

## Submission for the Office of the High Commissioner for Human Rights (OHCHR) report on migrants in transit (A/HRC/RES/29/2)

November 2015

Save the Children is the world's leading independent organisation for children, working in 120 countries through our members, programmes and partners. 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 full spectrum across development and humanitarian interventions, covering issues such as health and nutrition, education, child protection, child poverty and child rights governance. 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.

In response to the huge influx of migrants and refugees in recent years and months, Save the Children has stepped up its operational response in countries of transit, particularly in Central America and the Northern Triangle, in Europe and in the Western Balkans to provide immediate assistance to vulnerable children on the move and ensure minimum standards of protection and care within and across borders. This submission builds on research as well as practical examples from Save the Children's work on children on the move, in both emergency and non-emergency settings, in a number of countries across all regions.

### Introduction

Globally, around 24 million children worldwide below the age of 14 years were international migrants in 2013<sup>1</sup>, and since then, the number of people on the move or displaced due to conflict, environmental degradation, chronic vulnerability and large-scale displacements of growing intensity and unpredictability kept escalating. Political, demographic, environmental and economic trends are all drivers that increase migration and displacement.

Children migrate for various reasons. Some are asylum seekers fleeing war, armed conflicts, criminal and gang violence, discrimination or persecution in their home countries, whereas others are victims of trafficking and slavery. Some seek education and employment opportunities; others do not choose to leave, but are sent away by their families to escape poverty. Whatever the reason for their journey, many children may find themselves extremely vulnerable abroad, particularly unaccompanied children<sup>2</sup>, and even more so when crossing borders and in transit situations.

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<sup>1</sup> United Nations and others, "Facts and figures: international migrant children and adolescents" <http://www.un.org/en/development/desa/population/publications/pdf/migration/Factsheet%20Children%20and%20Adolescent%20Migrants%2009062013.pdf>

<sup>2</sup> **Unaccompanied children** 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 those *separated from both parents or from their previous legal or customary primary care-giver, but not necessarily from other relatives* and are not being cared for by an adult who, by law or custom, is responsible for doing so.

Committee on the Rights of the Child, General Comment n°6, Treatment of Unaccompanied and Separated Children Outside

Children who engage in those desperate journeys experience dangerous conditions during the journey and often find themselves affected by Post-Traumatic Stress Disorder, malnutrition and dehydration. Because of their irregular status, they are often unable to access services such as education, health, adequate housing and protection. Many of these children end up living and/or working in the street or in informal settlements where they are further exposed to violence and exploitation. Once settled, they face language barriers and discrimination which is often reinforced by a hostile climate of growing anti-immigration sentiments and xenophobic political propaganda.

The dynamics of transit and irregular status increase the obstacles in assessing the real trends of arrivals, since children on the move may pass undetected, bypassing identification and registration for fear of detention, of return to countries where they do not intend to remain and repatriation to their countries of origin. The lack of reliable and comprehensive data on children on the move in countries of transit leads to difficulties in formulating appropriate responses that cater to their needs. Similarly there is a knowledge gap among government officials in relation to the actual drivers for international migration particularly of unaccompanied and separated children, owing to the lack of appropriate case management systems and lack of political will to put those in place, which hinders early identification and individual assessment and follow-up of cases of vulnerable children and families at risk.

The unprecedented influx of migrants and refugees in several regions, over the past few years, notably in Central America, Bay of Bengal and Andaman Sea, the Middle East, the Western Balkans and Europe, has also added significant pressure on countries of transit, requiring an emergency response. In many of these countries there is no management in place in informal camps, with dire conditions in some and inadequate facilities across all. Even the formal reception centres in many countries lack management capacity and the ability to provide access to basic facilities. Many children are put into detention facilities until their registration and migration status is processed which can take several days or months. In this context, mechanisms for identifying, supporting and protecting vulnerable groups, in particular unaccompanied and separated children, are essential to prevent human rights violations.

## **Life-saving interventions and minimum standards in terms of reception, access to essential services and information**

### *Rescue at Sea*

Rescue and protection of people in distress, including at sea, is a moral and legal imperative and requires multi-state robust safe and rescue procedures in line with international human rights and refugee law obligations as well as international maritime law and other relevant standards. These standards should also support the development of common criteria at regional level defining a difficult situation as an “emergency” requiring search and rescue operations and the creation of a responsibility sharing mechanism to facilitate the disembarkation of people rescued at sea.<sup>3</sup>

The operation Mare Nostrum<sup>4</sup> launched in October 2013 in Italy illustrates an ambitious rescue effort at sea taken by national authorities in response to the refugee and migrant crisis in Europe. The operation was part of a massive civic response that included national authorities, local governments, social organizations, including cultural mediators and, medical doctors from the Sea, Air and Borders department, specialized in communicable diseases providing medical and hygienic care to the migrants onboard. In response to the high number of children arriving by boat, an agreement with Save the Children Italy has provided for the

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Their Country of Origin, CRC/GC/2005/6, 1 September 2005, para. 7 and 8.

<sup>3</sup> Praesidium, Recommendations and good practices in the management of mixed migratory flows by sea,

<sup>4</sup> Mare Nostrum Operation website <http://www.marina.difesa.it/EN/operations/Pagine/MareNostrum.aspx>

presence of Save the Children staff in rescue efforts for information, support, legal counseling and cultural mediation targeting children and teenagers rescued at sea.

### Identification and first reception, including access to essential services

A common challenge across our operations and programmes is the considerable disparity in the quality of the reception and accommodation of children within countries of transit, and the lack of procedural safeguards and standard operating procedures for the identification and registration of unaccompanied and separated children, allowing for the detection and protection of vulnerable children who have been or are at high risk of exploitation and abuse.

Minimum standards, based on humanitarian and human rights obligations<sup>5</sup>, in terms of shelter and housing, water and sanitation, access to healthcare and education as well as legal advice and protection need to be ensured in national laws, policies and programmes interventions. Special attention should be paid to children, either with their families, separated or unaccompanied, and the setting up of spaces where children can receive adequate psycho-social support, informal education activities, including the provision of life-saving messages on health, nutrition and protection as well as recreational activities.

Minimum standards of reception have been adopted at regional or country level but they are still limited to a few countries and have a limited scope (only for asylum seekers as opposed to all migrants). For example, the European Council Directive 2003/9/EC of 27 January 2003 lays down *minimum standards* for the *reception* of asylum seekers, including in terms of housing, healthcare, education, detention, guardianship which have been transposed into the legislation of European Union Member States. Yet implementation of these minimum standards remains a major challenge.

To fill this gap, Save the Children has worked with authorities and partners in different countries to provide humanitarian assistance to children on the move upon arrival and to help monitor conditions in reception facilities. An example of good practice in this respect is the Praesidium project<sup>6</sup> that started in 2006 in Italy which provides a multi-agency cooperation model for humanitarian reception and assistance led by the Ministry of Interior and carried out by States institutions<sup>7</sup>, in partnership with the International Organisation for Migration (IOM), the United Nations High Commissioner for Refugees (UNHCR), the Italian Red Cross (CRI) and Save the Children Italy. Through this project, various activities were coordinated among the different agencies according to their mandate and expertise, including legal information and counselling; monitoring and identification of individual vulnerable cases (in particular, victims of trafficking for labour or sexual exploitation, unaccompanied minors, single-parent families); monitoring of migrants' health conditions, paying particular attention to women and children or disabled people; monitoring reception procedures. Joint procedures were also developed to guarantee the constant presence of field officers in landing areas and in migrant reception centres. This allowed for better coordination and information exchange efforts between the different stakeholders.

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<sup>5</sup> These include, amongst others, State obligations with respect to the rights set out in the United Nations Convention on the rights of the child and the International Covenant on Economic, Social and Cultural rights. The Committee on Economic, Social and Cultural Rights. General Comment n°3, provides that States have to meet minimum essential levels of each of the rights for all those under their jurisdiction (para 10).

<sup>6</sup> The Italian Ministry of Interior, UNHCR, IOM, the Italian Red Cross, Save the Children, 2012, Praesidium Project, Recommendations and good practices in the management of mixed migratory flows by sea: <http://resourcecentre.savethechildren.se/sites/default/files/documents/6893.pdf>

<sup>7</sup> Main institutions responsible for various aspects of the reception system includes notably the Coast Guard, the Customs and Revenue Police, the Carabinieri, the Civil Protection Department and the Border Police, the local Police Headquarters' Immigration Office, the Provincial Police Headquarters, Prefects' offices-central government branch offices and management bodies in relation to migrants' and asylum seekers' reception centres, local health authorities and judges.

Save the Children has also set up temporary Child Friendly Spaces in landing areas and reception facilities. Child Friendly Spaces provide children with a safe space to play, socialise and recover a sense of normalcy after the trauma they have faced, in a safe and child-friendly environment. In those places, they also find protection from the potential risk of abuse and exploitation, they learn and receive support and information about their rights, and have the opportunity to raise their voice and needs through various activities.

For example, in Serbia, Save the Children has introduced four mobile units at entry and exit points and 24/7 safe spaces in strategic locations for children in transit. Mobile units are covering the detection of vulnerable families and children in transit, assistance and referral, the provision of information and awareness raising including critical basic psychosocial-protection-legal information needed as well as food and non-food items distribution. They also run recreational and psychosocial support/ street activities for migrants in transit; as well as rapid family reunifications of children accidentally separated from their families during transit periods. The 24/7 safe spaces provide resting zone, warm place for babies and small children to prevent hypothermia for those waiting outside of the registration centre and address immediate needs, including through basic hygiene facilities, hot showers and toilets for the most vulnerable children babies and their mothers (where appropriate).

Another important challenge to the identification of children and referral to services is the lack of standardized age assessment procedures. Despite recommendations - also by the Committee for the Rights of the Child - to conduct age assessment through a multidisciplinary approach (considering medical, psychological and sociological aspects), age assessment procedures vary with no comprehensive and holistic approach. Age assessment procedures should only be undertaken in case of reasonable doubt regarding the age of the migrant in question and only if it is not possible to determine their age via other means<sup>8</sup>. It should always be conducted in light of the best interest of the child.

Moreover, disappearances of children from reception centres and other temporary accommodations is a common problem in transit and reception countries. In some cases, children fade voluntarily in order to escape from the authorities and reach the country or region to which they were originally headed. Yet in cases where the legal framework is quite progressive in ensuring the protection for all unaccompanied children, many of those countries only provide access to essential services for children who are identified and registered, leaving a major gap for a significant number of children in countries of transit who remain invisible. Outreach to this targeted group of children is therefore critical to increase their protection against violence, abuse, neglect and exploitation and ensure their access to information and to essential services. For example, in Greece and Italy, where drop-in centres were set up<sup>9</sup>, outreach often entails reaching unaccompanied children where they gather or live and invite them to visit the centre so as to receive more detailed information, counselling and assistance, highlighting the fact that the service does not require identification and registration with the authorities. The high number of unaccompanied children registered at the drop-in centres in Italy and Greece is a useful indirect indicator of the success of this practice.

### *Access to information and to a legal guardian*

As highlighted in this example, the provision of information to children on the move and their families<sup>10</sup> about their rights, the available services and as well as the risks linked to irregular migration, is vital to ensure

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<sup>8</sup> No one method should be relied on to assess a child's age, but a combination of methods. In line with applicable rules and procedures, it is recommended that the child provide informed consent to any medical procedures, and to contact made with authorities from the child's country of origin.

<sup>9</sup> The Civico Zero drop-in Centre in Rome and the newly established temporary night accommodation centre for children in transit, A28, run by the NGO Intersos are part of a local referral system providing "alternative protection". This referral system offers services on a 24 hour basis and overnight accommodation on a temporary basis, with the aim of providing assistance and facilitating the protection of unaccompanied children who had entered the country with the intention of proceeding elsewhere and, thus, not willing to enter official protection mechanisms.

<sup>10</sup> The information provided should include the following: the definition of 'minor'; the legal rights of migrant minors; the different phases of their stay in the country; a description of the host association and of the 'guardianship' role; waiting times for

their protection, by improving the possibility for them to exercise their rights, enhancing their participation and active role in decisions regarding their future. The information provided should be provided in child friendly formats and should be delivered in relevant languages, with the support of interpreters and cultural mediators.

Moreover many States face challenges in terms appointing legal guardians in a timely manner which limits the capacity of unaccompanied children to exercise their rights but also further delays their access to essential services such as education. In the absence of a child's parents or other legitimate care giver, States should appoint a guardian or adviser as soon as the unaccompanied or separated child is identified and maintain such guardianship arrangements until the child has either reached the age of majority or has permanently left the territory and/or jurisdiction of the State.

## **Ensuring the best interest of the child and cross border protection**

### *Best interest assessment and determination*

Every boy and girl on the move has the right to a 'best interest assessment' and an individual screening for their specific protection needs, regardless of their migration status or that of their parents, in line with article 3 of the United Nations Convention on the rights of the child (UNCRC). The best interests of the child should always be the primary consideration in procedures and considerations on return, family tracing and reunification, and on reintegration in countries of origin.

While the best interest assessment can be carried out by relevant stakeholders in relation to a specific action that concerns individual children in the short and medium term, the Best Interest Determination is a formal process with strict procedural safeguards designed to determine a child's best interests for particularly important decisions affecting the child, including durable solutions such as local integration, return or a third country solution.

States have failed to establish regulations that clarifies how child's best interest determinations should be carried out in line with international obligations, resulting in little application of this principle in practice. Too often authorities lack the ability to act in a child sensitive way. Children's rights, child protection and best interest determination procedures should be an integral part of trainings for migration authorities, border control police and relevant service providers. Moreover, children's own views, and an understanding of the reasons they migrate and the agency of the child in the migration process should be part of these considerations.

To support States authorities and practitioners in translating this principle into their operational response, Save the Children in South Africa developed in 2010 a best interest determination toolkit for children on the move<sup>11</sup>, containing a best interest assessment form and a durable solution recommendation matrix. Although this toolkit focuses on the South African context, it has also proved to be a useful tool to adapt to other contexts, notably in Serbia, where Save the Children has used the toolkit to design a two-day training program for professionals from border police and state-operated services who are usually the first official contact persons for children on the move. Save the Children is planning to rollout trainings in Serbia and build capacity of front line workers to be able to assist best interest of children in transit and provide adequate support.

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guardianship and residence permits and the importance of staying in the country (clarifying that it is important not to leave the country to ensure a continuity in their legal status in the country); what a residence permit consists of and the different types of existing permits; the conditions for access to education, training, legal work and procedures to be reunited with any relatives living in the country.

<sup>11</sup> <http://resourcecentre.savethechildren.se/sites/default/files/documents/3829.pdf>

Similarly UNHCR and UNICEF have developed a Guidance document in 2014<sup>12</sup> for determining the best interests of the child in industrialized States, with particular reference to the European context. It provides guidance, informed by case studies, for how State authorities can apply the best interest principle in the different stages of identification and reception and in the asylum process.

### *Child protection systems and cross border protection*

Greater coordination<sup>13</sup> between the relevant actors that come into contact with children on the move in the affected countries at local, national and regional levels is key to ensure a continuum of protection for the many children who are crossing borders, often alone. However cross border protection and coordination will only work, if countries have their own systems working. States need to put in place integrated and inclusive national child protection systems that address both prevention and response throughout the migration process, in a coordinated manner across sectors and allows for non-discriminatory access for all children, including non-nationals. Child protection systems include a legal framework that protects children, a central government coordination mechanism, effective regulation and monitoring at all levels, a committed and trained workforce with relevant competencies and mandates, data collection systems and mechanisms to ensure the participation of children and of children's organisations. These systems should also include child sensitive and age appropriate procedures and tools to identify, protect and assist children at risk, including unaccompanied and separated children and children in need of international protection.

One example of bilateral cooperation between states to promote cross-border protection can be found in the coordination working groups on the borders of Mozambique and South Africa and Zimbabwe and South Africa, and recently scaled up to the border between Zimbabwe and Mozambique. Save the Children has helped set up these working groups which consist of government and non-governmental actors from both sides of the border, with existing responsibility for protection of migrant children. These platforms allow for more effective communication between social workers and law enforcement agencies on both sides of the border and strengthened coordination to identify the best solution for an individual migrant child. The groups also work to improve protocols and guidelines for family tracing and reunification and for the provision of psychosocial support both for children in shelters and for those who have recently returned to their families. Recently, by means of example, a child trafficker received multiple consecutive life sentences for the trafficking of young girls from Mozambique to South Africa, as a result of consistent cooperation and relationship-building between actors from both sides through the cross-border coordination working group.

### *Children's voices in decision making and programming*

A child's rights based approach to migration always requires that the best interest of the child be given primary consideration, with the full participation of children on the move as primary stakeholders.

The enshrinement of the right of children to be heard in the UNCRC<sup>14</sup> originates from the recognition that children are inherently best able to articulate their experiences and this carries relevance that should be taken into account by anyone making decisions that will affect the child.

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<sup>12</sup> UNHCR and UNICEF publication, 2014, Safe and Sound, What States can do to ensure respect for the best interests of unaccompanied and separated children in Europe, <http://www.refworld.org/docid/5423da264.html>

<sup>13</sup>In its General Comment n°5 on the General measures of implementation of the Convention on the Rights of the Child, the Committee on the Rights of the Child highlights the need for coordination of government to ensure implementation of children's rights at national level. In this section we also emphasize the importance of cross-border coordination.

<sup>14</sup> Article 12 of the UNCRC

For example Save the Children's Regional Office in Southern has conducted research in 2014<sup>15</sup> with 96 migrant children in six cities in Mozambique, South Africa and Zimbabwe, providing a detailed profile of children on the move from rural to urban contexts, their vulnerabilities and the strategies to promote survival, resilience and safety of these children in urban contexts, based on children's own recommendations. Children prioritized the strategies that they had used to stay safe, or that they would recommend to other children in transit to stay safe. These included practical hints including having prior access to information (e.g. emergency numbers, bus schedules, routes, looking for landmarks while on the journey and remembering these), avoiding night travel or avoiding travelling completely alone, knowing to migrate with an identity document (one third of children roughly indicated that they actually possessed ID but had failed to bring it along) and who to trust. Through this example, it is clear that children on the move also have a key role to play with their peers in terms of prevention and protection from unsafe migration.

### Alternatives to deprivation of liberty

Too often, children on the move are perceived as criminals due to their migration status. This results in violations of their rights, including immediate deportation, forced return, or detention. Many countries continue to deprive children on the move of their liberty because of their irregular status or in "protective custody" from further violence and exploitation. Detention is never in the best interest of the child and shall only be used as a measure of last resort, for the shortest appropriate period of time (article 37 of the UNCRC). There is clear evidence from various studies that immigration detention has severe detrimental impacts on the physical and mental health of children. While deprivation of liberty can exacerbate a child's existing trauma, the detention environment itself can also be a cause of mental illness for child detainees. In some cases, prolonged and lengthy deprivation of liberty has led to incidences of self-destructive behaviour including attempted and actual self-harm" and in some instances, depression and post-traumatic stress disorder. In some countries, where the practice of detention of irregular children on the move is still prevalent, there has been some steps taken towards alternatives to deprivation of liberty. For example on the island of Kos in Greece, in October, a national NGO with the support of the UN Office of the High Commissioner for Refugees, agreed with the public prosecutor to host unaccompanied children in alternative transit care, as an alternative to detention in the local police cell.

### Safe repatriation and reintegration of children on the move

Many of the children consulted by Save the Children report of being immediately deported from the border where they came into contact with state officials back to their countries of origin without any concern for their age, health and individual situation. Where return to the country of origin is identified as the most appropriate solution for the child's best interest, it is critical that States put in place coordination mechanisms to ensure the safe repatriation of children on the move to their countries of origin. One output from the cross-border coordination working groups supported by Save the Children in Southern Africa has been the development of guidelines for safe repatriation for children from South Africa, to Mozambique and Zimbabwe. Guidelines were developed in partnership with government and inter-agency actors in each of the three countries and are currently being finalised. The Ministry of Women and Social Welfare has committed to endorsing the guidelines for the Mozambican government. A dissemination and strategy meeting was held in Pretoria in June 2014 to facilitate debate and strategic discussion between government and non-governmental stakeholders from the three countries to fast track adoption and implementation of safe repatriation practice. Positive outcomes have already emerged including the fact that children who received repatriation services were no longer being transported with adults, or on open trucks, but in government vehicles with other children.

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<sup>15</sup> Save the Children, 2015, *Jozi Lights: How to protect children engaging in rural to urban migration – a participatory study with migrant children from 6 cities in Mozambique, South Africa and Zimbabwe*

Similarly, a recent study by Save the Children, UNICEF and the Latin American Foster Care Network (RELAF)<sup>16</sup>, identified the lack of child protection mechanisms for migrant children in cases where they are returned to their country-of-origin as a major human rights challenge. Often children are being returned to the same violent circumstances which they originally fled. Many are also going back to dangerous violent family situations or community affected by gang violence where they can face significant risks of reprisals, especially after having provided information to security forces regarding activities of criminal groups. These practices amount to human rights violations and are not compliant with the principle of non-refoulement. Save the Children works with national and local child protection systems in El Salvador, to strengthen the psychosocial support offered to repatriated children in those centres where children wait during identification of their parents or families to ensure a safe and sustainable return and reintegration. Save the Children is seeking to develop a return and reintegration model that can serve as a model throughout the sub-region in Central America.

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<sup>16</sup> RELAF, UNICEF and Save the Children, 2015, Niños, niñas y adolescentes migrantes retornados, Un análisis de los contextos y las respuestas de los servicios y las políticas de protección en El Salvador, Guatemala, Honduras y México : [http://www.unicef.org/lac/informe\\_migrantes\\_retornados\\_final.pdf](http://www.unicef.org/lac/informe_migrantes_retornados_final.pdf)