

# INITIATIVE ON CHILD RIGHTS IN THE GLOBAL COMPACTS

## RESPONSE TO THE ZERO DRAFT OF THE GLOBAL COMPACT ON MIGRATION

### Introduction

The present contribution is submitted on behalf of the members of the Initiative for Child Rights in the Global Compacts (hereafter “the Initiative”). The Initiative is a multi-stakeholder partnership bringing together 30 UN, civil society and philanthropic organisations around a shared agenda: to ensure that children’s rights are at the heart of the two global compacts on migration and on refugees and to create a continuum of care, protection and support for migrant and refugee children.

The paragraphs below are presented thematically and have been prepared in response to the zero draft of the Global Compact for Migration (hereafter “the Compact”) published on 5 February 2018, and in view of the upcoming first intergovernmental negotiations on the draft text of the Compact on 20, 22-23 February 2018.

We commend the work of the Co-Facilitators for their leadership in developing a zero draft that mainstreams the rights of all children in the context of international migration and for their openness in considering recommendations from a variety of stakeholders, including the members of the Initiative. We are ready to work together to ensure children and their rights are at the centre of this process.

The zero draft represents a crucial step forward in the way children and their rights are approached in discussions about migration, the culmination of a joint learning process years in the making. It not only includes children as a cross-cutting priority, but also proposes very specific actions that chart the way for governments to translate the principle of the best interests of the child into practice in order to create real change for children on the ground.

### Preamble

It will be essential to include a reference to the Convention on the Rights of the Child (CRC) in the preamble of the Compact.

### Best Interests of the Child

Today, nearly 50 million children have migrated across borders or been forcibly displaced. Every day and in every region, these children face a variety of rights violations, from exploitation and violence to being separated from their families, detained because of their migration status and deprived of essential protections and services. Policies, practices and behaviours that do not take their best interests into account compound children’s vulnerabilities with severe and enduring consequences. All children, irrespective of their migration status are entitled to all rights articulated in the CRC and other core international human rights instruments. The Compact provides a historic opportunity to ensure such obligations towards children are respected and fulfilled in the context of migration.

The Initiative therefore strongly welcomes that the Compact confirms child sensitivity as a guiding principle and that there is an explicit commitment to upholding the best interests of the child as the

primary consideration in situations concerning children at all times. We note, however, the absence of a reference to the cornerstone principle of non-discrimination as a guiding principle of the zero draft, despite reaffirmations of States' obligations to respect, protect and fulfill the human rights of all migrants.

## Protection

A child is a child first and foremost, and all children, regardless of their status, are entitled to protection and the opportunity to thrive. Migrant children, however, face a heightened risk of violence, abuse and exploitation, especially when compared to local children. As such, we welcome the call to address and reduce vulnerabilities in migration and the commitment to provide specialised protection and assistance to migrants by ensuring that human rights are at the centre of the Compact. We welcome actionable commitments calling for the establishment of robust procedures to ensure the best interests of the child are appropriately integrated, interpreted and applied. We further welcome the commitment to ensure unaccompanied or separated children are protected at all stages of migration through the establishment of specialised procedures and that they have access to their rights, such as to health, education, legal assistance and justice. We note, however, that no mention is made of the need to ensure that information is shared and that procedures are conducted in both a child-friendly and gender-responsive manner.

We also welcome the commitment for child protection authorities to be readily available at international borders to commence best interest determinations. That said, we note that the zero draft calls for the best interest determination procedures to commence "in a timely manner." We emphasise that the process (including best interest assessments) must be initiated as soon as any migrant child (not only when unaccompanied or separated) is identified in order to ensure that the child's best interests are the primary consideration until a sustainable solution for the child is reached. In this process the right of the child to be heard and their participation are of essence. We also note and are concerned by the lack of reference to cross-border child protection cooperation and to the need for strengthening child protection systems, paying particular attention to developing social workforce capacities.

## Detention

The Initiative applauds the objective to "*Uphold the protection and respect for the rights and best interests of the child at all times, regardless of their migration status, by ending the practice of child detention in the context of international migration.*" While the title of Objective 13 refers to detention as a measure of last resort, it should be clear that this should not apply to child immigration detention, which is never in the best interest of the child. We also welcome the call to provide alternatives to immigration detention that include access to services and allow children to remain with family members or guardians in non-custodial contexts but it is important to highlight that these alternatives to detention should be consistent with children's rights and their best interests. We emphasise that detention has a profound and negative impact on child health and wellbeing both in the short and long term. The Initiative has produced a roadmap to end the immigration detention of children that can support Members States' efforts to achieve the New York Declaration's commitment to work to end such a harmful practice. Members of the Initiative stand ready to work with other stakeholders to identify sustainable and child-sensitive solutions to achieve this goal. Now more than ever, it is urgent that the Compact calls on governments to develop national and regional action plans with time-bound milestones outlining how they intend to phase out immigration detention of children in law, policy and practice, starting by investing in alternatives to detention.

## Access to services

The zero draft presents a welcome commitment to provide migrants, regardless of their status, access to and delivery of basic social services, including health care, education, housing and social protection. Children of all ages need these services in order to develop and flourish. Non-discriminatory access to education is guaranteed in articles 2 and 28 of the CRC and the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families, while the enjoyment by every child of the highest attainable standard of health and access to facilities is guaranteed in article 24 of the CRC. Furthermore, SDG 4 commits States to ensure inclusive and quality education for all and promote lifelong learning. These commitments apply to all children irrespective of their migration status or the status of their parents or caregivers. They should be further strengthened by specifically including psychosocial and child protection services, sexual and reproductive healthcare and by specifying that education be safe and inclusive as well as quality, and accessible at all levels, including early childhood education and care and vocational training.

We are particularly happy to see the call for safe access to these services by setting up firewalls between service providers and immigration enforcement offices. Too often, children do not access much-needed healthcare, education or other services because of the fear of being reported to immigration authorities.

We note the commitment to mandating independent institutions to receive, investigate and monitor complaints in regard to denial of basic social services to migrants is a welcome and innovative step that goes beyond National Human Rights Institutions.

While we wholeheartedly welcome the call to grant equal access for all migrant children and youth to quality education that they can regularly attend, we are deeply concerned by the fact that the commitment is not time-bound. As education is a right and necessary for children to flourish, access should be granted within a few months of arrival at most, in line with the New York Declaration. We wish to also emphasise the need to invest in early childhood development. Finally, we are concerned that there is nothing to specify that quality of services for migrants be on par with quality of services received by nationals.

## Returns

We welcome the assurances that decisions relating to the potential return of a child be based on the outcome of best interests determination procedures. Such procedures should be formalised in law, policy and practice and should be individual and robust and include children travelling with their families.

While we welcome upholding the prohibition on collective expulsion, we are deeply concerned about elements of Objective 21 that promote assisted voluntary return while not referencing the non-refoulement principle which is a cornerstone of international law. This leaves open the possibility of returns to an unsafe country of origin or to a situation where the well-being of a child is at risk, including the possibility of forced returns involving children. We recommend that stronger, child-specific and gender-sensitive safeguards and a commitment to establish country of origin risk assessments to ensure the child is not returned to situations of harm.

## Sustainable solutions

Children in migration often meet legal and practical barriers to their right to family unity which run counter to States' obligations under the CRC and are extremely harmful for children as well as hamper social inclusion. We welcome and are encouraged by the multiple references to family reunification. These include the commitment to facilitate family reunification for migrants at all skill levels by integrating legal provisions and policies that remove barriers to the realisation of the right to family unity, particularly those barriers related to income requirements and type of status and the commitment to include family reunification as a means of protecting unaccompanied and separated children. We hope to see these commitments expanded to address other barriers to reunification such as narrow definitions of family and inaccessibility of consular services.

We also welcome and are encouraged by the explicit commitment to facilitate access to regularisation as a means for migrants to realise full inclusion and social cohesion and to reduce stigmas associated with irregular status.

### **Complementarity between the Compacts**

We welcome the commitment to promote the operationalisation of the Global Migration Group Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations, and stand ready to carry forward this proposal with a particular focus on child-specific vulnerabilities.

While we recognise that the Global Compact for Refugees is separate from the Compact for Migration, we insist on the value of ensuring appropriate complementarity between the two. Migration or residence status should never undermine access to human rights protection for those child migrants in irregular and vulnerable situations that fall outside the strict scope of these two parallel processes. Refugee and migrant issues are intimately interlinked throughout the migration process and therefore cannot be examined in isolation of each other. A child is a child, no matter what label or category she may fall into at a given point in time. Refugee and migrant children often face very similar vulnerabilities, move together along the same migration corridors, and may fit different definitions throughout their journeys.

We note positive language on addressing and reducing vulnerabilities in migration and on strengthening procedures and mechanisms for status determination but without the assurance of complementarity between the Compacts, there is the real risk of actually undermining status determination procedures and allowing young refugees and other migrants to fall through the cracks.

### **Additional Gaps**

We note three particular gaps that must be addressed to ensure children are fully integrated in the Compact's 360-degree approach to migration:

- There is no mention of children in the objectives related to labour migration. As migrant children face increased risk of violence, abuse and exploitation in the migration process, it is important to make reference to forced and child labour and the impact of labour migration schemes (including temporary and circular migration) on children's right to family life and family unity (e.g. challenges faced by children left behind by migrating parents);
- In order for the Compact to take on a truly whole-of-society approach, the voices of children and youth must be included. It is essential to recognise that children and youth are agents of

- change and they have a right to be heard both as a wider constituency as well as through their unique, individual voices;
- No reference to child-specific drivers of migration, such as violence in the home or in their communities, lack of access to essential services, searching for quality education, threat of child marriage and other forms of gender-based violence, poverty, accompanying or being reunited with family members, climate change, disaster, drought or famine, trafficking and other forms of exploitation and abuse.

### **Implementation/Follow-up and Review**

The positive steps articulated in the zero draft mean little without robust implementation, follow-up and review to ensure not only progress but also as a measure of responsibility under international human rights law and accountability.

Without funding commitments, hiring and training social workers, immigration authorities and border guards to assess a child's best interests is impossible. The establishment of a capacity-building mechanism is a welcome step, but more detail is necessary to ensure that all capacity-building activities are in line with international human rights standards and do not increase negative impacts on the situation of migrant children.

Crucial for keeping track of progress will be empowering children and young people to keep governments accountable and to actively and meaningfully participate in any actions that may impact them.

Finally, we are concerned by the lack of clarity on how countries will take into account their specific migration realities and priorities vis-à-vis the Compact's objectives and actionable commitments. To this, please note that the Initiative has developed concrete milestones in our [Working Paper](#), our [Actionable Commitments report](#) and our [Roadmap to Ending Child Immigration Detention](#) and we are ready to support implementation through new data, evidence and good practices.

### **Conclusion**

We thank the Co-Facilitators for their efforts so far. The zero draft offers an encouraging step towards a Compact that places the human rights and best interests of all migrant children at its core. We are ready to work with the Co-Facilitators and other stakeholders to ensure that the already strong child rights-focused elements of the text are retained and strengthened where necessary. You can count on our continued full support in the process ahead.