

## A Compact that works for children:

### Key measures of success from a child rights perspective

#### Introduction:

The New York Declaration adopted by UN Members States in September 2016 includes a number of historic commitments to migrant and refugee children. Building upon the New York Declaration, the Global Compact for Safe, Orderly and Regular Migration should reaffirm these commitments and provide direction on how these principles are to be upheld and operationalised for migrant children. The Compact can be a potential game changer for migrant children if their best interests and their protection are at the fore of this international agreement and include concrete mechanisms for turning this into reality.

Through this submission, we highlight four criteria of success for a Global Compact that works for children, and specific recommendations for actionable commitments of States that should be in the Global Compact. It complements the joint submission of the Initiative for Child Rights in the Global Compacts<sup>1</sup>.

#### **1. The Global Compact should reinforce international standards and include mechanisms for the application of the UN Convention on the Rights of the Child in the context of migration, including the principles of the best interest of the child and non-discrimination**

The existing international legal framework provides the foundation upon which the Global Compact should be built. It must reaffirm states' legal obligations under international law. The detailed framework of human rights law, in addition to other relevant branches of international law, provides specific protection to all migrants as they leave their countries of origin, while they are in transit, at international borders and in the context of reception, and as they live and work in countries of destination. Respect for children's rights is not a mere aspirational statement or a humanitarian principle upon which states should provide assistance and adequate treatment to children. This requires legal safeguards and concrete measures at national level that states have to put in place to respect, protect and fulfil the rights of all children.

- **Operationalising the principle of the best interest of the child**

***Recommendation: Ensure that all protocols, policies and procedures enacted at local, regional or national level concerning migrant children are founded on the best interests of the child principle and include best interests assessments and determination procedures where necessary***

***The Convention on the Rights of the Child (CRC) and its fundamental principles, including non-discrimination and best interest of the child, the right to life, survival and development and the right of the child to express his or her views, should be the overriding framework for guiding and reviewing national and international responses to migrant children.*** Migrant children should be treated as children first and foremost regardless of their status, and their best interests should be the primary consideration in all matters concerning them, including in transit, at borders and when identifying sustainable and protective solutions for children.

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<sup>1</sup> The Initiative is a multi-stakeholder partnership co-led by Save the Children and Terre des Hommes and includes 27 organisations from UN, NGOs and foundations. The Initiative's working document with specific goals, targets and indicators on migrant and refugee children is available at <http://www.childreonthemove.org/wp-content/uploads/2017/02/Working-document-29-June-2017.pdf>

General Comments from the Committee on the Rights of the Child, particularly General Comment 6 and the Joint General Comment on the human rights of all children in the context of international migration, provide authoritative interpretation of the CRC on the rights of migrant children and include specific guidance for states on how to apply their obligations deriving from the CRC when dealing with migrant children. These documents should be acknowledged as important normative standards for children in the Global Compact.

- **Respect for non-refoulement**

***Recommendation: Ensure the principle of non-refoulement is strictly upheld for migrant children through individual gender- and age-sensitive vulnerability assessments at borders***

The Global Compact should reaffirm the principle of non-refoulement for migrants. Every human being regardless of their migration status is protected from refoulement, including through the absolute prohibition of return to torture.<sup>2</sup> For children, specific provisions apply: “States shall not return a child to a country where they are at risk of irreparable harm, under-age recruitment or being re-trafficked.”<sup>3</sup>

Returns of children, whether unaccompanied or in a family, should be voluntary, fully informed and free of any coercion. The precondition to any return of a child – whether unaccompanied, separated or with family – is that their best interests have been determined and return is found to be a durable solution. This requires formal, robust, individual procedures, with due consideration given to the views of children. States should commit to appropriate procedural safeguards when repatriation of children is considered.

- **Non-discrimination and operationalising the right to education**

***Recommendation: Remove legal and policy barriers to ensure that all migrant children regardless of their migration status have access to quality education and learning opportunities without discrimination and commit to establish firewalls between immigration enforcement activities and provision of education services***

Many migrant are deprived of their core right to access quality education, as provided for in Article 28 of the CRC. Similarly, the Sustainable Development Goals include a specific goal calling on states to “ensure inclusive and equitable quality education and promote lifelong learning opportunities for all” and target 4.1 whereby States commit to ensure that “by 2030, all girls and boys complete free, equitable and quality primary and secondary education leading to relevant and effective learning outcomes”.

To achieve this goal and target and operationalise the right to education without discrimination, key legal, policy and financial barriers that stop children from going to school and learning must be removed. Firewalls between immigration enforcement activities and provision of education services should be established so that access to quality education and learning opportunities is not obstructed and migrant children can access such services without fear of detection, arrest or detention.

Priority is also the determination to provide quality education within a few months of arrival for all migrant children. This is achievable by including specific benchmarks on access to services, with a focus on access to quality education and learning opportunities. States, donors, and international financial institutions and other relevant actors must ensure that sufficient funding is committed and invested to strengthen education

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<sup>2</sup> See in particular Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Principle and Guidelines on the human rights protection of migrants in vulnerable situations within large and/or mixed movements, OHCHR, 2017; UNHCR position paper on Migrants in Vulnerable Situations, UNHCR’s Perspectives, June 2017

<sup>3</sup> UN Committee on the Rights of the Child, General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin

systems. Quality education for migrant and local children from the early years to secondary and vocational education will go a long way to delivering long-term solutions.

- ***Ending child immigration detention***

***Recommendation: Take measures to end child detention based upon the immigration status of children or their parents and implement child-sensitive alternatives to detention for migrant children and their families that respect the rights of the child and are in their best interests***

The Compact provide an opportunity to build upon the commitment made by Member States in the New York Declaration to work to end the immigration detention of children by agreeing to a clear set of targets and indicators for operationalizing this commitment and for implementing human rights-respecting alternative care and protection arrangements (“alternatives to detention”) for migrant children, whether travelling alone or with members of their families.

Detention is never in their best interests in this context, as emphasised by the Committee on the Rights of the Child<sup>4</sup> and numerous international and regional human rights bodies, and detention has very detrimental impact on children’s health and well-being; the longer the time of detention the longer-term its impact is on children’s wellbeing.

## **2. The Global Compact should recognise the specific vulnerability and needs of migrant children and prioritize their protection needs**

Child-focused responses should not be an afterthought in migration strategies but have to be a central part of any response from the reception of the child to the identification of solution in line with children’s best interests. It is also critical that the institutional architecture of migration governance is fit for purpose and gives a clear mandate and adequate resources to competent child protection authorities, who should bear primary responsibility for migrant children as regards both service provision and decision making whenever these children are in contact with migration authorities, from the time of first reception.

- ***Individualised vulnerability assessments and referrals***

***Recommendation: Establish effective mechanisms for individual gender- and age-sensitive vulnerability and needs assessments of children at borders and timely referrals, through child friendly and child sensitive approaches carried out by qualified professionals***

Tailored policies and assistance provided to migrant children are critical to respond to the individual situation and cater to the different needs of children. Particular attention should be paid to specific groups of children, who face multiple and intersecting forms of discrimination or risks to their safety, including migrant girls, children with disabilities or unaccompanied and separated children, who are exposed to a higher risk of sexual and physical abuse, debt bondage or forced into child labour or prostitution.

- ***Strengthening national child protection systems***

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<sup>4</sup> CRC, Report of the 2012 Day of General Discussion, *The Rights of All Children in the Context of International Migration*; Joint General Comment No.21 on the Human Rights of Children in the Context of International Migration of the Committee on the Rights of the Child and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

***Recommendation: Invest in and strengthen national child protection systems that ensure migrant children's access to appropriate protection services, including for appropriate reception and care, procedures for assessing the best interests of children, effective guardianship and family reunification systems***

States should develop a comprehensive approach for the protection of children throughout the migration process, that ensure migrant children's access to appropriate protection services, including for appropriate reception and care, procedures for assessing the best interests of children and effective guardianship and family reunification systems. Appropriate protection in the case of unaccompanied or separated children includes safe accommodation separated from adults.

- ***Continuum of protection along the migratory route through cross-border cooperation mechanisms***

***Recommendation: Develop effective cross border cooperation mechanisms between national child protection services in countries of origin, transit and destination to ensure a continuum of protection***

Relevant authorities and agencies should also put in place cooperation frameworks within and across borders to protect and support children at each step of their journey to ensure that children have access to protection, care, support and learning opportunities wherever they are, at origin, in transit and at destination. This means strengthening child protection systems along migratory routes, through inter-country case management and information sharing.

Information sharing across countries is essential for individualised assessments to determine children's identity, assessing the age, family tracing and reunification.

### **3. The Global Compact should support a long term vision and seek durable solutions for children that are in children's best interests, including through more safe and regular migration channels**

- **Best interest determination procedures for durable solutions**

***Recommendation: Develop and implement clear procedures for determining durable solutions for migrant children based on their best interests, with due regard to children's right to be heard***

The Compact must prioritize policies that support long-term solutions for migrant children, in their best interests. Children require security, stability, and predictable access to services for healthy development. To deliver and not deny solutions, States must abandon harmful, common, short-term practices. These include and are not limited to the practice of detaining children for immigration purposes, lack of pathways to full legal protection, and denial of services based on status.

The Compact must put forward a new way to promote solutions that considers the child's physical, material, and legal safety wherever they occur. Individual solutions must be tailored to suit the child and that the child, unless too young, should have a say in deciding which option is chosen. All decisions concerning solutions should be made on a case-by-case basis, with a view, notably, to ensuring the child's safety and security, and must be grounded in the best interests and rights of the child concerned. The Compact must also include ample references to protecting the best interest of the child and their material safety.

- **Expanding opportunities for family reunification**

***Recommendation: Put in place measures to operationalize the right to family unity when in the best interests of the child including increasing opportunities and establishing systems for family tracing and reunification.***

Migration policies, legislation and measures should respect the right of the child to family life and that no child is separated from his/her parents unless in accordance with his/her best interests. Measures to respect family unity would include humanitarian, and expeditious attention to family reunification applications; options for regularisation of migration status wherever possible; and, family reunification policies, at all stages of migration, for enabling children left behind to join their parents (or parents to join their children) in transit and/or destination countries. Establishing protocols in line with international guidelines for family tracing and reunification procedures is therefore central for the protection of children.

- **Appropriate safeguards for safe returns, readmission and reintegration**

*Recommendation: If return is found to be in the best interest of the child, put in place safeguards to ensure safe returns, readmission agreements in line with the UNCRC, and existence of appropriate reception and reintegration and monitoring mechanisms for children upon return*

The precondition to any return of a child – whether unaccompanied, separated or with family – is that their best interests have been determined and return is found to be a sustainable solution. This requires formal, robust, individual procedures, with due consideration given to the views of children. States should commit to appropriate procedural safeguards when repatriation of children is considered. These include, for example, access to relevant information for the child, independent legal representation, family tracing and assessment; existence and assessment of adequate reception facilities follow up and reintegration plans to ensure their short and long-term support.

If the best interest determination for a child is voluntary return then the provision of appropriate reception and reintegration assistance be accessible as a minimum standard. Monitoring of returned children's access to services and protection will improve the achievement of solutions. The continuity can be facilitated by inter-country case management, bilateral coordination mechanisms, and through formal agreements between States, where appropriate and relevant. Child-appropriate reintegration is critical for sustainable returns and to prevent undue and prolonged harm and trauma.

#### **4. The Global Compact should enhance accountability of states within the UN framework through a strong follow-up and review framework including national, regional and global level accountability**

- **Means of implementation and follow-up**

*Recommendation: Regularly review and report progress in implementing the commitments made under the global compact through national, regional and global accountability mechanisms*

The Compact should present a framework similar to the 2030 Agenda for Sustainable Development, with goals, targets that are ambitious but achievable on graduated timelines and indicators to measure progress or lack thereof. The Compact should also provide for appropriate means of implementation, including adequate financial resources for supporting the development of national action plans, the strengthening of child protection systems responsive to the needs of migrant children and cross-border mechanisms. Donors, the international community, and financial institutions should ensure that resources be available to support these interventions.

The Compact should also make provision for a follow-up and review mechanism within the United Nations framework and recognise the role of existing international accountability mechanisms, such as treaty monitoring bodies, the Human Rights Council, Special Procedures and the Universal Periodic review as well as the UNGA High-Level Dialogues on International Migration and Development and the High-Level Political Forum on Sustainable Development.

- **Meaningful participation of migrant children in the follow-up and review**



***Recommendation: Ensure the meaningful participation of migrant children in the follow-up and review mechanism for the implementation of State's commitments in the Global Compact***

The Compact should ensure transparent, accessible, inclusive, child-friendly and responsive processes at national, regional and global level as part of the follow-up and review framework and support the meaningful participation of all relevant stakeholders, particularly migrant children in those processes.