

NGO Committee on Migration



The NGO Committee on Migration is member of the
Conference of Non-Governmental Organizations in consultative relationship with the United Nations.

About Us

The NGO Committee on Migration is a coalition of organizations worldwide working towards the full realization of migrant rights. We advocate, educate, and collaborate to encourage the promotion and protection of migrants and their human rights, in accordance with the United Nations Charter.

This booklet contains three position papers from 2014-2015 written by our subcommittees.

Sea Change Seven.....2

Unaccompanied Youth at Borders.....5

*Giving Childhood Back to
Children in Refugee Camps*.....9

Connect with us!



www.ngo-migration.com



Committee on Migration



ngomigrationcommittee@gmail.com



Civil Society Recommendations on Protection at Sea: Sea Change Seven

Together, the undersigned civil society organizations around the world offer the following recommendations on Protection at Sea. These recommendations are in the larger context of addressing the assistance and protection needs of all migrant and refugee victims of violence and trauma in transit.

As in other moments in history—including the histories of many of our own countries, people are being driven across borders by armed conflict, political repression, and economic destitution. Some are so desperate that they risk their lives boarding unseaworthy boats to cross the Mediterranean and other seas: thousands upon thousands are dying in front of our eyes.

We call for a clear needs-first approach to the challenge of protection at sea and emphasize that *all* who cross the sea are bearers of universal, international human rights. All must be treated with dignity and respect. This includes all migrants, quite explicitly those who are refugees, asylum seekers, stateless persons, vulnerable women and children, and victims of torture, human trafficking, trauma and violence in transit.

It is the responsibility of States, with the support of the international community as a whole, to:

1. Ensure a needs-first approach to rescue at sea (SAR) operations and reception centers, regardless of anyone's migration status

Such an approach requires:

- Humane treatment and respect for the human rights of everyone rescued or surviving distress at sea
- Respect for the principle of non-refoulement
- Desistance from criminalization of irregular immigration
- Avoidance of punitive, arbitrary, or deterrent immigration detention

Timely rescue and safe disembarkation are critical for migrants and refugees in distress at sea. All should have prompt and fair hearings at reception centers to establish their status and to care for their needs.

2. Scale-up existing multi-actor frameworks of protection on a needs-first basis that meaningfully engage civil society competencies and partnership

Such as:

- UNHCR’s “10-point Plan of Action for Refugee Protection and Mixed Migration”
- IOM’s Migration Crisis Operational Framework
- The Praesidium (Lampedusa) project, with increased emphasis on interdisciplinary mobile protection teams for post-rescue differentiation and referral to specific protection and assistance
- Interagency minimum standards for Child Protection in Humanitarian Action
- The UNODC International Frameworks for Action to implement the Palermo Protocols, in particular the recent guidelines on protection of victims of human trafficking and smuggling of migrants

Human traffickers and smugglers must be apprehended, prosecuted, and punished in accordance with international conventions, protection frameworks, and national laws.

3. Establish a protocol based on a needs-first principle to protect particularly vulnerable migrants and refugees, e.g., women and children

Including provisions that ensure that:

- The best interests of the migrant child shall be the primary consideration
- Children are kept with their parents, and the safety and care of unaccompanied children are provided for
- Children are not detained
- Women are protected from gender-based violence

4. Ensure fair and competent responsibility-sharing and regional cooperation among coastal and non-coastal States of tasks and costs involved in SAR, relocation and resettlement procedures

Including:

- Revision or replacement of the Dublin Regulation
- Support of search-and-rescue operations with humanitarian priority, like Italy’s Operation Mare Nostrum

We urge States to remove disincentives to rescuing migrants and refugees at sea by reaching cooperative international agreements on asylum, migration, and border systems. Regional responsibility-sharing should address not only disembarkation but also reception conditions, efficient asylum procedures, and durable solutions.

We also urge that disincentives for private shipmasters to assist those in distress at sea be removed, with consideration given to compensating those who incur financial losses for rescuing migrants and refugees.

5. Address “route causes” and “root causes” of forced and dangerous migration

with:

- Express reference in the post-2015 Sustainable Development Goals to migrants and refugees as subjects and actors in transformative development
- Decent work and sustainable development in countries of origin to strengthen the right to remain at home, with migration a choice not necessity
- More opportunities for legal migration while reducing barriers due to increased securitization
- Cooperative international agreements by States to provide more safe-havens for asylum seekers, e.g., through expanded UNHCR resettlement programs
- Migration and asylum policies that recognize the benefits of migration and the contributions of migrants and refugees to the development of countries of destination and origin

Great care, consultation and convergence with UN agencies and civil society is imperative before implementing any proposal for external or in-country processing of refugees and others in need of protection.

It is urgent to provide pathways for legal entry to address the drivers of irregular maritime movements undertaken to achieve family reunification and access the labor market. Opening legal channels for migration and regularized movement for migrant workers, asylum seekers, refugees, and especially low-skilled workers will reduce the use of smugglers as well as underground labor markets.

6. Ensure that border management is firmly based on human rights principles

including:

- Requiring States engaged in migration control cooperation with third countries to ensure that their migration control agreements fully respect international human rights and refugee laws as well as the law of the sea
- Imposing human rights and refugee law obligations, as well as the international law of the sea and other relevant standards, on the procedures regarding the rescue of migrants and refugees at sea
- Requiring training of border authorities on international human rights law relevant to their work including its practical implementation and gender equality training
- Requiring monitoring for human rights-compliance regarding SAR and reception and holding States accountable for adversely impacting the human rights and dignity of migrants and refugees

7. Empower migrants and refugees

including:

- Access to the legal system through administrative agencies, courts, and other tribunals, including those that trigger human rights mechanisms, to enable them to take legal action on their own behalf
- Decent work and sustainable development in countries of origin to strengthen the right to remain at home, with migration a choice not necessity
- More opportunities for legal migration while reducing barriers due to increased securitization
- Cooperative international agreements by States to provide more safe-havens for asylum seekers, e.g., through expanded UNHCR resettlement programs
- Migration and asylum policies that recognize the benefits of migration and the contributions of migrants and refugees to the development of countries of destination and origin

A multi-stakeholder Migrants-in-Crisis Group should develop a matrix of existing legal instruments, guidance, and practical examples on how States and other parties can best protect all migrants and refugees in distress crossing sea, land, and air borders.



INTRODUCTION

For as long as international borders have existed, children have been crossing them to flee danger, disaster, to reunite with families, or start a new life. Here, we look at the processes and policies that shape the realities for unaccompanied children crossing international borders, with a focus on good practices and recommendations. Although data is scarce and fragmented, statistics on detention, deportation and shelter reports confirm alarming increases in children moving across international borders without their parents; these children face a perilous journey fraught with violence, danger and exploitation. We wish to focus attention on what happens at these borders because too often, quick assessments lead to detention, deportation, and an inability to petition for asylum. If children cross borders without documents or enter a destination country conditionally, the *border* actually accompanies them wherever they are, whether they are experiencing barriers to health care and education, or in their dealings with local law enforcement. It is important to remember that these are children first and foremost, who have journeyed alone through dangerous conditions taking tremendous risks in search of safety and a better life.

Children under the age of 18 traveling alone continue to cross international boundaries in search of refuge from disaster, conflict, pandemics, gang violence, domestic violence, or trafficking. Others seek to reunite with their parents or are looking for work to help support their families who are living in poverty. They travel unaware that they may be entering situations that are more dangerous than those they are attempting to escape. For example, unaccompanied children are at a heightened risk of being exploited for sex trafficking or child labor. For the situations these children face, several international documents outline appropriate protections.

The *Convention on the Rights of the Child*, along with General Comment number 6 (2005), states clearly that regardless of their migratory status, the standard treatment must be in the best interest of the child. This includes, but is not limited to the following:

- Children should not be detained because of legal status
- Children must have access to legal representation
- Children deserve an opportunity to be heard
- Children have a right to be with their families

The best interest of the child is echoed in OHCHR's recently launched *Recommended Principles and Guidelines on Human Rights at International Borders*, particularly in Section II A and in Guideline 6, #12-14 and Guideline 8, #6. UNHCR's report *Children on the Run* underscores the inherent vulnerability of children, especially those separated from their parents. These children have the possibility of applying for asylum in accordance with the status of having endured "child-specific forms of persecution that may give rise to a claim of refugee protection". UNHCR urges all States to offer child protection services. According to the UNHCR Report, 58% of the migrant children who were interviewed qualified for international protection. These children were fleeing harm, or potential harm, and did not receive protection from their home countries.

To fully understand the importance of rights for unaccompanied migrant children, it must be clarified that the term *refugee* has become a common term to describe any individual fleeing violence in their home country. However, in a legal context, the designation of refugee affords a set of protections that only apply to those who fit the legal definition. The 1951 Convention relating to the Status of Refugees provides a narrow definition, stating that a refugee is a person who has fled their home country, “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.” While this definition seems broad, the requirement that one be “persecuted” for a specific set of reasons greatly reduces the number of protected persons, since immigration courts often interpret “persecution” very narrowly. Those who are threatened by general, untargeted violence are often not considered to be persecuted.

Many States have recognized the narrowness of the definition of refugee in the context of current international migration flows. While the U.S. and Western Europe use the refugee definition outlined in the 1951 Convention, States in other world regions have negotiated additional agreements such as the 1969 Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, which expands the definition of refugee to include anyone who has been displaced due to “external aggression, foreign domination, or events seriously disturbing public order”. Similarly, the Cartagena Declaration expands the refugee definition to include “persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order”. Despite the trend towards broadening the definition of refugee, given the limited scope of the traditional definition and the high bar for UNHCR resettlement it is estimated that only 1% of the 10 million refugees displaced worldwide will be resettled in safe, secure environments.

Significantly, non-refoulement, a principle of customary international law that is highly applicable to the protection of migrants, specifies that no one may be returned to a country where their life or liberty may be threatened. It is outlined in the 1951 Refugee Convention, as well as the Convention Against Torture, making it binding for all states that have ratified one or both of those Conventions. It applies to everyone, regardless of refugee or other status. Therefore many migrants find themselves in a legal void, protected from forcible return to their countries, and yet denied any legal protective status. The limits of the 1951 Convention, along with the limited resources of those countries implementing an expanded definition, results in the vast majority of migrants lacking international protection—including unaccompanied children.

UNIQUE ISSUES FACED BY UNACCOMPANIED CHILD MIGRANTS AND GAPS IN HUMAN RIGHTS-RESPONSIVE TREATMENT

- Oftentimes unaccompanied children are subject to unstandardized, inappropriate age determination techniques, which render them invisible within a system designed to protect the best interest of the child. Many young people have a right to seek asylum without realizing it and they are not necessarily advised of this at the border. Often immigration systems are not conducive to family unity.
- Most border officials are not well prepared to distinguish between refugees, asylum seekers, victims of human trafficking, and other persons on the move. Young migrants are more vulnerable than adult migrants and have fewer options to provide for themselves.
- Many countries do not have specific protocols for minors that provide for their distinct needs and protection.

ON THE GROUND REALITIES

In the past few years there has been a surge of unaccompanied child migrants from Guatemala, El Salvador, and Honduras. The main factor forcing these children to flee is societal violence, often gang violence related to drug trafficking, combined with poverty and sometimes family violence. Honduras and El Salvador have some of the highest murder rates in the world. Gangs are terrorizing and displacing families; they recruit young men and rape girls, causing many families to encourage their youth to migrate to neighboring countries for safety since their governments cannot or will not protect them. The U.S. receives the majority of the asylum claims, but UNHCR has documented a 712% increase in the number of asylum applications received by Mexico, Panama, Nicaragua, Costa Rica and Belize. The number of unaccompanied child migrants attempting to cross the border into the U.S. from Latin America rose from 4,059 in 2011 to over 57,000 in 2014 (UNHCR, 2014). In the past, the trend was for unaccompanied children to be older boys but the situation has become dire enough that many girls are making the journey alone, as well children under twelve years of age (Pew Research Center, 2014).

The majority of unaccompanied child migrants entering the E.U. are fleeing conflict or persecution in African and Middle Eastern nations. Each year, many of these children are forcibly detained and deported, even though they could qualify as asylum seekers. The psycho-social impact of both detention and deportation must be recognized as extremely harmful, especially to children, after making a long and dangerous journey. Being minors without familial or legal representation, their agency is not taken seriously. In detention, they are often not given adequate information regarding their status. Upon deportation, not only are they at risk of psychological issues and possible exploitation, but are often disillusioned by the system and consider highly dangerous means of re-migration in the near future. The reality of re-migration is extremely frequent, especially among those fleeing economic hardship and war who feel they have no alternative (European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, 2010).

GOOD PRACTICES

All over the world there are good practices that can serve as examples for the international community and individual states. These examples demonstrate continued instances in which the international community aids in the protection of unaccompanied children.

The UK has made large strides in protecting the rights and welfare of unaccompanied children. Efforts are directed toward ending the practice of detention of migrant children and centering policy and approach on human rights. Change takes time, but there is recognition that detaining children deprives them of their fundamental rights and that migrants crossing borders without accompaniment or documentation are not committing criminal acts. (Human Rights of unaccompanied migrant children and young people in the UK, 2014)

Over half of the Syrians fleeing their country are children and many of them are traveling alone (UNHCR, 2015). More than one thousand unaccompanied children have ended up in the Za'atari refugee camp in Jordan since 2012, some as young as nine years old. They leave because of violence and destruction of their homes, separation at the border, the hope of finding work to help support their families, risk of forced recruitment by armed groups, or fear of retaliation for family members' involvement in opposition forces. They are often not identified as traveling alone and this leaves them open to exploitation such as child marriage, prostitution and child labor.

UNICEF, in partnership with the Jordanian government and several NGO's, has a program to assist these children. Once they are identified and registered, they are provided with food, shelter, medical care, psychosocial care and school enrollment. Many of the children have witnessed or experienced violent situations due to the crisis in their country and/or the stress created by it, and all of them have been separated from their families. If relatives are found, they are reunited based on the best interest of the child. If no relatives are available, they try to offer them a foster family. If none are found, they live in assisted living facilities cared for by social workers (UNICEF, 2013a).

- Recognize the unique experiences of child migrants and prioritize their best interests and rights throughout the entire migration process.
- Increase accurate data and statistics, disaggregated by age and gender, easily accessible to the public.
- Implement specific protection measures to protect child migrants against violence and exploitation, such as gender-based violence, sexual exploitation, child labor and trafficking.
- Sensitize border patrol to the unique vulnerabilities of girls, including the possibility of coercion, forced prostitution, and child marriage.
- Guarantee children have full access to health care including basic medical care, clean water, nutritious food, mental health services, including trauma and psychological counseling.
- End detention of child migrants due to their migratory status.
- Increase access to legal representation, including the time necessary to examine each individual situation, so that the children know their rights and the possible ramifications for the decisions throughout the legal proceedings.
- Provide full access to economic, social and cultural rights including appropriate school enrollment and an adequate standard of living.
- Increase cooperation between states to actively address the root causes of migration, especially of forced migration.
- Promote capacity building of both Government and Civil Society by sharing information and best practices, locally, regionally, and globally.

Giving Childhood Back to Children in Refugee Camps



Civil Society Recommendations

The Convention on the Rights of the Child (CRC) establishes the basic rights of all children, including those living in refugee camps. Yet, hundreds of thousands of children in refugee camps around the world are suffering from the violation of their rights. The developmental and psychological consequences, particularly for children under the age of five, can be devastating.

Sovereign host States hold the primary responsibility for ensuring respect for the human rights and safety of all forcibly displaced persons in refugee camps. It is therefore imperative to reduce the implementation gap between the rights enshrined in the CRC and the actual living conditions of children, especially the most marginalized, in refugee camps.

These children must be considered as active survivors not as passive and invisible victims. The correct implementation of the CRC and of the best interest of the child by host States provides a stable normative bridge between humanitarian situations and development contexts. The benefits are multiple: the prevention and amelioration of toxic stressors, laying the groundwork for resilience, recovery and renewed development. In particular, the promotion of the right to quality education at all levels, starting from Early Childhood Development, plays a fundamental role in teaching self-reliance, creating the human and social capital needed for development, breaking the cycle of poverty and contributing to peace-building.

The key component of a policy on alternatives to refugee camps, moving from humanitarian assistance towards greater autonomy, is undoubtedly represented by the protection of refugee children's rights from their very birth, paving the way for their eventual successful social integration into newly urbanized populations either in the country of origin or the new host country.

To accomplish this goal, the undersigned civil society organizations worldwide, offer the following recommendations.

It is the responsibility of States, with the support of the international community as a whole, to:

- 1 Collect and share disaggregated data by age, gender, country of origin, education, and other relevant information about refugee children in camps and those in urban areas.**

Timely, comparable, and accessible data are important to formulate effective measures to ensure the protection of children's rights when they are confronted with a range of risks, violence and abuse. Policy discussions go amiss without such data

2 Make clear in domestic legislation, policy and practice, that the principles of:

- **non-discrimination (CRC, art.2);**
- **the best interest of the child (CRC, art.3, par.1);**
- **the right of survival and development (CRC, art.6);**
- **the right of the child to express his or her view and to have taken it into account (CRC, art.12)**

must be implemented in the refugee camps.

These are the fundamental values of the Convention, and States have legal obligations to comply with them.

3 Ensure that the best interest of the child is a primary consideration in all actions of States or private institutions concerning every child, regardless of his or her migration status, including unaccompanied and separated children as well as children in refugee camps. The CRC clearly states additional situations that are not in the best interest of the child, such as: to be exposed to any form of violence (art.19); to be wrongly separated from his or her parents (art.9); to be exploited or abused (arts. 33-36).

Furthermore, the best interest of the child must be determined on a case-by-case basis, according to the specific situation of the child and of children as a group.

The standard for case management is the formal Best Interest Procedure (covering Best Interest Assessment (BIA) and Best Interest Determination (BID)) established by UNHCR for the protection of vulnerable asylum-seeking and refugee children, including Unaccompanied and Separated Children (UASC).

4 Recognize the particular vulnerabilities of refugee children, during the preflight, flight and resettlement phases, and conduct a child protection assessment by trained staff, in full compliance with the CRC.

Refugee children encounter traumatic scenarios in the country of origin (violence, loss of family members, friends, homes), in the countries of transit (dangerous transit, day-to-day uncertainty, deprivation of basic needs, parental separation), and in refugee camps in the host country. It is critical to make refugee children's particular vulnerability to violence a priority issue for action by all relevant stakeholders within the UN system.

5 End the restrictions in refugee camps on children's rights guaranteed by the CRC. States must treat children in refugee camps as active rights holders, and inform them of their rights.

In refugee camps children face high risks of exploitation, human trafficking, underage marriage, violence and abuse, recruitment into armed groups, and organized crime. They experience a high level of toxic stress, with mental and physical health consequences that last into adulthood. It is critical to develop and support campaigns to raise awareness of the

rights of refugee children so as to prevent discrimination and marginalization and to ensure respect for their identity.

**6 Ensure the right to *quality* education for refugee children (CRC, art. 28-29).
Education is a fundamental right that does not expire in emergency situation.**

Attending school helps to mitigate the devastating psychological impact of living in a refugee camp. With age-appropriate, culturally sensitive attention, resilience can be fostered and coping and healing can begin. Moreover, it is necessary to focus on higher education and long-term capacity building among refugee children, especially adolescents. Higher education is important for both individuals and society to rebuild lives and foster leadership in both protracted settings and peaceful post-conflict reconstruction. Without higher education there will be no qualified teachers for primary education; thus, it is fundamental to adopt a well-balanced and holistic approach to supporting education at all levels.

7 Protect the youngest children (birth to five) at high risk of trauma-related disruptions, promoting Early Childhood Development (ECD).

The adverse relationships between toxic stress and children's development have long been established by psychological research. Early Childhood Development programs provide psychological, physical, emotional and cognitive protection. They have the potential to contribute in significant ways to peace-building by promoting non-violent attitudes and behaviors in children, especially high-risk children in conflict-ridden refugee camps.

8 Host States need the support of Civil Society and the international community to find durable solutions to end the many protracted refugee situations, which already span 2nd and 3rd generations.

The preamble of the CRC states that the child "should be fully prepared to live an individual life in society", not in a refugee camp.

9 States must support and promote an alternative to camps which enables refugees, including children, to lead more dignified, productive lives and to contribute to their host societies.

The escalating trend in forced displacement and humanitarian needs is likely to continue, while humanitarian financing is close to bankruptcy. Incorporating refugees in the post-2015 development agenda would promote active participation of refugee youth in their own development as well as that of their host countries.



NGO Committee on Migration

Committee History

The NGO Committee on Migration was a civil society response to the 2006 High Level Dialogue on Migration and Development. It began as a sub-committee of the NGO Committee on Human Rights. Seeing the intense focus and organization of the migration sub-committee, members of the Human Rights Committee recommended that the new committee on migration apply to become a full-fledged NGO of CoNGO (Conference of NGOs).

The NGO Committee on Migration's application was successful, and it rapidly became one of the most active CoNGO committees. In January of 2007, members were already advocating for the human rights of migrants as stated in our mission statement: "Our mission is to encourage the promotion and protection of migrants and their human rights, in accordance with the United Nations Charter."

To carry out our mission, we have: engaged in partnerships with UN entities and agencies whose mandate includes Migration and Development; actively participated in every Global Forum on Migration and Development; identified good practices, challenges, and global gaps in carrying out this work; and made recommendations in preparation for the 2013 HLD.

Substantively, our advocacy activities have focused on ensuring and enhancing the protection of the human rights of migrants in countries of origin, transit and destination, through such measures as formulation and implementation of national, regional, and international legal instruments; policies of social integration, especially for preserving and re-establishing family unity; and effective protection regimes for migrants, especially the most vulnerable, such as women, children, migrants from the global south, and mixed populations, regardless of their legal status.

Procedurally, our activities have focused on gaining a place at the table with the other major stakeholders in these endeavors. We have sought to collaborate and partner with States, UN entities and agencies, and NGO networks across the globe, to provide momentum in reaching our advocacy goals on behalf of migrants around the globe.

The NGO Committee on Migration encompasses an international network of over 300 NGOs. We also work closely with the 16 member Global Migration Group, (GMG) which is composed of 15 UN agencies and the International Organization for Migration. We engage in ongoing dialogue with member states on positions of advocacy for migrants, which serves to advance their human and civil rights, respects their dignity and welcomes their many contributions to countries of origin, transit and destination.