

Save the Children's 5 key policy recommendations for the

Third Informal thematic session on:

“International cooperation and governance of migration in all its dimensions, including at borders, on transit, entry, return, readmission, integration and reintegration”

Global Compact for Safe, Orderly and Regular Migration

19-20th June 2017

The principles and rights protections enshrined in the UN Convention of the Rights of the Child should form the foundation of any framework of migration governance and should be operationalised into practical steps and measures¹, with a few suggested below.

We call on UN Member States to pay particular attention to the following five key policy areas and the related recommendations as they discuss international cooperation and governance of migration in all its dimensions.

1. The protection and empowerment of migrant children at the core of a human rights based governance framework on migration

- Provide a clear mandate and adequate resources to competent child protection authorities, who should bear primary responsibility for migrant children as regards service provision and decision making whenever these children are in contact with migration authorities, starting from the time of first reception.
- Empower and take into account migrants voices, including migrant children, in migration policy development or decisions, as a critical condition for effective migration governance and an integral part of the “whole of society approach”, endorsed by UN Member States in the New York Declaration.

¹ Save the Children and Terre des Hommes, with a broad coalition of 27 organisations, including civil society, UN agencies, foundations and experts, have come together to promote the Initiative for Child Rights in the Global Compact. This is a multi-stakeholder initiative seeking to ensure that the rights of all children on the move are at the core of the two Global Compacts and form the foundation of any framework of migration governance. As part of this initiative, a working proposal has been developed setting out a roadmap for operationalising six commitments related to migrant and refugee children from the New York declaration, and drawing on CRC standards and guidance, into clear benchmarks and timelines. It will be available as of 28th June 2017 on: www.childrenonthemove.org.

2. Best interest of the child should be the primary consideration in all matters concerning migrant children, including in transit, at borders and when identifying sustainable and protective solutions for children

- Ensure that all protocols, policies and procedures enacted at local, regional or national level concerning migrant children contain are founded on the best interests of the child principle and include best interests assessments and determination procedures where necessary.
- Ensure that the principle of non-refoulement is strictly upheld for all migrants, including children, and it is interpreted according to the provisions of the customary law, CRC and, and the guidelines set out by the General Comment No 6.
- Ensure that migrant children benefit from the most protective legal and policy framework available.

3. Identification and referral of migrants in vulnerable situations, including migrant children

- Ensure implementation of policies and practices that secure immediate identification of at risk migrant children by all officials who come into contact with them at borders or elsewhere with a dedicated budget
- Ensure immediate referrals of all at risk migrant children to child protection services, irrespective of migration status.

4. Ending child immigration detention

- Review existing national legislation and policies as well as regional agreements and processes to prohibit child detention based upon the immigration status of children or their parents/guardians.
- Develop, fund and implement and monitoring national action plans for the elimination of child immigration detention involving government authorities, civil society, and other relevant actors, including children themselves.
- Develop and/or 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) and allow children to remain with their family members and/or guardians in non-custodial, community based-contexts while their immigration status is being resolved.
- Establish an independent monitoring and evaluation system to assess and improve the quality of these alternatives to detention to ensure that the best interests of the child is always a primary consideration;

5. Ensuring a continuum of care and protection at all stages of the migration route through cross-border coordination

- Ensure effective cross border coordination and cooperation between national child protection services in countries of origin, transit and destination for the protection of children on the move to provide a continuum of protection throughout the migration cycle for migrant children and ensure they are protected and able to access to key services, including quality education and health.

Annex: Background paper

This thematic session presents a key opportunity for States to firmly anchor the debate on international migration within the framework of the United Nations and to embed the human rights framework and its practical application within all aspects of governance of migration, at local, national, regional and international level, within and between states.

This brief focuses on the protection of migrants in vulnerable situations, particularly migrant children, which should be at the core of a human rights based governance framework on migration. It focuses on the protection of migrants in vulnerable situations, particularly migrant children, which should be at the core of a human rights based governance framework on migration. Indeed, globally, nearly 50 million children have migrated across borders or been forcibly displaced. Over 28 million amongst them would have fled violence or insecurity. The number of children embarking in dangerous journeys on their own is also dramatically growing for a combination of factors, including the lack of regular pathways opportunities to move safely, including for family reunification. In addition to the risks faced on the migration journey, migrant children, particularly those undocumented, are often subjected to discrimination, deprived of their liberty in closed facilities and are denied access to essential services, such as health, education, safe accommodation and housing, whether on transit, at borders or in destination countries. These children are in a situation of extreme vulnerability, because of the conditions they are leaving behind and/or the circumstances in which they are compelled to move and to which they arrive” and while many of them may not fulfil the conditions of the refugee definition, they will nevertheless be in need of human rights protection.

The principles and rights protections enshrined in the UN Convention of the Rights of the Child should form the foundation of any framework of migration governance and should be operationalised into practical steps and measures². The Guiding Principles and Guidelines on migrants in vulnerable situations produced by the Global Migration Group provides concrete guidance for Member States and should be adopted as part the Global Compact. 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, starting from the time of first reception.

Any strategy addressing migration should be based on long term strategic planning on human mobility, evidence based and comprehensive, and should be developed in cooperation with all relevant partners. Empowering migrant voices, including migrant children, whose views are rarely sought and or taken into account in migration policy development or decisions, is also a critical

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condition for effective migration governance and should be an integral part of the “whole of society approach”, endorsed by UN Member States in the New York Declaration.

Best interest of the child should be the primary consideration in all matters concerning migrant children, including in migration issues on transit, at borders and when identifying sustainable and protective solutions for children

Best interest assessments of migrant children in transit, at borders and entry

Throughout the migration cycle, refugee and migrant children, whether accompanied or not, are routinely affected by policies and practices that do not take their best interests into account as a primary consideration.

All migrant children, whether accompanied or not, are entitled to an individualised assessment of their individual needs that has their best interests as its core guiding principle. The best interests of the child should be the primary consideration in procedures on identification, vulnerability screening, age assessment and reception. The process needs to be initiated as soon as the child is identified to ensure that the child’s best interests are a primary consideration throughout the migration cycle, and that they inform the whole process of identifying solutions for that individual child that is protective and sustainable. For this purpose, dedicated resources and appropriate training of relevant authorities that come into contact with children or that are mandated to make decisions that affect a child on child rights and child sensitive approaches should be in place.

Best interest determination as a precondition for identifying sustainable solutions

Importantly, mechanisms for the formal determination of the best interests of the child should be put in place to make appropriate decisions about medium and long term solutions for the protection of children on the move. Sustainable solutions include, amongst others, integrating children into the community they have reached, integration in a third country, or returning to their country of origin if in their best interests. When the solutions involves moving to another state, the authorities of both States share a responsibility to ensure a continuum of protection. This continuity of care and protection can be facilitated by inter-country case management and bilateral coordination mechanisms between relevant authorities, and through formal agreements between States, where appropriate and relevant.

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 in their best interests. This requires formal, robust, individual procedures, with due consideration given to the views of children, for every decision that could lead to the return of a child. On the contrary, immediate deportation, forced return, or the detention of children based on the migration status are a violation of children’s rights and should not be part of the tools that states should mobilise with children. Appropriate procedural safeguards should be in place in when repatriation of children is considered, in compliance with international standards. 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.

Child-appropriate reintegration measures are also a critical precondition for sustainable returns. These measures should provide support for education, vocational or other training, as well as financial support for the family, embed the reintegration within broader child protection systems

with mechanisms for safeguarding returnee children from abuse or violence and provide monitoring mechanisms of the child reintegration.

Identification and referral of migrants in vulnerable situations, including migrant children

Throughout the migration cycle, refugee and migrant children face a heightened risk of violence, abuse and exploitation compared to national children. The immediate identification and referral of refugee and vulnerable migrant children, including all unaccompanied and separated children, to the child protection system is therefore critical in ensuring assessment of their immediate needs, referral to the appropriate services, and to prevent and respond to potential cases of violence, exploitation, abuse/. Migrant children need referral to and support from a national child protection system based on a legal framework, including formal and informal structures, with the capacity to protect them from violence abuse, exploitation and neglect. Appropriate protection in the case of unaccompanied or separated children includes safe accommodation separated from adults and with well-trained, gender appropriate staff and a guardianship system. Unless it is not in their best interests, accompanied children should always be accommodated with their parents or guardians.

Criminalisation and child immigration detention

Every day, all around the world, millions of children are affected by immigration detention. Yet irregular entry or presence does not, in itself, constitute a legitimate ground for detention. Policies of criminalisation of irregular migration and detention put migrant children at risk of harm, are not effective in stopping migration and often deflect migration management challenges on to other, less wealthy nations. Reports on the effects of immigration detention on children have found excess rates of suicide, suicide attempts, self-harm, mental disorder and developmental problems, including severe attachment disorder³.

The Global Compacts 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 refugee and 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 Child⁴ 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.

Prohibiting immigration detention requires governments to develop alternatives to detention, in line with children’s best interests, in law and in practice, for all children, including children with their families. The steps for developing such alternatives have been outlined by the International Detention

³ M Dudley and B Blick, Appendix E to The heart of the nation’s existence – a review of reports on the treatment of children in Australian detention centres, Human Rights and Equal Opportunity Commission, A Last Resort? National Enquiry into Children in Detention HREOC, (April 2004); Z Steel, S Momartin, C Bateman, A Hafshejani, D M Silove, N Everson, K Roy, M Dudley, L Newman, B Blick, S; Z Steel, The politics of exclusion and denial: the mental health costs of Australia’s refugee policy, p.10 (May 2003)

⁴ CRC, Report of the 2012 Day of General Discussion, *The Rights of All Children in the Context of International Migration*, 2012, accessed at <http://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2012/DGD2012ReportAndRecommendations.pdf>

Coalition in the Community Assessment and Placement (CAP) model. This model outlines five steps to prevent and reduce the likelihood of unnecessary detention⁵.

Ensuring a continuum of care and protection at all stages of the migration route through cross-border coordination

The lack of established mechanisms of cooperation and collaboration between countries of origin, transit and destination often results in serious protection gaps for children on the move. Procedures to determine the children's identity, assessing their age, and identifying children's specific needs and implementing sustainable and protective solutions are often complex and may require the involvement of several actors in different countries in order to gather the right information, particularly when issues of lack of documentation, statelessness and regularisation of the child's legal identity and status emerge.

In some cases, the failure to establish contact with authorities or non-governmental organisations in the countries of origin or transit to gather documentary evidence about the child and the adult claiming to be caring for him have resulted in victims of trafficking being transferred to centres for migrants together with their exploiters.

In other cases, lack of coordination or contact between relevant actors or authorities in countries of origin, transit or destination stops children from accessing education or the healthcare they need. This is the case, for example, when lack of documentation or transferability of documentation means that education achievements in one countries are not recognised in another. Similarly, the lack of access of records of health issues or care received in a country may affect the care children are able to receive at arrival in a different country.

Save the Children believes that key stakeholders should work towards establishing cross border cooperation based on a child protection and child rights agenda. Such a cooperation framework should include accountability mechanisms and appropriate resources.

⁵ Robyn Sampson, Vivienne Chew, Grant Mitchell, and Lucy Bowring, *There are Alternatives: A handbook for preventing unnecessary immigration detention* (revised edition), IDC 2015, available [here](#) or at <http://idcoalition.org/publication/there-are-alternatives-revised-edition/>. The five steps are: (1) presume detention is not necessary; (2) screen and assess the individual case; (3) assess the community setting; (4) apply conditions in the community if necessary; (5) detain only as a last resort in exceptional cases.