



Save the Children's comments on the second draft joint General Comment No.3 of the Committee on the Protection of All Migrant Workers and Members of Their Families and No.21 of the Committee on the Rights of the Child on the Human Rights of Children in the Context of International Migration

We would like to commend members of the Committee on the Protection of All Migrant Workers and Members of Their Families and of the Committee on the Rights of the Child and others involved in the drafting of this draft Joint General Comment for their efforts and contribution to bring the text to this level. We hope this round of comments and suggestions will contribute to further enrich this good draft.

Background

We would recommend the inclusion of the reference of the multi-stakeholder Initiative for Child Rights in the Global Compact, which both the Committee on the Rights of the Child and the Committee on Migrant Workers have joined in 2017.

It may also be good to provide background information upfront answering questions such as why the need for this particular General Comment, giving an outline of the problem it is striving to address (i.e. migrant children falling through the cracks and not being considered as children first and foremost), and its relationship to today's context, for example the 2030 Agenda for Sustainable Development with its leave no one behind principle and target 10.7, the New York Declaration for Refugees and Migrant, and the need to clarify normative standards in light of new emerging trends and issues. Inclusion of such background information would help better understand its purpose and the gaps it would potentially fill in terms of providing interpretation and guidance on the relevant provisions of the CRC and CMW.

For example, in addition to the reference to the initiatives led by the Committees, it would also be useful to refer to the wider context, key international moments, declarations, resolutions and reports that have profiled the issue of children in the context of international migration, or that are particularly relevant to the topic, and that will inform the present General Comment, including the UNGA High Level Dialogue on International Dialogue and Development (2013), the 2030 Agenda for Sustainable Development (2015), the New York Declaration for Refugees and Migrants (2016), the UNGA resolution 71/177 on the rights of the child with a focus on migrant children (2016), the HRC resolution on unaccompanied children and adolescents and human rights (2016), the study of the United Nations High Commissioner for Human Rights on challenges and best practices in the implementation of the international framework for the protection of the rights of the child in the context of migration (2009) and the study of the Human Rights Council Advisory Committee on the global issue of unaccompanied migrant children and adolescents and human rights (2017 – *to be presented in September at the Human Rights Council*).

Terminology and scope

In relation the scope of this document, the draft could benefit from a clear definition of children in the context of international migration and whether children left behind in their countries of origin

are covered by this general comment. For example we found the current wording in paragraph 9 open to interpretation because it first refers to “children outside their country of nationality” and then it adds “or affected by migration”. For the sake of clarity, we would argue to keep the focus on children involved in cross-border migration, given the specific challenges related to cross-border migration and the realisation of children’s rights in this context, which are the primary focus of this document. It would also be useful to mention that all children, irrespective of the reasons that triggered their movement or of their migration status, are within the scope of this General Comment.

General Measures of Implementation of CMW and CRC Conventions for the protection of children in the context of migration. The Primacy of Children’s Rights within Migration Policies

- **Strengthen reference to a system approach and comprehensive child protection systems for children in the context of migration**

Paragraph 14 stresses the leading role of child protection authorities and the need for mainstreaming the situation of children in the context of migration in comprehensive child protection systems. This concept of mainstreaming should be spelled out to reflect the importance of a system-wide approach. At the national level a series of agencies and actors are likely to be involved when a child crosses the national borders. These might include migration and asylum authorities, child protection, education, and health services, law enforcement and justice authorities, international and non-governmental actors. However, lack of coordination between these actors can have very negative impact on the ability of these children to access protection and other key services and receive appropriate and timely information. States should establish or invest in and strengthen national protection systems that are accessible and respond to the specific needs of children in the context of migration, supported by appropriately screened, trained, qualified and monitored staff and with a permanent mechanism of coordination between the agencies involved. Measures such as centralizing and strengthening the institution of guardianship and establishing standard operating procedures that specify who does what, and when, can improve the protection of children and make national systems more responsive and cost-effective.

- **Strengthen reference to accessibility of disaggregated data on migrant children**

It would be useful to further highlight the importance of data and monitoring. We would suggest to add the reference to *comparable, reliable, timely, disaggregated and accessible* data as the basis for planning, designing and implementing a comprehensive policy aimed at the protection of the rights of children in the context of international migration. This data would need to be available in a user-friendly way for civil society to understand them, including children.

- **References to relevant General Comments from the CRC Committee**

We would suggest to add in paragraph 10 the reference to General Comment No. 6 about Treatment of Unaccompanied and Separated Children Outside their Country of Origin and General Comment No.19 (2016) on public budgeting for the realization of children’s rights, also mentioned in the below section on public budgeting.

- **Importance of resource mobilization, budget allocation and spending to respect, protect and fulfil the rights of migrant children**

Considering that the investment element would be key to deliver on many of the recommendations outlined in the General Comment, we think it would be crucial to strengthen references to this in the document linked to UNCRC General Comment No.19 on public budgeting for the realization of children’s rights, including through the following additions:

- Paragraph 7 – We would suggest to include a reference to budgetary measures.
- Paragraph 11 – We would suggest to include a reference to UNCRC General Comment No.19 (2016) on public budgeting for the realization of children’s rights.
- Paragraph 16 – Consider adding a sentence at the end of the paragraph making it clear that the disaggregated data generated should be made publicly available in a timely manner.
- Paragraphs 18 and 19 – Consider adding a paragraph here outlining the legal obligation of states to invest in the realization of the rights of children in the context of migration linked to UNCRC Article 4 and drawing on language in UNCRC GC No. 19 along the lines of *‘It will not be possible for States parties to implement the legislative, policy and other appropriate measures to fully protect the rights of migrant children without sufficient financial resources being mobilized, allocated and spent in an accountable, effective, efficient, equitable, participatory, transparent and sustainable manner. In its General Comment No.19 (2016) on Public Budgeting for the Realization of Children’s Rights, the CRC Committee has already stressed that States parties have a duty to ensure that sufficient public resources are mobilized, allocated and utilized effectively to fully implement approved legislation, policies and programmes for children and that States parties should identify groups of children that qualify for special measures and use public budgets to implement such measures. These obligations also apply in the context of this General Comment and to ensure the full protection of the human rights of children in the context of international migration.*
- Paragraphs 106-108 – Consider adding a paragraph here explicitly mentioning the obligation of states to provide ODA. One option could again be to draw on language in UNCRC General Comment No.19, i.e. *‘States that lack the resources needed to implement the rights enshrined in the Convention and its Optional Protocols are obliged to seek international cooperation, be it bilateral, regional, interregional, global or multilateral. States parties with resources for international cooperation have an obligation to provide such cooperation with the aim of facilitating the implementation of children’s rights in the recipient State’.*
- Paragraphs 36-40 – States parties need to allocate resources to ensure children’s meaningful and safe participation and to have their views heard. In view of this, we would recommend that the following sentence from UNCRC General Comment No.19 is added to this section *‘The Committee underlines the need for States parties to budget for and provide contextually appropriate materials, mechanisms and institutions to enable meaningful participation.’*

Fundamental principles

- **Non discrimination:** This section could be expanded upon to reflect the obligations of States to ensure that laws, policies and programmes do not intentionally or unintentionally discriminate children in the context of migration in their content or implementation. This also requires the creation of an enabling environment of non-discrimination through capacity building on children’s rights of state authorities and service providers who come in contact with children in the context of migration, and to address inequalities among children by reviewing and revising relevant legislation, policies and programmes. This section could also

highlight language barriers and the need to address those through linguistic and culturally appropriate support measures for migrant children, in order to facilitate their integration into receiving societies.

- **Best interest of the child:** This section could be organised in a way to provide more targeted guidance for states on the key steps and considerations that States should bear in mind when applying the principle of the best interest of the child in the context of international migration. The best interest of the child should be a primary consideration in all decisions about short, medium and long term solutions.

It would be helpful to focus on what it means to take the best interest of the child as a primary consideration, vis-a-vis other considerations, explaining further why child's best interests should take priority, drawing on General Comment 14, in which contexts it should be applied (in identification and vulnerability screening procedures at entry or in transit countries, in making decisions about family reunification or separation in cases of child abuse, in establishing the nature of relationship between a separated child and an accompanying adult, in guardianship procedures, in identifying temporary care solutions for unaccompanied children and in identifying sustainable solutions) and how it should be carried out, with special attention given to the views of children and adequate safeguards put in place.

We would also recommend to elaborate on the best interest determination procedure in the context of return and the requirements for reaching such determination, including the child's right to competent and independent legal representation; ensure that all solutions available to the child are equally assessed; incorporate the component of adequate development and survival of the child; and take into account the socio-economic conditions in the child's country of origin and family environment, including whether there is adequate safe reception in their country of origin.

- **Life, survival and development:** This section could also elaborate on the importance of finding sustainable solutions in children's best interests, be it local integration, resettlement in a third country or return to the country of origin. It could draw on language from General Comment No. 6 para.79 on the need for such efforts to be initiated and implemented without undy delay and wherever possible immediately upon the assessment of a child being unaccompanied or separated.
- **Right to be heard, express his or her views and participation:** In paragraph 37 and throughout the document, consider the inclusion of the word "independent" wherever "guardians" is referred to in the General Comment. In some countries, the guardian is the immigration officer, who has an inherent conflict of interest.
- **Non refoulement:** Consider including discussion of "constructive refoulement". Eg. Detention conditions can be so harsh as to result in migrants returning "voluntarily" to places where they face persecution. We would also recommend further guidance on repatriation procedures and methods of repatriation in full respect with international law, in conditions of safety and dignity, and with due procedural guarantees, with particular mention of the fact that children should be accompanied throughout the return process.

Further emphasis could be put on the need to ensure ongoing human rights monitoring post-return carried out by independent mechanisms, to ensure that the return did not violate the

principle of non-refoulement, the right to seek asylum, and/or the prohibition of arbitrary and collective expulsions; guarantee that all allegations of human rights violations during return processes are promptly and impartially investigated; monitor the human rights situation of migrant children who have been returned in forced or voluntary processes; and ensure access to effective complaints mechanisms and remedies where appropriate.

Legal obligations of State parties

- **Right to liberty and non-detention:** In relation to paragraph 52, consider additional language noting that detention can have an adverse impact on the enjoyment of many other rights including health, education, cultural rights, recreation, rights to family life, etc.. Also the fear of arrest and detention can lead to non-reporting by children of violence/abuse and exploitation.
- **Protection from all forms of violence:** In Section B. 6 on the right to protection from all forms of violence and abuse, we would recommend to include other forms of violence that migrant children are exposed to and should be protected from, including corporal punishment, physical and sexual violence, military recruitment and harmful traditional practices, such as female genital cutting and child marriage. For example the number of child marriage among refugee children has increased exponentially over the last years in many host countries, including in Jordan. See Save the Children study [Too Young to wed](#) for more information.
- **Right to education:** This should include access to accredited and sustained education (e.g. some certificate/proof of education so that children can continue their education at the same level if they move to another country). Inclusive models and policies should be put in place to facilitate the integration of migrant children in schools and support teachers to respond to the needs of students from diverse backgrounds, through age-appropriate and relevant curricula for skills development.

International cooperation:

An important element that merits further attention is the need to ensure a continuum of care and protection for migrant children through cross-border coordination and cooperation mechanisms between countries of origin, transit and destination for the protection of children on the move. This cooperation involves primarily national child protection services between countries but also non-state actors to ensure that children are protected through all stages of their migration journey, notably through better data exchange and case management, and are able to access to key services, including education and health. It is vital for transnational cooperation to be rooted in a common child protection agenda, and thereby allow for better and more sustainable outcomes for children in migration. Normative, institutional and procedural solutions need to be set up to build effective national and transnational coordination frameworks to protect children on the move; those mechanism and frameworks, must include migrant children and youth networks.

More harmonized approaches are needed in areas such as legal definitions, asylum procedures, sharing of country of origin information, 'safe country' designations, and reception practices, including guardianship, age assessment, and family tracing and reunification.