

## **Global Compact on Refugees**

### **Comments on Draft 3 by the Special Representative of the Secretary General on Migration and Refugees, Council of Europe, June 2018**

#### **I. Introduction**

1. In January 2016, in response to the unprecedented number of migrants and refugees who arrived in Europe over the course of 2015, the Secretary General appointed a Special Representative on Migration and Refugees to work with the relevant structures within the Council of Europe, its member states and other international organisations, to coordinate assistance and support for member states and contribute to international cooperation in this area.
2. As part of his engagement with international partners, the Special Representative has followed closely the development of the GCR. He acknowledges the extensive national, regional and international standards and mechanisms already in place to support refugees and the central role of the UNHCR in this field. He further recognises the development cooperation focus of the GCR and the advantages that improvements in this area will bring to the situation of refugees in their host countries and in their countries of origin. The present written comments from the Special Representative are focused on those areas where the Council of Europe can provide added value, namely in the sphere of protection of the human rights of refugees and in respect of the implementation of a number of the actions outlined in the GCR.
3. The Special Representative welcomes the identification of guiding principles in the GCR. However, he is of the opinion that the current draft of the GCR, while a continuing improvement on previous drafts, does not give due recognition and weight to the importance of human rights protection. The reference to international human rights instruments in paragraph 5 of the introduction should be substantially developed, in line with the human rights approach adopted in the New York Declaration. Express acknowledgement of all key regional human rights instruments, including the European Convention on Human Rights (ECHR), and the role they play in enhancing refugees' rights to access to asylum and asylum procedures, would be welcome. The relevance of a reference to the ECHR is underlined by the fact that other regional asylum mechanisms are now directly referenced in the text. In particular, the GCR should give central prominence to the principle of non-refoulement, which underpins refugee protection law.
4. In order to reflect the spirit of the New York Declaration, the Special Representative is of the view that one of the objectives of the GCR, in paragraph 7, should be to secure the effective protection of refugees' fundamental rights at all stages of their journeys. Aside from the role of human rights in the asylum process itself, refugees and asylum-seekers are also entitled to broader human rights protection upon arrival in destination countries. The GCR therefore also needs to cover these broader considerations, potentially including the importance of adequate accommodation, alternatives to detention of refugees, family reunification, access to information and fair asylum procedures, access to education and the labour market, access to justice, political participation at local level and the right to privacy and data protection. The reference in paragraph 9, while welcome, does not go far enough.

5. Concrete measures for gender considerations should also be outlined in the text. In this respect, the Special Representative welcomes the inclusion of a number of additional references to gender-responsiveness in recent drafts of the GCR. But more detailed provisions could provide guidance on how such gender-responsiveness could better be achieved in practice.
6. The Special Representative has prepared the present submission following consultation with other services of the Council of Europe secretariat involved in refugee and migration issues.

## **II. Mechanisms for burden- and responsibility-sharing**

7. The Council of Europe, through its Secretary General, has consistently called for solidarity among its member states in the face of the challenges linked to the arrival numbers of refugees and migrants in Europe in recent years. The Special Representative fully supports efforts to encourage and improve responsibility-sharing. He will continue to press for solidarity in his communications with Council of Europe member states.
8. As regards the Global Refugee Forum, the participation of regional organisations could be expressly mentioned given the role that they can play in furthering the realisation of the objectives of the GCR.
9. In section 2.2, more emphasis on the role of relevant regional organisations in the Support Platform would be particularly welcome since, unlike the Global Refugee Form, the Support Platform is intended as an *ad hoc* response to country- or region-specific refugee situations. The engagement of regional organisations like the Council of Europe will promote a comprehensive and coordinated approach to region-specific situations and can encourage responsibility-sharing.
10. Section 2.3 addresses regional approaches. The Special Representative would welcome further detail on what is envisaged here and how the Council of Europe might ensure its position as a full participant in matters concerning migration management in Europe. For example, regional organisations could play a central role in developing a strategy for the implementation of the GCR at regional level. As outlined later in this contribution, a number of Council of Europe projects and other initiatives which reflect the goals of the GCR are currently under way. There is appetite within the Organisation for aligning our projects and activities, where possible, with international goals.
11. In section 3.2, in the list of the different stakeholders, the role of regional organisations might also be usefully reflected given that large migration flows are often a regional, rather than an international or national, issue. As explained above, regional organisations can play a central coordination role and provide a forum for discussions among states. A reference to the Council of Europe's Intercultural Cities (ICC) network ([www.coe.int/interculturalcities](http://www.coe.int/interculturalcities)) could be included in paragraph 39, in the context of networks of cities and municipalities. The ICC network supports cities in reviewing their policies through an intercultural lens and developing comprehensive intercultural strategies to help them manage diversity positively and realise the diversity advantage. It is therefore well placed to facilitate the sharing of good practices and innovative approaches.

12. The Special Representative welcomes the proposal in section 3.3., on data and evidence, to improve the collection, analysis and dissemination of disaggregated data. Accurate, reliable and detailed data are critical to the putting in place of appropriate strategies and mechanisms for refugees. He welcomes in particular the reference in paragraph 46 to the need for data protection and privacy safeguards, and fully supports the change of wording in the latest draft from data protection and data privacy “policies” to “principles”. It is important to be clear in the GCR that protection of personal data is a fundamental right for refugees which must be secured.
13. The Council of Europe has developed extensive standards on data protection. The key principles are set out the 1981 Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, which is the only international treaty in this field. States which are not members of the Council of Europe may accede to the Convention: more than 50 countries around the world have already signed it. The Convention is currently being updated to address that challenges for privacy resulting from the use of new information and communication technologies, to strengthen its follow-up mechanism and to ensure it is compatible with various normative frameworks around the world. The principles of the Convention are further elaborated through recommendations to Government, adopted unanimously by the Committee of Ministers. Although these recommendations are not legally binding, they contain real standards of reference for all states, whether they are parties to the Convention or not. The right to protection of personal data has also been developed by the interpretation of the right to respect for private and family life under Article 8 of the European Convention on Human Rights by the European Court of Human Rights. In a number of judgments, the Court has clarified the data protection standards that apply to the collection and processing of personal data. The Court’s judgments are binding on the parties to the case.

### **III. Areas in need of support**

14. The Special Representative is pleased to see the inclusion in the GCR of areas for concrete contributions in support of states faced with large refugee movements or protracted refugee situations. He regrets the deletion in paragraph 49 of the latest draft of the reference to the need for actions to be in accordance with international law and good international practice. Indeed, he considers that the draft could usefully refer to the need for all actions carried out under the GCR to comply also with international, and where appropriate regional, human rights standards. It could also emphasize that a number of the actions listed flow from international human rights obligations; their implementation would therefore ensure states’ compliance with their legal duties in this respect. The acknowledgement in the draft of the diverse needs and potential vulnerabilities of refugees is very positive. It would be helpful here to underline expressly the need for actions to respond adequately to the specific vulnerabilities identified and to reflect the highest standards for refugee children.

#### **1. Reception and admission**

15. Because of the overlapping nature of the different subsections in this part of the text, the Special Representative will first present his comments on this section before outlining relevant Council of Europe activities.

*a) Comments on the GCR draft*

16. As regards immediate reception arrangements, it is of critical importance to identify and refer those with special needs. While this is addressed to some extent in subsection 1.5, the draft could usefully underline – either here or in subsection 1.5 – that such identification and referral must take place immediately upon arrival, as a matter of priority. Any delay could place vulnerable refugees at greater risk of harm, including in particular trafficking. The establishment of reception and transit areas should take into account the need to avoid criminalising refugees and asylum-seekers; such arrangements should therefore be based on non-deprivation of liberty and availability of alternatives to detention wherever possible, in line with international standards. Access to essential services is key social right of refugees and the reference in paragraph 54 is therefore welcome. The provision of information about available services and how to access them is also central to ensuring the effectiveness in practice of this objective. It would moreover be useful to include a commitment to providing intercultural competence training for key front-desk service professionals. Mechanisms to transfer new arrivals away from borders and pursue alternatives to camps should be human-rights compliant and should not prejudice refugees' access to legal, social, educational and other essential services. More generally, provision of information about asylum procedures and the rights and obligations of asylum-seekers and refugees should form part of immediate reception arrangements. Such information should be adapted as appropriate for those with special needs or vulnerabilities.
17. The Special Representative acknowledges that refugee flows can give rise to legitimate security concerns. However, it is important that these concerns do not undermine the protection to which refugees are entitled under international humanitarian and human rights law. Security screening should be conducted efficiently and should not delay access to asylum procedures. Those undergoing security screening should also be provided with appropriate shelter and essential services during the screening process. An express reference to human rights training and guidance on international refugee protection to be provided to relevant authorities would be a welcome addition in subsection 1.3. Such training is particularly important for those guarding the border, to ensure that the principle of non-refoulement is fully complied with and that new arrivals have effective access to asylum procedures. There should also be a commitment to tackle smuggling and recognition of the role that corruption plays in facilitating smuggling networks. There is a need for action to ensure that corruption in all its forms is not an impediment to the effective management of migration flows.
18. As regards registration and documentation, the Special Representative notes the reference in subsection 1.4 to data protection principles. However, he would welcome more developed references to data protection and privacy concerns in this context, with an emphasis on data protection as a fundamental right.
19. In terms of addressing specific needs, in many European countries, children without a legal guardian have no access to legal procedures, including asylum procedures. They are also at greater risk of exploitation. Accordingly, those identified as unaccompanied or separated children should immediately enter the guardianship/child protection system. An express reference in subsection 1.5 to this effect would reflect the general consensus as to the central importance of swift and appropriate follow-up in these cases, to prevent abuse, exploitation and

disappearances. The Special Representative also welcomes the reference to the development of alternatives to detention in this context, although as indicated above he is of the view that these should also be part of the immediate reception arrangements. He would support a more ambitious target of working to end the immigration detention of children altogether. It would moreover be beneficial to refer in this subsection not only to procedures to assist with the identification of stateless persons but also to procedures to reduce statelessness.

20. As far as identification of international protection needs is concerned, the Special Representative acknowledges the advantages of group-based recognition in the context of large migration flows. However, some further thought should be given to the scope of protection afforded under group-based recognition. Beneficiaries who meet the standards for intentional protection and are given recognition on a group-basis should have access to all the same rights as individual international protection beneficiaries, in line with applicable international humanitarian and human rights standards.

*b) The CoE's contribution to the realisation of the actions in the GCR*

21. The activities of the Council of Europe can support efforts by states to accomplish the actions outlined in the GCR as regards reception and admission of refugees. Its Gender Equality Strategy 2018-2023 highlights the necessity of identifying and responding to the specific needs and circumstances of refugee women and girls. Its 2017-2019 Action Plan on Protecting Refugee and Migrant Children in Europe similarly underlines the need for effective protection of children. The Council of Europe has also adopted a 2016-2021 Strategy for the rights of the child which contains measures relevant to the protection of children in migration. The Organisation's Human Rights Commissioner is active in drawing attention to shortcomings in the protection of vulnerable people in migration and in pressing for measures to strengthen their protection, including through dialogue with member states' governments.
22. Action undertaken by the Council of Europe in implementation of the Strategies and the Action Plan can contribute to the securing relevant goals in the GCR. As regards children, for example, the Council of Europe is working on standard-setting in respect of guardianship and age assessment, as provided for in its 2017-2019 Action Plan on Protecting Refugee and Migrant Children. Draft recommendations of the Committee of Ministers on these two subjects are under discussion and it is hoped that they will be adopted over the coming months. The Organisation will also prepare and publish a compilation of good practices on migration-related procedures which are child-friendly, such procedures including in principle identification, age assessment, registration, guardianship and child protection procedures. The Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) requires criminalisation of sexual offences against children. The Convention is open to accession by non-Council of Europe member states. It requires parties to adopt specific legislation and take measures to prevent sexual violence, to protect child victims and to prosecute perpetrators. The Lanzarote Committee monitors whether parties effectively implement the Convention. In 2017 it adopted a special report on protecting children affected by the refugee crisis from sexual exploitation and sexual abuse. It is now considering follow-up activities based on the findings and recommendations of the report, in line with the Action Plan. A resolution of the Parliamentary Assembly of the Council of Europe on harmonising the

protection of unaccompanied minors in Europe (Resolution 2136(2016)) calls on member states to reinforce cross-border police cooperation and coordination to enhance the protection of unaccompanied migrant children who go missing. A training course for legal professionals on refugee and migrant children has been developed and covers their rights and guardianship and age assessment procedures among other topics.

23. The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) creates a legal framework to protect women against all forms of violence and prevent, prosecute and eliminate violence against women and domestic violence. It also establishes a specific monitoring mechanism (GREVIO) to ensure effective implementation of its provisions by the parties. The Convention is open to accession by non-member states.
24. The 2005 Council of Europe Convention on Action against Trafficking in Human Beings has a comprehensive scope of application, encompassing all forms of trafficking and all persons who are victims of trafficking. The Convention is not restricted to Council of Europe member states; non-members states may also accede. The main added value of the Convention is its human rights perspective and focus on victim protection. Another important added value of the Convention is the monitoring system set up to supervise the implementation of the obligations it contains, including the Group of Experts on Action against Trafficking in Human Beings (GRETA). GRETA undertakes country visits to identify gaps and needs in current procedures for the identification of trafficking victims. The 2017-2019 Council of Europe Action Plan on Protecting Refugee and Migrant Children includes actions to protect children from trafficking. Under the Action Plan, work is expected to begin shortly on a compendium of good practices in the fight against child trafficking. The Council of Europe has also developed a training course for legal professionals on trafficking in human beings.
25. The Action Plan on Protecting Refugee and Migrant Children includes an action on tackling the smuggling of migrant children. In June 2017 the Council of Europe held a conference to discuss best practices and concrete measures to prevent and combat the smuggling of migrants, strategies for more efficient co-operation and information exchange. By way of follow-up, the European Committee on Crime Problems decided to set up two expert working groups, one dealing with preventive measures and the other with practical measures to improve international co-operation. The first meetings of the two working groups will take place in June 2018. The Council of Europe has established standards in the field of corruption, most notably in its 1999 Criminal Law Convention on Corruption and Civil Law Convention on Corruption. Both treaties are open to accession by non-member states. The Group of States against Corruption (GRECO) monitors states' compliance with the Organisation's anti-corruption standards.
26. The European Social Charter guarantees a broad range of everyday human rights related to housing, health, education, social protection and welfare. It emphasises protection of vulnerable persons, such as refugees, and requires that rights be guaranteed without discrimination. A new training course on refugee and migrant children includes a module on their socio-economic rights. The Council of Europe's Gender Equality Strategy refers to the need for measures to ensure that migrant, refugee and asylum-seeking women have access to their human and social

rights in relation to employment, housing, health, education, social protection and welfare where applicable.

27. The Council of Europe in its Action Plan on Protecting Refugee and Migrant Children underlined the support which will continue to be provided to improve reception facilities by its Development Bank. The Action Plan also proposes the preparation of a recommendation for adoption by the Committee of Ministers on appropriate standards of reception for migrant children.
28. The European Court of Human Rights has underlined the importance of the provision of information on access to international protection and the applicable procedures, as part of Council of Europe member states' obligations under Articles 2 (right to life) and 3 (prohibition of torture) of the ECHR. The need to ensure access to information has been included in the Council of Europe's Action Plan on Protecting Refugee and Migrant Children. As part of the Action Plan's implementation activities, a handbook on child-friendly information for migrant children is currently being drafted; it will be made available in several languages in due course. The training course on refugee and migrant children discussed above also covers the right to child-friendly information. The Council of Europe's Gender Equality Strategy underlines the need for measures to ensure that migrant women have access to information about their rights and the services available.
29. The principle of *non-refoulement* is reflected in the interpretation of Articles 2 (right to life) and 3 (prohibition of torture) of the ECHR. The European Court of Human Rights has clarified that the actions of the authorities of a member state at its borders or on the high seas will generally fall within that state's jurisdiction for the purposes of the Convention. It has consistently underlined in its judgments that expulsions, including pushbacks, cannot take place where there are substantial grounds for believing that a person, if expelled, would face a real risk of being subjected to treatment contrary to Articles 2 or 3 in the receiving country. The Council of Europe has developed a training course on relevant human rights standards, which is suitable for adaptation to country-specific contexts as appropriate.
30. The Council of Europe's data protection standards and activities have been outlined above.
31. Article 5 (right to liberty and security) of the ECHR as interpreted in the case-law of the European Court of Human Rights establishes the standards to be applied by the member states of the Council of Europe in respect of detention. Detention for immigration purposes can only be ordered to prevent a person from effecting an unauthorised entry into a country or in respect of a person against whom action is being taken with a view to deportation. Procedural guarantees apply, including the right to challenge the legality of detention before a court and the right to a speedy judgment. In the case of children, the Court's position to date has been that detention must be a measure of last resort and conditions of detention must be suitable for children in order for it to be compatible with Article 5. It has only once found these conditions to be satisfied. The Council of Europe's 2017-2019 Action Plan on Protecting Refugee and Migrant Children includes an action to avoid resorting to the deprivation of liberty of children on the sole ground of their migration status. In implementation of this action, a conference on ending immigration detention of children was held in Prague in September 2017 to identify best practices and potential recommendations in this area. The Steering Committee for Human

Rights, which operates under the Committee of Ministers, is currently developing guidance on alternatives to detention, on the basis of which a training course will be developed for relevant professionals. The Parliamentary Assembly of the Council of Europe has launched a campaign to end immigration detention of children.

32. The Council of Europe has been active on the issue of statelessness for some time. Important instruments have been adopted, including the 1997 European Convention on Nationality and a recommendation of the Committee of Ministers (CM/Rec(2009)13) on the nationality of children. The Convention is open to accession by non-Council of Europe member states. In 2016, the Parliamentary Assembly of the Council of Europe adopted resolution 2099 (2016) on the need to eradicate statelessness of children. The resolution sets out specific actions which it calls on member states to take to eradicate childhood statelessness. Article 8 of the European Convention on Human Rights (right to respect for private and family life) has also been interpreted as providing protection against the arbitrary denial of citizenship. The Council of Europe's 2017-2019 Action Plan on Protecting Refugee and Migrant Children includes an action to ensure that every child has a nationality. Work is now under way in the European Committee on Legal Cooperation to examine how the principle of avoiding statelessness in respect of child migrants can be implemented in practice.

## **2. Meeting needs and supporting communities**

33. The principle of non-discrimination plays an important role in the sphere of activities envisaged in the context of meeting needs and supporting communities. Reference to this principle in the introductory paragraphs would therefore be a welcome addition to the text.
34. The Special Representative fully supports actions aimed at facilitating children's access to education. Experience in the European context suggests that integration into mainstream education is most beneficial for school-age refugee children, provided that the necessary linguistic and extra-curricular "catch-up" support is provided to ease the transition. He therefore welcomes the general approach of the text in these respects, but would suggest express reference in subsection 2.1 to the importance of non-segregated education opportunities. Thought should also be given to including a specific provision on access to education for those in transition to adulthood, who face particularly challenges in this respect as a consequence of national compulsory schooling age limits. Their access to non-formal educational and learning opportunities could also be underlined. The Council of Europe's Action Plan on Protecting Refugee and Migrant Children envisages information-gathering on education provision to refugee children and their integration into mainstream education, identification and the sharing of good practices in this area, with a view to the subsequent development of a guide and other follow-up measures. The aim of these activities is to facilitate school access within the shortest possible time period following arrival in the host country and is thus very much aligned with this GCR goal.
35. Access to jobs and livelihood for refugees is also an essential component of meeting refugees' needs and enhancing their integration into local society. The actions described in subsection 2.2 will undoubtedly have a positive impact in this area. However the Special Representative would welcome greater emphasis on the importance of local language acquisition for access to jobs and livelihood, and the provision of language instruction; experience from his fact-finding



missions has shown that lack of language skills is a major barrier to employment for many refugees. The mapping of and mechanisms for recognition of the skills and qualifications of refugees will also make an important difference for the many refugees who flee their homes without relevant educational and employment papers or lose them on their journeys. The Council of Europe has piloted a landmark project in this respect: the European qualifications passport for refugees. The passport is a document providing an assessment of higher education qualifications based on available documentation and a structured interview. It also presents information on the applicant's work experience and language proficiency. The document provides reliable information for integration and progression towards employment and admission to further studies. The pilot phase has been successful and the passport is now being rolled out in further European countries. It could serve as a model for mapping and recognition of refugees' skills and qualifications at a global level; to this end a reference to the European qualifications passport for refugees model could usefully be inserted in the GCR text (<https://www.coe.int/en/web/education/recognition-of-refugees-qualifications>).

36. The 1997 Convention on the Recognition of Qualifications concerning Higher Education in the European Region (Lisbon Recognition Convention), developed by the Council of Europe and UNESCO, is the key legal instrument for recognition of qualifications across Europe. Non-Council of Europe states may accede to the Convention. The Committee of the Convention on the Recognition of Qualifications concerning Higher Education in the European Region is responsible for promoting the application of the Convention and overseeing its implementation. It can adopt recommendations, declarations, protocols and models of good practice to guide the competent authorities of participating states. The European Network of National Information Centres on Academic Mobility and Recognition (the ENIC Network) upholds and assists the practical implementation of the Convention by the competent national authorities. It is under the auspices of this Convention that the European qualifications passport for refugees, discussed above, was developed. The Council of Europe has also launched a project on linguistic integration of adult migrants. In the context of this project, it has developed a linguistic toolkit, launched in 2017, designed to assist organisations that provide language support for refugees. It offers information on cultural and language awareness and language learning, guidance on finding out about language needs and planning language support, and diverse learning activities. It currently exists in seven languages and can provide a useful model for similar initiatives in other, non-European countries (<https://www.coe.int/en/web/language-support-for-adult-refugees/home>).
37. As regards access to health services, it would be helpful to mention explicitly in subsection 2.3 the provision of interpreters to facilitate refugees' access to appropriate healthcare. Experience in Europe suggests that language barriers are currently an important obstacle in this respect, both because they discourage an approach by refugees to health services and because they restrict the ability of refugees and health workers to communicate effectively on health needs. A specific reference to the need to facilitate in particular the access of women and girls to sexual and reproductive rights services would provide much-needed attention to the difficulties they face in this respect.
38. The inclusion of a separate subsection 2.4 on gender gives welcome attention to the specific barriers faced by women and girls. However, the focus should remain on mainstreaming gender

considerations in policy planning and responses. It would be helpful to underline this in the text. It would also be beneficial to refer to the importance of ensuring that women and girls can obtain autonomous residence status and to promote their access to gender-cased asylum claims. The Council of Europe's Gender Equality Strategy contains a separate strategic objective on protecting the rights of migrant, refugee and asylum seeking women and girls. It covers a number of the actions set out in paragraph 75 of the latest GCR draft. Activities under the auspices of the Council of Europe to implement the Strategy could therefore equally serve to help member states ensure that national policies and practices reflect the targets set out in the GCR. Articles 59 and 60 of the Istanbul Convention provide the relevant standards in this area.

39. Similarly, a separate subsection 2.5 on children and youth encourages states to focus on their specific needs when it comes to integrating them, whether temporarily or permanently, into host communities. The efficient functioning of child protection and guardianship systems is central to ensure their continued protection from exploitation and other risks. The Special Representative also welcomes the recognition in the GCR of the need for adapted, child-sensitive procedures; it should be clear that this concerns all procedures which might affect refugee children (including identification and age assessment, registration, child protection and guardianship, best interests assessment and determination, alternatives to detention, first-instance examination of asylum applications, administrative and judicial appeals, returns procedures and appeals, other law-enforcement procedures, family reunification requests, durable solutions and procedures for the support of victims of exploitation and abuse). Child-friendly information is naturally an important complement to such procedures. The Special Representative considers that it is moreover important to make express reference here to facilitating family reunification in the host country for child refugees. Experience shows that this is a key element of integrating children into host societies. It would also be useful to include reference to measures to support refugee children's transition to adulthood. This is a particular concern in countries receiving unaccompanied adolescent refugee children, who may not yet have had the time or opportunity before reaching the age of 18 to complete their education or adapt to the host culture and have no family network for support.
40. The Council of Europe's extensive work on standards for guardianship systems and for conducting age assessment as well as its activities on child-friendly information and child-friendly procedures have already been discussed above. As regards family reunification, Article 8 (right to respect for private and family life) of the European Convention on Human Rights has essentially been interpreted as securing a right to family reunification for refugees and requiring a speedy, attentive and careful examination of their reunification requests. The Council of Europe's then Commissioner for Human Rights published in 2017 an issue paper on realising the right to family reunification of refugees in Europe in which he set out a series of recommendations and follow-up activities are now under consideration. The Council of Europe's Action Plan on Protecting Refugee and Migrant Children includes measures to assist children and families to restore family links and be reunified. The Organisation is currently preparing a handbook on standards and good practices in this area and will develop a training module on family reunification as part of the training course of refugee and migrant children. More broadly, in terms of supporting child refugees, the Committee of Ministers has adopted a recommendation on life projects for unaccompanied migrant minors (CM/Rec(2007)9), the implementation of which is to be reviewed under the Action Plan on Protecting Refugee and

Migrant Children in Europe. The Organisation is also working on standards for supporting refugee children's transition to adulthood, again as part of the Action Plan.

41. The aim of preventing and reducing statelessness in subsection 2.9 is a welcome one. However, the Special Representative would support stronger, more positive language as regards children which expresses a commitment to ensuring that every child has a nationality. As noted above, this is one of the objectives of the Action Plan on Protecting Refugee and Migrant Children. The Council of Europe's activities in this area have been discussed above.
42. The Special Representative fully supports actions to foster tolerance and peaceful coexistence as provided for in subsection 2.10. Access to language learning opportunities, education and employment has an important role to play in this respect by facilitating exchanges between refugee and host populations. Some further thought could also be given to the question of political participation of migrants at local level, which could encourage them to have a stronger stake in their communities and ensure that their interests, concerns and needs are represented.
43. The measures outlined in subsection 2.10 align closely with the work of the Council of Europe on refugee inclusion at local level. The Intercultural Cities Programme supports cities in reviewing their policies through an intercultural lens and developing comprehensive intercultural strategies to help them manage diversity positively and realise the diversity advantage. It is open to non-Council of Europe member states and counts among its members cities in Japan, Australia and Mexico for example. The fifth monitoring round of the European Commission against Racism and Intolerance focused on integration, including the integration of migrants and refugees. The Commission has reported on a number of countries and made recommendations. The 2016-2019 Action Plan on Building Inclusive Societies also sets out relevant actions which could improve the social inclusion of refugees. One of the Special Representative's priorities is integration and possibilities for action are under consideration, based among other sources on the 2016 Issue Paper *Time for Europe to get migrant integration right* published by the Council of Europe's Commissioner for Human Rights. The 1992 Convention on the Participation of Foreigners in Public Life at Local Level could provide guidance on extending limited political rights to refugees. It is open to accession by non-member States. Work is also under way, under the Action Plan on Protecting Refugee and Migrant Children, on the possible contribution of sport as a tool for integration of refugees.

### **3. Solutions**

44. Identifying and implementing durable solutions for refugees is an essential aspect of the effective management of refugee and mixed migration flows.
45. There is no doubt that voluntary repatriation, where possible and appropriate, can be a durable solution which respects the wishes and the dignity of refugees. However, there is a need for safeguards to ensure that it reflects the voluntary and informed decision of a refugee and that the process is carried out in full respect of fundamental human rights, including the principle of non-refoulement. The express reference to these considerations in paragraph 87 is therefore particularly welcome.
46. The Special Representative also very much supports the emphasis on resettlement. This is a means for states to show solidarity with those most affected by large refugee flows. It also

contributes, through the more balanced sharing of refugees, to a higher protection of refugees' rights. As noted above, within the framework of the Council of Europe, the Secretary General has consistently called for more solidarity among its member states and encouraged resettlement offers.

47. The reference in the text to the need for complementary pathways for admission is positive. Such pathways are one important way to tackle the problems of smuggling and human trafficking. Family reunification and clear, accessible, workable procedures to achieve this are of central importance in this respect. A reference to procedural requirements for family reunification processes and to the need to take into account the best interests of the child would be a welcome additional guarantee. The activities of the Council of Europe in this area have been outlined above.
48. The Special Representative welcomes the recognition in the GCR that, inevitably, a number of refugees will remain in the host country in the long-term. For this group of refugees, he supports the emphasis on local integration. There is an overlap here with the various elements discussed in the context of section 2 on "Meeting needs and supporting communities", a number of which are briefly mentioned in paragraph 99. A cross reference to the more detailed treatment in section 2, to underline the multifaceted approach that should be taken to integration, would be useful. In any event, an express reference to education of children in this context would be desirable given its critical importance to local integration.
49. Other local solutions may be appropriate in certain circumstances. However, temporary legal stay options should be treated with caution since uncertainty as to status can hinder social inclusion and can restrict refugees' motivation or ability to construct a new life. Those who have been recognised as refugees should in principle have the opportunity to put down roots in a safe country and invest in their new communities. They should not live for years in fear that their situation may be changed at any time.

#### **IV. Follow-up and review**

50. As indicated throughout these comments, the Council of Europe has relevant expertise in many of the areas covered by the GCR. A number of the Organisation's activities dovetail with the actions outlined in the text. As regards European countries in particular, the Special Representative emphasises that the Council of Europe is especially well placed to assist its 47 member states to work towards implementing the actions in the GCR. A number of binding human rights standards applicable to refugees are already in place. Bodies have been established to monitor states' implementation of these standards and to assist them in achieving greater compliance. The Committee of Ministers provides a political forum in which states' representatives can engage in discussion of refugee-related issues and make recommendations which, although not binding, offer useful guidance in a wide variety of areas. Further, most Council of Europe Conventions are open to participation by non-member states. Accession to these treaties would provide support to other states to put in place a legal framework designed to assist them to work to resolve large refugee flows in full harmony with the provisions of the GCR. The Council of Europe has also developed extensive training modules in the field of human rights for legal professionals, several of which address refugee-related human rights.

51. It would therefore be beneficial in this part of the GCR to refer expressly to the role of the regional organisations, such as the Council of Europe, and to envisage their full involvement in the follow-up and review process. An express commitment from the UNHCR in the text to establish coordination with relevant regional bodies could encourage engagement by them and capitalise on the experience and expertise that they can offer.

## **V. Concluding remarks**

52. The Special Representative fully supports the aims of the GCR, which could be further bolstered by strengthened reference to human rights standards and to the important role that regional organisations can play in managing large refugee or mixed migration flows. He will continue to engage with and follow the GCR negotiations and is happy to provide further information on the various different actions of the Council of Europe both during this drafting process and in the context of future follow-up activities.