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Protecting children affected by the refugee crisis: A shared responsibility
Secretary General's proposals for priority actions

Urgency of the situation

1. Since September 2015 an average of two children have drowned every day while trying to cross the Mediterranean¹. An estimated 300,000 migrant and asylum-seeking children arrived in Europe last year². Of these, 26,000 were unaccompanied, according to Save the Children, and Europol estimates that at least 10,000 have disappeared since the beginning of the crisis. Many will have fallen into the hands of human traffickers or become victim of others forms of violence, abuse or exploitation. More than one in three (36%) of the migrants and asylum-seekers crossing between Greece and Turkey is a child³.
2. The majority of migrant and asylum-seeking children⁴ are boys. However, the situation for girls is particularly worrying due to the risk of abuse, exploitation and other harmful practices (such as forced marriage), as well as the inadequacy and shortage of not just child-sensitive, but also gender-sensitive reception centres and accommodation.
3. The above findings confirm those of the Council of Europe's Group of Experts on Trafficking in Human Beings (GRETA), which highlighted in its [4th](#) General Report, (April 2015), that in 31 out of 35 countries evaluated at the time there were important gaps in the identification of child victims of trafficking. In many countries migrant and asylum-seeking children disappear within a few days of being placed in reception centres. GRETA's findings point to the inadequacy of child protection measures, such as specialised shelters offering a protected environment for children, insufficient appointment of legal guardians, and the lack of co-ordination between different national authorities, such as border officials, immigration officers, social services, law enforcement and child protection services. There is also a lack of co-ordination between the agencies of different countries. All these factors increase the risk of migrant and asylum-seeking children, particularly those who are unaccompanied, falling victim to trafficking.

¹ UNHCR, UNICEF, IOM data (<http://www.unhcr.org/56c6e7676.html>).

² Eurostat data in "Safety and fundamental rights at stake for children on the move", ECOC, 2016.

³ News note, "With growing numbers of child deaths at sea, UN agencies call for enhancing safety for refugees and migrants", 19 February 2016, http://www.unicef.org/media/media_90271.html;
News note, "More children and women seek safety in Europe: UNICEF", 2 February 2016, http://www.unicef.org/media/media_90000.html.

⁴ For the purposes of this paper the terms "migrant and asylum-seeking children" cover also children who have obtained refugee status.

4. Providing international protection to children fleeing war, violence and persecution, and guaranteeing their safety and fundamental rights, should therefore be an urgent priority for all Council of Europe member states.
5. In accordance with the UN Convention on the Rights of the Child and the European Convention on Human Rights, in dealing with migrant and asylum-seeking children all states must uphold the principles of non-discrimination on any ground, the best interests of the child, children as rights-holders, children's right to life, survival and development, family unity, non-refoulement, child-participation, and confidentiality. Today, a child-rights based approach is needed.
6. I have already issued guidance to member states on treating migrants and asylum-seekers in line with Council of Europe standards. These standards – notably the European Convention on Human Rights⁵ and the European Social Charter⁶ – are directly relevant to children.
7. The case law of the European Court of Human Rights relating to family reunification is relevant in this context. On a number of occasions the Court found a violation of the right to respect for family life because a proper balance was not struck between the applicants' interest and the countries' interest in controlling immigration. The Court has made clear the need to consider the specific circumstances of different cases, looking at the situation of the family in question, including the best interest of the child, against the right of the state to control immigration within its borders⁷. The Court has also stressed the importance of proper counselling and educational assistance from a qualified person especially assigned to unaccompanied children, the importance for

⁵ See the Secretary General Guidance on "The protection of migrants and asylum seekers: States' main legal obligations under the Council of Europe Conventions" for details about the relevant provisions of the ECHR and the case law of the Court, in such areas as prohibition of collective expulsions, non-discrimination, prohibition of inhuman and degrading treatments or punishments, detention and living conditions, access to procedures, family reunification, treatment of vulnerable groups.

⁶ For instance, right to shelter (Article 31§2), right to health (Articles 8, 11, 7, 19§2), right to education (Articles 9, 10, 15, 17, 19§§11-12), protection of the family and right to family reunion (Articles 16, 27, 19§6), prohibition of child labour under the age of 15 (Article 7§1 and §3), specific working conditions between 15 and 18 (Article 7). Migrant children have the right to an effective remedy. Access to quality education and health services for unaccompanied minors without any discrimination is key to uphold the child's best interests.

⁷ See, for instance, *Osman v. Denmark*, *Sen v. the Netherlands*, *Tuquabo-Tekle and Others v. the Netherlands*, *Mugenzi v. France*, *Tanda-Muzinga v. France* and *Senigo Longue and Others v. France*; *Ly v. France*.

reception centres adapted to children's needs, and the need to avoid conditions of detention that can cause considerable distress to children⁸.

8. Moreover, other key Council of Europe conventions of particular relevance for children (Convention on Action against Trafficking in Human Beings, Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Convention on Preventing and Combating Violence against Women and Domestic Violence and European Convention on Nationality) should be ratified by all member states and effectively implemented. All states should implement relevant recommendations concerning children issued by Council of Europe monitoring bodies and, notably, those issued by the Council of Europe's Commissioner for Human Rights. The Commissioner pays particular attention in his work to the human rights of children in migration and asylum proceedings and he has provided member states with a comprehensive set of recommendations, based on relevant international standards.

Proposals for priority actions

9. I propose a series of **immediate, priority actions**⁹ by member states and the Council of Europe to better ensure the safety and proper treatment of migrant and asylum-seeking children entering Europe, with a special focus on those who are unaccompanied.
 - **Prevent migrant and asylum-seeking children from falling victim to violence, abuse, exploitation and trafficking**¹⁰. To secure adequate protection, all member states must: (i) put in place a procedure for rapidly appointing legal guardians for unaccompanied children; (ii) provide suitable safe accommodation and adequately trained supervisors or foster parents; (iii) ensure the timely identification of victims of trafficking among such children¹¹; and (iv) carry out registration and documentation as soon as

⁸ See, for instance, *Muskhadzhiyeva and Others v. Belgium*.

⁹ These proposals are not exhaustive and constitute a first set of immediate responses to address the situation of migrant and asylum-seeking children, notably unaccompanied children. They are without prejudice to more medium to long-term actions.

¹⁰ As required under the UN CRC, the Council of Europe conventions on Action against Trafficking in Human Beings (CETS 197), on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201), on Preventing and Combating Violence against Women and Domestic Violence (CETS 210). Relevant issues have been raised also by the report of the Committee on Migration, Refugees and Population, Parliamentary Assembly Council of Europe, Unaccompanied children in Europe: issues of arrival, stay and return (21 March 2011 – doc 12539, Resolution 1810 (2011), Recommendation 1969 (2011)).

¹¹ The Council of Europe's Anti-Trafficking Convention provides for special measures and procedures for children in the context of victims identification. (See, for instance, Chapter III of the Convention.) In

possible after the child is identified. Member states should work with the EU, FRONTEX, relevant UN agencies (e.g. UNHCR, UNICEF), IOM, and other partners to train all staff concerned, including police and immigration officers, to address the specific needs of migrant and asylum-seeking children. Special attention should be paid to (i) girls to ensure protection from multiple risks and (ii) preventing and combatting all forms of hate crimes which may affect migrant and asylum-seeking children. Child-friendly material for different age groups explaining the applicable rights and procedures should be provided to all children in a language they can understand. In order to map the most pressing gaps in preventing migrant and asylum-seeking children from falling victims to trafficking, and to complement already existing information, I will task my Special Representative on Migration and Refugees, together with relevant experts, to carry out a fact-finding mission and focus action on the most urgent needs.

- **Make every effort to end the placement of children in immigration detention facilities.** Member states must ensure that the reasons for detention in exceptional circumstances are clearly defined and that it is used only as a means of last resort for the shortest period of time possible, taking into account the best interests of the child as a primary consideration. This entails providing effective alternatives to detention of children with families and child appropriate treatment and care arrangements¹². The Council of Europe will support member states by sharing experience and good, gender-sensitive practices in the context of the Ad Hoc Committee for the Rights of the Child (CAHENF)¹³ and targeted support, where requested, on a country by country basis.
- **Improve age assessment procedures.** Assessing their age is essential to ensuring children can benefit from the protection to which they are entitled. When the age of the child is uncertain and there are reasons to believe that the person is a child/minor, he or she shall be presumed to be a child and shall be accorded special protection measures pending verification of age.

several countries' evaluations, GRETA has urged the authorities to take measures in order to improve the identification of and assistance to child victims of trafficking, including by setting up a specific identification and referral mechanism which takes into account the special circumstances and needs of child victims, involves child specialists, child protection services, and specialised police and prosecutors, and ensures that the best interests of the child are the primary consideration.

¹² See CPT's 19th general report (2009, para 97). The detention of migrant children has also been addressed by the European Court of Human Rights in the context of Articles 3, 5, 8 and 13 of the ECHR. See inter alia *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, *Muskhadzhiyeva and Others v. Belgium*, *Rahimi v. Greece*, *Popov v. France*, *Kanagaratnam and Others v. Belgium*, *Mahmundi and Others v. Greece*. See also *Tarakhel v. Switzerland* on specific assurances for adequate reception conditions suitable to children.

¹³ Pending adoption of its terms of reference by the Committee of Ministers.

While no international standard exists to stipulate age assessment procedures¹⁴, the Council of Europe will support member states by (i) sharing good, inter-disciplinary and gender-sensitive practices in this area which are compatible with the Organisation's human rights standards, respect children's rights and (ii) providing appropriate safeguards to the individuals whose age is being disputed, prior to and throughout the whole procedure. This work should be carried in the context of the newly created ad hoc Committee for the Rights of the Child (CAHENF) and, where requested, on a country by country basis.

- **Ensure a gender dimension in dealing with migrant and asylum-seeking children.** Member states must: (i) consider granting girls who are victims of gender-based violence independent residence status; (ii) recognise gender-based violence against girls as a form of persecution within the meaning of the 1951 Convention relating to the Status of Refugees and as a form of serious harm giving rise to complementary/subsidiary protection; (iii) ensure that a gender-sensitive interpretation be given when establishing refugee status; (iv) introduce gender-sensitive procedures, guidelines and support services in the asylum process; (v) take whatever steps are necessary to ensure full respect for the principle of *non-refoulement*.^{15 16}
- **Ensure access to education.** The right to education applies to all children present in a member state's territory, including those who have been granted refugee status and those who are seeking asylum, and in both transit and destination countries¹⁷. The Council of Europe Committee of Social Rights declared in 2009 that "... denial of access to education will exacerbate the

¹⁴ However, see General Comment No. 6 of the Committee on the Rights of the Child which provides guidance in this respect. See also the Council of Europe's Commissioner for Human Rights Comment on this subject matter: <https://go.coe.int/zUgwt>.

¹⁵ See Chapter VII of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, in particular Articles 59-61.

¹⁶ States must respect its *non-refoulement* obligation in all cases. They must not return a child – whether boy or girl – to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child.

¹⁷ Article 26 of the Universal Declaration of Human rights ; Article 2, Additional Protocol N°1 of the European Convention on Human rights and Fundamental Freedoms; Article 17 of the European Social Charter Revised governs the right to education and is subject to the provisions of Articles 18 and 19 in relation to migrants and the promotion of teaching of the national language of the receiving state and the teaching of the migrant worker's mother tongue; Article 29 of the United Nations Convention on the Rights of the Child; Article 22 (1) of the Refugee Convention and the EU asylum acquis provide for the right to education of asylum seeking children and for those granted refugee status or subsidiary protection (Directive 2008/115/EC, OJ L 348/98, Art 14 (1))

vulnerability of an unlawfully present child.” The Council of Europe will support member states in ensuring the right to education is upheld by: (i) promoting positive education policy measures, remedies and action based on good practices with regard to effective implementation, such policies should take account of the linguistic, cultural and educational experience of children in order to rebuild their self-esteem and confidence and make them less vulnerable to isolation; and more specifically by (ii) sharing innovative practice related to teaching refugee and asylum-seeking children basic language skills in transit and destination countries. This work will be carried out by the Steering Committee for Education Policy and Practice (CDPPE) based on the CM Recommendations 2012/13 on ensuring quality education and 2008/4 on strengthening the integration of children of migrants or with an immigrant background.

- **Prevent statelessness of children.** Nationality in a number of countries connected to the current crisis, including Syria¹⁸, is often based on the father. Mothers and unaccompanied minors can struggle to prove paternity when the family has been separated, often across different countries or different refugee camps, or when the father has died¹⁹. As a result, children can be left without a nationality²⁰. The right of everyone to a nationality is enshrined in Article 15 of the Universal Declaration of Human Rights and is recognised in many other international and regional human rights instruments, such as the Council of Europe Convention on Nationality²¹, further strengthened by the CM/Rec(2009)13 on nationality of children which focuses specifically on the necessity of avoiding statelessness of children. Council of Europe bodies, notably the European Committee on Legal Co-operation (CDCJ) and the ad hoc Committee for the Rights of the Child (CAHENF)²² provides guidance on procedures to identify stateless children and on the relationship between birth registration and the right to acquire a nationality, building on relevant international and European standards²³.

¹⁸ See, for instance, Article 3.A of the Syrian Nationality Law, in refworld.org.

¹⁹ This is confirmed by UNHCR (<http://www.unhcr.org/cgi-bin/txis/vtx/refdaily?pass=52fc6fbd5&id=56403b845>) which noted that in Syria the war has forced more than four million people to flee the country and left 25 percent of refugee families fatherless.

²⁰ See, in this context, “Safety and fundamental rights at stake for children on the move”, ENOC, February 2016, and the EU Council Conclusions on statelessness of December 2015.

²¹ Article 4.a.

²² Pending adoption of its terms of reference by the Committee of Ministers.

²³ Article 7 of the UN CRC guarantees the right to acquire a nationality, as does Article 24 (3) of the ICCPR. This is also a concern under the European Convention on Nationality (CETS no. 166, dated 06/11/1997).

Moving forward within the Council of Europe

1. **My Special Representative on Migration and Refugees** will ensure a special focus on migrant and asylum-seeking children to further national asylum policies and practices compliant with the rights of the child. He will provide support to member states to ensure appropriate follow-up to the relevant judgments of the European Court of Human Rights and the decisions and recommendations of the monitoring mechanisms and will interact, as appropriate, with the national authorities, major international and regional organisations, as well as non-governmental organisations working for and with children.
2. The High Level Launching Conference of the **Council of Europe Strategy for the Rights of the Child (2016-2021)**²⁴ (Sofia, 5-6 April 2016) will have a special session devoted to **Upholding the rights of children on the move: Learning from the “refugee crisis”**. During this session, broader issues concerning children on the move or otherwise affected by migration will be discussed. Indeed, migrant children at large – whether accompanied or unaccompanied – too often suffer persistent violations of their human rights. This session will discuss, among others, the application of the best interests of the child in asylum and immigration procedures, guardianship and age assessment issues, as well as how to prevent child trafficking, abuse and exploitation.
3. The **Ad Hoc Committee for the Rights of the Child (CAHENF)**²⁵, which will be responsible for overseeing the implementation of the new Council of Europe Strategy for the Rights of the Child (2016-2021), will hold its first meeting in the second half of 2016 and focus on additional appropriate action to strengthen efforts to protect the rights of migrant and asylum-seeking children.
4. **GRETA’s forthcoming 5th Report**, to be issued in March 2016, will continue to address the issue of the identification of victims of trafficking in human beings among migrants, asylum seekers and refugees. A special focus will be placed on children, notably unaccompanied, because of the specific risks they face.
5. **The Council of Europe Development Bank (CEB)**, in particular through its Migrant and Refugee fund (MRF), supports financing of transit and reception centres and of integration projects that are specifically relevant for children. CEB

²⁴ Pending adoption by the Committee of Ministers.

²⁵ Pending adoption of its terms of reference by the Committee of Ministers.

member states should consider whether their current projects in favour of children may fall within the eligibility criteria.

6. **Comprehensive child protection systems** must be set up, in line with Council of Europe standards. They must include the adoption, implementation and monitoring of integrated national strategies for the protection of children from all forms of violence²⁶. The Council of Europe is ready to support member states by sharing experience and good, gender-sensitive practices, where requested, on a country by country basis to develop such child protection strategies²⁷. The possibility to propose a more forward looking and sustainable solution should also be considered on the basis of the CM/Rec(2007)9 on life projects for unaccompanied migrant minors.

²⁶ See, for instance, the Council of Europe Policy Guidelines on integrated national strategies from the protection of children from violence.

²⁷ See [2016/DG II/VC/3484](#) Strengthening legal and policy framework to eliminate all forms of violence against children. Member states and the EU should consider providing funding to this project.