

Initiative for Child Rights in the Global Compacts¹
Position paper for the sixth thematic consultation of the Global Compact for Migration:
Irregular migration and regular pathways

This paper aims at highlighting key messages from the Initiative for Child Rights in the Global Compacts ahead of the thematic consultation on irregular migration and regular pathways. Ultimately, the Initiative aims at creating a **continuum of care and protection for children in the context of migration** and calls on Member States to support a Compact that works for children.

It entails child-focused and concrete measures for building systems that guarantee children's universal rights, notably focusing on education, child protection and integrated and sustainable solutions for migrant children based on the principles of the best interests of the child and non-discrimination.

The following section includes specific recommendations for actionable commitments of States that should be in the Global Compact in order to ensure that child-focused responses are in place at each step of their journey and appropriate and protective solutions for children. More background information can be found in the annex page 4. Reference to the goals, targets and indicators recommended by the [Initiative on Child Rights in the Global Compacts](#) can be found in the Initiative's working document at www.childrenonthemove.org/resources.

Key recommendations:

The Global Compact on Safe, Regular and Orderly Migration should support a long term vision and seek comprehensive, sustainable solutions, anchored in child rights and in children's best interests, including through:

- 1. Enhancing safe and regular migration pathways, which protect children and their families from embarking on unsafe and dangerous journeys**
- 2. Recognising the specific vulnerability of migrant children, particularly those in irregular situations and urging States to put in place tailored measures to respond to their specific needs**
- 3. Ensuring access to quality education and learning opportunities as part of immediate and long term responses**
- 4. Securing long term solutions for migrant children in irregular situations, in the child's best interests including policies aimed at facilitating regularisation, social inclusion into host communities and protection from discrimination, racism and xenophobia and child rights policies and procedures on returns**

¹ The Initiative is a multi-stakeholder partnership co-led by Save the Children and Terre des Hommes and includes 29 organisations from UN, NGOs and foundations.

1. More safe and regular migration channels, including family reunification, which protect children and their families from embarking on unsafe and dangerous journeys

- Increase opportunities for families to move together as to avoid family separation.
- Review and reduce legal and practical barriers to access family reunification and establish systems for family tracing and reunification.
- In order to facilitate the reunification of children with their families, States should consider prioritizing visa applications for family reunification in cases involving children and investing in accelerated procedures.
- States should also consider expanding the definition of family so that children can be reunited with members of their extended family in countries of destination- such as adult siblings, grandparents, aunts and uncles.
- To avoid undue waiting, and stranding children alone, States should make flexible use of existing family reunification mechanisms to respond to humanitarian situations, including by easing the procedures and conditions required.
- Put in place regularisation policies that include clear criteria such as length and conditions of stay, work, integration, family and other ties or conditions and include pathways to secure residency, and pathways to citizenship for: victims of trafficking; and children and young people who have lived in a country for a long time.

2. Recognising the specific vulnerability of migrant children, particularly those in irregular situations, the Compact should include measures to encourage States to put in place tailored child focussed measures that respond to children's specific needs that reflect the best interests of each child

- 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.
- 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.
- Take measures to end child detention based upon the immigration status of children or their parents through legal and policy review, defining specific benchmarks and by piloting, implementing and monitoring child-sensitive alternatives to detention for migrant children and their families that respect the rights of the child and are in their best interests.
- Ensure effective cross border coordination and cooperation between national child protection services in countries of origin, transit and destination to provide a continuum of protection and systems of referrals for vulnerable children throughout their migration cycle. Such cooperation mechanisms should be child focussed and aim to provide culturally competent support and access to key services and ensuring sustainable and protective solutions for children.²

3. Ensuring access to quality education and learning opportunities as part of immediate and long term responses

² These mechanisms are largely undeveloped and two positive practices include the cross-border coordination working groups set up in Southern Africa or the West Africa Network recently adopted by ECOWAS.

- Eliminate legal and practical barriers that prevent children in situation of irregular migration, whether accompanied or unaccompanied, from enrolling in schools and adopt a flexible approach to registration and documentation requirements to maximise access to education and learning opportunities.
- Establish firewalls between immigration enforcement and education provision so children, regardless of their legal status or the status of their parents, can freely attend school and learn.
- Ensure sufficient funding is committed and invested to strengthen education systems, including ECD programmes, for all children and improve access to and quality of education that can respond to the specific needs of migrant children, from the early years to secondary and vocational education, and including language instruction, psychosocial support and orientation services for migrant children.
- Enact policies that allow and certify innovative non-formal or informal learning opportunities that meet quality standards for out-of-school children. These opportunities should be accredited or should have pathways into the accredited formal system so that children can transition into formal systems.

4. Securing long term solutions for migrant children in irregular situations, in the child's best interests including policies aimed at facilitating regularisation, social inclusion into host communities and protection from discrimination, racism and xenophobia and child rights policies and procedures on returns

- Develop and implement clear procedures for determining the best interests of the child leading to the identification of comprehensive, protective and sustainable solutions for migrant children, with due regard to children's right to be heard, and including, for example amongst others, the reunification with (extended) family members, identification of pathways for regularisation, including plans for their integration in the country of destination, opportunities for study permits, or options for their return in countries of origin, if in their best interests.
- States should have a formalised, individual, culturally sensitive and robust best interest determination procedure that precedes any decision to issue a return decision/order to leave the territory for an unaccompanied or separated child or family with children. When children are concerned, returns should be both assisted and voluntary. If return is considered to be in the best interests of the child, individual plans for the child's sustainable return should be developed, including on transfer of care, and adequate and ongoing post-return evaluation.
- If return is found to be in the best interest of the child, safeguards should be put in place to ensure safe returns, readmission agreements in line with the UNCRC, and the existence of appropriate reception and reintegration and monitoring mechanisms for children upon return. Deprivation of liberty of children for immigration related reasons during return must be avoided.
- Legislation and policies affecting migrant children should be reviewed and when appropriate amended to clarify the pathways for regularisation, including options for permanent residence status and to enhance the sense of stability for migrant children who have lived in countries of transit or destination for a long time and promote their ability to make plans for their own future as adults.
- Develop bilateral or multilateral agreements with other relevant States which standardise approaches for identifying and implementing sustainable solutions for migrant children in keeping with their best interests and facilitate inter-country case management.

Annex:

Background

Irregular migrant children often experience multiple rights deficits and vulnerabilities, as children and as migrants in an irregular situation. The existing international legal framework provides the foundation upon which a Global Compact on safe, orderly and regular migration should be built. In this context, the Convention on the Rights of the Child should be the overarching framework guiding all decisions concerning migrant children, regardless of their status or any other conditions, and its provisions apply to all children under the jurisdiction or effective control of the state. States are urged to treat children first and foremost - and without exception - as children.

Special considerations:

We would urge states to consider the following points:

Need for child focused responses

Migrant children in irregular situations are often unable or unwilling to seek protection and access to services when they need it, yet they are extremely vulnerable to violence, trafficking, exploitation and discrimination. Fear of detection and fear to be reported to immigration authorities are overwhelming barriers that obstruct irregular migrant children's access to key protective measures and services. Child-focused responses should 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, with a particular focus on protection and access to education. To that end, child protection actors should bear primary responsibility for migrant children as regards to service provision and decision-making.

Centrality of protection from reception to the identification of sustainable solutions

Tailored policies and assistance provided to migrant children are critical to respond to the individual situation and cater to the different needs of children. A primary obligation of the child protection system for migrant children is also to support family unity or reunification where this is in the child's best interests and to provide safe referral systems to appropriate services, information, assistance and protection. Cooperation frameworks and information sharing across countries with the view of enhancing protection of children is essential for individualised assessments to determine children's identity, assessing their age, family tracing and reunification.

Barriers to education

Education is one of the first services demanded by families and children during crises. And yet, it is all too often the first service suspended and one of the last services resumed. Though families and children claim education as a top priority, the barriers to getting an education remain tremendous, including discriminatory laws and policies. When migrant families settle in new homes, legal, financial and language barriers, fear of immigration enforcement, inability to transfer their previous school work, and xenophobia are all common factors that keep children out of classrooms. In addition, school qualification certificates are not acknowledged across borders and school systems, and may discourage families to send their children to school. Yet education is a right (CRC article 24) and a critical opportunity. Education can provide a protective environment during displacement, offering protection against the worst forms of exploitation and harm, and a powerful platform to

deliver lifesaving interventions and messages. Education can also offer a child stability, provides a sense of normalcy and helps create a buffer against the stress of upheaval.

Therefore the Global Compact should include measures to turn the commitment from states in the New York Declaration to provide quality education within a few months of arrival for all migrant children.

Best interest determination procedures for sustainable solutions

Increasingly, children in irregular situations find themselves in situations of protracted uncertainty – left in limbo for months and years without access to their rights and with no solution in sight. Such a situation affects their childhood is contrary to their best interests and has long term consequences. The Compact must set out a strategic vision and prioritize rights-based policies and pathways out of irregularity that supports 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.

Family reunification

Family unity is a major motivating factor for children's movement – at least 300,000 unaccompanied and separated children moving across borders were registered in 80 countries in 2015/2016 – a near fivefold increase from 2010/2011 (source: UNICEF, 2017, *A Child is a Child – Protecting children on the move from violence, abuse and exploitation*, [link](#)). Many are separated because families could not move together. The severe limitations of safe and regular pathways for migrants and refugees pushes many families to pool scarce resources for one family member to afford the cost of irregular travel towards safety or better opportunities. Where family reunification procedures exist, they can often be over-burdensome, fraught with practical obstacles and lengthy, leaving families apart for extended periods of time. The longer the journey of a child takes, the higher the risk for children to be trafficked, exploited and abused. Practical obstacles to access existing family unification include statutory time limitations, legally mandated 'waiting periods', financial thresholds (having to proof a certain type of income), practical obstacles such as accessibility of consular services where applications can be filed. Many states also take a narrow definition of families that only considers nuclear families which significantly reduces access to family reunification and does not reflect the realities of family care structures and protection needs of children.

These barriers run counter to states obligations under the CRC to respect family unity. It does not acknowledge that family unity is an important factor for 'successful integration' for all as families tend to integrate easier, faster and smoother. Easing family reunification would also reduce costs by reducing the need for state-provided care/guardianship and reduce costs in the long-term regarding child development (the psychosocial impact of long separations on children), social behavior and integration.

Alternatives to detention

Measures that focus solely on stopping the detention of unaccompanied children are appropriate but not sufficient, as immigration procedures in many States result in the detention of entire families, including children. Prohibiting immigration detention requires governments to develop alternatives to detention for the entire family. The key considerations and a practical framework for developing such alternatives have been outlined by the International Detention Coalition in the Community Assessment and Placement (CAP) model. This model outlines five key steps to implementing effective alternatives, including: reviewing national laws and policies; screening and assessment procedures; case management and support services; placement options; and ensuring minimum human rights standards are respected.