

'Not Refugee Children, Not Migrant Children, Children First': Lack of a systematic and integrated approach

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OVERVIEW

By now, the staggering figures involved in child migration globally are familiar to us all. However it is important to remind ourselves that 50 million children worldwide have been uprooted – including 28 million children forced to move due to conflict and violence.¹ One in every 200 refugees is a child. In Europe, one in every four asylum applications is made by a minor. Yet, while child migration is recognized as one of the most pressing humanitarian challenges of our time, our analysis reveals a significant lack of understanding about children's mobility. A strong focus is placed upon drafting new regulations and frameworks instead of addressing some of the underlying – and, to some extent, invisible – problems entrenched in the region- and country-specific policies and practices that contribute to implementation gaps in migration systems. Within migration pathways, there is a need to **explicitly recognize** the rights of children – not as migrants or as refugees, but as children first.²

Supporting migrant children is a shared responsibility, and governments have a legal obligation under the United Nations Convention on the Rights of the Child to protect and safeguard children. The 'best interests principle' set out in article 3.1 of the Convention stipulates "The best interests of the child shall be a primary consideration in all actions affecting children".

In addition, article 2 (on non-discrimination), article 6 (on the right to life and survival and development) and article 12 (on the right to be heard) are extremely important in the context of children on the move. Finally, general comments made by the Committee on the Rights of the Child – the authoritative guidance issued to States parties about how to interpret and implement the Convention – provide an important legal framework for responding to the needs of children in migration pathways. Migration is also broadly mentioned throughout the 2030 Agenda for Sustainable Development. The Sustainable Development Goals (SDGs) and targets codify strategies of engagement with migration³. Children's migration is relevant to SDG targets, including, but not limited to, targets 1.2, 3.2, 4.1, 4.2, 4.5, 4.A, 5.2, 8.6, 8.7, 8.8, 10.7, 16.1 and 16.2.

In this brief, we summarize the risks, vulnerabilities and protection needs of children as refugees and migrants in Europe. We use the Convention on the Rights of the Child and the SDGs as the normative frameworks and draw on the insights of the UNICEF *Uprooted* study and its background documents (hereafter cited as country reports) as well as a range of primary and secondary data sources.⁴ Following a brief overview of the conceptual issues at stake, we highlight some of the key implementation gaps in migration systems.⁵

- 1 United Nations Children's Fund, 'Nearly a quarter of the world's children live in conflict or disaster-stricken countries: UNICEF', Press release, UNICEF, New York, 9 December 2016. Available at: <www.unicef.org/media/media_93863.html>, accessed 1 June 2017.
- 2 United Nations General Assembly, 'Seventy-first session. Resolution adopted by the General Assembly on 19 December 2016, 71/177, Rights of the Child', 30 January 2017, A/RES/71/177. The terms 'child migrants', 'child immigrants', 'refugee children', 'unaccompanied and separated children' and 'children seeking asylum' are used interchangeably, generally to refer to immigrant children who are under 18 years of age.
- 3 On 25 September 2015, the United Nations General Assembly adopted 17 Sustainable Development Goals (SDGs) and 169 accompanying targets as part of a global agenda to promote sustainable development over the next 15 years. United Nations General Assembly, 'Seventieth session. Resolution adopted by the General Assembly on 25 September 2015, 70/1, Transforming our world: the 2030 Agenda for Sustainable Development', 21 October 2015, A/RES/70/1.
- 4 United Nations Children's Fund, *Uprooted. The Growing Crisis for Refugee and Migrant Children*, UNICEF, New York, September 2016. The other data sources used include: European Commission, Knowledge Centre on Migration and Demography, <<https://ec.europa.eu/jrc/en/migration-and-demography>>, accessed 1 August 2018; International Organization for Migration, Global Migration Data Analysis Centre, <<http://gmdac.iom.int/>>, accessed 1 June 2017.
- 5 In the second brief, we analyse Europe's migration practices and policies through the lens of inequality. D'Costa, Bina, and Emilia Toczydlowska, 'Migration and Inequality: Making policies inclusive for every child', Innocenti Research Brief, UNICEF Office of Research - Innocenti, Florence, 2017.

TERMINOLOGY AND LANGUAGE

A simple Internet search to explore the terminology used in the Italian media provides an interesting insight into media representations of migration. In 2014, the term 'migration crisis' appeared 6,990 times in the Italian media, rising to 26,990 occurrences in 2016. Similarly, 'refugee crisis in Europe' appeared 4,800 times in 2014, increasing to 44,900 instances in 2016.⁶ In September 2015, the tragic image of the lifeless body of three-year-old Aylan Kurdi, a migrant from the Syrian Arab Republic, washed up on a Turkish seashore sparked a public outcry and turned the world's attention to Europe's challenge with forced migration involving children.⁷ We argue, however, that it is critical that the pressing concerns of displaced children's migration, within Europe or elsewhere, are *not* framed as a 'crisis'.

Throughout history and across the world, children have been on the move – migrating both with families and communities and, at times, without them. Also, there are far more refugees and migrants in Africa and the Asia-Pacific region than in Europe: together, the two regions host approximately 60 per cent of the world's displaced children. Though the intention behind the use of the language of crisis may be worthy, and while it evokes a certain urgency and emotion that stakeholders believe is appropriate to the situation in Europe, it also heightens anxiety and social unrest, which has a political impact on the rapidly evolving migration dynamics. A fearful political climate that focuses only on border security undermines the critical objective to develop a sustainable, systematic and child-friendly migration governance structure. There is also a risk that the 'crisis' label will result in the exceptional or differential treatment of the children involved, either to their own disadvantage or to the disadvantage of other migrant children. Using certain terms such as 'flows' and 'influx' when discussing migration also conjures up images of mass movements of people and associated risks for States parties.

The real *crisis* in forced displacement and irregular migration today is that border regimes worldwide make desperate people turn to desperate measures and dangerous journeys, which in turn generates a *reception crisis*. The ongoing large-scale movements of people and the growing number of children who are compelled to take risky and unsafe routes by sea, land and/or

air are serious concerns. Data from the International Organization for Migration (IOM) tell us that 43,204 migrants and refugees had entered Europe by sea in 2017 as at 23 April 2017, with more than 80 per cent of this number arriving in Italy and the rest in Spain and Greece.⁸ The IOM Missing Migrants Project also reports that there had been 1,089 fatalities in 2017 along the Central Mediterranean migration route (again, as at 23 April 2017).⁹

PREVAILING CHALLENGES

Migration scholarship distinguishes between refugees and migrants, arguing that international norms and regulations guarantee for refugees certain rights and protection that migrants do not have, although they also face innumerable risks in the countries they wish to enter.¹⁰ Recognizing this conceptual distinction, we argue in our second brief on inclusive migration policies that for refugee children and migrant children the legal, political and sociocultural production of illegality is often comparable, resulting in similar experiences of violence and exploitation.¹¹ At times, children may fall into or be moved into different categories. Using the available data that recognize diversity, we have distilled some of the common experiences of children on the move in Europe. Thus, unless specified otherwise, this brief considers all children in migration pathways. This brief does not address the concerns of naturalized migrant citizens (i.e. migrants who subsequently obtained citizenship).

Our research indicates that Europe's existing migration assistance systems, which include laws, policies and practices, are not always child-friendly.¹² Family reintegration is one of the most important challenges. In addition, the risk of **statelessness** experienced by children on the move in Europe has increased dramatically. Yet, no coordinated and systematic effort has been established to resolve such issues in Europe. Recent publications cover the plight of unaccompanied and separated children but **overlook accompanied, undocumented and/or missing children**. Making assumptions about accompanied children not needing special child protection is also a serious oversight. In addition, there remains an **insufficient understanding of the situation of children who are returned to their country of origin or to a third country**. Also, the Return

6 The authors are grateful to Michelle Godwin for this background research.

7 D'Costa, Bina. 'Children and Responsibility to Protect', *Global Responsibility to Protect*, Introduction to special issue, forthcoming in 2018.

8 International Organization for Migration, 'Mediterranean Migrant Arrivals Top 43,000 in 2017; Deaths: 1089', Press release, IOM, 25 April 2017, <www.iom.int/news/mediterranean-migrant-arrivals-top-43000-2017-deaths-1089>, accessed 1 June 2017.

9 Ibid.

10 *Refugee Survey Quarterly*, Special issue on Children at Risk, December 2008, vol. 27, no. 4. See also: report 'Migrants in countries in crisis' 2016.

11 Bloch, Alice, Nando Sigona and Roger Zetter, *Sans Papiers: The Social and Economic Lives of Young Undocumented Migrants*, Pluto Press, 2014.

12 For details, see the in-depth reviews for eight countries (Austria, the Czech Republic, Germany, Greece, Hungary, Italy, Serbia and Turkey). Also, recognized during the EU meeting in Brussels, discussion notes on file with B. D'Costa.

Directive breaches the principles of the Convention on the Rights of the Child.¹³ Consequently, we argue that Europe has reached a critical juncture, where a comprehensive, well-governed, child-sensitive and child-responsive rights-based approach to migration must be developed. This approach must be informed not only by sending and receiving country data, but also by relevant evidence from transit countries – both those within Europe and beyond.

A MORE HUMANE APPROACH TO ASYLUM CLAIMS

The normative frameworks underpinning the protection of displaced children in Europe need to be more humane and compassionate throughout the entire migration process – from arrival to a durable solution. Most children perceive Austria, the Czech Republic and Serbia as transit countries and try to move to other countries in Europe, but altercations between border guards and migrants have been reported during such movements. Such interactions between migrants and authorities could work against asylum and protection needs.¹⁴ Different agencies may also interpret the compulsory accommodation of migrants in reception facilities differently, which could result in coercion and violence.¹⁵

In the European Agenda on Migration, hot spots are “characterized by specific and disproportionate migratory pressure, consisting of mixed migratory flows, which are largely linked to the smuggling of migrants, and where the Member State concerned might request support and assistance to better cope with the migratory pressure.”¹⁶ The identification and registration process for minors entering reception facilities and detention centres in Europe’s migration ‘hot spots’ involves various steps. These include, for example: arrival at the centre, courtesy of coastguards; information sessions, led by IOM and the United Nations High Commissioner for Refugees (UNHCR); screening, identification and/or

fingerprinting, by agencies such as Frontex; registration, by reception and identification centres and the police; medical examination, by Médecins du Monde (MdM); determination of vulnerability, via psychosocial sessions led by MdM; age assessment using dental X-rays; and psychosocial assessments to examine the relationship where a relative is involved (the public prosecutor is usually strict in awarding temporary guardianship to an adult relative. For example, guardianship only awarded if a relationship can be proved).¹⁷

With so many different stakeholders involved throughout the process, a **better integrated and coordinated child protection system** is key to improving the processing of children’s asylum claims. Various actors carry out a range of services in different reception facilities, resulting in confusion about who has ultimate responsibility for a child. Inadequate standards in reception facilities are also a cause of serious concern.

Such concerns have led, for example, to the Italian Council of State annulling, on 15 May 2017, the transfer of an asylum seeker to Hungary as stipulated by the Dublin Regulation.¹⁸ Based on reports and requests by UNHCR and other international organizations to temporarily suspend all transfers to Hungary because of the inhumane and degrading conditions experienced there by asylum seekers, the Council of State found that there was a risk to the applicant if he was returned to Hungary.¹⁹ In contrast, however, a new legislative proposal on asylum policies in Austria,²⁰ as well as recent asylum law reforms in Germany,²¹ signal a new era of even stricter obligations and restrictions being imposed on asylum seekers, including children. The new German legislation also introduces the option for federal states to oblige asylum seekers, including children, to remain in initial reception centres (*Erstaufnahmeeinrichtungen*) until the conclusion of the asylum application process or the execution of a removal order. UNICEF and German civil society

13 Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals. Available at: <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008L0115&from=en>>, accessed 29 August 1 June 2017.

14 National Report, Republic of Serbia. Entitlements for Refugee and Migrant Children.

15 Report from Czech Republic, Entitlements for Refugee and Migrant Children.

16 ‘Explanatory note on the “Hotspot” approach’. Available at: <www.statewatch.org/news/2015/jul/eu-com-hotspots.pdf>, accessed 1 June 2017.

17 Discussion with Kostas Simitopoulos, Coordinator for Unaccompanied Migrants, Reception and Identification Centre, Moria, Lesbos Island. On file with B. D’Costa.

18 Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person. Available at: <<http://eur-lex.europa.eu/legal-content/EN/ALL/?sessionId=jHNItp3HLjqw8mqGbQSpZh1VWpjCyVQq14Hgcztw4pbfSQZffnm!557467765?uri=CELEX:32013R0604>>, accessed 1 June 2017.

19 Associazione per gli Studi Giuridici sull’Immigrazione, ‘Hungary is unsafe country for transferring asylum seekers under Dublin Regulation’, 22 May 2017, <www.asgi.it/english/hungary-is-unsafe-country-for-transferring-asylum-seekers-under-dublin-regulation/?utm_source=ECRE+Newsletters&utm_campaign=cb4caab7cc-EMAIL_CAMPAIGN_2017_05_26&utm_medium=email&utm_term=0_3ec9497afd-cb4caab7cc-422298729>, accessed 1 June 2017.

20 United Nations High Commissioner for Refugees, *UNHCR-Analyse des Entwurfs für das Fremdenrechtsänderungsgesetz 2017. Teil II*, UNHCR, 18 May 2017. Available at: <www.parlament.gv.at/PAKT/VHG/XXV/SNME/SNME_11972/imfname_637401.pdf?utm_source=ECRE+Newsletters&utm_campaign=cb4caab7cc-EMAIL_CAMPAIGN_2017_05_26&utm_medium=email&utm_term=0_3ec9497afd-cb4caab7cc-422298729>, accessed 1 June 2017.

21 Deutscher Bundestag, Gesetzentwurf der Bundesregierung, Entwurf eines Gesetzes zur besseren Durchsetzung der Ausreisepflicht, Drucksache 18/11546, 16 March 2017. Available at: <http://dip21.bundestag.de/dip21/btd/18/115/1811546.pdf?utm_source=ECRE+Newsletters&utm_campaign=cb4caab7cc-EMAIL_CAMPAIGN_2017_05_26&utm_medium=email&utm_term=0_3ec9497afd-cb4caab7cc-422298729>, accessed 1 June 2017.

organizations have warned that exercising this option would contravene the best interests of the child principle, as the conditions in initial reception centres are unsafe and inappropriate for children and access to education is insufficient²² Although the harmonization of asylum procedures within and across European countries is crucial, this should never lead to the lowering of child protection standards.

FAMILY REUNIFICATION, RESETTLEMENT, AND REPATRIATION

Migration has always been and will remain an important strategy for families to improve their livelihoods. Lack of adequate information about access to rights, education and health services, and family reintegration are the most important challenges in Europe today. There is an urgent need to establish common European rules on the legal guardianship of unaccompanied and separated minors. Although European Union (EU) law recognizes the need for a guardian and legal representation, proper guidance on the notion of guardianship and the guardian's functions is non-existent. As the European Union Agency for Fundamental Rights handbook on *Guardianship for children deprived of parental care* notes, use of the terms 'guardian', 'representative' and 'legal representative' is inconsistent, and national definitions also vary, and so the emphasis should be on the functions of the appointed person, rather than on the title or terminology used.²³

THE MOST VULNERABLE: UNDOCUMENTED, UNACCOMPANIED, SEPARATED, MISSING AND RETURNED CHILDREN

In 2016, 633,000 asylum applications made across the EU-28 countries were submitted by unaccompanied and separated minors, and 15.9 per cent of all children on the move were unaccompanied (see *Figure 1*). Among those minors who applied for asylum that year, the proportion who were unaccompanied was less than 50 per cent in most EU Member States (Italy and Slovenia were the exceptions).²⁴ An important feature of the current migration situation and the emergency response in Europe is the significant number of child migrants and

refugees among the sea arrivals, which has raised great concern in the EU. Over 100,000 refugee and migrant children arrived in Europe over the course of 2016, the majority of which arrived in Italy (Central route) or in Greece (Eastern route). In Italy, in 2016, 16% of total arrivals were children – a proportion that remained constant so far in 2017. One particularly worrying trend is the increase in the numbers of unaccompanied minors, 34% of the total arrivals of children in Europe. This issue is particularly noticeable in Italy, whereas 91% of children who arrived by sea in 2016 were unaccompanied and separated children (Graph 1).

The Committee on the Rights of the Child General Comment No. 6 on the Treatment of Unaccompanied and Separated Children Outside their Country of Origin explains in great detail about children's exposure to serious risks in hot spots, and also how hot spots have insufficient trained personnel to work with children who have suffered severe trauma and sexual abuse.²⁵ Unaccompanied and separated children are sometimes housed in certain reception facilities with adults who are unrelated to them. Furthermore, in some reception facilities, and in some countries in Europe, unaccompanied children are not given de facto asylum.²⁶ All children who go missing from reception facilities are at risk of exploitation, whatever the reason for their disappearance.

In addition, the decision to remove a child asylum seeker from the country where she or he has applied for asylum very often interferes with the child's right to respect for private and family life under the European Convention on Human Rights (art. 8). Interference with the exercise of this right is justified if necessary in the interest of public safety, national security, the prevention of disorder and crime, and the economic well-being of the country. Recent removal orders to remove children from France, Germany and Sweden were justified on the basis of these interests. Also, the Council of Europe has repeatedly promoted the principle of voluntary return over forced removal. Related legal provisions and frameworks regarding 'illegal', 'irregular' and 'unauthorized' crossings are, however, open to interpretation by European countries. As the country reports note, children apprehended or intercepted by border security agencies are often refused entry.

22 Kalkmann, Michael, *Country Report: Germany, 2016 Update*, Asylum Information Database (n.d.). Available at: <www.asylumineurope.org/sites/default/files/report-download/aida_de_2016update.pdf?utm_source=ECRE+Newsletters&utm_campaign=cb4caab7cc-EMAIL_CAMPAIGN_2017_05_26&utm_medium=email&utm_term=0_3ec9497afd-cb4caab7cc-422298729>, accessed 1 June 2017.

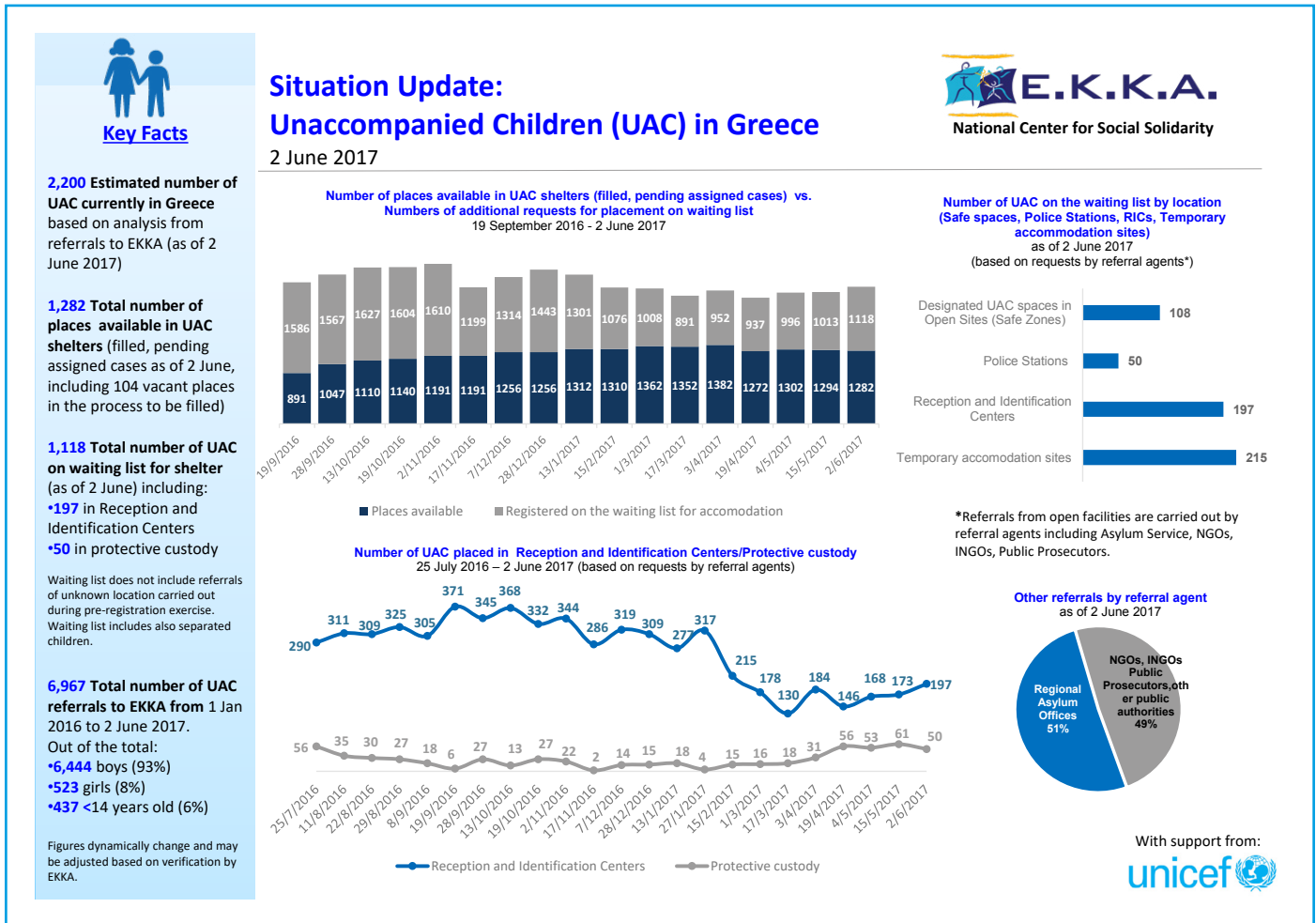
23 European Union Agency for Fundamental Rights, *Guardianship for children deprived of parental care. A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking*, Publications Office of the European Union, Luxembourg, 2015, p. 14. Available at: <<http://fra.europa.eu/en/publication/2014/guardianship-children-deprived-parental-care-handbook-reinforce-guardianship>>, accessed 1 June 2017.

24 Eurostat, 'Asylum statistics', <http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics#Asylum_applicants>, accessed 10 July 2017.

25 United Nations Committee on the Rights of the Child, General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, 1 September 2015, CRC/GC/2005/6. Available at: <www.refworld.org/docid/42dd174b4.html>, accessed 1 June 2017.

26 See Part II of the brief. D'Costa, Bina, and Emilia Toczydlowska, 'Migration and Inequality: Making policies inclusive for every child', Innocenti Research Brief, UNICEF Office of Research - Innocenti, Florence, 2017.

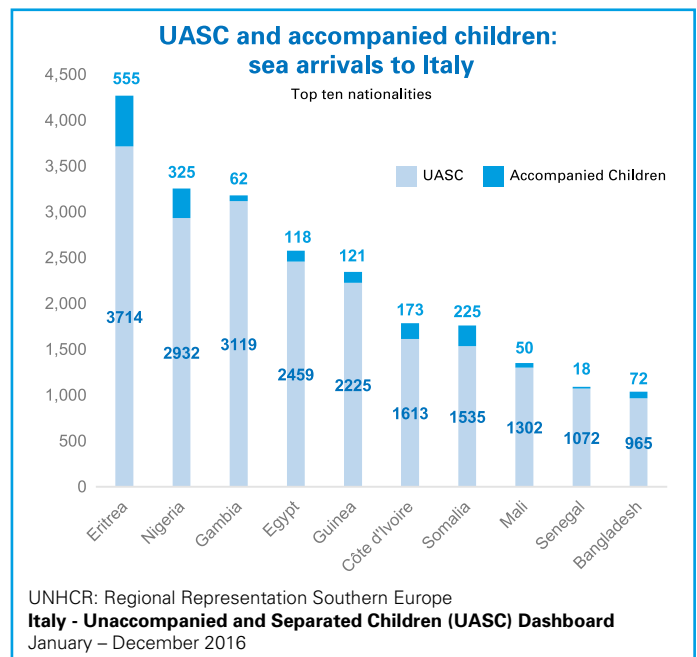
Figure 1. Key figures on Unaccompanied Children (UAC) in Greece



ACCESS TO BASIC RIGHTS INCLUDING GENDER- AND AGE-APPROPRIATE SERVICES

The lack of age- and gender-disaggregated data for unaccompanied and separated children is one of the most pressing challenges currently facing European States parties. Between 1 January and 30 September 2016, unaccompanied children were responsible for 25 per cent of all asylum claims made in Europe. Data about their backgrounds, age and gender are inadequate, however, which makes it more difficult to develop appropriate responses. Basic services for children on the move are sometimes strictly limited. The right to education should be observed for all children as soon as possible following their arrival in country.

Graph 1. Unaccompanied and Separated Children (UASC) and accompanied children: Sea arrivals to Italy, 2016



CONCLUSION

Children in the migration pathway must be respected and stakeholders must ensure that their voices are heard. It is vital to address the implementation gaps in migration systems, which result from problems entrenched in region- and country-specific policies and practices. This is necessary to ensure that all children on the move are granted their basic rights, as guaranteed for every child under the Convention on the Rights of the Child. The protection of Europe's borders and the protection of children are not mutually exclusive. The SDGs clearly articulate that migration is invaluable to global development. Children on the move bring with them innovative ideas and skills that may be seen as opportunities and which can be harnessed to help build Europe's sustainable future.

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