



QUNO

Quaker United Nations Office

Foundations for Implementation

A reference tool containing guidance drawn from the UN's Special Procedures and Treaty Bodies to support States in human rights based implementation of the Global Compact for Safe, Orderly and Regular Migration.

Objective 12: Strengthen certainty and predictability in migration procedures for appropriate screening, assessment and referral

What This Reference Tool Contains

This compilation draws on recommendations from:

- Special Procedure thematic reports that relate specifically to migrants
- Treaty Body General Comments and General Recommendations that relate specifically to migrants

This practical tool emphasises recommendations for individual State action rather than observations, and includes those recommendations that assist in turning the objectives into practical actions rather than echoing the principles and standards agreed in the Compact.

December 2018

Objective 12: Strengthen certainty and predictability in migration procedures for appropriate screening, assessment and referral

Guidance from Special Procedures

| Source | Guidance |
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| Special Rapporteur on the human rights of migrants (2018), A/HRC/38/41 (para.86) | All migrants are entitled to the protection of their human rights, without discrimination and regardless of their status. Migrants in irregular situations require individual screening and assessment procedures so that their specific situations of vulnerability are effectively identified and the legal protection frameworks that meet their needs, including under international human rights law, may be determined. Failure to provide such procedures constitutes a violation of due process guarantees and the international principles of non-refoulement and the best interests of the child, among others. The protection of the economic, social and cultural rights of migrants, such as access to an adequate standard of living, food, water, health and education, and their civil and political rights, such as access to justice, in countries of origin, transit and destination must be ensured |
| SR migrants (2010), A/65/222 (para.97) | The Special Rapporteur recommends the development of standardized procedures to ensure access to asylum procedures as well as an assessment of the situation in the country of origin or habitual residence of the rejected asylum-seekers before deciding on their repatriation. In this regard, States should follow the several country-specific guidelines issued by UNHCR in order to avoid returning rejected asylum-seekers whose appeals have been exhausted to countries where they may be at risk of human rights violations |
| SR migrants (2010), A/65/222 (para.98) | States should not consider asylum-seekers as irregular migrants and should follow the guidance provided by UNHCR not to detain asylum-seekers but to house them in open reception centres |
| SR migrants (2009), A/HRC/11/7 (para.102) | The Special Rapporteur recommends that migration officials be trained, including on the rights of the child and cultural sensitivities. States should ensure that age-assessment processes comply with international standards and that the persons concerned are allowed access to effective remedies to challenge age-assessment decisions. States should also consider according the benefit of the doubt in age-determination procedures |
| SR migrants (2008), A/HRC/7/12 (para.64) | All cases of persons involved in the interception of migrants at sea, whether irregular migrants or those involved in the rescue or transport of migrants found to be irregular, should be treated on an individual basis and granted the basic right to due process. Persons believed to be smuggled or trafficked should be brought before an independent judge without the involvement of the country of origin; States should renew their cooperation in protecting witnesses and victims who assist in identification and prosecution of smugglers and traffickers. Persons claiming international protection should be allowed to enter the national asylum procedure without delay |

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| <p>Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (2018), A/HRC/37/50 (para.65(g))</p> | <p>Training of officials: Officials or other persons tasked with the determination of refugee status and/or entitlement to subsidiary international protection should be appropriately trained in the conduct of the relevant assessments and the identification and documentation of signs of torture and ill-treatment, and should be aware that non-refoulement protection specifically against the risk of torture and ill-treatment is absolute and non-derogable and applies to all migrants regardless of their entitlement to refugee status, or of considerations of national or public security</p> |
| <p>SR torture (2018), A/HRC/37/50 (para.65(e))</p> | <p>Victims of torture: States should ensure that migrants having suffered torture or ill-treatment: (a) are identified as early as possible through adequate screening; (b) have access to an independent medical and psychological evaluation of allegations of past trauma in accordance with the Istanbul Protocol, (c) have access to adapted status determination proceedings taking into account their psychological trauma; (d) receive redress, including as full rehabilitation as possible; (e) are not deported to a State or territory where adequate rehabilitation services are not available or guaranteed. Rehabilitation may require the tracing of and reunification with family members, particularly for unaccompanied or separated children and other persons with specific vulnerabilities</p> |
| <p>SR torture (2016), A/HRC/31/57 (para.70(q))</p> | <p>With regard to women, girls, and lesbian, gay, bisexual and transgender persons in detention, the Special Rapporteur calls on all States to: Ensure that migrants, refugees and asylum seekers are individually assessed, including with respect to their need for protection, and that adequate screening and assessment procedures are in place to identify victims of torture and ill-treatment; provide opportunities for safe, voluntary and dignified disclosure of lesbian, gay, bisexual, transgender and intersex status; and ensure that measures taken by migration authorities do not retraumatize victims;</p> |
| <p>Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (2018), A/73/216 (para.83(h))</p> | <p>Establish individual screening and assessment procedures for people on the move, to identify survivors of sexual and gender-based violence and torture, people with intellectual, cognitive and psychosocial disabilities and other people on the move with mental health and well-being needs;</p> |
| <p>SR health (2018), A/73/216 (para.83(i))</p> | <p>Ensure the sustainability and non-discrimination of mental health care and support interventions for all people, including people on the move, through effective referrals of people on the move to appropriate services and through the broad incorporation of their needs into existing mental health systems;</p> |
| <p>Special Rapporteur on trafficking in persons, especially women and children (2018), A/73/171 (para.74(b))</p> | <p>In relation to the protection of victims of trafficking: Establish and/or adapt national procedures for early identification, assistance and referral to protection services for victims and potential victims of trafficking, including gender- and child-sensitive measures, in conflict and post- conflict settings, as well as in the context of forced displacement and large migration flows, in line with the recommendations of the Special Rapporteur (A/HRC/38/45);</p> |
| <p>SR trafficking (2017), A/72/164 (para.80(c))</p> | <p>Enhance the capacity of all stakeholders, including border and law enforcement officials, front-line workers and volunteers, in places where migrants or refugees reside, including reception centres, refugee camps or informal settlements, and in areas of arrival of large influxes of people fleeing conflict and humanitarian crisis, to ensure the systematic registration of all, including children, and the identification of cases and risks of trafficking and exploitation of children</p> |

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| SR trafficking (2017), A/72/164 (para.81(f)) | In terms of protection and assistance, States, in cooperation with United Nations agencies and programmes, international organizations, host countries and civil society organizations, should: Appoint trained and independent translators in areas and services that are or could potentially be in contact with vulnerable migrant and refugee children to facilitate effective communication and access to services; |
| SR trafficking (2016), A/HRC/32/41 (para.64(g)) | All States, particularly those hosting potential victims of trafficking among persons fleeing conflict, should: Establish and/or adapt national procedures for assistance and protection services for victims and potential victims of trafficking in persons, including gender- and child-sensitive measures, to detect trafficking cases and indications of the risk of trafficking in all locations where there are large influxes of refugees and migrants, including hotspots, reception centres and administrative detention centres for migrants; |
| SR trafficking (2016), A/71/303 (para.69(g)) | All States, particularly those hosting potential victims of trafficking among persons fleeing conflict, should: Establish and/or adapt national procedures for assistance and protection services for victims and potential victims of trafficking in persons, including gender- and child-sensitive measures, to detect trafficking cases and indications of the risk of trafficking in all locations where there are large influxes of refugees and migrants, including hotspots, reception centres and administrative detention centres for migrants; |
| Special Rapporteur on extrajudicial, summary or arbitrary executions (2017), A/72/335 (para.93) | [States] should implement individually based assessments at borders; under no circumstances engage in collective expulsion; and ensure that victims of trafficking, including women and girls, at risk of exploitation shall be entitled to specific protection and individualized assistance |

Guidance from Treaty Bodies

| Source | Guidance |
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| <p>CMW / CRC Joint general comment No.3 / No.22: on the general principles regarding the human rights of children in the context of international migration (2017), CMW/C/GC/3-CRC/C/GC/22 (para.III.B.31)</p> | <p>In order to implement the best interests principle in migration-related procedures or decisions that could affect children, the Committees stress the need to conduct systematically best-interests assessments and determination procedures as part of, or to inform, migration-related and other decisions that affect migrant children. As the Committee on the Rights of the Child explains in its general comment No.14, the child's best interests should be assessed and determined when a decision is to be made. A "best interests assessment" involves evaluating and balancing all the elements necessary to make a decision in the specific situation for a specific individual child or group of children. A "best-interests determination" is a formal process with strict procedural safeguards designed to determine the child's best interests on the basis of the best-interests assessment. In addition, assessing the child's best interests is a unique activity that should be undertaken in each individual case and in the light of the specific circumstances of each child or group of children, including age, sex, level of maturity, whether the child or children belong to a minority group and the social and cultural context in which the child or children find themselves</p> |

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| <p>CMW / CRC Joint general comment No.3 / No.22: on the general principles regarding the human rights of children in the context of international migration (2017), CMW/C/GC/3-CRC/C/GC/22 (para.III.B.32)</p> | <p>The best-interests assessment should be carried out by actors independent of the migration authorities in a multidisciplinary way, including a meaningful participation of authorities responsible for child protection and welfare and other relevant actors, such as parents, guardians and legal representatives, as well as the child; Develop procedures and define criteria to provide guidance to all relevant persons involved with migration procedures on determining the best interests of the child and on giving them due weight as a primary consideration, including in entry, residence, resettlement and return procedures, and develop mechanisms aimed at monitoring its proper implementation in practice...Provide guidance to all relevant authorities on the operationalization of the principle of the best interests of the child for migrant children, including children in transit, and develop mechanisms aimed at monitoring its proper implementation in practice; Develop and put into practice, with regard to unaccompanied children and children with families, a best-interests determination procedure aimed at identifying and applying comprehensive, secure and sustainable solutions, including further integration and settlement in the country of current residence, repatriation to the country of origin or resettlement in a third country. Such solutions may include medium-term options and ensuring that there are possibilities for children and families to gain access to secure residence status in the best interests of the child. Best-interest determination procedures should be guided by child protection authorities within child protection systems. Possible solutions and plans should be discussed and developed together with the child, in a child friendly and sensitive manner, in accordance with Committee on the Rights of the Child general comment No. 12 (2009) on the right of the child to be heard</p> |
| <p>CMW / CRC Joint general comment No.3 / No.22: on the general principles regarding the human rights of children in the context of international migration (2017), CMW/C/GC/3-CRC/C/GC/22 (para.III.C.36)</p> | <p>States parties should appoint a qualified legal representative for all children, including those with parental care, and a trained guardian for unaccompanied and separated children, as soon as possible on arrival, free of charge. Accessible complaints mechanisms for children should be ensured. Throughout the process, children should be offered the possibility to be provided with a translator in order that they may express themselves fully in their native language and/or receive support from someone familiar with the child’s ethnic, religious and cultural background. These professionals should be trained on the specific needs of children in the context of international migration, including gender, cultural, religious and other intersecting aspects</p> |
| <p>CMW / CRC Joint general comment No.3 / No.22: on the general principles regarding the human rights of children in the context of international migration (2017), CMW/C/GC/3-CRC/C/GC/22 (para III.C.38)</p> | <p>States parties should take all appropriate measures aimed at ensuring children’s right to be heard in the immigration procedures concerning their parents, in particular where the decision could affect the children’s rights, such as the right to not be separated from their parents, except when such separation is in their best interests (see art. 9 of the Convention on the Rights of the Child)</p> |

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| <p>CMW / CRC Joint general comment No.4 / No.23: on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return (2017), CMW/C/GC/4-CRC/C/GC/23 (para.II.A.4)</p> | <p>To make an informed estimate of age, States should undertake a comprehensive assessment of the child's physical and psychological development, conducted by specialist paediatricians or other professionals who are skilled in combining different aspects of development. Such assessments should be carried out in a prompt, child-friendly, gender sensitive and culturally appropriate manner, including interviews of children and, as appropriate, accompanying adults, in a language the child understands. Documents that are available should be considered genuine unless there is proof to the contrary, and statements by children and their parents or relatives must be considered. The benefit of the doubt should be given to the individual being assessed. States should refrain from using medical methods based on, inter alia, bone and dental exam analysis, which may be inaccurate, with wide margins of error, and can also be traumatic and lead to unnecessary legal processes. States should ensure that their determinations can be reviewed or appealed to a suitable independent body</p> |
| <p>CMW / CRC Joint general comment No.4 / No.23: on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return (2017), CMW/C/GC/4-CRC/C/GC/23 (para.II.B.13)</p> | <p>In the view of the Committees, child protection and welfare actors should take primary responsibility for children in the context of international migration. When a migrant child is first detected by immigration authorities, child protection or welfare officials should immediately be informed and be in charge of screening the child for protection, shelter and other needs. Unaccompanied and separated children should be placed in the national/local alternative care system, preferably in family-type care with their own family when available, or otherwise in community care when family is not available. These decisions have to be taken within a child-sensitive due process framework, including the child's rights to be heard, to have access to justice and to challenge before a judge any decision that could deprive him or her of liberty, and should take into account the vulnerabilities and needs of the child, including those based on their gender, disability, age, mental health, pregnancy or other conditions</p> |
| <p>CMW / CRC Joint general comment No.4 / No.23: on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return (2017), CMW/C/GC/4-CRC/C/GC/23 (para.II.C.17)</p> | <p>More specifically, and in particular in the context of best interest assessments and within best interest determination procedures, children should be guaranteed the right to: (a) Access to the territory, regardless of the documentation they have or lack, and to be referred to authorities in charge of evaluating their needs in terms of protection of their rights, ensuring their procedural safeguards; (b) Be notified of the existence of a proceeding and of the decision adopted in the context of the immigration and asylum proceedings, its implications and possibilities for appeal; (c) Have the immigration proceedings conducted by a specialized official or judge, and any interviews carried out in person by professionals trained in communicating with children; (d) Be heard and take part in all stages of the proceedings and be assisted without charge by a translator and/or interpreter; (e) Have effective access to communication with consular officials and consular assistance, and to receive child-sensitive rights-based consular protection; (f) Be assisted by an attorney trained and/or experienced in representing children at all stages of the proceedings and communicate freely with the representative, and have access to free legal aid; (g) Have the application and procedures involving children be treated as a priority, while ensuring ample time to prepare for proceedings and that all due process guarantees are preserved; (h) Appeal the decision to a higher court or independent authority, with suspensive effect; (i) For unaccompanied and separated children, have appointed a competent guardian, as expeditiously as possible, who serves as a key procedural safeguard to ensure respect for their best interests; (j) Be fully informed throughout the entire procedure, together with their guardian and legal adviser, including information on their rights and all relevant information that could affect them</p> |

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| <p>CMW / CRC Joint general comment No.4 / No.23: on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return (2017), CMW/C/GC/4-CRC/C/GC/23 (para.II.H.50)</p> | <p>States parties should develop detailed guidelines on standards of reception facilities, assuring adequate space and privacy for children and their families. States should take measures to ensure an adequate standard of living in temporary locations, such as reception facilities and formal and informal camps, ensuring that these are accessible to children and their parents, including persons with disabilities, pregnant women and breastfeeding mothers. States should ensure that residential facilities do not restrict children’s day-to-day movements unnecessarily, including de facto restriction of movement</p> |
| <p>CRC General comment No.6: treatment of unaccompanied and separated children outside their country of origin (2005), CRC/GC/2005/6 (para.VII.a.80)</p> | <p>Tracing is an essential component of any search for a durable solution and should be prioritized except where the act of tracing, or the way in which tracing is conducted, would be contrary to the best interests of the child or jeopardize fundamental rights of those being traced. In any case, in conducting tracing activities, no reference should be made to the status of the child as an asylum-seeker or refugee. Subject to all of these conditions, such tracing efforts should also be continued during the asylum procedure. For all children who remain in the territory of the host State, whether on the basis of asylum, complementary forms of protection or due to other legal or factual obstacles to removal, a durable solution must be sought</p> |
| <p>CEDAW General recommendation No.32: on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women (2009), CEDAW/C/GC/32 (para.IV.C.34)</p> | <p>Gender sensitivity should be reflected in reception arrangements, taking into account the specific needs of victims of sexual abuse and exploitation, of trauma and torture or ill-treatment and of other particularly vulnerable groups of women and girls. Reception arrangements should also allow for the unity of the family as present within the territory, in particular in the context of reception centres</p> |

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This reference tool is part of a larger document that contains guidance for all 23 objectives of the Global Compact for Safe, Orderly and Regular Migration. It is available online at: quno.org/resource/2018/11/foundations-implementation

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