

INITIATIVE ON CHILD RIGHTS IN THE GLOBAL COMPACTS

RESPONSE TO DRAFT REV 1 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. 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 Draft Rev 1 of the Global Compact for Migration published on 26 March 2018, and in view of the upcoming third round of intergovernmental negotiations on the draft text of the Compact on 3-6 April 2018.

We commend the continued work of the Co-Facilitators for their leadership in developing a draft that mainstreams the rights of all children in the context of international migration and promotes the existing international legal obligations in relation to the rights of the child.

Best Interests of the Child and Human Rights

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. **All children, irrespective of their migration status are entitled to all rights articulated in the Convention on the Rights of the Child (CRC) and other core international human rights instruments. For this reason we warmly welcome the reference to the promotion of existing international legal obligations in relation to the rights of the child in the guiding principles, and would encourage the Co-Facilitators to make a more explicit mention of the CRC.**

We also welcome the inclusion of the cornerstone principle of non-discrimination in the human rights guiding principle, reinforcing already existing references to States' obligations to respect, protect and fulfill the human rights of all migrants.

We note that references to States' sovereign migration jurisdiction have been expanded throughout the Draft Rev 1. We would welcome that States' obligation to protect the human rights of all migrants regardless of their status is more systematically linked to such references. Moreover we are concerned by the general weakening of language on operationalizing documents such as the Global Migration Group Principles and Guidelines.

Protection, Children in Vulnerable Situations and Child-Specific Migration Drivers

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 all child-specific provisions in Objective 4 and the commitment in Objective 7 to protect and assist migrants in accordance with obligations under international human rights law, as well as the new reference to**

particular, multiple and intersecting forms of vulnerability. 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. **However, we find it worrying that Objective 7 makes no mention of the need to increase access to secure status and sustainable solutions for children in vulnerable situations, as this is a key factor that compounds children’s vulnerability at destination.**

We are equally worried that, despite the welcome mention of vulnerabilities linked to the reasons why migrants leave their country of origin, there is still no reference to child-specific drivers of migration in Objective 2, 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.

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 is reached. In this process the right of the child to be heard and her or his participation are of essence, as well as immediate referral to child protection authorities, appointment of a guardian or caregiver and provision of information in a language and format the child can understand.

We also note and are concerned by the continued 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. **For example, paragraph 24c under Objective 9 calls for facilitating cross-border cooperation on intelligence and law enforcement, but does not make reference to the role child protection actors play in such cooperation. Furthermore, under Objective 11, paragraph 26c presents a call for child protection authorities to commence with best interest determinations (BIDs) once a child crosses an international border. We welcome this call but strongly recommend additional language calling for capacity development initiatives that would train frontline and law enforcement actors stationed at borders in child rights, child-sensitive procedures and vulnerability identification, and would ensure they are qualified to promptly refer children to child protection authorities.** We continue to call for a reference to strengthening consular child rights and child protection capacities in Objective 14, including child-friendly procedures, interview techniques and referral protocols.

Detention

The Initiative applauds the retention of paragraph 28g’s strong language calling for States 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.”* We also note paragraph 28a’s language on expanding alternatives to detention has been strengthened by the addition of a reference to community-based care arrangements. This is a welcome step toward mainstreaming such practices. We would however recommend replacing the word “including” with “favouring” in this paragraph.

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. **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 Draft Rev 1 retains a welcome actionable commitment in paragraph 30g to grant access for all migrant children and youth to quality education and to ensure that they can regularly attend. We strongly welcome the addition of early childhood development to the substantial list of education opportunities carried over from previous drafts.

We appreciate language calling for States to provide all migrants, regardless of their status, equal access to and delivery of basic services necessary to exercise their human rights. Children of all ages need services such as healthcare, education, protection, housing and social protection 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 of quality, and accessible at all levels.

We welcome substantive language calling for assurances that personal data is not reported to immigration enforcement authorities, and migrants are not apprehended at places of service delivery. Too often, children and their parents do not access much-needed healthcare, education or other services because of the fear of being reported to immigration authorities.

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 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.

Finally, we call for children not to be looked at in isolation throughout the migration cycle – lack of access to services by parents has a very negative impact on children.

Data

We welcome the inclusion of the right to privacy and protection of personal data in paragraph 16 and the references to avoiding negative profiling, discrimination and potential human rights violations in paragraph 16g.

Further to the collection of new data, we encourage the use of existing data to challenge anti-migrant narratives that impact the wellbeing of children. In this regard, we welcome the inclusion of relevant language into Objective 1 paragraph 16c and emphasise that States are also responsible for combatting xenophobic narratives towards migrant children and youth by leveraging available information. Data should be gathered not only on the conditions and protection gaps that children on the move face, but also to hold States accountable and share good practices on progress made towards realizing the rights of children in the context of migration.

Labour

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). To that end, **we are especially pleased to see the addition of child labour to the list of human and labour rights violations in paragraph 21f and the retention of firewalls in paragraph 21j.**

Returns

We welcome the assurances that decisions relating to the potential return of a child be based on the outcome of BID procedures. Such procedures should be formalised in law, policy and practice and should be individual and robust and include children travelling with their families. Future drafts 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 this has been determined to be in the best interests of the child through a BID process, 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.

While the added reference to returns being undertaken in accordance with international human rights law in paragraph 36e is appreciated, we recommend 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 are discouraged by the limitations placed on **the right to family unity and family life that changes to paragraph 20g seem to imply. Every child has a right to be and grow up with her family, unless this is not in her best interests. More pathways to regular status should be made available for children and parents so this right can be realized in practice. We therefore urge you to**

reinstate the language on family reunification as it appeared in previous drafts. Moreover, 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 are pleased by new language calling for facilitation of access to procedures towards residence status.

Complementarity between the Compacts

While we recognise that the Global Compact for Refugees is distinct 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 child migrants. This includes migrant children in vulnerable situations, such as undocumented children. A child is a child, no matter what legal category or protection regime 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 as part of mixed migratory flows and large movements, and may fit different definitions throughout their journeys.

As recognised in the New York Declaration, the experiences of refugees and migrants overlap significantly in mixed migratory flows. Refugees and migrants move along the same routes in the same forms of transportation and often suffer the same violence, abuse, exploitation, discrimination, xenophobia and human rights abuses, including at the hands of unscrupulous smugglers and traffickers. Moreover, the reasons for which refugees and migrants leave their countries of origin are often deeply intertwined, to the point where many migrants in vulnerable situations cannot be returned but don't have access to secure status or sustainable solutions. The lack of regular migration channels adds to the possibility of migrants, including children, entering into situations of vulnerability in transit and at destinations. These points are not addressed in the current draft, where a clear and strong call to expanding safe and regular migration pathways continues to be lacking (e.g. in Objective 5). If the Global Compact for Migration does not take the reality of contemporary migration flows into account, there is a real risk of allowing many child and young migrants to fall through the cracks between both Compacts.

Implementation/Follow-up and Review

The positive steps articulated thus far 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 systematically include child rights and child protection, 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. 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.

Finally, we are very concerned that commitments to implement and monitor the Compact have been substantially weakened in the latest draft. The text provides no clarity or guidance on how countries could take into account their specific migration realities and priorities vis-à-vis the Compact's objectives and actionable commitments. The new language in paragraph 39 seems to leave the implementation of the Compact completely up to States' discretion. Furthermore, references to tracking progress and monitoring Compact implementation have been deleted from paragraph 45.

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 ongoing efforts to produce a Global Compact on Migration that ensures the rights of children who are on the move or impacted by migration are respected and fulfilled. 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.