



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 7: Address and reduce vulnerabilities in migration

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 7: Address and reduce vulnerabilities in migration

Guidance from Special Procedures

Source	Guidance
Special Rapporteur on the human rights of migrants (2018), A/73/178/Rev.1 (para.75(a))	Ensure equal access for migrants and provide them with reliable legal information, competent and affordable legal representation, effective legal aid, and competent translation and interpretation services; waive legal fees for all migrants who cannot afford them; and protect migrants by regularizing their status, giving them special visas or taking other protective measures for victims of trafficking and forced labour;
SR migrants (2018), A/73/178/Rev.1 (para.75(b))	Ensure and facilitate equal and effective access for all migrants whose labour or human rights are violated to independent, competent, fair, effective and accountable judicial and quasi-judicial institutions;
SR migrants (2018), A/73/178/Rev.1 (para.76(b))	With regard to migrant boys and girls States should: Facilitate access to mechanisms for submitting formal complaints and reports that are adapted to the needs of boys and girls, in cases of violations of their rights;
SR migrants (2018), A/73/178/Rev.1 (para.76(d))	With regard to migrant boys and girls States should: Give due consideration to the views of boys and girls and safeguard their privacy and confidentiality when they participate in judicial proceedings, in order to prevent their victimization or revictimization;
SR migrants (2018), A/73/178/Rev.1 (para.76(e))	With regard to migrant boys and girls States should: Ensure that, as soon as possible, a legal representative is appointed for all children, free of charge, and a trained guardian is appointed for unaccompanied and separated children;
SR migrants (2018), A/73/178/Rev.1 (para.76(g))	With regard to migrant boys and girls States should: Train and educate judicial and administrative officials in the human rights and needs of boys and girls
SR migrants (2018), A/73/178/Rev.1 (para.77(b))	With regard to migrant women States should: Take appropriate measures to create supportive environments that encourage women to claim their rights, report crimes committed against them and actively participate in criminal proceedings;
SR migrants (2018), A/73/178/Rev.1 (para.77(c))	With regard to migrant women States should: Take effective measures to protect women against secondary victimization in their interactions with law enforcement and judicial authorities;
SR migrants (2018), A/73/178/Rev.1 (para.77(d))	With regard to migrant women States should: Review and monitor all judicial procedures to ensure that they do not directly or indirectly discriminate against women and eliminate any discrimination against women in penalties;
SR migrants (2018), A/73/178/Rev.1 (para.77(e))	With regard to migrant women States should: Train and raise the awareness of justice system personnel regarding women's human rights and the principle of equality

<p>SR migrants (2018), A/HRC/38/41 (para.92(c))</p>	<p>Adopt and support strategies on migrants in vulnerable situations, including by creating mechanisms and allocating resources to ensure that the status of migrants in vulnerable situations can be determined individually, fairly and reliably while respecting the principle of non-refoulement;</p>
<p>SR migrants (2018), A/HRC/38/41 (para.92(g))</p>	<p>Provide accessible complaint mechanisms for migrants, including those who have experienced sexual or gender-based violence, and also legal information and aid in a language that they understand to ensure their access to justice and remedies for human rights violations;</p>
<p>SR migrants (2015), A/HRC/29/36 (para.113)</p>	<p>Remove barriers to access to justice ensuring migrants can effectively — and not simply on paper — access legal remedy for violations of their rights. Facilitating access to justice, without fear of detection, detention or deportation, in order to help migrants fight for their rights, would go a long way towards, on the one hand, legitimizing new migration policies by showing that territorial sovereignty and human rights are not incompatible, and, on the other hand, changing mentalities regarding migration through fighting fantasies and stereotypes</p>
<p>SR migrants (2014), A/HRC/26/35 (para.93)</p>	<p>Extend labour protection in national law to domestic workers, including by formulating provisions related to minimum wages, payment for overtime, working hours, working conditions, days of rest, annual leave, freedom of association and social security protection, including with respect to maternity, pension rights and health insurance, as well as effective recourse and remedies. Ensure that migrant domestic workers have a written contract, in a language they can understand, stating their specific duties, working hours, remuneration, days of rest, and other conditions of work. Model contracts should be adopted for this purpose. Persons who abuse domestic workers should be prevented from hiring more domestic workers in the future. Labour inspections should be undertaken also in employers' households, and regular meetings should take place between domestic workers and a labour inspector outside the household, in order to combat abuse. Ensure that migrant domestic workers have access to complaint mechanisms and legal assistance</p>
<p>SR migrants (2014), A/HRC/26/35 (para.100)</p>	<p>Ensure that migrants, including those in an irregular situation, can access human rights institutions, courts and tribunals, without fear of being deported. Legal aid and interpreters should be provided as required. Courts should effectively apply the international human rights law and international labour law in providing appropriate redress. Migrants who have filed cases against abusive employers should be allowed to remain in the country, and be given necessary assistance to take part in the trial against their employer and obtain justice. They should be provided with temporary immigration status that allows them to live in dignity until the case is resolved, including shelter – not detention – and food when needed</p>
<p>SR migrants (2012), A/67/299 (para.93(d))</p>	<p>States should support civil society organizations that give a voice to such vulnerable populations, including migrants or potential migrants, with a view to ensuring their meaningful participation in all the deliberations regarding their future as citizens and/or migrants;</p>

<p>SR migrants (2010), A/65/222 (para.75)</p>	<p>States should consider that irregular migrants are generally in a very vulnerable condition and that irregularity is due to several factors (including restrictive migration policies, social exclusion and marginalization as well as demand for labour in countries of destination). States should accordingly: (a) Adopt integrated and protective approaches, instead of approaches that are punitive and based solely on security and border control concerns; (b) Design and implement programmes, plans and policies to address irregular migration in a comprehensive and holistic way, without resorting to its criminalization; (c) Take into account the root causes of migration and the importance of creating legal channels for migration in policymaking initiatives so that they can be comprehensive, human-centred and incorporate human rights; (d) Promote multi-pronged and multi-stakeholder initiatives, preferably including civil society and migrants themselves (such as research, advocacy strategies, policy discussions, etc.) in order to examine the context-specific and human rights-based options to address irregular migration</p>
<p>SR migrants (2010), A/65/222 (para.76)</p>	<p>Regularization policies, plans and programmes States are encouraged to adopt and promote regularization programmes, plans and policies as a crucial strategy for ensuring migrants’ rights, prevent human rights violations and abuses associated with irregular migration, address marginalization and facilitate the integration of migrants and their families in the communities of destination</p>
<p>SR migrants (2010), A/65/222 (para.77)</p>	<p>States are particularly encouraged to: (a) Develop public policies to regularize non-documented migrants (especially children and their families) through flexible, permanent and regular legal avenues and by extraordinary regularizations aimed at contributing to the social integration of the large number of irregular migrants living in host societies; (b) Consider regularization programmes as a key element of migration policies in order to ensure social integration and family reunification, limit migrant workers’ exploitation and abuse and incorporate workers from informal and underground economies into the labour force, with clear benefits for host countries, including increasing contributions to national tax and social security revenues; (c) Consider creating regularization options for persons who may not fall under the international refugee regime but who may need to have their human rights protected and consider granting legal residence to children and adolescent victims of abuse and exploitation as a durable solution, in line with the best interests of the child; (d) Ensure that regularization policies are sustainable and respectful of human rights norms, inter alia, by incorporating provisions to protect migrants from reprisals from their employers who might prefer that they remain in an irregular status</p>

<p>SR migrants (2010), A/65/222 (para.80)</p>	<p>The Special Rapporteur encourages the establishment and implementation of institutionalized services and programmes to provide comprehensive support and protection to persons arriving in mixed migratory flows, especially women, children and the elderly, including means to detect those who are in need of international protection. Protection services should include access to humanitarian assistance in the first instance, including adequate food and water, and access to health services, legal advice and effective asylum procedures. Longer term needs should include access to durable solutions in the case of persons in need of international protection and support for return to the community of origin for those people who are deemed able to return with no risk to their human rights</p>
<p>SR migrants (2009), A/HRC/11/7 (para.82)</p>	<p>All policies and programmes aimed at addressing the situation of children in the context of migration should have a human rights-based approach and be based on fundamental principles, such as the best interest of the child, non-discrimination and the right of the child to be heard in all decisions that concern him or her</p>
<p>SR migrants (2009), A/HRC/11/7 (para.86)</p>	<p>States should also consider the specific vulnerability of the migrant girl child and the gender impact of migration and human rights implications for girls and boys of any migration-related planned action, including legislation, policies and programmes, and address existing gaps in protection</p>
<p>SR migrants (2009), A/64/213 (para.96)</p>	<p>States should review their national and regional laws and policies to harmonize them with the international legal framework on the protection of the human rights of migrants, with particular attention to the protection of the rights of the child. Immigration laws and policies should include concrete regulations aimed at protecting the rights of the child in the context of migration and fulfilling their specific needs in migration-related circumstances</p>
<p>SR migrants (2009), A/HRC/11/7 (para.99)</p>	<p>The Special Rapporteur recommends that protection programmes include reproductive sexual health awareness and training to address psychological trauma</p>
<p>SR migrants (2009), A/HRC/11/7 (para.128)</p>	<p>The Special Rapporteur encourages inter-institutional coordination at the national level, including through specific mechanisms and with the participation of civil society, consular services, local governments and the private sector, for the development and implementation of multidisciplinary policies to ensure the protection of the rights of children in the context of migration</p>
<p>Special Rapporteur on violence against women, its causes and consequences (2001), A/CONF.189/PC.3/5 (para.205)</p>	<p>The risk of discrimination on multiple grounds such as race, ethnicity, gender and class has increased with the feminization of migration. Governments should: Provide and ensure access to education and training, as well as to income-generating activities, for migrant women;</p>
<p>Special Rapporteur on violence against women (2000), E/CN.4/2000/68 (para.111)</p>	<p>Measures designed to limit women's legal entry into countries of destination should be carefully weighed against their disadvantages as they pertain to potential immigrants and women. In particular, measures that are designed to protect women by limiting their access to legal migration or increasing the requirements associated with such migration should be assessed in terms of the potential for discriminatory impact and the potential for increasing the likelihood that women consequently may be subjected to trafficking</p>

7

<p>Special Rapporteur on violence against women (1997), E/CN.4/1997/47 (para.170)</p>	<p>The immigration policy of receiving countries should be revised to prevent vulnerable women from being doubly marginalized. In addition, procedures should ensure that traffickers cannot act with impunity because of the immediate deportation of trafficked victims</p>
<p>Special Rapporteur on violence against women (1997), E/CN.4/1997/47 (para.178)</p>	<p>Receiving States should prosecute employers abusing women migrant workers. In addition, laws and regulations that place women migrant workers in vulnerable situations, such as through the confiscation of passports, should be repealed. In addition, receiving States, with the collaboration of non-governmental organizations, should ensure that shelters and counselling services are available for women migrant workers who are victims of violence. Immigration authorities should be more sensitive to the needs of migrant workers, bearing in mind that their immigration status often makes them vulnerable to abuse</p>
<p>Special Rapporteur on trafficking in persons, especially women and children (2017), A/72/164 (para.83(b)) Joint report with the Special Rapporteur on the sale and sexual exploitation of children</p>	<p>In terms of access to justice, prosecution and sanctions, States, in cooperation with United Nations agencies and programmes, international organizations, host countries and civil society organizations, should: Ensure that legislation, policies, measures and practices guarantee child-sensitive due processes in all migration-related administrative and judicial proceedings affecting the rights of children or of their parents. All children, including those accompanied by parents or other legal guardians, must be treated as individual rights-holders, not criminals, their child-specific needs must be considered equally and individually and their views must be duly heard. They must have access to administrative and judicial remedies against decisions on their own situation or that of their parents that affect them in order to guarantee that all decisions are taken in their best interests. Children should be able to bring complaints beyond legal or court procedures at lower levels that should be easily accessible to them, such as those of child protection and youth institutions, schools or the ombudsperson, and they should be able to receive advice from professionals in a child-sensitive manner when their rights have been violated;</p>
<p>SR trafficking (2018), A/HRC/38/45 (para.71(c))</p>	<p>In relation to the protection of refugees, asylum seekers and migrants in vulnerable situations, including victims and potential victims of trafficking in persons, States should: Ensure that appropriate laws and procedures are in place to enable actors to protect and assist refugees and migrants, and review and suspend, amend or repeal any laws or other measures that have a negative or disproportionate impact on the human rights of refugees and migrants;</p>
<p>SR trafficking (2017) A/72/164 (para.81(e))</p>	<p>In terms of protection and assistance, States, in cooperation with United Nations agencies and programmes, international organizations, host countries and civil society organizations, should: Create safe child-friendly spaces in places where migrants or refugees reside, including reception centres, refugee camps or informal settlements that host children and offer them space for recreation, study and rest, separated from other facilities, and ensure that those areas are family- based and family-like, whenever possible;</p>

<p>SR trafficking (2013), A/HRC/23/48 (para.85(c))</p>	<p>Discouraging demand routinely requires measures to stop discrimination, notably discriminatory practices which contribute to the exploitation of persons. These include discrimination based on gender, ethnicity, national origin and other criteria, such as discrimination against migrant workers in employment practices. States should eliminate acts or practices of discrimination on such grounds and should amend laws and policies that institutionalize discrimination and thereby also shape demand, particularly ones concerned with employment or migration, just as they must challenge discriminatory social attitudes, practices and beliefs, which also shape demand;</p>
<p>SR trafficking (2007), A/HRC/4/23 (para.63(d))</p>	<p>States amend their immigration legislation so that victims of forced marriages are not dependent upon their spouses for legal immigration status but can obtain residence permits independently of their continued relation to their husbands. Governments should recognize forced marriage, especially in the context of trafficking in persons, as a condition giving rise to a claim of asylum based on gender-related violence and other forms of human rights violations, and ensure that the women and girls concerned are not deported;</p>
<p>SR trafficking (2007), A/HRC/4/23 (para.63(o))</p>	<p>States support public authorities and non-governmental and community-based organizations that already assist victims of domestic violence and sexual assault, including immigrant women and children, and establish more facilities to protect and assist victims of trafficking, including safe shelters that provide services such as security, housing, legal advice, employment, education, health care, childcare and relocation assistance for women and girls fleeing actual or threatened forced marriages. These shelters should, together with appropriate consular and other authorities, assist in the safe repatriation of those who have undergone forced marriages abroad, if desired;</p>
<p>Special Rapporteur on extrajudicial, summary or arbitrary executions (2017), A/72/335 (para.102)</p>	<p>States should ensure that all refugees and migrants and their families have effective access to justice, whatever their migration status: all refugees and migrants and their families should be able, and should be encouraged, to report arbitrary killings and disappearances, file charges and access witness protection, if needed</p>
<p>Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (2013), A/HRC/23/41 (para.76(m))</p>	<p>Prevent the detention and deportation of irregular migrant workers and instead regularize their stay on objective criteria, in order to protect them from exploitation and ensure their full enjoyment of the right to health;</p>
<p>Special Rapporteur on the independence of judges and lawyers (2013), A/HRC/23/43 (para.105)</p>	<p>Recognizing that the lack of public policies to eliminate obstacles to access to justice for all has a greater impact on groups in a vulnerable situation or living in extreme poverty, States should develop and implement appropriate policies to ensure meaningful access to legal aid for women, children and groups with special needs</p>

Guidance from Treaty Bodies

Source	Guidance
CMW General comment No.1: on migrant domestic workers (2011), CMW/C/GC/1 (para.C.54)	States parties shall take appropriate measures to protect the unity of the families of migrant domestic workers in a regular situation (article 44, paragraph 1). In particular, migrant domestic workers should have reasonable opportunities for family contact and family-related mobility, including opportunities to communicate with family left behind, travel to participate in essential family matters such as funerals, and, especially in the case of long-term migrants, to visit spouses and children in other countries. States parties should ensure that children separated from one or both parents are allowed to maintain direct contact with both parents on a regular basis
CMW General comment No.1: on migrant domestic workers (2011), CMW/C/GC/1 (para.C.55)	States parties should take appropriate measures with regard to migrant domestic workers in a regular situation to facilitate their reunification with their spouses and children (article 44, paragraph 2). In the event of the death of or divorce from a migrant worker with a regular status, States parties should favourably consider granting independent residence status to family members of that migrant worker (article 50)
CMW General comment No.1: on migrant domestic workers (2011), CMW/C/GC/1 (para.C.61)	States parties should also repeal discriminatory laws, regulations and practices related to HIV, including those which result in the loss of work visas based on HIV status, and ensure that medical testing of migrant domestic workers, including tests for pregnancy or HIV, is only done voluntarily and subject to informed consent
CMW General comment No.2: on the rights of migrant workers in an irregular situation and members of their families (2013), CMW/C/GC/2 (para.III.D.2.71)	The Committee considers that in cases of extreme poverty and vulnerability, States parties should provide emergency social assistance to migrant workers in an irregular situation and members of their families, including emergency services for persons with disabilities, for as long as they might require it. It recalls that even if many migrant workers in an irregular situation do not participate in contributory schemes, they contribute to financing social protection schemes and programmes by paying indirect taxes
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.II.18)	The Committees are of the opinion that, in order to fulfil the rights of all children in the context of international migration, the following elements should be part of the policies and practices to be developed and implemented: (a) comprehensive, inter-institutional policies between child protection and welfare authorities and other key bodies, including on social protection, health, education, justice, migration and gender, and between regional, national and local governments; (b) adequate resources, including budgetary, aimed at ensuring effective implementation of policies and programmes; and (c) continuous and periodic training of child protection, migration and related officials on the rights of children, migrants and refugees and on statelessness, including intersectional discrimination

<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.A.24)</p>	<p>States parties should conduct a robust gender analysis of the specific impacts of migration policies and programmes on children of all genders. States parties should review and amend any gender-discriminatory restrictions on migration in law or practice that limit opportunities for girls or that do not recognize their capacity and autonomy to make their own decisions</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.A.25)</p>	<p>The Committees recommend that the States parties put special emphasis on the policies and related regulations about the prevention of discriminatory practices towards migrant and refugee children with disabilities and the implementation of necessary policies and programmes for ensuring the full enjoyment of all human rights and fundamental freedoms of migrant and refugee children with disabilities on an equal basis with children who are nationals of the States, and taking into consideration the provisions enshrined in the Convention on the Rights of Persons with Disabilities</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.B.28)</p>	<p>Recognizing that the best interests of the child — once assessed and determined — might conflict with other interests or rights (e.g. of other children, the public and parents) and that potential conflicts have to be resolved on a case-by-case basis, carefully balancing the interests of all parties and finding a suitable compromise, the Committee stresses in paragraph 39 of its general comment No. 14 that the right of the child to have his or her best interests taken as a primary consideration means that the child's interests have high priority and are not just one of several considerations. Therefore, a larger weight must be attached to what serves the child best. It further states in paragraph 82 that the purpose of assessing and determining the best interests of the child is to ensure the full and effective enjoyment of the rights recognized in the Convention on the Rights of the Child, and the holistic development of the child</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.B.32)</p>	<p>Conduct a best-interests assessment on a case-by-case basis in order to decide, if needed, and in accordance with the Guidelines for the Alternative Care of Children, the type of accommodation that would be most appropriate for an unaccompanied or separated child, or children with parents. In that process, community-based care solutions should be prioritized. Any measure that constrains children's liberty in order to protect them, e.g. placement in secure accommodation, should be implemented within the child protection system with the same standards and safeguards; be strictly necessary, legitimate and proportionate to the aim of protecting the individual child from harming him or herself or others; be part of a holistic care plan; and be disconnected from migration-enforcement policies, practices and authorities</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.35)</p>	<p>The Committee on the Rights of the Child, in its general comment No. 12, underlines that adequate measures to guarantee the right to be heard should be implemented in the context of international migration, as children who come to a country could be in a particularly vulnerable and disadvantaged situation. For that reason, it is critical to implement fully their right to express their views on all aspects affecting their lives, including as an integral part of immigration and asylum proceedings, and for their views to be given due weight. Children may have their own migration projects and migration-driving factors, and policies and decisions cannot be effective or appropriate without their participation. The Committee also emphasizes that these children should be provided with all relevant information, inter alia, on their rights, the services available, means of communication, complaints mechanisms, the immigration and asylum processes and their outcomes. Information should be provided in the child’s own language in a timely manner, in a child-sensitive and age-appropriate manner, in order to make their voice heard and to be given due weight in the proceedings</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.37)</p>	<p>States parties should take all measures appropriate to fully promote and facilitate the participation of children, including providing them with the opportunity to be heard in any administrative or judicial proceeding related to their or their families’ cases, including any decision on care, shelter or migration status. Children should be heard independently of their parents, and their individual circumstances should be included in the consideration of the family’s cases. Specific best-interests assessments should be carried out in those procedures, and the child’s specific reasons for the migration should be taken into account. Regarding the significant relationship between the right to be heard and the best interests of the child, the Committee on the Rights of the Child has already stated that there can be no correct application of article 3 if the components of article 12 are not respected</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.39)</p>	<p>States parties should adopt measures directed at facilitating the participation of all children in the context of international migration in the design, implementation, monitoring and evaluation of policies that could directly or indirectly affect them, as individuals or a group, including in the fields of social policies and social services. Initiatives should be taken to prepare girls and transgender children to participate actively, effectively and equally with boys at all levels of social, economic, political and cultural leadership. In countries of origin, the participation of children is paramount in developing policies on and in processes aimed at addressing drivers of the migration of children and/or their parents and developing policies in that regard. In addition, States should adopt measures aimed at empowering children affected by international migration to participate on different levels, through consultations, collaborations and child-led initiatives, and at ensuring that civil society organizations, including children associations and child-led organizations, can participate effectively in policy dialogues and processes on children in the context of international migration, at the local, national, regional and international levels. Any limitations on children’s freedom of association, including through legally establishing associations, should be removed</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.A.3)</p>	<p>The Committees are concerned that children between 15 and 18 years tend to be provided much lower levels of protection, and are sometimes considered as adults or left with an ambiguous migration status until they reach 18 years of age. States are urged to ensure that equal standards of protection are provided to every child, including those above the age of 15 years and regardless of their migration status. In accordance with the Guidelines for Alternative Care of Children, States should provide adequate follow-up, support and transition measures for children as they approach 18 years of age, particularly those leaving a care context, including by ensuring access to long-term regular migration status and reasonable opportunities for completing education, access to decent jobs and integrating into the society they live in. The child should be adequately prepared for independent living during this transition period, and competent authorities shall ensure adequate follow-up of the individual situation. The Committees additionally encourage States to take protective and support measures beyond the age of 18 years</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.16)</p>	<p>Children should be able to bring complaints before courts, administrative tribunals or other bodies at lower levels that are easily accessible to them, e.g., in child protection and youth institutions, schools and national human rights institutions, and should be able to receive advice and representation in a child-friendly manner by professionals with specialized knowledge of children and migration issues when their rights have been violated. States should ensure standardized policies to guide authorities in offering free, quality legal advice and representation for migrant, asylum-seeking and refugee children, including equal access for unaccompanied and separated children in local authority care and undocumented children</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.E.1.30)</p>	<p>The Committees are concerned about cases where children are separated from parents and placed in alternative care by child protection systems when there are no concerns related to parental abuse and neglect. Financial and material poverty, or conditions directly and uniquely attributable to such poverty, should never be the sole justification for removing a child from parental care, for receiving a child into alternative care or for preventing a child's social reintegration. In this regard, States should provide appropriate assistance to parents and legal guardians in the performance of their childrearing responsibilities, including by providing social benefits and child allowances and other social support services regardless of the migration status of the parents or the child</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.E.2.32)</p>	<p>Under article 10 of the Convention on the Rights of the Child, States parties are to ensure that applications for family reunification are dealt with in a positive, humane and expeditious manner, including facilitating the reunification of children with their parents. When the child's relations with his or her parents and/or sibling(s) are interrupted by migration (in both the cases of the parents without the child, or of the child without his or her parents and/or sibling(s)), preservation of the family unit should be taken into account when assessing the best interests of the child in decisions on family reunification</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.E.2.34)</p>	<p>In the case of unaccompanied or separated children, including children separated from their parents due to the enforcement of immigration laws, such as the parents’ detention, efforts to find sustainable, rights-based solutions for them should be initiated and implemented without delay, including the possibility of family reunification. If the child has family in the country of destination, the country of origin or a third country, child protection and welfare authorities in countries of transit or destination should contact family members as soon as possible. The decision as to whether a child should be reunited with his or her family in the country of origin, transit and/or destination should be based on a robust assessment in which the child’s best interests are upheld as a primary consideration and family reunification is taken into consideration, and which includes a sustainable reintegration plan where the child is guaranteed to participate in the process</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.E.2.36)</p>	<p>When a country of destination refuses family reunification to the child and/or to his/her family, it should provide detailed information to the child, in a child-friendly and age-appropriate manner, on the reasons for the refusal and on the child’s right to appeal</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.E.2.38)</p>	<p>The Committees are aware that insufficient financial resources often hinder the exercise of the right to family reunification and that the lack of proof of adequate family income can constitute a barrier to reunion procedures. States are encouraged to provide adequate financial support and other social services to those children and their parent(s), siblings and, where applicable, other relatives</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.F.44)</p>	<p>States should take the following actions to ensure the full and effective protection of migrant children from all forms of violence and abuse: • Take effective measures to ensure that they are protected from any form of slavery and commercial sexual exploitation and from being used for illicit activities or from any work that would jeopardize their health, safety or morals, including by becoming party to relevant conventions of the International Labour Organization • Take effective measures to protect them from all forms of violence and abuse, regardless of their migration status • Recognize and address the gender-specific vulnerable situations of girls and boys and children with disabilities as potential victims of trafficking for sexual, labour and all other forms of exploitation • Ensure comprehensive protection, support services and access to effective redress mechanisms, including psychosocial assistance and information about those remedies, for migrant children and their families reporting cases of violence, abuse or exploitation to police or other relevant authorities, regardless of their migration status; children and parents must be able to safely report to police or other authorities as victims or witnesses without any risk of immigration enforcement as a result • Recognize the important role that can be played by community services and civil society organizations in regard to the protection of migrant children • Develop comprehensive policies aimed at addressing the root causes of all forms of violence, exploitation and abuse against migrant children, including adequate resources for their proper implementation</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.III.65)</p>	<p>Child protection/welfare agencies should have a key role in the development of any international, regional or bilateral agreements that affect the rights and treatment of children in the context of international migration</p>
<p>CRC General comment No.6: treatment of unaccompanied and separated children outside their country of origin (2005), CRC/GC/2005/6 (para.V.b.33)</p>	<p>States should appoint a guardian or adviser as soon as the unaccompanied or separated child is identified and maintain such guardianship arrangements until the child has either reached the age of majority or has permanently left the territory and/or jurisdiction of the State, in compliance with the Convention and other international obligations. The guardian should be consulted and informed regarding all actions taken in relation to the child. The guardian should have the authority to be present in all planning and decision-making processes, including immigration and appeal hearings, care arrangements and all efforts to search for a durable solution. The guardian or adviser should have the necessary expertise in the field of childcare, so as to ensure that the interests of the child are safeguarded and that the child's legal, social, health, psychological, material and educational needs are appropriately covered by, inter alia, the guardian acting as a link between the child and existing specialist agencies/individuals who provide the continuum of care required by the child. Agencies or individuals whose interests could potentially be in conflict with those of the child's should not be eligible for guardianship. For example, non-related adults whose primary relationship to the child is that of an employer should be excluded from a guardianship role</p>

7

<p>CRC General comment No.6: treatment of unaccompanied and separated children outside their country of origin (2005), CRC/GC/2005/6 (para.V.b.34)</p>	<p>In the case of a separated child, guardianship should regularly be assigned to the accompanying adult family member or non-primary family caretaker unless there is an indication that it would not be in the best interests of the child to do so, for example, where the accompanying adult has abused the child. In cases where a child is accompanied by a non-family adult or caretaker, suitability for guardianship must be scrutinized more closely. If such a guardian is able and willing to provide day-to-day care, but unable to adequately represent the child’s best interests in all spheres and at all levels of the child’s life, supplementary measures (such as the appointment of an adviser or legal representative) must be secured</p>
<p>CRC General comment No.6: treatment of unaccompanied and separated children outside their country of origin (2005), CRC/GC/2005/6 (para.V.b.35)</p>	<p>Review mechanisms shall be introduced and implemented to monitor the quality of the exercise of guardianship in order to ensure the best interests of the child are being represented throughout the decision-making process and, in particular, to prevent abuse</p>
<p>CRC General comment No.6: treatment of unaccompanied and separated children outside their country of origin (2005), CRC/GC/2005/6 (para.V.b.40)</p>	<p>Due regard ought to be taken of the desirability of continuity in a child’s upbringing and to the ethnic, religious, cultural and linguistic background as assessed in the identification, registration and documentation process. Such care and accommodation arrangements should comply with the following parameters: – Children should not, as a general rule, be deprived of liberty; – In order to ensure continuity of care and considering the best interests of the child, changes in residence for unaccompanied and separated children should be limited to instances where such change is in the best interests of the child; – In accordance with the principle of family unity, siblings should be kept together; – A child who has adult relatives arriving with him or her or already living in the country of asylum should be allowed to stay with them unless such action would be contrary to the best interests of the child. Given the particular vulnerabilities of the child, regular assessments should be conducted by social welfare personnel; – Irrespective of the care arrangements made for unaccompanied or separated children, regular supervision and assessment ought to be maintained by qualified persons in order to ensure the child’s physical and psychosocial health, protection against domestic violence or exploitation, and access to educational and vocational skills and opportunities; – States and other organizations must take measures to ensure the effective protection of the rights of separated or unaccompanied children living in child-headed households; – In large-scale emergencies, interim care must be provided for the shortest time appropriate for unaccompanied children. This interim care provides for their security and physical and emotional care in a setting that encourages their general development; – Children must be kept informed of the care arrangements being made for them, and their opinions must be taken into consideration</p>
<p>CRC General comment No.6: treatment of unaccompanied and separated children outside their country of origin (2005), CRC/GC/2005/6 (para.V.h.55)</p>	<p>Care arrangements for unaccompanied and separated children shall be made in a manner which prevents their recruitment, re-recruitment or use by any party to a conflict. Guardianships should not be given to individuals or organizations who are directly or indirectly involved in a conflict</p>

**CRC General comment No.6:
treatment of unaccompanied
and separated children out-
side their country of origin
(2005), CRC/GC/2005/6
(para.VII.e.91)**

States should, in particular, observe the following: – Adoption of unaccompanied or separated children should only be considered once it has been established that the child is in a position to be adopted. In practice, this means, inter alia, that efforts with regard to tracing and family reunification have failed, or that the parents have consented to the adoption. The consent of parents and the consent of other persons, institutions and authorities that are necessary for adoption must be free and informed. This supposes notably that such consent has not been induced by payment or compensation of any kind and has not been withdrawn; – Unaccompanied or separated children must not be adopted in haste at the height of an emergency; – Any adoption must be determined as being in the child's best interests and carried out in keeping with applicable national, international and customary law; – The views of the child, depending upon his/her age and degree of maturity, should be sought and taken into account in all adoption procedures. This requirement implies that he/she has been counselled and duly informed of the consequences of adoption and of his/her consent to adoption, where such consent is required. Such consent must have been given freely and not induced by payment or compensation of any kind; – Priority must be given to adoption by relatives in their country of residence. Where this is not an option, preference will be given to adoption within the community from which the child came or at least within his or her own culture; – Adoption should not be considered: – Where there is reasonable hope of successful tracing and family reunification is in the child's best interests; – If it is contrary to the expressed wishes of the child or the parents; – Unless a reasonable time has passed during which all feasible steps to trace the parents or other surviving family members has been carried out. This period of time may vary with circumstances, in particular, those relating to the ability to conduct proper tracing; however, the process of tracing must be completed within a reasonable period of time; – Adoption in a country of asylum should not be taken up when there is the possibility of voluntary repatriation under conditions of safety and dignity in the near future



QUNO offices:

In Geneva:
13 Avenue du Mervelet
1209 Geneva
Switzerland

Tel: +41 22 748 4800
Fax: +41 22 748 4819
quno@quno.ch

In New York:
777 UN Plaza
New York, NY 10017
United States

Tel: +1 212 682 2745
Fax: +1 212 983 0034
qunony@afsc.org

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

For hard copies, please contact Laurel Townhead at ltownhead@quno.ch.

