

CHILD RIGHTS IN THE GLOBAL COMPACTS:

Recommendations for protecting, promoting and implementing the human rights of children on the move in the proposed Global Compacts



Working Document

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- ▶ Caritas Internationalis
- ▶ Child Fund Alliance
- ▶ Committee on Migrant Workers (CMW)
- ▶ Committee on the Rights of the Child (CRC)
- ▶ Cross-Regional Center for Refugees and Migrants
- ▶ Destination Unknown Campaign
- ▶ Global Partnership to End Violence Against Children
- ▶ International Catholic Migration Commission (ICMC)
- ▶ International Council of Voluntary Agencies (ICVA)
- ▶ International Detention Coalition (IDC)
- ▶ International Organization for Migration (IOM)
- ▶ International Social Services
- ▶ Marta Santos Pais, Special Representative of the Secretary-General on Violence against Children
- ▶ Migrant Forum in Asia (MFA)
- ▶ NGO Committee on Migration
- ▶ Norwegian Refugee Council
- ▶ Oak Foundation
- ▶ Office of the United Nations High Commissioner for Human Rights (OHCHR)
- ▶ Plan International
- ▶ Platform for International Cooperation on Undocumented Migrants (PICUM)
- ▶ Public Services International (PSI)
- ▶ Save the Children
- ▶ SOS Children’s Villages
- ▶ Terre des Hommes
- ▶ United Nations Children’s Fund (UNICEF)
- ▶ World Vision

This document is intended to serve as an advocacy document used to engage governments and other stakeholders in adopting a common approach to protecting children on the move. For any questions about this document, please contact Amy Hong (amy.hong@terredeshommes.org).

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1 INTRODUCTION

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⁾ A key outcome of the Declaration is the creation of two new Global Compacts, one on refugees and one on migrants. These Global Compacts, to be agreed by government representatives at the United Nations (UN) in 2018, will articulate common commitments in respect of the protection of refugees and migrants. 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⁾

This working document by the Initiative for Child Rights in the Global Compacts, a multilateral initiative supported by 26 organizations, sets out what these protection and inclusion measures entail with respect to six priority issues involving refugee and migrant children (sometimes referred to collectively as “children on the move”⁽⁴⁾) and what provisions it would consequently be appropriate to include in the two Global Compacts. The six issues are:

- 1) Non-discrimination
- 2) Best interests of the child
- 3) Child protection
- 4) Child immigration detention
- 5) Access to services for refugee and migrant children
- 6) Sustainable solutions in children’s best interests

The six issues were selected because of their importance for refugee and migrant children and the commitments affecting them made in the New York Declaration, as well as other binding and soft law obligations in international law, particularly the UN Convention on the Rights of the Child (CRC).⁽⁵⁾ Each of these issues is presented in a separate section, opening with a summary of relevant information and references to existing commitments by States, notably those set out in international law and soft law instruments, some of which are summarized in the Recommended Principles for Children on the Move and Other Children Affected by Migration that were developed in 2016⁽⁶⁾ and endorsed by the UN Committee on the Rights of Migrant Workers and Members of their Families in September 2016.⁽⁷⁾ The six issues do not address all the obligations that States have under international law to guarantee the rights of refugee and migrant children. Respecting the rights of all children, whether nationals or non-nationals, should underpin the provisions in the Global Compacts that affect children. It follows that States should ensure children’s right to be heard and take into account gender-related issues, both in the context of actions and decisions affecting an individual refugee or migrant child, as well as in the broader context of adopting laws, policies and practices affecting children.⁽⁸⁾

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.

4 The term “children on the move” refers to children moving for a variety of reasons, voluntarily or involuntarily, within or between countries, with or without their parents or other primary caregivers. This includes: children displaced by conflict and natural disasters; children who move with their parents or migrate alone (e.g., to pursue better life opportunities, look for work or education or to escape exploitative or abusive situations at home); and children who are trafficked. “Other children in the context of migration” refers to children remaining in the country of origin after their parents have migrated, and to children living with their parents in the destination country. In the present working document, the phrase “refugee and migrant children” is used to refer to all the children who would be the subject of the two proposed Global Compacts, including children who are internally displaced.

5 UN General Assembly, Convention on the Rights of the Child, General Assembly resolution 44/25 of 20 November 1989.

6 Available at <https://principlesforcom.jimdo.com>.

7 See <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20450&LangID=E>.

8 See Committee on the Rights of the Child, General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration, UN document CRC/C/GC/14 of 29 May 2013. Article 12(1) of the CRC requires States Parties to “assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child”.

Each section contains one or more examples of how international standards have been put into practice in a particular State or region, based on information and examples contributed by international organizations and non-governmental organizations (NGOs) engaged in protecting and supporting refugee and migrant children. Each section concludes with one or more goals relating to the rights of refugee and migrant children that are proposed for the Global Compacts. Specific targets are proposed for achieving these goals, supported by indicators to allow progress to be monitored.

1.1 Proposals for goals, targets and indicators

The Sustainable Development Goals⁽⁹⁾ (SDGs) adopted in 2015 by the UN General Assembly include numerous goals and targets relevant for refugee and migrant children and their families. The SDG framework provides a useful model for monitoring progress towards the achievement of goals concerning refugee and migrant children. Accordingly, this working document uses the same framework (of goals, targets and indicators) to suggest a process for achieving goals and targets concerning refugee and migrant children through the Global Compacts. Though the indicators associated with the SDGs set out to measure progress principally at global level, some of the indicators proposed in this paper would show the level of change at national level.⁽¹⁰⁾ The goals proposed are expected to be achieved by the same end date as most of the SDGs, 2030, but in order to stimulate progress and afford time for reorientation where necessary, earlier dates for the accomplishment of targets are set. Some priority targets are to be realized by 2021, considered the earliest realistic date for implementing change; other, more long-term targets, are to be realized by 2025, a date which affords considerable implementing time but also the opportunity to institute any necessary further changes by 2030 where progress has been inadequate. Some targets are intended to act as milestones on the way to achieving goals, while other targets focus on steps that would contribute to a goal being achieved. The indicators proposed are intended to provide data to assess whether progress is being made towards achieving the stated targets and goals. Where appropriate, the indicators proposed are the same as indicators already agreed for monitoring progress in reaching the SDGs or Sustainable Development Targets.⁽¹¹⁾ Some have been modified so that they specifically assess the situation of refugee and migrant children. Other indicators are based on ones developed by other specialists.⁽¹²⁾

Alongside SDGs that apply to refugee and migrant children as much as other children,⁽¹³⁾ several SDGs include targets that relate specifically to migration, mobility and legal identity. These include:

- ▶ Goal 10 (“Reduce inequality within and among countries”) and several of its targets, particularly Target 10.7 on migration (“Facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies”);
- ▶ Goal 16 (“Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”), notably Target 16.2 (“End abuse, exploitation, trafficking and all forms of violence against and torture of children”) and Target 16.9 (“Achieve universal legal identity and birth registration by 2030”).

Where indicators proposed in this working document have been aligned with indicators agreed for monitoring progress in achieving these SDGs and targets, this is noted in a footnote.

9 UN General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, General Assembly resolution of 25 September 2015, UN document A/RES/70/1 of 21 October 2015.

10 A number of States have already adopted objectives and indicators concerning refugee and migrant children, e.g., Mexico’s National Objectives for Girls, Boys and Adolescents. One of the 25 objectives aims to guarantee the rights of all refugee or migrant children by providing for special protection measures: it is complemented by several indicators (Sistema Nacional de Protección Integral de Niñas, Niños y Adolescentes, 25 al 25: Objetivos Nacionales de Derechos de Niñas, Niños y Adolescentes, 2016, <https://www.infosipinna.org/25-al-25-descarga-documento>).

11 See United Nations Economic and Social Council, Report of the Inter-Agency and Expert Group on Sustainable Development Goal Indicators, UN document E/CN.3/2016/2/Rev.1 of 19 February 2016, available at http://www.un.org/ga/search/view_doc.asp?symbol=E/CN.3/2016/2/Rev.1; supplemented by Report of the Inter-Agency and Expert Group on Sustainable Development Goal Indicators, Annex IV, Final list of proposed Sustainable Development Goal indicators, available at <https://sustainabledevelopment.un.org/content/documents/11803Official-List-of-Proposed-SDG-Indicators.pdf>.

12 Such as those published in working papers published by the Global Knowledge Partnership on Migration and Development (KNOMAD, <http://www.knomad.org>), e.g., Rodolfo Córdova Alcaraz, Human Rights Indicators for Migrants in Mexico: National Consultation Report, KNOMAD working paper 23, April 2017. KNOMAD is supported by a multi-donor trust fund established by the World Bank, Germany’s Federal Ministry of Economic Cooperation and Development (BMZ), Sweden’s Ministry of Justice, Migration and Asylum Policy, and the Swiss Agency for Development and Cooperation (SDC). In April 2017, the UN Special Rapporteur on the Rights of Migrants proposed eight “human mobility” goals to be achieved by 2035, also supported by targets and indicators (Report of the Special Rapporteur on the human rights of migrants on a 2035 agenda for facilitating human mobility, UN document A/HRC/35/25 of 28 April 2017). In addition, UNICEF has developed a tool for tracking the realization of the rights of the child in progress reporting for the SDGs (see UNICEF, Mapping the Global Goals for Sustainable Development and the Convention on the Rights of the Child, 2016 https://www.unicef.org/agenda2030/files/SDG-CRC_mapping_FINAL.pdf).

13 Such as SDG 3 (“Ensure healthy lives and promote well-being for all at all ages”) and SDG 4 (“Ensure inclusive and equitable quality education and promote life-long learning opportunities for all”).

1.2 Data to assess progress in achieving goals and targets

Effective assessment of progress towards achieving goals and targets requires the use of consistent definitions, and regularly updated, appropriately disaggregated and carefully collected data. There have been significant advances in data collection in the fields of refugees, migration and development in recent years, though relatively little attention has been paid to identifying or collecting quantitative and qualitative information to assess the social and human impacts of migration policies. The Global Compacts should certainly emphasize the importance of collecting and sharing disaggregated data about child refugees, migrants and stateless and internally displaced children, both to inform policy-makers about the realities experienced by such children and as a tool to monitor progress in the realization of goals and targets. The proposals set out in this working document depend on the use of consistent definitions across jurisdictions, and on the collection of accurate, targeted and disaggregated data, which would enable an analysis of progress against agreed baselines as well as a comparison of the access to rights and protection of refugee and migrant children in different countries, or by comparison with national children. The Global Compacts should emphasize the importance of collecting disaggregated data about child refugees, migrants, and stateless and internally displaced children as a tool in monitoring progress in the realization of goals and targets.

2 NON-DISCRIMINATION

2.1 Background

Refugee and migrant children risk discrimination in all aspects of their lives, both because they are children and because of their status as migrants, refugees or asylum seekers, or members of particular religious, ethnic, racial or nationality groups. They are frequent targets of xenophobic crime, including both physical attacks and hate speech. They are frequently criminalized because of irregular entry or stay. They are regularly denied access to health, education, housing and other services, or to work simply because of their status. Migration status intersects with gender and disability-linked vulnerabilities to compound the risk of discrimination-related exploitation or violence, including in situations of sexual exploitation or trafficking. Age may also exacerbate discrimination. Some States operate a double standard with respect to child protection, refusing refugee and migrant children aged 15 to 17 access to protective care when they face abuse or exploitation, thus increasing their risk of re-victimization.

In addition to these acts of direct discrimination, refugee and migrant children also routinely experience indirect discrimination. The failure to implement robust social inclusion measures that stimulate integration between host and refugee or migrant communities as soon as possible from the time of reception, enabling both to positively adapt to change, can have enduring detrimental effects on societies. Factors affecting all children, such as the lack of access to information or to justice, disproportionately affect these children because of States' failure to address their particular needs, including for mentorship or interpreting services. The family status of refugee and migrant children may also affect their exposure to indirect discrimination. Because accompanied children have not generally been considered at risk of protection failures, they are routinely excluded from participation in proceedings that have a direct impact on their future. The continued exposure of refugee and migrant children to discrimination and xenophobia is incompatible with Sustainable Development Goal (SDG) 10.3 (which calls for "equal opportunity... including by eliminating discriminatory laws, policies and practices and promoting appropriate legislation").

2.2 Relevant provisions in international law

The principle of non-discrimination is a fundamental norm of international law, enshrined in the Universal Declaration of Human Rights, and codified in many binding international treaties including the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child (CRC).⁽¹⁴⁾ The CRC places a specific obligation upon States Parties to take appropriate measures to ensure that children are protected from all forms of discrimination or punishment on the basis of the "status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members". Article 8 of the CRC requires States Parties to "respect the right of the child to preserve his or her identity".

Several soft law commitments also enshrine the fundamental and binding nature of the non-discrimination norm. The Committee on the Rights of the Child notes that the non-discrimination principle "prohibits any discrimination on the basis of the status of a child as being unaccompanied or separated, or as being a refugee, asylum-seeker or migrant".⁽¹⁵⁾ Other official bodies have also included non-discrimination provisions protecting refugee and migrant children in their recommendations and principles.⁽¹⁶⁾

14 UN General Assembly, Universal Declaration on Human Rights, General Assembly resolution 217 A of 10 December 1948, Art. 2; UN General Assembly, International Covenant on Civil and Political Rights, General Assembly resolution 2200A (XXI) of 16 December 1966, Art. 2(1); Convention on the Rights of the Child, Art. 2(1).

15 Committee on the Rights of the Child, General Comment No. 6 on the treatment of unaccompanied and separated children outside their country of origin, UN document CRC/GC/2005/6 of 1 September 2005, para. 18.

16 Resolution 12/6 of the UN Human Rights Council notes that the legal framework protecting children applies irrespective of migration status. See UN General Assembly, Human rights of migrants: migration and the human rights of the child, UN Document A/HRC/RES/12/6 of 12 October 2009, para. 1(a). The Recommended Principles and Guidelines on Human Rights at International Borders require States to ensure that children in the context of migration are treated first and foremost as children. See OHCHR, Recommended Principles and Guidelines on Human Rights at International Borders, UN document A/69/CRP.1 of 23 July 2014. The UN General Assembly has held that States and other actors have an obligation to use non-discriminatory terminology when referring to migrants and their children. See UN General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development.

The New York Declaration includes several commitments to combat discrimination in all its forms as it affects refugees and migrants, including children.⁽¹⁷⁾ It commits States to combat xenophobia and racism, and the intersecting forms of racism that affect children throughout the migration cycle and expose them to exploitation, abuse, violence, trafficking and contemporary forms of slavery. The Declaration also commits States to taking measures to improve integration and social inclusion, and to implement a gendered approach to the management of migration throughout the migration process.⁽¹⁸⁾ Further, it affirms that children should not be criminalized because of their migration status or that of their parents.⁽¹⁹⁾

2.3 Relevant example

GOVERNMENT SPONSORED-CAMPAIGNS AGAINST RACISM

Several governments have responded to racist behavior in their countries by developing anti-racism campaigns. By disseminating a public endorsement of positive integration and diversity these efforts promote welcoming and inclusive conduct. For examples, see Italy's 2015 week of action against racism (<http://www.governo.it/articolo/campagna-accendi-la-mente-spegni-i-pregiudizi-e-xi-settimana-d-azione-contro-il-razzismo>), and Francophone Belgium's "Refugees welcome" campaign against racism (<http://www.refugees-welcome.be/2017/02/15/vous-valez-mieux-que-ca-campagne-de-lutte-contre-le-racisme/>). Several city governments have also initiated activities to counter racism and xenophobia. For example, see Toronto's 2017 campaign against racism (<http://globalnews.ca/news/2763471/toronto-launches-ad-campaign-against-racism-targeting-syrian-refugees/>) and Johannesburg's development of operational plans to safeguard against and respond to outbreaks of xenophobic violence (<http://www.iol.co.za/news/crime-courts/joburgs-plans-to-stop-xenophobic-violence-7955358>).

2.4 Proposed goals, targets and indicators

Goals for States to be included in the Global Compacts

- I. Adopt and implement measures to foster an open and non-discriminatory society, including by preventing xenophobia, racism and discrimination against refugee and migrant children, starting from the moment of their arrival.
- II. Adopt and implement measures that proactively support reciprocal inclusion between host and refugee and migrant communities 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 any refugee and migrant children or require service providers to share personal data for immigration enforcement.

Targets to be included in the Global Compacts

- 1) By 2025, eliminate all provisions that discriminate against refugee and migrant children, including children who are stateless, with regard to laws, services and programs, in laws and policies, including those affecting stateless children.
- 2) By 2021, eliminate all criminalization of refugee and migrant children because of their migration, nationality or residence status.
- 3) By 2021, ensure access to justice and effective remedies for refugee and migrant child victims of discrimination, racism or xenophobia, on a par with national children and without legal or other repercussions on grounds of their residence status.
- 4) By 2025, ensure equal access to social, economic and political inclusion for refugee and migrant children, on a par with national children, without legal or other repercussions on the grounds of their residence or nationality status.

¹⁷ New York Declaration.

¹⁸ Op. cit., para. 31.

¹⁹ Op. cit., para. 56.

Indicators proposed to monitor progress in the Global Compacts

- i. The establishment and training of public bodies in charge of successfully implementing non-discrimination, social inclusion and equality policies that demonstrably benefit refugee and migrant children, alongside other vulnerable and stigmatized groups. Between 2020 and 2030, evidence of a 10% annual increase (compared to the previous year) in documented successful cases of implementation.
- ii. Existence of dedicated budget fully disbursed for promoting non-discrimination and social inclusion practices in enjoyment of civil documentation, nationality, education, health and social services for refugee and migrant children, without repercussions related to residence status and starting from the time of arrival. Between 2020 and 2030, 5% annual increase in budget allocation.
- iii. Existence of dedicated budget fully disbursed for stimulating submission of complaints by or affecting refugee and migrant children (including by production of child-friendly complaints mechanisms) concerning incidents of xenophobia, social exclusion and racism, and prosecutions related to those complaints. Between 2020 and 2030, 10% annual increase in cases submitted and acted upon.

3 BEST INTERESTS OF THE CHILD

3.1 Background

Throughout the migration cycle, all refugee and migrant children are routinely affected by policies and practices that do not take their best interests into account as a primary consideration. This failure has severe and enduring consequences for the children and for States' ability to respect, protect and fulfill the human rights they owe to these children. Consideration of the best interests of the child includes a substantive right – namely, the right of the child to have his or her best interests assessed and taken into account as a primary consideration; a legal principle – namely, that if a legal provision is open to more than one interpretation, the interpretation that most effectively serves the child's best interests should be chosen; and a rule of procedure – namely, that whenever a decision is made that will affect a specific child, group of children or children in general, the decision making process must include an evaluation of the possible impact (positive or negative) of the decision on the child concerned.⁽²⁰⁾ All refugee and migrant children, whether accompanied or not, have the right to have their best interests taken into account as a primary consideration. They also have the right to participate fully in actions or decisions that affect them, and to grow up as part of a family. It follows that actions or decisions affecting refugee or migrant families as a whole have to take these rights into account.

All refugee and migrant children are entitled to a best interests assessment (BIA) of their individual needs, which incorporates into the actions taken by state authorities an ongoing procedure for balancing and weighing the different elements of their circumstances, with particular emphasis on health, education and social protection needs. The process needs to be initiated as soon as the refugee or migrant child is identified to ensure that the child's best interests are a primary consideration throughout the migration cycle, and that they inform the whole process of reaching a sustainable solution for that child.⁽²¹⁾ The BIA should include an assessment of sources of support, empowerment or risks facing the child, including the quality of the relationship between the child and any accompanying adults. All refugee and migrant children are also entitled to a best interests determination (BID) that formally decides on the child's future, on the basis of careful scrutiny of relevant factors, including the views expressed by the child. A consideration of the maturity and capacity for agency of the individual child is important to both processes.⁽²²⁾ So is the use of a language and format for interactions that ensure the child is able to communicate effectively.⁽²³⁾ Ensuring the effective participation of the child in actions and decisions affecting that child is essential at all stages of the process.

3.2 Relevant provisions in international law

States are required as a matter of binding international law to treat the best interests of a child as a primary consideration in all actions concerning them. The best interests principle is universal, one of four general principles articulated in the Convention on the Rights of the Child.⁽²⁴⁾ This principle asserts that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration". Several soft law commitments also assert the primacy of the best interests principle with respect to particular categories of children, including stateless children, unaccompanied and separated children, and refugee and asylum seeking children.⁽²⁵⁾

The New York Declaration commits signatories to ensuring that the best interests of the child will be a primary consideration in all matters concerning the child.⁽²⁶⁾

20 Committee on the Rights of the Child, General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration, op. cit.

21 This point is clearly articulated by the Committee on the Rights of the Child: "In the case of a displaced child, the principle [of the best interests of the child] must be respected during all stages of the displacement cycle. At any of these stages, a best interests determination must be documented in preparation of any decision fundamentally impacting on the unaccompanied or separated child's life". Committee on the Rights of the Child, General Comment No. 6 on the treatment of unaccompanied and separated children outside their country of origin, para. 19.

22 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. <http://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2012/DGD2012ReportAndRecommendations.pdf>.

23 Council of the Baltic Sea States, Guidelines for Promoting the Human Rights and the Best Interests of the Child in Transnational Child Protection Cases, 2015. http://www.childcentre.info/public/PROTECT/Guidelines_-_promoting_the_Human_Rights_and_the_Best_Interest_of_the_Child_in_Transnational_Child_Protection_Cases.pdf.

24 UN General Assembly, Convention on the Rights of the Child, art. 3 together with art. 2 (non-discrimination), art. 6 (right to life, survival and development) and art. 12 (right of the child to express his or her views freely).

25 See Committee on the Rights of the Child, General Comment No. 6 on the treatment of unaccompanied and separated children outside their country of origin; UNHCR, Guidelines on Determining the Best Interests of the Child, 2008, <http://www.unhcr.org/4566b16b2.pdf>; UNHCR, Field Handbook for the Implementation of UNHCR BID Guidelines, 2011, <http://www.unhcr.org/protection/children/50f6d27f9/field-handbook-implementation-unhcr-bid-guidelines.html>.

26 Op. cit. para. 32.

3.3 Relevant examples

GOVERNMENT OF MOLDOVA REGULATION INCLUDING REFERENCE TO BEST INTERESTS PRINCIPLE

The Government of Moldova adopted a Regulation in 2008 on the procedure for the return of child and adult victims of human trafficking, smuggled migrants and unaccompanied children. For the first time, this government introduced a reference to the best interests of the child and a requirement to consider the views of the child concerned (where appropriate) in procedures governing the repatriation of Moldovan children who were identified in other States, notably the Russian Federation and Ukraine. The regulation stipulated that “[r]epatriation of children shall be carried out with due respect to the best interests of the child, presenting in this respect documents confirming that a durable solution for caring for the child has been found [i.e., prior to repatriation]”. This could include “return to country of origin, reunification with the biological family, extended family or placement in other forms of care”.

GOVERNMENT OF ZAMBIA GUIDELINES ON PROTECTION ASSISTANCE FOR VULNERABLE MIGRANTS

With assistance from the International Organization for Migration, the Government of Zambia developed guidelines to inform “first line officials” involved in protecting vulnerable migrants about procedures for identifying, referring and supporting migrants that are “protection-sensitive”. The guidelines address the specific needs of unaccompanied and separated children. They itemize these children’s basic immediate needs (including care, accommodation, food, emergency health care and legal assistance to regularize their stay), their medium-term needs (including reference to juvenile welfare, and, where appropriate to asylum procedures, birth registration where applicable, education and family tracing) and their long-term needs (including family reunification and sustainable solutions).

3.4 Proposed goals, targets and indicators

Goals for States to be included in the Global Compacts

- i. Ensure that the best interests of the child will be a primary consideration in all matters concerning refugee and migrant children, whether they are accompanied or unaccompanied.

Targets to be included in the Global Compacts

- 1) Between 2020 and 2030, achieve a 10% annual increase (compared to the previous year) in the proportion of refugee and migrant children benefitting from national laws, regulations, policies and procedures (local, regional or national) that explicitly state that the best interests of the child should be a primary consideration in all actions and decisions.
- 2) Between 2020 and 2030, achieve a 10% annual increase (compared to the previous year) in the number of States that have instituted measures to address the best interests of refugee and migrant children as they transition beyond the age of 18 and that have abandoned the practice of issuing residence permits to refugee or migrant children that are only valid until the age of 18.
- 3) By 2021, ensure that procedures are [or have been] 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.
- 4) By 2025, improve access to free legal advice and representation for all refugee and migrant children who need or request it, by creating a dedicated budget by 2021 for supporting access to free legal advice and representation for refugee and migrant children (if one does not already exist) and ensuring a year-on-year increase in the number of cases supported.
- 5) By 2025, ensure the appointment of qualified guardians and advisors for unaccompanied or separated refugee and migrant children and their participation in the BIA and BID process.
- 6) Between 2020 and 2030, achieve a 10% annual increase in the number of asylum and migration laws and policies that include child rights impact assessments.

Indicators proposed to monitor progress in the Global Compacts

- i. The establishment of a senior public official as a focal point responsible for instituting and overseeing the introduction of regulations, policies and procedures for refugee and migrant children that contain an explicit best interests provision as an inherent part of the development of a well-managed migration policy. ⁽²⁷⁾
- ii. Existence of a dedicated budget spent on supporting best interests assessments and determinations, including regular and quality training of staff involved in these processes and clear lines of institutional accountability for management and oversight. Between 2020 and 2030, 5% annual increase (compared to previous year) in the budget and in the proportion of pending refugee and migrant child cases with successfully completed BIAs and BIDs.
- iii. Existence of dedicated budget spent on supporting free legal advice and representation for all refugee and migrant children, and an annual budget increase proportional to the documented number of refugee and migrant children arriving in the State.
- iv. Existence of dedicated budget spent on supporting appointment of qualified guardians and trained interpreters who participate in the BID process. Between 2020 and 2030, 5% annual increase (compared to previous year) in budget and appointments of qualified guardians and interpreters.

27 This indicator relates to SDG 10.7.2 that refers to the “[n]umber of countries that have implemented well-managed migration policies”.

4 CHILD PROTECTION

4.1 Background

Throughout the migration cycle, refugee and migrant children face a heightened risk of violence, abuse and exploitation compared to national children. Child protection actors should therefore bear primary responsibility for refugee and migrant children as regards both service provision and decision making, whenever these children are in contact with migration authorities, starting from the time of first reception. The immediate identification and referral of refugee and migrant children, including all unaccompanied and separated children, to the child protection system is therefore critical in ensuring assessment of their immediate needs and protection against violence, exploitation, abuse and neglect. Identification procedures (including age assessment) should fully and at all times respect the rights of the child.⁽²⁸⁾

Equally critical is ensuring that all personnel who interact with refugee and migrant children are screened, trained and monitored so that they comply with safeguarding concerns.

Refugee and migrant children need referral to and support from a national child protection system based on a legal framework, including formal and informal structures, with the capacity to protect them from violence abuse, exploitation and neglect.⁽²⁹⁾ This remit includes interventions against a wide range of harmful conduct, including corporal punishment, physical and sexual violence, commercial sexual exploitation, trafficking, child labour, military recruitment and harmful traditional practices, such as female genital cutting and child marriage.

A primary obligation of the child protection system for refugee and migrant children is to support family unity or reunification where this is in the child's best interests, and to provide safe referral systems, irrespective of their migration status (or that of their families), to appropriate services, information, assistance and protection. Where appropriate, the system should also assist these children in making safe and rights protecting choices for themselves.

Appropriate protection in the case of unaccompanied or separated children includes safe accommodation separated from adults and with appropriately screened, trained and monitored staff. Unless it is not in their best interests, accompanied children should be accommodated with their parents or other primary caregivers. Child protection also includes safe access or referral to health care, including reproductive and maternity services, and psychosocial support.

4.2 Relevant provisions in international law

Article 19 of the CRC requires States Parties to “take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse”. Similarly, Article 20 of the Convention notes that “[a] child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State”. The CRC also obligates States Parties to prevent trafficking and sexual and other forms of exploitation, abuse and violence, and to take measures to promote recovery and social integration.⁽³⁰⁾ The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children⁽³¹⁾ and the Protocol against the Smuggling of Migrants by Land, Sea and Air also address the child protection needs of refugee and migrant children in the contexts of trafficking and smuggling.⁽³²⁾

Soft law provisions also address the child protection needs of migrant and refugee children. The Committee on the Rights of the Child's General Comment 6 notes that unaccompanied or separated children outside their country of origin are particularly vulnerable to exploitation and abuse. It notes the special protection and assistance obligations of States to ensure that these children are protected from trafficking and from sexual and other forms of exploitation, abuse and violence.⁽³³⁾

28 For a useful discussion of age assessment procedures see <https://www.easo.europa.eu/sites/default/files/public/EASO-Age-assessment-practice-in-Europe1.pdf>

29 UN General Assembly, United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, General Assembly resolution 69/194 of 18 December 2014, UN document A/RES/69/194 of 26 January 2015, para. 6(b).

30 Convention on the Rights of the Child, arts. 34, 35, 36 and 39.

31 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000.

32 Protocol against the Smuggling of Migrants by Land, Sea and Air, also supplementing the UN Convention against Transnational Organized Crime, 15 November 2000.

33 See Committee on the Rights of the Child, General Comment No. 6 on the treatment of unaccompanied and separated children outside their country of origin,

The New York Declaration includes several commitments to ensure the child protection needs of refugee and migrant children. It states: “We will refer their care to the relevant national child protection authorities and other relevant authorities... We will strive to provide refugee and migrant children with a nurturing environment for the full realization of their rights and capabilities”.⁽³⁴⁾ The Declaration also commits States, to the extent possible, to ensuring that measures are in place to provide the care and services needed by affected children.⁽³⁵⁾

4.3 Relevant examples

CHILD AND FAMILY SUPPORT HUBS FOR REFUGEE AND MIGRANT CHILDREN

In response to children arriving and traveling through the Balkans in 2015 and 2016, UNICEF, UNHCR and the ICRC, together with partners, teamed up to offer integrated services. The services were later adjusted to serve the needs of stranded populations. These included child protection case management services, which provided family reunification assistance, emotional and stress management and psychosocial support, nutrition services and basic education activities. In 2016 alone, 96,000 children in five countries were reached through the support hubs.⁽³⁶⁾

GOVERNMENT OF ITALY UNACCOMPANIED FOREIGN MINORS LAW

In March 2017, the Italian Parliament passed the ‘Zampa’ or Provision of Protection for Unaccompanied Foreign Minors Law, which enhances supports and protections for unaccompanied and separated children arriving in the country. The law incorporates the establishment of a structured national reception system, with minimum standards in all reception facilities; education and health rights for all unaccompanied and separated children; the right to be heard in administrative and judicial proceedings, including in the absence of a guardian; and the right to legal assistance.⁽³⁷⁾

GLOBAL PARTNERSHIP TO END VIOLENCE AGAINST CHILDREN RESOURCE

INSPIRE is an evidence-based resource for preventing and responding to violence against children and adolescents. It can be used by governments, civil society organizations and the private sector. It assembles evidence-based strategies that promote prevention programs and services with the greatest potential to reduce violence against children. All strategies are applicable to work with refugee and migrant children.⁽³⁸⁾

4.4 Proposed goals, targets and indicators

Goals for States to be included in the Global Compacts

- I. Enact national laws that ensure the protection of refugee and migrant children and their participation according to their age and maturity in all decisions affecting them, starting from the time of first reception, and continuing until family re-unification.
- II. Ensure all at-risk refugee and migrant children, including those who are unaccompanied or separated and those for whom remaining with parents or primary caregivers is not in their best interests, are immediately identified.
- III. Ensure appropriate and integrated child protection care and services for all at-risk refugee and migrant children, starting from the time of arrival.

paras. 50-51. This General Comment notes that both negative and positive obligations are incumbent upon signatories of the CRC, including the prohibition of abuse and exploitation as well as efforts to identify unaccompanied children and attempt to trace their families. In addition, it reiterates the principle of non-refoulement of children on the move and provides guidelines on the range of protections that should be afforded to them, including protection from exploitation and abuse and from military recruitment. The General Comment also emphasizes the need for specialized training for staff who deal with child protection issues and for accurate data collection.

34 New York Declaration, para. 32.

35 Ibid. para. 32; Annex I, paras. 5(a), 5(3) and 7(b).

36 <https://www.unicef.org/ceecis/SitRep19.pdf>.

37 UNICEF hails new Italian law to protect unaccompanied refugee and migrant children as model for Europe, 2017. https://www.unicef.org/media/media_95485.html?utm_source=ECRE+Newsletters&utm_campaign=7ef417da6b-EMAIL_CAMPAIGN_2017_04_07&utm_medium=email&utm_term=0_3ec9497afd-7ef417da6b-420551781.

38 http://www.who.int/violence_injury_prevention/violence/inspire/en/.

- IV. Establish appropriate alternative care options for unaccompanied and separated children whenever necessary and appropriate, in the spirit of the UN Guidelines for the Alternative Care of Children.⁽³⁹⁾
- V. 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.

Targets to be included in the Global Compacts

- 1) By 2021, ensure implementation of policies and practices that secure immediate identification of at-risk refugee and migrant children by all officials who come into contact with them, whether at the border or elsewhere, with a dedicated budget for this purpose.
- 2) By 2021, ensure immediate referral of all at-risk refugee and migrant children to the national child protection services, irrespective of migration status. Between 2020 and 2030, establish an annual referral increase proportional to the documented number of at-risk refugee and migrant children arriving in the State with a dedicated budget to fully fund the referral system.
- 3) By 2025, establish mechanisms for the comprehensive integration of refugee and migrant children into the national child protection system to ensure their full protection from violence, exploitation and abuse.
- 4) By 2025, ensure provision of appropriate care and services on a par with national children, to all refugee and migrant children from the time of arrival. Between 2020 and 2030, increase percentage of refugee and migrant children in need of alternative care who benefit from the alternative care system by 10% annually.
- 5) Between 2020 and 2025, annually increase the number of participating countries included in this coordinated, cross-border child protection system to encompass all countries by 2025.
- 6) By 2021 establish effective international systems to prioritize family reunification, resettlement and relocation and provision of other humanitarian programs that prioritize children and their families alongside other people in a situation of vulnerability. Between 2020 and 2030, increase percentage of child and family reunification concluded cases by 10% annually.

Indicators proposed to monitor progress in the Global Compacts

- i. Establishment of a regulatory authority within the mainstream child protection system with overarching responsibility to authorize, monitor and improve care standards for refugee and migrant children.
- ii. Establishment of a reliable and integrated international family tracing and reunification system, guaranteed by law and operated consistently with the best interests of the child.
- iii. Enforcement of the right to respect for family life for all refugee and migrant children, including by allowing the family to stay together unless not in the best interests of the child, and by promoting reunification as soon as possible (including by eliminating barriers such as residency qualification periods for sponsors or exclusion of reunification with siblings).⁽⁴⁰⁾
- iv. Establishment of comprehensive system for provision of legal assistance and representation for refugee and migrant children in need of child protection.
- v. Establishment of appropriate alternative care options for refugee and migrant children wherever necessary, in accordance with the UN Guidelines for the Alternative Care of Children. Such options should include support for informal care within a child's extended family and placement in family-like or residential settings as appropriate.
- vi. Ratification and implementation of the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children.⁽⁴¹⁾

³⁹ 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.

⁴⁰ <https://redcross.eu/positions-publications/disrupted-flight-the-realities-of-separated-refugee-families-in-the-eu.pdf>.

⁴¹ This Convention of The Hague Conference on Private International Law has 46 Contracting States. The Committee on the Rights of the Child urged States to ratify this Convention in its General Comment No. 6, op. cit., para. 15. The text of the Convention is available at <https://www.hcch.net/en/instruments/conventions/full-text/?cid=70>.

5 CHILD IMMIGRATION DETENTION

5.1 Background

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 Compacts provide an opportunity to build upon the commitment to work to end the immigration detention of children by agreeing to a clear set of targets and indicators for operationalizing this commitment and for implementing human rights-respecting alternative care and protection arrangements (“alternatives to detention”) for refugee and migrant children, whether traveling alone or with members of their families.

In practice, States detain refugee and migrant children for reasons that are quite avoidable, such as to conduct routine health and identity screening; to maintain family unity; or to facilitate engagement with ongoing asylum or migration procedures. Sometimes children are detained without the knowledge of state authorities, for example because there is a failure to properly conduct age assessments, or due to a lack of appropriate child screening and identification. At other times, children are knowingly detained, for example when they are detained together with their parents or guardians on the grounds that it maintains family unity. Regardless of the reasons for immigration detention, studies have shown that detaining children has a profound and negative impact on child health and well-being.⁽⁴²⁾ There is consequently an urgent need to implement alternatives to detention for refugee and migrant children and families.

The immigration detention of children appears incompatible with several Sustainable Development Goals and Targets, notably Goal 16 (which aims to “[p]romote peaceful and inclusive societies for sustainable development, provide access to justice for all”) and Target 16.3 (“Promote the rule of law at the national and international levels and ensure equal access to justice for all”).

5.2 Relevant provisions in international law

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.⁽⁴³⁾

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.⁽⁴⁴⁾

The position of the Committee on the Rights of the Child has been echoed by numerous international and regional human rights bodies⁽⁴⁵⁾ and by the Inter-American Court of Human Rights.⁽⁴⁶⁾ 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.⁽⁴⁷⁾

42 Inter-Agency Working Group to End Child Immigration Detention, Ending Child Immigration Detention, 2016. http://www.iawgendchilddetention.org/wp-content/uploads/2016/11/IAWG_Advocacy-Brochure_Aug-2016_FINAL-web.pdf.

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

44 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.

45 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/>.

46 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.

47 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.

Rather than detaining children and families crossing international borders, States have been called upon to implement human rights-respecting alternatives to detention, which fulfill the best interests of the child, 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. ⁽⁴⁸⁾

5.3 Relevant examples

Some States are reported to have prohibited the detention of any children for immigration purposes (e.g., Costa Rica, Ireland and Panama). In others, such detentions have been prohibited if children are below a specified age (e.g., in Egypt for children under 15 years old). ⁽⁴⁹⁾ Some States have prohibited the detention of unaccompanied children on the basis of their migration or residency status, ⁽⁵⁰⁾ while others have prohibited such detention when children seek asylum. ⁽⁵¹⁾ Some have halted most detentions: for example, Malta stopped the mandatory detention of asylum seekers and irregular migrants in 2015, but still detains undocumented children and adults upon arrival for a period of 7 to 14 days on the grounds that they may have infectious diseases and, in the case of adolescents, their age may need to be assessed.

In the case of unaccompanied children, alternative measures to detention include foster care (reportedly available in France, Greece and Malaysia) and, for older adolescent children, group homes (e.g., Indonesia).

Measures that focus 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. ⁽⁵²⁾

A series of alternatives to detaining children on account of their migration status have been shown to work in countries around the world. For example, Austria specifies that, even when there are legal grounds for detaining a foreign adult or child, what the law calls “more lenient measures” ⁽⁵³⁾ can be used to achieve the same purpose (such as preventing absconding): e.g., residing at a particular address determined by the authorities, reporting periodically to the police station, or depositing a sum of money with the authorities.

UNITED KINGDOM (UK) FAMILY RETURNS PROCESS

In the UK, the Family Returns Process has successfully reduced the detention of families with children, with 97% of the 1,470 families who left the country in 2014-16 leaving the UK without enforcement action or detention. The success of the family returns process demonstrates the benefits of face-to-face dialogue with migrants: the Independent Family Returns Panel ascribes the improved rates of non-enforced return to improved engagement with families involving a “Family Engagement Manager” (FEM), noting that “[t]he creation of the FEM role...has greatly improved communication with families and helps them to understand the process and prepare for a return both practically and psychologically”. ⁽⁵⁴⁾

48 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>.

49 Under the terms of Article 119 of Egypt's Child Act (quoted in International Detention Coalition, Alternatives to immigration detention in Africa. A summary of member findings from six countries, 2015 – 2016, is available at http://idcoalition.org/wp-content/uploads/2017/03/Alternatives-in-Africa_web_graphics_final.pdf).

50 E.g., Hungary, Italy, Poland and Spain.

51 E.g., Nicaragua and Turkey.

52 R. Sampson, V. Chew, G. Mitchell and L. Bowring, There are Alternatives: A handbook for preventing unnecessary immigration detention (revised edition), International Detention Coalition (IDC), 2015, available at <http://idcoalition.org/publication/there-are-alternatives-revised-edition/>.

53 Austria, Federal Act on the Exercise of Aliens' Police, the Issue of Documents for Aliens and the Granting of Entry Permits (Aliens' Police Act – Fremdenpolizeigesetz), 2005, art. 77, para. 1.

54 Independent Family Returns Panel report 2014-16, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/583790/Independent_Family_Returns_Panel_report_2014-16.pdf.

5.4 Proposed goals, targets and indicators

Relevant commitments made in the New York Declaration

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”.⁽⁵⁵⁾ 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.

Goals for States to be included in the Global Compacts

- i. End the immigration detention of children and other practices that result in the deprivation of liberty of children for immigration-related reasons.

Targets to be included in the Global Compacts

- 1) By 2021, identify and initiate implementation of alternatives to detention that respect the rights of the child (and are in their best interests) and allow refugee and migrant children to remain with their family members and/or guardians in non-custodial, community-based contexts while their immigration status is being resolved.
- 2) By 2023, enact legislation and/or policies to prohibit the detention of children—whether accompanied or unaccompanied—for reasons related to their or their parents’ or guardian’s migration status.⁽⁵⁶⁾

Indicators proposed to monitor progress in the Global Compacts

- i. The number of States that have adopted and started implementing national plans to end child immigration detention, and to operationalize human rights-compliant, non-custodial, community-based alternatives to immigration detention.
- ii. The number of States that report publicly on the number of children held in immigration detention each year and the length of time involved, and on the number of children placed in open reception or other alternatives to immigration detention, disaggregated by gender, age, and whether the child is accompanied or unaccompanied.
- iii. The number of States that, in comparison to 2018, are implementing alternatives to detention for both accompanied and unaccompanied refugee and migrant children and their families.
- iv. The number of States that confirm to the Committee on the Rights of the Child, or to the UPR process in the UN Human Rights Council, that they have abandoned the practice of immigration detention of children.
- v. The number of States that have laws or regulations prohibiting child immigration detention.

55 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”.

56 Legislation should include the obligation of administrative or judicial bodies to start from a presumption of liberty and only if that is rejected for clear, articulated reasons to consider human rights-based alternatives to detention – one by one – including the obligation to provide adequate reasons at each step why each option is not applicable in a particular case.

6 ACCESS TO SERVICES

6.1 Background

To develop and flourish, children of all ages need access to basic health, education and psychosocial services. To benefit from such services, their basic needs must be met, such as safe accommodation and adequate nutrition. However, a wide range of administrative and other obstacles stand in their way. For example, when considering the situation of adolescents, the Committee on the Rights of the Child noted recently that:

Many adolescent migrants are denied access to education, housing, health, recreation, participation, protection and social security. Even where rights to services are protected by laws and policies, adolescents may face administrative and other obstacles in gaining access to such services, including: demands for identity documents or social security numbers; harmful and inaccurate age determination procedures; financial and linguistic barriers; and the risk that gaining access to services will result in detention or deportation.⁽⁵⁷⁾

This working document comments in particular on children's access to adequate accommodation, education and health services, while noting the importance of birth registration, social protection and access to other services as well. Despite commitments made by States (notably in the CRC), there are numerous reports of refugee and migrant children being subjected to sub-standard shelter that negatively impacts other rights, such as the right to education and the right to health.⁽⁵⁸⁾ At present, facilities for housing refugees around the world are sometimes "dilapidated and overcrowded, providing inadequate shelter and services... Sometimes their inhabitants enjoy no basic services at all".⁽⁵⁹⁾ In situations of protracted crises or adverse weather conditions, inadequate shelter can have a significant impact on the well-being of refugee and migrant children, exposing them to health hazards as well as situations of violence or vulnerability to abuse.⁽⁶⁰⁾

Children are entitled to receive an education, but refugee and migrant children are sometimes unable to attend school for months or years. Services that support early childhood development are critical for all children, especially refugee and migrant children who do not have routine access to such services. Adequate access to education comprises numerous aspects that go beyond the formal provision of a schooling facility; for example, there is a significant need for language and cultural barriers to be resolved in the system that provides education. Similarly, the specific learning needs of children with disabilities must be taken into account if the CRC's goal of making education accessible for all is to be met. Secondary and higher education are essential building blocks for the social and economic inclusion of refugee and migrant children and young adults.

All children require timely access to health services, including preventive care. Adolescent girls, as well as adult women, require access to reproductive health services.⁽⁶¹⁾ Children suffering from stress or trauma have a special need for access to psychosocial services, both upon their arrival in a new country and thereafter. Physical, emotional and psychological distress can have lifelong, negative impacts on developmental potential, resulting in long-term health problems, post-traumatic stress disorder, depression and behavioural problems, including severe depression many years or even decades later.⁽⁶²⁾ A wide range of interventions are labelled "psychosocial" responses.⁽⁶³⁾ Some address emergency mental health problems (such as depression, anxiety, paranoia, trauma, suicidality or delusions). Others are part of a strategic psychosocial programming approach, such as creating child friendly spaces.⁽⁶⁴⁾ Nevertheless, in many situations where the refugees or migrants are nominally granted access to basic health services, this does not include access to psychosocial services because of poorly developed mental health infrastructures or other barriers to accessing services.

57 Committee on the Rights of the Child, General Comment No. 20 on the implementation of the rights of the child during adolescence, UN document CRC/C/GC/20 of 6 December 2016, para. 76.

58 UNICEF, A child is a child: Protecting children on the move from violence, abuse and exploitation, 2017.

59 OHCHR and UN Habitat, The Right to Adequate Housing, Factsheet No. 21, 2009. http://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf.

60 V. Digidiki & J. Bhabha, Emergency within an emergency: The Growing Epidemic of Sexual Exploitation and Abuse of Migrant Children in Greece, 2017. <https://cdn2.sph.harvard.edu/wp-content/uploads/sites/5/2017/04/Emergency-Within-an-Emergency-FXB.pdf>.

61 The World Health Organization (WHO) estimates that some 26 million women and girls of reproductive age are living in emergency situations, all of whom need sexual and reproductive health care.

62 A. Nickerson, I. M. Aderka, R. A. Bryant, and S. G. Hofmann, "The Relationship Between Childhood Exposure to Trauma and Intermittent Explosive Disorder", *Psychiatry Research*, 197, no. 1-2 (May 2012): 128-134.

63 The term "psychosocial" denotes the inter-connection between psychological and social processes and the fact that each interacts with and influences the other.

64 See Inter-Agency Standing Committee Guidelines on Mental Health and Psychosocial Support in Emergency Settings (2007), Action Sheet 5.4, available at http://www.who.int/mental_health/emergencies/guidelines_iasc_mental_health_psychosocial_june_2007.pdf.

A particular obstacle to services for children who have no identification papers or whose parent or guardian is undocumented is that immigration enforcement services may enlist other public services as auxiliaries for the detection of undocumented migrants or to gain access to information about them. The UN Secretary-General has encouraged States

[T]o establish effective safeguards and firewalls between public service providers and immigration enforcement authorities. Public service institutions should not be required to report to or otherwise share data with immigration authorities.⁽⁶⁵⁾

The Special Rapporteur on Migrants' Rights, Professor F. Crépeau, has also noted that ,

Unless firewalls are established between public services and immigration enforcement, vulnerable migrants will never report human rights violations, and perpetrators will benefit from practical immunity.⁽⁶⁶⁾

6.2 Relevant provisions in international law

The rights guaranteed by the CRC entitle all children to access a range of services.⁽⁶⁷⁾ It specifies that all children have the right to free and compulsory primary education and encourages States to develop secondary and vocational education and to make these available and accessible to all children (article 28). Migrant children's equality of access to education is also supported by the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families (1990).⁽⁶⁸⁾ In 2015, the Incheon Declaration included a commitment

[T]o developing more inclusive, responsive and resilient education systems to meet the needs of children, youth and adults...including internally displaced persons and refugees.⁽⁶⁹⁾

The CRC guarantees “the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health” (article 24) and requires States Parties to “strive to ensure that no child is deprived of his or her right of access to such health care services”. The Committee on the Rights of the Child has cautioned States against practices and regulations requiring migrants to present a residence permit in order to have access to health services⁽⁷⁰⁾ and against practices requiring health institutions to report or share data on the migratory status of patients to immigration authorities or conduct immigration enforcement operations on or near public health premises, as this would effectively limit or deprive migrant children in an irregular situation of their right to health.⁽⁷¹⁾ It has commented with specific reference to unaccompanied and separated children that they are entitled to the same health care as nationals regardless of their migratory status.⁽⁷²⁾

Some regional organizations have issued standards on both education and health care. For example, the European Commission has encouraged European Union Member States to “ensure that all children have timely access to healthcare (including preventive care) and psychosocial support, as well as to inclusive formal education, regardless of the status of the child and/or of his/her parents”.⁽⁷³⁾ The Inter-Agency Standing Committee Guidelines on Mental Health and Psychosocial Support in Emergency Settings (2007) set out standards for psychosocial services.⁽⁷⁴⁾

65 Promotion and protection of human rights, including ways and means to promote the human rights of migrants. Report of the Secretary General, Promotion and protection of human rights, including ways and means to promote the human rights of migrants (on migrant children and adolescents), UN document A/69/277 of 7 August 2014.

66 Report of the Special Rapporteur on the human rights of migrants on a 2035 agenda for facilitating human mobility, UN document A/HRC/35/25 of 28 April 2017.

67 The Recommended Principles for Children on the Move and Other Children Affected by Migration note that “[c]hildren affected by migration should be ensured the same rights as all other children, including birth registration, proof of identity, a nationality and access to education, health care, housing and social protection” (Principle No. 1).

68 Also by regional conventions such as the Council of Europe Convention on the Legal Status of Migrant Workers (1977), which endorses migrant children's right to access general education and vocational training in the host State “on the same basis and under the same conditions as national workers” and their families.

69 Education 2030 Incheon Declaration and Framework for Action: Towards inclusive and equitable quality education and lifelong learning for all, 2015, available at <http://www.uis.unesco.org/Education/Documents/incheon-framework-for-action-en.pdf>. The World Education Forum was organized by UNESCO, together with UNICEF, the World Bank, UNFPA, UNDP, UN Women and UNHCR, and hosted by the Republic of Korea.

70 Committee on the Rights of the Child, General Comment No. 20 on the implementation of the rights of the child during adolescence, para.76.

71 Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, General Comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, UN document CMW/GC/2 of 28 August 2013, para. 74.

72 Committee on the Rights of the Child, General Comment No. 6 on the treatment of unaccompanied and separated children outside their country of origin, op. cit., para. 46.

73 European Commission, Communication from the Commission to the European Parliament and the Council, The protection of children in migration, op. cit..

74 Available at https://www.unicef.org/protection/guidelines_iasc_mental_health_psychosocial_june_2007.pdf.

6.3 Relevant examples

Numerous attempts have been made to set minimum standards for emergency accommodation, including camps, notably to prevent violence against vulnerable groups.⁽⁷⁵⁾ In Germany, the Federal Ministry for Families, Senior Citizens, Women and Children, together with UNICEF and 14 other organizations, published specific standards intended to prevent violence against women and children in refugee shelters.⁽⁷⁶⁾

Access to services can be brought about by measures to end discrimination or to give refugee and migrant positive rights to particular services. For example, Argentina has passed national legislation explicitly stating that the rights of migrants to access services should be on an equitable basis with nationals.⁽⁷⁷⁾

There are benefits to adopting a coordinated approach at national level when giving refugee and migrant children access to services such as education and health services.

MAKING “EDUCATION FOR ALL” A REALITY

In 2005, Thailand’s Ministry of Education instructed school directors to enroll all children, including children born abroad who did not have proper identification documents, so they could access free basic education.⁽⁷⁸⁾ At first, migrants whose status was irregular were worried that taking children to and from school would be an opportunity for law enforcement officials to detain them, but this practice reportedly declined. By 2015, almost 76,000 children with parents from Cambodia, Lao People’s Democratic Republic or Myanmar were reported to be enrolled in Thai schools, most at the elementary level.⁽⁷⁹⁾

There were difficulties in integrating children who had arrived in Thailand after starting school elsewhere. If they enrolled in a government-run school, they were required to restart their schooling from the beginning. However, such children could attend “learning centers”, where NGOs and international organizations were able to support teaching in the students’ own language and to allow them to continue from the level they had already reached. For example, children arriving from neighboring Myanmar attended learning centers at locations along the border.⁽⁸⁰⁾ Allowing the two systems to function alongside each other made best use of the expertise developed by specialist NGOs. A major obstacle that remains to be solved concerns funding for foreign children, with individual schools facing difficulties in securing funding. Further, the authorities still have difficulty in recognizing the scale of the numbers of out-of-school migrant children, for only migrant children who are registered in school or who have parents that are documented workers are normally counted in official data, leaving other migrant children largely invisible.

In Bangladesh (which is both a country of origin of refugees and migrants, and a destination country), the World Health Organization (WHO) supported the Government and other actors in developing a National Strategic Action Plan on Migration and Health 2015-2018, aiming to enhance the policy and legal framework specifically for migrants and to establish the monitoring and information system and promote multi-sectoral partnerships.

75 See SPHERE Project, Humanitarian Charter and Minimum Standards in Humanitarian Responses, available at <http://www.sphereproject.org>.

76 Mindeststandards zum Schutz von Kindern, Jugendlichen und Frauen in Flüchtlingsunterkünften, 2013, available at <https://www.bmfsfj.de/blob/107848/5040664f-4f627cac1f2be32f5e2ba3ab/schutzkonzept-mindeststandards-unterkuenfte-data.pdf>.

77 UNICEF, Uprooted: The Growing Crisis for Refugee and Migrant Children, 2016, citing Law 25.871 (2004) and Decrees No. 836/04 and 578/05.

78 World Education and Save the Children, Pathways to a Better Future: A Review of Education for Migrant Children in Thailand, 2015. <http://thailand.worlded.org/wp-content/uploads/2016/04/MESR-Policy-Brief.pdf>.

79 According to Thailand’s Office of Basic Education Commission, quoted in Tanu Anand, ‘Migrant Children Deserve Equal Chance to Attend School in Thailand’, 20 April 2016, available at <https://campaigns.savethechildren.net/blogs/tanuanand/migrant-children-deserve-equal-chance-attend-school-thailand>.

80 Aree Jampaklay, “Migration and Children” in IOM, Thailand Migration Report, 2011, available at http://publications.iom.int/system/files/pdf/tmr_2011.pdf.

The provision of psychosocial support is generally part of standard humanitarian interventions to children who have been forcibly displaced but are generally no longer on the move. For example, a multi-layered response in Lebanon was composed of prevention through sensitization and psychosocial support for girls and boys, women and caregivers; mobilization of “gatekeepers”; detection and referral of vulnerable children; specialized services in response to violations; capacity building of communities, child protection actors and local institutions; and strengthening systems. In Lebanon, the UNICEF coverage for psychosocial support increased from 8,000 children in 2012 to more than 354,000 children in 2015, significantly strengthening the resilience of boys, girls, women, families and communities.⁽⁸¹⁾

6.4 Proposed goals, targets and indicators

Relevant commitments made in the New York Declaration

The New York Declaration guarantees children access to essential services:

- (i.) We stress the importance of addressing the immediate needs of persons who have been exposed to physical or psychological abuse while in transit upon their arrival, without discrimination and without regard to legal or migratory status or means of transportation.⁽⁸²⁾
- (ii.) 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...⁽⁸³⁾
- (iii.) 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.⁽⁸⁴⁾

Goals for States to be included in the Global Compacts

- I. Grant immediate access to appropriate health services for refugee and undocumented migrant children arriving at reception facilities, including screening and treatment for physical or psychological abuse, and ensure that all refugee and migrant children have timely access to health and psychosocial services, including preventive care, regardless of their migration status and that of their parents.
- II. Provide safe shelter for refugee and undocumented migrant children upon arrival in a State.
- III. Register the birth of all refugee and migrant children with a civil authority and provide refugee and undocumented migrant children with appropriate documentation (to allow them to access services for which proof of identity is required).
- IV. Ensure all refugee and migrant children receive development care (focusing on children up to eight years of age) and quality education on an equal footing to national children and that new arrivals have access to (and are receiving) developmental care or education within two months of arrival.

81 UNICEF Operational Guidance: Community-Based MHPSS, available at <http://mhps.net/groups/policy-and-good-practice-guidelines/unicef-operational-guidance-community-based-mhpss/resources/>.

82 New York Declaration, para. 26.

83 New York Declaration, para. 32.

84 New York Declaration, para. 59.

Targets to be included in the Global Compacts

- 1) By 2021, reception centers for refugees and undocumented migrants routinely check new arrivals for physical or psychological health problems, including trauma and stress, and make appropriate treatment and care available.
- 2) By 2021, implement measures to improve quality and safety of accommodation provided to refugee and migrant children and their families, including both temporary accommodation and long-term camps.
- 3) By 2023, review and amend policies and practices which have the effect of making migrants or refugees destitute or which exclude them and their families from decent accommodation.
- 4) By 2023, review administrative arrangements concerning the registration of births of children born to refugees or migrants to identify possible obstacles or disincentives to birth registration and take appropriate remedial action.
- 5) By 2025, administrative arrangements (known as “firewalls”) are in place between immigration enforcement and public services, thereby allowing refugee and migrant children and their families to report crimes and have access to justice, housing, health care, education, police, social and labor services without fear of detection, detention or deportation.
- 6) By 2025, measures have been taken and sufficient funding made available to ensure equal access for all refugee and migrant children to quality education in destination and transit countries and their regular attendance, including formal schooling (pre-school, primary, secondary and higher education); non-formal education programs for children for whom the formal system is inaccessible; adult education,⁽⁸⁵⁾ on-the-job and vocational training; language training and lifelong learning opportunities.
- 7) By 2025, ensure that refugee and migrant children have access on a par with national children to national immunization schemes and to pediatric care.
- 8) By 2025, all women and girl refugees and migrants are included in national sexual, reproductive and family planning health care strategies and programs and consequently have access to the care and services provided to national women and girls.⁽⁸⁶⁾

Indicators proposed to monitor progress in the Global Compacts

- i. Proportion of reception facilities for refugees and undocumented migrants in a State where mental health and psychosocial support⁽⁸⁷⁾ is available to children.
- ii. Proportion of refugee and migrant population residing in temporary or other dedicated accommodation in a State that reports feeling safe walking alone in the accommodation, its surroundings and when accessing services.⁽⁸⁸⁾
- iii. Number of refugee and migrant children born in a State each year whose birth is registered with a civil authority as a proportion of the total estimated number of such births (and comparison of that proportion to the proportion of national children whose birth is registered).⁽⁸⁹⁾
- iv. Proportion of States where service providers (e.g., of education, health services and social protection) are not required to share personal information about their service-users with immigration authorities or other law enforcement officials involved in detecting people whose residence status is irregular.
- v. Proportion of refugee and migrant children under five years of age in a State who are developmentally on track in health, learning and psychosocial well-being, by sex.⁽⁹⁰⁾
- vi. Number of States where the Ministry of Education (or equivalent authority) adjusts school registration and documentation requirements, so that refugee and migrant children can enroll in schools within two months of their arrival, including children who have no identity documents or documentation concerning their previous educational qualifications.

85 I.e., for older children who have already left school.

86 I.e., as consistent with Sustainable Development Target 3.7, concerning universal access to sexual and reproductive health-care services by 2030, including for family planning, information and education, and the integration of reproductive health into national strategies and programs.

87 The composite term mental health and psychosocial support (MHPSS) is used to describe any type of local or outside support that aims to protect or promote psychosocial well-being and/or prevent or treat mental disorder. SDG 3 focuses on health in general: “Ensure healthy lives and promote well-being for all at all ages” and Target 3.4 emphasizes promotion of mental health and wellbeing.

88 Based on Indicator 16.1.4 developed for the SDGs (which refers to “Proportion of population that feel safe walking alone around the area they live”, supplemented to require data to be disaggregated to monitor the situation of refugee and migrant populations residing in emergency or temporary accommodation.

89 Based on Indicator 16.9.1 developed for the SDGs (“Proportion of children under 5 years of age whose births have been registered with a civil authority, by age”), measuring progress towards Sustainable Development Target 16.9 (“By 2030, provide legal identity for all, including birth registration”).

90 Based on Indicator 4.2.1 developed for the SDGs, disaggregated to monitor situation of refugee and migrant population. Other indicators assessing progress towards achieving SDG 4 (“Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all”) could also be adapted to assess the educational achievements of refugee and migrant children.

- vii. Number of refugee and migrant children enrolled in formal education and in non-formal education programs (total each year for each State and disaggregated to indicate number of boys and girls, and the proportion of each age group that is enrolled).
- viii. Number of States (and the increase each year in the number) that have adopted and started implementing national plans on migration and health, which incorporate a public health approach and universal and equitable access to quality health services, including mental health and psychosocial support.

7 SUSTAINABLE SOLUTIONS IN CHILDREN'S BEST INTERESTS

7.1 Background

Sustainable solutions in children's best interests determine long-term arrangements for refugee and migrant children, including those who are unaccompanied or separated and are the subject of a decision concerning their future by the authorities in a State other than their own. A range of options is available for such children, whether accompanied or unaccompanied. A fundamental principle is that they should be tailored to suit the individual child and that the child, unless too young, should have a say in deciding which option is chosen. For some, the options are limited by international law (prohibiting, for example, *refoulement*). It is when making decisions which have long-term implications for a child (whether accompanied or unaccompanied) and which involve reviewing the options for the child and selecting a potential solution, that the competent authorities have an obligation to conduct (and document) a best interests determination.

While the procedures for deciding on durable solutions for refugee children are relatively clear, the procedures and options concerning child migrants are less clear-cut, although the Committee on the Rights of the Child has commented in detail on solutions for unaccompanied or separated child migrants. The Committee has noted that:

The ultimate aim in addressing the fate of unaccompanied or separated children is to identify a durable solution that addresses all their protection needs, takes into account the child's view and, wherever possible, leads to overcoming the situation of a child being unaccompanied or separated. Efforts to find durable solutions for unaccompanied or separated children should be initiated and implemented without undue delay and, wherever possible, immediately upon the assessment of a child being unaccompanied or separated. Following a rights-based approach, the search for a durable solution commences with analysing the possibility of family reunification.⁽⁹¹⁾

The possibility of family reunification should consequently be reviewed as a matter of priority for unaccompanied or separated children, if this is in the child's best interests, and every effort should be made to expedite family reunification in cases where, for example, a child has become separated from other family members during the course of a journey or when an unaccompanied or separated child is endeavoring to join a parent or other family members already resident in another State. The same rights-based approach means that, during all phases of migration, accompanied children should not be separated from their parents or primary caregivers (unless this is in their best interests)⁽⁹²⁾ and that accompanied children too should have their views taken into account when decisions are made about their future—decisions that make the child's best interests a primary consideration.⁽⁹³⁾

The experience of organizations that specialize in supporting refugee and migrant children indicates that it is a priority to:⁽⁹⁴⁾

1. Ensure each child is in a safe and (as soon as possible and unless inappropriate) a family-like environment. When reviewing options for the future, the risks associated with each possible solution must be assessed, i.e., looking beyond finding a child a new home by anticipating whether an option for the child in the future is compatible with his or her best interests, and whether it entails unacceptable risks.
2. Enable the child to develop stable social relationships: ideally by remaining with other family members or in contact with them; otherwise by placing the child in a family-like environment and promoting independent living as children approach 18.
3. Enable the child to develop plans for the future. This means giving the child stability (and the ability to plan ahead). For the individual child in care, it means preparing a personal care plan for and with the individual child and his or her family, which covers schooling, training and employment opportunities, access to appropriate health care, accommodation, care and protection, and integration. In addition, for unaccompanied children the care plan should set out steps for the proper and formal transfer of care and custodial responsibilities, to enable them to leave care and to integrate them into a family and community.
4. Ensure continuity of care (between organizations caring for a child and between States when a child moves from one country to another). This continuity can be facilitated by case management, including inter-country case management and multilateral or bilateral agreements between States.⁽⁹⁵⁾

91 Committee on the Rights of the Child, General Comment No. 6 on the treatment of unaccompanied and separated children outside their country of origin, para. 79.

92 Recommended Principles for Children on the Move and Other Children Affected by Migration, (Principle No. 5), available at <https://principlesforcom.jimdo.com/>.

93 The Committee on the Rights of the Child has also noted that "Non-rights-based arguments such as those relating to general migration control, cannot override best interests considerations" (General Comment No. 6 on the treatment of unaccompanied and separated children outside their country of origin, op. cit., para. 86).

94 See "Giving children on the move prospects for the future", Destination Unknown campaign (www.destination-unknown.org); and S. Arnold et al., Durable Solutions for Separated Children in Europe, Irish Refugee Council, 2015 (<http://www.irishrefugeecouncil.ie/children-and-young-people/durable-solutions-for-separated-children-in-europe>).

95 Without such case management, there is a risk of a lack of coherence and coordination in the child protection procedures followed by separate countries—and

Children require security and stability for healthy development,⁽⁹⁶⁾ so the options concerning their future must be sustainable, rather than short-term ones that aggravate a child's sense of insecurity. This is particularly important when adolescents approach adulthood, possibly leaving care or moving from education into work, when policies adopted by States have the potential either to help young refugee and migrants make the transition satisfactorily or, on the contrary, to undermine their confidence and leave them fearful. Sustainable solutions include integrating children (and, when relevant, their families) into the community in the country they have reached, returning to their country of origin (sometimes to be reunited with their family, if this is in their best interests), or integration in a third country. Solutions require resources to pay for them, but adequate resources to finance solutions are often not available, either in destinations or upon return. International cooperation is vital to make up the shortfall.

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, in conformity with the principle of non-discrimination and taking due account of the gender perspective. They should respect fully the child's right to be consulted and to have his/her views duly taken into account in accordance with his/her evolving capacities, and on the basis of his/her access to all necessary information. Every effort should be made to enable such consultation and information provision to be carried out in the child's preferred language.⁽⁹⁷⁾

When assessing possible solutions for a child, States have a responsibility to investigate the implications of the options under consideration, notably by carrying out risk and security assessments. The Committee on the Rights of the Child has pointed out that these should focus on "safety, security and conditions" and of the "availability of care arrangements".⁽⁹⁸⁾ This may be a challenge when an assessment involves inquiries being carried out in a different State. They can be assisted in doing this by NGOs, as well as child protection officials in the other State. It involves a social assessment in the child's place of origin (of the specific situation of the child's family or potential caregivers and their capacity to care for the child, as well as general conditions in the country and place).⁽⁹⁹⁾ These are all part of a "risk assessment" but require significantly more than checking whether a child would be safe upon arrival.

When the solution for a child involves moving to another State, the authorities of both States share a responsibility to ensure a "continuum of protection".⁽¹⁰⁰⁾ The extent to which national child protection systems provide the necessary continuum of protection and care requires monitoring at national, regional and international level, to identify gaps or weaknesses and, where appropriate, to take remedial action.

In a recent report on the status of the CRC, the UN Secretary-General has pointed out that

Reintegration support for children who are returned to their country of origin needs to be child-focused and take special account of child-specific needs such as reintegration at school, access to psychosocial support, social inclusion, etc. Specific funds need to be invested in ensuring reintegration support is available and of good quality. Regular monitoring should take place, including through independent child rights bodies and civil society.⁽¹⁰¹⁾

7.2 Relevant provisions in international law

The CRC recognizes that children should grow up in a family environment and consequently requires States parties to deal with "applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification"... "in a positive, humane and expeditious manner".⁽¹⁰²⁾ The UN Guidelines for the Alternative Care of Children (2010) set standards for alternative care, including in emergency situations.⁽¹⁰³⁾ The Hague Convention on Jurisdiction, Applicable

children suffer as a result. In the worst cases, unaccompanied children have been taken to a border by officials and obliged to cross to a neighboring State without anyone there being forewarned and ready to care for them.

96 Recommended Principles for Children on the Move and Other Children Affected by Migration (Principle No. 8).

97 These principles are essentially the same as those set out in the Guidelines for the Alternative Care of Children (art. 6), op. cit.

98 Committee on the Rights of the Child, General Comment No. 6 on the treatment of unaccompanied children and separated children outside their country of origin, para. 84.

99 Separated Children in Europe Program: Statement of Good Practice, 2009, available at <http://www.scepnetwork.org/p/1/69/statement-of-good-practice>.

100 Recommended Principles for Children on the Move and Other Children Affected by Migration (Principle No. 7).

101 Status of the Convention on the Rights of the Child, Report of the Secretary-General, UN document A/71/413 of 27 September 2016, para. 46.

102 Convention on the Rights of the Child, preamble and art 10.1.

103 Guidelines for the Alternative Care of Children, op. cit. These Guidelines are designed, inter alia, "To support efforts to keep children in, or return them to, the care of their family or, failing this, to find another appropriate and permanent solution, including adoption and kafala of Islamic law" and "To ensure that, while such permanent solutions are being sought, or in cases where they are not possible or are not in the best interests of the child, the most suitable forms of alternative care are identified and provided, under conditions that promote the child's full and harmonious development" (Article 2).

Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children (1996) addresses a range of international child protection issues. When two States have ratified this Hague Convention, its provisions allow them to implement sustainable solutions for children who are nationals of one State but are located in the other without the need of a further bilateral agreement.

Numerous guidelines describe the steps to be taken to identify and implement solutions in cases of unaccompanied or separated children, both those who are refugees and those who are not.⁽¹⁰⁴⁾

In possible cases of *refoulement* (of a refugee or a person facing a risk of torture⁽¹⁰⁵⁾), a child may not be returned to his or her country of origin. Further, the Committee on the Rights of the Child has pointed out that family reunification in the country of origin should not be pursued where there is a “reasonable risk” that such a return would lead to the violation of human rights of the child.⁽¹⁰⁶⁾

7.3 Relevant example

HARMONIZING THE APPROACH IN WEST AFRICA

In a region where tens of thousands of children engage in independent migration, mainly to seek a living, the Economic Community of West African States (ECOWAS), a regional organization, agreed a set of guidelines in 2015 to be applied in all 15 Member States when a young person under 18 is identified as unaccompanied and in difficulty, whether in their own country or abroad.⁽¹⁰⁷⁾ They go beyond general measures for protecting unaccompanied children, by promoting inter-country case management and a standardized approach that facilitates cooperation among case managers and organizations based in different countries. Recognized by ECOWAS and government ministries, the system, now an integral part of West Africa’s regional child protection framework, involves the West Africa Network for the Protection of Children (WAN), a network of NGOs and government agencies which assist children in difficulty. WAN’s goal is to facilitate and monitor the social re/integration of children found living away from home and in difficulty and to enable them to develop alternative plans for the future (known as a “life project”).

Between its establishment in 2005 and the adoption of the ECOWAS guidelines, the WAN had already assisted 6,500 children aged 13 to 17, about two thirds of whom were identified outside their own country and assisted in returning and re/integrating in their country of origin.⁽¹⁰⁸⁾ The ECOWAS guidelines outline eight steps for protecting child migrants in difficulty, from identification to the monitoring of the child’s re/integration, a process that continues for two years after a child is re/integrated. The steps include: finding out about the personal situation of each child and his/her reasons for leaving home, then assessing whether it is realistic for the child to return home or whether appropriate alternatives are available. They point out some circumstances in which it is not advisable for a child to return to his/her family.

7.4 Proposed goals, targets and indicators

Relevant commitments made in the New York Declaration

The New York Declaration guarantees that “We will actively promote durable solutions, particularly in protracted refugee situations”.⁽¹⁰⁹⁾ The Declaration reaffirms that individuals must not be returned at borders.⁽¹¹⁰⁾

Any type of return, whether voluntary or otherwise, must be consistent with our obligations under international human rights law and in compliance with the principle of non-refoulement. It should also respect the rules of international law and must in addition be conducted in keeping with the best interests of children and with due process.⁽¹¹¹⁾

104 E.g., see the following UNHCR documents: Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum (1997); Guidelines on Determining the Best Interests of the Child (2008); Field Handbook for the Implementation of UNHCR BID Guidelines (2011); and A Framework for the Protection of Children (2012). On cases which include children who are not refugees, see Separated Children in Europe Program: Statement of Good Practice, 2009 (endorsed by UNICEF and UNHCR); UNICEF, Guidelines on the Protection of Child Victims of Trafficking, 2006; and the Council of the Baltic Sea States, Guidelines Promoting the Human Rights and the Best Interests of the Child in Transnational Child Protection Cases, 2015.

105 The Human Rights Committee expressed the view in 1992 that States parties to the International Covenant on Civil and Political Rights should “not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement” (Human Rights Committee, General Comment 20, Prohibition of torture or other cruel, inhuman or degrading treatment or punishment (Article 7), UN document A/44/40 of 10 March 1992).

106 Committee on the Rights of the Child, General Comment No. 6 on the treatment of unaccompanied and separated children outside their country of origin, para. 82.

107 ECOWAS, Support Procedures and Standards for the Protection and Reintegration of Vulnerable Children on the Move and Young Migrants, 2016, available at http://www.resao.org/sites/default/files/pao/u697/ecowas_standards_children_on_the_move_pdf_15903.pdf.

108 Baobab, Quarterly Newsletter of International Social Service – West Africa, November 2016.

109 New York Declaration, para. 75. An annex to the Declaration (Annex I, “Comprehensive refugee response framework”) contains eight more detailed points about durable solutions for child and adult refugees.

110 New York Declaration, para. 24.

111 New York Declaration, para. 58.

Goals for States to be included in the Global Compacts

- I. Develop and implement clear procedures for determining the status of refugee and 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; the options available should include continued residence and integration when this option is found to be in the best interests of the child.
- II. Develop bilateral or multilateral agreements with other relevant States, which standardize approaches for identifying and implementing sustainable solutions for refugee and migrant children in keeping with their best interests.
- III. Develop the capacity of communities to provide solutions for migrants and refugees, including by providing extra resources from central government or international cooperation.⁽¹¹²⁾
- IV. Agree an internationally recognized procedure for monitoring returns (of children, whether accompanied or unaccompanied) and for monitoring the subsequent re/integration of the children involved in their countries of origin.

Targets to be included in the Global Compacts

- 1) By 2021, States review and, where appropriate, amend legislation or policies governing decisions concerning refugee or migrant children to ensure that the best interests of the child are a primary consideration in any decision affecting them (whether about an individual child or a child and other family members), that the child's right to be heard is guaranteed explicitly and that any returns are both assisted and voluntary.
- 2) By 2023, States review and, where appropriate, amend legislation and policies affecting refugee and migrant children to clarify the pathways for permanent residence status and to enhance the sense of stability for refugee and migrant children and promote their ability to make plans for their own future as adults.
- 3) By 2023, States take evidence from monitoring reports into account when deciding on solutions for refugee and migrant children (i.e., evidence about what happens to accompanied and unaccompanied children after they are returned).
- 4) By 2025, all bilateral or multilateral agreements concerning unaccompanied or separated children promote the continuity of care and facilitate inter-country case management.

Indicators proposed to monitor progress

- i. The number of States that are reported to implement well-managed migration policies, in comparison to 2018, including standard procedures for agreeing and implementing solutions for refugee and migrant children that explicitly make the best interests of the child a primary consideration and take the child's views into account, along with evidence from risk and social assessments.⁽¹¹³⁾
- ii. At national level, an independent children's rights institution confirms that the rights of refugee and migrant children to participate in decisions affecting them and to be assisted by legal counsel at administrative or judicial proceedings are being respected (or the respect of such rights is confirmed in a country report issued by the Committee on the Rights of the Child).
- iii. The number of States that, by comparison to 2018, authorize young refugees and migrants who have attended secondary education in their territory to complete their higher education or vocational training in the State after reaching the age of 18.
- iv. The number of bilateral or multilateral agreements that contain provisions on inter-country case management or otherwise promote inter-country case management (and changes in comparison to 2018).⁽¹¹⁴⁾
- v. The numbers of unaccompanied or separated children reported to be moved by immigration or other officials to another State each year without their transfer being coordinated with child protection authorities in the receiving State (either across a land border or by being put on an airplane or in a boat). This indicator should measure the total number of children involved and the number of such incidents.

112 This includes both local communities that refugees or migrants either pass through or live in and the communities of refugees and migrants themselves, to empower them to take action to help themselves and others from the same community.

113 SDG Indicator 10.7.2 refers to the "[n]umber of countries that have implemented well-managed migration policies".

114 Such as Standard Operating Procedures.