



THE WRETCHED CHILD: AN ANALYSIS OF THE VULNERABILITY OF MIGRANT AND REFUGEE CHILDREN

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Abstract

Children among migratory and displaced communities are a particularly vulnerable category. Logically, they are often less resilient than adults and more prone to injuries. This research situates child migration at the nexus of resilience and vulnerability and focuses on the local factors that affect the lives of child migrants. Additionally, the research examines the broader issues of poverty, violence, and displacement that characterize children's migration both within and beyond a country's borders. While acknowledging that migrating children do not speak in unison, attesting to the immense diversity and complex nature of child migration, this research suggests proper measures to be adhered to if children's rights are to be promoted even in the face of adversity.

1. Introduction

Children among migrating and displaced communities are a particularly susceptible subpopulation, and this vulnerability is heightened in irregular circumstances, including diseases and health threats.¹ Given that such children have not yet reached physical and psychological maturation and have less societal experience than adults, it makes sense that they are typically less resilient and more prone to injury. Despite this preliminary evidence on children's vulnerability, there is a lack of analytical grasp of what vulnerabilities are, how they may be exacerbated or decreased by various causes, and how they manifest in actual circumstances.²

Due to their forced relocation and the difficulties they encounter during migration, children who are migrants or refugees are particularly susceptible. These children frequently go through a variety of difficulties, including being taken away from their relatives, being subjected to abuse and exploitation,

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¹ Ener Cagri Dinleyici and Ray Borrow, 'Meningococcal Infections among Refugees and Immigrants: Silent Threats of Past, Present and Future' [2020] *Human Vaccines & Immunotherapeutics* 1 <<https://www.tandfonline.com/doi/abs/10.1080/21645515.2020.1744979>> accessed 2 December 2023.

² Gaoqiang Fei and others, 'Unintentional Injuries and Risk Behaviours of Internal Migrant Children in Southern China: A Cross- Sectional Study' [2021] *Health & Social Care in the Community* <<https://onlinelibrary.wiley.com/doi/abs/10.1111/hsc.13565>> accessed 2 December 2023.



having less access to healthcare and education, and facing prejudice. Many of the children end up fighting for their mental health.³

Migrant and refugee children may encounter risky situations, including human trafficking and physical and sexual abuse. The voyage itself can be dangerous.⁴ They are more vulnerable because they run the possibility of losing their families or ending themselves as unaccompanied children. They frequently face obstacles in getting access to crucial services and protection, including healthcare.⁵ Their access to healthcare, social services, and education may be restricted by language barriers, a lack of legal documentation, and a lack of familiarity with the host country's systems and practices.⁶

The development and well-being of migrant and refugee children are severely impacted by these issues. Such children are twice as likely to be victims of trauma, health problems, and social marginalization. Their future prospects may be hampered by a lack of education and restricted integration chances, which can prolong cycles of marginalization and poverty.

2. Vulnerability of unchaperoned and separated child migrants

Children may be unaccompanied for various reasons, others being very sad circumstances as in the case of armed conflict, human trafficking as well as separation of parents.⁷ There exists a comprehensive legal as well as institutional framework for the advancement of protection for children who, unluckily, get separated from their parents in the course of migration and have increasingly faced difficulties both during the migration process and even after the migration.⁸ From sexual exploitation and abuse to child labour and involvement in armed conflicts. This points to the existence of gaps in the protection of children, gaps that must be addressed comprehensively.

³ Theresa Stichick Betancourt and Kashif Tanveer Khan, 'The Mental Health of Children Affected by Armed Conflict: Protective Processes and Pathways to Resilience' (2008) 20 *International Review of Psychiatry* 317 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2613765/>> accessed 2 December 2023.

⁴ Aya Thabet and others, 'Interventions to Enhance Psychological Resilience in Forcibly Displaced Children: A Systematic Review' (2023) 8 *BMJ Global Health* <<https://gh.bmj.com/content/8/2/e007320.abstract>> accessed 2 December 2023.

⁵ Niina Markkula and others, 'Use of Health Services among International Migrant Children – a Systematic Review' (2018) 14 *Globalization and Health* <<https://globalizationandhealth.biomedcentral.com/articles/10.1186/s12992-018-0370-9>> accessed 2 December 2023.

⁶ Bukola Salami and others, 'Access to Healthcare for Immigrant Children in Canada' (2020) 17 *International Journal of Environmental Research and Public Health* 3320 <<https://www.mdpi.com/1660-4601/17/9/3320>> accessed 2 December 2023.

⁷ AKM Ahsan Ullah, 'Conflicts and Displacements in Syria: Exploring Life Trajectories of Separated Refugee Minors' (2018) 12 *Asian Journal of Middle Eastern and Islamic Studies* 207.

⁸ John C Oldroyd and others, 'The Experiences of Children and Adolescents Undergoing Forced Separation from Their Parents during Migration: A Systematic Review' (2021) 30 *Health & Social Care in the Community* <<https://pubmed.ncbi.nlm.nih.gov/34622499/>> accessed 2 December 2023.



Such children frequently face entry denials or detentions from border or immigration officers in various nations. This was the case with child immigrants to the United States of America.⁹ In worse cases, such children may be allowed in some countries, but their rights will be limited in that they may be denied the opportunity to participate in the asylum process, and if they do, their claims may not be addressed with due consideration to their age and gender.

It is important to address the dangers unaccompanied and separated children face around the world, especially given the fact that their numbers are constantly growing. The main concern in the discourse is to address the threats and insecurities that children face in a bid to make the world more habitable for them even in such trying moments.

3. The United Nations on reunification and the right to be associated with a family

The United Nations¹⁰ and African Charter on the Rights and Welfare of the Child¹¹ emphasize family unity, family reunification, and the importance of a child being brought up in a family environment. Family members, as well as guardians frequently serve as the first human connection a child has as they grow.¹² The early encounters a child is exposed to help them know themselves better and understand their environment including those around them. This is crucial for the development and advancement of the child's personal and interpersonal skills. It helps children understand themselves and those around them better, which is crucial for the development of their social skills. This privilege may not be enjoyed by migrant children.

Children who migrate are frequently left out of discussions about migration and displacement around the world. The absence of concrete data to back up their claims may be one factor, which obviously makes policy-making difficult. It is challenging to ascertain the age and birthplace of the migrant children. It's harder to even ascertain whether the migration was voluntary or they were forced to migrate out of circumstances that they had no control over.¹³

⁹ Mary Grace Antony and Ryan J Thomas, "Stop Sending Your Kids across Our Border?" Discursively Constructing the Unaccompanied Youth Migrant' (2016) 10 *Journal of International and Intercultural Communication* 4.

¹⁰ Nigel Cantwell and Anna Holzscheiter, *A Commentary on the United Nations Convention on the Rights of the Child, Article 20: Children Deprived of Their Family Environment* (BRILL 2007) <<https://books.google.com/books?hl=en&lr=&id=l1qwCQAAQBAJ&oi=fnd&pg=PP7&dq=The+UN+and+African+Charter+on+the+Rights+and+Welfare+of+the+Child+emphasize+family+unity>> accessed 2 December 2023.

¹¹ Geraldine Van Bueren, *International Documents on Children* (Martinus Nijhoff Publishers 1998) <<https://books.google.com/books?hl=en&lr=&id=frva2tftICIC&oi=fnd&pg=PR11&dq=The+UN+and+African+Charter+on+the+Rights+and+Welfare+of+the+Child+emphasize+family+unity>> accessed 2 December 2023.

¹² Heather Breiner, Morgan Ford and Vivian L Gadsden, 'Parenting Knowledge, Attitudes, and Practices' (*Nib.gov* 21 November 2016) <<https://www.ncbi.nlm.nih.gov/books/NBK402020>> accessed 2 December 2023.

¹³ Peter E Hopkins and Malcolm Hill, 'Pre-Flight Experiences and Migration Stories: The Accounts of Unaccompanied Asylum-Seeking Children' (2008) 6 *Children's Geographies* 257.



The United Nations encourages states to ensure that child migrants receive education within the earliest possible time that they get to their respective countries seeking asylum protection. This is in a bid to fill in the gap where such children have failed to go to school following the unfortunate events that led such children to seek protection from foreign countries. The goal is that all children, including migrant children, get access to education.

The United Nations Sustainable Development Goals, specifically goals 5 and 16, are particularly important for properly tracking abuse against immigrant children.¹⁴ Despite these goals being non-binding, they call upon member states to avoid all forms of violence directed at children, girls and women while forbidding sexual exploitation and trafficking.¹⁵

The Convention on the Rights of the Child recognizes children as human beings hence those with inherent and inalienable rights. The CRC's guiding principles, which include non-discrimination, best interest and child participation, are predicated on the need to realize children's rights as entrenched in the Convention.¹⁶ CRC mandates States Parties to respond to requests from a child on leaving or entering another country for purposes of family reunion in a manner that is positive, humane, and prompt. Furthermore, state parties are required to make sure that such requests do not result in unfavorable consequences for the child applicants or any of their family members.¹⁷

A child's best interest must come first in all decisions involving a child's separation from their parents, particularly those requiring family reunification across international boundaries. Efforts must be put in place to promote the best interest of the child and ensure that their interests are considered when decisions are being made regarding the entrance or exit of a child for the sake of family reunification. A child's best interest must always be taken into account in all elements of immigration law, including creating, executing, and assessing migration policies as well as making judgments on particular cases, including allowing or denying petitions for admission into or residence in a country.

4. Non-refoulement principle

¹⁴ United Nations, 'Transforming Our World: The 2030 Agenda for Sustainable Development' (2015) <<https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf>>.

¹⁵ Tanja Bastia and Ronald Skeldon, *Routledge Handbook of Migration and Development* (Routledge 2020) <https://books.google.com/books?hl=en&lr=&id=B3_QDwAAQBAJ&oi=fnd&pg=PT309&dq=un+sdg+goals+on+child+migration&ots=OVuteyJkOD&sig=QKhrphEgdsjG30o8wRFdb7Zh6I> accessed 2 December 2023.

¹⁶ Margrite Kalverboer and others, 'The Best Interests of the Child in Cases of Migration' (2017) 25 *The International Journal of Children's Rights* 114.

¹⁷ CRC 1989, art. 9(1)



Non-refoulement under international law is an essential form of protection. It encourages states to never expel people from their jurisdictions if they perceive reasonably that such expulsion might result in the people suffering harm upon such return, in whatever form be it persecution, mistreatment, or even torture, among other grave violations of human rights.¹⁸ The principle implicitly maintains the fundamental state duty to promote and protect human rights within their respective jurisdictions.

International human rights law forbids the transfer of anybody, without due regard to their status, if there are reasonable justifications to believe that so doing will expose the person to serious risks of experiencing torture, cruel treatment, or other severe abuses of their rights. The principle is a crucial part of the explicit prohibition against torture and cruel treatment. This is because more pertinent treaties on human rights address the implementation of this concept. The prohibition is applied to everyone without regard to their nationality. Moreover, it comes into play both when someone is within the territory of a state and when they are outside the effective authority of the state.

The ban on refoulment has been construed by certain courts of justice and human rights groups to include a number of human rights violations extending to torture and other degrading treatment, as well as the flagrant curtailment of fair trial rights. The principle of non-refoulment has also been established by the courts through the art of judicial interpretation to extend to situations of dangers of rights to life violation, female genital mutilation, and sex-based violence.¹⁹

Children escaping conflict, violence, and persecution deserve international protection, and their safety and fundamental rights should be guaranteed. This should be a top priority when it comes to migrant and refugee children.

5. An analysis of the legal and legislative arrangements aimed at assisting the internally displaced, migrant, and refugee children as well as their implementation in particular in various local contexts within Africa.

The Joint Africa-EU Declaration on Migration and Development (2006),²⁰ while recognizing that migration occurs mostly within Africa towards the industrialized nations, it is aware to the fact that over time many nations have evolved into either a destination country, origin or transit, or a collection of the three. It highlights an urgent need for collaboration through reciprocal cooperation done in a

¹⁸ J Allain, 'The Jus Cogens Nature of Non-Refoulement' (2001) 13 International Journal of Refugee Law 533 <<https://academic.oup.com/ijrl/article/13/4/533/1516189>> accessed 2 December 2023.

¹⁹ Human Rights Committee, *Judge v Canada*, No. 829/1998, 20 October 2003, para 10.3

²⁰ Jack Mangala, 'Africa-EU Partnership on Migration, Mobility, and Employment' [2013] Palgrave Macmillan US eBooks <https://link.springer.com/chapter/10.1057/9781137269478_9> accessed 3 December 2023.



thorough, holistic, and integrated means to improve migration management.²¹ It further bolsters the view that protecting migrant rights, especially those of women and children, is an important aspect of handling migration effectively. It further favours nondiscrimination in implementing and realizing the core human rights treaties while promoting effective dissemination of information on migration and policy.

The Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children (2006) stipulates that measures are to be put in place to combat human trafficking.²² It provides that the campaign against human trafficking ought to be founded on the fulfillment of human dignity while emphasizing that at no point in time should the protection of such vulnerable groups lead to their trafficking.

The African Union's (AU) Common Position on Migration and Development (2006) affirms that migration is indeed an important tool when it comes to development.²³ While underscoring that African intergovernmental cooperation and conversation will enhance states' capacity to manage migration, it favours the creation of mutually beneficial plans for harmonizing policies, regulations, and migration strategies.

6. Findings, Conclusions, and Recommendations

6.1 Findings

This research finds the following:

States must work hand in hand with other regional and international bodies championing the well-being and rights of children, including the African Union and relevant UN agencies, including UNHCR and UNICEF. They should similarly partner with and train officers, including immigration officers and police, in order to respond to the unique needs of migrant children.

Warding off trafficking, abuse, exploitation, and violence against migrant children is yet another option. In ensuring adequate protection of the children, all member states must put in efforts in terms of putting in place a procedure for the rapid appointment of legal guardians for all unaccompanied children as well as the provision of safe accommodation and properly trained supervisors and foster

²¹ Paula García Andrade and Iván Martín, 'EU Cooperation with Third Countries in the Field of Migration' [2015] cadmus.eui.eu.

²² Rochelle L Dalla and Donna Sabella, *Routledge International Handbook of Human Trafficking: A Multi-Disciplinary and Applied Approach* (Routledge 2019) <<https://books.google.de/books?id=FZWwDwAAQBAJ&pg=PT106&lpq=PT106&dq=Ouagadougou+Action+Plan+to+Combat+Trafficking+in+Human+Beings>>, accessed December 3 December 2023.

²³22. 'Migration Policy Framework for Africa and Plan of Act (2018-2030)', <https://violenceagainstchildren.un.org/sites/violenceagainstchildren.un.org/files/documents/other_documents/35316-doc-au-mpfa_2018-eng.pdf> .



parents who are capable of taking care of the children. Similarly, measures for the timely identification of children victims of trafficking among the refugees should be put in place.

Similarly, all children should be given age-appropriate information in a language they can comprehend that explains the relevant rights and processes. Fact-finding missions and expertise-based teams on child matters may partner and conduct surveys, then publish reports on the issues that affect children, especially migrant and refugee children. The report should be reduced to simple and child-friendly language that can be comprehended by children.

Further, states must put in efforts to stop the concentration of children in migration detention facilities. Countries must make sure that justifications for such detentions in extraordinary situations are properly stated and are only used as a measure of last resort, and even then, it should be for the least time possible and considering a child's best interests.

In addition, there is a need to ensure a gender-sensitive approach when handling asylum-seeking as well as refugee crises. Member states have to think about allowing girls who have experienced gender violence independent residency. States must similarly recognize gender-based assault of girls as a form of discrimination warranting protection. States should introduce procedures, guidelines, and support services that are gender-sensitive.

Furthermore, there is a need to promote access to education for migrant and refugee children. The denial of education to a migrant or refugee child will only make their vulnerability worse. This calls for the need to implement measures in the form of promoting positive education policy measures that take into account the cultural, personal, and linguistic experience a child has so that they rebrand their esteem as well as their courage, making them less vulnerable to isolation and stress.

6.2 Conclusions

The risks and unique desires of migrant and refugee minors require attention. This entails ensuring their security and protection and granting them access to proper medical care and quality education. It also extends to arranging family reunions while encouraging inclusive policies and social integration. Proper cooperation and collaboration among governments, civil society, and institutions is paramount to protecting the well-being of children while reducing the risks they are likely to encounter.

6.3 Recommendations

This research recommends:

- a. There is a need to adopt a Convention on the Protection of the Rights and Fundamental Freedoms of Migrant and Refugee Children. This is informed by the unique difficulties that such a category of children undergoes. The Convention, premised on ensuring the best interest



of the child, should address the challenges likely to be faced by such children on the move. It should particularly address the safety and security of the children while promoting their access to healthcare and education. The Convention should equally have a clause on accountability from the state parties in terms of requiring them to make periodic reports on the status of, as well as progress with, the protection of the fundamental rights and freedom of refugee and migrant children.

- b. Emphasis on the role of international organizations in the discourse- the competence of international organizations in this area cannot be downplayed. Previous tasks conducted by such organizations speak to their ability. The International Committee of the Red Cross is an example of an international organization that has fundamentally done well on matters humanitarian intervention. With skilled personnel and appropriate resources, these international organizations are likely to play a huge role as far as enhancing and undertaking the protection of these children is concerned. This research has recommended the establishment of a Convention on the Protection of Migrant and Refugee Children. It further proposes the establishment of a Committee, whose membership will be drawn from experts on child protection from different Member States who are to be trained and equipped to handle and protect refugee and migrant children.
- c. Underscoring the role of Member States- the pertinent role that member states play in the realization of these objectives cannot be overlooked. From the domestication of treaties on the safeguarding of rights of refugee and migrant children to the enactment of local laws further promoting the protection of such category of children, member states are indeed a big deal. They are to contribute funds to finance the Committee the research proposed above so that there are always experts trained and equipped at all levels to deal with such children. Such expertise-based teams are to be deployed rapidly to a country witnessing migration of refugees following wars or whatever cause. In the long run, not only will we ensure the well-being of our children, but also, States will be fulfilling their international obligations on matters of human rights and fundamental freedom.

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