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**Save the Children submission to the OHCHR report on the promotion and protection of the human rights of migrants in the context of large movements**

**July 2016**

**Introduction**

The world is experiencing the largest forced displacement since the Second World War. By the end of 2015, 65.3 million men, women and children have been forced from their homes by conflict, generalised violence, persecution or human rights violations. Millions of people are also moving for lack of livelihood, food, water or security at home, climate change and environmental disasters. As a result, migration flows are becoming more mixed and require comprehensive solutions grounded in human rights standards.

The unprecedented scale of the migration crises which have unfolded in 2015 have also been marked by a much higher proportion of children amongst the large population movements, thus requiring specific attention to this group of people, particularly children an in irregular situation, considering their specific vulnerabilities and needs. Among the 21.3 million refugees, children represent about half of the population according to UNHCR 2015 data. Worryingly the number of unaccompanied and separated children has also increased dramatically, with the highest record of 98400 asylum applications in 2015. These data provide an incomplete picture of the situation as it only represents a small proportion of children moving across borders worldwide. The lack of accurate and disaggregated data on migrant children reflects the overall absence of a child rights approach in migration policies.

Many are vulnerable on the move, drowning at sea, dying or being brutalized and exploited. And even if migrants manage to move or arrive safely they are increasingly being met with fear, xenophobia, violence, suffering gross violations of their human rights. Increasingly policies are being put in place to prevent human movement, to criminalise migration and to close borders, with border control considerations and national interests prevailing over the collective responsibility to protect the safety and dignity of people on the move. Current responses at the international level are ad hoc and utterly inadequate. There is an urgent need for increased cooperation and responsibility sharing to find effective solutions for all migrants, irrespective of their status, and grounded in full respect for human rights standards.

Efforts to strengthen international cooperation and action to address the needs of migrants, and particularly the specific needs of vulnerable groups such as children, need to receive a boost at both the forthcoming high-level plenary meeting of the UN General Assembly Summit on Addressing Large Movements of Refugees and Migrants, to be held on 19 September 2016. This meeting provides the international community with the opportunity to agree a plan to safeguard the human rights, safety and dignity of migrants, including by addressing the causes of unsafe movements, protecting migrants in vulnerable situations from violence and exploitation and preventing the discrimination and countering the xenophobia they frequently encounter.

In this context and on the basis of the learning from programs, research and advocacy, Save the Children has identified a number of key issues that urgently needs to be addressed by Member States at national level and by the international community to ensure the protection of the human rights of migrant children in the context of large movements.

*Save the Children is the world’s leading independent organisation for children, working in 120 countries through our members, programmes and partners. Our mission is to inspire breakthroughs in the way the world treats children and to achieve immediate and lasting change in their lives. We have been working on protecting and assisting children on the move since our foundation in 1920, working in countries of origin, transit and destination, through our programmes in Africa, Asia, Europe, the Balkans, and Latin America, to prevent unsafe migration, ensure that children are protected from violence, abuse and exploitation along the migratory route and have access to essential services.*

**Key human rights challenges faced by migrant children in the context of large population movements**

***Measures that violate children’s right to life and survival***

States have increasingly resorted to harsher border control policies, such as border closure and push-back policies to ensure that irregular migrants, including migrant children, are not under their jurisdiction, thus removing any obligation towards them. States need to fulfil their obligations of *non-refoulement* under international refugee law and human rights law[[1]](#footnote-1). This obligation requires states not to return people to countries where they face a risk of persecution and other forms of serious harm. Other international standards, including maritime law[[2]](#footnote-2), require States to provide immediate assistance to persons in distress. Yet there is little mobilisation from States for search and rescue operations and many migrant children continue to lose their lives at sea[[3]](#footnote-3) or to be pushed back, notably as part of collective expulsions, without consideration for their individual circumstances or the possibility to ask for international protection.

***Children in irregular migration still criminalised, deported and detained***

In response to the large influx of migrants, detention of irregular migrant children, especially unaccompanied and separated children, has become the norm in many countries rather than the exception, and is often presented as a protective measure or as the most practical solution to address large arrivals. These children, who have already been through traumatic experiences during the journey, find themselves extremely vulnerable upon arrival as they are often detained in deplorable conditions, including overcrowding, poor sanitation facilities, no access to education, lack of healthcare and are exposed to physical and sexual violence. They can be detained with other adults, including in certain cases with convicted criminals and in some cases for lengthy periods and without access to information about their rights. Detention of children on the basis of their migratory status is never in the best interests of the child[[4]](#footnote-4) and is a violation of the right of the child. There is compelling evidence that detention can have permanent negative effects on children’s physical and mental health. Yet, legislation and policies that prohibit migration-related detention of children are either not in place or are not implemented.

Beyond the issue of detention, the poor reception conditions of migrants in countries faced by mass influx of migrants often raise serious concerns, particularly in informal camps where migrant children are exposed to further risks and vulnerabilities, and thus require particular attention and support.

***Right to access basic services too often denied to migrant children***

As displacement becomes increasingly protracted,migrant children are finding themselves stranded for years in distress. In this context, it is even more critical to ensure that migrant children have access to essential public services, such as education, housing and health care, beyond the provision of basic humanitarian services. Children in an irregular situation, including those accompanied by their parents or born to migrant parents in countries of destination, are particularly vulnerable to discrimination and are often denied access to essential public services because of legal restrictions or practical barriers including prohibitive financial costs, lack of information and discrimination. Support and protection services, including access to a legal guardian as well as legal representation where relevant, should also be provided for all children travelling and especially those travelling unaccompanied or separated from their families.

***Restrictions on the right to family life and restrictive family reunification policies***

Children born in destination countries to irregular migrant parents may be denied their right to family life due to the deportation of one or both parents; many destination countries are increasingly interpreting family reunification as a basis for sending migrant children in an irregular situation back to their country of origin without considering their best interests nor assessing the situation if they were to return to their country of origin. Because of restrictive family reunification policies, children have to go through more dangerous irregular channels to join their parents, often unaccompanied, and are exposed to further risks, including trafficking or highly exploitative labour.

***Increased risk of exploitation and abuse while on the move and at borders***

Trafficking and smuggling thrive when routes to safety are closed to people fleeing from war, conflict and destitution. The risks are particularly acute for children, many of whom have already suffered violence, abuse and exploitation before they reach their destination, only to be even more vulnerable to violence when they get there. Save the Children’s programmes on children on the move globally also show how lack of access to work or education opportunities in countries of transit and destination, reluctance to rely on local authorities for protection, fear of being detained, and lack of regular avenues for family reunification make migrant children more vulnerable to being economically or sexually exploited or forcibly recruited into illegal activities or terrorist organisations.

**Key recommendations for UN Member States and the international community:**

As UN Member States are coming together to find joint solutions and an agreement to address large movements of refugees and migrants, it is critical to put the protection of people on the move to the forefront of this agenda with human rights at its core. In the lead up to the 19th September UNGA Summit, Save the Children makes the following recommendations:

* **Urgent attention should be paid to the specific vulnerabilities, needs and protection risks faced by children in migration by ensuring that migration laws, policies and international humanitarian responses are consistent with the Convention on the rights of the child (CRC**). In practice this means that the best interests of the child should be the primary consideration in all migration-related procedures, including on identification, age assessment, reception, identification of durable solutions, including decisions on relocation, resettlement or return, family reunification and alternative care solutions. Individual best interests of the child assessments and/or formal determination procedures should take place at all stages of any migration process affecting children, with the involvement of the child and of child protection professionals and child-friendly screening procedures should be in place. An understanding of the reasons to migrate and the views of the child should be a central part of these considerations. Further practical guidance for states on the protection of migrants in vulnerable situations, particularly migrant children in irregular situation, in line with CRC standards, is needed. Moreover all children should have equal access as national children to basic services regardless of their or their parent’s migration or residence status or if they possess relevant documents. These rights should be made explicit in national legislation and in the design of social, education, health and housing policies as well as in child protection policies.
* **End immigration detention of children**. Alternatives to detention must always be found for children and their families, including accommodation in non-custodial, community-based contexts while their immigration status is being resolved. When necessary, states should implement legislation and policies ensuring appropriate community-based placement models exist in practice. Consistent with the principles of family unity, parents or primary care-givers should not be detained, but should be allowed to live in the community setting with their children, while having their status assessed.
* **Ensure internal and cross-border coordination on child protection between authorities**: There is a huge need for States coordination and collaboration within and across key ministerial departments and sectors (e.g. welfare, health, education, labour, justice, migration) and between geographical areas to address the protection and care of children on the move, within and between countries. This should include structures for cross-border cooperation between child protection actors, community programmes which monitor, protect and refer children and families at risk in regions of origin and transit countries, funding aimed at strengthening national child protection systems and information sharing about the risks of unsafe migration, to enable children and families to mitigate risks of migration.
* **Establish mechanisms and instruments of responsibility-sharing based on human rights principles, including an effective resettlement system.** The present resettlement targets globally, including the resettlement quota system in Europe – have proven to be inadequate. A comprehensive agreement that establishes a permanent resettlement scheme adequate to the millions of people seeking international protection worldwide is necessary. In resettlement and humanitarian admission programmes special attention should be given to children, either with their families or unaccompanied with priority given to children and adolescents.
* **Establish and ensure more safe and regular channels, including more flexible family reunification processes**: UN Members States should ensure safe and legal routes, including concrete commitments to resettle the most vulnerable refugees and migrants, humanitarian visas, increased flexibility in family reunification processes, private sponsorship programmes and student scholarship schemes. These should all ensure minimum standards of protection, especially for children, and must recognise child-specific forms of persecution – such as under-age recruitment, child trafficking and female genital mutilation – as the basis of asylum claims. Ensuring that safe and legal routes are in place is a key step to achieving the SDG 10.7 target on *“*facilitating orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies”.

1. [↑](#footnote-ref-1)
2. The United Nations Convention on the Law of the sea of 1982 (UNCLOS) provides a general and unconditional obligation to assist anyone in distress at sea for all ships in the vicinity. Paragraph 2 of article 98 further provides that "all coastal States promote the establishment, operation and maintenance of an adequate and effective search and rescue service (...)”. The International Convention on Maritime Search and Rescue, known as SAR Convention also provides the creation Search and rescue (SAR) zones, within which the states are responsible for coordinating relief efforts through coordination centers for search and rescue operations. [↑](#footnote-ref-2)
3. According to UNICEF children represented more than 30 per cent of all recorded deaths in the Aegean Sea tin 2015. [↑](#footnote-ref-3)
4. The UNCRC provides that the detention of children, including children in the context of migration, should be avoided (article 37 CRC). UN 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, February 2013, para 78 www2.ohchr.org/english/bodies/crc/docs/discussion2012/2012CRC\_DGD-Childrens\_Rights\_InternationalMigration.pdf <http://tinyurl.com/OHCHR-CRC-2012> [↑](#footnote-ref-4)