



Doc. 14905
07 June 2019

Stop violence against, and exploitation of, migrant children

Report¹

Committee on Migration, Refugees and Displaced Persons

Rapporteur: Ms Rósa Björk BRYNJÓLFSDÓTTIR, Iceland, Group of the Unified European Left

Summary

The report draws attention to the serious threats that migrant children face on their way to Europe, and to important gaps in the policies and procedures, which limit the legal opportunities for migration in Europe and put these children at risk of falling into the hands of smugglers and traffickers.

It condemns violent practices such as detaining migrant children and using invasive methods in age-assessment procedures, which may have devastating effects on the child's physical, emotional and psychological development.

The report highlights the need for a common strategy to be adopted by the governments of the member States of the Council of Europe on how to combat violence against migrant children in all its forms and to ensure the broad and comprehensive protection of their human rights.

Member States are urged to undertake a set of legislative and policy implantation measures to prevent all cases of violence against migrant children.

1. Reference to committee: [Doc. 14363](#), Reference 4323 of 13 October 2017.



Contents	Page
A. Draft resolution	3
B. Draft recommendation	5
C. Explanatory memorandum by Ms Rósa Björk Brynjólfsdóttir, rapporteur	6
1. Introduction	6
2. Root causes and reasons why children are particularly vulnerable and become irregular migrants	7
3. Various forms of violence	7
3.1. Migrant children as victims of smugglers and traffickers	7
3.2. Violence in facilities, transit zones and migrant centres	8
3.3. Particular vulnerability of unaccompanied children	10
4. Protecting migrant children from all forms of violence	10
4.1. Positive action of the Council of Europe	11
5. Conclusions and recommendations	13

A. Draft resolution²

1. Amongst the migrants arriving in Europe since 2015, many are children, and many of them are unaccompanied. Children migrate to escape violence, armed conflict, persecution, ravages of climate change and natural disasters, as well as poverty. Many young migrants set out to find opportunities for work or education. In other cases, children leave home to avoid the threats of forced marriage, female genital mutilation or gender-based violence (in the case of girls) or forced military conscription (regarding boys).
2. The Parliamentary Assembly is very concerned about the serious threats that migrant children face on their way to Europe, and important gaps in the policies and procedures, which limit the legal opportunities for migration in Europe and put these children at risk of falling into the hands of smugglers and traffickers. After arriving in Europe, migrant children can also be subject to abuse in detention centres or transit zones, sexual assault and violence, or be forced to live on the streets in order to avoid deportation, especially if they entered a European country illegally. They are also at risk of being sexually exploited by criminal gangs engaging in human trafficking, or of being exploited as undocumented workers. They also often face discrimination and xenophobia in host countries.
3. The Assembly recalls its [Recommendation 2117 \(2017\)](#) and [Resolution 2195 \(2017\)](#) on child-friendly age assessment for unaccompanied children, [Resolution 2136 \(2016\)](#) on harmonising the protection of unaccompanied minors in Europe, [Resolution 2128 \(2016\)](#) on violence against migrants and [Resolution 2174 \(2017\)](#) on the human rights implications of the European response to transit migration across the Mediterranean, which raised specific issues related to the violation of the rights of migrant children. It regrets that a number of European signatories to the United Nations Convention on the Rights of the Child continue to violate their obligations by not providing adequate protection to migrant children and not safeguarding their rights.
4. The member States of the Council of Europe must abide by the principles of the Convention on the Rights of the Child, which includes prioritising the child's best interests and ensuring that a best interests determination procedure is legislated and implemented for each migrant child.
5. The Assembly underlines that local and regional authorities bear a major responsibility in providing necessary protection to migrant children at places of arrival and ensuring access to their rights and child-friendly procedures, as highlighted in [Resolution 428 \(2018\)](#) of the Congress of Local and Regional Authorities of the Council of Europe.
6. The Assembly reiterates its position condemning violent practices such as detaining migrant children and using invasive methods in age-assessment procedures, which may have devastating effects on the child's physical, emotional and psychological development. It welcomes the activities of the Parliamentary Campaign to End Immigration Detention of Children in promoting alternatives to immigration detention and encouraging a holistic approach to age assessment.
7. The Assembly is convinced that there is a need for a common strategy to be adopted by the governments of the member States of the Council of Europe on how to combat violence against migrant children in all its forms and to ensure the broad and comprehensive protection of their human rights. Such a strategy should include proposals on how to ensure safe and legal entry for migrant children from third States to limit the risk of trafficking and abuse.
8. The Assembly urges the Council of Europe member States in order to prevent all cases of violence against migrant children by:
 - 8.1. as regards legislative measures:
 - 8.1.1. creating channels for safe, legal and regular migration, thereby strengthening safeguards for children and their family members;
 - 8.1.2. ensuring the compliance of national legislation with international standards for the protection of migrant children, in particular prohibiting their detention and ensuring the best interests of the child and their right to participate in decisions affecting them;
 - 8.1.3. providing legal safeguards for migrant children regarding their access to asylum procedures;

2. Draft resolution adopted unanimously by the committee on 29 May 2019.

- 8.1.4. ensuring that national legislation provides protection for migrant children from all forms of exploitation and provides child victims of exploitation and violence with the status of victims of crime;
 - 8.1.5. ensuring that national legislation prohibits invasive age-assessment practices;
 - 8.1.6. ensuring that mechanisms allowing migrant children to denounce violence committed against them are introduced;
 - 8.1.7. ensuring that national legislation incorporates the principle of the child's best interests and that a best interests determination procedure is legislated and implemented for each migrant child;
 - 8.1.8. for those parliaments of the member States which have not yet done so, signing and ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Council of Europe Conventions on Action against Trafficking in Human Beings (CETS No. 196) and on the Protection of Children against Sexual Exploitation and Sexual Abuse (ETS No. 201, "Lanzarote Convention");
- 8.2. as regards policy implementation:
- 8.2.1. refraining from push-back practices in particular in relation to migrant children;
 - 8.2.2. allocating necessary resources in the national budgets to the protection of migrant children and the provision of child-friendly services, including the training, education and capacity building of child protection professionals;
 - 8.2.3. incorporating gender awareness in national responses to asylum-seeking children;
 - 8.2.4. providing special training for law-enforcement and immigration officers, and border guards on international humanitarian law and the main international standards on the treatment of migrant children;
 - 8.2.5. involving non-governmental organisations working with migrant children in governmental programmes aimed at the prevention of violence against these children;
 - 8.2.6. putting in place specific policies in order to achieve full inclusion of migrant children in the host country's society, and to prevent any form of discrimination or marginalisation that could result in violence and abuse;
 - 8.2.7. promoting joint projects between national law-enforcement authorities, Interpol and Europol on the identification of organised crime and human trafficking networks involved in the exploitation and abuse of migrant children;
 - 8.2.8. adopting proactive and inclusive strategies towards migrant children who were victims of violence and abuse, addressing their mental and physical health issues;
 - 8.2.9. creating asylum units specialised in assisting migrant children and providing child-friendly information in the child's native language;
 - 8.2.10. training local child protection networks in identifying and following migrant children at risk of being exposed to violence and exploitation.
9. The Assembly invites the Council of Europe, in co-operation with the European Union and Europol, to develop a unified registration system of unaccompanied migrant children entering Europe, with the aim of safeguarding their rights and duties.

B. Draft recommendation³

1. The Parliamentary Assembly refers to its Resolution ... (2019) "Stop violence against, and exploitation of, migrant children".
2. It welcomes the work done by the Council of Europe in the framework of its Action Plan on Protecting Refugee and Migrant Children in Europe as a follow-up to the Special Representative of the Secretary General on Migration and Refugees' Thematic Report on migrant and refugee children, and in particular the chapter on preventing and responding to violence, trafficking and exploitation.
3. The Assembly acknowledges the work done by the Lanzarote Committee in monitoring the implementation of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201, "Lanzarote Convention") and in supporting the European States to adopt specific legislation and take measures to prevent sexual violence against children, to protect the victims, including migrant children, and to prosecute the perpetrators. In particular, it welcomes the Lanzarote Committee's special report on "Protecting children affected by the refugee crisis from sexual exploitation and sexual abuse".
4. It also welcomes the work of the monitoring mechanism of the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197), the Group of Experts on Action against Trafficking in Human Beings (GRETA), aimed at the implementation by the member States of the obligations to provide rights for victims of trafficking, including migrant children, for example the right to be identified as a victim, to be protected and to be assisted.
5. The Assembly also supports the work of the Ad hoc Committee for the Rights of the Child (CAHENF), in particular through its Parliamentary Campaign to End Immigration Detention of Children, and welcomes its current work to develop guidelines on children's rights and safeguards in the context of migration, notably on guardianship and age assessment.
6. The Assembly therefore calls on the Committee of Ministers to:
 - 6.1. adopt as soon as possible the guidelines on guardianship and age assessment in order to provide appropriate safeguards for children in the context of migration, and invite the CAHENF and other relevant Council of Europe bodies to promote them among the member States;
 - 6.2. ask the Steering Committee for Human Rights (CDDH) to consider the possibility of developing European standards for reception centres for migrant children;
 - 6.3. call on the member States that are Parties to the Lanzarote Convention and have not yet done so, to take action to comply with the recommendations of the Lanzarote Committee's special report on "Protecting children affected by the refugee crisis from sexual exploitation and sexual abuse".

3. Draft recommendation adopted unanimously by the committee on 29 May 2019.

C. Explanatory memorandum by Ms Rósa Björk Brynjólfsdóttir, rapporteur

1. Introduction

1. Amongst the migrants who have arrived in Europe since 2015, many are children and most of them are unaccompanied. According to the report by the Office of the United Nations High Commissioner for Refugees (UNHCR) “Refugee and Migrant Children in Europe: accompanied, unaccompanied and separated”,⁴ over 16 500 children arrived in Greece, Italy, Bulgaria and Spain in the first six months of 2017. Over 11 900 (72% of them) were unaccompanied or separated.
2. Although all migrants are at risk of being subjected to a certain degree of violence, as indicated in the Assembly’s report on “[Violence against migrants](#)”, migrant children are particularly vulnerable to violence and abuse, even once they reach host countries in Europe. Migrant children face abuse as a result of poor conditions in detention centres or transit zones, and due to a lack of standards and good practices in some countries. Unaccompanied migrant children are the most vulnerable category when it comes to the risk of being subject to sexual assault and violence, especially if they enter European countries illegally or live on the streets in order to avoid deportation. Migrant children are also at risk of being exploited by criminal gangs engaging in human trafficking for sexual exploitation, or of being exploited as undocumented workers. Even when they are included in schooling and official programmes by State authorities they may face discrimination and xenophobia in host countries.
3. Their exposure to violence therefore does not stop at the European borders. Many European countries continue to place irregular migrants or rejected asylum seekers in detention centres or detention-like facilities, which has a detrimental effect on their health and development. In reception centres migrant children can also be victims of sexual abuse as they are often placed with unrelated adults. Once they arrive in the host countries, this violence continues as some children are forced into prostitution and sexual exploitation to “pay back” their smugglers.
4. States are obliged, under international law, to protect children from violence. The United Nations Convention on the Rights of the Child guarantees the right for children to be free from violence, including “physical and mental violence, injury and abuse, neglect and negligent treatment, maltreatment or exploitation, including sexual abuse”.⁵ The European Convention on Human Rights (ETS No. 5) which prohibits all forms of torture, inhumane and degrading treatment according to its Article 3, also applies to children. Furthermore, the case law of the European Court of Human Rights confirms that countries have a positive duty to take effective measures to protect children from abuse. Therefore, every member State has a duty to protect migrants whether they are asylum seekers, in transit or in the return procedure.
5. The Assembly has adopted several relevant resolutions and recommendations which look into the issues facing migrant children, such as [Recommendation 2117 \(2017\)](#) and [Resolution 2195 \(2017\)](#) on child-friendly age assessment for unaccompanied children and [Resolution 2136 \(2016\)](#) on harmonising the protection of unaccompanied minors in Europe. A number of resolutions and recommendations have also been adopted by the Assembly with regard to the mass migration flows to Europe and the resulting consequences on the migrants themselves, such as [Resolution 2128 \(2016\)](#) on violence against migrants, or [Resolution 2174 \(2017\)](#) on the human rights implications of the European response to transit migration across the Mediterranean. The ongoing reports on refugees and migrants as an easy target for exploitation and on missing refugee and migrant children in Europe will deal with the specific challenges of migrants closely linked to the topic of this report.
6. The Council of Europe member States must take action by adopting a common strategy on how to combat violence against migrant children in all its forms. This strategy should include proposals on how to ensure safe and legal entry for migrant children into third States in order to avoid the risk of them being at the mercy of human traffickers.
7. For the preparation of this report, I conducted a fact-finding visit to Madrid and Melilla. The findings of this visit are reflected in the report.

4. <https://data2.unhcr.org/en/documents/download/60348>.

5. www.coe.int/de/web/commissioner/blog/-/asset_publisher/xZ32OPEoxOkq/content/no-violence-against-children-is-acceptable-all-violence-is-preventable/pop_up?_101_INSTANCE_xZ32OPEoxOkq_viewMode=print&_101_INSTANCE_xZ32OPEoxOkq_languageld=de_DE.

2. Root causes and reasons why children are particularly vulnerable and become irregular migrants

8. Children migrate to escape violence, armed conflict, persecution, ravages of climate change and natural disasters, as well as poverty. Many young migrants set out to find opportunities for work or education. In other cases, children leave home to avoid the prospect of forced marriage, female genital mutilation or gender-based violence (in the case of girls) or forced military conscription (regarding boys).

9. In some cases, children migrate alone because their chances of success are deemed greater than those of older family members. Interviews conducted in Afghanistan in the communities of origin of unaccompanied migrant children revealed that the decision to migrate was based on a belief that children under 18 arriving in Europe would enjoy special protection and have a greater chance of being allowed to stay.

10. Another increasing phenomenon is that of parents sending their children to Europe alone. The European Asylum Support Office (EASO) published an annual report⁶ in 2016 indicating that Afghan parents are sending their children to Europe unaccompanied in the hope they will be granted asylum and seek reunification with the rest of their family. Many children arriving to Greece or Spain are sent by their families for economic reasons, to earn money and to send it back to support families at home.

11. Many children (especially unaccompanied or separated children) fall between the cracks of asylum systems that are overburdened, inefficient and inconsistent. Often children are detained (in detention facilities, in police custody, in airports or transit zones), because of lack of space in child protection centres and limited capacity for identifying alternative solutions. Migrant children are encouraged to take dangerous illegal routes (which often require them to go through smugglers) and to flee detention centres once they arrive because of the violence they endure in these facilities.

12. The current situation is critical, particularly in Italy, where almost 12 000 migrant children arrived in the first half of 2017, 96% of them being unaccompanied; and in Spain where it is estimated that there are around 10 000 unaccompanied migrant children at this time. The situation also remains difficult in other countries that have faced the largest influx of migrants, such as Croatia, Greece, Serbia and Bulgaria.

3. Various forms of violence

13. The migration crisis has been exploited by criminal human trafficking networks to target the most vulnerable, in particular women and children. Italian social workers have stated⁷ that some girls arrive pregnant, having been raped during their journey. Nonetheless, given the illicit nature of human smuggling, there are no reliable figures which indicate specific numbers of migrants dying or disappearing into forced labour or prostitution.

3.1. Migrant children as victims of smugglers and traffickers

14. An increase in the number of migrant children travelling alone has left many of them at risk of sexual abuse and exploitation at the hands of smugglers and traffickers. The Central Mediterranean passage has been identified as one of the most dangerous: more than 75% of the 1 600 children between 14 and 17 years old who arrived in Italy reported being held against their will or forced to work.⁸ According to Europol, nearly 90% of migrants irregularly entering Europe have been helped by smugglers, and the agency reported a jump of nearly 65 000 suspected smugglers in 2018.⁹

15. Whether in countries of first arrival such as Italy, Greece or Bulgaria, or destination countries like France, Spain or the Netherlands, the presence of illegal or poorly monitored markets allows for the exploitation of children in underground work by criminal organisations of various sizes, which are often active in trafficking or smuggling of human beings. Most victims of trafficking and exploitation are children escaping violence, conflict, severe humanitarian crises or poverty. In the absence of safe and legal access channels, unaccompanied children have to rely on the smugglers who can exert control on them upon their arrival in Europe.

6. www.easo.europa.eu/sites/default/files/public/EN_%20Annual%20Report%202015_1.pdf.

7. www.unicef.org/emergencies/childrenonthemove/files/Child_Alert_Final_PDF.pdf.

8. www.theguardian.com/global-development/2017/may/17/traffickers-smugglers-exploit-record-rise-unaccompanied-child-refugees-migrants-unicef-report.

9. www.dailysabah.com/europe/2018/04/07/crisis-hit-eu-faces-increasing-numbers-of-migrant-smugglers.

16. Many children are suffering because of States' inhumane and aggressive policies against migrants: countries close their borders, implement aggressive pushback measures and put migrants in overcrowded shelters and makeshift camps. All of these methods increase the risk of children being exploited, encouraging unaccompanied children to take again dangerous routes and to flee detention centres once they arrive.

17. Harvard University's report¹⁰ "Emergency within an emergency" outlines a situation where migrant children suffer from sexual violence including prostitution in Greece's migrant camps and facilities. According to its research, "every migrant child, regardless of his or her origin, faces the risk of becoming a victim of the sex trade". The report issues a warning that "children gravitate towards dangerous and illegal activities to pay smugglers, including theft, drug dealing and transactional sex". Unaccompanied or separated migrant girls are particularly vulnerable to sexual and gender-based violence.

3.2. Violence in facilities, transit zones and migrant centres

18. The sheer scale of the migration crisis has strained welfare systems in host countries despite efforts at all levels in society to provide support. For example, in December 2015 an assessment¹¹ by the German Government and the United Nations Children's Emergency Fund (UNICEF) of children who arrived in Germany with their families showed that children are vulnerable to becoming victims of violence, abuse and exploitation, particularly in reception and temporary accommodation centres. As they wait for their applications to be processed (for months) they are housed in sports halls, former military barracks and other temporary shelters where they don't have access to schooling or adequate psychological support.

19. After escaping violence in their home countries, refugee children often face physical and psychological violence in Europe's refugee camps, detention facilities, transit zones, hotspots or next to closed borders.

20. The detention of children, along with their families, has been condemned by the United Nations Committee on the Rights of Child as it goes against the principle of the child's best interest. Migrant children who are detained have to endure poor conditions in detention centres that are usually overcrowded, and where they are insufficiently protected, and constant staff changes add additional instability. Subsequently, there is also the problem of the lack of a proper system of data collection, and the insufficient training of professionals.¹²

21. In detention, children are at risk of suffering from depression and anxiety and frequently exhibit symptoms consistent with post-traumatic stress disorder such as insomnia, nightmares and bed-wetting.¹³ In fact, as it has been shown by numerous studies, like those within the Parliamentary Assembly's Campaign to End Immigration Detention of Children, even short periods of detention can undermine a child's psychological and physical well-being and compromise their cognitive development.¹⁴

22. Studies have revealed that detention causes excessive rates of suicide or suicide attempts, self-harm, mental disorder and developmental problems, including severe attachment disorder. According to Mr Juan Méndez, United Nations Special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, children in immigration detention have been tied up, gagged, beaten with sticks, burned with cigarettes, given electric shocks and placed in solitary confinement, causing severe anxiety and mental harm.¹⁵

23. Even relatively humane or child-friendly detention environments can exacerbate pre-existing psychological and developmental vulnerabilities such as previous trauma, disruption of the family unit or lack of basic needs. According to the European Court of Human Rights, even short-term immigration detention of children is a violation of the prohibition on torture and other ill-treatment, because a child's vulnerability and best interests outweigh the government's interest in attempting to control or stop irregular migration.¹⁶

10. <https://reliefweb.int/sites/reliefweb.int/files/resources/Emergency-Within-an-Emergency-FXB.pdf>.

11. www.unicef.org/emergencies/childrenonthemove/files/Child_Alert_Final_PDF.pdf.

12. Plataforma de Infancia; Complementary Report to the 5th and 6th Report on the Implementation of the UN CRC and its OP, pp. 106-114; http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/ESP/INT_CRC_NGO_ESP_27135_E.pdf.

13. https://idcoalition.org/wp-content/uploads/2016/09/End-Child-Detention-Advocacy-Brochure_web_spreads_190816-1.pdf.

14. No Child in Detention Coalition, "Dad, have we done something wrong?", 2014, p. 5.

15. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, 5 March 2015, A/HRC/28/68, paragraph 60.

16. *Ibid.*, paragraph 62, citing *Popov v. France*, judgment of 19 January 2012.

3.2.1. Case study of violence against migrant children in Spain: reception centre in Melilla

24. The huge numbers of migrants landing on European shores, in particular in Italy and Greece, have led to severe overcrowding in reception facilities. In Spain, the situation is still problematic at the land border between Morocco and the Spanish territories of Ceuta and Melilla, due to the huge number of migrants trying to cross and those who are already accommodated in facilities and detention centres in those cities. Another issue is that migrant children are attempting to escape the detention centres in order to continue their journey to other European States and bypass the official bureaucratic procedures set up by those States, thus becoming irregular migrants and even easier targets for violence and exploitation.

25. According to several reports, migrant children in Ceuta and Melilla are subject to abuses at the border as well as inside the enclaves. Numerous migrants have given interviews describing the violence that they were subjected to when attempting the crossing at the Moroccan border, both by the Moroccan authorities and the Spanish border agents. Some migrants, including children, reported that they had been handed over to the Moroccan police by the Spanish authorities, even though they managed to reach the soil of the two Spanish enclaves. These examples, along with a number of other instances, constituted *de facto* expulsions carried out by Spanish authorities in breach of their international obligations. Several minors were also expelled without due process, in violation of international human rights law, the European Union Returns Directive and the European Union Action Plan on Unaccompanied Minors.¹⁷

26. Despite increased funding by the Spanish Government, non-governmental organisations (NGOs) continue to report that the situation in the detention centres of both Ceuta and Melilla is below standard. According to Amnesty International, due to overcrowding and poor health conditions, migrant children prefer to sleep on the streets rather than endure a stay in the centre for minors.¹⁸

27. During my fact-finding mission to Spain, I visited Melilla, which hosts such a centre for minors – La *Purísima*. To understand the context of the situation, I met with national police and civil guard authorities. They informed me that every day around 14 000 people are crossing the border in Melilla, including children. Around 1 000 unaccompanied migrant children are registered in the city, however the exact number of them is unknown. Many of them arrive with adults, parents or close relatives, who often abandon them hoping that they will find working or educational opportunities. Some children arrive as irregular migrants trafficked by criminal gangs.

28. If the police have any doubts as to the age of children, they take them to the hospital for medical age-assessment procedures, very often involving invasive tests such as genital or X-ray examinations (dental tests).

29. The centre has an official capacity of 170 places, but it hosts nearly 650 minors. All of them are boys, as girls are accommodated in another centre. The majority of them come from Morocco, but also from Palestine, Syria, Tunisia and Turkey. The centre is overcrowded and the staff is doing its best to look after the children but it is obvious that the centre is not able to cope with such large numbers. Often children share the beds, the rooms are very dark and very poorly furnished. The educators even told me that the children were constructing their beds themselves.

30. To limit the number of inmates in the centre, the administration has decided to close the doors of the centre at 10 pm, so that all boys who arrive later are obliged to spend the night outdoors. It certainly puts them at risk and creates security problems, as children are fighting for the resources between themselves. Unaccompanied minors are not applying for asylum as they are not provided with information on this opportunity. Children who stay in the centre could attend the school in the city, but they have no space for sports or other social activities.

31. The NGOs whom I met in Madrid claimed that they had registered several cases of violence against migrant children in two reception centres, however children are unable to report these cases as judges doubt their legal capacity and require the presence of their guardians, even if they are perpetrators of violence. The official authorities deny any cases of violence against unaccompanied minors, except one which took place in 2018, when the worker of a centre stabbed a child with a knife.

17. Human Rights Watch; *Abused and Expelled: Ill-Treatment of Sub-Saharan African Migrants in Morocco*, 2014; www.hrw.org/sites/default/files/reports/morocco0214_ForUpload.pdf.

18. Amnesty International; *En Tierra de Nadie, La situación de las personas refugiadas y migrantes en Ceuta y Melilla*; www.es.amnesty.org/uploads/media/Informe-Ceuta-y-Melilla_FINAL-1.pdf.

32. Throughout 2014 and 2015 in Melilla, activists of *Asociación Harraga* and *PRODEIN* interviewed migrant children who were living on the streets. 92% of the 91 migrant children who were interviewed declared that violence endured was the reason why they did not want to return to the centre. 75% of the them accused the personnel of the centre of carrying out some sort of violent act against them, along with violence enacted by other migrant children as well. Yet another reason for refusing to stay in the centre is the fact that some children did not receive any of the official documents to which they were entitled, and therefore preferred trying to cross the border illegally in order to reach mainland Spain and to try to follow the legal procedures that would allow them to stay there.¹⁹ Migrant children are also easy targets for sexual abuse, and several cases have been reported to the authorities, one even concerning two policemen who were accused of abusing a child who sold sex for small gifts.

3.3. Particular vulnerability of unaccompanied children

33. Unaccompanied migrant children are one of the most vulnerable groups. From the start of their journey they are exposed to violence and risk falling into the hands of criminal networks. For the vast majority of them, the downward spiral of exploitation begins at the start of the journey and often deteriorates and crystallises upon entry into European countries. Evidence gathered by the NGO Save the Children who are present at borders and in numerous Italian towns,²⁰ together with data and reports supplied by the major humanitarian organisations, confirm that for many unaccompanied children violence and exploitation by criminal networks and human traffickers continues in the countries of destination.

34. On their arrival, many migrant children whose age is disputed are subjected to an age-assessment procedure. In many countries, the methods used to assess the age of the child include the use of x-ray examinations in the form of dental or wrist x-rays or a genital examination. Such methods risk traumatising or re-traumatising a child.

35. The current age-assessment practices in Europe vary from country to country and those tasked with undertaking age assessments lack guidance, training and support. The consequences of incorrect determination or dispute over a child's age are not only detrimental to the health and well-being of a child, but can lead to a child being treated as an adult and being detained or incarcerated.

36. Children are often afraid of being prevented from continuing their journey and mistrust authorities; up to 50% of unaccompanied migrant children go missing within 48 hours of being placed in reception centres in Europe.²¹ Some go missing with a specific destination in mind or run away out of fear of being sent back to the situation they tried to escape from. Others are victims of kidnapping, trafficking, sexual exploitation and economic exploitation, including forced donation of organs, prostitution, forced drug smuggling and begging.

4. Protecting migrant children from all forms of violence

37. The Convention on the Rights of the Child (CRC) puts clear obligations on all States signatories to protect unaccompanied and separated children. The provisions of the convention foresee all necessary measures to identify unaccompanied minor at the earliest stage, to provide a child with all necessary protection, to trace his or her family and if it is possible and in the best interest of child to reunify the child with his or her family. States Parties to the CRC should align their national legislation with the provisions of the convention and create necessary administrative bodies to implement them.

38. The States should ensure that a best interests determination procedure is legislated for and implemented for each migrant child. As it involves a comprehensive assessment of the child's background and current situation, the procedure offers important opportunities to identify incidents of violence, as well as any risks, and to respond to them in an appropriate manner. There are good examples of how States ensure best interest determinations for children within the national context of child protection and care. When it comes to migrant children, and the aspiration to determine a durable solution for each child, these procedures are often highly fragmented, inefficient or in fact inexistent.

19. Harraga Melilla; De niños en peligro a niños peligrosos; <https://ep00.epimg.net/descargables/2017/06/21/a34d5de11e2a2bf04ea93f580d34b688.pdf>; www.meltingpot.org/l-bambini-dimenticati-di-Melilla.html.

20. www.savethechildren.it/sites/default/files/files/rapporto%20young%20invisible%20enslaved%20DEF.pdf.

21. <http://missingchildreneurope.eu/news/Post/575/Up-to-50-of-unaccompanied-migrant-children-go-missing-within-48-hours-of-being-placed-in-certain-reception-centres-in-Europe>.

39. In practice, few children in migration benefit from a comprehensive determination of their best interests. In Europe, only Finland enacted a law that lists the elements and factors that have to be considered for a best interests determination. Initially adopted in the national child welfare context, its provisions were subsequently extended also to children in migration. Finnish law is closely oriented around the rights of the child set forth in the CRC and it has triggered a series of policy measures and activities in the country that have helped to clarify and strengthen best interest determinations of migrant children.

40. A best interests determination procedure offers inevitable opportunities for safeguarding the human rights of children in migration in a holistic way. Effective legislation in this field can make a significant difference for the identification and referral of children who are victims of violence or exploitation and enhance preventive measures. This is an area where law reform is urgently needed to facilitate also the implementation of a whole range of other laws in the fields of child protection, care, education and immigration/asylum. Best interests determination aims to identify a durable solution, promoting the human rights of the child in the medium and longer term and considering the child's transition into adulthood and independent life, and will determine where this will best be implemented.

4.1. Positive action of the Council of Europe

41. The Council of Europe has taken many positive steps to tackle different forms of violence against migrant children. The Secretary General of the Council of Europe called for a series of priority actions to protect children affected by the refugee crisis (March 2016), the first one being to prevent migrant and asylum-seeking children from falling victim to violence, abuse, exploitation and trafficking.²² In 2016, the Council of Europe launched the "Strategy for the Rights of the Child",²³ which includes a focus on countering discrimination and guiding member States to take a co-ordinated child rights-based approach.

42. Moreover, the Council of Europe elaborated an Action Plan on Protecting Refugee and Migrant Children in Europe.²⁴ This plan was a follow-up to the thematic report on migrant and refugee children²⁵ by the Special Representative of the Secretary General on migration and refugees, and in particular the chapter on preventing and responding to violence, trafficking and exploitation. The main areas of focus concern access to an effective guardianship system, ensuring appropriate shelter for children and their families during long journeys, restoring family reunification, preventing deprivation of liberty of children and guaranteeing effective protection from violence, including trafficking and sexual exploitation.

43. The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201, "Lanzarote Convention")²⁶ requires criminalisation of all sexual offences against children. It sets out that States in Europe and beyond shall adopt specific legislation and take measures to prevent sexual violence, to protect child victims including migrants and to prosecute perpetrators. A [special report on "Protecting children affected by the refugee crisis from sexual exploitation and sexual abuse"](#) was adopted by the Lanzarote Committee on 3 March 2017.²⁷

44. Finally, the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197)²⁸ provides for a series of rights for victims of trafficking, including migrant children, in particular the right to be identified as a victim, to be protected and assisted. The convention has a monitoring system – the Group of Experts on Action against Trafficking in Human Beings (GRETA) – which allows the implementation of the obligations contained in it to be supervised and effectively executed.

45. In its [Resolution 2020 \(2014\)](#),²⁹ the Assembly called on member States to introduce legislation prohibiting the detention of children for immigration reasons and ensure its full implementation in practice,³⁰ and in 2015 launched its Parliamentary Campaign to End Immigration Detention of Children.³¹ The campaign seeks to raise awareness of the deprivation of liberty of children in immigration contexts and to promote the

22. SG/Inf(2016)9 final, Protecting children affected by the refugee crisis: A shared responsibility, Secretary General's proposals for priority actions.

23. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168066cff8>.

24. www.coe.int/en/web/portal/-/47-european-states-agreed-on-an-action-plan-on-how-to-protect-children-in-migration.

25. https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016806fdd08.

26. www.coe.int/en/web/children/lanzarote-convention.

27. <https://rm.coe.int/special-report-protecting-children-affected-by-the-refugee-crisis-from/168075b9df>.

28. www.coe.int/en/web/anti-human-trafficking/about-the-convention.

29. [Resolution 2020 \(2014\)](#) on the alternatives to immigration detention of children; Parliamentary Assembly, A study of immigration detention practices and the use of alternatives to immigration detention of children (2017), p. 7.

30. See [Resolution 2020 \(2014\)](#).

31. <https://pace.coe.int/web/apce/children-in-detention>.

adoption of alternatives to detention by member States. Activities undertaken have included awareness-raising about immigration detention of children, training for parliamentarians and ombudspersons to effectively monitor places of immigration detention and various roundtables and studies to map the current state of immigration detention and age assessment in member States.³² In the framework of the Campaign, a Guide for Parliamentarians: “Visiting places where children are deprived of their liberty as a result of immigration procedures was produced”,³³ providing detailed guidance to those involved in monitoring.

46. An International Conference hosted by the Czech Chairmanship of the Committee of Ministers of the Council of Europe on “Immigration detention of Children: Coming to a Close?” was held in Prague, on 25 and 26 September 2017, and aimed both to raise awareness of children’s rights and to promote exchange of good practices on alternatives.³⁴ The report published at the conclusion of this conference made a number of suggestions for member States in this area. It suggested that governments should set out a clear roadmap to end the practice of detaining children in migration contexts and emphasised the need for child-friendly procedures to be adopted.³⁵ The Council of Europe Commissioner for Human Rights has also emphasised the need for clear alternatives in law and policy, for the exchange of good practices and improvements in data gathering.³⁶

47. Article 17 of the European Social Charter (revised) (ETS No. 163) guarantees the right of children, including unaccompanied minors to social and medical assistance.³⁷ Given that the practice of detaining children in the migration context continues in many countries, it has been emphasised that where this occurs, children should not be separated from their parents against their will.³⁸ The European Social Charter requires States to take necessary and appropriate steps to provide children with the care and assistance they need to protect them from negligence, violence or exploitation.³⁹ This obligation extends to children who are in their territory unlawfully.⁴⁰ Children must be treated on an individual basis, and the principle of the best interests of the child should apply fully to migrant children.⁴¹

48. The European Court of Human Rights has consistently found that due to the extreme vulnerability of children in migration, the threshold for harm is lower and so detention itself can amount to inhuman and degrading treatment. For example, violations have been found of children’s rights under Article 3 due to the conditions in which an unaccompanied five-year-old child was held within an adult facility,⁴² and in circumstances where conditions amounted to inhuman and degrading treatment.⁴³ Similar violations have been found regarding accompanied children.⁴⁴

49. There is also a continuing commitment to monitoring the situation of migrant children in detention, notably the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).⁴⁵ The European Commission against Racism and Intolerance (ECRI), the European

32. See further https://pace.coe.int/en_GB/web/apce/eidc-at-a-glance.

33. Council of Europe, Guide for Parliamentarians: Visiting places where children are deprived of their liberty as a result of immigration procedures, October 2017.

34. Council of Europe Strategy for the Rights of the Child 2016-2021: 1st *Implementation Report*, October 2017), p. 25.

35. Office of the Czech Government Agent, Immigration Detention of Children: Coming to a Close?, Prague, 25-26 September 2017: Conference Report (Chairmanship of the Czech Republic and the Council of Europe, 2017), pp. 42-43.

36. See www.coe.int/en/web/commissioner/-/high-time-for-states-to-invest-in-alternatives-to-migrant-detention?inheritRedirect=true&redirect=%2Fen%2Fweb%2Fcommissioner%2Fthematic-work%2Fmigration.

37. *International Federation of Human Rights Leagues (FIDH) v. France*, Complaint No. 14/2003, decision on the merits of September 2004, paragraph 36).

38. Parliamentary Assembly, A study of immigration detention practices and the use of alternatives to immigration detention of children (2017) at p. 12.

39. *Defence for Children International (DCI) v. Belgium*, Complaint No. 69/2011, decision on the merits of 23 October 2012, paragraph 82.

40. *Defence for Children International (DCI) v. the Netherlands*, Complaint No 47/2008, decision on the merits of 20 October 2009.

41. Parliamentary Assembly, A study of immigration detention practices and the use of alternatives to immigration detention of children (2017), p. 13.

42. *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, Application No. 13178/03.

43. *Mahmundi and Others v. Greece*, Application No. 14902/10, judgment of 31 July 2012; *S.F. and Others v. Bulgaria*, Application No. 8138/16, judgment of 7 December 2017; *Rahimi v. Greece*, Application No. 8687/08, judgment of 5 April 2011; *Mohamad v. Greece*, Application No. 70586/11, judgment of 11 December 2014; *Abdullahi Elmi and Aweys Abubakar v. Malta*, Applications Nos. 25794/13 and 28151/13, judgment of 22 November 2016.

44. *Popov v. France*, Applications Nos. 39472/07 and 39474/07, judgment of 19 January 2012.

45. CPT, *Factsheet on Immigration detention*, March 2017; see also, for instance, the CPT’s report on the 2016 visits to Greece, September 2017), pp. 20-28.

Committee of Social Rights (ECSR) and the Committee of Experts of the European Charter for Regional or Minority Languages have also, among others, looked into the matter in the context of their own monitoring procedures.⁴⁶ In order to improve monitoring of places where children are deprived of their liberty, training has been developed for those responsible for visiting and monitoring places of detention as a result of migration.⁴⁷

50. In the framework of the third phase of the Assembly's Campaign to End Immigration Detention of Children in collaboration with Children's Rights Division, supporting the work of the Ad hoc Committee for the Rights of the Child (CAHENF), it will also focus on improving access to rights for children in migration, in particular during age-assessment procedures. CAHENF have also established a group of experts to assist in the development of guidelines on children's rights and safeguards in the context of migration. Two texts are being developed to provide guidance to member States on guardianship and age assessment in the context of migration, and are expected to be finalised by 2019.⁴⁸

5. Conclusions and recommendations

51. The member States should take effective action to stop the use of violence against migrant and refugee children and their families (notably at borders), provide protection to children at risk of trafficking (in line with the Convention on Action against Trafficking in Human Beings), ensure the availability for unaccompanied migrant children of guardianship, and stop detaining migrant children. The European Union's policy and legislative reform should be used to create more opportunities for safe, legal and regular channels for refugees and migrants, strengthening legal safeguards for children without family members. Existing family reunification rules should be interpreted broadly and more flexibly to respond to the humanitarian needs of children.

52. The Council of Europe should consider UNICEF's Six-Point Agenda for Action⁴⁹ for refugee and migrant children that includes giving children access to services like health care and education, developing efficient family reunification strategies as well as establishing safe and sustainable legal global pathways for migration.

53. Furthermore, the member States should abide by the principles of the United Nations Convention on the Rights of the Child, which includes prioritising the child's best interests. The Council of Europe should therefore continue to promote its policy against the detention of migrant children and promote alternatives like foster care, supervised independent living and reporting obligations. In this way, children (especially unaccompanied children) will neither be victims of violence in detention centres nor be tempted to escape and find themselves in the hands of human traffickers. The Council of Europe should refer to the positive State practices already in place: there has been a clear shift toward detention reform and a decrease in the use of immigration detention in several States over the past five years, including some which have pledged to end child immigration detention as a matter of priority (like the United Kingdom, Finland and Italy⁵⁰).

54. The Council of Europe must insist that its member States respect the "non-refoulement" principle. If violence is probable on European soil, it is practically certain that children sent back to their home country will face persecution and serious human rights violations. Sending migrant children back to where they came from equates to handing them directly over to those who abused them during their journey to Europe.

55. To ensure children's safety, security and stability, safeguards related to the asylum process should be incorporated in law rather than in rules and regulations. Their stipulation only at these levels allows too much room for wide interpretation and lax implementation, often to children's detriment. Much stronger safeguards are required at every stage of the asylum process to allow a child's legal challenge and judicial review of decisions.

56. Moreover, member States should consider strengthening their legislative and policy frameworks by ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

46. Children's Rights Division, Council of Europe, Implementation of the Council of Europe Strategy for the Rights of the Child 2016-2021, September 2017, p. 6; Council of Europe Strategy for the Rights of the Child 2016-2021, March 2016, p. 12; Parliamentary Assembly, A study of immigration detention practices and the use of alternatives to immigration detention of children (2017), p. 14.

47. Implementation of the Council of Europe Strategy for the Rights of the Child 2016-2021, op. cit., p. 6.

48. www.coe.int/en/web/children/cahenf.

49. www.unicef.org/emergencies/childrenonthemove/filehild_Alert_Final_PDF.pdf.

50. https://idcoalition.org/wp-content/uploads/2016/09/End-Child-Detention-Advocacy-Brochure_web_spreads_190816-1.pdf.

57. Also, gender awareness must be incorporated in national responses to asylum-seeking children. For instance, young girls should not be placed in dorms with unrelated men as this puts them at risk of sexual violence.

58. More joint projects and inter-governmental co-operation should be promoted among law-enforcement authorities with the help of Europol and Interpol in order to effectively identify organised crime networks and human traffickers which are exercising violence against migrant children and exploiting them. The authorities and governments of member States should be encouraged to include the relevant work of NGOs which operate with migrant children in their official programmes, in order to ensure a wide-ranging and broad protection of all migrant children. NGOs are often capable of reaching migrant children who are marginalised and living in extreme conditions, thus providing a chance to include and help those children who are living on the streets or in informal camps, as well as those being exploited as cheap workers or sex slaves.

59. Another key safeguarding mechanism is guardianship. This would allow unaccompanied children to have an adult they can refer to personally and offer them moral support as well as help with the asylum-seeking process. A common code of good practice should be put in place to ensure that both guardianship and legal representation are available to every child. Member States should establish clear guidelines relating to confidentiality and disputes between guardian and child, as well as the child's right to speak for himself and to complain about his or her guardian.

60. Finally, member States should ensure that asylum seekers, in particular children, have equal access to health care and social services as nationals. Although migrant children are entitled to health care and medical treatment, local health-care services can be reluctant to offer such care. Therefore, countries must define a common "core package" of services available to asylum seekers. Additionally, the mental health of child asylum seekers is severely affected by uncertainty about their legal status and the constraints of their living conditions. Member States must therefore adopt a proactive and inclusive strategy towards child asylum seekers to address mental health issues.

61. The Council of Europe should underline and put forward best practices and successful policies implemented by certain member States, such as special asylum officers specialising only in assistance and care for migrant children, providing child-friendly information in the child's native language, and creating areas that are devoted solely to migrant children in transit zones and police stations.

62. Specific policies should be put in place to achieve a full inclusion of migrant children in the host country's society, in order to prevent any form of discrimination or marginalisation that could result in them being targets for violence and abuse.

63. This report highlights the need for a common strategy to be adopted by governments of the members States on how to combat violence against migrant children in all its forms and to ensure broad and comprehensive protection of their human rights. Such a strategy should include proposals on how to ensure safe and legal entry for migrant children into third States in order to avoid the risk of them being at the mercy of human traffickers.

64. The relevant intergovernmental Committee of the Council of Europe – the Steering Committee for Human Rights (CDDH) and its Drafting Group on Migration and Human Rights (CDDH-MIG) – could also look into the possibility of developing European standards for reception centres for migrant children.