

No. 6

# LEGAL NOTE:

PROTECTIONS FOR REFUGEE WOMEN AND CHILDREN:  
SPOTLIGHT ON THE EUROPEAN CONVENTION ON  
HUMAN RIGHTS

Read time: 25 mins

Published on: 12 September 2018



ACCOUNTABILITY  
UNIT



# LEGAL NOTE:

## PROTECTIONS FOR REFUGEE WOMEN AND CHILDREN: SPOTLIGHT ON THE EUROPEAN CONVENTION ON HUMAN RIGHTS

### EXECUTIVE SUMMARY

- Women and child refugees and asylum seekers are particularly vulnerable to human rights violations; for example, they are at heightened risk of human trafficking and exploitation, unlawful detention in unsuitable conditions and, if returned to their country of origin, Female Genital Mutilation (“FGM”).
- In our [previous notes](#), we discussed some of the issues faced by women and children refugee and asylum seekers, and the protections available to them at EU law. In this note, we focus on the protections available via the European Convention on Human Rights (“ECHR”).
- The ECHR is an international treaty that protects the fundamental civil and political rights of individuals in countries that belong to the Council of Europe (the “CoE”). There are currently 47 members of the CoE, 28 of which are members of the European Union (“Member States”).
- The ECHR is directly enforced through the European Court of Human Rights (“ECtHR”).
- Although the ECHR does not provide for any specific protections for women and children refugees and asylum seekers, the ECtHR has developed a number of such protections through its jurisprudence.

### BACKGROUND

*What specific issues are faced by women and children migrating into Europe?*

1. Around 467,000 refugees and migrants crossed the Mediterranean sea into Europe between 2016 and the second half of 2017.<sup>1</sup> Of refugees and migrants entering Europe, a majority are women and children.<sup>2</sup> Of the children who enter Europe, a significant portion are unaccompanied.<sup>3</sup>
2. Women and children who are refugees or seek asylum in Europe are at a heightened risk of (i) human trafficking and exploitation,<sup>4</sup> (ii) unlawful detention in inappropriate conditions,<sup>5</sup> and, if sent back to their country of origin, (iii) FGM.<sup>6</sup>

*Which groups are protected by the ECHR?*

3. The ECHR does not contain any specific protections for refugees or asylum seekers. It does not define “refugee”; and nor has the ECtHR, which enforces the ECHR’s provisions, developed a definition. However, each Member State is party to the UN Convention Relating to the Status of Refugees (the “Refugee Convention”) and so the definition in the Refugee Convention applies;<sup>7</sup> i.e., “refugees” are persons unable to remain in their home country due to a well-founded fear of persecution for reasons of “race, religion, nationality, political opinion or membership of a particular social group”.<sup>8</sup>
4. Member States have the power to control the entry, residence and expulsion of non-nationals. However, they

are also under a general obligation to uphold the human rights guaranteed by the ECHR, which apply to all persons within their jurisdiction, whether citizens or non-citizens.<sup>9</sup> These universal human rights can be relied on by refugees and asylum seekers. For example, the ECtHR has confirmed that the ECHR's prohibition on torture and inhuman or degrading treatment<sup>10</sup> can form the basis of a claim to oppose return to a country where an individual would be subjected to such treatment,<sup>11</sup> or to challenge the detention conditions of migrants.<sup>12</sup> Other key ECHR rights and freedoms invoked before the ECtHR in cases involving migrants, refugees and asylum seekers include the right to life,<sup>13</sup> the prohibition of slavery and forced labour,<sup>14</sup> the right to a fair trial,<sup>15</sup> and the right to respect for private and family life.<sup>16</sup>

5. The ECHR does not define or contain provisions specific to children. However, the ECtHR will have regard to UN Convention on the Rights of the Child (the "CRC") in cases that concern children.<sup>17</sup> For example, the ECtHR has stated that the best interests of the child, as set out in Article 3 of the CRC, should be a primary consideration of administrative authorities in making decisions concerning children, and has also relied on Article 37 of the CRC to hold that detention of children should only be a measure of last resort.<sup>18</sup>
6. As with children, the ECHR does not contain provisions specific to women. However, the prohibition on discrimination under Article 14 includes gender discrimination.<sup>19</sup>

7. As well as the general ECHR human rights that may be relied upon by women and children refugees and asylum seekers, the ECtHR has interpreted the ECHR to impose positive obligations on Member States with respect to certain specific vulnerable groups, such as unaccompanied child migrants and victims of human trafficking (see further paragraphs 16 and 18-19, below).

## **ENFORCEMENT OF THE ECHR**

### *The ECtHR*

8. The ECtHR is an international court located in Strasbourg. It was established to supervise the enforcement of the ECHR. Individuals who believe their ECHR-enshrined rights have been violated by a Member State may bring a claim against that Member State in the ECtHR. As well as holding that a breach of the ECHR has occurred and providing for appropriate remedies, the ECtHR can also require the infringing Member State to make changes to legislation, policy or practice in order to prevent future violations. Judgments finding violations are binding on the Member States concerned.

### *Who can bring a claim in the ECtHR?*

9. The ECtHR can receive applications from any person, NGO or group of individuals claiming to be a victim of an ECHR violation occurring within the jurisdiction of a Member State,<sup>20</sup> and in situations where Member State public officials exercise "control and authority" over foreign nationals.<sup>21</sup> The notion of 'victim' is broad and

denotes a person who has been affected by an ECHR violation, either directly, indirectly or potentially.<sup>22</sup> Claims under the ECHR can only be brought against a Member State.

10. An applicant to the ECtHR must meet four admissibility criteria:<sup>23</sup>
  - (i) the applicant must have exhausted the domestic remedies available to them in the jurisdiction of the infringing contracting party;<sup>24</sup>
  - (ii) the applicant must submit their complaint within six months after it has exhausted domestic remedies;<sup>25</sup>
  - (iii) the applicant must have suffered a significant disadvantage;<sup>26</sup>
  - (iv) the applicant's complaint must not be manifestly ill-founded.<sup>27</sup>

## DETENTION CENTRES

### *Unsuitable Conditions*

11. Women and children are at particular risk of being detained in unsuitable conditions not only because of their specific needs but also because they are more likely to belong to certain vulnerable groups with additional needs, such as pregnant women, survivors of sexual or gender-based violence and unaccompanied minors.<sup>28</sup>
12. Article 3 of the ECHR contains a prohibition on torture, inhuman and degrading treatment. This prohibition can be invoked to challenge the conditions under which refugees and asylum seekers are detained. Because the Article 3 protection is absolute, where an applicant is

particularly vulnerable by reason of, for example, their age, it takes precedence over considerations relating to an applicant's status as an illegal immigrant.<sup>29</sup>

13. The ECtHR pays attention to the specific needs of women and children in detention cases. For example, in *Mahmundi and Others v Greece*, the ECtHR held that unsuitable conditions capable of breaching the Article 3 prohibition include a lack of safe facilities for children and a lack of medical care for, in particular, pregnant women.<sup>30</sup> In relation to children specifically, the ECtHR in *Popov v France* held that a violation of Article 3 had occurred where detention facilities had not been properly adapted for children, for example there were no play areas.<sup>31</sup> In *Rahimi v Greece*, the ECtHR held that detaining children with adults instead of other children contributed to unsuitable conditions for those children.<sup>32</sup> The detention of women in centres without female staff has similarly been found by the ECtHR to contribute to unsuitable conditions amounting to a breach of Article 3.<sup>33</sup>

### *Unlawful Detention*

14. The ECHR prohibits the unlawful deprivation of liberty under Article 5.<sup>34</sup> Lawful detention is permitted as a last resort in narrow circumstances, including where it is necessary to prevent an individual's unauthorised entry into a country or where an individual is to be deported.<sup>35</sup> Where possible, measures less intrusive than detention must be implemented.<sup>36</sup> A detainee may challenge the lawfulness of his or her detention through court proceedings, which must be conducted speedily,<sup>37</sup> and

has a right to compensation should it be found to be unlawful.<sup>38</sup>

15. The ECtHR has found Member States to be in breach of Article 5 of the ECHR where they lack adequate procedures in place for asylum seekers to challenge the lawfulness of their detention. In *Popov v France*, for example, there was a breach of Article 5 where domestic law failed to provide for placing asylum seekers who were minors in administrative detention, which created a “legal vacuum” that prevented them from challenging the legality of their detention before a court or obtaining remedies in the event their detention was unlawful.<sup>39</sup> The ECtHR also held that an asylum seeker had been unlawfully detained where his detention order was made without consideration of his best interests as an unaccompanied minor and where the Greek authorities had taken insufficient measures to inform him of the remedies available to him.<sup>40</sup> The detention of minors in unsuitable conditions can also breach Article 5.<sup>41</sup>

## **TRAFFICKING AND EXPLOITATION**

16. Women and child refugees and asylum seekers are particularly vulnerable to exploitation and abuse. In 2017, more than 75% of 14-17 year-old asylum seekers in Italy were reported as having been held against their will or forced to work.<sup>42</sup> The Global Slavery Index 2016 reported that within the European cases that had been formally identified by EU authorities, the largest proportion of registered human trafficking victims were female, being approximately 80% of all victims.<sup>43</sup>

### *The Anti-Trafficking Convention*

17. Although this note focuses on the protections and remedies that stem from the ECHR, it is worth briefly noting the CoE Convention on Action against Trafficking in Human Beings (the “Anti-Trafficking Convention”), the purposes of which are to prevent and combat human trafficking, protect the human rights of the victims of trafficking, design a comprehensive framework for the protection and assistance of victims and witnesses and to ensure effective investigation and prosecution of trafficking.<sup>44</sup> The Anti-Trafficking Convention is not directly enforceable, however, it provides for a two-pillar monitoring mechanism to assess and issue non-binding recommendations in respect of the implementation of its obligations by Member States.<sup>45</sup> Importantly, the ECtHR is influenced by its provisions when deciding cases brought under the ECHR.<sup>46</sup>

### *The approach of the ECtHR in human trafficking cases*

18. The ECHR does not contain express provisions that relate to human trafficking. However, in the trafficking case *Siliadin v France*, the ECtHR found that Member States have a positive obligation, inherent in Article 4 of the ECHR, to adopt tangible criminal law provisions to deter, penalise and effectively prosecute acts of slavery or forced labour.<sup>47</sup>
19. The ECtHR broadened its approach in the landmark case *Rantsev v Cyprus and Russia*.<sup>48</sup> Firstly, it concluded that trafficking itself falls within the scope of Article 4, without

any need to consider whether the specific treatment complained of constitutes “slavery”, “servitude” or “forced and compulsory labour”. Secondly, it found that Member States have additional positive obligations under Article 4 to (i) take protective operational measures to protect those that they are aware (or ought to be aware) are victims of trafficking, and (ii) conduct effective investigations in potential trafficking cases, including cooperating with the investigations of the countries of origin, transit and destination.<sup>49</sup> In doing so, the ECtHR drew on both the Anti-Trafficking Convention and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.<sup>50</sup>

## **FEMALE GENITAL MUTILATION**

20. FGM is the partial or total removal of the external female genitalia, often without anaesthetic, for non-medical reasons.<sup>51</sup> The procedure is mostly carried out on girls between infancy and adolescence,<sup>52</sup> and 200 million women are estimated to have undergone FGM, with an additional 3 million at risk.<sup>53</sup>
21. The ECtHR has acknowledged that subjecting a woman to FGM amounts to ill-treatment contrary to the ECHR’s Article 3 prohibition on torture and inhuman or degrading treatment or punishment.<sup>54</sup> A number of women asylum seekers have challenged the refusal by a Member State to grant them asylum before the ECtHR on grounds that being expelled would put them at risk of FGM and therefore constitute a breach of Article 3 on the part of the Member State.<sup>55</sup> The test that applicants

need to satisfy is whether they face a “real and concrete risk” of being subject to FGM upon return to the relevant country.<sup>56</sup> However, none of these challenges have been successful to date. Typically, this is due to the ECtHR finding that the applicant could avoid FGM by moving to a different part of the country to which they are being returned.<sup>57</sup>

## **ACCESS TO JUSTICE**

22. While the substantive rights enshrined in the ECHR, as interpreted and developed by the ECtHR, provide some protection to women and children refugee and asylum seekers in principle, accessing that protection is often very difficult in practice.
23. As the ECtHR is a court of last resort, potential applicants must first exhaust all available remedies in the relevant Member State. This usually involves applying to the appropriate national court, followed by appeals up to the ultimate appellate court or constitutional court, if there is one. This procedure can be challenging to access, costly and time-consuming.
24. Although Article 6 of the ECHR provides for the right of access to a national court,<sup>58</sup> the ECtHR has held that this right is inapplicable to asylum cases because they do not concern the determination of a civil right or obligation, or a criminal charge.<sup>59</sup> However, the ECtHR has held that the general right under Article 13 to an effective remedy before a national authority encompasses the need for an accessible procedure.<sup>60</sup> It has also referred

recommendations to the CoE on legal aid to facilitate access to justice<sup>61</sup> and found a breach of Article 13 where an applicant had not received information concerning access to organisations offering legal advice and guidance, in circumstances where there was a shortage of legal aid lawyers in the relevant Member State.<sup>62</sup>

25. Despite the protections afforded by Article 13, women and children refugees and asylum seekers face numerous issues in practice, which vary to some extent between countries.<sup>63</sup> As a preliminary matter, prospective applicants must have information about their rights, the available remedies and the relevant procedures if they are to access them. But as a report published by the European Council of Refugees and Exiles (“ECRE”) in 2014 makes clear, many barriers to information exist.<sup>64</sup> For example, it found that although information leaflets on the relevant legal procedures were available in Austria in 50 languages, they were so complex that both adults and children struggled to understand them.<sup>65</sup> Similarly, the report found police in Italy using complicated terminology to inform unaccompanied child refugees of their age assessment procedures, with no effort made to adopt child friendly language.<sup>66</sup> Language barriers can also reduce accessibility. ECRE’s 2014 report found that a lack of interpreters for social workers and guardians responsible for informing children of their legal rights resulted in children being unaware of their right to legal assistance.<sup>67</sup>
26. Even if potential applicants do overcome the hurdles existing on a domestic level, they may also face practical

issues at the ECtHR, such as extended delays due to the volume of pending applications.<sup>68</sup>

27. In May 2017 the CoE adopted its Action Plan on Protecting Refugee and Migrant Children in Europe (2017 – 2019) (“the Action Plan”).<sup>69</sup> The Action Plan aims to address the barriers to justice faced by children refugees and migrants by, for example, providing training on child-friendly procedures and publishing a handbook on promoting child-friendly information for refugee and migrant children on access to rights and relevant procedures.<sup>70</sup> There is no equivalent plan for the protection of women refugees to date.

## REFERENCES

1. United Nations High Commissioner for Refugees (UNHCR) – Europe situation, available at: <http://www.unhcr.org/uk/europe-emergency.html> (last accessed 22 May 2018).
2. United Nations (UN) Department of Economic and Social Affairs, *International Migration Report 2017*, UN Doc. ST/ESA/SER.A/202, 28 December 2017, p. 15, stating that although women comprise slightly less than half of all international migrants worldwide, in Europe the share of female migrants was 52% in 2017.
3. UNHCR, United Nations International Children's Emergency Fund (UNICEF) and International Organization for Migration (IOM), *Refugee and Migrant Children in Europe – Accompanied, Unaccompanied and Separated – Quarterly Review of Trends – January - March 2017*, June 2017, which reports on p. 1 that over 5,000 children arrived in Greece, Italy, Bulgaria and Spain in Q1 of 2017, of whom approximately 69% were unaccompanied.
4. Council on Foreign Relations, *Sex Trafficking and the Refugee Crisis: Exploiting the Vulnerable*, 8 May 2017, available at: <https://www.cfr.org/blog/sex-trafficking-and-refugee-crisis-exploiting-vulnerable> (last accessed 22 May 2018).
5. UN news, *Migrating children and women "suffer 'sexual violence', exploitation, abuse and detention"* – UN agency, 28 February 2017, available at: <https://news.un.org/en/story/2017/02/552322-migrating-children-and-women-suffer-sexual-violence-exploitation-abuse-and> (last accessed 22 May 2018).
6. Refugee Council, *The Vulnerable Women's Project – Refugee and Asylum Seeking Women Affected by Rape or Sexual Violence – Literature Review*, February 2009, p. 5.
7. The ECtHR will consider the UN Convention Relating to the Status of Refugees, 1951, UNTS 150, (entered into force 22 April 1954) (the "Refugee Convention") when it forms part of the relevant domestic law; see e.g. ECtHR, *TI v the United Kingdom*, Judgment, Application No. 43844/98, 7 March 2000, in which the ECtHR cited (at p. 6) Article 33(1) of the Refugee Convention, the provision on non-refoulement, as an applicable international text forming part of relevant domestic law.
8. Refugee Convention, art. 1.
9. ECHR, art. 1.
10. ECHR, art. 3.
11. See e.g. ECtHR, *Chahal v United Kingdom*, Judgment, Application No. 22414/93, 15 November 1996, para. 74.
12. See e.g. ECtHR, *Riad and Iadiab v Belgium*, Judgment, Application Nos. 29787/03 and 29810/03, 24 January 2008, where the ECtHR held that the detention of the applicants, who had entered into Belgium illegally, for more than ten days in the transit zone of Brussels National Airport violated Article 3 of the ECHR.
13. ECHR, art. 2. Although in ECtHR, *Soering v United Kingdom*, Judgment, Application No. 14038/88, 7 July 1989, the ECtHR found that it could not be a breach of Article 2 read together with Article 3 to expel a person to face the death penalty (since Article 2 does not prohibit capital punishment), it has since been held that for those Member States which are parties to Protocol No. 6 to the ECHR concerning the Abolition of the Death Penalty, 1983, ETS 114, (entered into force 1 March 1985), it can be a breach of that Protocol to extradite or expel a person to another State where there is a real risk that the death penalty will be imposed: see e.g. European Commission of Human Rights, *Alla Raidl v Austria*, Judgment, Application No. 25342/94, 4 September 1995.
14. ECHR, art. 4. See e.g. ECtHR, *CN v the United Kingdom*, Judgment, Application No. 4239/08, 13 November 2012.
15. ECHR, art. 6. Although the Article 6 guarantee of the right to a fair trial does not apply to asylum or expulsion procedures, it has been relied on, for example, in a case concerning the deportation of a Jordanian national, where the ECtHR found that the use of evidence obtained by torture in a retrial of the applicant were he to be returned to Jordan would amount to a violation of Article 6.
16. ECHR, art. 8. See e.g. ECtHR, *BAC v Greece*, Judgment, Application No. 11981/15, 13 October 2016, where the ECtHR found that an asylum seeker's prolonged precarious and uncertain situation, due to an unjustified failure by the authorities to take action with respect to his asylum request, constitutes a violation of Article 8.
17. UN Convention on the Rights of the Child, 1981, 1577 UNTS 3 (entered into force 2 September 1990).
18. ECtHR, *Rahimi v Greece*, Judgment, Application No. 8687/08, 5 April 2011, para. 108. Article 37(b) of the CRC provides that "[t]he arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time".
19. ECHR, art. 14, which states that "[t]he enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex...".
20. See ECHR, art. 34, stating that "[t]he Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right".
21. See ECtHR, *Al-Skeini and Others v United Kingdom*, Judgment, Application No. 55721/07, Grand Chamber, 7 July 2011. A Member State will have "control and authority" over a foreign national, and thus jurisdiction, where, in accordance with custom, treaty or other agreement, Member State authorities carry out executive or judicial functions on the territory of the state where that foreign national is located. Thus, in this case, the ECtHR found it had jurisdiction in respect of the killing by the United Kingdom of six Iraqi civilians in Iraq.
22. See ECtHR, *Practical Guide on Admissibility Criteria*, 2017, pp. 12-18. A direct victim must show that he or she was "directly affected" by the measure complained of (see ECHR, *Tănase v. Moldova*, Judgment, Application No. 7/08, Grand Chamber, 27 April 2010, para. 104). Indirect victims may include, for example, next-of-kin or close family members. A potential victim could include an alien whose removal had been ordered, but not enforced, where enforcement would have exposed him or her to treatment contrary to Articles 3 and 8 of the ECHR in the receiving country (see *Soering v the United Kingdom*, supra note 13).
23. ECHR, art. 35.
24. Note that where multiple effective remedies are available in the national jurisdiction, the applicant needs only show they have exhausted one (not all) of remedies. See further ECtHR, *Practical Guide on Admissibility Criteria*, supra note 22, pp. 22-23.
25. *Ibid.*, pp. 27-30.
26. *Ibid.*, pp. 60-67. The "significant disadvantage" criteria was introduced in response to the increasing caseload of the ECtHR, and enables the ECtHR to reject cases that it considers to be sufficiently minor. Violations that are purely technical do not count as a "significant disadvantage" (see ECtHR, *Shefer v Russia*, Judgment, Application No. 45175/04, 13 March 2012). The severity of the violation depends on both a subjective view of the applicant and an objective view of the circumstances, although a subjective perception must be justified on objective grounds (see ECtHR, *Ladygin v Russia*, Judgment, Application No. 35365/05, 30 August 2011). Notably, in ECtHR, *Giuran v Romania*, Judgment, Application No. 24360/04, 21 June 2011, para. 22, the ECtHR held that the applicant had suffered a significant disadvantage where he, despite only aiming to recover stolen goods worth €350, felt that the proceedings concerned a question of principle for him, namely his "right to respect for his possession and for his home".
27. For example, where there is a clear absence of an ECHR violation, where a complaint is far-fetched or unsubstantiated, based on falsified documents (see e.g. ECtHR judgment of 30 March 2004 in *Jian v Romania*, application no. 46640/99) or where an application is made under a false identity (see e.g. ECtHR judgment of 22 February 2011 in *Tjitske Drijfhout v The Netherlands*, application no. 51721/09); see also ECtHR, *Practical Guide On Admissibility Criteria*, supra note 22, pp. 82-88.
28. See further ECtHR, *Practical Guide on Admissibility Criteria*, supra note 22, pp. 54-60.
29. ECtHR, *Mubilanzila Mayeka and Kaniki Mitunga v Belgium*, Judgment, Application No. 13178/03, 12 October 2006, para. 55.

30. ECtHR, *Mahmundi and Others v Greece*, Judgment, Application No. 14902/10, 24 October 2012, which concerned the detention of an Afghani family, including a woman who was eight months pregnant and four minors, in a detention centre on the island of Lesbos. The ECtHR found that the conditions of detention of the applicants (noting in particular at paras. 59-76 the absence of any specific supervision of the applicants, despite their particular status as minors and as a pregnant woman) had amounted to inhuman and degrading treatment in breach of the Article 3 prohibition on torture.
31. ECtHR, *Popov v France*, Judgment, Application Nos. 39472/07 and 39474/07, 19 January 2012.
32. ECtHR, *Rahimi v Greece*, Judgment, Application No. 8687/08, 5 July 2011.
33. ECtHR, *Aden Ahmed v Malta*, Judgment, Application No. 55352/12, 9 December 2013.
34. That is, the deprivation of a person's liberty save as where such detention is: (i) pursuant to a conviction by a competent court; (ii) for non-compliance with a lawful order of a court or in order to secure any obligation prescribed by law; (iii) effected to bring that person before a competent legal authority on reasonable suspicion of them having committed an offence, or where reasonably necessary to prevent them committing or fleeing from an offence; (iv) of a minor for educational supervision; (v) to prevent the spreading infectious diseases or to detain those of unsound mind or alcoholic or drug addicts; or (vi) to prevent the unauthorised entry of a person into the country or of a person against whom action is being taken with a view to deportation or extradition.
35. ECHR, art. 5(1)(f).
36. See European Union Agency for Fundamental Rights, *Alternatives to detention for asylum seekers and people in return procedures*, 2015, available at: <http://fra.europa.eu/en/publication/2015/alternatives-detention-asylum-seekers-and-people-return-procedures> (last accessed 22 May 2018).
37. ECHR, art. 5(4).
38. ECHR, art. 5(5).
39. ECtHR, *Popov v France*, supra note 31, para. 124.
40. ECtHR, *Rahimi v Greece*, supra note 32. For example, the applicant was not provided with an information brochure in a language he could understand, and was unable to contact a lawyer.
41. See, for example, ECtHR, *Muskhadzhiyeva v Belgium*, Judgment, Application No. 41442/07, 19 January 2010.
42. Guardian, *Traffickers and smugglers exploit record rise in unaccompanied child refugees*, available at: <https://www.theguardian.com/global-development/2017/may/17/traffickers-smugglers-exploit-record-rise-unaccompanied-child-refugees-migrants-unicf-report> (last accessed 16 May 2018).
43. The Global Slavery Index 2016, available at: <https://www.globalslaveryindex.org/region/europe/> (last accessed 22 May 2018).
44. CoE, Convention on Action against Trafficking in Human Beings, CETS 197, as adopted by the Committee of Ministers on 3 May 2005 and opened for signature in Warsaw on 16 May 2005, on the occasion of the 3rd Summit of Heads of State and Government of the Council of Europe member states, art. 1.
45. Human Trafficking Convention, Chapter VII.
46. For example, in ECtHR, *Rantsev v Cyprus and Russia*, Judgment, Application No. 25965/04, 7 January 2010, para. 285, the ECtHR held that the positive obligations of Member States with respect to trafficking must be considered within the broader context of the Anti-Trafficking Convention as well as the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, 2000, (entered into force 25 December 2003).
47. ECtHR, *Siliadin v France*, Judgment, Application No. 73316/01, 26 October 2005. In this case, the applicant, a 15-year old girl, had been kept as an unpaid servant in Paris, which the ECtHR held was prohibited forced-labour. The applicant was awarded compensation in the French courts in the form of back payment for her services, but the perpetrators were acquitted of any criminal liability. Due to this acquittal, the ECtHR held that France had failed to have adequate criminal law procedures to prevent and punish the perpetrators of forced labour as required under Art. 4 of the ECHR, noting in particular the applicant's status as a minor (at para. 148).
48. ECtHR, *Rantsev v Cyprus and Russia*, Judgment, Application No. 25965/04, 7 January 2010.
49. *Ibid.*, paras. 285 – 289.
50. *Ibid.*, para. 285.
51. World Health Organisation (“WHO”), *Factsheet on Female Genital Mutilation*, 31 January 2018, available at: <http://www.who.int/mediacentre/factsheets/fs241/en/> (last accessed 22 May 2018).
52. *Ibid.*
53. *Ibid.*
54. See e.g., ECtHR, *Izevbekhai and Ors v Ireland*, Judgment, Application No. 43408/08, 17 May 2011, para. 73.
55. See e.g., ECtHR, *Collins and Akaziebie v Sweden*, Judgment, Application No. 23944/05, 8 March 2007; ECtHR, *Izavbekhai and Ors v Ireland*, Judgment, Application No. 43408/08, 17 May 2011; and ECtHR, *Omeredo v Austria*, Judgment, Application No. 8969/10, 20 September 2011. Women who are seeking asylum because they have been subjected to, or are likely to be subjected to, FGM may also have refugee status under the Refugee Convention.
56. ECtHR, *Collins and Akaziebie v Sweden*, *ibid.*, p. 12.
57. For example, in *Collins and Akaziebie v Sweden*, the ECtHR noted that FGM was prohibited by law in Nigeria (the country to which the applicant was to be returned) and that this prohibition was observed in at least six Nigerian states.
58. The right of access to a national court is derived from the right to a fair trial under ECHR, art. 6.
59. ECtHR, *Maouia v France*, Judgment, Application No. 39652/98, 5 October 2000, para. 38. The right to a fair hearing under EU law applies to asylum and immigration cases, which is not the case under the ECHR.
60. For example, in ECtHR, *GR v the Netherlands*, Judgment, Application No. 22251/07, 10 January 2012, the ECtHR found a violation of Article 13 of the ECHR on the issue of the effective access to the administrative procedure for obtaining a residence permit. The ECtHR stated that the principles of “access to court” developed under Article 6 were also relevant for Article 13. This overlap was therefore to be interpreted as requiring an accessible procedure.
61. Council of Europe, Committee of Ministers (1981) Recommendation No. R (81)7 of the Committee of Ministers to member states on measures facilitating access to justice; ECtHR, *Siałkowska v Poland*, Judgment, Application No. 8932/05, 22 March 2007.
62. ECtHR, *MSS v Belgium and Greece*, Judgment, Application No. 30696/09, Grand Chamber, 21 January 2011, para. 319.
63. Differences in access to justice between countries can depend on, for example, the location of NGOs and the availability of state-subsidised services for refugees and asylum seekers.
64. ECRE, *Right to Justice: Quality Legal Assistance for Unaccompanied Children - Comparative Report*, July 2014.
65. *Ibid.*, p. 38.
66. *Ibid.*
67. As reported in Spain; *ibid.*, p. 52.
68. Committee on Legal Affairs and Human Rights, *The future of the Strasbourg Court and enforcement of ECHR standards: reflections on the Interlaken process*, Conclusions of the Chairperson, Mrs Herta Däubler-Gmelin, of the hearing held in Paris on 16 December 2009, 21 January 2010.
69. CoE, Council of Europe Action Plan on Protecting Refugee and Migrant Children in Europe (2017 – 2019), May 2017.
70. *Ibid.*, p. 10.

## CONTACT INFORMATION

This briefing note is published to provide general information and not as legal advice. Please contact a member of the Accountability Unit Legal Team or Research Team if you would like to discuss the contents of this note.

We would like to acknowledge the kind efforts of our colleagues at Gibson Dunn & Crutcher LLP, Madeleine Healy, Sophy Helgesen, Nooree Moola, Rose Naing, Nisha Navekar, Joseph Emly, and Rebecca Sambrook who volunteered their time to research and author this note whilst managing their busy legal practices.

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