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**Human rights questions, including alternative approaches  
for improving the effective enjoyment of human rights and  
fundamental freedoms**

## Human rights of migrants

### Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the human rights of migrants, Gehad Madi, in accordance with Human Rights Council resolution [52/20](#).

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\* [A/79/150](#).



## **Report of the Special Rapporteur on the human rights of migrants, Gehad Madi**

### **Children are children first and foremost: protecting child rights in migration contexts**

#### *Summary*

In the present report, the Special Rapporteur on the human rights of migrants, Gehad Madi, highlights the comprehensive protection of child rights under international law that extends to all children irrespective of migration status, and analyses the contemporary human rights issues facing children in migration contexts. Through the report, the Special Rapporteur aims to focus global attention on pressing challenges to the rights of children in migration settings and lay the groundwork for priority action moving forward.

## I. Introduction

1. The reasons children and families migrate are multiple, complex and often intertwined. These may include a lack of sustainable livelihoods, poverty and economic hardship; limited access to basic services; educational and employment aspirations and opportunities; family reunification; domestic violence and abuse; denial of human rights; harmful cultural practices; and displacement due to armed conflicts, persecution, violence, disasters and the impacts of climate change and environmental degradation. Migration decisions are often made in a context of constrained life choices, where children and families are caught between aspirations, a sense of responsibility towards family members and communities, and pressures to leave their homes.<sup>1</sup>

2. Children in international migration contexts move across borders through regular or irregular migration pathways, may be with or without their parents or family members, or may remain in their country of origin while their parents migrate. They are often part of mixed migratory movements<sup>2</sup> that may include migrants, refugees and asylum seekers, with vulnerability heightened for unaccompanied and separated children,<sup>3</sup> stateless and undocumented children, trafficked and smuggled children, and children growing up without the protection of their primary caregivers. Migration is often cyclical and continuous,<sup>4</sup> and a child's migration or refugee status may change several times during their migration journey; but their primary status is their childhood. No matter where they are from and why they and their families move, children in migration contexts are children first and foremost, with the same human rights as all children – rights that do not cease at borders.

3. When safe and well-governed, migration can provide significant opportunities for children and families, including pursuit of education, improved living conditions, enhanced prospects, protection from harm and the ability to make important contributions to communities of origin, transit and destination.

4. Nonetheless, millions of children around the world have their rights as children violated because of their or their family's migration status. Migratory processes that fail to respect and protect child rights create serious risks for children, threatening their lives, development and well-being. With 28 million international child migrants globally in 2020 (10.1 per cent of the estimated 281 million international migrants and 1.4 per cent of the world's children)<sup>5</sup> it is critical to bring children's rights to the fore of discourse on human rights and migration.

<sup>1</sup> United Nations Children's Fund (UNICEF), International Organization for Migration (IOM) and Major Group for Children and Youth, "Children uprooted in a changing climate: Turning challenges into opportunities with and for young people on the move", briefing note (October 2021), p. 10.

<sup>2</sup> Mixed migration refers to cross-border movements of people, including refugees fleeing persecution and conflict, victims of trafficking and people seeking better lives and opportunities (see Migration Data Portal at [migrationdataportal.org](https://migrationdataportal.org)).

<sup>3</sup> "Unaccompanied" children are 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 separated from both parents, or legal or customary primary caregivers, but not necessarily from other relatives. See Committee on the Rights of the Child, general comment No. 6 (2005), paras. 7–8.

<sup>4</sup> UNICEF, *Reimagining Migration Responses: Learning from Children and Young People who Move in the Horn of Africa* (2021), p. 6.

<sup>5</sup> IOM, *World Migration Report 2024*, p. 4. The United Nations Recommendations on Statistics of International Migration define an "international migrant" as any person who has changed their country of usual residence, so this includes refugees and other persons needing international protection.

5. Unfortunately, many of the concerns raised in my predecessor's 2009 report ([A/HRC/11/7](#)) on the protection of children in the context of migration remain a decade and a half on. The present report reiterates and expands on those concerns and challenges, many of which are compounded in contemporary migration settings, including concerning trends by several countries towards increasingly restrictive migration policies; externalization of border and migration procedures; criminalization of irregular migration; compounding of racial discrimination, including through digital technologies used for border enforcement;<sup>6</sup> targeting of human rights defenders and organizations working to save migrants' lives,<sup>7</sup> which reduces capacity for rescuing children in danger; return and readmission arrangements that lack due process guarantees for children's rights and safety; certain unprecedented immigration-related practices during the coronavirus disease (COVID-19) pandemic; and the growth of climate-induced displacement.

6. The number of children who are compelled to move by the impacts of climate change will only increase, with weather-related events linked to an estimated 9.8 million new (mostly internal) displacements of children in 2020 alone.<sup>8</sup> In disaster contexts, children often experience physical and emotional stress and trauma, witnessing the destruction of homes and communities, losing family members and becoming (or fearing being) separated from parents or caregivers, which amplifies the risks of exploitation, child trafficking and abuse.<sup>9</sup> At the end of 2023, 47 million children were forcibly displaced by insecurity, armed conflicts and persecution, whether internally within countries or crossing borders to seek international protection as refugees.<sup>10</sup>

7. In recent years, new policy instruments and guidance have reiterated that the comprehensive protection of children under international law extends to all children irrespective of migration status. These include two joint general comments by the Committee on the Rights of the Child and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families on the human rights of children in the context of international migration in 2017,<sup>11</sup> and this mandate holder's report on child immigration detention in 2020.<sup>12</sup> It also includes adoption of the Global Compact for Safe, Orderly and Regular Migration and the Global Compact on Refugees, with the Global Compact for Migration including child-sensitivity as a guiding principle for all aspects of migration governance.<sup>13</sup> Several States and stakeholders made child-focused pledges at the first global review of the Global Compact for Migration in 2022 (the International Migration Review Forum), including on working to end child immigration detention, while at the 2023 Global Refugee Forum, States and stakeholders made more than 90 pledges linked to a child

<sup>6</sup> See [A/75/590](#) and [A/HRC/48/76](#). See also Office of the United Nations High Commissioner for Human Rights (OHCHR) and University of Essex, "Digital border governance: a human rights-based approach" (September 2023).

<sup>7</sup> See [A/77/178](#).

<sup>8</sup> United Kingdom Committee for UNICEF (UNICEF UK), "Futures at risk: protecting the rights of children on the move in a changing climate" (2021), p. 5.

<sup>9</sup> UNICEF, *Children Displaced in a Changing Climate: Preparing for a Future already Underway* (2023).

<sup>10</sup> United Nations High Commissioner for Refugees (UNHCR), Refugee Data Finder (viewed 18 June 2024).

<sup>11</sup> Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 22 (2017) of the Committee on the Rights of the Child; and joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 23 (2017) of the Committee on the Rights of the Child.

<sup>12</sup> See [A/75/183](#). See also [A/HRC/15/29](#) (study by OHCHR on the protection of the rights of the child in the context of migration).

<sup>13</sup> Global Compact for Migration, para. 15; see also Global Compact for Refugees.

rights multistakeholder pledge, including some mirror pledging on ending child immigration detention.

8. Recent measures reinforce the position of children's rights in international law, the cornerstone being the Convention on the Rights of the Child,<sup>14</sup> which applies to all children. In accordance with the Convention's definition of a child,<sup>15</sup> the present report concerns children up to age 18. While the focus is on children, it must be recognized that the transition into adulthood is not instant – yet migrant children frequently lose protections overnight on turning 18 years old, which can result in the loss of accommodation, support, access to services and residence permits, and becoming subject to detention and removal. Knowing that they will face such uncertainty and precarity has a negative impact on children's well-being while they are children, during that important period of psychosocial development, and increases risks of children going missing.<sup>16</sup>

## II. Protecting child rights in migration contexts

### A. Overarching human rights principles in the context of migration

9. The overarching principles of the Convention on the Rights of the Child described below must guide all actions concerning children, irrespective of their migration status.

#### 1. Non-discrimination

10. Article 2 of the Convention obligates States to respect, protect and ensure the rights set out in the Convention to every child in their jurisdiction<sup>17</sup> without any discrimination, irrespective of the child's or his or her parents' status, and to ensure that children are protected from discrimination or punishment based on the status, activities, expressed opinions or beliefs of the child's parents, legal guardians or family members. The Committee on the Rights of the Child and the Committee on Migrant Workers have highlighted that in the context of children and migration, all migration policies and procedures should have the principle of non-discrimination<sup>18</sup> at the centre, regardless of the migration status of children or their parents. In addition, the Committee on the Elimination of Racial Discrimination has stated that differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation are not applied pursuant to a legitimate aim and are not proportional to the achievement of that aim.<sup>19</sup>

<sup>14</sup> Convention on the Rights of the Child.

<sup>15</sup> Ibid., art. 1.

<sup>16</sup> UNICEF and others, "Guidance to respect children's rights in return policies and practices" (September 2019), p. 27.

<sup>17</sup> Jurisdiction includes a State's territory and areas under its "effective control" (i.e. areas over which a State exercises State-like powers). See Bruce Abramson, *Article 2: The Right of Non-Discrimination* (Boston, Martinus Nijhoff Publishers, 2008), pp. 127–128.

<sup>18</sup> The right to non-discrimination is also contained in the International Covenant on Civil and Political Rights, arts. 2, 16 and 26, the International Covenant on Economic, Social and Cultural Rights, art. 2 (2), the Convention on the Elimination of All Forms of Racial Discrimination, arts. 1, 2 and 4–5, the Convention on the Elimination of All Forms of Discrimination against Women, art. 2, the Convention on the Rights of Persons with Disabilities, art. 5, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 7.

<sup>19</sup> Committee on the Elimination of Racial Discrimination, general recommendation No. 30 (2004).

11. Children in migration contexts can be particularly vulnerable to de facto discrimination,<sup>20</sup> necessitating positive measures by States to counter conditions and attitudes that lead to and perpetuate de facto discrimination.<sup>21</sup> The non-discrimination obligation also requires States to identify any groups of children requiring special measures to enjoy their rights, taking into account intersecting factors,<sup>22</sup> including gender, gender identity or sexual orientation, race, colour, ethnicity or nationality, disability, religion, economic status and migration status.

## 2. Best interests of the child

12. There are no exceptions or limitations to the application of the Convention's principle in article 3 that in all actions concerning children, the best interests of the child shall be a primary consideration.<sup>23</sup> As articulated by the Committee on the Rights of the Child, the best interests principle serves three purposes: as a substantive right held by children as individual rights holders; as an interpretative legal principle that must inform the interpretation of all other child rights; and as a rule of procedure requiring all decision-making affecting children to include evaluation of possible impacts of the decision on the child or children concerned.<sup>24</sup> The latter applies to State actions affecting individual children and specific groups of children or children in general,<sup>25</sup> with the Committee on the Rights of the Child and the Committee on Migrant Workers reiterating that States shall ensure that the best interests of the child are taken fully into consideration in immigration law, planning, implementation and assessment of migration policies.<sup>26</sup> This demands a continuous process of child impact assessment and evaluation.

13. While children's best interests need to be balanced with other affected interests, best-interests considerations cannot be overridden by considerations relating to general migration control. States must develop and implement robust and individualized best-interests assessment and determination procedures for a range of migration situations involving children – both unaccompanied and separated children and children with families – including decisions about entry, accommodation, residence, resettlement, return, deportation, or detention or deportation of an adult that could lead to children's separation from a parent.<sup>27</sup>

## 3. Right to life, survival and development

14. Every child's right to life is protected by article 6 of the Convention on the Rights of the Child, which requires States to ensure children's survival and development to the maximum extent possible.<sup>28</sup> The prohibition of collective expulsion and the principle of non-refoulement<sup>29</sup> are central to this, giving rise to child-specific considerations that must be taken into account to ensure that no child is returned to a place where they would be at risk of death, torture, cruel, inhuman and degrading

<sup>20</sup> "De facto" discrimination occurs in practice rather than in law ("de jure" discrimination).

<sup>21</sup> Joint general comment No. 3/No. 22 (2017), para. 26.

<sup>22</sup> Committee on the Rights of the Child, general comment No. 5 (2003), para. 12.

<sup>23</sup> John Eekelaar and John Tobin, "Article 3. The Best Interests of the Child" in *The UN Convention on the Rights of the Child: A Commentary*, John Tobin, ed. (Oxford, Oxford University Press, 2019), pp. 73–74.

<sup>24</sup> Committee on the Rights of the Child, general comment No. 14 (2013), para. 6.

<sup>25</sup> Ibid.

<sup>26</sup> Joint general comment No. 3/No. 22 (2017), para. 29.

<sup>27</sup> Ibid., paras. 31–33.

<sup>28</sup> See also International Covenant on Civil and Political Rights, art. 6 (1) (right to life), and International Covenant on Economic, Social and Cultural Rights, art. 12 (1) (right to health).

<sup>29</sup> See, inter alia, Convention relating to the Status of Refugees, art. 33, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 3, and International Convention for the Protection of All Persons from Enforced Disappearance, art. 16.

treatment or punishment, enforced disappearance, or other irreparable harm, either in the country to which removal is to be effected or in any country to which the child may subsequently be removed. These include risks of child marriage, other forms of sexual and gender-based violence,<sup>30</sup> child recruitment, human trafficking, and exploitation and abuse, including the worst forms of child labour. The particularly serious consequences for children of insufficient provision of food or health services should also be considered in the assessment of risk.<sup>31</sup>

15. The Committee on the Rights of the Child and the Committee on Migrant Workers have highlighted risks to children's lives and survival in migratory processes due to, inter alia, violence from organized crime, violence in camps, pushback or interception operations, excessive use of force by border authorities, refusal of vessels to rescue people, extreme travel conditions, immigration raids, detention and deportation practices, limited access to basic services, and family separation.<sup>32</sup> States are obligated to protect children from migration-related risks that may jeopardize their right to life, survival and development, and to ensure that children in the context of migration, regardless of their or their parent's status, have a standard of living adequate for their physical, mental, spiritual and moral development.<sup>33</sup> This includes promoting leisure and play, which encourage the fullest possible development of a child's personality. Too often, migrant children's survival and development rights in transit and destination countries are limited by constraints on their or their parents' rights.

#### 4. Right to be heard

16. In accordance with article 12 of the Convention on the Rights of the Child, children's views must be heard in all matters affecting them and given due weight based on age and maturity and in line with the child's evolving capacity. Participation is both a fundamental right of every child and a means of realizing other rights,<sup>34</sup> with an inherent interconnectedness between children's right to be heard and to have their best interests be a primary consideration in decision-making affecting them. Article 12 recognizes children's agency, which is essential in migration contexts, as children's views on their migratory situations may differ significantly from that of family members or other sections of their communities: they may have different reasons to stay or leave and may be differently affected by migration decisions.<sup>35</sup> My predecessor has expressed concern that in some countries accompanied children may be denied their right to be heard and are treated as a "footnote" to their parents' files, meaning that child-specific or individual reasons for granting asylum or other regular status may be overlooked.<sup>36</sup> Research has shown that children, particularly adolescents, see themselves as primary agents in their migration journey and are able to articulate their perspectives, experiences, needs and aspirations.<sup>37</sup>

17. For children's right to be heard to be meaningful in their or their families' migration-related cases, due process must include provision of relevant information in the child's own language in a timely, child-sensitive and age-appropriate manner;

<sup>30</sup> See Committee on the Rights of the Child, *F.M.A and H.K.A. v. Denmark* (CRC/C/93/D/140/2021), paras. 7.7–7.8.

<sup>31</sup> Committee on the Rights of the Child, general comment No. 6 (2005), para. 27; and Committee on the Rights of the Child, *D.D. v. Spain* (CRC/C/80/D/4/2016), para. 14.4.

<sup>32</sup> Joint general comment No. 3/No. 22 (2017), paras. 40–41.

<sup>33</sup> Ibid, paras. 42–43.

<sup>34</sup> UNICEF, "Children's participation in the work of NHRIs" (2018), p. 7.

<sup>35</sup> Committee on the Rights of the Child, *Z.S and A.S v. Switzerland*, (CRC/C/89/D/74/2019), para. 7.8.

<sup>36</sup> A/HRC/53/26, para. 69.

<sup>37</sup> See, for example, UNICEF, *Reimagining Migration Responses*.

provision of free and independent legal advice and representation; a trained guardian for unaccompanied and separated children immediately on identification; interpretation by qualified interpreters and/or support from someone familiar with the child's ethnic, religious and cultural background; accessible complaints mechanisms; and ensuring that children should be heard independently of their parents and that their individual circumstances should be considered in a family's case.<sup>38</sup> In addition, in the context of international migration, States should adopt measures to facilitate children's participation in the design, implementation, monitoring and evaluation of policies that affect them as individuals or a group either directly or indirectly.<sup>39</sup>

## **B. Safe and regular pathways, including family reunification**

18. The lack of regular and safe channels for children and families to migrate contribute to children taking life-threatening and extremely dangerous migration journeys. Regular pathways<sup>40</sup> contribute to reducing the risk of migrants becoming vulnerable to sexual and gender-based violence, abuse, human trafficking, exploitation and exclusion, and ensure protection of their human rights and access to services.<sup>41</sup>

19. In the Global Compact for Migration, States committed to adapt options and pathways for regular migration in a manner that facilitates labour mobility and decent work, optimizes education opportunities, upholds the right to family life, and responds to the needs of migrants in a situation of vulnerability, with a view to expanding and diversifying availability of pathways for safe, orderly and regular migration.<sup>42</sup> These would include provision of humanitarian visas, private sponsorships, access to education for children and temporary work permits, together with planned relocation and visa options, in cases where adaptation in or return to their country of origin is not possible.<sup>43</sup> Grounds for the admission and stay for children and their families can be established in international human rights law and in the context of humanitarian and other considerations relevant to migrants in situations of vulnerability. Human rights grounds include, inter alia, the right to private and family life and unity (see sect. C below), the principle of the best interests of the child, and the principle of non-refoulement. As noted by the United Nations Network on Migration, even where it is not strictly required by international law, extending pathways of admission or stay for compassionate, humanitarian or other considerations can also be done as an exercise of discretion, international cooperation and solidarity.<sup>44</sup>

20. Children have the right to family reunification,<sup>45</sup> which is an important driver for children migrating alone. Article 10 of the Convention on the Rights of the Child requires States to deal with applications by a child or his or her parents to enter or leave a State party for the purpose of family reunification in a positive, humane and

<sup>38</sup> [A/HRC/53/26](#), paras. 35–37, and Committee on the Rights of the Child general comments No. 6 (2005), para. 33, and No. 12 (2009).

<sup>39</sup> Joint general comment No. 3/No. 22 (2017), para. 39.

<sup>40</sup> This includes provision of visas before or on arrival and regularization or granting of residence and/or work permits or other adjusted migration status for migrants in irregular situations already on the territory.

<sup>41</sup> United Nations Network on Migration, "Regular pathways for admission and stay for migrants in situations of vulnerability", guidance note (2021), para. 2.

<sup>42</sup> Global Compact for Migration, objective 5.

<sup>43</sup> *Ibid.*, para. 21 (g)–(h).

<sup>44</sup> Network on Migration, "Regular pathways", para. 20.

<sup>45</sup> Always when in a child's best interests. Convention on the Rights of the Child, arts. 10 and 22, and International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 44.



expeditious manner. An absence of accessible and flexible family reunification pathways or options for families to move together, as well as to enter and stay, leads children to take unsafe and irregular paths to reunify with family members.<sup>46</sup> Children and their families can face major obstacles to family reunification, leading to prolonged separations. Such obstacles include complex administrative requirements, limited eligibility criteria, including restrictive definitions of family that do not reflect children's realities, lack of child best-interests procedures, highly discretionary decisions that lack transparency and a lack of information, support, legal aid and appeal possibilities.<sup>47</sup>

21. To realize their commitments on pathways in the Global Compact for Migration, States agreed to draw from actions that include facilitating access to procedures for family reunification for migrants at all skills levels, including by reviewing and revising applicable requirements, such as on income, language proficiency, length of stay, work authorization and access to social security and services.<sup>48</sup> Family reunification should allow for both entry into the territory and regularization on the territory, and should provide family members with the same residency status as the initial applicant.<sup>49</sup> Well-designed and well-governed family reunification pathways support governments in their efforts to enhance regular migration pathways while upholding the right to family life and family unity, as well as child rights, and reducing vulnerabilities throughout the migration process.<sup>50</sup> States should give priority to applications for family reunification involving children.<sup>51</sup>

22. Family reunification must always be guided by the outcome of best-interests processes, including the location for family reunification, since migration decisions for some children are motivated by family conflict, neglect or abuse by a caregiver, or some are victims of trafficking and/or exploitation by family members. The Committee on the Rights of the Child has confirmed that family reunification in the country of origin should not be pursued where there is a "reasonable risk" that such a return would lead to the violation of the rights of the child.<sup>52</sup>

23. My predecessor has previously recommended that States should take appropriate measures towards regularizing the situation of migrants, considering factors such as the duration of their stay, their family situation and social, familial, educational and economic ties.<sup>53</sup> Regularization is a critical tool for the protection of children's rights in migration contexts and for realizing the principle of the best interests of the child in migration policy. Given the negative impacts on children's well-being of having an insecure and precarious migration status, it is crucial that clear and accessible status determination procedures for children are in place to regularize their status on various grounds.<sup>54</sup> In accordance with article 69 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, States should consider regularization as a way of ensuring that migrant workers and their families are not residing in irregular situations, giving particular consideration to their family situation. To realize their commitments in the Global Compact for Migration on addressing and reducing

<sup>46</sup> UNICEF, "Family unity in the context of migration", working paper.

<sup>47</sup> Network on Migration, "Regular pathways", para. 21, and Frances Nicholson, "The 'essential right' to family unity of refugees and others in need of international protection in the context of family reunification", Legal and Protection Policy Research Series, PPLA/2018/02, (UNHCR, 2018), pp. 121–122.

<sup>48</sup> Global Compact for Migration, objective 5, para. 21 (i).

<sup>49</sup> Network on Migration, "Regular pathways", para. 21.

<sup>50</sup> Ibid.

<sup>51</sup> [A/HRC/49/31](#), para. 47.

<sup>52</sup> Joint general comment No. 4/No. 23 (2017), para. 35.

<sup>53</sup> [A/HRC/53/26](#), para. 72 (a).

<sup>54</sup> Joint general comment No. 4/No. 23 (2017), para. 18.

vulnerabilities, States agreed to draw from actions that include building on existing practices to facilitate access for migrants in an irregular status to an individual assessment that may lead to regular status, on a case-by-case basis and with clear and transparent criteria, especially in cases where children, youth and families are involved.<sup>55</sup> The United Nations Network on Migration has noted the variety of purposes for which regularization programmes are commonly used by States for migrants in an irregular situation already on the territory, including specific regularization pathways for survivors of sexual and gender-based violence, sexual or labour exploitation or human trafficking and many examples exist of criteria for regularization that are particularly relevant for children. These include enduring emotional, personal, economic or social ties to the destination country; children whose best interests are determined to be served through local integration with secure status; and children who have lived in the country of residence since childhood and would otherwise risk becoming undocumented at 18 years of age.<sup>56</sup>

### C. Protection of family life and family unity

24. In the Convention on the Rights of the Child, the family is recognized as the natural environment for the growth and well-being of all its members and particularly children, and it includes a call on States to afford the necessary protection and assistance to enable families to assume their responsibilities.<sup>57</sup> This reflects the critical role of families both in children's development and in the ability of children to realize their rights.<sup>58</sup> The Committee on the Rights of the Child and the Committee on Migrant Workers have reaffirmed that children and families in the context of international migration should not be subjected to arbitrary or unlawful interference with their family life, including children's relationships with siblings, and that positive measures should be taken by States to maintain the family unit, including reuniting separated family members.<sup>59</sup> They have reiterated that the expulsion of a child's parent(s) based on a breach of immigration laws is disproportionate, as a child's right to family life and the impact on the child's development is not outweighed by advantages obtained by expelling the parent(s) based on an immigration-related offence.<sup>60</sup> The Committee on the Rights of the Child has clarified that "family" must be interpreted in a broad sense to include biological, adoptive or foster parents or, where applicable, the members of the extended family or community as provided for by local custom.<sup>61</sup>

25. The unity of a family is a protective factor for children in the context of migration and assists in the integration (or reintegration) of children and families, hence the importance of considering family unity in assessing the best interests of children who have had family relations disrupted by migration processes.<sup>62</sup> Separating a family by deporting or removing a family member from a State's territory, or refusing to allow a family member to enter or remain in the territory, may amount to

<sup>55</sup> Global Compact for Migration, objective 7, para. 23 (i).

<sup>56</sup> Network on Migration, "Regular pathways", paras. 26–27.

<sup>57</sup> Convention on the Rights of the Child, preamble, para. 6. See also International Covenant on Civil and Political Rights, art. 23 (1), International Covenant on Economic, Social and Cultural Rights, art. 10 (1), and International Convention on the Rights of All Migrant Workers and Members of Their Families, art. 44.

<sup>58</sup> Committee on the Rights of the Child, general comment No. 7 (2005), para. 15.

<sup>59</sup> Joint general comment No. 4/No. 23 (2017), paras. 27 and 32; Convention on the Rights of the Child, arts. 8, 10 and 16.

<sup>60</sup> Joint general comment No. 4/No. 23 (2017), para. 29.

<sup>61</sup> Committee on the Rights of the Child, general comment No. 14 (2013), para. 59, and Committee on the Rights of the Child, *Y.B. and N.S. v. Belgium* (CRC/C/79/D/12/2017), paras. 8.11–8.12.

<sup>62</sup> A/HRC/15/29, para. 60.

arbitrary or unlawful interference with family life, and a best-interests procedure must always be carried out in the context of a potential separation of a child from the parent.<sup>63</sup> Therefore, to protect children's survival and development rights and right to family unity, the focus must be on preventing family separation by permitting families to move together, and ensuring fast reunification if families are separated.

26. As previously recommended by my predecessor in relation to temporary labour migration, States should ensure family reunion policies, multiple re-entry permits and access to permanent pathways for migrant workers to enable spouses and children to join them in destination countries.<sup>64</sup> Recent guidance also states that bilateral labour migration agreements should facilitate the admission of a migrant worker's family members and family reunification, and that such agreements should consider the best interests of the dependent children of migrant workers and the preservation of the family unit in their family reunification policies.<sup>65</sup> Recognizing the heightened vulnerability of children affected by migration processes, the Committee on the Rights of the Child and the Committee on Migrant Workers have also urged that child welfare agencies be properly included in the development of bilateral, regional and international agreements that affect children's rights.<sup>66</sup> As the temporary labour migration of parents directly affects their children, it is essential that labour migration policies and agreements include a proper assessment of children's best interests in their design and evaluation.

27. When family unity is constrained by temporary labour migration policies that do not permit family accompaniment for migrant workers, it is critical that States make efforts to preserve transnational family relationships, including by supporting parents to remain active and present in their children's lives. This includes having specific provisions in bilateral labour migration agreements that create opportunities for regular reunification between dependent children and their parents.<sup>67</sup> The impacts of separation from parents for children remaining in countries of origin will vary based on the individual circumstances of children and their parents, families and communities, as well as the policies and practices of the receiving State and individual employers. However, factors that can assist in preserving family life and family relations for the children of migrant workers include a family's pre-migration situation, family preparedness for periods of separation, the quality and suitability of alternate caregivers, a parent's capacity to make return visits and the availability of the means and support to maintain transnational family relationships.<sup>68</sup>

#### **D. Children's rights at borders and initial reception**

28. In the absence of safe and regular pathways, children face significant dangers in transit and at borders. Pushbacks of children by States at some borders represent a failure to protect children's rights. The Convention on the Rights of the Child requires States to take appropriate measures to ensure that children in migration contexts, whether unaccompanied or accompanied by their parents or any other person, receive

<sup>63</sup> Joint general comment No. 4/No. 23 (2017), para. 28, and Committee on the Rights of the Child, *O.M. v. Denmark* (CRC/C/94/D/145/2021), para. 8.5.

<sup>64</sup> A/78/180, para. 68 (j).

<sup>65</sup> United Nations Network on Migration, *Global Guidance on Bilateral Labour Migration Agreements* (2022), chap. III, para. A.6; see also OHCHR, "Human rights and temporary labour migration programmes in and from Asia and the Pacific", 2022.

<sup>66</sup> Joint general comment No. 4/No. 23 (2017), para. 65.

<sup>67</sup> Network on Migration, *Global Guidance on Bilateral Labour Migration Agreements*, chap. III, para. A.6.

<sup>68</sup> UNICEF, "Children 'Left Behind'", working paper, and Network on Migration, *Global Guidance on Bilateral Labour Migration Agreements*, p. 75.

appropriate protection and assistance.<sup>69</sup> Children should be guaranteed the right to access to territory, regardless of documentation, and should be referred to authorities in charge of evaluating their needs, protecting their rights and ensuring their procedural safeguards.<sup>70</sup>

29. Some States have implemented restrictive border governance measures, including the “externalization” of borders to compel countries of first arrival, transit or departure to enforce border controls and prevent irregular entry to the territory concerned, exacerbating situations of vulnerability and undermining procedural safeguards.<sup>71</sup> Restrictive migration or asylum policies exacerbate children’s vulnerability to violence and abuse during their migration journey and in countries of destination.<sup>72</sup> In the Global Compact for Migration, States committed to implement child-sensitive border management policies,<sup>73</sup> to uphold children’s best interests at all times, and to apply a gender-responsive approach in addressing vulnerabilities, including in responses to mixed movements.<sup>74</sup> It is essential that States put in place formal processes, with strict procedural safeguards, to assess and determine children’s best interests in decisions affecting children.<sup>75</sup> Best-interests assessments and determination procedures should be individualized processes guided by child protection authorities within child protection systems, including consultation with the child in line with their evolving capacity and an assessment of their express wishes, and possible solutions and plans should be discussed and developed together with the child.<sup>76</sup>

30. A child-sensitive approach to migration and border governance also requires the establishment of child rights-based procedures, including in relation to States’ use of digital technologies, and initial reception systems that incorporate child welfare principles. States should invest in training border officials in human rights, including child rights. Interviews carried out by border authorities with children should be limited to gathering basic information about the child’s identity.<sup>77</sup> States should ensure that qualified, culturally competent child protection professionals are present at the first point of contact and centrally involved in all interviews, screening processes, assessments and referrals of children and families, and that relevant service providers are present at international borders, such as competent interpreters, legal aid service providers, health service providers, guardians for unaccompanied and separated children and others.<sup>78</sup> Children travelling with adults should be verified as being accompanied by or related to them, including through separate interviews with appropriately trained and qualified personnel.<sup>79</sup> Children should be provided with information in a language and format that they can understand, including about complaints mechanisms, and have access to essential services such as medical and psychological care. Moreover, States should invest in child rights-based, gender-sensitive, non-custodial reception processes, infrastructure and arrangements, which preserve family unity and implement minimum standards and other child-specific safeguards.

<sup>69</sup> Convention on the Rights of the Child, arts. 20 and 22.

<sup>70</sup> Joint general comment No. 4/No. 23 (2017), para. 17, and Committee on the Rights of the Child, *D.D. v. Spain*, para. 14.4.

<sup>71</sup> [A/HRC/54/81](#), paras. 23–24.

<sup>72</sup> Joint general comment No. 4/No. 23 (2017), para. 40.

<sup>73</sup> Global Compact for Migration, objective 11.

<sup>74</sup> *Ibid.*, objective 7.

<sup>75</sup> Committee on the Rights of the Child, general comment No. 14 (2013), para. 87.

<sup>76</sup> Joint general comment No. 3/No. 22 (2017), para. 32 (j).

<sup>77</sup> OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*, p. 29.

<sup>78</sup> *Ibid.*, p. 31.

<sup>79</sup> *Ibid.*, p. 29.

31. Age assessments should only be initiated if serious doubts about the child's age exist. Safeguards should include that such assessments only be carried out as a measure of last resort, that the benefit of the doubt be given to the individual, that information about the process and possible consequences be provided to the individual in a child-friendly manner, that they receive support, advice and free and independent legal representation, and that the individual be protected from return while his or her age is being assessed.<sup>80</sup> Age assessments should take a holistic approach<sup>81</sup> and should only be undertaken by independent and appropriately skilled practitioners, in accordance with the recommendations of the Committee on the Rights of the Child.<sup>82</sup>

32. For unaccompanied and separated children, States are obligated to provide special protection and assistance.<sup>83</sup> Once identified, these children should be immediately referred to child protection agencies, and only be interviewed in the presence of an appropriately trained childcare worker.<sup>84</sup> States' obligations to unaccompanied and separated children include appointing a guardian who has the authority to be present in all planning and decision-making processes immediately after such children are identified<sup>85</sup>, as well as providing access to legal advice and representation, and a safe and protective community-based, and ideally family-based, environment, rather than institutional care.<sup>86</sup> To realize their commitments set forth in the Global Compact for Migration on addressing and reducing vulnerabilities, States agreed to draw from various actions, including protecting unaccompanied and separated children at all stages of migration through the establishment of specialized procedures for their identification, referral and family reunification, providing access to services and swiftly appointing a competent and impartial legal guardian.<sup>87</sup>

33. Immigration detention of any child violates children's rights and always contravenes the principle of the best interests of the child.<sup>88</sup> Article 37 (b) of the Convention on the Rights of the Child establishes the general principle that a child may only be deprived of liberty as a last resort and for the shortest appropriate period of time. However, offences concerning irregular entry or stay cannot under any circumstances have consequences similar to those derived from the commission of a crime. Therefore, the possibility of detaining children as a measure of last resort is not applicable in immigration proceedings as it would conflict with the principle of the best interests of the child and the right to development.<sup>89</sup> Several special procedures mandate holders have also stressed that immigration detention of children should be prohibited.<sup>90</sup> However, at least 330,000 children globally per year are

<sup>80</sup> [A/HRC/15/29](#), para. 44.

<sup>81</sup> A holistic approach involves balancing a range of physical, psychological, developmental, environmental and cultural factors. See UNICEF, "Age assessment: a technical note" (2013).

<sup>82</sup> Ibid.; see also UNICEF, "Towards a child rights-based assessment tool to evaluate national responses to migrant and refugee children", discussion paper No. 2018-04 (2019), pp. 18–19, and Committee on the Rights of the Child, *C.O.C. v. Spain* ([CRC/C/86/D/63/2018](#)), paras. 8.9–8.11.

<sup>83</sup> Convention on the Rights of the Child, arts. 20 and 22.

<sup>84</sup> OHCHR, Recommended Principles and Guidelines on Human Rights at International Borders, p. 30.

<sup>85</sup> Committee on the Rights of the Child, general comment No. 6 (2005), para. 33.

<sup>86</sup> United Nations Guidelines for the Alternative Care of Children.

<sup>87</sup> Global Compact for Migration, objective 7, para. 23 (f).

<sup>88</sup> Committee on the Rights of the Child, "Report of the 2012 day of general discussion: The rights of all children in the context of international migration", para. 32.

<sup>89</sup> Ibid., and joint general comment No. 4/No. 23 (2017), para. 10.

<sup>90</sup> [A/HRC/30/37](#), para. 46, and [A/HRC/39/45](#), annex, para. 11; see also [A/HRC/37/50](#), para. 73, [A/75/183](#) and OHCHR press release, "Child immigration detention must be prohibited following adoption of EU migration and asylum pact, UN experts say" (2 May 2024).

deprived of their liberty based on their (or their parents') legal or migratory status.<sup>91</sup> Lack of accurate data means this is likely to be a significant underestimate.

34. With the adoption of the Global Compact for Migration, States committed to a human rights-based approach to any detention of migrants and, to realize this, to draw from a range of actions, including ensuring a viable range of non-custodial measures that are in line with international law and working to end the practice of child detention in the context of international migration.<sup>92</sup> The United Nations Network on Migration has noted some momentum, with important progress made through peer learning exchanges between States, and a growing body of replicable promising practices that respect children's rights and meet States' concerns about migration management.<sup>93</sup> Furthermore, the 2030 Agenda for Sustainable Development provides an overarching impetus for action to end violence against children and to leave no child behind. To fully realize target 16.2 of the Sustainable Development Goals, which contains a pledge to end violence against children, States must address issues of structural violence, abuse and denial of essential services that children often face in immigration detention<sup>94</sup> and other migration contexts.

## **E. Protection from violence, exploitation and abuse, going missing, human trafficking, exploitation and statelessness**

35. It is critical that children are protected from all forms of physical and mental violence<sup>95</sup> across all stages of their migration journey. Children in migration settings face heightened vulnerability to violence, exploitation and abuse, particularly but not only if they are undocumented and/or unaccompanied or separated. This includes risks of immigration detention, pushbacks, child trafficking, aggravated smuggling, child labour, child marriage, child recruitment (into armed conflict, organized criminal gangs and radicalized movements) and online harms. They can also experience violence and abuse during migration raids and deportations. While robust protections must be extended to unaccompanied and separated children, it is important that children in families are not excluded from these protections, as they can also face heightened vulnerability. It is also essential that States provide child-sensitive consular protection, assistance and cooperation throughout the migration cycle, as recognized in objective 14 of the Global Compact for Migration.

36. Strengthening child protection systems in countries of origin, transit and destination – and cross-border collaboration between child protection actors – is key to meeting the needs of children in the most vulnerable situations, including victims and survivors of child trafficking, exploitation and sexual and gender-based violence.<sup>96</sup> It is essential that intersectoral approaches are taken to the protection of children, recognizing intersecting factors that can compound risks for children, including migration status, nationality, gender, age, disability, race, colour, sexual orientation and gender identity, ethnicity, religion, country of origin, level of

<sup>91</sup> See [A/74/136](#).

<sup>92</sup> Global Compact for Migration, objective 13.

<sup>93</sup> United Nations Network on Migration, "Report of fourth global peer learning exchange: Working to end child detention in the context of international migration" (24 May 2023), and United Nations Task Force on Children Deprived of Liberty, "End immigration detention of children", advocacy briefing note (February 2024).

<sup>94</sup> [A/75/183](#), para. 21.

<sup>95</sup> Convention on the Rights of the Child, art. 19 (among others).

<sup>96</sup> United Nations Special Representative of the Secretary-General on Violence against Children, "Protecting the rights of children on the move in times of crisis" (2022), and UNICEF and IOM, "Inclusion of children in the context of migration into national child protection systems" (April 2024).

education of children and families, socioeconomic status and exposure to forced displacement. Children living with disabilities can have impairments and vulnerabilities aggravated by migration and displacement settings, or new conditions may develop, including related to mental health, if they are not provided with the necessary care and support, are excluded from services or are invisible in migration and displacement planning.<sup>97</sup>

37. The Convention on the Rights of the Child and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, together with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention on Transnational Organized Crime,<sup>98</sup> protect children from all forms of exploitation and abuse, including human trafficking and sexual exploitation. Yet, child trafficking remains one of the most egregious child rights violations globally and is inherently connected with other forms of exploitation and abuse, with child trafficking victims almost twice as likely as adults to be subjected to physical or extreme violence<sup>99</sup> and one in three identified trafficking victims being a child.<sup>100</sup> For children, preventing and responding to trafficking requires strong child protection, social protection and education systems, online safety, enhanced pathways for safe and regular migration and frontline responders equipped to identify victims and survivors. It also requires additional considerations, including best-interests processes, child- and gender-sensitive justice procedures, access to legal advice and representation, sexual and gender-based violence services, training for enforcement and prosecution staff on child rights, alternative care solutions and tailored reintegration assistance. Moreover, trafficked children, including those exploited for criminal purposes, are often arrested, punished and criminalized, instead of being provided with the necessary protection and child- and gender-sensitive assistance that they should be afforded under international law. In line with the non-punishment principle, child victims of trafficking should not be subject to arrest, charge, detention, prosecution, or be penalized or otherwise punished for illegal conduct that they committed as a direct consequence of being trafficked.<sup>101</sup>

38. Child migrants can also be particularly vulnerable to child labour, despite protections against child labour and exploitation<sup>102</sup> set forth in the Convention on the Rights of the Child, especially if they are undocumented, unaccompanied and in countries where they face socioeconomic exclusion and lack of access to rights and basic services. Many children in these situations end up in agricultural and domestic work and some are victims of child trafficking.<sup>103</sup> Moreover, of an estimated 3.3 million children in situations of forced labour daily, there are an estimated 1.7 million children in commercial sexual exploitation, many of whom are victims of human trafficking.<sup>104</sup>

39. With almost half of all international migrants being women or girls, it is critical that gender-specific needs are incorporated into migration policies and responses,

<sup>97</sup> UNICEF, “Included, every step of the way: Upholding the rights of migrant and displaced children with disabilities” (February 2023).

<sup>98</sup> Convention on the Rights of the Child, art. 35 (among others); Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

<sup>99</sup> Inter-Agency Coordination Group against Trafficking in Persons, “Call for accelerated action by 2025 to prevent and end child trafficking” (November 2023), p. 2.

<sup>100</sup> *Global Report on Trafficking in Persons* (United Nations publication, 2022).

<sup>101</sup> Inter-Agency Coordination Group against Trafficking in Persons, “Non-punishment of victims of trafficking”, issue brief No. 8/2020.

<sup>102</sup> Convention on the Rights of the Child, arts. 32 and 36 (among others).

<sup>103</sup> International Labour Organization, “Child labour and migration”.

<sup>104</sup> International Labour Organization, cited in Inter-Agency Coordination Group, “Call for accelerated action”, p. 7.



including child-sensitive approaches to addressing risks and experiences of sexual and gender-based violence. Gender can influence migration drivers, such as delaying early marriage being a driver for some girls, and can also influence children's agency over decisions to migrate and the nature of the migration pathway. For example, internal migration is more likely for girls, whereas boys are more likely to cross borders, migrate longer distances and be unaccompanied than girls, but girls may not be captured in the data.<sup>105</sup> Some risks and deprivations faced by children in migration settings are distinctly gendered, such as child marriage and child trafficking. Girls account for 27 per cent of detected victims of trafficking for sexual exploitation, while boys account for five per cent; and 12 per cent of detected victims of trafficking for forced labour are boys, whereas five per cent are girls.<sup>106</sup>

40. The Convention on the Rights of the Child includes recognition of birth registration as central to a child's right to a nationality, identity and the prevention of statelessness.<sup>107</sup> This is reiterated in the Convention on the Protection of All Migrant Workers and Members of Their Families (art. 29) in relation to the right of children of migrant workers to a name, birth registration and a nationality. A lack of birth registration and identity documentation frequently leads to unsafe migration and lack of or limited access to rights and basic services, and is a significant risk factor for statelessness.

41. A child's stateless status can stem from their parents' statelessness and be due to discrimination against particular groups; gaps in – or conflicts of – nationality laws; emergence of new States and changes in borders; and loss or deprivation of nationality.<sup>108</sup> The Security Council has recognized that gender discrimination in nationality laws preventing women from conferring nationality to children exacerbates risks to displaced women and children.<sup>109</sup>

42. Children are more at risk of going missing on migratory routes. Between 2014 and 2019, nearly 1,600 children were reported dead or missing, although many more go unrecorded.<sup>110</sup> The General Assembly has expressed concern about the number of migrants in a vulnerable situation when crossing or attempting to cross international borders, especially women and children, and stressed the need for coordinated international efforts to assist and protect migrants in vulnerable situations.<sup>111</sup>

## F. Inclusion and integration of migrant children

43. Many children in migration contexts face barriers in law and practice to accessing national systems and services that would otherwise support their rights to protection, mental and physical health, education, social security and an adequate standard of living, as well as their rights to play and recreational activities, enshrined in the Convention on the Rights of the Child.<sup>112</sup> Investment in strong national child protection, education, health and social protection systems that are inclusive of all children and families regardless of migration status is central to protecting children from violence, abuse and exploitation, poor mental and physical health and dropping out of school. It can also prevent families in situations of poverty and insecurity from

<sup>105</sup> Ibid.

<sup>106</sup> *Global Report on Trafficking in Persons* 2022.

<sup>107</sup> Convention on the Rights of the Child, arts. 7–8.

<sup>108</sup> UNHCR, #IBelong Campaign (2024).

<sup>109</sup> UNHCR and UNICEF, "Gender discrimination and childhood statelessness"; and [S/2014/693](#), para. 42.

<sup>110</sup> IOM, *Fatal Journeys Volume 4: Missing Migrant Children* (2019).

<sup>111</sup> [A/HRC/54/81](#), para. 13.

<sup>112</sup> Convention on the Rights of the Child, arts. 19, 24, 26–28 and 31.



resorting to negative coping mechanisms, such as child marriage or child labour.<sup>113</sup> Fear of being reported to immigration authorities can create a barrier to migrant children's access to key services such as education and health care and "firewalls" are therefore essential. Firewalls create a strict and real separation between immigration enforcement and public services, so that immigration authorities cannot access information on the migration status of visitors to public services, and public service providers are not required to investigate or share information on the migration status of their users.<sup>114</sup>

44. Migrant children must be included in national education systems and other non-formal learning opportunities as soon as possible on arrival, with positive measures in place to remove regulatory, administrative, financial, social, cultural and linguistic barriers that hinder access to schooling (including factors related to documentation, recognition of prior learning, gender, age, disability, mental health, discrimination, bullying and xenophobia). Efforts must also be made to close the digital divide for migrant and displaced children in national digitization efforts to improve connectivity and equal access to digitally enabled education and learning opportunities.<sup>115</sup> The Convention on the Protection of All Migrant Workers and Members of Their Families reiterates the right to education for children of migrant workers in destination countries, stating that access to education should be provided on the basis of equality of treatment with nationals and access to public preschool arrangements and schools should not be limited due to irregular migration status of children or their parents.<sup>116</sup>

45. Importantly, schools are places of first integration for migrant children and can provide a bridge between migrant and local children and families by fostering dialogue, mutual understanding and social relationships.<sup>117</sup> This helps to build social cohesion and overcome discrimination, supporting migrant children's inclusion in schools and communities and retention in education and learning.<sup>118</sup> However, children in migration contexts frequently experience stigmatization, discrimination and xenophobia, despite the resilience they have shown on migration journeys and the enormous contributions that migrant communities, including children, make to countries of destination and origin.<sup>119</sup> Experiences of exclusion and feelings of vulnerability for migrant and displaced children can be compounded by a lack of information about, and access to, their rights and support services, as well as social and financial barriers such as language, culture and lack of income, together with fear of detection, detention and deportation if undocumented.<sup>120</sup>

46. Inclusive social protection measures can significantly reduce vulnerabilities for children and families in migration settings, reducing poverty, facilitating access to basic services, improving the well-being of children and parents and reducing the risks of negative coping strategies. This involves equity-driven and rights-based universal systems that provide social protection to every person when needed across the life cycle.<sup>121</sup> It is responsive to the needs of all children and sensitive to particular

<sup>113</sup> Special Representative of the Secretary-General on Violence against Children, "Protecting the rights of children on the move in times of crisis".

<sup>114</sup> [A/73/178/Rev.1](#), para. 33.

<sup>115</sup> UNICEF, "Education, children on the move and inclusion in education" (2022) p. 13.

<sup>116</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 30.

<sup>117</sup> IOM, "Youth and migration: Engaging youth as key partners in migration governance", International Dialogue on Migration No. 29 (2020), p. 40.

<sup>118</sup> UNICEF, "Education, children on the move", p. xii.

<sup>119</sup> [A/HRC/56/54](#), para. 51.

<sup>120</sup> UNICEF, "Protected on paper?: An analysis of Nordic country responses to asylum-seeking children" (2018), p. 62.

<sup>121</sup> Rebecca Holmes and Christina Lowe, "Strengthening inclusive social protection systems for displaced children and their families" (London, ODI, and New York, UNICEF, 2023).

characteristics that can increase the risk of exclusion, discrimination, marginalization and inequality, such as age, migration status, socioeconomic status, gender, disability, race, colour, ethnicity, class, religion, being from an Indigenous group, geographic location, health status or LGBTQI identity.<sup>122</sup> Moreover, portability of social protection benefits for migrant workers is critical to protect their children and families in countries of origin, including in times of crisis. Bilateral labour migration agreements must ensure portability, as well as health care on a par with nationals for children of migrant workers in countries of destination, and equal treatment with nationals for migrant workers concerning maternity protection and measures to support the care of dependent family members.<sup>123</sup>

47. While children in migration contexts are among the most marginalized young populations globally, there remain significant gaps and disparities in how they are reported on by States, if at all.<sup>124</sup> Too often, they are invisible in data, which means they are unlikely to be accounted for in policies and programmes.<sup>125</sup> In particular, data is not routinely and consistently generated on many children in highly vulnerable migration situations, such as unaccompanied and separated children, stateless children, children in countries of origin whose parents have migrated, and children with an irregular migration status. There is an urgent need to address data and evidence gaps on these children to ensure that policies and investments are evidence-based and children are kept at the centre of migration policies and processes to reduce vulnerabilities and risks of marginalization.<sup>126</sup>

## G. Child rights-based return and reintegration

48. As with all decisions by States about children, the best-interests principle applies to return decisions,<sup>127</sup> with the precondition to the return of any child – whether unaccompanied, separated or within a family – being that return has been found to be in their best interests through an individual and participative process aimed at identifying a sustainable solution with the central involvement of child protection authorities.<sup>128</sup> States are obligated to ensure that any decision to return a child to his or her country of origin is based on evidentiary considerations on a case-by-case basis and pursuant to a procedure with appropriate due process safeguards, including a robust individual assessment and best-interests determination. This procedure should ensure, inter alia, that the child, upon return, will be safe and provided with proper care and enjoyment of rights.<sup>129</sup> Return is only one of the sustainable solutions for children, with others including regularization and integration in countries of residence – either temporarily or permanently – according to each child’s circumstances, resettlement in a third country (including on family reunification grounds), or other solutions on a case-by-case basis.<sup>130</sup>

<sup>122</sup> Nupur Kukrety and Daniela Knoppik, “Leaving no one behind: A case for inclusive social protection for displaced children”, *International Social Security Review*, vol. 76, No. 4 (2023).

<sup>123</sup> Network on Migration, *Global Guidance on Bilateral Labour Migration Agreements*, para. F.1.

<sup>124</sup> International Data Alliance for Children on the Move, “Data and statistics for children on the move: Essential sources and good practices” (2023), pp. 1–2.

<sup>125</sup> Ibid., “Children on the move: Key terms, definitions and concepts” (2023), p. 2.

<sup>126</sup> IOM, “Youth and migration”, p. 31.

<sup>127</sup> Convention on the Rights of the Child, art. 3.

<sup>128</sup> Committee on the Rights of the Child, general comment No. 6 (2005), para. 84, United Nations Network on Migration, “Ensuring safe and dignified return and sustainable reintegration”, position paper (March 2021), para. 2.

<sup>129</sup> Joint general comment No. 3/No. 22 (2017), para. 33, and Committee on the Rights of the Child, *Z.S. and A.S. v. Switzerland*, para. 7.6.

<sup>130</sup> Joint general comment No. 3/No. 22 (2017), para. 33.

49. States should examine each child's case in an age- and gender-sensitive manner, taking into account the specific rights and vulnerabilities of children, the particularly serious consequences of traumatic returns on children's mental health and well-being, and the impact of disrupted or insufficient access to services upon return, including education, shelter, food, health and other rights.<sup>131</sup> For children, "return" may mean moving to a country where they have never resided, of which they have no memory, or where they have limited cultural or family ties. If return is determined to be in a child's best interests, child protection actors should collaborate across borders prior to and during the return.<sup>132</sup> Cross-border case management procedures should be established in an expeditious manner in conformity with the Convention on the Rights of the Child and other applicable international laws.<sup>133</sup>

50. Regarding the return itself, States should have safeguards in place during the physical departure of children to ensure child-appropriate care and treatment and that family members are not separated during return operations unless this is deemed to be in the child's best interest. Unaccompanied children should only be returned to appropriate non-custodial and community-based reception and care arrangements when a best-interests procedure has found this to be in a child's best interests.<sup>134</sup> To realize their commitments in the Global Compact for Migration on safe and dignified return and sustainable reintegration, States agreed to draw from a variety of actions, including ensuring that a parent, legal guardian or specialized official accompanies the child throughout the return process and ensuring that appropriate reception, care and reintegration arrangements for children are in place in the country of origin upon return.<sup>135</sup>

51. Return and reintegration measures should be sustainable from the perspective of the child's right to life, survival and development.<sup>136</sup> If it is in a child's best interests to be returned, an individual plan should be prepared, together with the child where possible, for the child's sustainable reintegration using a rights-based approach. Consideration should be given to immediate protection measures and long-term solutions, including effective access to education, health, psychosocial support, family life, social inclusion, access to justice and protection from all forms of violence.<sup>137</sup>

## H. Participation of children

52. Children are affected by migration policies and programmes at the global, regional, national and local levels; yet children in migration contexts are often talked about but rarely listened to.<sup>138</sup> In individual cases, the Committee on the Rights of the Child has discouraged States from introducing age limits that would restrict a child's right to be heard in all matters affecting the child and held that determining the best interests of children requires that their situation be assessed separately from their parents and the child's views be heard.<sup>139</sup> When return to the country of origin or a third country is considered to be in a child's best interests, it is essential that the child

<sup>131</sup> Network on Migration, "Ensuring safe and dignified return", para. 2.

<sup>132</sup> Ibid., Introduction, para. 3.

<sup>133</sup> Joint general comment No. 4/No. 23 (2017), para. 64.

<sup>134</sup> Network on Migration, "Ensuring safe and dignified return", para. 3. Network on Migration, "Ensuring safe and dignified return", para. 3.

<sup>135</sup> Global Compact for Migration, objective 21, para. 37 (g).

<sup>136</sup> Joint general comment No. 3/No. 22 (2017), para. 32 (k).

<sup>137</sup> Ibid.

<sup>138</sup> UNICEF, "A right to be heard: Listening to children and young people on the move" (December 2018), p. 1.

<sup>139</sup> Committee on the Rights of the Child, *Z.S and A.S v. Switzerland*, para. 7.8.

be consulted in the decision-making process and the child's views are given proper consideration.

53. The Committee on the Rights of the Child has recognized empowerment as essential to realizing children's rights, particularly during adolescence.<sup>140</sup> Children and adolescents in migration contexts often display high levels of resilience, motivation and ability to adapt quickly to new environments.<sup>141</sup> Moreover, migrant children and children from diasporas in destination countries support the integration of families and communities, promoting understanding of other cultures to help counter negative and harmful stereotypes and build social cohesion, and also transfer knowledge and skills to countries of origin.<sup>142</sup> By recognizing the strengths and abilities of children and adolescents in different migration settings, including the most marginalized, children are empowered to shape their lives and contribute to their communities, which fosters resilience, improves mental health and promotes social inclusion and civic participation.<sup>143</sup>

54. Having inclusive child participation in policymaking processes not only protects children's rights in migration contexts, supports integration and builds social cohesion, it also allows policymakers to benefit from the knowledge, dynamism, innovation, expertise and leadership of these children and adolescents in the design, implementation and evaluation of policies that affect them.<sup>144</sup> It recognizes that children and adolescents are key agents for change, at the forefront of efforts to promote and protect human rights, including by leading global efforts to make decision-making spaces inclusive to ensure that critical decisions are informed by diverse perspectives.<sup>145</sup> Migrant and displaced children are also at the forefront of addressing climate change, including risks associated with climate-induced displacement, by voicing their opinions and concerns, identifying solutions, promoting environmentally sustainable lifestyles and contributing to needs assessments in their communities.<sup>146</sup>

55. The need for meaningful engagement of children and youth in decision-making processes has been reiterated by the Secretary-General in relation to the collective capacity to achieve the 2030 Sustainable Development Agenda, with the Sustainable Development Goals cutting across all aspects of migration, including in relation to children. To translate this into action, which includes in the context of migration governance, States have been urged to expand and strengthen youth participation in decision-making at all levels; make meaningful youth engagement a requirement in all United Nations decision-making processes; and support the establishment of a standing United Nations youth townhall.<sup>147</sup>

### III. Conclusion and recommendations

**56. The Special Rapporteur welcomes efforts by some States to protect the rights of children in migration contexts, which offer some promising practices that can be replicated or scaled up. These include regional declarations and plans of**

<sup>140</sup> Committee on the Rights of the Child, general comment No. 20 (2016), para. 4.

<sup>141</sup> UNICEF, "Talent on the move: Listening to children and young people on the move" (July 2021), p. 19.

<sup>142</sup> IOM, "Youth and migration", pp. 61 and 72.

<sup>143</sup> UNICEF, "Adolescent empowerment", technical note, p. 5.

<sup>144</sup> IOM, "Youth and migration", p. 79.

<sup>145</sup> Our Common Agenda policy brief 3: Meaningful youth engagement in policymaking and decision-making processes (April 2023), p. 6.

<sup>146</sup> UNICEF, IOM and Major Group for Children and Youth, "Children uprooted in a changing climate", p. 17.

<sup>147</sup> Our Common Agenda Policy Brief 3, p. 3.

action,<sup>148</sup> policies and legal frameworks prohibiting child immigration detention, expansion of pathways for entry and stay, including regularization programmes, investing in inclusive child protection and social protection systems, scaling up family-based care and comprehensive case management systems, improving guardianship systems and family reunification processes, inclusion of all migrant children in essential services, developing protocols for the consular assistance of migrant children, return processes that respect child rights and adopting measures to enable children's views to be heard in migration processes.<sup>149</sup>

57. However, serious gaps in the protection of child rights in migration contexts put many children's lives and futures at risk, despite almost universal ratification of the Convention on the Rights of the Child and widespread adoption of other relevant international human rights instruments and related policy frameworks. While highlighting many of the pressing challenges, the present report also identifies key issues for priority action, including two critical areas warranting further consultation and immediate attention by the mandate holder and Member States:

(a) Protection of family unity and family life, including facilitation of family reunification;

(b) Prevention of statelessness.

58. To strengthen the protection of child rights in migration contexts, the Special Rapporteur urges States to:

(a) Harmonize laws, policies and practices affecting children in migration contexts with the Convention on the Rights of the Child and its jurisprudence and guidance, and other relevant human rights instruments;

(b) Give precedence to children's best interests over migration management objectives. States should establish robust, multi-disciplinary best-interests procedures for children, ensuring that child protection agencies play a leading role in identifying children's best interests, for both unaccompanied and separated children and children with family members;

(c) Conduct child rights impact assessments when considering laws, policies or budgetary allocations that affect children in migration contexts and evaluate the impact on children of their implementation. States are encouraged to utilize tools,<sup>150</sup> adapted to their contexts, and to involve children and youth in these processes;

<sup>148</sup> See, for example, Association of Southeast Asian Nations, Declaration on the rights of children in the context of migration (November 2019) and regional plan of action on implementing the declaration.

<sup>149</sup> United Nations Task Force on Children Deprived of Liberty, "End immigration detention of children"; European Agency for Fundamental Rights, *Guardianship Systems for Unaccompanied Children in the European Union: Developments since 2014* (Publications Office of the European Union, 2022); Council of Europe, *Family Reunification for Refugee and Migrant Children: Standards and Promising Practices* (April 2020); United Nations Network on Migration, *Promising Practices in the Provision of Essential Services to Migrants* (January 2022); UNICEF, "Building on promising practices to protect children in migration across the European Union" advocacy brief; United Nations Network on Migration, "Mapping gaps and positive practices for safe and dignified return and sustainable reintegration" (December 2021); and UNICEF, "Child-sensitive return: A comparative analysis" (November 2019).

<sup>150</sup> See, for example, European Union and UNICEF, Child Rights Toolkit (2014); and European Network of Ombudspersons for Children, Common Framework of Reference on Child Rights Impact Assessment (2020).

(d) Review laws, policies and procedures on family reunification to reduce barriers faced by children and families and improve the accessibility and efficiency of procedures;

(e) Create and expand regular pathways for admission and stay, including regularization, based on human rights, including rights to family life and unity, best interests of the child and non-refoulement, as well as on compassionate, humanitarian or other grounds for children and families, including those affected by climate change and environmental degradation;

(f) Develop operational guidance for maintaining family relations in bilateral labour migration agreements, including regarding regular visitation between family members, family-friendly employment conditions and investment in supporting/preparing children, families and alternative caregivers for periods of separation;

(g) Ensure children can enter and remain in the State's territory for the duration of asylum or migration proceedings, or until a sustainable solution in the child's best interests is identified;

(h) Train border officials to apply a child-sensitive and human rights-based approach, making necessary referrals to child protection agencies. Ensure the early identification of children who are victims of trafficking and sexual exploitation and other crimes or human rights violations, as well as armed conflict and violence, and their referral to adequate services and support for social reintegration and physical and psychological recovery;

(i) Ensure the presence of qualified child protection agencies at borders. Identification and registration of children at borders must be conducted in a child-sensitive and child-protective manner, including collection of biometric data, which must never involve coercion;

(j) Ensure that the presumption of minority underpins age assessment processes, and that while the procedure is under way the individuals concerned should be given the benefit of the doubt and treated as children, remaining within the child protection system; ensure a multidisciplinary approach, taking into account all aspects, including psychological and environmental aspects of the person's situation, and ensure age determinations can be reviewed by or appealed to an independent body;

(k) Provide safeguards for unaccompanied and separated children, including immediate appointment of a competent and impartial legal guardian, access to free and independent legal advice and representation, and a safe and protective community-based, and ideally family-based, environment;

(l) Prohibit immigration detention of children and families in law, policy and practice;

(m) Ensure that in search and rescue procedures particular attention is paid to migrants in vulnerable situations, including children, and that organizations assisting children are not criminalized or punished for these activities;

(n) Ensure child- and gender-sensitive support for, and non-criminalization of, child trafficking victims, and support the initiatives of the Inter-Agency Coordination Group against Trafficking in Persons;

(o) Screen for vulnerability to statelessness in reception processes, ensure birth registration and issue adequate documentation and civil registry documents for all children regardless of migration status, adopt regularization

measures to prevent childhood statelessness, and support legal service providers to assist in individual cases of child statelessness;

(p) Strengthen national child protection, education, health, housing and social protection systems by building capacity to deliver services that are inclusive of all children regardless of their or their family's migration status, and to facilitate children's best interests through cross-border collaboration between services. Inclusive services must recognize intersecting factors that compound risks of marginalization, including gender, age, migration status, disability, sexual orientation and gender identity, nationality, race, colour, ethnicity, religion and socioeconomic status;

(q) Establish firewalls and ensure separation of functional responsibilities between immigration authorities and those providing care, protection and services for children and families. Personal data of children must only be collected, used, retained and shared in accordance with the child's best interests and clear child protection objectives;

(r) Ensure children in migration contexts can bring legal claims and complaints, and can access justice, accountability and redress if their rights are violated, including by ensuring children's access to legal advice and representation and other procedural safeguards;

(s) Promote the social inclusion of migrant children and facilitate their integration in local schools and communities, including through provision of additional language training and mental health and psychosocial support, particularly when children have experienced trauma, and recognize the positive contributions of migrant children and youth;

(t) Invest in combating discrimination and xenophobia, including by countering harmful migration narratives, and applying and reinforcing, if needed, existing laws when hate crimes or xenophobic or intolerant acts or expressions occur against migrant children and youth, including online acts;

(u) Ensure migrant and displaced children, and those at risk of displacement, are included in the development of national and local disaster risk reduction strategies and climate adaptation plans;

(v) Disaggregate data to understand children's different needs in migration contexts, inform evidence-based policies and programmes and improve outcomes for children;

(w) Ensure no child is returned unless a robust, multidisciplinary process, with the central involvement of child protection authorities, determines it is in the child's best interests. Any expedited procedures or fast-tracked border screening measures must include safeguards to account for child-specific risks. States are encouraged to use guidance on a child rights approach to sustainable reintegration of migrant children and families;<sup>151</sup>

(x) Support migrant children's transition into adulthood, including through extending safeguards and services and ensuring their status enables completion of any ongoing education or training after turning 18 years of age;

(y) Create opportunities for migrant children and youth, and their representative organizations, to meaningfully participate in migration policymaking and review processes; and build the capacity of migrant youth organizations, which are often the most able to reach marginalized children.

<sup>151</sup> See, for example, IOM and UNICEF, *A Child Rights Approach to the Sustainable Reintegration of Migrant Children and Families* (2020).

**Uphold children's right to be heard in their and their families' migration cases, and ensure access to child-friendly information, legal aid and representation;**

**(z) Make further child-focused pledges in the Global Compact for Migration, Global Compact on Refugees and other relevant review processes and forums.**

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