



## I. Introduction

1. In its resolution 70/137, the General Assembly requested the Secretary-General to submit to the Assembly at its seventy-first session a report on the status of the Convention on the Rights of the Child and the issues addressed in the resolution, with a focus on migrant children. The present report is submitted in accordance with that request.

## II. Status of the Convention on the Rights of the Child

2. As of 1 July 2016, the Convention on the Rights of the Child<sup>1</sup> had been ratified or acceded to by 196 States. Somalia ratified the Convention on 1 October 2015. One Member State, the United States of America, is not yet party to the Convention.
3. As of 1 July 2016, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict<sup>2</sup> had been ratified or acceded to by 165 States, and the Optional Protocol to the Convention on the Rights of the Child<sup>3</sup> on the sale of children, child prostitution and child pornography<sup>4</sup> had been ratified or acceded to by 173 States.
4. Additionally, as of 1 July 2016, the Optional Protocol to the Convention on the Rights of the Child on a communications procedure had been ratified or acceded to by 27 States.

## III. Reporting under the Convention on the Rights of the Child

5. During the reporting period, the Committee on the Rights of the Child held its seventieth to seventy-second sessions.
6. As of 1 July 2016, the Committee had received initial reports from all but two States Parties, namely, Tonga and the State of Palestine. All initial reports submitted, with the exception of Nauru, have been reviewed by the Committee. In total, the Committee has received 502 initial and periodic reports, including combined periodic reports, submitted pursuant to article 44 of the Convention.
7. Furthermore, the Committee has received 109 initial reports and 2 periodic reports under the Optional Protocol to the Convention on the involvement of children in armed conflict, and 98 initial reports and 2 periodic reports under the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography.
8. The Chair of the Committee will present an oral report on the work of the Committee and engage in an interactive dialogue with the General Assembly at its seventy-first session as a way to enhance communication between the Assembly and the Committee, in accordance with Assembly resolution 70/137.

1 United Nations, *Treaty Series*, vol. 1577, No. 27531.

2 *Ibid.*, vol. 2173, No. 27531.

3 *Ibid.*, vol. 2173, No. 27531.

4 *Ibid.*, vol. 2171, No. 27531.

## IV. The rights of children in the context of migration

### A. The human right of children to be treated first and foremost as children

9. The realization of the human right of a child to be treated as a child first and foremost, regardless of his or her migratory status or the migratory status of his or her parents, remains uneven. This report looks at children in the context of migration, including those migrating internally and internationally, those forcibly displaced across borders and within their own country, and those affected by the interlinkage of migration and statelessness. Whilst some regions have made rapid progress in increasing protection and access to basic services for some categories of children affected by migration, in particular refugee children, in other regions progress has been less marked, and in many regions children who are found not to be refugees as defined in international refugee law have faced significant difficulties in accessing basic services. At the same time, progress is being made on the ground, including in response to some of the largest movements of forcibly displaced people documented in some regions for over half a century. Such efforts need to be bolstered in order to guarantee that all children everywhere receive the protection, assistance and services that are their right, and that their best interests remain the primary consideration.

### B. The rights of children affected by migration in international law

10. The Convention on the Rights of the Child (CRC) states in article 2, paragraph 1, that “States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status”.<sup>5</sup> The Committee on the Rights of the Child (CRC Committee) and other experts have asserted that the enjoyment of rights stipulated in the CRC is not limited to children who are nationals of a State.
11. The International Covenant on Civil and Political Rights provides a further example of the general principle of equality that underlies international human rights law as it relates to non-nationals and the limited scope of exceptions to that principle. According to its article 2(1), “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.<sup>6</sup> In general comment No. 15 (1986), the Human Rights Committee stated that “the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness. Thus, the general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens”.
12. The right of migrant children to be treated without discrimination, including in their right to access social, cultural and educational rights, is also rooted in article 2 of the Universal Declaration of Human Rights, as well as article 2 of the International Covenant on Economic, Social and Cultural Rights.<sup>7</sup> The Covenant affirms the right of everyone to education, compelling States Parties to respect, protect and fulfil the right on the basis of

<sup>5</sup> See United Nations (UN) General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations.

<sup>6</sup> See UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations.

<sup>7</sup> See UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations.

non-discrimination and equality of opportunity. The Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of Persons with Disabilities, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families reaffirm the principle of non-discriminatory application of human rights guarantees and access to services for migrants and their families, including children affected by migration.

13. The Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2) restate and compile international human rights and humanitarian law relevant to internally displaced persons, including internally displaced children. The principles highlight the need to take into account children's special needs for protection and assistance (4.2), especially their right to education (23).
14. A number of global political commitments in the past two decades have sought to reinforce this commitment to non-discrimination on the basis of migratory status, particularly for children, in access to services and the fulfilment of human rights, and to support the rights of migrants, including migrant children. The 2030 Agenda for Sustainable Development in goal 10.7 commits States to "facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies"<sup>8</sup> "involving full respect for human rights and the humane treatment of migrants regardless of migration status".<sup>9</sup> In 2012, during its fifty-ninth session, the CRC Committee devoted its Day of General Discussion to the rights of all children in the context of international migration.
15. The CRC Committee reaffirmed that States are obligated to guarantee all of the rights enshrined in the CRC to all children within their jurisdiction, according to three key tenets: firstly, non-discrimination, meaning that children affected by migration are entitled to the same fundamental rights, treatment, services and protection as child nationals; secondly, adoption of a comprehensive human rights-based approach that avoids categorization of these children and looks holistically at their rights and needs, since migration dynamics are complex and categories such as "irregular", "trafficked", "unaccompanied" and "asylum-seeking" can be fluid and temporary; and thirdly, application of the principle of the best interests of the child, which should be a primary consideration for States when making decisions that affect a migrant child. The Committee also recommended that implementation of the CRC with regard to children in the context of migration should be monitored. It called upon States Parties to "incorporate systematic evaluation of Convention implementation in relation to all children affected by migration present in their territory into their periodic reporting to the CRC Committee". The Committee has also requested State Parties "to empower national institutions responsible for guaranteeing human rights (ombudsmen, equality bodies, etc.) to play a key role in monitoring compliance with the Convention, with a specific mandate to address the needs of children affected by migration".<sup>10</sup>
16. In *One Humanity, Shared Responsibility: Report of the Secretary-General for the World Humanitarian Summit* (2016) and the Agenda for Humanity (see A/70/709 and annex), a number of specific actions to address the protection and assistance needs of internally displaced persons – including children – are enumerated. In addition, the Nansen Initiative is building consensus on a protection agenda for those forcibly displaced across borders by natural disasters and climate change, and is highlighting the specific needs of children.<sup>11</sup>

<sup>8</sup> See UN General Assembly, *Transforming Our World: The 2030 Agenda for Sustainable Development* (A/RES/70/1), 21 October 2015, United Nations.

<sup>9</sup> *Ibid.*, para.29.

<sup>10</sup> See *Committee on the Rights of the Child: Report of the 2012 Day of General Discussion on the Rights of All Children in the Context of International Migration*, para.66.

<sup>11</sup> See <https://nanseninitiative.org/>.

### C. The rights of children affected by migration in regional law

17. Regional conventions and treaties further reinforce the principles of non-discrimination on the basis of national origin or migratory status. The African Charter on Human and Peoples' Rights contains commitments to non-discrimination in article 2 and to freedom of movement and the right to seek asylum in article 12. It reaffirms these principles specifically for children, and additionally, in article 23, addresses the rights of refugee children, stating that they should, “whether unaccompanied or accompanied by parents, legal guardians or close relatives, receive appropriate protection and humanitarian assistance in the enjoyment of the rights set out in this Charter and other international human rights and humanitarian instruments to which the States are Parties”. The American Convention on Human Rights contains similar provisions in article 1, and in article 19 affirms that the child has the right to “measures of protection required by his condition as a minor on the part of his family, society, and the state”, as well as affirms in article 22 the right of individuals to “leave any country freely, including his own” and to “seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions”. The European Convention for the Protection of Human Rights and Fundamental Freedoms in article 14 reaffirms States’ obligation to not discriminate on the basis of national origin. However, regional borders and bilateral agreements, including readmission agreements, often remain areas in which children’s rights and child protection are largely absent.<sup>12</sup>

## V. Realizing the rights of children in the context of migration

### A. Promoting safe, orderly and regular migration, involving full respect for human rights

18. Approximately fifteen per cent – some 35 million individuals – of the world’s total migrant population is below the age of 19, according to data from the United Nations Department of Economic and Social Affairs. However, approximately fifty per cent – or 30 million – of the world’s involuntarily displaced – including refugees, asylum seekers and internally displaced persons – are children, according to the United Nations High Commissioner for Refugees (UNHCR), and around half are female.<sup>13</sup> In 2014, 86 per cent of the world’s refugees resided in developing countries. Almost 40 million individuals, of whom around half were children, were internally displaced within their own country by the end of 2014, according to the Internal Displacement Monitoring Centre.
19. As well as the full enjoyment of their human rights under all nine core international human rights treaties (including the CRC) regardless of their migration status, migrant children should also enjoy rights and protection under different branches of international law, including refugee, labour, humanitarian, maritime, transnational criminal, nationality and consular law. Several of these international legal instruments grant specific protections to migrant workers and their families, such as the 1990 Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and relevant International Labour Organization (ILO) instruments including Convention No. 97 on migration for employment, Convention No. 143 on migrant workers and Convention No. 189 on domestic workers. Ratification and effective implementation of the existing normative frameworks are important and urgent measures toward realizing migrants’ rights and the rights of migrant children; facilitating safe, fair, regular and orderly migration; reducing the

<sup>12</sup> See *Report of the 2012 Day of General Discussion on the Rights of All Children in the Context of International Migration*, para.46.

<sup>13</sup> See United Nations High Commissioner for Refugees (UNHCR), *UNHCR Mid-Year Trends 2014* (Geneva, 2015); UNHCR, *UNHCR Mid-Year Trends 2015* (Geneva, 2015).

incidence of exploitation and abuse associated with migration (especially for children); and enhancing international cooperation on migration.

20. Many migrant children, especially those that are unaccompanied or have been separated from their parents and families, and those migrating through irregular channels, present particular vulnerabilities in their countries of origin, in countries of transition, upon arrival at their destinations, and/or through the process of return or upon return to their country of origin. Guided by the principle of the best interests of the child, the specific needs and vulnerabilities of these children must be documented and highlighted, with a view to accelerate the provision of rights-based assistance and protection. Guidance has also been developed by international organizations and entities – such as the ILO’s Fair Migration Agenda<sup>14</sup> and Multilateral Framework on Labour Migration,<sup>15</sup> the Office of the United Nations High Commissioner for Human Rights’ (OHCHR’s) Recommended Principles and Guidelines on Human Rights at International Borders,<sup>16</sup> and the Migration Governance Framework<sup>17</sup> and Migration Crisis Operational Framework developed by the International Organization for Migration (IOM) to address practical needs of migrants and their families. IPU, ILO and OHCHR recently developed a Handbook for Parliamentarians entitled *Migration, human rights and governance*.<sup>18</sup> The CMW and CRC Committees are currently developing a joint general comment to provide guidance on children in the context of international migration.<sup>19</sup>
21. In the absence of sufficient and accessible safe and regular pathways for moving to other countries, children are often compelled to undertake risky and lengthy sea, land or air journeys, whether they are fleeing persecution or conflict or responding to other drivers of forced movement such as extreme poverty, discrimination and denial of their human rights (such as the right to health or education), and the consequences of environmental degradation. Without safe alternatives, they may resort to the use of services provided by criminal networks in order to cross international borders. The rising number of children as part of large-scale movements through irregular channels, including those traveling unaccompanied, is of grave concern. Between January and mid-July 2016, almost 240,000 people, more than one-third of whom were children, made their way across the Mediterranean, often under dangerous conditions due to lack of alternatives.<sup>20</sup> All persons in distress at sea must be rescued and brought to a place of safety in accordance with international law, in particular the United Nations Convention on the Law of the Sea<sup>21</sup>. Whilst States have increased their efforts to enhance rescue and interception measures at sea, such as through the Joint Operations Triton and Poseidon of the European Agency for the Management of Operational Cooperation at the External Borders (Frontex) in the European Union, more needs to be done to ensure that rescue, interception, transport and transfer operations acknowledge and respond to the needs and rights of children, whether they arrive by land, sea or air. Child- and gender-specific measures must be in place at all stages, including at the planning stage, of rescue operations.

14 ILO, *Fair Migration: Setting an ILO Agenda* (Geneva, 2014).

15 ILO, *ILO Multilateral Framework on Labor Migration: Non-Binding Principles and Guidelines for a Rights-Based Approach to Labor Migration* (Geneva, 2006).

16 OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders* (Geneva, 2014).

17 IOM, *Migration Governance Framework* (C/106/40), 4 November 2015.

18 *Migration, Human Rights and Governance: Handbook for Parliamentarians*, OHCHR, IPU, ILO, 2015

19 <http://www.ohchr.org/EN/HRBodies/CMW/Pages/JointGeneralCommentonChildren.aspx>

20 IOM, *Mediterranean Update – Migration Flows Europe: Arrivals and Fatalities*, 12 July 2016.

21 UN General Assembly, *United Nations Convention on the Law of the Sea*, 10 December 1982, United Nations.

## B. Preventing exploitation and abuse, including trafficking

22. People smuggling and human trafficking are distinct crimes under the United Nations Convention against Transnational Organized Crime<sup>22</sup> and its supplementing protocols against human trafficking and migrant smuggling. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air contain special measures and protections for children. About two-thirds of all Member States have ratified these two protocols.
23. Children – both those traveling unaccompanied and those traveling with their families – face particular risks when migrating through irregular channels, including sexual and gender-based violence, family separation, psychosocial stress and trauma, health complications, physical harm and injury, and risks of exploitation.<sup>23</sup> All children, and in particular unaccompanied and separated children (UASC), should have access to services along the route, including legal advice and counselling on their specific situation and options. In response to the recent large-scale movement of refugees into Europe, UNHCR and the United Nations Children’s Fund (UNICEF) collaborated to establish 20 special support centres for children and families along the most frequently used migration routes in Europe.<sup>24</sup> The centres provide a safe space for children and their families, vital services, play, protection and counselling in a single location, and aim to support vulnerable families. Governments, in collaboration with UN agencies, non-governmental organizations (NGOs) and civil society organizations (CSOs), provided support to migrants stranded on the Andaman Sea in 2015, as well as to migration movements from Latin America into Mexico, and from the Horn of Africa to Europe. Strengthened and harmonized cross-border information-sharing mechanisms can better protect children at risk on their journey.<sup>25</sup> Child-safeguarding policies<sup>26</sup> should be part of manuals on search and rescue operations and implemented during such operations.

## C. Meeting humanitarian and human rights protection needs of children in the context of migration

24. States have a responsibility to ensure that their border procedures and reception procedures for refugees, asylum seekers and migrants protect human rights and are sensitive to the particular needs of children, who may be at particular risk. The immediate needs of all children, regardless of their migration status, must be met, and boys and girls with specific needs must be referred to appropriate services. The Government of Zambia, for example, has established a mechanism to identify vulnerable migrants, including UASC and stateless migrants, to refer them to the appropriate services.<sup>27</sup> Claims made by children should be processed with priority and through accelerated procedures that respect the best interests of the child and procedural safeguards. Guidance on procedures at borders and for immediate reception includes the *Recommended Principles and Guidelines on Human Rights at*

22 See UN General Assembly, *United Nations Convention Against Transnational Organized Crime*, 15 November 2000, United Nations.

23 See, for example, UNHCR, *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection* (2014).

24 See <http://www.unhcr.org/en-us/news/press/2016/2/56d011e79/unhcr-unicef-launch-blue-dot-hubs-boost-protection-children-families-move.html>.

25 See UNICEF, *Palermo Call for Action: Protecting the Rights of Refugee and Migrant Children Arriving in Europe* (2016).

26 See [http://www.keepingchildrensafe.org.uk/sites/default/files/resource-uploads/KCS\\_STANDARDS\\_2014.pdf](http://www.keepingchildrensafe.org.uk/sites/default/files/resource-uploads/KCS_STANDARDS_2014.pdf).

27 Sampson et al., *There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention*, revised (Melbourne, International Detention Coalition, 2015), p. 37.

*International Borders*<sup>28</sup> issued by OHCHR, IOM's Migration Crisis Operational Framework, and UNHCR's *Refugee Protection and Mixed Migration: A 10-Point Plan of Action*,<sup>29</sup> all of which contain recommendations specific to children.

25. National child protection systems in States are essential and should take measures to ensure that migrant and refugee children are provided care and services on equal grounds as children from the country. In the United Kingdom, for example, an unaccompanied child is the responsibility of the local authority in which he or she is present in the same way as any national child deprived of parental care. Upon the arrival of an unaccompanied child, the social services department of the local authority assesses the child's needs and provides assistance. Many States, however, need to improve their systems. As OHCHR noted in a 2010 report, "most national childhood policies do not take account of the needs and rights of migrant children, who can be excluded explicitly or in practice from the protection of legislation and regulations put in place by Governments to protect children who are nationals of the country."<sup>30</sup> More data and information is needed about the situation of refugee and migrant children, their needs, and the risks they face. The development of specialized services and social policies should be guided by such data.
26. Home-/family- and community-based accommodation for refugees and migrants should be available, with refugee and migrant children and their families prioritized for placements in such settings. In Lebanon, for example, several alternative shelters are available specifically for women, children and unaccompanied minors.<sup>31</sup> Should such accommodations not be available, any reception centre used should meet children's needs in its design, functioning and equipment. There should be sufficient gender- and age-segregated safe spaces, gender-segregated water, sanitation and hygiene facilities, and safety and security measures for children and women. Accessibility for children and parents with disabilities should also be anticipated.
27. Reception centres should ensure access to basic services for children and their families, including medical first aid, adequate food and non-food supplies, mother and child safe spaces, child-friendly spaces and recreational activities for children, counselling, education, etc., as well as referral to specialized services when needed, i.e. hospitalisation, provision of guardians, specialized mental health care, etc. Facilities receiving children, whether unaccompanied and separated or with their families, should have in place clear procedures of reporting for any child protection concern and adequate follow-up procedures. All centres should be independently monitored, including through consultations with child and adult refugees and migrants.

#### **D. Preventing childhood statelessness**

28. Statelessness – the condition of an individual who is not considered as a national by any State – can be both a cause of migration and a consequence of migration. UNHCR estimates that more than 10 million people worldwide are stateless. Many of these are children. The consequences for children can be serious: In more than 30 countries, children need nationality documentation to receive medical care. In at least 20 countries, stateless children cannot be legally vaccinated.<sup>32</sup> Stateless children often face severe restrictions in accessing basic services and in the fulfilment of basic human rights – circumstances that for

28 See OHCHR *Recommended Principles and Guidelines*, (see footnote 16).

29 UNHCR, *Refugee Protection and Mixed Migration: A 10-Point Plan of Action* (Geneva, 2011).

30 UN General Assembly, *Study of the Office 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* (A/HRC/15/29), July 2010, United Nations.

31 International Detention Coalition, available at <http://idcoalition.org/interactive-map-alternatives-to-detention/?location=lebanon>.

32 See UNHCR, <http://www.unhcr.org/ibelong/the-urgent-need-to-end-childhood-statelessness/>.

many are a contributing factor to migrate. Several countries have adopted national action plans on reducing statelessness, most notably in Central Asia and West Africa through promoting systematic birth registration of migrants and initiating field surveys. Other countries have implemented legislative changes to address statelessness, such as Armenia, Estonia, Latvia and Montenegro.<sup>33</sup>

29. A key action to preventing statelessness is providing birth registration for all children, including those who are born to refugee, asylum-seeking and migrant parents. UNICEF and UNHCR have both undertaken successful programmes to ensure birth registration for refugee populations in camp and urban settings,<sup>34</sup> and UNICEF works in more than 80 countries to improve national capacities to reach full registration, in line with goal 16.9 of the 2030 Agenda for Sustainable Development.<sup>35</sup>

## VI. Due process and fair trial guarantees in migration proceedings for children

30. Migration proceedings concerning children are recommended to be conducted in a prompt, child-friendly, multi-disciplinary, and culturally and gender-sensitive manner by officials with expertise in children's rights.<sup>36</sup> However, the CRC Committee noted that in many countries of destination, migration procedures and decisions are not conducted in accordance with standards and due process spelled out in the CRC and other international human rights treaties and other instruments of international law.<sup>37</sup> In an effort to address such concerns, child-specific provisions, including keeping interviews to a minimum and using child-sensitive interview techniques, are increasingly being utilised.<sup>38</sup> Argentina introduced due process safeguards in its deportation procedures, including the right to appeal with suspensive effect, the right to free legal aid and the right to access to justice.<sup>39</sup>
31. One of the general principles of the CRC, the right to be heard, extends to matters and decisions on immigration and asylum procedures in accordance with a child's evolving age, capacity and maturity. The Constitutional Court of Spain has upheld the right of the child to be heard in the context of unaccompanied children facing repatriation or deportation.<sup>40</sup> It covers the right to be informed in a language and manner children understand, including options and possible consequences.<sup>41</sup> The CRC Committee suggests that this encompasses "guaranteeing children's access to administrative and judicial review of their parents' detention and immigration decisions" in order to make sure that decisions adopted against their parents do not affect children's best interests.<sup>42</sup> In Bulgaria, social workers from the

33 UNHCR, *Good Practices Paper – Action 1: Resolving Existing Major Situations of Statelessness* (Geneva, 2015).

34 See UNICEF, *A Passport to Protection: A Guide to Birth Registration Programming* (New York, 2013).

35 See UN General Assembly, *Transforming Our World: The 2030 Agenda for Sustainable Development* (A/RES/70/1), 21 October 2015, United Nations.

36 See *Report of the 2012 DGD on the Rights of All Children in the Context of International Migration*.

37 *2012 DGD: The Rights of All Children in the Context of International Migration: Background Paper* (Geneva, 2012).

38 ILO, *Strengthening Action to End Forced Labor* (Geneva, 2014), as in line with OHCHR *Recommended Principles and Guidelines on Human Rights at International Borders*, para. 6.17; for guidance, see OHCHR *Recommended Principles and Guidelines*.

39 Law 25.871, 2004.

40 Case No.183/2008 of 22 December 2008, as cited in *Study of the OHCHR 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*, (see footnote 27).

41 Convention on the Rights of the Child (CRC), art. 3, 9 and 10; CRC *General Comment No. 6 – Treatment of Unaccompanied and Separated Children outside Their Country of Origin* (2005), para. 82 and 83.

42 CRC, art. 3, 9, 10 and 12; CRC Committee, *General Comment No. 6* (2005), para. 82 and 83.

Child Protection Units of the Agency for Social Assistance consult children on their rights and possibilities for support and protection.

32. In order to implement child-sensitive due process in practice, duty bearers and frontline workers require specific capacity and knowledge of child rights and protection standards.<sup>43</sup> In response to the large movements of migrants, UNICEF provided child rights training to frontline workers in Afghanistan, Bangladesh, Croatia, former Yugoslav Republic of Macedonia, Mexico, Myanmar, and Serbia. At an institutional level, the enforcement of migration policies should involve the oversight of agencies specializing in children's rights.<sup>44</sup> The creation by Mexico of a body of child protection officers within the National Migration Institute is an example of how increased specialized training can contribute to child-sensitive migration procedures. In South Africa, migrant unaccompanied children are assigned a social worker, who can refer them to the Children's Court to make an alternative care order.<sup>45</sup>
33. Immigration and border control measures should be developed in a manner that takes into account the best interests of the child and the principle of non-discrimination.<sup>46</sup> The CRC Committee has recommended that States set up a best interest determination procedure to consider and determine what constitutes the best interests of the child on an individual and case-by-case basis. This includes a clear and comprehensive assessment of the child's circumstances and should take into account the child's views.<sup>47</sup> State-run best interest determination is provided in Argentina, Mexico and several European States.
34. The CRC Committee has advised that for States, making a child's best interests the primary consideration implies that every decision for repatriation must pay close attention to a child's health and psychosocial needs, in line with ensuring the development of the child "to the maximum extent possible".<sup>48</sup> In this realm, it is best practice to also consider a child's right to education, adequate living conditions and presence of a caretaker.<sup>49</sup> The European Union is currently piloting the introduction of child-sensitive country of origin information (COI) to guide their asylum decisions, in recognition of the fact that most COIs currently lack a child-specific focus.
35. In relation to the treatment of UASC, States are required to take necessary measures to secure suitable representation of the child's best interests.<sup>50</sup> In this regard, guardians with expertise in child care, supervised by national child protection authorities, are key in order to protect the best interests of the child. In the Netherlands, NGOs worked with national authorities to develop core standards to guide guardians in their daily work with unaccompanied children.<sup>51</sup> Agencies or individuals whose interests could potentially conflict with those of the child should not be eligible for guardianship.<sup>52</sup>
36. While the repatriation of undocumented children remains often-used as a measure to punish individuals for irregular entry to a territory, States should only repatriate children as a measure of protection – for instance, to ensure family reunification in cases in which it is in

43 *2012 Day of General Discussion: Background Paper.*

44 United Nations Special Rapporteur on the Human Rights of Migrants, as cited in CRC Committee, *Report of the 2012 Day of General Discussion*, p. 3.

45 National Department of Social Development, *Guidelines on Services for Separated and Unaccompanied Children outside Their Country of Origin in South Africa* (2009).

46 CRC, art. 2.

47 *012 Day of General Discussion: Background Paper.*

48 CRC, art. 6(2).

49 UNICEF, IOM and UNHCR, *2013 Technical Note UASC*.

50 CRC Committee, *General Comment No. 6*.

51 Defense for Children – ECPAT the Netherlands, *Core Standards for Guardians of Separated Children in Europe* (Netherlands, 2011).

52 CRC Committee, *General Comment No. 6*.

the child's best interests and after due process of law.<sup>53</sup> The Regional Conference on Migration<sup>54</sup>, an intergovernmental body of eleven countries from North and Central America, for example, declared that the decision to repatriate unaccompanied children must always take into account their best interests.<sup>55</sup> UNICEF and UNHCR have jointly developed guidelines to inform the current response by States in Europe to ensure respect of the best interest of UASC.<sup>56</sup> Many asylum-seeking children have not been granted refugee status but instead have been given subsidiary protection on humanitarian grounds – a status they can lose upon reaching 18 years of age. Germany allows for temporary extension in order to complete school or vocational training.

37. Accurate age assessment is core to ensuring the protection of the rights of migrant children. Any assessment that goes beyond interviewing the child should only be carried out as a measure of last resort. Drawing on assessments by psychologists, social workers and others, it should consist of child- and gender-friendly multidisciplinary age determination procedures.<sup>57</sup> In recognition of the difficulty of accurately estimating the age of children, the presumption of age method applied in Sweden allows for discrepancies to the benefit of the child; when the child is estimated to be 9 to 18 years of age, a 24-month discrepancy is taken into account.<sup>58</sup>
38. The right to family may be severely affected in the context of international migration. Children born in destination countries to undocumented migrant parents may be denied their right to family life due to the deportation of one or both parents, even if the children have acquired nationality. In addition, a growing number of countries are restricting family reunification policies,<sup>59</sup> while the interpretation by administrative and judicial bodies of the right to family life within the context of migration is also becoming more restrictive. At the same time, children and adolescents across the globe migrate in precarious and irregular circumstances, many unaccompanied, in order to reunite with their parents, legal guardians or caregivers.<sup>60</sup> On the other hand, the maintenance of family unity should never be a justification for child immigration detention.<sup>61</sup> Regional human rights courts have repeatedly encouraged State authorities to abstain from making decisions that result in separating children from their families unless it is in the child's best interests as determined by a comprehensive assessment, and have also urged authorities to facilitate family reunification.<sup>62</sup>

53 *Study of the OHCHR 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*, p. 57.

54 See <http://www.remvs.org/>

55 XIV Regional Conference on Migration, Guatemala City, July 2009.

56 UNICEF and UNHCR, *Safe and Sound – What States Can Do to Ensure Respect for the Best Interests of Unaccompanied and Separated Children in Europe* (2014).

57 See *Report of the 2012 Day of General Discussion*; UNICEF, *Age Assessment: A Technical Note*, working paper (New York, 2013). For guidance, see UNICEF, *Age Assessment: A Technical Note*, working paper (New York, 2013); UNHCR, *Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum* (Geneva, 1997).

58 See [http://www.unicef.org/ceecis/UNICEF\\_Child\\_Trafficking\\_low.pdf](http://www.unicef.org/ceecis/UNICEF_Child_Trafficking_low.pdf).

59 CRC Committee, *2012 Day of General Discussion: Background Paper*, p.6.

60 *Study of the Office 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*.

61 See CRC Committee, *Report of the 2012 Day of General Discussion*.

62 CRC Committee, *2012 Day of General Discussion: Background Paper*.

## VII. Ending the detention of child migrants

39. Children, as a matter of principle, should never be detained for purposes of immigration control, yet children continue to face detention based on their or their parents' migratory status or undocumented entry to a country.<sup>63</sup> The CRC Committee has affirmed that "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".<sup>64</sup> However, the increasing criminalization of irregular movements that are occurring in 2016<sup>65</sup> is likely to result in increasing numbers of children in detention. Stateless persons, including children, specifically face a high risk of indefinite detention.<sup>66</sup> This also includes the detention of migrant children with their parents on the premise of maintaining family unity, which violates the principle of the best interests of the child.<sup>67</sup>
40. Both Mexico and Panama legally prohibit the detention of child migrants.<sup>68</sup> The *Council of Europe Strategy for the Rights of the Child (2016-2021)* contains specific provisions on migration and sets out to "make every effort to end the placement of children in immigration detention facilities".<sup>69</sup> This provision reiterates a 2014 resolution by its Parliamentary Assembly, which called on Member States to urgently put an end to the detention of migrant children by introducing legislation prohibiting their detention and providing non-custodial community-based alternatives.<sup>70</sup> In some situations, children are placed in immigration detention as a substitute for care arrangements.<sup>71</sup> To the greatest extent possible, and always using the least restrictive means necessary, more States need to adopt human rights-compliant, non-custodial and community-based alternatives to detention that fulfil the best interests of the children. In Yemen, a community-driven alternative care system consisting of small group homes was established for asylum-seeking and refugee children by the local authorities and UNHCR together with refugee leaders.<sup>72</sup>

## VIII. Integration and access to basic services for children in the context of migration

41. Immediate humanitarian assistance and addressing the immediate protection needs of children in migration is vital. It is also essential that States undertake integration

63 UN General Assembly, *In Safety and Dignity: Addressing Large Movements of Refugees and Migrants: Report of the Secretary-General (A/70/59)*, April 2016, United Nations; CRC Committee, *General Comment No.*, para. 61; CRC, art. 37.

64 See CRC Committee, *Report of the 2012 Day of General Discussion*, p. 23.

65 UN General Assembly, *In Safety and Dignity: Addressing Large Movements of Refugees and Migrants: Report of the Secretary-General (A/70/59)*, April 2016, United Nations.

66 European Network on Statelessness, *Protecting Stateless Persons from Arbitrary Detention* (London, 2015), p.6; OHCHR, *Administrative Detention of Migrants*, available at <http://www2.ohchr.org/english/issues/migration/taskforce/docs/administrativedetentionrev5.pdf>.

67 See CRC Committee, *Report of the 2012 Day of General Discussion*.

68 Panamá, No. 3, 2008, art. 93; México, Reglamento de la Ley General de los Derechos de Niñas, Niños y Adolescentes, 2 Desembre 2015, art. 111.

69 Council of Europe, *Protecting Children Affected by the Refugee Crisis: A Shared Responsibility: Secretary General's Proposals for Priority Actions* (2016).

70 Council of Europe, *Resolution 2020: The Alternatives to Immigration Detention of Children* (2014).

71 *Study of the Office 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*.

72 UNHCR, *Options Paper 1: Options for Governments on Care Arrangements and Alternatives to Detention for Children and Families* (Geneva, 2015), p.13.

programmes and make greater efforts to mainstream both refugee and migrant children into national and local development plans so as to ensure their educational and livelihood needs while strengthening the resilience of and development opportunities for host communities. Host communities, directly impacted by the arrival of large numbers of refugees and migrants, may benefit from the support and expertise of development actors such as the United Nations Development Programme (UNDP), UNICEF and the World Bank. In this context, the international community has increasingly acknowledged the need to strengthen the nexus between humanitarian and development assistance, particularly in responding to large movements of refugees and migrants.

42. Measures to promote the inclusion of migrant children into the national education systems in particular represent a sound investment, as they increase the chances of those children being able to enter employment, contribute taxes at an earlier stage and use fewer public services should they remain in the host country, and they contribute to the maintenance of social cohesion. There should be no “lost generation” of refugee and migrant children. In many countries, primary education is compulsory and available to all refugee and migrant children; educational opportunities at all levels should be expanded. There is a growing body of evidence and good practices on ways of including migrant children and youth in schooling and social activities.<sup>73</sup>
43. Some States and local authorities have found a variety of means to facilitate the access of migrant and refugee children to basic educational, social and healthcare services. Argentina, for example, has passed national legislation explicitly enumerating the rights of migrants to access services on an equitable basis with nationals.<sup>74</sup> In many cities, such as Geneva, Seoul, or Munich, “firewalls” providing sealed barriers of confidentiality have been placed between service providers and immigration authorities allowing migrants – including those in irregular status – to access those services without fear of reprisals, a move that is supported by the Special Rapporteur on the Human Rights of Migrants and the Chair of the Committee on the Protection of the Rights of Migrant Workers and Members of Their Families (CMW Committee).<sup>75</sup>
44. Xenophobic and racist responses to refugees and migrants, including children, appear to be increasing and achieving greater levels of public acceptance. Policy and public discourse on migrants and refugees must be shifted from one of threat to one of international solidarity, and emphasize that migrant and refugee children are, first and foremost, children. International and non-governmental organizations such as IOM, UNICEF, UNHCR, OHCHR, ILO and Terre des Hommes have been using social media and other non-traditional platforms to counter xenophobic and racist discourse aimed at refugees and migrants,<sup>76</sup> and regional intergovernmental bodies such as the African Union and European Union have condemned xenophobia in all its forms and manifestations.
45. States should begin working with children towards a durable solution as soon as possible to avoid prolonged exposure by the child to a situation of legal and psychological insecurity. In particular, if a child is returned after a thorough risk assessment conducted by trained and independent child protection officers, a documented best interests’ determination process and a support plan should be in place before return procedures begin.

73 See, for example, Organization for Economic Co-operation and Development (OECD) and European Union, *Indicators of Immigrant Integration 2015: Settling In* (OECD Publishing, Paris, 2015).

74 For example, in Argentina, Law 25.871 (2004) and Decrees No. 836/04 and 578/05.

75 See OHCHR, “International Migrants’ Day: Friday 18 December 2015”, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16886&LangID=E>.

76 See, for example, campaigns by IOM (<http://iamamigrant.org/>), UNHCR (#withrefugees), UNICEF (#ActofHumanity), OHCHR and ILO (<http://www.ohchr.org/EN/Issues/Migration/Pages/InternationalMigrantsDay2013.aspx>) and Terre des Hommes (<http://destination-unknown.org/>).

46. 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. The Government of Ethiopia ensures family tracing, reunification and the reintegration of children who are voluntarily returning to their country.
47. States should move to relieve the burden on host countries by expanding means of admission for refugee and migrant children. This can be achieved through means such as enhanced resettlement; medical evacuation and humanitarian admission programmes; temporary evacuation programmes; opportunities for skilled migration, labour mobility and education; and expanded criteria for family reunification.
48. The CMW Committee, in its general comment No. 2, has also highlighted the importance of regularization as a means of addressing the needs and vulnerabilities of migrant children, noting that “regularization is the most effective measure to address the extreme vulnerability of migrant workers and members of their families in an irregular situation. States Parties should therefore consider policies, including regularization programmes, for avoiding or resolving situations whereby migrant workers and members of their families are in, or are at risk of falling into, an irregular situation”.<sup>77</sup>

## **IX. Way forward**

49. **Sustainable development starts and ends with safe, healthy and well-educated children, including migrant children (both regular and irregular), children born to migrant parents and children left behind by migrating parents. Societies can only develop in a sustainable manner if the basic needs and rights of all children, particularly the poorest and most vulnerable, are met. The protection of children is a central pillar of the 2030 Agenda for Sustainable Development. Peace, respect for human rights and protection of the most vulnerable, including protection from all forms of violence, are essential underpinnings of an integrated framework for sustainable and sustained development. In seeking to attain universal goals, attention should be focused on the worst-off so that no child, whatever her or his migration status, is left behind.**
50. **Children and young people can only reap the benefits of migration if their rights are protected, respected and fulfilled. Migration can be an enabler of equitable, inclusive and sustainable social and economic development that benefits countries of origin and destination, but first and foremost it can be an enabler of the human development of migrants and their families.**
51. **Children in the context of migration are more vulnerable to violence in countries of origin, transit and destination. This vulnerability is due to specific migration-related factors such as parental absence, legal and social exclusion, and xenophobia. Some of these vulnerabilities are gender-based. In order to address these risk factors and rights challenges, States should review and reform their national violence-prevention legal frameworks, policies and programmes to ensure that they explicitly include children in the context of migration and address their particular vulnerabilities. In particular, countries of origin should ensure that children left behind when their families migrate can benefit from affirmative actions under national social protection policies and programmes, and that their caregivers can access public services and benefits aimed at strengthening their capacity to protect the children in their charge from violence.**

77 CMW Committee, *General Comment No. 2* (2013), para. 16.

52. Increased access to regular, safe pathways to migrate for children and their families would decrease the attraction and necessity of reliance upon the services of human smugglers and the risks associated with irregular migration, including, especially for unaccompanied children, the risks of falling prey to trafficking and other forms of exploitation and abuse.
53. Countries of origin, transit and destination should ensure that xenophobic attitudes, discourse and actions by civil servants, public institutions (school, healthcare system, courts, police, etc.) and communities are effectively addressed, publicly rejected and progressively eradicated.
54. To effectively respond to the needs of migrant children – regular or irregular – States need to be able to identify children, and children and their families should be able to prove that a child is below the age of 18. The Recommended Principles and Guidelines on Human Rights at International Borders produced by OHCHR provide further guidance on this matter.
55. All children, including children accompanied by parents or other legal guardians, must be treated as individual rights-holders, protected as children first and foremost, with their child-specific needs and rights considered equally and individually. 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 (CRC art. 3.1).
56. Children should be granted the right to be heard in proceedings concerning their or their parents' admission, residence, detention and expulsion procedures, and have access to administrative and judicial remedies against their own or their parents' detention or deportation, to ensure that all decisions are in their best interests.
57. Age-appropriate programmes should be promoted to enable children in countries of origin, transit and destination to access child-friendly information on safe migration, their rights, and how to claim these rights.
58. Children affected by migration in all countries should be able to participate in the development, implementation, and evaluation of policies concerning migration, integration, labour, education and fighting xenophobia, among others.
59. Barriers that prevent the social and political participation of girls and boys in the context of migration should be removed. Threats to their freedom and security, combined with the lack of access to quality education, significantly hinder their political engagement at the national, regional and international levels.
60. Policies fostering gender equality and empowerment in schooling, health and youth employment can help enhance successful transitions to adulthood for migrant adolescent girls and boys. It is important to collect reliable information on the patterns governing the gender division of responsibilities within migrant households, identifying gender inequalities that may hamper the opportunities of both girls and boys.
61. Children should never be criminalized or subject to punitive measures because of their migration status.
62. Non-custodial and community-based alternatives to detention should be implemented in accordance with the best interests of the child. Children in the context of migration should never be detained for the purpose of immigration control or on the basis of their or their parents' migration status. Detention is never in the best interests of a child and constitutes a child rights violation. Detention of migrant children cannot be justified to preserve family unity. The right of every child in the context of migration to family life should be fulfilled. Families should never be separated by State action or left separated by State inaction, unless this is determined to be in the best interests of

the child. In cases regarding the deportation of irregular migrant parents, States should explore the possibility of granting residence status to the parents. Family reunification policies in transit and destination countries should enable children left behind to join their parents (or parents to join their children) in the destination country.

63. Any decision on the fate of a child in the context of migration should be taken by child protection officers, and, only if this is not possible, at least by well-trained migration officials who understand children's rights and needs. Institutional reforms and measures aimed at strengthening child protection institutions and training migration officials should be promoted.
  64. Opportunities for regular migration at all skill levels should be increased to enable adolescents and youth to seek work abroad safely. Legal recruiting systems should be made accessible, safe and affordable for young migrants so that they do not resort to illegal or unsafe recruitment. Young migrants should also be informed of their rights and prepared ahead of their migration experience. This could happen, for example, through orientation and support for potential migrants, in accordance with employment opportunities. Similar services could also help returning migrants to reintegrate. Establishing mechanisms for adolescents and youth by which they can maintain ties to family and friends in their country of origin could help to avoid social isolation and the disintegration of family structures, as well as to facilitate return migration. Systems should be put in place to monitor recruitment agencies, and labour inspection mechanisms should be sensitized on child migrants and issues concerning child labour, especially in destination countries, in the types of work in which migrants predominate.
  65. The availability of age- and gender-disaggregated, comparable data on children affected by migration, as well as their needs and risks, needs to be strengthened.
  66. States are called upon to implement their commitments made in the New York Declaration for Refugees and Migrants, adopted on 19 September 2016, including to 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. They are also called to ensure that all children benefit from education within a few months of arrival. Children should also not be criminalised nor subject to punitive measures because of their migration status or that of their parents nor in any circumstance should they be placed in migration detention.
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