

# Refugee and Migrant CRISIS IN EUROPE

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## Exploitation, trafficking and smuggling can be avoided

The refugee and migrant crisis in Europe is a children's crisis. Between January 2015 and August 2016, almost 1.3 million people crossed Europe in search of safety and a better life. The number of children among them has been on the increase. In September 2015, one in ten of the refugees and migrants was a child, by the end of December it was one in three, and now children make up around 40 percent of the refugees and migrants stranded in Greece and across south-eastern Europe. In 2015, 88,300 asylum seekers applying for international protection in the Member States of the European Union (EU) were considered unaccompanied children.<sup>1</sup> They are the most vulnerable and many have experienced exploitation, the worst forms of child labour and/or other types of abuse, on at least one leg of their journey.

Most often abuse, exploitation and other forms of violence start back in the country of origin. According to UNHCR, 69 per cent of people arriving to Europe by sea in 2015 come from countries experiencing war, conflict and generalised violence. Parents and children escape to seek survival. With ever-tighter border restrictions, and border walls multiplying across the region, they find themselves undertaking longer and riskier journeys.

Violence and abuse experienced in earlier ages at community and family level also increases exploitation and trafficking risks for the children. Domestic violence pushes children away from families and communities, and when not protected and guided, the chances are high that they will continue experiencing abuse and exploitation along their journey.

Evidence shows that the current refugee and migrant crisis has boosted smuggling businesses.<sup>2</sup> With little information available and increasingly restrictive opportunities to move further, very often refugees and migrants see smugglers as their only option to reach the planned destination. While many refugee and migrant children might not start their journey as trafficked, many end up



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being exploited and abused during the journey. Europe has a solid legal framework criminalising smuggling and trafficking and yet not enough is done to fight exploitation and abuse of the refugee and migrant children.

### European legal and policy framework

The international community developed the legal definitions of smuggling and trafficking in persons in the context of fighting transitional organised crime, with two Protocols supplementing the UN Convention against Transnational Organized Crime.<sup>3</sup> Today, both smuggling and trafficking are criminalised regardless of whether committed in the context of organised crime or not.

Smuggling and trafficking are complex offences and it is not always easy to differentiate between the two, especially when children are involved. Smuggling legislation criminalises 'the procurement of the illegal entry, or/and enabling of illegal stay, for the purpose of financial or other material benefit.'<sup>4</sup> It is a sort

<sup>3</sup> UN Convention against Transnational Organized Crime (New York 2000); Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (Palermo 2000), supplementing the United Nations Convention against Transnational Organized Crime (Hereinafter: the Palermo Protocol); Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (Hereinafter: the Smuggling Protocol)

<sup>4</sup> Article 3, Smuggling Protocol

<sup>1</sup> Eurostat Press release, 87/2016, 2 May 2016

<sup>2</sup> See for Example IOM, Mixed Migration Flows in the Mediterranean and Beyond, Analysis: Flow Monitoring Surveys, The Human Trafficking and other Exploitative Practices Prevalence Indication Survey, May-August 2016



of 'agreement' whereby the smuggler facilitates the illegal entry or stay, in exchange of a given amount or other benefits.' As such smuggling is considered as an offence against the State. However, persons resorting to smugglers are often in a very vulnerable position, which can be exploited by smugglers, especially when smuggling occurs within the context of organised crime.

Trafficking, on the other hand, is always a crime against the person as the intent is to exploit the person. Trafficking is defined as the 'recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.' When children are involved, there is no need however to prove that certain means are used, and the mere 'recruitment, transportation, transfer, harbouring or receipt of the child for the purpose of exploitation qualifies as trafficking.'<sup>5</sup> 'Consent' is thus not always conclusive in legally differentiating between the two offences. The reality becomes even more complex as children move 'within categories'. A child can in fact start the journey towards Europe on his/her own, agree to work to pay a smuggler later on in the journey and end up exploited, in a worst form of child labour or otherwise abused.

A holistic child rights approach is required to prevent and respond to the multi-faceted and often interconnected forms of violence that refugee and migrant children arriving in Europe have experienced. Europe has a solid legal framework that enables such an approach. The majority of the European States have ratified all relevant international legal instruments, including the Convention on the Rights of the Child<sup>6</sup>, ILO Forced labour Convention<sup>7</sup>, the ILO Convention on Worst Forms of Child Labour<sup>8</sup>, the UN Convention against Transnational Organized Crime and its two supplementing Protocols, etc.

At the European level, both the Council of Europe (CoE) and the EU have enacted legislation against sexual abuse and exploitation of children and trafficking.<sup>9</sup> This legislation harmonises the substantive criminal law and provides for protection and assistance to victims. CoE Conventions are in particular very

5 Article 3 (c), Palermo Protocol

6 Convention on the Rights of the Child (New York 1989)

7 ILO Convention concerning Forced or Compulsory Labour (No. 29 of 1930)

8 ILO Convention on Worst Forms of Child Labour (No. 182 of 1999)

9 See among others: Council of Europe Convention against Human Trafficking (Warsaw 2005); Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote 2007); European Convention on the Compensation of Victims of Violent Crimes (Strasbourg 1983); Directive 2011/36/EU of the European Parliament and of the Council of 05 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (hereinafter Directive 2011/36/EU); Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (hereinafter: Directive 2004/81/EC)

strong tools not only in terms of law enforcement but also with regard to prevention and protection of children. The EU legislation on preventing and combating trafficking in human beings and protecting its victims also provides for non-prosecution or non-application of penalties to victims of trafficking for criminal activities committed as a direct consequence of being subject to trafficking. Specific attention is paid to the assistance needed by trafficked children. According to EU legislation, a child victim of trafficking should be able to access education, and if the child is unaccompanied, his/her identity and nationality need to be established and his/her family located as soon as possible. The child should access legal representation, including representation in criminal proceedings and his/her best interests respected as the prevailing consideration.<sup>10</sup>

Measures on assistance to victims of trafficking and in particular children are further elaborated in the EU Strategy on trafficking.<sup>11</sup> This strategy foresees concrete actions under five key priorities: **protection of victims, prevention, and prosecution of traffickers, enhanced coordination and cooperation and increased knowledge of emerging concerns.** However, in terms of protection most of the measures apply to victims recognised as such and not to children at risk. Residence permits to trafficking victims are also mainly dependent on their cooperation with law enforcement authorities. As a new EU Strategy on anti-trafficking is to be developed for 2017 and on, it is high time to invest further in efficient measures preventing exploitation and trafficking of refugee and migrant children.

## Smuggling is on the increase

As people, including children, decide to migrate across borders for a variety of reasons and they are given no legal opportunities to do so, a demand for smugglers arises. According to a 2015 joint Europol and Interpol report, more than 90 per cent of all migrants reaching the European Union use the facilitation services of a migrant smuggling network at some point throughout their journey. In 2015 alone, an estimated USD 5-6 billion was generated from illegal smuggling activities into the EU.<sup>12</sup> Europol analysis of data for 2016, shows an even more sombre situation as, according to the same source, the prices for migrant smuggling have tripled.<sup>13</sup>

EU resettlement and relocation schemes are moving slowly. By October 2016, only 8,268 refugees have been resettled from Turkey to the EU and 4,697 people have been relocated from Greece.<sup>14</sup> In the same time, police investigation conducted in Greece in summer 2016, referred to over some 600 migrants smuggled from Turkey into Greece and in other European States in only few months.<sup>15</sup> Since the Balkan Route was declared closed for refugees and migrants in March 2016, media reports highlight ongoing movement through the route facilitated by smugglers and their networks. Though the Idomeni camp was closed by the end of May 2016, according to police estimates, between 50 and 100 migrants a day are spotted trying to cross the border with the former Yugoslav Republic of Macedonia (fYROM) and being turned back.<sup>16</sup> In Serbia, in June 2016, UNICEF reported an estimated 300 refugee and migrants entering the country on daily basis: 60 per cent of them arriving from the fYROM and 40 per cent from Bulgaria. Police authorities from all countries on

10 Directive 2011/36/EU and Directive 2004/81/EC

11 EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016 (hereinafter: EU Strategy on trafficking)

12 Joint Europol-Interpol Report, Migrant Smuggling Networks, Executive Summary 2016

13 Europol, Latest Trend in Migrant Smuggling, June 2016

14 [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/press-material/docs/state\\_of\\_play\\_-\\_relocation\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_relocation_en.pdf)

15 AP, Smuggling surges in Greece as migrant frustrations grow, 7 August 2016

16 Time Ragus, Migrant Smuggling surges in Greece, 8 August 2016



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the route regularly report identified cases of smuggling, including of children. Despite this information, child protection and other actors have and continue to focus on the children stranded or on the small numbers of children allowed to enter territory, while the protection consequences of smuggling for children too often remain off the radar.

### More needs to be done to prevent exploitation and trafficking

Whilst the current migration management policies have allowed the smuggling business to thrive, they have also indirectly contributed to further abuse and exploitation of refugee and migrant children. The Central Mediterranean Route, crossing from North Africa to Italy, has long been notorious for the severe abuses and exploitations suffered by children undertaking it. While the Eastern Mediterranean route, from Turkey to Greece, has been used mainly by Syrians, Afghans and Iraqis, the main nationalities arriving by sea in Italy are from Sub-Saharan and Northern Africa (e.g. Egypt, Tunisia). Due to the dangers involved, the number of children undertaking the Central Mediterranean route remains lower. The figures though cannot be ignored. Between January 1 and May 31, 2016, 7,567 children crossed irregularly by sea to Italy. 92 per cent of them were identified as unaccompanied, more than twice compared to the previous year. They are mainly 15 to 17 year olds and come from Nigeria, Somalia, Eritrea, Gambia and Egypt. Most of the migrants from Sub-Saharan Africa use a 'pay-as-you-go' system, stopping to work along the way to pay smugglers. As such, they are particularly vulnerable to exploitation and trafficking.

A recent report by UNICEF gives first hand testimonies of extreme abuse and exploitation suffered by the children on the move, especially in Libya.<sup>17</sup> A 2016 Amnesty International report provides testimonies of abductions for ransom, torture, rape and other forms of sexual violence at all stages of the smuggling routes running from West and East Africa towards the Libyan coast.

17 UNICEF, *Danger every step of the way, A harrowing journey to Europe for refugee and migrant children*, UNICEF Child Alert, June 2016.

Amnesty International also reports on the systematic detention of foreign nationals for migration-related offences, with widespread torture and other ill-treatment in immigration detention centres. Women held in these facilities, which lack female guards, are vulnerable to sexual violence and harassment.<sup>18</sup>

In a study conducted in seven camps along the coast of the English Channel, UNICEF interviewed 60 children, between the ages of 11 and 17 years old originating from Afghanistan, Egypt, Eritrea, Ethiopia, Iran, Iraq, Kuwait, Syria, and Vietnam. All refugee and migrant children interviewed spoke of degrading living conditions in the camp and fear of sexual violence and exploitation. Similar fears of abuse are reported from refugee camps in other countries and alleged cases are investigated.<sup>19</sup>

Moreover, in Northern France, child testimonies refer to cases of exploitation, worst forms of child labour and trafficking. Young Kurdish girls, as well as girls from Ethiopia and Eritrea, spoke of being forced into prostitution to pay for crossing over to the UK. There were references to the use of unaccompanied and separated children for illicit activities, such as assisting smugglers at ferry terminals. During interviews, several cases of Vietnamese children being exploited on cannabis farms in the UK, Strasbourg and in the greater Paris area were recorded.

Evidence shows that some of the stranded children who were abused, exploited and trafficked could have legally and safely reached their country of destination through family reunification schemes.<sup>20</sup> But children often lack information about these options. In addition, narrow legal definitions and lengthy, complicated procedures of family reunification generate distrust in the system, push children into the hands of smugglers and expose them to risks of trafficking and exploitation.<sup>21</sup>

18 Amnesty International, *Refugees and migrants fleeing sexual violence, abuse and exploitation in Libya*, July 2016, 'Libya is full of cruelty', stories of abduction, sexual violence and abuse from migrants and refugees, London, 2015.

19 See for example: The Guardian, 'Sexual assaults on children' at Greek refugee camps, 13 August 2016  
20 UNICEF, *Neither Safe nor Sound*, June 2016

21 See UNICEF *Refugee and Migrant Crisis in Europe, The right of the child to family reunification*, May 2016



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## Children who 'disappear' are not necessarily exploited or trafficked

Only few of the unaccompanied and separated children arriving in Europe in 2015-2016 are currently cared for in foster families or by adult relatives. The majority of them are in centres, often for extended periods, in overcrowded conditions and sometimes together with adults not related to them. Guardianship systems do not function properly and often children are left without integration plans and uncertain about their legal status, with children aged 16-17 year old particularly fearing that they will be returned as soon as they turn 18.<sup>22</sup>

Many unaccompanied and separated children are reported to leave centres within a short period and no information exists on what happens to them afterwards. This does not mean that they are (all) necessarily trafficked. As children do not trust that their best interests will prevail in the current procedures, they may take matters into their own hands. Some of them arrive in Europe under pressure to earn money to pay back smugglers and/or assist family back home. They might try to unite with extended family, peers or move for other reasons to chosen destination countries. The risk of exploitation exists but little evidence is available on whether children who leave centres navigate successfully through such risks or indeed end up exploited and in a worse off situation.

## Justice for exploited and trafficked children

Child protection authorities reach out to exploited children, but often they arrive too late or lose track of the children soon after the first contacts. Outreach and assistance efforts are sometimes ad hoc and not coordinated between law enforcement and social protection. Police investigations are long and complex. Very few cases of child trafficking end up in court, and even when they do, the number of convictions is low. According to Eurostat data, for the period 2010-2012, out of 7,704 cases prosecuted for trafficking, only 2,700 ended before a court of law and there is no consolidated data on number of them ending up in convictions.

A UNICEF report concludes that it is unclear whether this is due to the complexity of anti-trafficking legislation and evidentiary requirements, inefficient law enforcement, poor identification of cases, or simply a low prevalence of child trafficking.<sup>23</sup> The same report also concludes that protection measures for trafficked and

exploited children tend to focus on short-term assistance prior to returning the child to the country of origin. Broader violations of children's socio-economic and political rights in origin and destination countries and during the movement itself are rarely considered.

Though the UNICEF report dates back to 2008, its findings are still relevant, as illustrated by the cases of exploitation and trafficking of Nigerian girls in Europe. Only between January and June 2016, 3,529 Nigerian girls and women arrived by sea in Italy. This is not a new phenomenon, but the numbers have been on increase the last two years. Many of the Nigerian girls arriving are 15 to 17 years old, though an increasing number of 13 year old girls is also reported. The girls are usually lured back in Nigeria by people they know (neighbours, cousins, friends, boyfriends) with promises of well-paying jobs in Europe. Some of the girls have experienced abuse and exploitation since childhood and may consider the trip to Europe to be the final part of their exploitation chain. Before leaving, the girls make a promise through traditional ceremonies of paying back the costs, which puts them in a situation of bonded labour. They face abuse and exploitation on their journey to Europe, with cases reported of unwanted pregnancies. They hide their age to the authorities and, once in the hands of their traffickers, they are exploited throughout Italy or in other European States.<sup>24</sup> According to Eurostat Data, the majority of identified trafficked victims within the EU come from Nigeria.<sup>25</sup>

Fears from traffickers, belief in traditional practices, the need to earn money, the prospect of being returned and overall distrust in the system are some of the reasons for which the trafficked and exploited children do not proactively identify themselves as victims and are often reluctant to collaborate in police and judicial investigations. For children identified and recognised as victims, different forms of support and protection are available. They remain however, short in their duration, while various research has brought to light the long lasting consequences of exploitation on children.<sup>26</sup> Child victims of trafficking can be provided with a residence permit, but in most of the cases this is conditional upon their collaboration with the authorities against their suspected traffickers.<sup>27</sup> No safeguards exist for them and their family back home against potential reprisals.

24 A Save the children report provides detailed evidence on the child rights violations face by Nigerian girls. See Save the Children Italia, *Piccoli Schiavi Invisibili*, June 2016

25 Eurostat Statistical Working Papers, *Trafficking in human beings*, 2015 edition

26 M. Dottridge, *Kids as Commodities? Child Trafficking and what to do about it*, International Federation Terre des Hommes, 2004; see also ILO, UNICEF, UN. Gift, *Training manual to fight trafficking in children for labour, sexual and other forms of exploitation*, ILO 2009

27 Directive 2004/81/EC

22 For more see UNICEF, *Refugee and Migrant Crisis in Europe, A home away from home*, and *A call for effective guardianship for unaccompanied and separated children*, August 2016

23 UNICEF Innocenti Research Center, *Child Trafficking in Europe, A broad vision to put children first*, 2008

## UNICEF Recommendations:

1. **Family reunification:** Effective schemes of family reunification, resettlement and relocation and other legal pathways, guided by the best interests of the child, protect children against abuse, trafficking and exploitation. UNICEF calls upon States to speed up family reunification procedures and make it easier for children to reunite with their families, including with their extended families in destination countries.
2. **Resettlement and relocation:** States should extend commitments and investments in resettlement and relocation schemes to minimise the risks of smuggling, exploitation and trafficking for stranded refugee children. When in the best interests of the child, families with children and unaccompanied and separated children should be prioritised by such schemes.
3. **Child protection systems:** National child protection systems should be further strengthened in origin, transit and destination countries so that they are able to effectively prevent, identify, refer and address cases of violence, abuse and exploitation against children, including refugee and migrant children.
4. **Transnational collaboration:** States should promote cross border exchanges and collaboration of child protection authorities as well as sharing of data, information and knowledge. Guided by existing good practices, protection entitlements and information management systems for children on the move should be harmonised.
5. **Protection of refugee and migrant children:** Origin, transit and destination countries should take measures to prevent trafficking and exploitation by providing better support to refugee and migrant children through the systematic appointment of qualified guardians, better access to information regarding their own situation and the management of their case, as well as access to legal assistance.
6. **Durable solution:** Refugee and migrant children should be offered with a durable solution. Any such solution should be built together with the child and reflect his/her concerns and aspirations.
7. **Multidisciplinary work:** Along migratory routes, more needs to be invested in early identification and assistance of exploited children through outreach multidisciplinary work and by building trust with the child.
8. **Legal residence:** Children should be entitled to reside in the country of destination, when in the child's best interests and regardless of collaboration with the authorities against suspected traffickers.
9. **Long term support:** Trafficked and exploited children should be provided with long term protection and support. Assistance provided should enable the child to deal with the physical and psychological consequence of the abuse, and access education, training and other skills' development and services, fostering the child's social inclusion.
10. **Non-prosecution:** Trafficked and exploited children should not be prosecuted for criminal activities committed as a direct consequence of being subject to trafficking or exploitation. Children taking part in justice processes should benefit from all safeguards put forth in the UN Guidelines on justice in matters involving child victims and witnesses of crime and other relevant international standards, including the present of a support person, an interpreter and a lawyer.

