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Thematic Report on migrant and refugee children

**Prepared by the Special Representative of the Secretary General on
migration and refugees**

Introduction

In March 2016, the Secretary General's paper on "Protecting children affected by the refugee crisis: A shared responsibility" (SG/Inf(2016)9) identified a series of immediate, priority actions for member states and the Council of Europe. They would result in improved safety for these children and enhanced respect for the human rights standards of the Council of Europe, with a special focus on children who are unaccompanied.

Since his appointment, the Special Representative of the Secretary General on migration and refugees (hereafter the SRSG) has carried out four fact-finding missions in order to assess how the Council of Europe can assist member states to manage the current migratory flows, while respecting their commitments under Council of Europe human rights instruments. The SRSG has also initiated consultations within the Council of Europe on ongoing and future activities on refugee and migrant children with a view to the adoption, in early 2017, of a transversal action plan on refugee and migrant children. Moreover, discussions have taken place with other international and European organisations that are active in the field of protection of migrants' and refugees' rights.

This thematic report focuses specifically on issues concerning refugee and migrant children, including children within families as well as unaccompanied and separated children. Its aim is to identify key findings from the SRSG's missions in 2016 and to reflect on how priorities must be addressed, both as a matter of urgency and in the ongoing work of the Council of Europe, in the upcoming action plan.

General Overview: Situation of Refugee & Migrant Children

The United Nations Children's Fund (UNICEF) has noted that almost one child in ten lives in a country affected by armed conflict and more than 400 million children live in extreme poverty (UNICEF June 2016).^[1] Such harsh circumstances have led to half of the world's displaced now being children under the age of 18 (UNHCR Global Trends 2015).

Children arrive in Europe as part of a family, or travelling with persons other than their parents or primary caregivers, or entirely alone. They come from many different countries and for many different reasons. Some are fleeing war or persecution; some are escaping serious deprivation; others are seeking educational or economic opportunities or seeking to reunite with family members. Indeed, sometimes children may have different motivations at the same time and may shift between categories, such as asylum seeker, migrant or trafficked, along their migratory journey.

According to figures from Eurostat and the European Parliamentary Research Service (EPRS), around 30% of asylum seekers arriving in Europe in the last two years were children. Nearly 70% of these children were fleeing conflict in Syria, Afghanistan and Iraq. The number of unaccompanied children who applied for asylum in the European Union reached 96,465 in 2015 and they accounted for almost one quarter of all asylum applicants under 18 years of age.

According to UNICEF, in 2016, the number of unaccompanied and separated children using the central Mediterranean route (most of whom started their journey in Eritrea, Gambia or Nigeria) more than doubled compared to last year; as a matter of fact, nine out of ten children who used this route in 2016 were unaccompanied and separated. These figures represent a significant increase from previous years and a trend which is likely to continue considering the situation in the main countries of origin.

The task of addressing the situation of the refugee and migrant children recently arrived in Europe will demand concerted efforts for many years to come, over a wide range of fields and involving many actors. Measures must be taken at local, national, regional and international levels. This will include measures concerning access to international protection, humanitarian assistance, combating trafficking and abuse, child protection, immigration control, family reunification, return procedures and integration. Integration is crucial for children to have a real chance to start a new life. It is vital that refugee and migrant children have welcoming places to settle, including foster care for unaccompanied children. Immigration and law enforcement officials, child protection actors, health, education and legal professionals, guardians, amongst others, are all implicated in this task. The work of national authorities, intergovernmental agencies, non-governmental organisations and volunteers in these tasks is interconnected in a vital way for the years ahead.

Situation Analysis from Fact-Finding Missions of the Special Representative

The SRSG undertook four fact-finding missions to Greece and “the former Yugoslav Republic of Macedonia”, Turkey, northern France (Calais and Grande-Synthe) and Italy. He also visited Paris, London and several accommodation centres in the French region of the Grand Est to which persons evacuated from the camp in Calais had been taken. These countries are all particularly significant, given their location on important points of the migration routes out of countries of origin, and into and within Europe. His visits included areas frequently under acute pressure (such as Gaziantep in Turkey, Idomeni in Greece, Calais in France and Lampedusa in Italy) because of the high numbers arriving and because of the reality of many being stranded in situations of distress, unable to transit in the face of closed borders and the absence of effective cross-border procedures.

On-site visits and meetings with authorities and intergovernmental, non-governmental and other organisations were carried out.

In each of these places, the SRSG encountered children who have arrived in Europe in difficult circumstances and after dangerous journeys. Many live in precarious and difficult situations within Europe, vulnerable to neglect and violence. It is clear that the situation, although unpredictable and changing, is not temporary and measures that began as emergency responses have sometimes become protracted.

There are many factors that affect refugee and migrant children and their families during their journeys to safety. Based on concrete observations during the SRSG’s four visits, the following fields raise serious concern:

Identification and age assessment

In order to access special protection and assistance measures, unaccompanied children must be identified and referred to child protection authorities. Without proper identification procedures in place, children are at risk of being treated like adults and placed in detention, as witnessed in the field.

Therefore, age assessment measures are necessary when an individual’s stated age is disputed. However, as observed, such measures are not always comprehensive because psycho-social aspects appear to be neglected. The Committee on the Rights of the Child of the United Nations advises that age assessment measures should be multi-disciplinary and holistic (CRC General Comment No. 6) and should be carried out with appropriate safeguards.

Registration and guardianship

Following identification, children and families should be registered. Unaccompanied and separated children, as well as age-disputed individuals, should have a guardian

appointed as soon as possible. As observed in the field, unaccompanied children are not always identified, registered and provided with a guardian. Without a guardian and suitable care, such children may be exposed to serious protection risks, such as sexual exploitation, and are more likely to go missing. Until a guardian is appointed, there is often a vacuum in terms of the child's ability to access and to enjoy protection, particularly in countries where children need guardians in order to complete administrative procedures, including applications for asylum and requests for relocation and family reunification. While guardianship practices vary across Europe, good practice standards do exist. It was encouraging to learn that such good practice is being considered by the Greek authorities and others in the development and strengthening of guardianship systems for unaccompanied children.

Adequate reception conditions including preventing and responding effectively to disappearances

As observed in the field, many children and families across Europe live in abysmal conditions. Fortunately, in some cases, such as the makeshift Tabanovce camp in "the former Yugoslav Republic of Macedonia", the responsible authorities responded to the SRSG's call for action and assisted those concerned by providing proper shelter and relocation to better reception facilities. With regard to minimum living conditions in camps, practical measures such as gender-separate sanitary facilities, better lighting and child-friendly spaces not only make a huge difference for children's well-being, but may also eliminate risks of sexual abuse. Efforts to transfer those concerned from camps to better accommodation are welcome, as are efforts to ensure that they are able to access procedures to claim international protection. However, in taking such measures, it is vital to safeguard unaccompanied children and to prevent disappearances. In this regard, the SRSG observed limited involvement of child protection authorities at certain critical moments. For example, during his missions, he observed that no child protection officer was present when children register with migration authorities to inform them in child-friendly language about their rights and to respond to their questions and concerns. There is a real need for an integrated response from the different actors involved in the reception and care of children and families.

Alternatives to detention for families and suitable alternative care arrangements for unaccompanied and separated children

Immigration detention is never in the best interests of the child. Furthermore, separation of a child from his or her family should only take place when it is in the best interests of the child. Yet, migrant and refugee children are detained and many are separated from a parent who is placed in immigration detention. A lack of alternatives to detention is one of the most damaging structural problems affecting children, which urgently needs to be addressed. The Council of Europe has supported the Global Campaign to end immigration detention of children^[2] and we shall continue our efforts to end this violation of children's rights.

Accurate information, quality legal aid and access to child-friendly procedures

Refugees and migrants are seeking safety and stability. It is crucial that they receive accurate information on their rights, access to procedures that will determine their protection needs and decisions that provide them with a durable solution. Yet, it seems that children are rarely provided with child-friendly information, the assistance of an interpreter or free legal aid. The SRSG, throughout his field missions, encountered migrants who lacked information, or had been given inaccurate or insufficient information, and who were languishing in limbo. In some cases, this was due to backlogs in the system. In the worst cases, refugee and migrant families were detained without access to international protection procedures. These backlogs and barriers must be addressed in order to

avoid further human rights violations and to ensure access to protection for those who deserve it as well as to strengthen the effective functioning of asylum and immigration systems across Europe. In this regard, the need for practical guidelines on child-specific persecution and child-sensitive credibility assessment as well as related training initiatives targeting relevant decision-makers in member states should also be emphasised.

Preventing and responding to violence, trafficking and exploitation

Child trafficking is a concern on the migrant route to and through countries. The procedures do not always guarantee the effective identification of trafficking victims.

Migrants and refugees are exposed to violence not only at the hands of smugglers and traffickers, but also as a result of state action and inaction. For example, the SRSG was concerned to learn on one of his missions that children caught vending or begging were arrested and detained. This is not an appropriate response: rather, child protection measures should be put in place. There were also allegations of sexual harassment and abuse of children in some camps the SRSG visited and of disproportionate use of force by the police. State actors should ensure that their interventions do no harm to children. Additionally, states should work to prevent child labour, such as the exploitation of Syrian children in the textile industry and agriculture. States also need to develop appropriate responses to harmful practices and survival strategies such as early and forced marriages, which appear to be an increasing phenomenon.

Education and integration measures

Every child has the right to education. Yet, it was observed that many children face both systemic and practical barriers to accessing quality education. Globally, only 50% of refugee children attend primary school. In the hotspots and emergency camps, there are often very limited or no educational opportunities. In some countries children without the necessary documentation were unable to enrol in school. In particular, children of irregular migrants face discrimination. There is a need not only to address such inequality, but also to provide specialised linguistic support to refugee and migrant children. Additionally, member states should take measures to support families so that children do not need to engage in child labour and, therefore, miss out on their chance for educational opportunities. Local and regional authorities have a key role to play in improving access to and quality of education for all children.

Access to health services

Migrants and refugees should be guaranteed access to health services. In this regard, it is disturbing to learn that unregistered refugees and asylum seekers in some countries only have access to emergency healthcare, which does not always include maternity care and giving birth in a hospital. It is essential that such services be accessible for migrants and refugees. As with other services, the assistance of an interpreter or cultural mediator may be necessary to access and to benefit from health services. Additionally, specialised mental health services may also be necessary and such services should be better developed and resourced across Europe.

Relocation and resettlement

Relocation and resettlement provide a legal avenue to protection. By increasing and fulfilling such pledges, states can proactively manage the selection and integration of the most vulnerable. Such measures require adequate resources both before and after relocation or resettlement. Unfortunately, relocation pledges remain insufficient and measures to relocate the most vulnerable, such as unaccompanied children are unsatisfactory. In practice many children fall outside their scope. For

example, the European Commission's seventh report on relocation notes that the biggest group of unaccompanied minors in Greece are Afghans, who are not eligible for relocation. It is therefore important to find other mechanisms for transfer to other countries. As an example, the so-called Dubs amendment provides a mechanism for relocation of children to the United Kingdom but still needs to be implemented more effectively.

The scarcity of relocation offers prevents those entering frontline countries from being able to travel legally to other countries to have their asylum claims examined there. During SRSGs visits, it is observed that relocation takes too long. This creates further pressure on the reception systems. More focused attention at EU level to the specific question of relocation of children could ensure that swift and effective procedures are put in place to transfer children away from acute shortages of reception to places where they can access asylum procedures and benefit from reception conditions which cater for their needs.

Family reunification

Children and families often become separated on their long journeys to Europe. Ideally, the implementation of the Dublin III Regulation should facilitate timely family reunification within the European Union. However, procedures for such transfers have been heavily criticised as cumbersome. They need urgent improvements to ensure a child-centred approach and, in particular, to cut down on lengthy delays. Authorities should continue to monitor and to support families following reunification efforts.

Statelessness

In addition to these issues that the SRSG encountered during his field missions, there is also the need to prevent and to reduce statelessness among migrant and refugee children. Addressing statelessness is highlighted as a priority in the Secretary General's March 2016 paper and is regularly a focus of the country monitoring and recommendations made by the Commissioner for Human Rights. Most recently, the Parliamentary Assembly adopted Resolution 2099 (2016) that outlines concrete measures that member states should take in order to eradicate statelessness of children.

Transition to adulthood

When an unaccompanied child turns 18, he or she may suddenly be transferred to adult facilities and receive limited assistance or, in the worst case, find himself or herself living on the street without any support. A more gentle transition period for those reaching the age of majority could help better prepare them for life ahead and prevent disappearances. More attention to easing transition could reduce the risk that these children find themselves unemployed and without any support network.

IX# Setting a Course for Better Responses

During the course of his missions, the SRSO witnessed, first-hand, great commitment and engagement from authorities and NGOs. However, there were also examples of authorities and organisations struggling to mobilise the necessary resources and identify adequate solutions, both at the frontline and in actions, which address the longer-term situation of these children.

What is abundantly clear is that we cannot afford to fail to address the situation of refugee and migrant children decisively. How best to respond in a way that respects human rights remains a challenge for all governments. However, challenges if well-managed can turn into opportunities. The stakes are very high both for these children and for our societies as a whole. Without adequate assistance to these children and proper procedures to determine where their futures lie, their ability to develop and contribute to society, whether that be in Europe or elsewhere, is completely undermined. And if we do not guarantee respect for human dignity, solidarity and protection of children from violence, our societies take on the real and significant risks of marginalised communities, social division and insecurity.

It is vital to place the rights of refugee and migrant children at the centre, while directly engaging with the very real challenges for authorities and other actors in securing their immediate protection and longer-term solutions in line with their best interests.

Treating migrant and refugee children as children first and foremost must be our clear starting point, regardless of their citizenship, immigration status or background. As stressed by the Secretary General, in accordance with the United Nations Convention on the Rights of the Child, the European Convention on Human Rights and the European Social Charter, in dealing with migrant and asylum-seeking children, all member states must uphold the principles of non-discrimination on any ground, be guided by the best interests of the child and recognise children as rights-holders as well as their right to life, survival and development, family unity, non-refoulement, participation and confidentiality.

We must also recognise that some issues which arise during mass arrivals and when addressing individual cases of families and unaccompanied children are complex and sensitive, both legally and politically. If children are to be protected and assisted, these questions need to be addressed squarely by the international community, drawing on human rights standards. Without this, we will fail to make progress. For example, finding ways to ensure solidarity and responsibility sharing in Europe is a difficult but crucial task. Child-sensitive procedures must be designed and take into account their individual circumstances. This is challenging and involves adapted procedures, the involvement of specialised actors and inter-agency approaches and adequate fact gathering and assessment. A further example of an area where practices and approaches are contested arises around the deprivation of liberty of migrant children. However, there is growing consensus that detention of children, for immigration reasons, must be brought to an end.

Resolving these issues requires determined collective effort. The need to find better ways to work together to secure the rights of children is manifest within countries and across borders, and between different actors and organisations, whether governmental or inter-governmental, civil society and volunteers. What these children are going through will define who they will become. It will also define, in some respects, our common future.

V. Moving Forward

The SRSG's fact-finding missions have demonstrated some key areas where the Council of Europe must play its role in supporting member states, and indeed all actors concerned.

The body of Council of Europe conventions sets important standards, in diverse areas, which are the foundation stones for action. The geographical reach of its membership allows activities by the Council of Europe to achieve an impact all along the migration routes into and within Europe. The Council of Europe can draw on the knowledge and experiences of its member states along this spectrum to develop policy and provide support in fulfilling our obligations towards refugee and migrant children. The Council of Europe also supports networks which have a real role to play, including the European Network for Ombudsmen for Children. It participates in ongoing dialogue and co-operates closely with other international and regional organisations including the European Union and United Nations bodies and agencies.

Putting in place, as a next step, an action plan that addresses issues facing all refugee and migrant children will strengthen the Council of Europe's ongoing work and crucially will allow us to do more and to do better for children and families. A comprehensive framework allows the Council of Europe to bring refugee and migrant children specifically into focus across the many areas of Council of Europe work that have an impact on them. These include child rights, education, sport, youth participation, access to social rights and intercultural programmes. It would allow better links to be forged between them and would contribute to the ongoing work of the Parliamentary Assembly, the Congress of Regional and Local Authorities, the European Committee of Social Rights and the important monitoring work of the treaty bodies. An action plan will also enable the Council of Europe to engage more fully with external stakeholders in respect of refugee and migrant children by raising awareness of its activities, supporting dialogue, and facilitating synergies and co-operation.

Features of this framework will be led by the findings from the fact-finding missions, including a focus:

- not only on short-term, emergency responses, but on a longer-term strategy;
- not only on certain border points, but also on efforts to find durable solutions for the future well-being of refugees and migrants and in the best interests of the children concerned;
- on all refugee and migrant children, not just those with claims for international protection;
- on meeting the special needs for the assistance and protection of unaccompanied children and ensuring that the situation of children within families is visible and addressed;
- on ensuring respect for non-refoulement, while at the same time managing migration flows;
- on securing stability for refugee and migrant children through support for integration in our societies, resettlement to other countries or return to their countries of origin, when and where this is in their best interests;
- on strengthening child protection systems and building capacity for the protection of all children in the jurisdiction of member states.

A Council of Europe wide action plan on migrant and refugee children, with special focus on unaccompanied children, will play an instrumental role in both standard-setting processes on issues such as age assessment, legal guardianship and in dissemination of promising practices on a wide-range of areas such as alternatives to detention, education, in particular linguistic education, and fight against child trafficking. The Action Plan will include concrete activities that would improve the lives of refugee and migrant children in Europe.

[1] UNICEF Child Alert, Danger Every Step of the Way, June 2016
https://www.unicef.org/emergencies/childrenonthemove/files/Child_Alert_Final_PDF.pdf.

[2] Launched during the 19th session of the United Nations Human Rights Council in 2012.

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