

*The Secretary General's Report on the Global Compact for Safe, Orderly and Regular Migration**UNICEF Suggestions regarding input specifically relating to the rights and protection of child migrants and their families*

Structure and Elements of a Global compact for Safe, Orderly and Regular Migration, including its purpose, goals, challenges and opportunities

The Structure of the February 2017 report from the SG of the report of Peter Sutherland provides a sound framework, and we would suggest a roughly similar structure for the SG's report on the compact. In particular, we would suggest replicating the use of a broad introduction, although in the case of this report that introduction could perhaps give in a first section a brief overview of UN processes on migration prior to 2016, then an overview of the process leading up to the September 19th summit of 2016, followed by a brief summary of activities undertaken in the phases of work up to summer/fall 2017.

The next section could perhaps replicate the 'problems/challenges, where things stand, and where they should go' flow of the February 2017 report, although perhaps the 'where they should go' could be subsumed into a section on the overall purpose of the compact, which would, presumably, be defined in terms following the language of the NY Declaration in section III of Appendix II, on the elements of the compact.

For the actual substantive content, in particular around the actionable commitments, given that the work process to date has been organized around the 6 thematic clustering's of issues, within the substantive body of the text of the report that this thematic grouping be replicated as much as possible.

Actionable Commitments that may be included in the Global Compact on Migration

The New York Declaration for Refugees and Migrants is an important reaffirmation by Heads of State and Government and High Representatives of their intention "to fully protect the human rights of all refugees and migrants, regardless of status".¹ Regarding children,² the New York Declaration contains a number of explicit guarantees, including:

We will protect the human rights and fundamental freedoms of all refugee and migrant children, regardless of their status, and giving primary consideration at all times to the best interests of the child. This will apply particularly to unaccompanied children and those separated from their families; we will refer their care to the relevant national child protection authorities and other relevant authorities. We will comply with our obligations under the Convention on the Rights of the Child.³ The New York Declaration in various sections elaborates and further explains commitments to child migrants (and/or refugees) and UNICEF wishes to see these commitments maintained and where possible expanded. As such, at a minimum, UNICEF would ask for the following actionable commitments to be included in the

¹ UN General Assembly, New York Declaration for Refugees and Migrants, UN document A/71/L.1 of 13 September 2016, para. 5.

² Defined by the UN Convention on the Rights of the Child (CRC) as anyone under the age of 18 (UN General Assembly, Convention on the Rights of the Child, General Assembly resolution 44/25 of 20 November 1989).

³ New York Declaration, para. 32. Unaccompanied children (also called unaccompanied minors) are children who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so. Separated children are children who have been separated from both parents, or from their previous legal or customary primary care-giver, but not necessarily from other relatives. Separated children may, therefore, be accompanied by other adult family members.

Compact: the arrangement and grouping of these commitments is based upon the agreed upon set of 6 priority principles identified by the Initiative for Child Rights in the Global Compacts, a multilateral initiative supported by 27 organizations including UNICEF.

Non Discrimination

- I. Adopt and implement measures to foster an open and non-discriminatory society, including by preventing xenophobia, racism and discrimination against migrant children, starting from the time of first reception.
- II. Adopt and implement measures that proactively support integration between host and migrant communities through, and the social inclusion of refugee and migrant children, including as regards their access to legal identity, nationality, education, health care, justice and language training.
- III. Repeal provisions that criminalize the provision of services to migrant children or require service providers to share personal data for immigration enforcement.

The Best Interests of the Child

- I. Ensure that the best interests of the child will be a primary consideration in all matters concerning migrant children, whether they are accompanied or unaccompanied.
- II. Undertake to ensure that procedures are enacted at local, regional or national level, to implement best interests assessments and best interests determinations in all their decision making processes affecting refugee and migrant children.
- III. Improve access to free legal advice and representation for all migrant children who need or request it, including to ensure that no child appears before an immigration authority without adequate legal representation.
- IV. Ensure the appointment of qualified guardians for unaccompanied or separated migrant children.

Child Protection

- I. Ensure appropriate and integrated child protection care and services for all at risk migrant children, starting from the time of first reception.
- II. Establish appropriate alternative care options for unaccompanied and separated children whenever necessary and appropriate, ideally based upon the guidance found in the UN Guidelines for the Alternative Care of Children.⁴
- III. Ensure effective cross border coordination between national child protection services to provide a continuum of protection throughout the migration cycle for refugee and migrant children.
- IV. States may consider concluding cooperation arrangements putting in place designated authorities and liaison officers as well as agreed procedures for the handover of guardianship across jurisdictions in the case of UASC.
- V. States may put in place joint case management systems to enable authorities in one country to access information about decisions taken on behalf of a child in another country and the recommendations that were made for the child's future.

⁴ UN Guidelines for the Alternative Care of Children, adopted by UN General Assembly resolution 64/142, UN document A/RES/64/142 of 24 February 2010.

Immigration Detention of Children

The detention of children and families for reasons related to their migration status remains a growing, and concerning, feature of State migration management policies around the world. The Global Compact provides an opportunity to build upon the commitment to work to end the immigration detention of children contained in the New York Declaration by guiding states to agree to undertake measures 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.

In its General Comment on unaccompanied and separated children, the Committee on the Rights of the Child confirmed that:

*In application of article 37 of the Convention and the principle of the best interests of the child, unaccompanied or separated children should not, as a general rule, be detained. Detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof.*⁵

In its analysis of the rights of all children in the context of international migration in 2012, the Committee underlined the application of this principle to all children—whether accompanied or unaccompanied:

*Children should not be criminalized or subject to punitive measures because of their or their parents’ migration status. The detention of a child because of their or their parent’s migration status constitutes a child rights violation and always contravenes the principle of the best interests of the child. In this light, States should expeditiously and completely cease the detention of children on the basis of their immigration status.*⁶

The position of the Committee on the Rights of the Child has been echoed by numerous international and regional human rights bodies⁷ and by the Inter-American Court of Human Rights.⁸ The UN Special Rapporteur on Torture has also found that the immigration detention of children may constitute a particular form of cruel, inhuman or degrading treatment of migrant children.⁹

Rather than detaining children and families crossing international borders, States are called upon to implement human rights-respecting alternatives to detention, which fulfil the best interests of the child,

⁵ Committee on the Rights of the Child, General Comment No. 6, 2005, op. cit., para. 61.

⁶ Committee on the Rights of the Child, Report of the 2012 Day of General Discussion, The Rights of All Children in the Context of International Migration, 2012.

⁷ The Recommended Principles summarize these standards as follows: “The detention of children because of their or their parents’ migration status constitutes a child rights violation and always contravenes the principle of the best interests of the child” and “States should expeditiously and completely cease detention of migration affected children and allow children to remain with family and/or guardians in non-custodial, community-based contexts while their immigration status is being resolved” (Principle No. 4). See <https://principlesforcom.jimdo.com/>.

⁸ Inter-American Court on Human Rights. Advisory Opinion OC-21/14 of August 19, 2014, Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, paras. 157-160. http://www.corteidh.or.cr/docs/opiniones/seriea_21_eng.pdf.

⁹ UN Special Rapporteur on Torture, Thematic Report on torture and ill-treatment of children deprived of their liberty, UN document A/HRC/28/68 of 5 March 2015, para. 80.

along with each child’s rights to liberty and family life, by accommodating the entire family in a non-custodial, community-based context that is suited to the appropriate care and protection of the child.¹⁰

The New York Declaration recognizes that the detention of children for the purposes of determining migration status “is seldom, if ever, in the best interest of the child” and makes the commitment to “work towards the ending of this practice”.¹¹ With respect to “all individuals who have crossed or are seeking to cross international borders”, the Declaration makes a commitment to pursue alternatives to detention while assessments are under way.

- I. Progressively work to end the immigration detention of children and other practices that result in the deprivation of liberty of children for immigration-related reasons.
- II. With the support of UNICEF, UNHCR, IOM and others, work to identify and initiate implementation of alternatives to detention that respect the rights of the child (and are in their best interests) and allow migrant children to remain with their family members and/or guardians in non-custodial, community-based contexts while their immigration status is being resolved.

Access to Services for Migrant Children

The New York Declaration already contains guarantees regarding migrant children’s access to essential services:

- (i) We will work to provide for basic health, education and psychosocial development and for the registration of all births on our territories. We are determined to ensure that all children are receiving education within a few months of arrival...¹²
- (ii) We reaffirm our commitment to protect the human rights of migrant children, given their vulnerability, particularly unaccompanied migrant children, and to provide access to basic health, education and psychosocial services, ensuring that the best interests of the child is a primary consideration in all relevant policies.¹³

To make these commitments more concrete, we would suggest the following language be considered:

- I. States undertake to grant immediate access at reception facilities to appropriate health services for migrant children, including screening and treatment for physical or psychological abuse, and ensure that all migrant children have timely access to health and

¹⁰ Committee on the Rights of the Child, Report of the 2012 Day of General Discussion, op. cit., para. 79. See also UNHCR, Options Paper 1: Options for governments on care arrangements and alternatives to detention for children and families, Revision 1, 2015, available at <http://www.refworld.org/docid/5523e8d94.html>.

¹¹ New York Declaration, para. 33, which adds that children will be detained “only as a measure of last resort, in the least restrictive setting, for the shortest possible period of time, under conditions that respect their human rights and in a manner that takes into account, as a primary consideration, the best interest of the child”.

¹² New York Declaration, para. 32.

¹³ New York Declaration, para. 59.

psychosocial services, including preventive care, regardless of their migration status and that of their parents;

- II. States undertake to register the birth of all migrant children with a civil authority and provide migrant children with appropriate documentation (to allow them to access services for which proof of identity is required);
- III. States undertake to ensure all refugee migrant children receive early childhood development care (focusing on children up to 8 years of age) and quality education within two months of arrival.

Sustainable solutions in children's best interests

- I. Develop and implement clear procedures for determining the status of migrant children and granting them secure residence status on a range of grounds, and include explicit provisions in relevant laws or policies confirming such children's right to participate when decisions are made that concern them.
- II. Develop bilateral or multilateral agreements with other relevant States, which standardize approaches for identifying and implementing sustainable solutions for migrant children in keeping with their best interests;
- III. With the assistance of UNHCR, UNICEF, IOM and others, agree an internationally-recognized procedure for monitoring returns of migrant children, whether accompanied or unaccompanied and for monitoring the subsequent re/integration of such children in their countries of origin.