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“Child and Adolescent Mental Health”
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Ladies and gentlemen, dear colleagues

Only a few months ago, the entire world stood up in shame and shock when children were separated from their parents at the US boarder with Mexico. This situation generated waves of anger and shock across all continents, including ours. Truly enough, this was unbearable and unlawful but I feel that many of our own political leaders, before shaming others, should also look at what is really happening in our own countries. Thankfully the situation is not the same but still, are the rights of children on the move really being upheld in our countries in a way that can make us proud, stand tall and affirm that all is well in Europe-land? I am not so sure.

The plain truth is that our member States continue to face acute challenges responding to the migration crisis and the situation of the many affected children remains a grave concern. The situation also appears to be having a ripple effect and appears to hamper progress across the board. The destabilising effect of these arrivals is being exploited by some political leaders and movements to instigate fear. As a result children are seen as a threat and we see regression in legislation and human rights protection which we fought for since the Second World War.

Although no reliable data exists to quantify the exact number of children who have arrived in our member States since the crisis began in 2015 we know that children have arrived in their thousands whether with their families or isolated, unaccompanied and alone. UNHCR estimates that 13,300 children arrived unaccompanied or separated from their parents or caregiver in the **first half of 2017**¹. Although these numbers have reportedly decreased in 2018, thousands of children remain within the borders of our member states, in need of care. Their rights also count.

But today we stand before a crisis which we need to manage in line with our solid human rights values.

¹ UNHCR, Report, Desperate Journeys January-August 2018, Published September 2018.

Regardless of the reasons why these children left their homes, the vast majority will have suffered from trauma, violence, and sometimes unthinkable abuses during their journey to our borders. In a recent IOM survey² of over 4,000 people in Italy of which 725 were children, 77% of children reported being held against their will by groups other than government authorities, mostly due to kidnap for ransom or detention by armed groups and mostly in Libya (91%); and **88% of children between 14 and 17 reported experiencing physical violence**, primarily in Libya.

Children on the move demonstrate **great resilience**. The human rights abuses and risks to their safety during their journey to and through Europe are well documented and yet these children survive, rebuild their futures and are driven by a strong will to integrate and contribute to the host societies. These children also cumulate multiple **vulnerability characteristics**; due to their young age, the fact that they are far away from everything that is familiar to them and for many of them because they are unaccompanied. **As such, these children are recognised as one of the most vulnerable groups of children in Europe today.** It is important to remember that these children suffer violations of their rights within our borders which can have severe consequences on their mental health and development.

These violations arise from

a) The use of detention practices rather than welfare protection;

- immigration detention of accompanied and unaccompanied children can amount to inhuman and degrading treatment as well as constitute a violation of the child's right to liberty where the state failed to take the child's best interests as a primary consideration³;

b) Lack of or ineffective guardianship;

- failure to provide adequate care (including guardianship) for an unaccompanied child in detention or in the community which provoked feelings of anxiety and profound worry amounted to a violation of Article 3 ECHR⁴;

c) Lack of or ineffective family reunification procedures;

² See IOM, Flow monitoring surveys: The human trafficking and other exploitative practices indication survey, November 2017, <https://goo.gl/gm6og9>

³ Accompanied children: Popov v France, nos 39472/07 and 39474/07, ECHR 2012. Unaccompanied children: Mubilanzila Mayeka and Kaniki Mitunga v Belgium, no 13178/03, ECHR 2006 Rahimi v Greece, no 8687/08, ECHR 2011).

⁴ Rahimi v Greece, no 8687/08, ECHR 2011.

- family unity is an essential right for refugees and family reunification is a fundamental precondition for allowing persons who have fled persecution to re-establish a 'normal' life⁵.

d) Demeaning age assessment procedures or practices.

- Interference with the child's physical integrity can amount to a violation of their right to a private life and can also reach the threshold of torture, inhuman and degrading treatment.
- demeaning or humiliating procedures, such as gynaecological examinations without the child's informed consent can amount to a violation of the child's right to freedom from inhuman and degrading treatment, this is of significance for our member states as they review their age assessment procedures and practices⁶.

The Council of Europe strives to continue supporting member states to implement national responses to ensure that children are always treated first and foremost as children in order to ensure that the rights of the child are upheld without discrimination on the basis of their or their parents migratory or any other status. We should remember that these children have the right to the highest attainable standard of health and that instruments, such as **the Council of Europe Guidelines on child-friendly healthcare or the Guidelines on child-friendly social services** apply to these children equally.

As Ombudspersons for Children you play a key role in ensuring these children's rights are upheld and respected, I'd like to present the areas of our work that you may find particularly useful and of course I look forward to hearing your country updates in order to bring on board, in our work, your concerns.

WHAT THE COUNCIL HAS DONE SO FAR

As you all know we are working in the framework of the **Council of Europe Strategy for the Rights of the Child** all its priorities are relevant to the rights of children on the move. Because of the migration crisis we reacted swiftly and refocused our work on developing European standards for the guardianship of unaccompanied and separated children and for age assessment procedures.

Our key focus is on guardianship, age assessment and life projects for unaccompanied migrant minors.

⁵ Mugenzi v France, no 52701/09, ECHR 2014

⁶ Yazgül Yılmaz v. Turkey, App No. 36369/06, ECHR 2011

Unaccompanied children are not always properly identified, registered or provided with a guardian. In order to access their rights, the identification of unaccompanied children and their immediate referral to child protection authorities is essential.

Without effective guardianship, children are at risk of being isolated and suffering neglect, this can have long-term consequences on their mental health. The extreme vulnerability of unaccompanied and separated children puts them at great risk of trafficking or falling victim to sexual abuse and exploitation. Effective guardianship should guard against these risks and facilitate children's access to their rights, including their right to access health care, mental health services, education, appropriate accommodation etc. The guardian should empower the child to access their rights enabling the child to understand the procedures affecting them and to have their views heard. The guardian may also play a role to empower the child to initiate a legal procedure such as challenging a situation of deprivation of liberty or commencing an asylum application. Effective guardianship can be seen as a building block to safeguard children's mental health by empowering the child to participate in procedures and to have their voice heard as well as facilitating the child's access to mental health services.

The recommendation on guardianship will provide **concrete policy guidelines** to member states to implement effective guardianship for unaccompanied and separated children. It will also be a useful advocacy tool for independent monitoring and evaluation of guardianship systems.

We trust that the adoption of this recommendation by the Committee of Ministers in early 2019 will trigger positive changes in member states' frameworks and a clear understanding of their obligations in this area towards the effective protection through guardianship of the rights of children on the move in Europe.

We have also advanced in the work to develop **human rights principles and guidelines on age assessment**.

Age assessments are of crucial significance for children on the move to be registered and recognised as children in member States. Following a study of age assessment policies, procedures and practices in 37 member states, we published a report in September 2017 which findings illustrate a great variations of rights and procedural safeguards in member States. Children experience age assessment as stressful and traumatic, sometimes because they find the medical procedure humiliating, or they lack of information about the purposes and extent of the procedure or simply because they feel that they have not been believed by the host State. These human rights principles and guidelines will seek to clarify how the

rights of the child apply in the context of age assessment. Basic safeguards such as ensuring that each child receives adequate information that is adapted to their maturity, gender, culture and given in a language that they understand will go a long way to mitigating the feelings of stress experienced during these procedures.

Age assessment procedures must at all times uphold the child's dignity and use the least invasive and intrusive methods. To avoid re-traumatising the child, they should take place in a friendly and safe atmosphere and in premises that guarantee privacy. Physical examinations must not involve nudity or examinations that the child could experience as humiliating.

The purpose of these guidelines is to provide an ethical, legal and technical framework for member States to ensure their age assessment procedures uphold the rights of the child.

The Council of Europe will consult with Children on the move who have experienced age assessment in order to ensure that their views are heard in the drafting process of these guidelines. I would thus like to call on you for your assistance to implement these consultations; we can provide you with a detailed methodology proposal and some funding support for the implementation of up to 2 workshops at country level. This text should be finalized by the end of 2019.

A review of the implementation of the Recommendation of the Committee of Ministers to member States **on life projects for unaccompanied migrant minors** is underway and is expected to be completed also in 2019. Life projects as a social contract or integration plan between a host State and an unaccompanied migrant or refugee child, are a useful tool for the integration of the migrant and refugee children in the host society. The life project is developed in consultation with the child, taking into account their best interests and their short and long-term goals. This collaborative approach upholds the child's right to participate and to be heard.

I would also like to take this opportunity to inform you that the Council of Europe is currently taking stock of progress achieved under the Strategy and challenges ahead, in the context of the mid-term evaluation of the Strategy. We will shortly reach out to all our counterparts, including yourselves through a dedicated survey and your input will be extremely important. We also count on your active participation to the High level conference which will be organised in June 2019 in Paris under the French Chairmanship to the Committee of Ministers.

SRSG ACTION PLAN

In addition to work implemented under the Strategy for the Rights of the Child, the Committee of Ministers adopted, in May 2017, the **Action Plan on Protecting Refugee and Migrant Children in Europe** for the period 2017 to 2019. The action plan was designed to assist member states build strategies and implement existing norms to respond to the challenges facing children on the move.

The Action Plan proposes a holistic approach to the protection of refugee and migrant children;

This action plan has three main pillars:

1. Firstly, ensuring access to rights and child-friendly procedures, including child-friendly information, procedures and preventing statelessness.
2. Secondly, providing effective protection including
 - a. The establishment of an effective guardianship system in each member state.
 - b. The restoring of family links
 - c. The avoidance of resorting to the deprivation of liberty of migrant children
 - d. The protection from violence, trafficking and sexual exploitation.
3. And thirdly, enhancing the integration of children who would remain in Europe, through the provision of education and training, as well as of opportunities to participate in society.

All activities foreseen for 2017 have been successfully developed, initiated or completed. On 26 September 2018 the Council of Europe Committee of Ministers will discuss the Mid-term implementation report on this Action Plan, which will be shortly published thereafter.

The Special Representative of the Secretary General for Migration, among other actors, has identified that children lack adequate information which can lead to feelings of stress and barriers in access to rights. The Council of Europe is seeking to mainstream the use and development of **child-friendly information** for children in migration. As part of this work we held a consultation with children who had experienced migration in five member states. Children reported that a lack of accessible information left them feeling frustrated, stressed and simply lost, not knowing where to go to seek help. Children recalled that upon arrival they didn't know who to trust, or which information sources were trustworthy, highlighting the importance for professionals at all levels to create a relationship of trust when giving information to the child; We are currently developing a handbook on this topic along with communication tools based on the findings of these consultations and examples of promising practice

from national level. The handbook is due for publication before the end of 2018 and may be a useful tool for you as you promote awareness of children's rights among other professionals, including as a training tool.

Too often, migration-management systems and procedures are not sufficiently adapted to the needs of children. They are systems designed for adults which are applied to children. One common problem in many member States is protracted temporary solutions and the absence of child-protection authorities during critical moments of the migration process. To mainstream and enhance the implementation of child-friendly procedures, a compilation of promising practices is underway. It will cover all stages of the migratory process within Europe, as well as connected law enforcement procedures, durable solutions and procedures for the support of victims of exploitation and abuse. I would invite you to contribute to this exercise and **share any examples of promising practice of child-friendly procedures for children in migration with us, the deadline for submissions is 30 September 2018**. I also invite you to disseminate this call.

Family separation, it is one of the most widespread problems facing unaccompanied and separated children in Europe. These children find themselves far from the protection of their family unit increasing their vulnerability to all forms of violence including sexual abuse and exploitation, trafficking and risk of forced marriage. These children may experience feelings of isolation. In our child consultations, children explained that they had been given false information about the time it takes to complete family reunification procedures and highlighted that family reunification was highly important to them.

In order to mainstream and improve practice across the member states the Council of Europe will publish a **handbook on standards and good practices to restore family links**. To support this work, a call for examples of promising practice of **family reunification is open until 30 October 2018** with special focus on refugee and migrant children and on various aspects of family reunification such as procedural safeguards, examples of inter-agency and transnational cooperation and support measures before, during and after family reunification. We also invite you contribute to this call by providing examples of promising practice of family reunification or family reunion procedures. I would also like to invite you to disseminate this among relevant agencies.

PARLIAMENTARY ASSEMBLY

The Parliamentary Assembly of the Council of Europe continues to work towards ending **immigration detention of children** in Europe. Children of every age continue to be detained for immigration

purposes in many member States often in violation of their best interests. A study on immigration detention practices was published in October 2017 and is available on the Parliamentary Assembly End Immigration Detention of Children Campaign website.

The European Court of Human Rights has repeatedly recalled that detention aggravates a child's vulnerability and that detention conditions that may be acceptable for adults almost always amount to inhuman and degrading treatment when a child is concerned. Psychologists report that children leave detention more vulnerable as the experience can have effects on the child's mental health and development which can often be irremediable. Lack of child-friendly information aggravates the child's vulnerability, increasing feelings of stress and uncertainty as the child cannot understand the reasons for their detention, how long they will be detained or how to access effective remedies. We know that detention is very stressful for children and is translated into physical, emotional and intellectual isolation. Detained children are at heightened risk of suffering depression and often show symptoms related to post-traumatic stress disorder such as insomnia. Several Council of Europe monitoring bodies have found that children and adolescents are at particular risk of suffering from violence, sexual exploitation and abuse, trafficking and ill-treatment when they are deprived of their liberty. Furthermore, children may feel like they are being "punished" despite having committed no crime. The fear of detention may also be one of the reasons why children on the move run away and disappear, which in turn increases their vulnerability to trafficking and exploitation.

In addition, feelings of hopelessness, frustration and abandonment of these children, and (for accompanied children) of seeing their parents powerless in the same situation can even manifest as acts of violence against themselves or mental disorder and developmental problems.

The Parliamentary Assembly campaign to end immigration detention of children has been prolonged for a third phase. The Campaign will now focus on raising awareness and promoting alternatives to detention and improving access to rights.

As Ombudspersons for children you have a mandate, whether explicit or implicit, to visit and monitor places of immigration detention. Several seminars for parliamentarians and ombudspersons were held in 2017 to encourage the effective monitoring of places of immigration detention within member States. We will continue to hold similar seminars to encourage exchange of practices and capacity building. This work is supported by a monitoring guide which is now available in English, French and Arabic. This is a very practical guide including checklists and food for thought about how to spot signs of vulnerability

and how to safeguard children during monitoring visits. This guide is based on the Defence for Children International, Practical Guide on monitoring places where children are deprived of their liberty (2016). I would encourage you to use these guides in your monitoring visits, as you train colleagues or other professionals at national level and if you would be interested in participating in a capacity building seminar please contact us.

EUROPEAN COMMITTEE OF SOCIAL RIGHTS

I would also like to draw your attention to the recent decision of the European Committee of Social Rights on the merits of the complaint of the European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France, which became public in June (2018). The European Committee of Social Rights affirmed the existence of several violations to the right of unaccompanied foreign minors to social, legal and economic protection in France due to shortcomings identified in the national shelter, assessment and allocation system of unaccompanied foreign minors; delays in appointing an ad hoc guardian for unaccompanied foreign minors; the detention of these minors in waiting areas and in hotels; the use of bone testing to determine the age of unaccompanied foreign minors considered as inappropriate and unreliable; and a lack of clarity to access an effective remedy for unaccompanied foreign minors, among other violations.

I'd like to commend the Ombudsperson (Défenseur des droits) for the active role and cooperation in this complaints procedure by submitting observations to the committee to elaborate on the situation at national level.

I would encourage you, ombudspersons for children of all the Member States to assist the European Committee of Social Rights.

LANZAROTE COMMITTEE

Let me add a final comment in relation to the work developed by the Lanzarote Committee. The short and long term consequences of sexual abuse and exploitation can be devastating, including the impact it can have on the mental health of children. The Lanzarote Committee highlighted, in its implementation report "*Protecting children affected by the refugee crisis from sexual exploitation and sexual abuse*" (adopted in March 2017), that therapeutic assistance, notably emergency psychological care should be made available to these children. The Committee also recalled that investigations and criminal

proceedings should not aggravate the child's trauma. The Lanzarote Committee underlines promising practices in various contexts, such as:

- Limit the number of interviews of the child to a minimum, to avoid repeating his/her statement;
- Avoid contacts with the suspected offender (in full respect with principle of "due process");
- Specific training for those persons in contact with the child victim;
- Protecting the child victim privacy;
- Receiving the child victim in a multi-agency structure such as Children's houses.

Assistance, in particular, psychological assistance, should also be provided to the child in addition to the criminal justice response and also once the criminal justice decision has been taken. This should also concern children who have witnessed sexual abuse.

CONCLUSION

Dear colleagues,

Many challenges remain for the future, it is therefore of the utmost importance that we continually reinforce our efforts to strengthen the protection of children. The needs of children and adolescents on the move are urgent, and in Europe they are suffering each day from situations that are harming their mental health and well-being. This shows the weakness of the protection systems that should take protect the rights of these children.

The Council of Europe has issued many reports, studies and guidelines that can assist you as you remind your member states of their obligation to uphold the rights of these children. We invite you to use the recommendations and guidelines issued, and the up-coming guidelines on guardianship and age assessment, to raise awareness of the violations of human rights that are taking place in Europe and to advocate for child's rights compliant policies and practices regardless of the immigration status of the child concerned. I think it is safe to say we have got our work cut out for us.