

**Submission for the Office of the High Commissioner for Human Rights (OHCHR) report to the General Assembly on the protection of migrants (RES 68/179)**

**June 2014**

Save the Children is the world’s leading independent organisation for children, working in 120 countries through our members, programmes and partners. Our mission is to inspire breakthroughs in the way the world treats children and to achieve immediate and lasting change in their lives. Save the Children has a dual mandate as a development and humanitarian agency, covering issues such as health and nutrition, education, child protection and child rights governance. Save the Children has been the leading organisation pioneering the work on protecting *Children on the Move*  since 2006. Its work includes programmes focussing on protecting migrant children in Africa, Asia, Europe, the Balkans and Latin America and advocacy at the national, regional and global level. Save the Children also chairs the Inter-Agency Group on Children on the Move which brings together regional and International Organisations working on children in the context of migration.[[1]](#footnote-1)

This document has been produced on the basis of Save the Children’s programmatic experience and its research and publications on protecting and supporting children on the move, which include consultations conducted directly with children on the move. It also benefits from specific contributions for this submission provided by Save the Children offices in Mexico, Côte d’Ivoire and Egypt about the key challenges faced by children on the move in those regions.

**Background**

It is estimated that 33 million international migrants worldwide are under the age of 20 and 11 million are children between the ages of 15 and 19 years. The number of children who are ‘on the move[[2]](#footnote-2)’ is growing dramatically. The current ‘youth bulge’ taking place in the developing world combined with the challenge of unemployment facing these children, young people and their families is likely to translate, in the next decades, in increased migration flows of people under 18 years of age in search of better opportunities.

The reasons, patterns and consequences of children’s movement are diverse and complex. For many children, leaving their home communities promises the chance of a better life, an escape from poverty, abuse, violence or conflict and a better opportunity to access jobs, education and basic services. But once children move, particularly in the absence of protection services and support, they become highly vulnerable to violence, discrimination, abuse and various forms of exploitation either during their journey, or once they reach the new destination.

(a) **KEY CHALLENGES FACED BY MIGRANT CHILDREN PARTICULARLY UNACCOMPANIED AND SEPARATED CHILDREN AND ADOLESCENTS**

Despite a clear legal framework obliging states to respect and ensure the rights of all children, children on the move face numerous systematic violations of their rights in countries of origin, transit and destination.

***The Double invisibility of Children on the Move and the lack of policy coherence***

Despite the growing number of children who are on the move and the demographic trends expected in the next decades, development, migration and national and international child protection laws and policies are not adequately addressing the specific needs of children on the move or responding to the violations of rights that these children often experience during migration. On the one hand, children on the move are faced by a general absence of a child-rights perspectives in migration laws, policies and practices that affect children, including a proper consideration and application of the ‘best interest of the child’ principle. On the other hand, international and national child protection policies are still ignoring the specific needs of children involved in migration. Social protection and social welfare policies and programmes, for example, too often ignore the specific needs of migrant children and/or discriminate against them because of their irregular migration status.

Lack of coherence between migration and child protection policies is compounded by the lack of coordination *within* protection systems that channel different categories of children on the move (economic migrants, trafficked children, children seeking asylum and refugee children) into different category-oriented protection responses and services which are subject to often conflicting political priorities.[[3]](#footnote-3) This invisibility and the lack of policy coherence between and within migration and protection policies, contributes to the denial of the rights of children on the move and enables discrimination, exploitation, abuse and family separation.

***Children in situation of migration still not regarded, first and foremost, as children.***

Despite being obliged under the UN Convention on the Rights of the Child to respect, protect and fulfill the rights of all children - irrespective of their status or place of origin - many governments still perceive children on the move as threats or offenders against migration laws, leaving them without adequate protection and often subject to prosecution, detention or unsafe return.[[4]](#footnote-4) In 2012, the Committee on the Rights of the Child held a General Discussion Day on the rights of all children in the context of international migration. The follow-up report adopted by the Committee on the Rights of the Child called States Parties to the Convention to *‘adopt comprehensive human rights-based laws and policies to ensure that all children involved in or affected by international migration enjoy the full protection of the Convention in a timely manner, regardless of age, economic status, documentation status of themselves or their parents, in both voluntary and involuntary migration situations, whether accompanied or unaccompanied , or any other.’* All persons under the age of 18 years should be recognised as children first and foremost, and without exception, independent of their migration status and the migration status of their family.

***Best interests of the child, best-interests determination procedures, respect of due procedure and consideration for children’s agency largely absent from migration decision-making***

Save the Children’s programmatic experience shows that considerations on the best interests of the child are too often absent from migration decision-making, despite the requirements of the UNCRC. This includes the review of migration and international protection applications, as well as decisions relating to migration control policies such as arrest, detention, deportation and restrictions on access to basic services. Even in decisions regarding family unity, the best interests of the child are not systematically assessed, if at all. Save the Children’s programmes and the experiences shared by children consulted show that too often the procedures for determining children’s identity, assessing their age, establishing the nature of relationship between a separated child and an accompanying adult, and identifying children’s specific needs, as well to identify a guardian, or temporary care solutions for unaccompanied children are not based on the best interests principle or on child friendly approaches. Too often authorities lack the necessary awareness of child rights and ability to act in a child sensitive way. Importantly, mechanisms for the formal assessment or determination of the Best Interests of the Child are rarely in place to make appropriate decisions about short, medium and long term solutions for the protection of children on the move. When seeking durable solutions for unaccompanied and separated children, very often the support to the integration process into the host country or the promotion of alternative durable solutions, such as placement in foster families in the host country, is weak.

The Convention on the Rights of the Child requires duty bearers to recognize and support the agency of children. Many of these children, particularly adolescents, have independent migration projects of their own. Crucially, the children consulted by Save the Children felt very strongly that it is impossible to understand the reasons why children migrate and the necessary solutions to risky migration without asking and involving them directly. *“Children should be asked about reasons for their migration, their experiences, problems and concerns’’* (Young person consulted in Serbia). *“Social workers and police officers should investigate more on the reasons behind why children migrate unaccompanied*.” (Young person consulted in Mozambique).[[5]](#footnote-5)

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

In many cases, children embark on dangerous journeys because of the absence of opportunities for them to migrate safely and through regular channels. Too often, children on the move are perceived as criminals due to their migration status. This results in violations of their rights, including immediate deportation, forced return, or detention. Many of the children consulted by Save the Children reported of being immediately deported from the border where they came into contact with state officials back to countries where they had transited from or to their countries of origin without any concern for their age, health and individual situation. *’’They didn’t ask anything – just deported us.’’ (Girl, 13 from Afghanistan consulted in Serbia.) ’’I travelled for days. And I was in very bad conditions. But they just deported me from Italy back to Greece. They were violent.’’ (Boy, 17, from Afghanistan consulted in Serbia)*.

The fear of being arrested due to their status as illegal migrants and the traumatic experience of detention featured as a key concern in all of the stories told by the children consulted by Save the Children. They described the inhumane conditions that they experienced during detention and the profound impact that this experience had on them and on other members of their families. There is compelling evidence that detention can have permanent negative effects on children’s physical and mental health.[[6]](#footnote-6) Yet, many States continue to detain children. The UNCRC provides that the detention of children, including children in the context of migration, should be avoided (article 37 CRC). The CRC Committee has affirmed that “unaccompanied or separated children should not, as a general rule, be detained”, and “detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof”.[[7]](#footnote-7) Yet, legislation and policies that prohibit migration-related detention of children are either not in place or are not implemented, violating a fundamental right of children.

***Right to access basic services too often denied to children on the move***

Children in an irregular situation, including those accompanied by their parents or born to migrant parents in an irregular situation in countries of destination, are particularly vulnerable to discrimination and are often denied access to essential public services such as education, housing and health care. Informal barriers and informal ones stop these children from accessing services. These include too high financial costs, lack of information, discrimination and a climate of fear of discovery and detention/deportation. Another major concern is when public officials and service providers who perform key functions in the protection of migrant children such as healthcare personnel, teachers, or the police are placed under a “duty to denounce” the presence of irregular migrants, including children, to immigration enforcement authorities thereby discouraging the access to these key services by children on the move.

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

The right to family has an important protective function for children in the context of migration, particularly for unaccompanied and separated children, and is relevant in admission, detention, and expulsion procedures. The right to family unity may be extremely affected in the context of international migration. 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. At the same time, children and adolescents often migrate in precarious and irregular circumstances in order to reunite with their parents, often being prevented from doing so using safe and regular channels because of restrictive immigration control policies.

***Increased risk of exploitation, abuse and forced recruitment especially of adolescents***

One of the key reasons of children’s migration is seeking economic means to support themselves and their families at home. Impunity and corruption in national institutions have allowed criminal organizations to take control of many of the routes used by children on the moveexposing them to the abuses perpetrated by organized crime networks, illegal netwroks of labour exploitation and forced recruitment. Save the Children’s programmes on children on the move globally also show that children on the move are more vulnerable to being economically or sexually exploited or forcibly recruited into illegal activities or terrorist organisations because of the lack of access to appropriate work or education opportunities in coutnries of transit or destination for adolescents who migrate alone or with family members. Additionally, their reluctance to rely on local authorities for their protection, the fear of being detained, and the lack of regular avenues for family reunification further increases their vulnerability.

***Lack of appropriate transnational coordination mechanisms for the protection of children on the move***

The lack of established mechanisms of cooperation and collaboration between countries of origin, transit and destination often results in serious protection gaps for children on the move. Procedures to determine the children’s identity, assessing their age, and identifying children’s specific needs and implementing durable solutions are often complex and may require the involvement of several actors in different countries in order to gather the right information, particularly when issues of lack of documentation, statelessness and regularisation of the child’s legal identity and status emerge. In Italy, for example, cooperation mechanisms have been established between the Italian authorities and the Egyptian Consulate to identify Egyptian children migrating to Europe. Such coordination has helped avoid past mistakes whereby many Egyptian children were returned to Egypt after being wrongly identified as adults during the process of age assessment. The phase of implementation of the durable solutions identified for the child also requires specific measures to ensure that the child has access to adequate care, education and training, protection and support and to ensure that adequate family assessment, reunification and follow up procedures are in place or to identify alternative care solutions if in the child’s best interests.[[8]](#footnote-8)

***Lack of consistent and comprehensive data on Children on the Move impacting appropriate policy development***

Lack of homogeneous criteria between countries to collect statistics is a significant barrier to the collection of comprehensive data on children on the move: data on children on the move are collected in the various national contexts through different measures and on the basis of different definitions (for example, the unaccompanied and separated foreign children definition in certain legislation include asylum-seeker children in others do not).[[9]](#footnote-9) Existing data do not fully reflect the scale of the phenomenon as many children on the move fall outside the scrutiny of formal institutions. On a broader scale, existing data disclose serious gaps in our knowledge of certain groups of minors such as irregular migrant children who remain unrecorded and undocumented, and asylum seeker children on the move who may bypass identification and registration processes in countries of transit.[[10]](#footnote-10)

(B)   **GOOD PRACTICES INITIATED BY STATES OR INTER-AGENCY INITIATIVES AND IMPACT**

***Strengthening cross border and inter-agency collaboration and information sharing***

In recent years, promising practices in promoting and protecting the human rights of all migrants at international borders have been implemented thanks to increased collaboration between state and non-state actors and the promotion of more coordinated work between private sector, government and civil society.

Save the Children has helped set up cross-border coordination working groups in the borders of Mozambique and South Africa and of Zimbabwe and South Africa. The groups bring together state and non-state actors working at the border to identify and implement measures to return and reintegrate children on the move. The working groups are working to improve coordination among various governmental and non-governmental agencies to ensure that children involved in irregular migration get more effective help. The groups are also establishing more effective communication between social workers and law enforcement agencies on both sides of the border. They are also working to improve the protection of children during transit, when they are often exposed to abuse when travelling in an irregular way together with adults. Finally, the groups also work to improve protocols and guidelines for family tracing and reunification and for the provision of psychosocial support both for children in shelters and for those who have recently returned to their families.

In 2013 Save the Children Côte d’Ivoire, Save the Children Mali and their partners gathered together in Sikasso (Mali) with state actors (Central directors for the child protection) and non-state actors (from Burkina Faso, Côte d'Ivoire and Mali) to jointly define an operational mechanism of protection for children on the move and to prevent abuses, exploitation and any sort of violence. Save the Children produced a report collecting information about all the state and non-state existent structures in the three countries which facilitate coherence of child protection mechanisms across borders.

In March 2014 the Inter-Parliamentary Union approved a resolution called *The Role of Parliaments in Protecting the Rights of Children, Particular Unaccompanied Migrant Children and in Preventing their Exploitation in Situations of Armed Conflict* in which they agreed to legislate against all forms of discrimination and violence that affect children and adolescents, and create a protection framework for unaccompanied migrant children. Save the Children in Mexico supported this initiative.

In Italy, Save the Children, together IOM, UNHCR, and the Italian Red Cross is part of a successful model for such multi-agency collaboration, the Praesidium Project. This project, supported by the Italian Ministry of Interior, aims at strengthening the reception capacity of migration flows reaching the island of Lampedusa. The strong collaboration between the agencies involved and the implementation of joint procedures for reception and referral has allowed to reach a diverse group of beneficiaries, voluntary migrants, asylum seekers, children on the move and victims of trafficking, and provide them with information, and counseling and identification of appropriate channels for their reception. This model has proved a successful way of protecting children in the ever increasing mixed migration flows that are characterizing migration flows in recent years.

***Strengthening Data Collection Systems Across Borders***

Data collection which interest simulatenouslty and consistently countries of origin, transit and destination and take into consideration new migration routes is the starting point for developing appropriate responses to protect children on the move. Save the Children has supported and piloted the development of tools and research methodologies to assess the needs of children in transit.[[11]](#footnote-11) The Inter-Agency Group on Children on the Move is also supporting the development of guidelines to conduct qualitative research with children on the move.

***Translating the principle of best interests of the child into practice***

Various initiatives are on the way to operationalise the best interests of the child principle for the protection of children on the move. Save the Children has contributed to developing common operation procedures between agencies involved in protecting children on the move in Italy as part of the Praesidium Project, across the borders between South Africa, Zimbabwe and Mozambique. Additionally a Best Interests Determination tool was developed in South Africa aimed at guiding relevant authorities in identifying long term solutions for children who cross border into South Africa. However, this is still a clear and serious gap that will require serious consideration at the international, regional and national levels.

***Actions in Countries of origin***

Since 2011, in Egypt, Save the Children has implemented a programme and supported actions targeting children and adolescent in their country of origin, aimed at providing information about the risk of unsafe migration and creating communitarian, educational and working alternatives through the provision of scholarships, school workshops, infrastructure’s improvement in schools, work and training options in the country of origin. This initiative has demonstrated the strength of a peer to peer approach whereby young people support each other and share information to improve their peers’ resilience and access to relevant and protective information. It has also demonstrated the importance of investing in increasing relevant and realistic opportunities for young people in countries of origin or establishing safe channels for improving the safety of those who decide to migrate.

**(C) KEY RECOMMENDATIONS**

* States must adopt and mainstream a **child’s rights-based approach to migration** into national legislation, action plans, programs, policies and practices. They should consider the impact of migration on children when they elaborate and implement national development frameworks, including on poverty reduction, rights protection and access to public services. Children on the move should be recognised as children first and foremost, and without exception, independent of their migration status and the migration status of their family.
* The principle of **the best interest of the child** must be the primary consideration and should take priority over migration policies or other administrative considerations. 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. The best interests of the child should be the primary consideration in procedures on identification, age assessment, reception, identification of durable solutions, including in considerations on return, family reunification and alternative care solutions. Children’s own views, and an understanding of the reasons to migrate and the agency of the child in the migration process shoud be part of these considerations.
* States should astablish and/or strengthen effective and appropriate **National child protection systems** that address both prevention and response throughout the migration process, in a coordinated manner across sectors and allow for non-discriminatory access to services for all children, including non-nationals.
* **Transnational** **coordination and cooperation mechanisms** should be established between countries, involving state and non-state actors, including children and youth and their communities, to ensure that children are protected through all stages of their migration journey and all asylum seeking children are provided access to child friendly asylum procedures.
* **End immigration detention of children.** Detention cannot be justified either on the basis of children’s or their parent’s immigration status or on their status as unaccompanied or separated children. Administrateive immigration detention of children is always a violation of children’s rights and alternatives to detention must always be found for children and their families.
* Provide effective support and strengthen humanitarian assistance and appropriate protection for the growing numbers of **child migrants and their families who are stranded in crisis situations**. This includes the consolidation of relevant principles and practices under existing refugee, humanitarian and human rights law and appropriate procedures for asylum, resettlement and humanitarian admission that reflect States’ obligations under the UNCRC and Refugee Law.
* **Data collection and analysis** should be improved to inform appropriate and evidence based policies to protect and support children on the move.
* **Actions should start in the country of origin.** Porgrams in the country of origin which aim at providing information about the risks and providing alternatives can be a good tool to prevent risky migration only if tailored on the specific context of each country. Providing alternatives to migration for young people should be done according to the context, promoting innovative practices that focus on local income generating activities that are tailored to both stakeholders’ needs and linked to the community’s local economic ecosystem. This should start with a basic assessment of local economic supply chains to develop interventions.

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1. The IAG CoM includes Save the Children (chair), UNICEF, ILO, IOM, UNHCR, Terre des Hommes, World Vision, Plan International, the African Movement of Working Children and Youths (AMWCY/MAEJT), Environmental Development Action in the Third World (ENDA), the Oak Foundation and individual experts and academics. [↑](#footnote-ref-1)
2. Given the commonality in the protection needs of children involved in mixed migration flows, agencies members of the Inter-Agency Group on Children on the Move which work directly to protect and support children affected by migration, have adopted a holistic focus on child migration, using the following umbrella definition of children on the move:

*‘children moving for a variety of reasons, voluntarily or involuntarily, within or between countries, with or without their parents or other primary caregivers, and whose movement while it may open up opportunities might also place them at risk (or at an increased risk) of economic or sexual exploitation, abuse, neglect and violence”.* [↑](#footnote-ref-2)
3. Reale,D., Away from Home. Protecting and Supporting Children on the Move. Save the Children 2008 [↑](#footnote-ref-3)
4. The UNCRC consolidates provisions included in other international human rights instruments insofar they apply to children. These include the other core international human rights instruments and otherther relevant international instruments, including: the International Convention on the Protection of All Migrant Workers and Members of their Families; ILO Conventions No 97 and No 143 on the rights of Migrant Workers; ILO Conventions No. 138 and 182 on minimum age and worst forms of child labour); Convention relating to the status of Refugees; Convention on Reduction of Statelessness; Palermo Protocol on Trafficking of persons; and regional instruments and other regional instruments, including the 1999 African Charter on the Rights and Welfare of the Child. [↑](#footnote-ref-4)
5. Save the Children (2012) Voices of Children on the Move. http://www2.ohchr.org/english/bodies/crc/docs/discussion2012/SubmissionsDGDMigration/SaveTheChildren\_2.pdf [↑](#footnote-ref-5)
6. SeeInternational Detention Coalition for a review of the resesarch on the impact of detention on children and Young migrants. E.g. IDC (2011) There Are Alternatives. A Handbook for Preventing Unecessary Migration Detention. <http://lawministudio.com/idcoalition/wp-content/uploads/2013/08/There-Are-Alternatives.pdf> [↑](#footnote-ref-6)
7. UNCRC Committee General Comment 6 [↑](#footnote-ref-7)
8. Save the Children (2012) Transnational Coordination Mechanisms for the Protection of Children on the Move in the Context of International Migration and the Fulfilment of their Human Rights [↑](#footnote-ref-8)
9. Hammarberg, T., ‘’Unaccompanied and separated migrant children in Europe: legal perspectives and policy challenges’’, In *Migrating alone,* p. 172; The Communication from the Commission to the European Parliament and the Council of 6 May 2010 – *Action Plan on Unaccompanied Minors (2010 – 2014)* – highlights the lack of comprehensive, reliable, comparable data of unaccompanied minors in Europe, [↑](#footnote-ref-9)
10. *Unaccompanied and Separated Asylum –seeking and refugee children turning eighteen: what to celebrate? UNHCR /* Council of Europe, Strasbourg March 2014; *Children and Migration. At the crossroads of resilency and vulnerability*, (eds. Marisa O. Ensor and Elzbieta M. Gozdziak, 2010) Palgrave Macmillan; [↑](#footnote-ref-10)
11. Reale, D, (2013) Protecting and supporting children on the move: Translating principles into practice <http://publications.iom.int/bookstore/free/Children_on_the_Move_19Apr.pdf> [↑](#footnote-ref-11)