

# INITIATIVE ON CHILD RIGHTS IN THE GLOBAL COMPACTS

## KEY ISSUES AT STAKE FOR CHILDREN IN THE GCM ZERO DRAFT PLUS

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 have been prepared in response to the Zero Draft Plus of the Global Compact for Migration (hereafter "the Compact") published on 5 March 2018, and in view of the upcoming second intergovernmental negotiations on the draft text of the Compact on 12-15 March 2018.

### **PREAMBLE: Reference the UNCRC as part of the core human rights treaties**

§ Argument: Children make up a substantial and growing part those on the move. Given the specific needs of children an explicit mention of the UNCRC would be important to ensure that the Compact's framework for enhanced cooperation on international migration is explicitly founded on the rights of children and the commitments made through the UNCRC

### **OBJECTIVE 1: Make children visible & improving data on migrant children**

§ Argument: Given important ethical and protection concerns, data on children, especially biometric data, should be collected, stored or shared for the purpose of protection only, and never collected through coercion.

§ Proposal: **ADD reference to additional safeguards to ensure full compliance with international standards and best practices on data protection, child protection and privacy rights.**

### **OBJECTIVE 2: Child-specific migration drivers**

§ Argument: Human mobility is a complex phenomenon driven by factors that interact with each other and are difficult to isolate. The decision to leave one's home is never an easy one, and is rarely made due to one reason only. In the case of children, the aspiration to get a good education is usually combined with other triggers for migration, including domestic or gang violence. Many children migrate on their own to reunify with family and in search of better opportunities. This often makes it difficult to clearly distinguish socio-economic root causes from drivers linked to persecution or conflict.

Furthermore, given the current lack of pathways for safe migration, many migrants may leave their country for economic reasons, but they then face situations en route that threaten their very life and freedom, such as violence by smugglers, labour exploitation, detention, etc. Children are particularly vulnerable in this regard and must be protected, no matter why they left, where they are or what's their status. Otherwise they will fall through the cracks of both Compacts.

§ **Proposal:** ADD reference to child-specific drivers of child and adolescent migration in this paragraph, such as domestic violence, recruitment by gangs, child marriage and other traditional harmful practices, lack of educational opportunities, family reunification and climate change.

## **OBJECTIVE 4: Realize every child's right to a name, identity and nationality**

### ***Name and identity (birth registration)***

§ **Argument:** Birth registration is unconnected with the granting of legal status or citizenship by any State. Every child has a right to a name and an identity, regardless of migration status. The lack of birth registration may have many negative impacts on the enjoyment of children's rights, such as child marriage, trafficking, forced recruitment and child labour. Birth registrations may also help to achieve convictions against those who have abused a child. Unregistered children are at particular risk of becoming stateless when born to parents who are in an irregular migration situation, due to barriers to acquiring nationality in the country of origin of the parents as well as to accessing birth registration and nationality at the place of their birth. Every child should be immediately registered at birth and issued a birth certificate, regardless of migration status.[1]

§ **Proposal:** KEEP recommendation to register migrant births (paragraph 19a).

### ***Nationality (safeguards against statelessness)***

§ **Argument:** UNHCR estimates that at least 3 million children around the world are stateless, which is both a driver for and a consequence of unsafe migration. While States are not obliged to grant their nationality to every child born in their territory, they are required to adopt every appropriate measure to ensure that every child has a nationality when he or she is born. A key measure is the conferral of nationality to a child born on the territory of the State, at birth or as early as possible after birth, if the child would otherwise be stateless.[2] When the law of a mother's country of nationality does not recognize a woman's right to confer nationality on her children and/or spouse, children may face the risk of statelessness. That's why it's important to grant equal rights to men and women to confer nationality.[3]

§ **Proposal:** KEEP call for stronger measures to facilitate citizenship to children born in another State's territory in situations where a child would otherwise be stateless, including by allowing women to confer their nationality to their children (paragraph 19b).

§ **Proposal:** KEEP call to provide access to individual documentation for female migrants and children (paragraph 19e).

§ **Proposal:** KEEP recommendation against requirements to prove citizenship or nationality at service delivery centres (19f).

## **OBJECTIVES 5 & 6: Pathways for regular migration that keep families together and respect every child's right to family life & child-sensitive labour mobility, ethical recruitment and decent work**

### ***Keeping families together***

§ **Argument:** The current lack of safe and regular migration channels leaves many children no other choice than to use dangerous routes. Migrant children risk their lives every day, seeking to reunite with loved ones – crossing the sea on dinghy rubber boats, traversing deserts by foot, and placing their lives in the hands of profit-oriented smugglers, where they risk being trafficked into exploitation.

Every migrant child has a right to family life, without discrimination, regardless of her parent's status, background, income or skill level. Preventing family separation by expanding safe and regular options for families to move together and facilitating prompt family reunification protects children's lives and wellbeing. Efficient family reunification procedures also foster social inclusion and integration to the benefit of migrants and host communities. When children are separated from their families, they are more vulnerable to sexual exploitation, trafficking, gender-based violence and recruitment into armed forces or groups. Additionally, research shows that family separation compounds children's vulnerabilities, has a negative impact on their mental and physical wellbeing and their resiliency, delaying pathways to integration and inclusion into host communities. Children left behind by migrating parents are at greater risk of neglect, abuse or institutionalization, with severe impact on children's psychosocial development.

§ **Proposal:** KEEP paragraph 20g calling to facilitate family reunification for migrants at all skills levels and to remove barriers to the realization of the right to family unity and paragraph 20f.

§ **Proposal:** ADD recommendation to define family beyond parents and children and to look at family reunification on a case-by-case basis, also recognizing de facto personal ties and dependency among relatives, foster family, etc.

### ***Systematic consideration of children and their best interests in labour mobility schemes and in fair and ethical recruitment and decent work***

§ **Argument:** Children are affected by migration even when they do not move. Any labour mobility model agreement or cooperation framework should include a systematic assessment of its impact on children, such as the right to family life of children left behind by migrating parents. Measures to realize this right in practice, such as visas for family visits, guaranteed re-entry or family leave should be an integral part of these schemes. The same applies to measures aimed at facilitating fair and ethical recruitment and decent work.

§ **Proposal:** ADD reference to the need to systematically assess the impact on children's rights in the design and implementation of the measures proposed in paragraphs 20a & b.

§ **Proposal:** ADD reference to the need to pay specific attention to preventing child labour and other forms of exploitation in paragraph 21.

## **OBJECTIVES 7, 9 & 10: Address and reduce vulnerabilities of children in the context of migration, including with regards to smuggling and trafficking**

§ **Argument:** To translate the best interests of migrant children into practice, the zero draft proposes concrete and doable actions, not only for children as a group, but also targeted measures addressing the specific vulnerabilities of unaccompanied or separated children, child victims of trafficking, children in irregular or other vulnerable situations, etc. Both the commitment to consider children's rights as a cross-cutting priority and the proposed specific measures that are relevant to children should be kept in successive drafts of the GCM.

§ **Proposal:** KEEP reference to the operationalization of the Global Migration Group Principles and Guidelines, Supported by Practical Guidance, on the Human Rights Protection of Migrants in Vulnerable Situations (paragraph 22a).

§ **Proposal:** KEEP call to establish robust procedures to ensure the best interests of the child in practice (paragraph 22d), as well specialized procedures to protect unaccompanied and separated children (paragraph 22e).

§ **Proposal:** KEEP reference to the importance of reducing precariousness of status and related vulnerabilities (paragraph 22g).

§ **Proposal:** KEEP reference to non-criminalization of irregular entry (paragraph 24d).

§ **Proposal:** ADD language under paragraph 22c, d or e ... *and that States can quickly and comprehensively respond to the specific vulnerabilities and needs of migrant children. Concrete ways of operationalizing the best interests of the child principle include strengthening child protection systems, including, inter alia, by investing in the social workforce, promoting closer collaboration between immigration authorities and child protection and welfare actors, and ensuring that child protection authorities are in the lead whenever children are concerned.*

§ **Proposal:** ADD (under paragraph 22 or 23c) call to strengthen cross-border collaboration of child protection authorities along migratory routes. Concrete measures to achieve this could include: standard protocols and procedures for the handover of guardianship across jurisdictions; strengthening cooperation on family tracing to inform decisions on sustainable solutions for children; developing regional guardianship networks; setting up joint case management systems; and establishing common national or regional standards for child-sensitive reception practices, including for age assessment.

§ **Proposal:** ADD clarification that residency for child victims of trafficking in persons should not be linked to their participation in judicial proceedings (paragraph 25h).

§ **Proposal:** ADD Provide for the physical, psychological and social recovery of victims of trafficking in persons, in particular, the provision of appropriate housing; counselling and information, medical, psychological and material assistance; and employment, educational and training opportunities, taking into account the special needs of children (as per the Palermo Protocol Article 6, sub-points 3 and 4).

## **OBJECTIVES 11 & 12: Child-sensitive border management and status determination**

§ **Argument:** We are concerned that the 0 draft Plus loses the reference to the presence and involvement of child protection authorities at border.

Child protection authorities should be readily available at international borders to ensure a continuum of care for children. Assessments and determinations of the Best Interests of the Child should be initiated as soon as any migrant child (not only when unaccompanied or separated) is identified, 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 her participation are of essence, as well as immediate referral to child protection authorities, appointment of a guardian and provision of information in a language and format the child can understand.

The new language ensuring that child protection authorities are able to commence procedures for a best interest determination "once a child crosses an international border" creates a gap in the continuum of care for migrant children and a substantial break in the Compact's overarching principle of upholding the best interests of the child *at all times* as the primary consideration in situations concerning children in the context of international migration.

§ **Proposal:** KEEP paragraphs 26b & 26g.

§ **Proposal:** KEEP paragraphs 27b & 27d.

§ **Proposal:** REINSTATE language from Zero Draft in paragraph 26g of Zero Draft Plus.  
*Ensure that child protection authorities are readily available at international borders ...*

## **OBJECTIVE 13: End child immigration detention**

§ **Argument:** In the New York Declaration Member States already committed to work towards ending immigration detention of children. Effective community-based care arrangements and non-custodial solutions that respect children's rights exist and have proven to work effectively and cost-efficiently. To make and measure progress, governments should 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.

§ **Proposal:** KEEP paragraph 28g calling to end the practice of child detention and provide alternatives.

§ **Proposal:** ADD recommendation in paragraph 28g for Member States to develop regional or national road maps with time-bound milestones outlining how they intend to end the practice of child immigration detention.

§ **Proposal** for alternative language in Paragraph 28g: *Uphold child rights by implementing action plans and defined milestones in order to work towards ending child detention and establishing alternatives to detention, in line with the best interests of the child and child protection standards.*

## OBJECTIVE 14: Child-sensitive consular protection

§ **Argument:** Capacity building of consular services should include child-friendly procedures to interview, assist and support migrant children. Actions in this area could draw on existing good practices, including model consular agreements focused on children.

§ **Proposal:** ADD that model consular cooperation agreements should have a section on child protection (paragraph 29a) and that consular officers should be trained in child rights (paragraph 29d).

## OBJECTIVES 15 & 16: Provide access to basic social services to migrant children and promote their inclusion

§ **Argument:** A child is a child until the age of 18, and each childhood provides a unique chance to grow up healthy, learn and develop. Migrant children have the same needs and rights as national children, and they all should be able to safely access services in practice without discrimination. Children are also negatively impacted by existing restrictions addressed at their parents.

Migrant children also face severe discrimination and xenophobia. The zero draft includes concrete actions that would support Member States to promote social inclusion -- measures that would benefit migrant children and host communities alike, such as exchanging best practices (paragraph 30b), developing targets to accelerate inclusion (paragraph 30d) and facilitating migrant participation locally (paragraph 30h). Crucially, the zero draft acknowledges that inclusion is not possible without access to secure status (paragraph 30g).

We fully support paragraph 30c as presented in the zero draft plus, but we are concerned that many Member States have expressed opposition and concerns towards the principle of firewalls. Firewalls are intended to safeguard the role of service providers whose priority is the welfare of service users; it protects services providers from breaching their confidentiality obligations as well as potentially infringing upon data protection rules. Importantly, the practice allows all migrants to enjoy their

right to accessing basic services. The fear of data being shared with immigration authorities means that many immigrants will choose not to access basic services, such as healthcare and education or seek redress for cases of exploitation such as trafficking or violence. Children are particularly vulnerable in this context. A child is a child and migrant children have the same needs and rights as national children. Migrant children should be able to safely access services in practice without discrimination and fear of being apprehended by migration authorities. Children are also negatively impacted by restrictions addressed at their parents. Ensuring non-discriminatory access to services to all irrespective of their migration status will also guarantee public interests goals: respect of human rights, enhancement of the effectiveness of health systems, trust in police and in the justice systems, combating xenophobia and discrimination and build inclusive societies.

§ **Proposal:** KEEP reference to safe access to services regardless of status (paragraph 30c) and to equal access to education (paragraph 30g).

§ **Proposal:** KEEP reference to firewalls in paragraph 30c  
OR

§ **Proposal:** Alternative language for paragraph 30c: *Develop, reinforce and maintain necessary capacities and resources to deliver basic social services to all migrants, regardless of their migration status, and ensure that all necessary steps are taken to allow them to safely access these services. For this purpose, put in place measures that allow service providers to pursue professional ethics and independence by safeguarding users' confidentiality. Protect data privacy of all natural persons and ensure that such data is processed fairly and for specified purposes and on the basis of consent of the person concerned or some other legitimate basis laid down in law. Service providers should not be obliged to gather and report information about service users in an irregular situation for immigration control purposes and migrants should not be apprehended at places of service delivery.*

§ **Proposal:** KEEP call to reduce the stigmas associated with irregular status and promote integration through secure status and lasting solutions for children who cannot be returned and who are not eligible for asylum (paragraph 30g).

§ **Proposal:** ADD reference to Early Childhood Development, psychosocial support and sexual and reproductive healthcare (under paragraph 30).

## **REGULARISATION:**

§ **Argument:** Regularisations are a very common policy tool used by governments to address the reality and situation of people without authorisation to reside on the territory. Regularisation has important benefits for well-managed migration systems. These include, for example, increased tax revenues and social security payments, information about the resident population and labour market, increased trust for state authorities amongst migrant communities, reduced inequality and social exclusion, reduced vulnerability to exploitation and abuse such as trafficking; better regulation and coverage of working conditions and health and social services.

For children, young people and their families, clear status determination procedures mean secure and long-term perspectives and sense of security and belonging.

§ **Proposal:** KEEP the language on Regularisation throughout the draft

§ **Proposal:** ADD language: *Facilitate access to procedures towards residence status, including children, young people and families, with clear and transparent criteria, as a means to fully harness the social, economic, and other benefits of their integration.*

## OBJECTIVE 21: Sustainable and child rights-compliant returns

§ **Argument:**

The reference to best interest determinations in the context of returns in the zero draft is welcome, but additional safeguards are needed in the case of migrant children, as reflected below in the suggested edits. The Compact should make clear reference to the principle of non refoulement and should propose the systematic consideration of child rights in return and readmission agreements and the development of international standards for safe, assisted and voluntary return of children to their countries of origin. These standards would guarantee that returns take place only when in the best interests of the child, are carried out in a child rights-compliant manner by child protection authorities, and are accompanied by long-term reintegration support and monitoring upon return. To inform return decisions and practices that concern children (including those with families), the Compact could also encourage Member States to develop child-specific country of origin information reports, and suggest the development of guidelines for reintegration support.

§ **Proposal:** ADD recommendation to develop international standards for the safe, assisted and voluntary return of children to their countries of origin, to use child-specific country of origin information reports and to craft guidelines for reintegration support.

§ **Proposal:** ADD language in red

Paragraph 36e: *Ensure that return decisions are carried out by competent authorities, including child protection and welfare authorities, and removal orders follow an individualized assessment of the circumstances that may weigh against the expulsion, such as risks of torture, persecution, gross violations of human rights or other irreparable harm, in compliance with due process guarantees, in compliance with non refoulement, and with special attention to the real risks for children, so as to preclude the possibility of forced return to an unsafe country of origin, to a third country, or to a situation where the well-being of a child or other vulnerable migrant is at risk.*

Paragraph 36f: *Establish or strengthen monitoring and oversight mechanisms on return, readmission and reintegration in partnership with relevant stakeholders, including child protection and welfare authorities, in order to provide recommendations on ways and means to enhance safety, dignity and sustainability.*

Paragraph 36g: *Develop international standards for the safe, assisted and voluntary return of children to their countries of origin, ensure that a parent or legal guardian accompanies*

*children, who should only be returned after a best interests determination, throughout the return process, including post return monitoring, and ensure that child-specific country of origin information reports and child-sensitive guidelines are developed and utilized to guarantee clarity about reception and care arrangements of children in countries to which they are being returned.*

## **IMPLEMENTATION, FOLLOW-UP AND REVIEW**

§ **Argument:** 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 development 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.

§ **Proposal:** **ADD reference to children and young people as agents of change and key stakeholders that should be empowered to contribute to the GCM implementation and to keep relevant stakeholders accountable for progress made.**

§ **Proposal:** **ADD reference to monitoring progress by identifying targets and indicators along a graduated timeline in complementarity to and in alignment with the Sustainable Development Goals targets and indicators.**

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[1] See: Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, paras 20-22.

[2] Ibid., para 24.

[3] Ibid., para 26.