

Save the Children's submission for the Office of the High Commissioner of Human Rights' report on the compendium of principles, good practices and policies on safe, orderly and regular migration in line with international human rights law

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Save the Children works in 120 countries through our members, programmes and partners and our mission is to inspire breakthroughs in the way the world treats children and to achieve immediate and lasting change in their lives.

Save the Children works across development contexts and humanitarian situations, covering issues such as health and nutrition, education, child protection, child poverty and child rights governance. Through Save the Children's Every Last Child global campaign, we are working to ensure that all children have the opportunity to survive and learn, regardless of who they are and where they live.¹

Save the Children has been working on protecting migrant and refugee children since our foundation in 1920, working in countries of origin, transit and destination, through our programmes in Africa, Asia, Europe, the Balkans, and Latin America, to prevent unsafe migration and ensure that children are protected from violence, abuse and exploitation along the migratory route.

This submission builds primarily on the guidance from the UN Convention on the Rights of the Child and the General Comment n.6 of the Committee on the Rights of the Child, which applies to all children irrespective of their legal or migration status and should be a central part of the Global Compact on Safe, Orderly and Regular Migration.

This submission will focus on three key principles for which we have identified practical examples of promising practices by States. It builds on existing work² including the multi-stakeholder Initiative for Child Rights in the Global Compacts³.

¹ Every Last Child campaign: <https://campaigns.savethechildren.net/>

² Nine Recommended Principles to guide actions concerning children on the move and other children affected by migration: <http://destination-unknown.org/wp-content/uploads/recommended-principle-EN.pdf>

³ Save the Children and Terre des Hommes International Federation, with a broad coalition of 27 organisations, including civil society, UN agencies, foundations and experts, have come together to promote the Initiative for Child Rights in the Global Compact. This is a multi-stakeholder initiative seeking to ensure that the rights of all children on the move are at the core of the two Global Compacts and form the foundation of any framework of migration governance. As part of this initiative, a working proposal has been developed setting out a roadmap for operationalising six commitments related to migrant and refugee children from the New York declaration, and drawing on CRC standards and guidance, into clear benchmarks and timelines. It is available on: www.childrenonthemove.org.

Principle one: Children on the move and other children affected by migration shall be considered children first and foremost, they should be protected against all forms of discrimination and their best interests shall be a primary consideration in all actions concerning them.

The four general principles of the UN Convention on the rights of the Child (UN CRC), including non-discrimination, the best interest of the child, the right to life, survival and development and the right to be heard should be guiding all decisions or actions on children in the context of migration. In the section below, we will focus specifically on the principle of non-discrimination, the best interest of the child, and the right to life, survival and development, for which we have gathered specific examples, while reaffirming the importance, indivisibility and interdependence of the four principles and all the rights enshrined in the UNCRC.

Non-discrimination (article 2 CRC)

The principle of non-discrimination is a fundamental norm of international law, enshrined in the Universal Declaration of Human Rights, and codified in many international binding treaties, including the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child (CRC). 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”.

Example of promising practice: Government sponsored campaigns against racism

Several governments have responded to racism and xenophobia behaviours against migrants and refugees 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 example, in 2017 Belgium launched a “Refugees welcome” campaign against racism. Moreover, the local government in Johannesburg, South Africa, developed operational plans to safeguard against and respond to outbreaks of xenophobic violence against migrants, including through the creation of help desks.

Policy recommendations:

- Eliminate all provisions that discriminate against migrant children in laws and policies.
- Eliminate all criminalization of migrant children because of their migration, nationality or residence status.
- Ensure access to justice and effective remedies for 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.

Best interest of the child (article 3 CRC)

All migrant children, whether accompanied or not, are entitled to an individualised assessment of their needs that has their best interests as its core guiding principle. The best interest of the child should be the primary consideration in all matters concerning migrant children, including in transit, at borders and when identifying sustainable and protective solutions for children. The best interests of the child should be the primary consideration in procedures on identification, vulnerability screening, age assessment and reception. For this purpose, dedicated resources and appropriate training of relevant authorities that come into contact with children or that are mandated to make decisions that affect a child on child rights and child sensitive approaches should be in place.

Importantly, mechanisms for the formal determination of the best interests of the child should be put in place to make appropriate decisions about medium and long term solutions for the protection of children on the move. Sustainable solutions include, amongst others, integrating children into the community they have reached, integration in a third country, or returning to their country of origin if in their best interests. When the solutions involves moving to another state, the authorities of both States share a responsibility to ensure a continuum of protection. This continuity of care and protection can be facilitated by inter-country case management and bilateral coordination mechanisms between relevant authorities, and through formal agreements between States, where appropriate and relevant.

The precondition to any return of a child – whether unaccompanied, separated or with family - is that their best interests have been determined and return is found to be a sustainable solution in their best interests. This requires formal, robust, individual procedures, with due consideration given to the views of children, for every decision that could lead to the return of a child. On the contrary, immediate deportation, forced return, or the detention of children based on the migration status are a violation of children’s rights and should not be part of the tools that states should mobilise with children. Appropriate procedural safeguards should be in place in when repatriation of children is considered, in compliance with international standards. These include, for example, access to relevant information for the child, independent legal representation, family tracing and assessment; existence and assessment of adequate reception facilities follow up and reintegration plans to ensure their short and long-term support.

Example of promising practice: The government of Zambia guidelines on protection and assistance for vulnerable migrants

With assistance from the International Organisation 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).

Policy recommendations:

- Ensure that all protocols, policies and procedures enacted at local, regional or national level concerning migrant children contain are founded on the best interests of the child principle and include best interests assessments and determination procedures where necessary.
- Ensure that the principle of non-refoulement is strictly upheld for all migrants, including children, and it is interpreted according to the provisions of the customary law, CRC and, and the guidelines set out by the General Comment No 6.

Right to life, survival and development (article 6 CRC)

All children have a right to a standard of living adequate for their physical, mental, spiritual, moral, educational, and social development. States have a duty to anticipate and prevent harm, including with respect to the triggers of child migration and to invest in robust search and rescue operations to avert harmful migration outcomes.

Children require security and stability for healthy development, so the options concerning their future must be sustainable, rather than short-term ones that aggravate a child’s sense of insecurity. This entails looking for

sustainable solutions in children's best interests, to enable the child to develop. A range of options is available for migrant 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. 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.

Example of promising practice: Harmonising the approach in West Africa in protecting children and providing long term solutions

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) 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. 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 is now an integral part of West Africa's regional child protection framework and 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 their country of origin. 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.

Policy recommendations:

- Invest in search-and-rescue efforts such as interventions designed to save lives at sea and ensure that the specific vulnerabilities of children on the move are integrated into response plans.
- Ensure appropriate standards to reception are adhered to in line with child rights and their best interests as well as family-based alternative care for unaccompanied and separated children are in place.
- Develop bilateral or multilateral agreements with other relevant States, which standardize approaches for identifying and implementing sustainable solutions for migrant children in keeping with their best interests.

Right to education (article 28 CRC)

The rights guaranteed by the CRC entitle all children to access a range of services. 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). Children are entitled

to receive an education, but migrant children are sometimes unable to attend school for months or years. Services that support early childhood development are critical for all children, especially 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 migrant children and young adults.

Examples of good practice: Making “education for all” a reality in Thailand

Access to services can be brought about by measures to end discrimination or to give migrant children 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.

In 2005, Thailand's Ministry of Education instructed school directors to enrol all children, including children born abroad who did not have proper identification documents, so they could access free basic education. 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.

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. Allowing the two systems to function alongside each other made best use of the expertise developed by specialist NGOs.

Policy recommendations:

- Ensure all 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.

Principle two: 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.

The Global Compact on Refugees and the Global Compact for Safe, Orderly and Regular Migration provide an opportunity to build upon the commitment made by Member States in the New York Declaration 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 migrant children, whether travelling alone or with members of their families. Detention is never in their best interests in this context, as emphasised by the Committee on the Rights of the Child⁴ and numerous international and regional human rights bodies, and detention has very detrimental impact

⁴ CRC, Report of the 2012 Day of General Discussion, *The Rights of All Children in the Context of International Migration*, 2012, accessed at <http://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2012/DGD2012ReportAndRecommendations.pdf>

on children's health and well-being; the longer the time of detention the longer-term its impact is on children's wellbeing.

Prohibiting immigration detention requires governments to develop alternatives to detention, in line with children's best interests, in law and in practice, for all children, including children with their families. The steps for developing such alternatives have been outlined by the International Detention Coalition in the Community Assessment and Placement (CAP) model. This model outlines five steps to prevent and reduce the likelihood of unnecessary detention⁵.

Examples of promising practice: Legal prohibition of detention of children for immigration purpose and the UK Family Returns Process

Ex. Costa Rica, Panama and Ireland have prohibited the detention of any children for immigration purposes. In Egypt, for instance, detention has been prohibited for children below the age of 15. Some States have prohibited the detention of unaccompanied children on the basis of their migration or residency status, while others have prohibited such detention when children seek asylum.

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".

Policy recommendations:

- Review existing national legislation and policies as well as regional agreements and processes to prohibit child detention based upon the immigration status of children or their parents/guardians.
- Develop, fund and implement and monitoring national action plans for the elimination of child immigration detention involving government authorities, civil society, and other relevant actors, including children themselves.
- Develop and/or implement child-sensitive alternatives to detention for migrant children and their families that respect the rights of the child (and are in their best interests) and allow children to remain with their family members and/or guardians in non-custodial, community based-contexts while their immigration status is being resolved.

Principle three: Child protection systems shall protect all children in the context of migration

States are primarily responsible for the protection of children and they need to establish and implement child protection systems in accordance with their international obligations, ensuring non-discriminatory access to all children under their jurisdiction.

⁵ Robyn Sampson, Vivienne Chew, Grant Mitchell, and Lucy Bowring, *There are Alternatives: A handbook for preventing unnecessary immigration detention* (revised edition), IDC 2015, available [here](#) or at <http://idcoalition.org/publication/there-are-alternatives-revised-edition/>. The five steps are: (1) presume detention is not necessary; (2) screen and assess the individual case; (3) assess the community setting; (4) apply conditions in the community if necessary; (5) detain only as a last resort in exceptional cases.

In their design and implementation, national child protection systems shall take into account the distinctive needs and views of children on the move and other children affected by migration. States shall protect children against exploitation, violence, abuse, and other crimes, and against resorting to crime or sexual exploitation to meet their basic needs. States and regional organizations have a responsibility to ensure a continuum of protection between local government authorities and States through which children travel, and to promote harmonized protection practices developed by local communities where appropriate.

Example of promising practice: The new comprehensive protection law for unaccompanied children in Italy

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. Along with an ‘absolute prohibition on refoulement’, 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.

Policy recommendations:

- Develop guidelines to ensure timely and effective screening and referrals for migrants in vulnerable situations, regardless of their migration status.
- Establish appropriate and holistic age assessment procedures based on the best interests of the child
- Ensure a functional and effective guardianship system for unaccompanied and separated children with qualified and trained independent legal guardians who have the know-how, expertise and capacity to support each child for whose care they are responsible.

