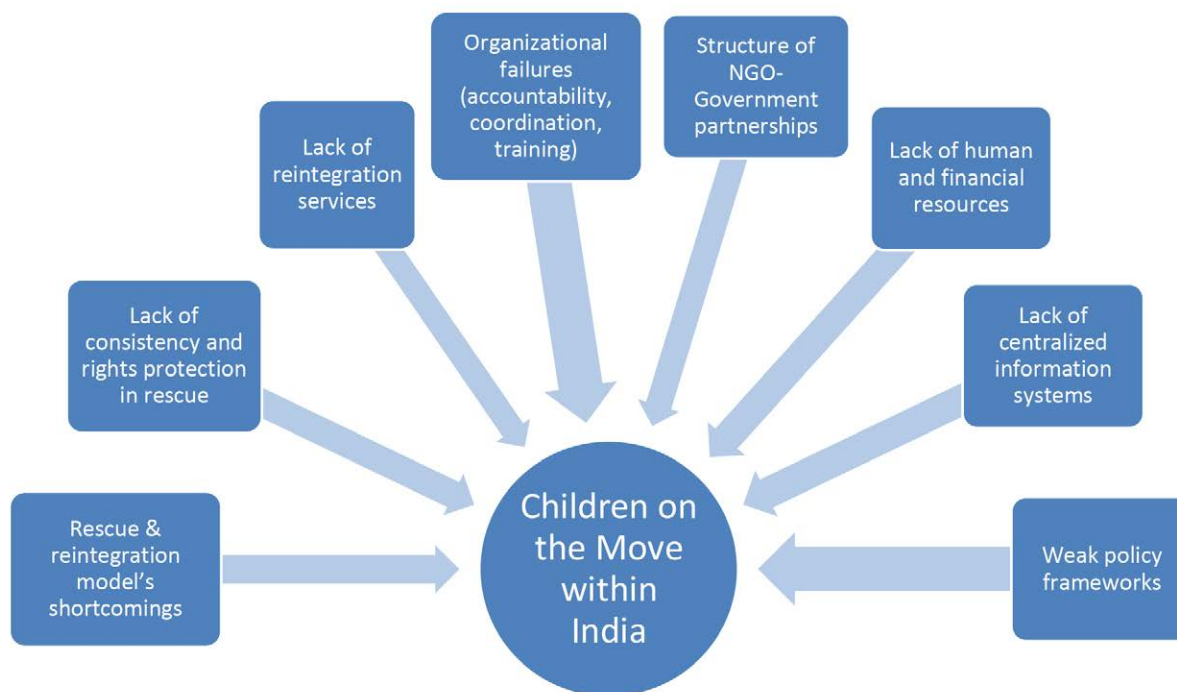
[Children] rarely get financial help, it is given only when the number of children is like 3-4 but in group of children then there is no chance of financial help or compensation. It is believed that child's freedom from labor is itself a compensation.

— NGO

ative migration. As a result, operations to rescue children from exploitative work contexts are carried out in isolation from preventative efforts to address structural determinants of vulnerability, as well as ex post efforts to support the children's long-term recovery within a viable family unit. Yet, as previous analysis has well noted, one cannot be effective without the

other. The raid and reintegration model has been criticized for its "blinkered approach, whereby the context of victims of trafficking, context of socio-economic and political forces that creates vulnerability for victims are ignored."²⁸

A rights-based approach to the trafficking of children for labor exploitation would involve holistic preventative measures targeted at areas of high out-migration and specific at risk populations, as well as a model of rescue and reintegration grounded in these same child welfare considerations. It would ensure that children who are trafficked are never detained and also have a clear voice in decision-making processes. It would emphasize careful and rights-respecting rescue procedures integrated with appropriate transitional services: the provision of health services geared to facilitating the child's recovery from the trauma of exploitation, as well as carefully supervised access to educational opportunity, safe and supportive accommodation, and broad poverty-reduction initiatives. Study results underscore significant potential for increased engagement of familial, village-level, and community stakeholders in reintegration. Issues of caste and class discrimination, of pervasive inequality in access to land, water,



Case Figure 6.1 Key Protection Issues for Children on the Move within India

and other basic resources are critical drivers of child trafficking that are routinely ignored or neglected.

Failure to carry out rescue operations in consistent and rights protective manner

Clear and detailed standard operating protocols for rescue operations are lacking. As a result, there is a failure to allocate precise responsibility and leadership for the planning and execution of raids. Rescue operations are also not supported by centralized intelligence systems, hindering information sharing, with the result that raids are carried out on a reactive basis, based on tip-offs, rather than as the result of proactive investigations.

These deficits contribute to unclear allocations of responsibility; the inappropriate use of police stations as a holding site for rescued children; privacy/protection deficits; inadequacies in shelter settings; and serious communication problems resulting from a failure to address language issues that arise during these operations.

Failure to provide adequate reintegration services

Operations to rescue children from situations of exploitation are currently carried out in isolation from efforts to support their long-term recovery. Yet one cannot be effective without the other. Long- and short-term reintegration

plans for rescued children, which integrate the different necessary services and ensure their provision, are not developed or implemented. Key stakeholders are unaware of existing reintegration policies and individual services are provided in an ad hoc, isolated manner. Rescue and return to a “family” situation is considered sufficient, but this does not address the many complex needs of children who have been trafficked for labor.

Organizational failures

Lack of clear accountability

At the macro level, no one office or individual is responsible for the overarching coordination of this multi-stage and logistically challenging process. In the absence of accountability clearly assigned to implementing departments, and without consistent and effective monitoring of services delivered, government stakeholders routinely evade responsibility, deflecting blame for protection failures to agencies other than their own or to the non-profit sector. Meanwhile, children receive a series of poorly thought-out, disjointed and fragmented services, if they do not fall through the cracks entirely. Although the mandate for ensuring careful rescue and sustained and comprehensive reintegration is technically assigned to the Anti-Human Trafficking Units, survey results clearly demonstrate that they are comprehensively failing to fulfill this mandate. The AHTUs lack clear guidelines, adequate supervision and monitoring, and necessary resources.

Earlier, departments used to say that they have shortage of manpower ... But in last 3 to 4 years, this gap has been filled. In my opinion, labor officers have so many responsibilities but they should be trained ... there should be some orientation programming or something like refresher training program for them.
—Government Official

Lack of interagency coordination

Because there is no established protocol for regular communication between implementing partners, stakeholders do not work together to implement the child’s rescue and reintegration plan in a holistic manner. Stakeholders separated by distance and sometimes language, affiliated with diverse organizations, do not collaborate to keep records of the services that individual children have already received or what their specific immediate and long-term needs are. In 2014, the Ministry of Home Affairs launched an online human trafficking portal to coordinate efforts of state and national government agencies. This has yet to have a significant impact on coordination failures.

Lack of training

Another crucial issue identified by the FXB study is a lack of standardized training programs for implementing partners, that include information about the different responsible partners for service provision, the content of policy requirements, and standards for implementation. As a result, personnel administering services to trafficked children lack a thorough and reliable grasp of relevant policies and regulations, and they frequently fail to take advantage of resources that could be utilized to promote more effective interventions.

Poorly structured NGO-government partnerships

Much of rescue and reintegration is conducted by the non-profit sector, which, though usually a committed and innovative provider of services for trafficked children, is not sufficiently integrated with government entities to provide the level of consistent, transparent or sustainable care needed in the long run. Positive non-profit initiatives are not adequately supported or scaled into state policy. Equally, non-profit initiatives that do not meet acceptable standards for working with vulnerable children are not subject to independent monitoring or evaluation. As one NGO respondent commented, “There are so many NGOs active in this field but they don’t care about proper system developing.” Ultimately, the Indian Constitution places primary responsibility on the State to ensure that children’s needs are met and their human rights fully protected.²⁹

Insufficient human and financial resources

Rescue and reintegration services could undoubtedly benefit from larger and more consistent funding support. This is particularly necessary to support bridge schools, income generation projects for families, health services for families and rescued children, government and non-profit shelters, legal services to secure compensation and effective prosecution of abusive traffickers and employers, and independent monitoring and evaluation of programs. Yet this study encouragingly suggests that inadequate resources are not the principal barrier to effective intervention. Rather, resources are *ineffectively allocated*, with the result that opportunities for protection and sustainable reintegration are squandered. For example, funding to compensate

children and their families post-rescue rarely reaches intended beneficiaries.

Lack of centralized information systems

Stakeholders consistently pointed to the lack of reliable data as a barrier to creating targeted and effective anti-trafficking policy. Failures of information sharing between agencies also impede the creation of long-term, integrated reintegration plans. A central reporting system would reduce confusion by replacing the wide variety of case reporting forms used by police, medical practitioners, and social workers with one centralized system. The Ministry for Women, Children and Development, under the ICPS, is developing a system for child protection data management and reporting, as well as a tool for monitoring the implementation of all its child protection schemes. Stakeholders surveyed did not display knowledge of this new system or its impacts.

Weak policy frameworks

In addition to implementation failures, there are several deficiencies in the wording and structure of Indian policy and legal frameworks. First, there is no detailed set of standard operating procedures for raids. The roles and responsibility of each individual and team are not assigned, undermining strong coordination at the outset between police teams, prosecutors, interpreters, and victim service providers. Additionally, there are no guidelines specifically tailored for rescue carried out while children are in transit, before reaching the site of exploitation. There is no clear elaboration of appropriate shelter locations for rescued children, or of the services to be provided to them during and

immediately after rescue. Finally, there is no clear identification of the agency responsible for accompanying the rescued child back to the state of origin.

Reintegration, on the other hand, is treated as a fixed and short-term process, so the long-term needs of children and their families are not addressed. The potential risks of returning trafficked children to their families are not carefully incorporated into decision-making processes, and standards for appropriate alternative accommodation are not articulated: no monitoring and evaluation mechanisms are required for shelters. There are no guidelines for coordinating “bridge schools” with formal schools. Policies do not adequately address the curricular and teacher training issues that reintegration of trafficked children raise. No financial, emotional, or logistical support is offered to the families of returned children, and the challenge of supporting the family’s economic reintegration is reduced to the provision of lump sum compensation, which may or may not ever reach the family. Little official guidance is offered on how this should be delivered. Finally, the acute health needs of rescued children, both physical and psychological, are acknowledged as an afterthought, without concrete policy initiatives to ensure delivery of suitable services.

CONCLUSION

Recent developments in India underscore the immediate vital importance of concrete policy reform and advocacy on the issue of rescue and reintegration of children trafficked for labor. In May 2015, the Indian union cabinet approved an amendment to the country’s Child Labour Prohibition Act that permits children below the age of 14 to work in select “non-hazardous” family enterprises. This

sanctions work in industries carpet-weaving, *beedi* (cigarette) rolling and gem-polishing,³⁰ significantly weakening protections for trafficked children. In December 2015, the Indian Supreme Court asked the Ministry of Women and Child Development to create a single, nation-wide Organized Crime Investigation Agency (OCIA) to combat trafficking. Work is now underway to establish this agency, which will be primarily concerned with increasing prosecution of traffickers involved in the commercial sexual exploitation of women and girls.³¹ This makes invisible the pervasive issue of labor trafficking of boys, and promotes a criminalizing approach over the holistic child-welfare approach advocated in this analysis.

This case study clearly demonstrates the need for a well-integrated and better overall systemic response to the exploitation of children migrating internally. The current rescue and reintegration model cannot be successful while conducted in isolation of preventative measures that address the root causes of this phenomenon. Equally, meeting the diverse and specialized needs of children trafficked for labor exploitation calls for a coordinated and sustained policy action, supported by adequate, long-term funding. Reintegration services should be grounded in the contextual realities of individual children trafficked for labor and informed by established best practice. Integrating a child-rights approach to rescue and reintegration policy is not only the best thing from the perspective of exploited children, but also the only effective way to tackle this pervasive and urgent social problem in the long term.

ENDNOTES

- 1 Child Welfare Committees are the district-level authorities for the care, protection, treatment, development, and rehabilitation of children in need of care and protection.
- 2 See, for example, Paramita Banerjee, “Where Have All the Flowers Gone? An Evidence-Based Research Into Sex Trafficking of Girls” (Sanjog, 2010); ILO, *The Demand Side of Human Trafficking in Asia: Empirical Findings*. (Bangkok: International Labour Office, 2006); Christine Joffres et al., “Sexual Slavery without Borders: Trafficking for Commercial Sexual Exploitation in India,” *International Journal for Equity in Health* 7 (2008): 22.
- 3 United Nations Office for Drugs and Crime (UNODC), *Current Status of Victim Service Providers and Criminal Justice Actors in India on Anti-Human Trafficking* (New Delhi: UNODC, 2013), 9; CRY Organization, “Missing or Sold? Child Trafficking in India,” in *Human Trafficking: The Stakeholders’ Perspective*, ed. Veerendra Mishra, 136.
- 4 Shantha Sinha, *National Commission for Protection of Child Rights (NCPCR): The First Six Years* (New Delhi: NCPCR, May 2013), 13.
- 5 CARE and CRY, *Developing a New Perspective on Child Labour*, *supra* note 31, at 3. Additionally, an informal report made to Harvard FXB by the NGO Action Aid during a field visit to Gaya Railway Station in Bihar in Jan 2014, stated that in one case over a third of rescued children had been re-trafficked within three months from their return date.
- 6 National Commission for the Protection of Child Rights (NCPCR), *Right to Education and Total Abolition of Child Labour: Freedom and Dignity for all Children*, Briefing Papers, (NCPCR), 1.
- 7 UNODC, *Current Status of Victim Service Providers and Criminal Justice Actors in India on Anti-Human Trafficking*, 9.
- 8 A *beedi* is a thin, hand-rolled cigarette.
- 9 Internationally, India has ratified the United Nations Convention against Transnational Organised Crime (UNTOC) and its three supplementing Protocols. India is also a signatory to the UN Convention on the Rights of the Child (“CRC”); see the Framing Review for more information.
- 10 As of December 2014 there were AHTUs in 225 of India’s 640 districts. See UNODC, *Current Status of Victim Service Providers and Criminal Justice Actors in India on Anti Human Trafficking*, 29-30; Indian Ministry of Home Affairs, “Launching of Web Portal on Anti Human Trafficking,” Government of India, February 20, 2014.
- 11 Indian Ministry of Labour and Employment, “Protocol on Prevention, Rescue, Repatriation and Rehabilitation of Trafficked and Migrant Child Labour,” 2008, 8.
- 12 Ministry of Labour and Employment, Government of India, “National Policy on Child Labour – 1987 (NCLP).”
- 13 In 2011, the government initiated the Grant in Aid (GIA) Scheme that covers 75% of the project costs incurred by NGOs working towards the elimination of the child labor in districts not covered by the NCLP.
- 14 United Nations Children’s Fund (UNICEF), “Rapid Assessment of Existing Practices and Mechanisms Concerning Rescue, Recovery and Reintegration of Child Victims of Trafficking between India and Bangladesh” (New Delhi: UNICEF, 2008).
- 15 See Ministry of Labour and Employment, “Protocol on Prevention, Rescue, Repatriation and Rehabilitation of Trafficked and Migrant Child Labour,” 21-25.

- 16 Sanjai Bhatt, *Not Made By Children Project: an impact assessment study* (September 2013), 34.
- 17 Anne T. Gallagher and Elaine Pearson, "Detention of Trafficked Persons in Shelters: A Legal and Policy Analysis" (Rochester, NY: Social Science Research Network, October 20, 2008).
- 18 All but two study participants stated that employers are "rarely" or "never" arrested. Respondents stated it was even less likely that an employer be convicted of a crime.
- 19 12 of 18 NGO respondents and 9 of 10 law enforcement respondents stated that it is the Labor Department's responsibility to file the First Information Report (FIR): only 1 of 8 Labor Department officials thought it was their duty to do so.
- 20 Rebecca Surtees, *Monitoring Anti-Trafficking Re/integration Programs: A Manual* (Washington, DC and Brussels: Nexus Institute, 2010), 24.
- 21 Ministry of Labor and Employment, "Protocol on Prevention, Rescue, Repatriation and Rehabilitation of Trafficked and Migrant Child Labor," 35.
- 22 Anoop K. Satpathy, Helen R. Sekar and Anup K. Karan, *Rehabilitation of Child Labor in India: Lessons Learnt from the Evaluation of NCLPs* (Noida: V.V. Giri National Labor Institute, 2010), 5.
- 23 Ministry of Labor and Employment, "Protocol on Prevention, Rescue, Repatriation and Rehabilitation," 32.
- 24 Supreme Court of India, *M. C.. Mehta versus State of Tamil Nadu*, 1996.
- 25 See CARE and CRY, "Developing a New Perspective on Child Labour: Exploring the Aftermath of Mumbai Raids Conducted from 2008 Onwards" (June 2014). Additionally, an informal report made to Harvard FXB by the NGO Action Aid during a field visit to Gaya Railway Station in Bihar in Jan 2014, stated that in one case over a third of rescued children had been re-trafficked within three months from their return date.
- 26 Aangan, "Changing Spaces"; United States Department of State, "2013 Trafficking in Persons Report – India;" Ammu Kannampilly, "'Culture of abuse' at India's children's care homes," *The National*, July 15, 2012, www.thenational.ae/news/world/south-asia/culture-of-abuse-at-indias-childrens-care-homes
- 27 Bundipur Zutsi, *Seeking to Bridge the Divide: Linking Formal and Non-Formal Education in Uttar Pradesh, India* (Geneva: International Bureau of Education, 2004), 8.
- 28 Banerjee, "Where Have All the Flowers Gone? An Evidence-Based Research Into Sex Trafficking of Girls," 5.
- 29 Constitution of India, 1950.
- 30 Chetan Chauhan, "Cabinet clears changes to Child Labour Act, those under 14 can work in family businesses," *The Hindu Times*, May 13, 2015, www.hindustantimes.com/india/cabinet-clears-changes-to-child-labour-act-those-under-14-can-work-in-family-businesses/story-mAq75Cld1opnUY0t8RAiOI.html
- 31 Amrita Madhukalya, "Harsher punishment for traffickers of minors under new law," *DNA India*, May 7, 2016, www.dnaindia.com/india/report-harsher-punishment-for-traffickers-of-minors-under-new-law-2209944

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LIVING ROUGH

On the Street in Senegal



INTRODUCTION

An estimated 50,000 children are forced to beg on the streets of Senegal every day.¹ These children are known as *talibés*, a French word originating from the Arabic, *talib*, meaning a person who seeks knowledge.² Talibés are male students between the ages of five and eighteen at Quranic schools called *daaras*.

Daaras are rooted in Senegal's history, culture, and religion and date back to pre-colonial times. Central to the Quranic education is the relationship between a talibé and his teacher, the *marabout*.³ While many marabouts care for their talibés and provide them with a high quality Quranic education, some take advantage of the system and exploit the children for their own economic gain, denying children their right to education, health, childhood, and freedom. This report focuses on the exploitive *daaras* and is not intended as a criticism of the many devoted marabouts providing excellent education and care for children in *daaras*. In particular, this report serves as an example of child migration and exploitation fueled by deeply entrenched traditions. Forced begging through *daaras* is concentrated in but not isolated to Senegal. Children are widely trafficked and exploited as part of their Quranic education across West Africa. This phenomenon leads to multiple child protection challenges, exacerbated by variations in cross-border policies and practices.

Religious traditions

Quranic schools have a long tradition in Senegal, dating back to the rise of Islam in the eleventh century.⁴ Even after the colonization by the French, they remained the most respected and dominant form of education. Efforts by the French to regulate *daaras* were viewed as attempts to limit the influence of Islam and were thus met with widespread resistance, the aftermath of which can still be felt today when the government attempts to enact regulations.⁵

Many families send their boys to daaras to learn Arabic and to memorize the Quran. Great value is placed on learning the Quran and marabouts are thus respected, influential figures.⁶ Traditionally, marabouts offer free education as well as room and board to their students. In return, talibés helped cultivate the land around the daara to sustain the students and teachers. Occasionally they would beg to fund supplemental items and as a way to learn humility.⁷ This begging is the origin of the modern-day forced street begging, which holds little semblance to its original form. Forced begging is perpetuated by Senegal's strong culture of alms giving, which is one of the tenants of Islam. People will give alms if they want a job or if they had a nightmare, providing ample opportunities for marabouts to make a profit.⁸ The long tradition of begging as part of talibés education as well as the notion of alms giving in Islam serves as a means of justification for the exploitation of tens of thousands of children through forced begging.

A profitable business

After independence and at the onset of urban migration in the 1970s, many daaras moved from rural to urban areas. Without the traditional means of sustaining the school through agriculture and village support, talibés were sent to the streets to beg for money and food. Many exploitative daaras emerged as marabouts began to realize how profitable this business could be. While the daily quota talibé must collect varies by marabout, it is not unusual for marabouts to receive the equivalent of 10,000 US dollars per child annually.⁹ In Senegal, child begging is almost exclusively linked to marabouts trying to profit from children. A study by UNICEF, the World Bank, and the International Labour

Organisation (ILO) found that 90 percent of all children begging on the streets of Dakar were talibés.¹⁰

This clear violation of children's rights is apparent to anyone walking the streets in Senegal's cities and yet there has been no concrete action by the government to provide protection or to change the status quo. Policies that would protect talibés and penalize those who are trafficking and abusing children exist or have been proposed, but political will is thus far lacking to enforce or pass these laws.

RESEARCH FINDINGS

This report is based on publications by non-governmental organizations (NGOs), especially Human Rights Watch, which investigated the issues concerning talibés in Senegal in 2010, 2014, and 2015. In addition, a literature review of existing peer-reviewed academic articles was conducted as well as interviews with three key informants: Issa Kayouté, director of the talibé rescue center La Maison Gare in Saint-Louis, Senegal; Mathew Wells, program officer at Center for Civilians in Conflict; and Lauren Seibert, West Africa research associate at Human Rights Watch.

Abusive practices

Talibés are subjected to various forms of abuse, including forced begging in unsafe conditions, denial of access to education, severe physical abuse, poor living conditions, and poor health.

Talibés are sent to the streets to beg for money and food. The marabout sets a quota for each day. If children do not meet the quota,

they are often brutally beaten or not allowed to return back to the daara, forcing them to sleep on the streets. Nearly every talibé interviewed by Human Rights Watch reported incidences of severe physical punishment.

When I could not bring the quota, the marabout beat me—even if I lacked 5 CFA (\$0.01), he beat me. It was always the marabout himself. He took out the electric cable and we went to the room. I stood there and ... he hit me over and over, generally on the back but at times he missed and hit my head. I still have marks on my back from the beatings.¹¹

Spending so much time on the streets, weaving between cars and buses asking for money, leaves talibés vulnerable to traffic accidents. Numerous deaths and injuries have been reported.

My friend—we begged together—was killed by a car. It happened when the sun was almost down, during the cold season. We were out begging and a car hit him. It was a big car. I don't know how it happened. The car just hit him and he died, right next to me. The car stopped and people came around. People were shouting at the driver. I think he was taken to the hospital—someone took him in a car—but he died. I never heard the marabout talk about it.¹²

Even when the children are off the streets, they are subjected to harsh conditions. The daaras are overcrowded, lack proper sanitation and protection from the elements, and are of poor structural integrity.¹³ It is not uncommon for over thirty children to sleep in one room, allowing for the rapid spread of disease. In 2009 a daara collapsed, leaving one child dead and four severely injured.¹⁴ In 2013 an overcrowded daara broke out in fire, killing nine children and causing public outrage over the conditions in which talibés live. The President vowed to make changes, but no one was ever held responsible and a proposed law to regulate daaras was never passed.¹⁵

Other physical needs like food and clothing are also left unmet at the daaras. Most talibés are malnourished and do not receive food at their daaras.¹⁶ They must survive on what they find on the streets.¹⁷ As a result, talibés have precarious health, but over 70 percent have reported not having access to medical care.

When I was sick, I was never treated by the marabout. If we said that we were sick, the marabout would tell us to find medicines ourselves. So generally I would just suffer, try to sleep it off. I had skin diseases and malaria several times, but diarrhea was the most frequent problem.¹⁸

From talibés to street children

Many talibés ultimately end up as street children in Senegal's major cities. They turn to the streets out of fear. Some do not return to their daaras because they were unable to collect the daily quota demanded by their marabout, while others plot their escape because they can no longer bear the abuse.¹⁹

For many of these boys returning home is not an option, as they fear disappointing their families. There have also been many instances in which runaway talibés are returned to the daara by their parents out of conviction that they must complete their education. For children brought to Senegal from neighboring countries, returning home is even more challenging.²⁰

Cross-border child trafficking

About half of the talibés in Senegal are from Senegal with the other half coming primarily from Guinea-Bissau followed by the Gambia. A minority also comes from Mali, Mauritania, and Guinea. Human Rights Watch conducted an analysis of trafficking routes within

Senegal as well as cross-border trafficking between Guinea-Bissau and Senegal, but documentation on other trafficking routes is currently lacking.

Children are recruited through multiple avenues. Parents frequently have prior connections to the marabout; he might be of the same ethnic group and have ties to the region in which he is recruiting.²¹ Some marabouts from Senegal recruit boys from remote villages in Guinea-Bissau with the help of local associates who promise the poorest families a free Quranic education for their sons.²² Families frequently cite poverty as one reason for sending their children to daaras because they lack the resources to adequately care for their children at home.²³

Children are packed into trucks and ferried across the border. In most instances the trafficking would be easy to spot and could be stopped at border crossings, but it is all too common for border guards to wave through trucks full of young boys. Traffickers purportedly pay police officers at border crossings an agreed-upon amount of money per child.²⁴

KEY CHILD PROTECTION ISSUES

Failure to regulate Quranic Schools and the denial of access to education

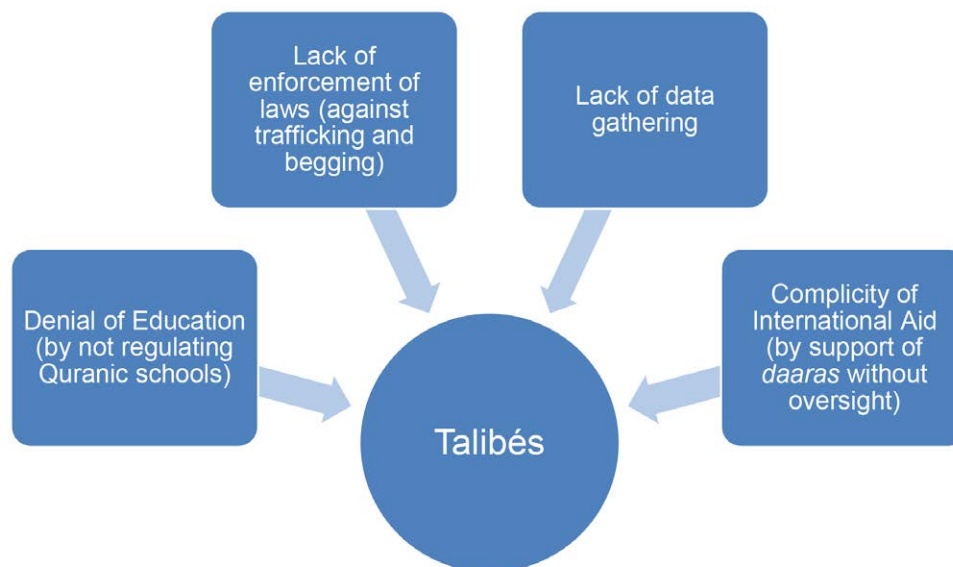
Efforts to regulate Quranic schools have been met with resistance ever since French colonial rule when regulatory attempts were viewed as attacks on Islam. The first regulation attempt to establish professional criteria for marabouts and standardize pedagogy was proposed by the Ministry of Education in 1978 but never passed.²⁵ One government

official explained the three-decade-long delay: “It is impossible for the state to regulate immediately. It must first gain the marabouts trust and reflect further on the institution of daaras.”²⁶

In the 1990s the government again promised to set standards. In 2013 President Macky Sall oversaw the drafting of the “Condition de la reconnaissance et aux modalités d’attribution des subventions, primes et appuis aux Daaras” [Status of Daaras], a draft law that would regulate Quranic schools, but it has yet to be passed by the National Assembly.²⁷ Under the draft law, Quranic schools would have to comply with curriculum standards, education and health inspections, and minimum teacher qualifications. In addition, all forms of begging would be outlawed. In return, schools would receive official government recognition and be eligible for subsidies and other incentives.²⁸ In 2014 an official at the Ministry of Education said that all relevant ministries had commented on the law and that the National Assembly was ready to review it;²⁹ however, as of June 2016 the law had still not been passed due to ongoing review and proposed amendments by religious leaders.³⁰

Senegal is in violation of its commitments to children’s well-being under the Convention on the Rights of the Child (CRC).³¹ Particularly stark violations are being committed in respect to talibés’ right to education.

Article 28 of the CRC requires that states “make primary education compulsory and available free to all.”³² It is particularly unfortunate that children are denied an education by the very marabouts who are supposed to be their teachers. Many exploited children leave the daaras as young adults having not only been denied a formal education, but also



Case Figure 7.1 Key Protection Failures Affecting Talibés

not having learned the Quran. With talibés in exploitive situations spending an average of eight hours per day on the streets begging, there is little time left for studying the Quran.³³

Lack of enforcement of existing laws against exploitation and trafficking

Senegal has legislation in place that could be used to protect talibés. Laws prohibiting forced begging, child trafficking, and abuse exist but are not frequently invoked.

Forced begging is considered one of the worst forms of child labor.³⁴ Article 245 of the Senegalese Penal Code prohibits begging with the exception of collecting alms as part of religious traditions.³⁵ This exception causes confusion for many, including police officers and prosecutors. Exploitative marabouts use this as a means of justification, but one religious scholar explains: “The tradition, for those who begged, was to spend a couple minutes in their village going to houses to ask

for food, to teach humility. It wasn’t to take kids to the city and force them to beg all day for money. Any real marabout is against such a practice.”³⁶

In 2005 Senegal passed a law that criminalizes the profiting from others through forced begging.³⁷ While a promising step on paper, enforcement of the law is extremely rare. Human rights experts are unaware of any cases in the last year in which a marabout was convicted under this law.³⁸

Some neighborhoods in Dakar have begun to enforce the anti-begging law. In April 2016 the mayor of Colobane called to end all begging,³⁹ offering talibés the opportunity to receive alms at local mosques from 2:00 to 5:00 pm instead.⁴⁰ While purportedly effective in keeping children off the streets, the success of such measures is still to be determined. It is unclear if such decrees are intended to truly benefit the talibés or merely keep neighborhoods appearing clean and safe. In addi-

tion, it is unclear if talibés are able to collect their daily quotas at the mosque or if they are begging in other neighborhoods to supplement their earnings instead. Another concern voiced is that marabouts will simply increase the daily quotas for the children so they can profit off of the mosque alms as well as street begging.⁴¹

The same 2005 law also prohibits human trafficking, making trafficking punishable by up to ten years in prison and a fine of up to the equivalent of 46,520 US dollars.⁴² While Guinea-Bissau has a better track record in enforcing anti-trafficking laws, there is a gross failure on the Senegalese side to monitor the borders. Child trafficking occurs openly. Matthew Wells, a human rights expert with Civilians and Conflict, notes “It’s not hard to spot eight to twenty boys in a station wagon being driven across the border by an adult man, and yet nothing happens.”⁴³ In addition, there are no statistics kept on the total number of trafficking investigations, prosecutions, convictions, or penalties assessed.⁴⁴

The failure to protect children against trafficking puts Senegal in violation of the CRC, which states in Article 35 that “States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.”⁴⁵

Gaps in data

In 2014 the government began a comprehensive mapping of Quranic schools across Dakar to identify the number of students living in abusive daaras and to document exploitation.⁴⁶ The mapping identified over 30,000 boys in Dakar alone who are subjected to forced begging and poor living conditions.⁴⁷

The actual number of boys is likely higher as corrupt marabouts might have avoided inspection. In its 2010 report, Human Rights Watch estimated there to be over 50,000 talibés forced to beg across the country every day.⁴⁸

Several religious leaders led their own mapping of daaras in the city of Touba and found that out of 1,275 daaras, nearly fifty percent were exploitative.⁴⁹ Other cities are likely to have similar statistics, but the full extent will remain unknown until the government completes a nationwide mapping of daaras. As the number of talibés continues to rise, it is especially important to understand where abusive daaras are concentrated and who is being exploited. While Human Rights Watch mapped the most common trafficking routes within Senegal and from Guinea-Bissau into Senegal, cross-border trafficking between Senegal and the Gambia has not been investigated.

This report focuses on Senegal because it is the country that has been most researched. However, forced begging by talibés (under various names) is pervasive across West Africa,⁵⁰ with virtually no documentation of the abuses or knowledge of the scope of the problem including the total number of children involved and trafficking patterns. Nigeria, Niger, Mali, Burkina Faso, and Cote d’Ivoire, though less acute, are also considered hot spots of forced child begging and cross-border trafficking.⁵¹ If the abusive practice of forced begging is to be ended, children must be protected at a regional level.

Shortcomings of international donors

Many well-intentioned practices by international aid organizations have inadvertently

fueled the problem. Numerous organizations provide services to talibés, marabouts, and daaras, ranging from clothing and food to subsidizing the marabouts quota. These benefits have led to a proliferation of daaras moving from rural to urban areas. Corrupt marabouts are drawn by the prospects of higher profits that can be earned through international aid organizations.⁵² Aid organizations helping talibés need a coordinated, long-term strategic plan to systematically help end forced begging. An innovative approach led by UNICEF and Terres des Hommes, for example, is to resettle urban daaras back to rural areas to keep children in their villages where there is more communal oversight and begging is not omnipresent.⁵³

CONCLUSION

The lack of government enforcement of the most basic laws protecting children is inexcusable. Year after year the status quo remains unchanged and tens of thousands of children continue to be trafficked and abused. As long as human traffickers can continue to freely move children across the border and daaras remain unregulated, the number of children who are being exploited will continue to rise and Senegal will solidify its reputation as a safe haven for corrupt marabouts in West Africa. The international community must work together with the government of Senegal as well as religious leaders, many of whom have joined child rights activists in the call to end forced begging and abuse, to implement a coordinated response protect the rights of the talibé children.

ENDNOTES

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- 4 Margari Hill, “The Spread of Islam in West Africa: Containment, Mixing, and Reform from the Eighth to the Twentieth Century,” *Stanford SPICE*, Spring 2009.
- 5 Human Rights Watch, “*Off the Backs of the Children*,” 20.
- 6 Anti-Slavery International, “Time for Change: A Call for Urgent Action to End the Forced Child Begging of Talibés in Senegal,” 2011, 6.
- 7 Human Rights Watch, “*Off the Backs of the Children*,” 18.
- 8 Ilssa Koyouté (director of the *talibé* rescue center *La Maison Gare*, Senegal) FXB interview, June 3, 2016.
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- 10 UNICEF, the International Labor Organisation (ILO), and the World Bank, “Enfants mendiants dans la région de Dakar” [Child beggars in the Dakar region], 2007, 2.
- 11 Human Rights Watch, “*Off the Backs of the Children*,” 38.
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- 29 Ibid.
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- 32 CRC, Article 28.
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- 34 United States Bureau of International Labor Affairs, “2014 Findings on the Worst Forms of Child Labor – Senegal,” Child Labor and Forced Labor Reports, US Department of Labor, 2015, 1.
- 35 Sénégal, Code Penal [Senegalese Code of Law], Bk 3, Title 1, Chapt. IV, Para. III, “Mendicité” [Begging], Article 245, 1975, page 41.
- 36 Sokhna Mame Issa Mbacké, quoted in Human Rights Watch, *Exploitation in the Name of Education*, 41.
- 37 US Bureau of International Labor Affairs, “Worst Forms of Child Labor,” 3.
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- 39 Ousmane Ndoye, “Arrete portant inderdiction d’actes de mendicité dans la Commune de Gueule Tapée Fass de Colobane” [Prohibiting the acts of begging in the neighborhood of Gueule Tapée Fass de Colobane], April 25, 2016.
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- 41 Wells, Interview.
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