



Joint open letter to the European Council Time to act to ensure children's rights in the EU's migration policy: 10 action points

Brussels, 30 October 2015

Mr. Donald Tusk
President of the European Council
B-1048 Brussels

- cc. Permanent Representative of Luxembourg, Ambassador Christian Braun
- cc. Counsellor, Permanent Representation of Luxembourg, Mr. Pascal Schumacher
- cc. All Permanent Representatives to the European Union
- cc. Secretary General of the Council, Jeppe Tanholm-Mikkelsen
- cc. President of the European Commission, Mr. Jean-Claude Juncker
- cc. First Vice-President of the European Commission, Mr. Frans Timmermans
- cc. High Representative of the Union for Foreign Affairs and Security Policy, Ms. Federica Mogherini
- cc. Commissioner for Migration, Home Affairs and Citizenship, Mr. Dimitris Avramopoulos
- cc. Commissioner for Justice, Consumers and Gender Equality, Ms. Věra Jourová
- cc. Head of the Cabinet of Mr. Tusk, Mr. Piotr Serafin

Dear European Heads of State or Government and Ministers of the Interior and Foreign Affairs,
Dear Mr. Tusk,

Significant numbers of children from third countries migrate to Europe, for a variety of reasons, travelling with their families, alone or separated from their family. Between January and August 2015 alone, 174,235 children sought asylum in the European Union, representing one in four asylum seekers.ⁱ From January to September, tens of thousands of unaccompanied children arrived by sea.ⁱⁱ Comprehensive data on children that have not claimed asylum or are residing undocumented in the EU is lacking. As children and as migrants they face a number of risks, particularly when they are undocumented.

Over the past few months, several European Council as well as Justice and Home Affairs and Foreign Affairs Council meetings have been convened to discuss and develop immediate responses and policies to address the recent increase in migrants and refugees arriving to Europe.

As 59 leading organisationsⁱⁱⁱ in the fields of human rights, child rights, health and social inclusion, including UNICEF, OHCHR and the European Network of Ombudspersons for Children, we are concerned by the lack of attention afforded to children's rights in these policy discussions and developments.^{iv}

All the policy decisions and practical developments are having – and will continue to have - a profound impact on the lives of children. The EU and its Member States need to ensure that their responses to the current situation properly address the specific needs, rights and risks that children face.

The current situation also demonstrates the necessity of implementing a rights-based approach to protect all migrant children, regardless of whether they are seeking asylum, are documented, undocumented, trafficked, accompanied or unaccompanied.

Children often move from category to category, and fall through the gaps in the protection framework. Many of the children who have experienced situations of violence, insecurity, child-specific forms of persecution, and other human rights violations are not recognised as in need of international protection, or are only provided a status for a short period of time. Many of the children claiming asylum today, are likely to be undocumented in a few months or years. Many were first documented, but lost their status at a later stage, for example, if their parent lost their job or experienced domestic violence.^v While many unaccompanied children migrate entirely independently, many do so to join family members already in Europe, and later reside regularly or irregularly with their family.

Furthermore, as the Council has noted, 'the EU Charter for Fundamental Rights and the United Nations Convention on the Rights of the Child, establish that children should be treated as such regardless of their migratory status, nationality or background'.^{vi} Some children may have additional protection needs that should be met, but all children have equal rights, and must have their rights protected, as children first and foremost. No form of discrimination is acceptable or justifiable, whether taken by public authorities or private actors.

Yet, the current package of policies reinforces a very differentiated treatment of children. While essential avenues for protection are foreseen for some children, the increasing focus on detention and deportation, further investment in border control, and significantly reducing the number of people that can arrive to the EU's borders through cooperation with third countries raises serious child rights concerns. All measures must be developed, implemented, evaluated and adapted to ensure compliance with child rights. It is the responsibility and duty of governments to respect, protect and fulfil the rights of every child.

We call on the EU and its member states to implement the following ten actions:

1. **Consider children's rights and views, and guarantee their best interests** when making decisions, including on immigration and asylum applications and in any decision to move a child or family to another country. The best interests of the child must never be outweighed by migration and border control concerns.
2. **Meet immediate humanitarian and reception needs**, while also investing in systemic reform to ensure access to services in a sustainable way, and to facilitate integration.
3. Ensure that all children have non-discriminatory access to services, such as health care, including mental health, and education, and have adequate accommodation together with their family.
4. Ensure effective protection of all children from all forms of violence, abuse and exploitation and discrimination, including gender-based, and access to justice for acts of violence or other rights violations.^{vii}
5. Ensure that no child is detained or subject to other punitive measures because of their or their parent's residence or migration status.
6. **Protect family unity** when in the child's best interests, including by ensuring that no child is separated from a parent by immigration-related detention.
7. **Provide adequate search and rescue and humanitarian assistance** to prevent all avoidable deaths, whether at sea or on land.

8. Provide regular and safe ways for children and their families to come to Europe to seek protection and join family members and open more rights-respecting avenues for work and study.
9. Ensure that all agreements with countries of origin and transit include child rights safeguards and pay particular attention to the needs and rights of children. Children and their families should not be returned to a country where there is a risk of human rights violation (non-refoulement).
10. Empower children to access justice, and have their views heard, including through providing information and access to legal representation in all proceedings that can affect their status, rights and freedoms.

Child rights and protection safeguards and impact assessments must be integrated in all migration-related policy and practice. The best interests of the child should always be a primary consideration in all policies, practices, decisions and procedures. While extending essential protection to some children, governments cannot detain, forcibly deport and deny essential services to others.

We urge Heads of Government and Ministers to develop and implement concrete measures towards a comprehensive and rights-based strategy ensuring effective protection for all children affected by migration^{viii}, including in the upcoming meetings at European level, in particular when discussing drivers for migration at the Valletta Summit on 11-12 November and the Justice and Home Affairs Council on 3-4 December and through its Council Conclusions.

We thank you in advance for consideration of our proposals,

Yours,

- Dominique Guibert, President, Association Européenne pour la Défense des Droits de l'Homme (AEDH)
- Spyros Rizakos, President, AITIMA
- Carlos Arce Jiménez, Immigration Area Coordinator, Asociación Pro Derechos Humanos de Andalucía (APDHA)
- Elvira Méndez, Director General, Associació Salut i Família
- Rebecca O'Donnell, Secretary General, Child Circle
- Sheila Donovan, Executive Director a.i., Child Helpline International
- Veronica Yates, Director, Child Rights International Network (CRIN)
- Meg Gardinier, Secretary General, ChildFund Alliance
- Liz Ayre, Director, Children of Prisoners Europe (COPE)
- Agnes Uherezky, Director, Confederation of Family Organisations in the European Union (COFACE)
- Carol Homden, Director, Coram Children's Legal Centre
- Katrín Fjeldsted, President, Standing Committee of European Doctors (CPME)
- Benoit Van Keirsbilck, President, Defence for Children International
- Ángel Gudiña Canicoba, Executive Secretary, Don Bosco International
- Sérgio Aires, President, European Anti-Poverty Network (EAPN)
- Luk Zelderloo, Secretary General, European Association of Service providers for Persons with Disabilities (EASPD)
- Michael Diedring, Secretary General, European Council for Refugees and Exiles (ECRE)
- Reinhold Müller, Director, European Federation for Street Children (EFSC)
- Michaël Privot, Director, European Network Against Racism (ENAR)
- Leeanne Torpey, Coordinator Global Campaign to END Immigration Detention of Children
- Marc Dullaert, Chair, European Network of Ombudspersons for Children (ENOC)
- Anna Zobnina, Chair, European Network of Migrant Women (ENoMW)
- Jana Hainsworth, Secretary General, Eurochild
- Heather Roy, Secretary General, Eurodiaconia
- Caroline Costongs, Managing Director, EuroHealthNet
- Allan Päll, Secretary General, European Youth Forum
- Freek Spinnewijn, Director, FEANTSA
- Yonous Muhammadi, President, Greek Forum for Refugees

- Clara Aerts, Coordinating Group, International Association for Steiner/Waldorf Early Childhood Education (IASWECE)
- Brian Killoran, CEO, Immigrant Council of Ireland
- Grant Mitchell, Director, International Detention Coalition
- Christine Sudbrook, Secretary General, International Falcon Movement- Socialist Educational International
- Karim M. Abdeltawab, IFMSA Liaison Officer to Human Rights and Peace Issues, International Federation of Medical Students' Association (IFMSA)
- Cristina Martins, President, International Federation of Social Workers (IFSW)–Europe
- Vicky Claeys, Regional Director, International Planned Parenthood Federation (IPPF) European Network
- Liana Ghent, Executive Director, International Step by Step Association (ISSA)
- Doros Polykarpou, Executive Director, KISA - Action for Equality, Support, Antiracism
- Virginia Wangare Greiner, Director, Maisha e.V.-African Women in Germany
- Françoise Sivignon, President, Médecins du monde (France) and Sagrario Martin, President, Médicos del Mundo (Spain), Doctors of the World - Médecins du monde International Network
- Christoph Krieger, Representative, Medibüro Kiel
- Maria Nyman, Director, Mental Health Europe - Santé Mentale Europe
- Delphine Moralis, Secretary General, Missing Children Europe
- Edel McGinley, Director, Migrant Rights Centre Ireland (MRCI)
- Jan Jařab, Regional Representative for Europe Office of the UN High Commissioner for Human Rights (OHCHR)
- Christina Goři, Secretary General, International Juvenile Justice Observatory (OJJJ)
- Michele LeVoy, Director, Platform for International Cooperation on Undocumented Migrants (PICUM)
- Laetitia Van der Vennet, Coordinator, Plate-forme Mineurs en exil / Platform Kinderen op de vlucht
- Mónica Garcıa, Director, Red Acoge
- Nubia Forero, Vice President, Red Aminvi
- Nadia Nguyen Quang, RESF activist, Réseau Education Sans Frontières (RESF)
- Carl Wirehag, Interim Chair, Rosengrenska stiftelsen
- Ester Asin, Director and EU Representative, Save the Children EU Office
- Pierre Baussand, Director, Social Platform
- Kélig Puyet, Head of Global Advocacy, SOS Children's Villages
- Rian Ederveen, Coordinator, Stichting LOS
- Ignacio Packer, Secretary General, Terre des Hommes International Federation
- Gocha Gogvadze, Chairman, International Youth Association for Training and Inter-employment Programs (TIP)
- Marie-Pierre Poirier, Regional Director, UNICEF Regional Office for CEE/CIS & Special Coordinator for the Refugee and Migrant Crisis in Europe
- Marius Wanders, EU Representative and Executive Director, World Vision - Brussels and EU Representation

ⁱ Latest available Eurostat figures available on <http://ec.europa.eu/eurostat/web/asylum-and-managed-migration/data/main-tables> (select 'Asylum and new asylum applicants - monthly data'), dated 27 October 2015.

ⁱⁱ UNHCR Italy reports 10,000 unaccompanied children arriving to Italy (UNHCR, 'Italy – Sea arrivals. UNHCR Update no.1', September 2015).

ⁱⁱⁱ This letter is being sent by PICUM - the Platform for International for International Cooperation on Undocumented Migrants on behalf of the undersigned organisations. For follow up, please contact PICUM, Rue du Congrès 37-41/ 5, Brussels 1000, Belgium (www.picum.org).

^{iv} European Commission Communication, 'A European Agenda on Migration', COM(2015) 240 final, Brussels, 13.5.2015; European Council Conclusions 25 and 26 June 2015 (EUCO 22/15); Presidency Conclusions 14 September 2015 (12002/15); Council Conclusions on the future of the return policy, 8 October 2015 (12856/15); European Council Conclusions 15 October 2015 (EUCO 26/15); Leaders' Statement, Leaders' Meeting on refugee flows along the Western Balkans Route, 25 October 2015.

^v If someone has a spouse-dependent visa, they are liable to lose their status and become undocumented when that relationship breaks down, even if the reason is domestic violence.

^{vi} Council conclusions on unaccompanied minors, 3018th Justice and Home Affairs Council meeting, Luxembourg, 3 June 2010, para c. See also the 36 concrete recommendations for States Parties to implement a systemic, comprehensive child-rights approach to migration that were issued by the Committee on the Rights of the Child in its [Report of the 2012 Day of General Discussion](#).

^{vii} See also the European Commission principles on integrated child protection systems, as published in the [Reflection paper](#) for the EU Child Rights Forum, 2-3 June 2015, Brussels, pending final publication.

^{viii} See also [Joint open letter](#) to the European Council calling for European commitments on children's rights to be prioritised in future common migration and asylum policies, dated 22 May 2014, sent by 38 leading organisations in the fields of human rights, health, education and social inclusion, including the UN Committee on the Rights of the Child, UNICEF, OHCHR and the European Network for Ombudspersons.