



Save the Children

KEEPING CHILDREN AT THE CENTRE

**Time for EU solidarity in protecting migrant
and refugee children's rights**

This report is the result of a team work of Save the Children's Mediterranean Advocacy Group on Migration (MAG).
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Cover photo: Refugees arriving in Lesvos, Greece.

Tell their story:

'My name is Nadir* and I am 11 years old. I am travelling with my two sisters and my parents from Afghanistan.
My mother is sick and in our country she could not be cured. The most important thing was to bring medicine for my mother,
so we could not bring more luggage. We did the trip from Turkey to Greece at night with other Afghans.
It was cold and the water came up to my knees. My lifejacket was fake.
We want to get to Germany, I would like to work as a dentist and help my family.'

* Not real names

(Photo: Pedro Armestre / Save the Children)

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Glossary

Child: A child is any person below the age of 18 years. UNCRC, Article 1. See also Anti-Trafficking Directive (2011/36/EU) Article 2 (6).

Unaccompanied child: An ‘unaccompanied minor’ is a child ‘who arrives in the territory of the Member States unaccompanied by an adult responsible for him or her whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such a person; it includes a [child] who is left unaccompanied after he or she has entered the territory of the Member States.’ Qualification Directive (2011/95/EU), Article 2 (l).

Separated child: A ‘separated child’ is a child outside their country of origin who has been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives.¹

Guardian:² A guardian is an independent person who safeguards a child’s best interests and general wellbeing, and to this effect complements the limited legal capacity of the child. The guardian acts as a statutory representative of the child in all proceedings in the same way that a parent represents his or her child.

Asylum-seeker:³ A person who has applied for asylum under the 1951 Refugee Convention on the Status of Refugees on the ground that if he/she is returned to his/her country of origin he/she has a well-founded fear of persecution on account of race, religion, nationality, political belief or membership of a particular social group. He/her remains an asylum-seeker for so long as his application or an appeal against refusal of his application is pending (UNHCR).

Refugee: According to Article 1(A) of the Geneva Convention a refugee is a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it.

Migrant: Any person who is moving or has moved across an international border or within a state away from his/her habitual place of residence, regardless of (1) the person’s legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) what the length of the stay is.⁴

Executive summary

One of the central goals of the 2015 European Agenda on Migration⁵ was to protect the rights of those in need. However, current EU policies and practices are aimed primarily at reducing the number of migrants and refugees arriving and staying in Europe, which is putting children at risk.

In 2016, more than 100,000 children arrived in Europe, of whom over one-third were unaccompanied or separated from their families.⁶ In the same year, more than 63,000 unaccompanied children applied for asylum in the EU.⁷ Around one-third of the asylum seekers currently residing in Greece are children, 2,100 of them unaccompanied.⁸ There has also been a rise in the number of children travelling alone in Libya.⁹ Between 2015 and 2016, the number of children crossing via the dangerous central Mediterranean route increased by 71%, while the number of children travelling alone doubled.¹⁰

There are almost no safe and regular routes for migrant and refugee children to reach safety in Europe. Children trapped in Libya face violence, abuse and torture. Thousands of children are stranded alongside adults in overcrowded ‘hotspots’ in Greece. Slow asylum processing procedures are driving children underground and forcing them to undertake dangerous journeys at the hands of smugglers.¹¹

UN agencies and NGOs have warned that a short-sighted focus on ‘stopping the flow’ will not be effective and creates long-term risks. The EU and many EU member states’ emphasis on returns and preventing migrants from reaching Europe is denying children and their families their rights and reducing access to international protection.

Many of these violations of migrant and refugee children’s rights are a consequence of the acute lack of solidarity between EU member states. Several countries are receiving fewer asylum seekers now than in 2012–2013, before

the crisis started.¹² Under the Dublin Regulation, many are planning to transfer asylum seekers back to Greece and Italy, which have already seen a sevenfold increase in the number of arrivals compared to pre-crisis levels and where thousands of children remain.

To improve the situation of migrant and refugee children on their way to or within Europe, Save the Children recommends taking action on the following priorities:

- **Actions for children should be streamlined across the Agenda on Migration and adequately budgeted for,** in alignment with the European Commission’s Communication on the Protection of Children in Migration.
- **A permanent mechanism for responsibility-sharing should be established as part of the Dublin Regulation,** giving priority to the most vulnerable and taking into consideration the needs, skills and preferences of asylum seekers.
- **Implementation of the European Commission Action Plan on the Integration of Third-Country Nationals¹³ should be prioritised and financed with a focus on early childhood education and the mental health of children.**
- **Regular migration channels should be expanded and safeguarded.**

Introduction

In May 2015, in response to thousands of tragic drownings in the Mediterranean, the European Commission put forward a European Agenda on Migration.¹⁴ The trigger had been the deaths of more than 800 people, including children, who drowned when the boats they were travelling in sank off the Italian coast of Lampedusa in April 2015. The European migration agenda originally aimed at protecting those in need but, in 2017, Europe is a different place than it was in 2015.

In the last two years, several measures have been introduced by the European Union (EU) and member states to reduce the number of refugees and migrants arriving in Europe and restrict their rights and freedoms.

European asylum legislation is being reformed, EU foreign and development policy has been transformed to include migration management, and the EU has negotiated ‘deals’ with countries of origin and transit to increase development assistance, promote returns and invest in border management. An emergency relocation mechanism was expected to generate solidarity among member states and relieve the burden on Italy and Greece.

Meanwhile, the number of people, including children, arriving in or dying en route to Europe increased between 2015 and 2016. More than 5,000 people died at sea in 2016, compared with 3,777 in 2015, and by mid-2017 more than 2,300 people had already lost their lives in the Mediterranean.¹⁵

In 2016, more than 100,000 children arrived in Europe, of whom over one-third (33,800) were unaccompanied or separated from their families.¹⁶ In the same year, more than 63,000 unaccompanied children applied for asylum in the EU.¹⁷

A recent study by REACH, in partnership with UNICEF, found that 70% of children arriving in Italy had experienced some form of violence that forced

them to flee their country of origin.

Other reasons they gave for leaving were a lack of job opportunities and poor public services. In most cases it was a combination of all three.¹⁸ According to a UNHCR report published in July 2017, there has been a rise in the number of children travelling alone in Libya, with unaccompanied and separated children making up 14% of the total number of people arriving in Europe via the central Mediterranean route.¹⁹

At the time of writing, around one-third of the 65,000 asylum seekers residing in Greece are children, of whom 2,100 are unaccompanied.²⁰ Save the Children’s programme in Serbia has also seen a rise in the number of unaccompanied children travelling through the Western Balkans, with over half (59%) of the almost 1,500 children arriving in 2017 being unaccompanied.²¹

It was not until April 2017 that **issues concerning children were finally addressed in the European Commission’s Communication on the Protection of Children in Migration.**²² However, while the Communication puts forward a number of key protection measures, new obstacles are being introduced that threaten children’s access to international protection:

- **Hotspots are not suitable or safe for children.**

More than a year after the EU-Turkey Statement, thousands of refugees and migrants are still stranded in Greece while their applications for asylum are processed. Meanwhile, new asylum seekers continue to arrive on the Greek islands. This is leading to overcrowding in the hotspots, where many refugees and migrants – including unaccompanied children and children with their families – are living in squalid conditions with poor infrastructure and a lack of basic services. As a result, tensions continue to rise and protests, violence and fires are commonplace. Children’s daily exposure to these traumatic events is severely affecting their mental health.

The European Court of Auditors has released a report detailing the severe protection risks children face in the hotspots²³ and Save the Children staff have witnessed an increase in suicide attempts and self-harm among children as young as nine.

In Italy there is a shortage of facilities for children in the areas where landings take place, so children are forced to stay in the hotspot centres. This constitutes a violation of the national law regulating the age assessment and identification procedures for unaccompanied minors.

- **Children are being denied their right to international protection.**

Reforms to the EU's asylum policy, the emphasis on returns and the obstacles created by member states are making it increasingly difficult to gain legal access to Europe or be granted asylum once there. It is less likely that children will be relocated to another EU country or reunited with their family. As of September 2017, only 32 unaccompanied children had been relocated from Italy²⁴ and 420 from Greece.²⁵ In addition, new procedures have been recommended to make it easier to send children back to their country of origin without adequate safeguards or to detain them, which is causing high levels of fear and despair among children.²⁶ Slow asylum-processing procedures and low rates of recognition in some EU states are also driving children underground and into the hands of smugglers.²⁷

Many of these violations of children's rights are the result of an acute lack of solidarity between EU member states. Although EU leaders make it sound as though Europe as a whole is facing a full-blown migration crisis, the numbers tell a different story. **While overall the number of people applying for asylum in the EU has doubled since 2013, some countries are now receiving fewer asylum seekers than in 2012–2013, before the crisis started.**²⁸ In 2016, the number of unaccompanied children arriving in Sweden dropped by 94%, in Hungary by 86% and in Belgium by 64%.²⁹ Many of these countries now intend to transfer asylum seekers back to Greece and Italy under the Dublin Regulation, which determines which state is responsible for examining an asylum application. This will add to the burden facing Greece and Italy, which have already seen about a

sevenfold increase in arrivals compared with pre-crisis levels.

This paper aims to capture the issues children face on the way to and once they have reached Europe. It makes a central plea for more solidarity – with all children, regardless of their status, with migrants and refugees generally, and between EU member states – to ensure the existence of a robust protection system. Chapter 1 looks at the dangers facing children and their families attempting to reach Europe; Chapter 2 at the rights being denied to those who eventually do; Chapter 3 at children's rights in relation to returns procedures; and finally Chapter 4 recommends actions the EU and member states need to take to improve the situation of migrant and refugee children.

**Rowan, 12 years old,
left Syria with her family 4 years ago
when she was in second grade.
She has been out of school since then,
first in Turkey and now in Greece.
Rowan attends Save the Children's Child
friendly Space in Cherso Camp in Northern Greece**



1 Protecting children before they reach Europe

There are almost no safe and regular routes for migrant and refugee children and their families to reach safety in Europe. The three main routes they take are: the eastern Europe (Balkans) route, the central Mediterranean route (via Libya to Italy) and the western Mediterranean route (via Morocco to Spain).

1.1 EASTERN EUROPE ROUTE

At least one-third of the people still arriving in Europe through Greece, Bulgaria, the Former Yugoslav Republic of Macedonia (FYROM), Serbia, Hungary and Croatia are children.³⁰ Along their journeys, these children are exposed to danger and neglect, and many are exploited by smugglers. Reception facilities are inadequate to meet children's needs. Many children try to complete their journey without being detected or formally registering in each or any of the countries along the way. Hence, there is a lack of child - disaggregated data or a clear picture of the protection risks they face.³¹

There are frequent reports of unlawful, and in some cases violent, pushbacks from one country to another, including by authorities in Hungary, Croatia, Romania, Serbia, FYROM and Bulgaria. Often the pushbacks amount to collective expulsions, with authorities denying the opportunity to seek asylum even for those explicitly requesting it. Some refugees and migrants in Serbia, including children, have tried unsuccessfully to cross the border with Croatia and Hungary more than ten times.

1.2 CENTRAL MEDITERRANEAN ROUTE

The central Mediterranean remains the route used by the highest number of people attempting to reach Europe, with 99,127 people arriving in Italy between 1 January and 31 August 2017, 14,353 of them children, most of whom were unaccompanied.³² It is also the deadliest, with more than 2,428 dead and missing people while attempting the sea crossing in the same period.³³ Between January and August 2017, 13,227 unaccompanied children arrived in Italy

by sea from Africa. Compared with figures for the same period in 2016, when 16,863 unaccompanied children arrived in Italy, there has been a decrease of 21.5%.³⁴

Most children have come from Eritrea, Gambia or Nigeria via Libya,³⁵ which has long been a country from which migrants cross from Africa to Europe. However, the deteriorating security situation in that country makes it increasingly perilous. The UN has reported conditions in detention centres as inhumane. Forced to flee their home countries by poverty, conflict and persecution, children either seek opportunities in Libya or try to make the crossing to Europe.

1.3 WESTERN MEDITERRANEAN ROUTE

Although fewer people tend to use the western Mediterranean route to reach Europe, there has recently been a sharp increase, with 8,385 people arriving in Spain by sea in the first seven months of 2017. This is more than double the number of people who arrived during the same period in 2016.³⁶ In addition to the number arriving by sea in the first seven months of 2017, 2,983 people arrived by land in Ceuta and Melilla (Spanish territories in Morocco) to avoid risking the dangerous sea route.³⁷ Even though conditions in temporary centres for migrants have improved, they are not prepared or equipped for the growing number of arrivals, and registration and referral processes to the mainland take longer than they should.

According to UNHCR, in the first quarter of 2017, 382 children arrived with their families by sea and land, almost half of whom were Syrians.³⁸ Although official data on unaccompanied children are not available from the Spanish Ministry of Interior for 2017, a 2016 report by the Public Prosecutor's Office shows an increase of over 80% in the number of unaccompanied children compared with 2014.³⁹ Nearly half of these children come from Algeria, one-third from Morocco, and the rest from sub-Saharan African countries.

1.4 EU MEASURES AND INSTRUMENTS

Migration has become a key element of the EU's foreign and development policy. In November 2015, the EU agreed the Valletta Action Plan with several African countries 'to help address the root causes of destabilisation, forced displacement and irregular migration, by promoting economic and equal opportunities, strengthening resilience of vulnerable people, security and development'.⁴⁰ And in June 2016, it announced its new partnership approach with third countries, a framework that uses positive and negative incentives to encourage partner countries of origin and transit to cooperate in "stemming the flow of irregular migrants".⁴¹

However, evidence from Save the Children's field missions and reports suggests that these and other EU measures could create additional risks for children.

- **People do not stop migrating, but instead seek alternative, more dangerous routes.** To avoid checkpoints, people travel through lesser known routes, for example through the desert, where they risk getting lost and dying of thirst. Women are exposed to even greater abuse and sexual violence.
- **In Serbia and along the Western Balkan route, there has been an increase in smuggling** following the EU-Turkey deal and official border closures.⁴² Such dangerous routes

expose families and unaccompanied children to serious protection risks, including violence, abuse and exploitation.

- **Migrants, including children, are at risk of human rights abuses by border guards, military and police.** While increased funding for border management has been made available for police and military vehicles, board computers, military equipment and army infrastructure, **no proper monitoring and reporting mechanism is in place.**
- **There is a higher risk of violence and displacement.** An increased focus on training police and military to crack down on smugglers comes at the potential risk of increased violence, especially along the northern borders of Niger, Mali and Chad. Smuggling networks often form part of larger political economies, deeply entrenched in the governance system of a country, and supported by an intricate network of local actors.⁴³ Currently migration offers a livelihood opportunity for young men who many otherwise join violent or rebel groups.

Both UN agencies and NGOs have warned that a short-sighted focus on 'stopping the flows' will not be effective and creates long-term risks, such as more violence and displacement in the targeted partner countries, more deaths at sea and in the



One of the more than 5000 children stuck in Idomeni camp, at the border between Greece and FYROM.

PHOTO: GABRIELLE FRANÇOIS CASINI/SAVE THE CHILDREN

desert, the emergence of new and riskier migration routes, and the adaptation of smuggling models. Other crises might emerge at the expense of solving the European migration crisis, leading to even more displacement.

Conflict, poverty and persecution are key drivers of forced movement and Save the Children welcomes the EU's efforts to address them. **However, this should never come at the expense of a clear and independent development policy, in line with the EU's legal obligation to reduce and eradicate poverty.** It is important to look at the actual needs of poverty-stricken and conflict-ridden states, and to find long-term structural solutions.

To improve the situation, Save the Children recommends the following measures to be taken by the EU and members states:

- **Strengthen child protection systems in countries of origin.**

Save the Children research on movements in the Horn of Africa reveals that, along with economic motivation and gender inequality, **child protection issues are an important 'push factor' in independent child migration.**⁴⁴ Children who migrate on their own often lack someone to care for them and are sometimes exposed to violence, abuse or neglect. Strengthening child protection and education systems in countries of origin and transit, and increasing investment in children in development programmes, could be a first step in moving this forward.

- **Increase the protection of children on the move.**

The EU should align the partnership approach with the EU Strategic Framework on Human Rights and the EU Action Plan on Human Rights and Democracy, and ensure that the human rights of migrants and refugees are central to the development and implementation of any migration policies. **Both the EU and its member states should consider the development of a human rights monitoring and accountability mechanism, mitigating the risks of external migration management policies.**

- **Precede funding with strategies and plans focused on actual needs.**

When the EU started distributing funding from the Trust Funds and later adopted

the partnership approach, there were no nationally supported strategies in place in the envisioned partner countries. Many countries, communities and local representations were put under pressure by the Commission and EU capitals to address the EU's migration crisis. EU priorities and partnership country priorities are not always aligned. Any strategy addressing migration should originate from and be owned by the partnership country and be **properly planned, consistently funded, evidence based and comprehensive, and should be developed in cooperation with all relevant partners.**

- **Expand and improve safe and regular pathways to reach the EU.**

A notable gap in the EU's migration agenda remains the lack of any increase in safe and regular channels to reach the EU. Such measures could ensure that the responsibility for protecting refugees globally is shared more fairly. They also address the legitimate concerns of the countries of origin – including countries where remittances comprise between 10% and 20% of their GDP and constitute a major factor in development. **Regular pathways to reach the EU are key to 'saving lives' and 'breaking the business model of smugglers'.**

Safe and regular pathways to the EU should include **resettlement, humanitarian admission and humanitarian visas, family reunification, worker mobility across skill levels, student visas and private sponsorship programmes.** Member states must commit to clear benchmarks and appropriate timelines for implementing a migration framework that meets the needs of migrants, asylum seekers and refugees, and their families, as well as the needs and obligations of member states.

Omar is a 17-year-old from Syria traveling alone.
He is now stuck in Idomeni camp in Greece,
where he is being assisted by
Save the Children's child protection partner Arsis.

2 Protecting migrant and refugee children within the EU

When the number of asylum seekers reaching the EU rose sharply in 2015, the need for a robust responsibility-sharing mechanism between EU member states became clear. To ensure that vulnerable groups, including many children, would not disappear below the radar, it was imperative for children to receive equal levels of protection across the EU.

Through its programmes, Save the Children has witnessed the numerous obstacles children face once they enter Europe. Because frontline states have been struggling to process the increasingly large number of arrivals, it often takes months or even years for children to register or file an asylum claim. Information on the procedures, the documents required, their rights and their obligations is scarce. There are often delays before an unaccompanied child is appointed a guardian. When they are, those guardians often lack training and are present only during certain procedures. In many cases, guardians are responsible for too many children to ensure that best interests are being served.

The impossibility of reuniting with their family or obtaining a secure asylum status can have a devastating impact on children and adults, resulting in severe mental health issues. Children are often accommodated in reception centres staffed by unqualified workers or volunteers. Many centres do not meet child protection standards and do not provide psychosocial support for children and their families. Detaining children, including those who are with their families, exposes them to additional harm, thereby undermining the overarching objective of the asylum procedure, which is to provide protection for those who are vulnerable.

Save the Children was pleased to see some of these concerns being addressed in the European Commission's Protection of Children in Migration communication, which states that 'A number of key protection measures, notably as regards access to information, legal representation and guardianship, the

right to be heard, the right to an effective remedy and multidisciplinary and rights-compliant age assessments, needs to be stepped up.'⁴⁵ However, while the Commission has moved some way towards harmonising guardianship procedures, including the role and tasks of the guardian, new obstacles are being introduced that threaten children's access to international protection as part of the ongoing reform of European asylum legislation. These include compulsory admissibility checks, the systematic use of the safe third country and first country of asylum concepts, the internal protection provision and frequent status reviews.

2.1 COMMON EUROPEAN ASYLUM SYSTEM REFORM – NEED FOR A GREATER EMPHASIS ON CHILDREN'S RIGHTS

In 2016, Save the Children welcomed the European Commission's proposal to reform the Common European Asylum System (CEAS) in the hope that it would be an opportunity to enhance the protection of vulnerable people fleeing conflict, violence and persecution – including child-specific forms of persecution. On the contrary, however, protection has been made subordinate to tackling abuses of the system and preventing secondary movement, resulting in limitations to the exercise of the right to international protection and punishments for applicants, including children, who do not cooperate.

Examples include:

- Extra admissibility checks upon arrival to determine whether asylum seekers, including children, can access their right to apply for asylum in the EU could reduce the space for children to access their right to protection. It could also significantly increase children's anxiety as they face a prolonged wait for clarity about their situation.
- The use of the safe third country and first country of asylum concepts allows member states to send children back to countries where their protection cannot be guaranteed.⁴⁶

- The ‘internal protection provision’ in the Qualifications Regulation allows member states to send children back to conflict-ridden countries if they can be returned to a particular region that is deemed safe. This creates the risk of children being sent back to regions in countries such as Afghanistan, Iraq and Somalia where they have no network or family and where they may be discriminated against as members of a minority group.
- Introducing repeated checks and status reviews when children have already received refugee and subsidiary protection status has a severe psychosocial impact. The continued insecurity causes anxiety and mental health problems, and is generally not in children’s best interests.
- Disregard of the 2013 MA judgment, which states that unaccompanied children should have their asylum application examined in the country where they have lodged an application and are present, will delay children’s access to protection because they could be transferred back to the country where they first entered the EU.⁴⁷
- If asylum seekers, including children, are not in the EU member state where they are required to be present, they will be denied essential rights, such as access to education, healthcare, employment and a guardian.⁴⁸

With regard to reform of the CEAS, Save the Children calls on the EU and member states to:

- Avoid unnecessary transfers of children by ensuring that the member state responsible for examining the asylum application of an unaccompanied child is that where she or he has lodged an application and is present, unless this is not in her/his best interests.
- Ensure that the assessment of the best interests of the child is carried out under national law with a multidisciplinary approach by competent staff with expertise in children’s rights, protection, psychology and development, and that it involves the child’s guardian and legal adviser or counsellor.
- Appoint an independent and trained guardian in charge of an appropriate and limited number of unaccompanied children immediately after a child arrives in an EU member state.
- Create a Europe-wide guardianship network to facilitate handover of guardianship between member states.
- Ensure that each state has sufficient funding to support a guardianship scheme and that

unaccompanied children receive continuous supervision and legal assistance, and are granted legal status promptly.

- Carry out age-assessment procedures, including those not involving medical examinations, only as a measure of last resort and always using a multidisciplinary approach that takes into account the physical and psychological development of the child and her or his ethnic and cultural identity.
- Concede the benefit of doubt in favour of the applicant if the results of the age assessment are inconclusive and ensure that, pending the results of the age assessment, the applicant is treated as a minor and accommodated in the appropriate reception structures provided for children under national law.
- Further expand the definition of family members to strengthen family reunification procedures, including for married children when this is in their best interests.
- Ensure access to education not later than one month after the application for international protection has been lodged.
- Ensure that reception conditions in member states are tailored to the specific needs of children (focus on vulnerable persons).
- Ensure that member states provide the necessary healthcare to children and their families, including appropriate mental healthcare.

2.2 HOTSPOTS – NO PLACE FOR A CHILD

One of the key operational measures proposed in the European Agenda on Migration was a new ‘hotspot’ approach towards managing the large inflow of migrants. This approach was conceived as an immediate response to a major migratory crisis and implemented in Greece and Italy, where, according to the European Commission, the ‘EU’s external borders face disproportionate migratory pressure and the EU needs to provide operational support to ensure arriving migrants are registered and referred, as appropriate, into the relevant national follow-up procedures.’⁴⁹

In reality, hotspots are often closed reception facilities or *de facto* detention centres, and are not suitable or safe for children. In Greece, incidents of self-harm in children as young as nine are growing, children as young as 12 have attempted suicide, and there has been an increase in drug and alcohol

abuse among teenagers.⁵⁰ The same detrimental impacts on children have been witnessed in other contexts, such as on Nauru, the Micronesian island where migrants trying to reach Australia are detained and where self-harm, depression and post-traumatic stress disorder are prevalent.⁵¹

In Italy, once migrants arrive on shore they are immediately transferred to a hotspot centre where they go through a quick initial identification procedure, are medically screened, and given a leaflet explaining national migration and asylum legislation. As there is a shortage of facilities for children in the areas where landings take place, children are forced to stay in the hotspots for a long time. In Taranto, unaccompanied children spend from 48 to 72 hours in the hotspot, and in Trapani and Pozzallo from 7 to 15 days. In May 2016, Save the Children reported 50 cases of unaccompanied children being held for over a month alongside adults in Pozzallo. This constitutes a violation of the national law regulating the age assessment and identification procedures for unaccompanied minors.⁵² At the same time, it was discovered that 123 children had declared themselves adults in an attempt to continue their journey, making them more vulnerable. Only after receiving legal advice and support did they confirm their real age.⁵³ A recent decree makes it now illegal for unaccompanied children to be placed in the hotspots.⁵⁴

Although the official number of people arriving in Greece via the Aegean dropped significantly at the start of the EU-Turkey Deal, arrivals to the islands have not stopped. Between 1 January and the beginning of August 2017, there had been 11,919⁵⁵ arrivals and in February 2017, the UN and Greek government estimated that there were 62,540 migrants and refugees stranded across Greece – almost 23,000 of them children.⁵⁶ Many are living in overcrowded facilities that do not meet EU minimum standards.⁵⁷

As was also outlined in the Court of Auditors report released in April 2017, hotspots in their current form are denying children in migration their rights and exposing them to further trauma and danger.

The system was set up to enable the identification, including fingerprinting, and registration of migrants and ensure their timely referral into the relevant follow-up processes, namely asylum or return and relocation, another instrument set up under the European Agenda on Migration. However, it has been ineffective in both Italy and Greece.

With regard to hotspots, Save the Children is calling on the EU and member states to:

- **End child detention immediately. Safe and appropriate alternatives should be provided, prioritising unaccompanied children and families with children.**
- **Carry out the identification and age assessments of children in dedicated centres outside of the hotspots.**
- **Provide consistent, unrestricted access to the hotspots for child protection actors**, so that they can support children and families at risk.
- **Honour their commitment to relocate and accept asylum seekers from Greece and Italy**, with a plea to drop the nationality criterion for relocation, and reunify families separated by current policies.
- **Provide consistent and clear information.** Basic information – including legal information, information about asylum and age-appropriate information for unaccompanied and separated children – should be immediately and readily available in all hotspots.
- **Scale up the delivery of basic humanitarian services**, including the provision of nutritious food and access to healthcare to ensure that people's basic needs are met and to prevent rising protection risks. Special attention should be paid to mental health.
- **Provide child protection training for local authority staff working in the hotspots**, who in general do not have experience in or basic knowledge of children's rights, child protection and safeguarding, or in communicating with children.
- **Create concrete and sustainable integration opportunities for asylum-seeking children.** These should include access to education, vocational training and (for those who are old enough) the job market. Children's previous studies and school certificates should be recognised, allowing them to access further studies in Europe.

A boy roams around
the busy muddy roads and paths
of Idomeni camp on his tricycle.



3 Return procedures – respecting the best interests of the child

'All returns should only be carried out in full respect for the human rights of migrants and in accordance with international law, including upholding the principle of non-refoulement, the prohibition of arbitrary or collective expulsion, the right to family life, as well as the right to seek asylum.'

UN High Commissioner for Human Rights⁵⁸

The UNCRC and Committee on the Rights of the Child guidance and General Comments, along with other treaty bodies and UN Special Procedures Mandate Holders,⁵⁹ provide recommendations and guidance on the rights of children subject to return procedures. In its General Comment No. 6, the Committee on the Rights of the Child states clearly that in case of the return of an unaccompanied child, 'Non-rights based arguments, such as those relating to general migration control, cannot override best interests considerations.'⁶⁰

Despite this, European countries are introducing more restrictive measures that could have tragic consequences. During the past two years, several EU member states have been adopting new legislation to allow the forced return of migrants and asylum seekers to unsafe countries such as Afghanistan, Iraq and Somalia.⁶¹ Families with children are being returned, without adequate regard for the best interests principle. Children have told Save the Children about their fear of deportation and how they find the continuing insecurity unbearable.⁶² In Sweden, seven asylum-seeking unaccompanied children from Afghanistan have tried to commit suicide and three have succeeded. As one young asylum seeker expressed it, *'Killing ourselves is better than being beheaded by the Taliban or ISIS in Afghanistan.'*

An effective common EU return policy remains one of the priorities under the European Agenda on Migration,⁶³ and in March 2017, the EU Commission released a renewed 'return package', which includes the reviewed EU Action Plan on Return and a set of recommendations to member states on how to make return procedures more effective.

With regard to returns, Save the Children's recommendations to EU member states and European institutions are that:

- **The principle of non-refoulement, including the specific provisions for children, should be respected at all times.**

Every human being regardless of their migration status is protected from refoulement, including through the absolute prohibition of return to torture.⁶⁴ For children, specific safeguards should apply: 'States shall not return a child to a country where they are at risk of irreparable harm, underage recruitment or being re-trafficked.'⁶⁵ Respect for this principle involves: effective access within the national legal framework to the right to be heard; protection mechanisms against health, the gender and nationality-based profiling; the right to appeal within a reasonable timeframe; the right to stay prior to removal when an appeal is pending.

- **Country of Origin Information reports should be child-focused.**

Country of Origin Information reports produced by the European Asylum Agency inform whether a child will be returned or not. Many EU member states are now starting to return families with children to countries that are highly volatile. While some countries may have areas that are deemed safe for adults, children are often exposed to different risks. Somalia, for example, has a female genital mutilation rate of 98%. Country of origin reports should be informed by all relevant actors present on the ground and should include up-to-date information on national child protection systems and capacities. Save the Children often produces child rights situation analyses in the countries where it is operational. They give a comprehensive overview of all the risks children are exposed to and could feed into country of origin reports.

- **The return of unaccompanied or separated**

children, regardless of their status, should be on a voluntary basis, fully informed and free of any coercion.

The older and more mature the child, the more weight should be given to their views in assessing what is in their best interests.⁶⁶ Return cannot be considered truly 'voluntary' if the child agrees to return simply because they are not given any alternative by the host country's authorities.⁶⁷

- **A best interests of the child determination procedure under national law should be developed for all children.**

Best interests assessments/determinations should precede **all decisions to return a child, including those travelling with their families.** Under their national law, EU member states should have **a formalised, individual and robust best interests determination procedure** that precedes any decision to issue a return decision/order to leave the territory for an unaccompanied or separated child or family with children. If return is considered to be in the best interests of the child, **individual plans for the child's sustainable return should be developed, including adequate and ongoing post-return evaluation.**

- **Children and families should never be detained during the return procedure.**

Detention for purposes of immigration control is never in the best interests of the child.⁶⁸ Alternatives to detention are the less harmful, more economical and efficient policy option and can be an important tool of migration management. There is a strong evidence base⁶⁹ that alternatives based on case management promote compliance and case resolution, including voluntary return, as well as protecting the rights of migrants. Member states should receive guidance, increased funding and be mobilised to develop effective alternatives before expanding the use of detention.

- **Reintegration in countries of origin, with particular regard to unaccompanied and separated migrant children, must be child-appropriate and prioritise child protection.**

Unaccompanied or separated children should not be returned if the only care arrangement immediately available upon their return is institutionalised care. In all cases involving the return of children, special attention needs

to be paid to ensure adequate reception and immediate access to appropriate accommodation, support to meet basic needs and access to healthcare, including psychosocial care. There is an urgent need for adequately funded and monitored child-appropriate reintegration programmes that prioritise support for swift school enrolment and targeted measures to protect children against all forms of violence and discrimination. Child-appropriate reintegration is critical for sustainable returns and to prevent undue and prolonged harm and trauma. Independent post-return monitoring and evaluation is critical to inform and guide member states' policies.

- **Family reunification is the most important factor in considering a child's return, but should not be supported when this is against the child's best interests.**

The UNCRC provides that parents have the primary responsibility for the upbringing of a child. A child should grow up in his or her family and should not be separated from his/her parents against his/her will, except when this is in the best interests of the child.⁷⁰ Conversely, if family reunification is not in the child's best interests, this is an important factor against that child's return. To decide whether return and family reunification are in a child's best interests, it is necessary to: trace the child's family; assess whether the family is responsible for violence, abuse or neglect; find out if the family agrees to provide immediate and long-term care for the child; and take into account both the child and family's views on the child's return.

A young girl holds her little sister in the middle of the rail tracks passing through Idomeni camp.



Save the Children staff at work in the child friendly space (CFS) at Idomeni Camp



4 Conclusion: a plea for solidarity

When the refugee crisis hit Europe in early 2015, the principle of solidarity between EU member states moved centre stage. Italy and Greece had always been strong advocates for more solidarity because of the enormous pressure put on them by the Dublin Regulation, which in many cases designates the member state of first irregular entry as the member state responsible for the asylum application.⁷¹ The sharp rise in arrivals generated momentum for an overhaul of existing policies.

In September 2015, the EU's Justice and Home Affairs Council took two unprecedented decisions to relocate 160,000 asylum seekers from Italy and Greece to other European countries.⁷² This appeared to jump-start a discussion on genuine responsibility sharing between member states. However, since then, the EU and member states have become primarily concerned with limiting the movement of asylum seekers, or preventing them from entering the EU altogether.

Despite the number of asylum applicants in the EU having doubled compared with pre-crisis levels (2012-2013), most of the burden remains with Italy and Greece. Today these two countries account for more than a quarter (27.7%) of all asylum applications in the EU, whereas before the crisis they accounted for just 8.3%.⁷³

The relocation mechanism, introduced with the aim of alleviating pressure on Greece and Italy could have gone some way to meeting refugees' needs. However, it did not manage to develop a specific procedure for unaccompanied children and to be eligible for relocation an asylum-seeker needed to have a 75% chance, across the EU, of gaining a favourable response to a request for international protection. This means that, by the end of the relocation period, only Syrians and Eritreans were able to access the relocation mechanism, while Afghani and Iraqi asylum seekers were excluded. With many unaccompanied children coming from the latter two countries (about four out of ten unaccompanied children seeking asylum in Europe

in 2016 were from Afghanistan), this creates severe protection risks.⁷⁴ Moreover, legal ways to reach Europe remain limited. The number of EU residence permits given to migrants from Africa has fallen by almost 30% since 2008⁷⁵ and, as pointed out earlier, the space for potential refugees to apply for asylum is shrinking. Safe and legal pathways make sure that children are protected along their journeys, and prevent them from being exploited or risking their lives for a future that is uncertain. They enhance member states' control over migration procedures and reduce incentives to turn to smugglers. If the workload is more evenly divided between member states this could change the public perception of chaotic arrivals of migrants.

The tools and budgets exist to design and implement migration governance policies that are fair, efficient and take into consideration both the rights of those wanting to reach Europe and the security concerns of European citizens. Only the political will seems to be lacking. To improve the situation of migrant and refugee children on their way to or within Europe, Save the Children recommends taking action on the following four priorities:

- **Actions for children should be streamlined across the migration agenda and adequately budgeted for**, in alignment with the Communication on the Protection of Children in Migration. This means strengthening child protection systems along migratory routes and ensuring that child protection is firmly embedded in national implementation plans of targeted 'partner' countries of origin and transit. It also means ensuring **compliance with fundamental human rights norms in asylum legislation** implemented by EU member states, **in particular when it comes to child-specific provisions such as guardianship, age assessment and reception conditions**. New pilots should be launched to cooperate on cross-border child protection, both within the EU and across migratory routes outside of the EU.

- **A permanent mechanism for responsibility-sharing should be established as part of the Dublin Regulation**, taking into consideration the needs, skills and preferences of asylum seekers. Vulnerability should be prioritised over any considerations related to the recognition rates of certain nationalities when asylum seekers, and especially children, are transferred from the member state of first entry. Children's best interests should guide the decision to relocate them. Procedures should be child-friendly, clear, swift and efficient, and include a fast-track possibility for family reunification.
- **Regular migration channels, including family reunification, should be expanded and safeguarded.** The European Agenda on Migration states that 'Europe should continue to be a safe haven for those fleeing persecution as well as an attractive destination for the talent and entrepreneurship of students, researchers and workers,' and that there is a need for a 'clear and well implemented framework for legal pathways to entrance in the EU'.⁷⁷ Alongside resettlement, these include private/non-governmental sponsorships and humanitarian permits, and family reunification clauses.
- **Implementation of the European Commission Action Plan on the Integration of Third-Country Nationals⁷⁶** should be prioritised and adequately financed. Investment in integration is key to preventing child poverty and the intergenerational transmission of disadvantage. In particular, education – including early childhood education – and mental healthcare deserve special attention, given the levels of trauma and other mental health issues observed.



PHOTO: ANNA PANTELIA / SAVE THE CHILDREN

Kate O'Sullivan, communications manager for Save the Children in Greece speaks with a Syrian family from Homs in the informal camp in Kara Tepe, Lesvos, September 2015.

Notes

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- ⁷ Eurostat Asylum Statistics, <http://ec.europa.eu/eurostat/documents/2995521/8016696/3-11052017-AP-EN.pdf/30ca2206-0db9-4076-a681-e069a4bc5290>
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- ⁹ UNHCR Libya, IMPACT and Altai Consulting (2017) *Mixed Migration Trends in Libya: Changing dynamics and protection challenges*, <http://www.altaiconsulting.com/wp-content/uploads/2017/07/LIB-HCR-MAS-Final-Report.pdf>
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- ¹⁶ REACH and UNICEF (2017), see note 6.
- ¹⁷ Eurostat Asylum Statistics, <http://ec.europa.eu/eurostat/documents/2995521/8016696/3-11052017-AP-EN.pdf/30ca2206-0db9-4076-a681-e069a4bc5290>
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- ⁶⁵ Committee on the Rights of the Child, General Comment No. 6, see note 60
- ⁶⁶ Article 12 of the UNCRC provides that "the child who is capable of forming his or her own views [has] the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child."
- ⁶⁷ Where it is believed that there are exceptional circumstances, the decision to return a child against her or his will should always be made in a court after an extensive best interests determination (BID), under the jurisdiction of child welfare rather than immigration procedures. Integration policies should not be delayed in order to encourage return and deter potential migrants, or be ineffective in preventing social segregation and discrimination of first- and second-generation immigrants.
- ⁶⁸ Immigration or residency status, or the lack thereof, can never be a reason for applying the measure of last resort and used as a justification for detaining children. The UNCRC stipulates that detentions should "only be used as a measure of last resort and for the shortest appropriate period of time". This has also been stated in the European Court of Human Rights, *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*.

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- ⁷² “Member states committed to relocating 98,255 by September 2017, not 160,000. This is because 7,745 from the first Council Decision on relocation have yet to be allocated and because 54,000 from the second Council Decision will be used for resettlement from outside the EU rather than relocation within the EU. As a follow-up to the EU-Turkey Statement, a decision was adopted in September 2016 to make the 54,000 places that had not yet been allocated to Member States under the relocation decisions available for the purpose of legal admission of Syrians from Turkey to the EU. Out of the 98,255, 34,953 people are to be relocated from Italy and 63,302 from Greece.” European Commission (2017) *Questions and Answers: Commission calls for renewed efforts in implementing solidarity measures under the European Agenda on Migration* (Factsheet 2 March 2017), http://europa.eu/rapid/press-release_MEMO-17-349_en.htm
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Refugees arriving
in Lesvos, Greece.





Save the Children

KEEPING CHILDREN AT THE CENTRE

Time for EU solidarity in protecting migrant and refugee children's rights

Save the Children believes every child deserves a future. In Italy and around the world, we work every day to give children a healthy start in life, the opportunity to learn and protection from harm.

When crisis strikes, and children are most vulnerable, we are always among the first to respond and the last to leave. We ensure children's unique needs are met and their voices are heard.

We deliver lasting results for millions of children, including those hardest to reach.

We do whatever it takes for children – every day and in times of crisis – transforming their lives and the future we share.