

# ISSUE 3

## A gender-responsive approach to promoting and protecting the rights of children and families at all stages of migration

The [GCMGender] Guidance Note series, presented by the Expert Working Group<sup>1</sup> for addressing women's human rights in the Global Compact for Migration (GCM), identifies key challenges in migration governance whilst providing clear and concrete guidance on how to ensure that the human rights of all women and girls in migration are at the core of the GCM, through the development and implementation of gender-responsive migration policies in accordance with international human rights frameworks. Further guidance is elaborated in the Expert Working Group's recommendations for addressing women's human rights in the GCM: <http://www.unwomen.org/en/digital-library/publications/2017/3/addressing-womens-rights-in-global-compact-for-migration>

### KEY CHALLENGES

#### Human Rights

- Recognizing the diverse realities and identities of migrant women and girls, and the various forms of families that exist at all stages of migration.
- Recognizing that many migrant women, including those who are not mothers, travel with children and face particular barriers and challenges, including the separation of children from their mothers and caregivers, and the denial of the right to family life.
- Ensuring full access to sexual, reproductive and maternal health information and services for all women and girls in migration, noting that adolescent girls are at increased risk compared to adolescent boys of sexual and gender-based violence and face different consequences of unprotected sexual relations.

#### Birth Registration

- Ensuring the right of all girls and boys to a name and an identity through birth registration, as enshrined in the Universal Declaration of Human Rights, regardless of their migration status or that of their parents. This is distinct from the granting of legal status or citizenship by any State.
- Recognizing the central role of birth registration in recording the age of a child, to protect against child labour, child marriage, arrest, treatment as adults in justice systems, trafficking in persons and sexual exploitation. Birth registration also facilitates the traceability of children separated from their families.

#### Family Unity

- Ensuring the right of all girls and boys to family life, without distinction of any kind.
- Respecting family unity and preventing family separation, including at borders and in cases of single parents with children, by expanding safe and regular options for families to move together, facilitating prompt family reunification, and avoiding family detention as an alternative to family separation.
- Overcoming the practical barriers to family reunification that girls and boys and their families often face. These barriers include narrow definitions of the family that may not accommodate different social and cultural interpretations of the scope of families; inaccessibility of consular services; financial thresholds; and lack of legal aid and appeal possibilities, among others.
- Addressing the heightened risk of violence girls face, especially when they are unaccompanied or separated from their families, from sexual and gender-based violence, commercial sexual exploitation, and trafficking in persons.

## Detention

- Ending all child detention without delay. Detention contravenes the best interest of the child, constitutes a child rights violation and has a profound and negative impact on children's health and well-being. Girls in detention are at greater risk of being targeted by all forms of discrimination and violence, including gender-based violence and sexual abuse.
- Ending the detention of all migrant women, in particular pregnant and nursing women whose specific needs cannot be sufficiently met while in detention.
- Establishing non-custodial alternatives to detention of children and their families. The detention of a child based on their migration status or that of their parents is never in a child's best interests, even when the aim is to achieve family unity.

## Returns and the Principle of Non-refoulement

- Upholding the principle of non-refoulement, a cornerstone of international human rights law. States are prohibited by this principle from removing a person from their jurisdiction when that person would be at risk of irreparable harm upon return.
- Eradicating practices of refoulement, in particular of children, as it presents a substantiated risk to a child's life, survival and development as well as a deprivation of liberty.

## KEY ACTIONS

### Safeguard

- Recognize the right to family life for all children, women, and men, regardless of migration status. Family life must be safeguarded in national migration laws, policies and procedures, including by recognizing the various forms of families that exist and removing administrative or financial barriers to family reunification.
- Implement the OHCHR Recommended Principles and Guidelines on Human Rights at International Borders.

### Legislate

- Ensure that family unity is central to the expansion of safe and regular pathways for migration. Migrant workers at all skill levels, including women migrant workers, should be able to bring their immediate family members, without discrimination, recognizing the various forms of families that exist.
- Robust, well-documented, multi-disciplinary and impartial "Best Interest Determination Procedures" that are child-focused, gender-responsive, accessible and participatory should be formalized in laws, policies and practice, and should always be the primary consideration in decisions affecting migrant children.

### Promote Alternatives

- Develop national action plans in law, policies and practice with time-bound milestones to end immigration detention of children, and promote effective and inclusive community-based care arrangements and non-custodial solutions that respect girls' and boys' human rights.
- Seek alternatives to the return of children, including regularization, residence status and integration policies.
- Implement the United Nations Guidelines for the Alternative Care of Children.