



Where childhood meets the border: a call for non-discrimination

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Abstract: The international community grants children rights regardless of status, recognising their vulnerability. Yet in practice, unaccompanied children remain unprotected, as states often prioritise border control over the full realisation of their human rights.

The rights set out in the Convention on the Rights of the Child ([CRC](#)) apply to every child, regardless of his or her 'race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status'. That is, states are not only expected to provide for the rights of their national children, but for all children under their jurisdiction, irrespective of their country of origin. The CRC, the [most broadly ratified](#) convention worldwide, articulates a wide array of rights including those to non-discrimination, identity, integrity, dignity, participation, privacy, and information that Contracting Parties must uphold. To this end, states are required to adopt every necessary measure to protect the child from all forms of discrimination in the enjoyment of the rights enshrined in the CRC. It is hence, an [active](#) rather than a passive obligation that demands from states a devoted attitude geared towards a genuine equal opportunity for every child.

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In upholding this maxim, the obligation of non-discrimination calls on states to take [a pre-emptive role](#) in identifying those children whose effective realisation of legal guarantees may require specific measures. As paradoxical as it may seem, to tackle material discrimination, [formal discrimination](#) is necessary at times. This relates to the fact that, equal enjoyment of rights and freedoms does [not imply](#) identical or uniform treatment in all cases. It is a matter of positive discrimination, and it relates to providing preferential treatment to certain groups with a view to eliminating the underlying causes that bring about [discrimination in practice](#).

Given the vulnerable character of children, both international and national frameworks provide a legal setting that favours this disadvantaged social group. The definition of 'child' in Article 1 of the CRC introduces a form of positive discrimination between children and young adults which, although open to criticism for its limited conceptual clarity, has nonetheless been recognised as an important step toward strengthening the protection of children. A [further form](#) of discrimination, however, persists, and this one is not beneficial but harmful. It concerns the practical inequalities that continue to exist among children themselves. Despite *de iure* efforts to grant equal opportunities and rights to national and migrant children, the former enjoys, *de facto*, [greater opportunities](#) than the latter.

The severe difficulties faced by migrant children reveal that the theoretical framework discussed, as well as the rights enshrined in international and national *corpus juris*, are either insufficient or not being adequately implemented. According to [data](#) from UNICEF, at least 2,000 migrants, including children, lost their lives while attempting to cross the Mediterranean Sea in 2024. Identifying a single causal nexus for these deaths is difficult, if not impossible, as they stem not from an isolated cause but from a structural configuration that prioritises border control over humanitarian imperatives.

In this same vein, the Committee on the Rights of the Child, together with the Committee on the Protection of the Rights of all Migrant Workers and Members of their Families, have reported that migrant children in general, and unaccompanied children in particular, are [especially vulnerable](#) to abuse, sexual exploitation, military recruitment, forced labour, and detention. This heightened vulnerability is exacerbated by the fact that many [states refuse entry](#) to a significant number of unaccompanied or separated children, and even when admission is granted, they are often denied access to asylum procedures, leaving them effectively unprotected and neglected.

This reality calls to mind a statement by [Jacob Lind](#) that has resonated with me ever since I first encountered it, and which becomes increasingly apparent the more one examines the vulnerable situation of unaccompanied minors: 'children's rights act as both a blessing and a curse for undocumented migrant children'. In other words, the rights conferred by the international community may serve as a blessing, securing access to fundamental protections and providing a legal framework through which restrictive migration policies can be challenged. Yet,

these very same rights, initially appearing beneficial, can become a curse if applied bureaucratically or selectively to control the entry of these children and exclude those deemed 'undeserving of protection' by the receiving state. Consequently, the rights granted by the international community become a double-edged sword that can both empower and restrict children.

Such a deeply fragile state of affairs is even more [acute for girls](#), as they are exposed to a particularly serious risk of gender-based sexual violence, including domestic violence. Despite differences among countries and cultures, strong consensus exists on human rights violations being gender biased. Both, women and men, are susceptible of being victims of human rights violations. Nonetheless, these infringements are often to be more [prevalent among women](#), especially women who have an added vulnerability factor related to age, race, culture, class or sexual orientation. A growing recognition of this vulnerability has led to increased efforts to address gender-mediated violations, also in migration policies. Gender sensitive strategies have proven to be key for not only a reactive, but also a proactive approach to the problem. By including a [gender dimension](#) to human rights monitoring, greater insights can be gathered in the underlying causes of gender-based infringements.

In light of the analysis presented, a discernible lack of coherence emerges between the principle of non-discrimination articulated in the international legal framework and its tangible realisation in practice. This *de jure v. de facto* dichotomy calls upon states to ensure, in an active and unequivocally effective manner, that every child, irrespective of his or her place of origin, enjoys meaningful protection and equality in the exercise of rights. The vulnerability that underpins these rights is indifferent to jurisdictional boundaries; it is shaped instead by risks arising from persistent patterns of inequality that must be addressed comprehensively, dismantling each pillar that sustains the *status quo* which ultimately abandons these children to their fate.

Only through a restructuring and subsequent dismantling of the system that enables these power imbalances, exposing migrant children, particularly girls, to disproportionate risks, can the founding promise of the CRC be fulfilled: ensuring that every child, everywhere and under all circumstances, can effectively enjoy their rights without discrimination, and thus develop fully, free from violence and deprivation.