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## Human Rights Council

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### Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

**Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development**

## **Rights of the child and family reunification**

### **Report of the United Nations High Commissioner for Human Rights\***

#### *Summary*

The present report is submitted pursuant to Human Rights Council resolution 45/30, in which the Council requested the United Nations High Commissioner for Human Rights to prepare a report on the rights of the child and family reunification. All children have the right to family life, yet millions worldwide are suffering preventable separation from their families and associated violations of their rights. In the present report, the High Commissioner recommends that States move to develop global, child rights-based guiding principles and a global strategy for family reunification.

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\* The present report was submitted after the deadline in order to reflect recent developments.

## I. Introduction

1. In resolution 45/30, the Human Rights Council requested the United Nations High Commissioner for Human Rights to prepare a thematic report on the rights of the child and family reunification, in close cooperation with all relevant stakeholders.
2. An advisory meeting was held in virtual format on 16 July 2021, through which a group of experts were consulted. Subsequently, a broad written consultation process was undertaken with all relevant stakeholders and submissions were received from States, United Nations entities, national human rights institutions and civil society.<sup>1</sup> In partnership with the non-governmental organization Child Rights Connect, a child-friendly consultation was also held to gather views from children who have experienced family separation.
3. The present report focuses primarily on the rights of children to be reunified with their families following separation from them, principally in cross-border situations, owing to migration, armed conflict and counter-terrorism measures. The situation of family separation affecting children in alternative care was addressed by the Committee on the Rights of the Child at its day of general discussion in 2021 and is not considered in the present report.<sup>2</sup>

### A. Overview

4. All children enjoy the right to family life under applicable international law, even as millions around the world are separated from their families as a result of economic, sociopolitical, environmental or other factors. While limited global data is available on the scale of this phenomenon, estimates indicate that alarming numbers of children are moving alone or being separated from their families within and across borders.<sup>3</sup>
5. In the context of migration, many children may begin their journeys unaccompanied, or are separated from their families while on the move or because of migration governance policies and procedures, including immigration detention and return processes. Other children particularly affected by family separation across borders are those living in contexts of armed conflict or subject to counter-terrorism measures.
6. Children who have been separated from their families may find themselves living alone or in the care of others. Many are deprived of their liberty for long periods. Children separated from their families are also at heightened risk of suffering violence, abuse, neglect, trafficking and exploitation, serious deprivation of their economic, social and cultural rights, and other rights violations detrimental to their lifelong physical and mental health and development.
7. Because they are children, they often lack appropriate support and clear pathways for seeking family reunification and may not have access to remedy or redress for the multiple rights violations they endure as a consequence of separation from family. Compounding the situation, a general lack of effective and accessible means to achieve family reunification may compel children to seek irregular and unsafe paths to reunification with their families, placing them at even greater risk.
8. States are under an obligation to respect, protect and fulfil the rights of all children affected by family separation, such as the right to family life, and to take positive measures to prevent separation and ensure that child-friendly, effective reunification procedures and rights-based solutions are in place, with children's best interests a primary consideration. However, serious gaps remain in the implementation of the relevant obligations under the Convention on the Rights of the Child and other international human rights treaties,

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<sup>1</sup> All submissions are available at <https://www.ohchr.org/EN/Issues/Children-OHCHR/Pages/report-child-rights-family-reunification.aspx>.

<sup>2</sup> See <https://www.ohchr.org/EN/HRBodies/CRC/Pages/Discussion2020.aspx>.

<sup>3</sup> For example, the United Nations Children's Fund (UNICEF) estimates that thousands of children are separated from their families each year due to crises. See <https://www.unicef.org/protection/family-separation-during-crisis>.

compounded by failures in international cooperation, with children bearing the brunt of those shortfalls.

9. A human rights approach requires that the implications of family separation for children's rights and the factors that drive the separation of children from their families are urgently addressed. In effect, children are bearing the grave consequences of the failure to implement their rights and until they can grow up in an environment in which their rights are fully respected, that situation will continue. The practice of unnecessarily detaining children further highlights the failure to use human rights to guide policies in pursuit of better, safer, more prosperous societies.

## **B. Voices of children who have been separated from their families**

10. Children between the ages of 5 and 17, living in 10 countries across different regions participated in workshop discussions or contributed to a written questionnaire during the preparation of the present report. They shared their experiences of being separated from family members for a range of reasons and circumstances.

11. Many shared sadness and anxiety about not being with their families. For example, a 13-year-old boy living in Rwanda described feeling "a void in my heart every time I think about [my parents]". A 16-year-old girl from Mexico shared her concerns about the risks she had faced while migrating: "I was very worried about getting lost on the way, that my sister and I would run out of food or get sick. I was afraid that someone would hurt us."

12. One 15-year-old girl from Burundi described traveling to Rwanda with her mother in pursuit of a better life. Her mother returned to Burundi, leaving her daughter behind in the host community, promising that she would return for her, but she never did. The girl was then abused and prevented from going to school. She explained that "there are times that I encounter challenges and wish my mother was around to help me deal with them, but then I remember she is not around, and I immediately feel pain".

13. Many children simply want to be with their families. A 5-year-old Afghan boy said: "I miss my father and my sister; they are in Greece, and I am alone here [in Switzerland] with my mother." A 15-year-old boy living in South Sudan was abducted at the age of 6 before being sold on to another man for nine years, after which he escaped. Currently living in a special protection unit waiting for his birth family to be traced, he asked that "parents and communities are supported to care for their children. I miss my family."

14. Children expressed concerns about the human rights violations they had experienced, about being denied their rights and needs, and about not being cared for when they were sick. They expressed fears about falling victim to crime or xenophobic attacks, or of being abandoned by their host families. A 13-year-old girl described how she had fled with her uncle from intense fighting in their home town in Somalia and crossed the border into Ethiopia. They lost contact with her immediate family members until she was reunified with her mother three years later. She described how being away from her parents was among the biggest worries she had ever had.

15. Some of the children consulted wondered why human rights law did not seem to apply to them. An 11-year-old Afghan girl refugee, living in Sweden asked: "Isn't there a law for children? Why doesn't it apply to me?" Others expressed frustration that their views had not been considered in decisions relating to their place of residence and family unity. An 8-year-old refugee girl asked: "Why should I have to leave Sweden? I was born here! I think I need to decide where to live, I'm actually 8 years old now!"

16. Some children asked that governments take action and cooperate to prevent family separation. A 17-year-old male from Mexico was grateful to have had the opportunity to share his views about the matter, saying that "this survey will serve a purpose, and that is positive".

## II. International legal framework

17. Protection of children's rights requires comprehensive compliance with the principles of equality before the law and non-discrimination, including that the notion of family in laws and policies recognizes the various forms of family that exist in practice, as well as a cultural diversity of approaches. In its general comment No. 14 (2013), the Committee on the Rights of the Child stated that the term "family" must be interpreted in a broad sense to include biological, adoptive or foster parents, or the members of the extended family or community, as provided for by local custom (para. 59). The Committee on Economic, Social and Cultural Rights has expressed similar views.<sup>4</sup>

18. At the national level, legal and policy frameworks for family reunification and related immigration procedures should recognize the diversity of families, including with respect to the recognition of certain forms of care,<sup>5</sup> the varying roles of parents, caretakers and (older) siblings, diverse sexual orientations or gender identities of parents and the recognition of families formed in contexts of movement or transit.<sup>6</sup>

19. Strengthened international cooperation and reviews of national policy frameworks are crucial to ensuring that reunification processes recognize the various forms of family, taking into account the best interests of the child.

### A. Right to family life

20. The family is the natural and fundamental group unit of society and requires the protection of State and society, as set forth in several international and regional human rights instruments.<sup>7</sup>

21. States have positive obligations to ensure children's effective enjoyment of their family life, free from arbitrary or unlawful interference.<sup>8</sup> Under the Convention on the Rights of the Child, the child's best interests must be the primary consideration in any decision related to the child's family and family environment.<sup>9</sup> Protection of the right to a family environment frequently requires that States not only refrain from actions which could result in family separation or other arbitrary interference in the right to family life, but also take positive measures to maintain the family unit, including the reunion of separated family members.<sup>10</sup> In complying with these obligations States should also give due consideration of the Guidelines for the Alternative Care of Children set out by the General Assembly in resolution 64/142 (annex).

22. The preamble of the Convention on the Rights of the Child notes that "the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members, and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community". It further recognizes that "the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding".

<sup>4</sup> Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991), para. 6, and general comment No. 5 (1994), para. 30.

<sup>5</sup> See, for example, *Y.B. and N.S. v. Belgium* (CRC/C/79/D/12/2017), para. 8.11.

<sup>6</sup> See International Covenant on Civil and Political Rights, art. 26.

<sup>7</sup> See, for example, Universal Declaration on Human Rights, art. 16 (3); International Covenant on Civil and Political Rights, arts. 17 and 23; Convention on the Rights of the Child, preamble and art. 16; and International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 44.

<sup>8</sup> See International Covenant on Civil and Political Rights art. 17 (2), and Convention on the Rights of the Child, art. 16 (2).

<sup>9</sup> Arts. 16 and 20 (1), and Committee on the Rights of the Child, general comment No. 14 (2013), paras. 58–70.

<sup>10</sup> Joint general comment No. 4 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 23 of the Committee on the Rights of the Child (2017), para. 27.

23. The Convention on the Rights of the Child establishes that children shall not be separated from their parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that separation is necessary for the best interests of the child, for example in cases involving abuse or neglect of the child by the parents (art. 9 (1)). The Convention further states that the child separated from one or both parents has the right to maintain personal relations and direct contact with both parents on a regular basis, unless it is contrary to the child's best interests (art. 9 (3)).

24. In addition, under the Convention, States parties undertake to respect the right of children to preserve their identity, including nationality, name and family relations, as recognized by law without unlawful interference (art. 8). No child shall be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence (art. 16).

25. The non-discrimination principle enshrined in the Convention on the Rights of the Child requires States parties to respect and ensure the rights set forth in the Convention for all children on their territory and subject to their jurisdiction, whether they are migrants in regular or irregular situations, asylum seekers, refugees, stateless persons and/or victims of trafficking, irrespective of the nationality, migration status, statelessness, or other status of the child or the parents or legal guardians.<sup>11</sup> In all actions concerning children, States should be guided by the overarching principle of non-discrimination.<sup>12</sup>

26. In accordance with article 12 of the Convention on the Rights of the Child, decision-making processes related to family separation or reunification must take full account of the right of children to express their views.<sup>13</sup>

## B. Cross-border contexts

27. States must respect and ensure children's rights within their territories or those that are subject to their jurisdiction. For example, the enjoyment of the rights stipulated in the Convention on the Rights of the Child are not limited to children who are nationals of a State party. The Convention applies to each child within the State's jurisdictions, including a jurisdiction arising from a State exercising effective control outside its borders. The obligations apply within the borders of the State, including with respect to those children who come under its jurisdiction while attempting to enter its territory. States parties must respect and ensure the rights set forth in the Convention, without discrimination, regardless of children's migration status or that of their parents.<sup>14</sup>

28. In their joint general comments on children in the context of international migration the Committee on the Rights of the Child and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families stress that States must facilitate family reunification procedures and complete them in an expeditious manner, in line with the best interests of the child. Moreover, those interests must be assessed and taken as the primary consideration in all migration-related procedures and decisions concerning children.<sup>15</sup>

29. As children should not be separated from their parents against their will, unless in exceptional circumstances, the Convention on the Rights of the Child requires States parties to deal with applications by children or their parents to enter or leave a State party for the purpose of family reunification "in a positive, humane and expeditious manner" (art. 10).

<sup>11</sup> Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 22 (2017) of the Committee on the Rights of the Child, para. 9.

<sup>12</sup> *Ibid.*, para. 19.

<sup>13</sup> *Ibid.*, paras 34–39, and Committee on the Rights of the Child, general comment No. 6 (2005), paras. 3, 81 and 84.

<sup>14</sup> Joint general comment No. 3 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 23 of the Committee on the Rights of the Child (2017), paras. 12 and 19, and joint general comment No. 4 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 23 of the Committee on the Rights of the Child (2017), para. 53.

<sup>15</sup> Convention on the Rights of the Child, art. 3.

According to the Committee on the Rights of the Child, when children's relations with their parents and/or sibling(s) are interrupted by migration, preservation of the family unit should be taken into account when assessing the best interests of the child in decisions on family reunification.<sup>16</sup> Article 22 (2) of the Convention sets out specific obligations to protect and assist children who are seeking refugee status or considered refugees, and trace their parents or other members of their family in order to obtain the information necessary for family reunification.

### **C. Deprivation of liberty**

30. According to the Committee on the Rights of the Child and the Committee on Migrant Workers, the detention of any child for reasons related to the migration status of their parents or legal or other guardians is a violation of child rights and is never in a child's best interest.<sup>17</sup>

31. When the child's best interests require keeping the family together, the imperative requirement not to deprive the child of liberty extends to the child's parents and requires the authorities to provide alternative measures to immigration detention for the entire family.<sup>18</sup> When parents or guardians are detained, maintaining family unity does not justify the immigration detention of children.<sup>19</sup>

### **D. Recruitment and use of children by armed groups or armed forces**

32. Children living in areas of armed conflict are at risk of violations and abuse of their rights, including but not limited to recruitment and use by parties to the conflict. Such risks are exacerbated when children recruited and used by armed groups or armed forces are separated from their parents or caregivers.

33. According to the Committee on the Rights of the Child, State obligations deriving from article 38 of the Convention on the Rights of the Child, read in conjunction with articles 3 and 4 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, entail extraterritorial effects and States must refrain from returning a child in any manner whatsoever to the borders of a State where there is a real risk of underage recruitment or of direct or indirect participation in hostilities, either as a combatant or through carrying out other military duties. A State must take all necessary measures to prevent the recruitment or use of children by any party to a conflict. That also applies to former child soldiers who have defected from their units and who require protection against re-recruitment.<sup>20</sup>

34. Under article 4 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, armed groups that are distinct from the armed forces of a State, should not, under any circumstances, recruit or use in hostilities persons under the age of 18. States parties shall take all feasible measures to prevent such recruitment and use.

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<sup>16</sup> Joint general comment No. 4 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 23 of the Committee on the Rights of the Child (2017), para. 32.

<sup>17</sup> *Ibid.*, paras. 5, 9 and 11, and [A/74/136](#), para. 91.

<sup>18</sup> Joint general comment No. 4 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 23 of the Committee on the Rights of the Child (2017), para. 11, and [A/HRC/28/68](#), para. 80.

<sup>19</sup> [A/HRC/28/68](#), para. 80.

<sup>20</sup> General comment No. 5 (2006), paras. 28 and 54.

### III. Children separated from their families in the context of migration

#### A. Causes of family separation

35. More than 300,000 children are detained for migration-related reasons annually and 77 countries are known to still detain children for the same reasons.<sup>21</sup>

36. Millions of children are left behind in a country of origin, either alone or in the care of others by one or both parents who migrate. In such situations, children have heightened vulnerabilities and may themselves migrate irregularly and unsafely, seeking to be reunited with their families.

37. Many children are forced to move, whether unaccompanied or with their families, to escape persecution, armed conflict and violence. Others are compelled to leave their countries of origin because of poverty and a lack of access to economic and social rights, including adequate food, education, health care and decent work. Many are also on the move as a consequence of the adverse effects of climate change, natural disasters or environmental degradation, while many are trafficked across borders for forced labour or sexual exploitation, among other purposes.

38. Children are also being separated from their families as a result of migration policies and procedures,<sup>22</sup> including during disembarkation and border controls, at reception or registration, or in the course of immigration detention and return processes.<sup>23</sup> In many cases, lengthy family reunification procedures prolong family separations over extended periods of time.

39. In decisions concerning migrant children, policy frameworks often prioritize immigration control over the rights and best interests of children, resulting in a risk of arbitrary or unlawful interference with their privacy and family life.<sup>24</sup>

40. Migrant families are also sometimes separated in situations in which some members of the family are allowed to stay in a destination country, while others are required to leave. According to the Committee on the Rights of the Child and the Committee on Migrant Workers, “separating a family member from a State party’s territory, or otherwise refusing to allow a family member to enter or remain in the territory may amount to an arbitrary or unlawful interference with family life”.<sup>25</sup> The two Committees further note that the rupture of the family unit by the expulsion of one or both parents, based on a breach of immigration laws related to entry or stay, is disproportionate, as the sacrifice inherent in the restriction on family life and the impact on the life and development of the child are not outweighed by the advantages obtained by forcing the parent to leave the territory because of an immigration-related offence.<sup>26</sup>

#### B. Human rights implications for children affected by family separation in the context of migration

41. Children separated from their families are at risk of violence, trafficking, abuse and exploitation; exclusion from economic and social rights and essential services; loss of their legal identity; irregular residence status; and exposure to child labour and other harmful

<sup>21</sup> A/75/183, para. 12.

<sup>22</sup> Ibid., paras. 24 and 26.

<sup>23</sup> OHCHR and Global Migration Group, *Principles and Guidelines, Supported by Practical Guidance, on the Human Rights Protection of Migrants in Vulnerable Situations* (Geneva, February 2017), principles 9, guideline 6, and 10, guideline 1.

<sup>24</sup> Joint general comment No. 4 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 23 of the Committee on the Rights of the Child (2017), para. 28.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid., para. 29.

practices. Specific circumstances relating to a child's age, migration or residence status, disability, religion, sexual orientation, or gender identity or other status may also increase that vulnerability. That is also the case of unaccompanied children, or those lacking legal identity documents. A child's vulnerability increases the longer they are separated from their families.<sup>27</sup>

42. According to the Special Rapporteur on the human rights of migrants, immigration detention, even in the most amenable conditions and for a short duration, can have a profound and negative impact on migrant children and may constitute a form of cruel, inhuman or degrading treatment. The detention of children in the context of international migration often leads to associated violations of their rights to physical and mental integrity, health care, education and family life.<sup>28</sup> Moreover, children who are detained for extended periods are more likely to experience fear, isolation, psychological deterioration, disempowerment and depression. For children fleeing other human rights abuses or persecution, detention is often perceived as part of a continuum of violence in their lives.<sup>29</sup>

### C. Preventing separation and supporting family reunification

43. A preventive approach, with corresponding policies at all levels, is needed to curb the family separation that is occurring across many countries and help to ensure that migrants can be regularly accompanied by their families.

44. Migration and border governance policies and procedures must be consistent with the right of the child to family life.

45. Urgent steps must be taken to amend restrictive national migration laws, policies and practices that arbitrarily separate children from their families, given that the best interests of the child must be the primary consideration. Operational guidelines and procedures are needed to ensure that migrant families, regardless of their status, are not separated in the context of interception, rescue, disembarkation, immediate assistance, reception and registration in another country, border controls and immigration detention.

46. National laws and policies in relation to family reunification are rarely child-sensitive and are often difficult to access in practice. Migration status is itself a significant barrier to family reunification.<sup>30</sup> In many countries, low-skilled migrant workers, migrants with temporary status and those in irregular situations are not eligible for family reunification. In addition, migrants, including unaccompanied and separated children, often lack the information and support they need to navigate onerous requirements, eligibility criteria and deadlines. They face lengthy procedures and lack procedural safeguards.<sup>31</sup> Such obstacles need to be identified and removed in order to facilitate family reunification in a humane and expeditious manner.<sup>32</sup>

47. This requires that decisions are taken on a case-by-case basis, considering the best interests of the child in robust assessment and determination processes, and that children's views are listened to and taken into account. States should give priority to applications for family reunification involving children. When a country of destination refuses family reunification to the child or their 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.<sup>33</sup>

<sup>27</sup> See <https://www.unicef.org/protection/family-separation-during-crisis>.

<sup>28</sup> A/75/183, para. 25.

<sup>29</sup> Ibid., para. 26.

<sup>30</sup> See OHCHR and Global Migration Group, *Principles and Guidelines, Supported by Practical Guidance, on the Human Rights Protection of Migrants in Vulnerable Situations*.

<sup>31</sup> United Nations Network on Migration, "Regular pathways for admission and stay for migrants in situations of vulnerability", para. 11 (July 2021).

<sup>32</sup> Joint general comment No. 4 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 23 of the Committee on the Rights of the Child (2017), para. 32.

<sup>33</sup> Ibid., para. 36.



48. General concerns about migration control cannot override best interest considerations and the assessment of a child's best interest should be conducted by appropriately trained officials on the basis of child rights-based benchmarks.<sup>34</sup>

49. Ensuring an equal standard of protection for every child, independent of their age, is fundamental to implementing the principle of non-discrimination. In that respect, measures to address the stigmatization of unaccompanied or separated migrant children are particularly important.

50. States must take adequate measures to guarantee the child's right to be heard in contexts of international migration by providing children with relevant information in their own language, in a timely, child-sensitive and age-appropriate manner, in order to make their voices heard and given due weight in the proceedings.<sup>35</sup> It is essential that the assistance provided at borders facilitates family reunification for those separated.

51. Systematic identification of minors is an essential step towards assuring the rights of the child, but this is often lacking upon their arrival in destination countries and at border points, as limited identification practices are often in place.<sup>36</sup> According to the Committee on the Rights of the Child and the Committee on Migrant Workers, States should ensure that children are identified promptly in border controls and other migration control procedures, and that anyone claiming to be a child is treated as such, promptly referred to child protection authorities and other relevant services, and appointed a guardian if unaccompanied or separated.<sup>37</sup> Mechanisms for the identification and referral of unaccompanied and separated children must be put in place by trained, qualified and competent authorities, including child welfare authorities, in line with a multidisciplinary, child-sensitive, gender-responsive approach.

52. The Committee on the Rights of the Child and the Committee on Migrant Workers have affirmed that any kind of child immigration detention should be forbidden by law and the prohibition fully implemented in practice.<sup>38</sup> Family and community-based solutions that fulfil the best interests of the child, along with their rights to liberty and family life, need to be adopted and carried out by competent child protection actors, while the best interests are assessed and the migration status resolved.<sup>39</sup>

53. States should enhance the availability and accessibility of safe and regular pathways, procedures and rights-based solutions for family reunification, and regular pathways for entry and stay for families to migrate together, including through the implementation of the Global Compact for Safe, Orderly and Regular Migration and the guidance of the United Nations Network on Migration.<sup>40</sup>

54. Labour migration schemes rarely include an option to bring family members, although the reality is that even temporary or circular labour schemes often entail medium- to long-term, and even permanent, migration to the host society.<sup>41</sup> Labour migration policies can support family reunification by prioritizing family unity, including by allowing family members to move with migrant workers under visa conditions that enable them to enjoy their

<sup>34</sup> Ibid., paras. 27–33.

<sup>35</sup> Joint general comment No. 3 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 22 of the Committee on the Rights of the Child (2017), para. 35.

<sup>36</sup> OHCHR and Global Compact for Migration, *Principles and Guidelines, Supported by Practical Guidance, on the Human Rights Protection of Migrants in Vulnerable Situations*, principle 10.

<sup>37</sup> Joint general comment No. 3 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 22 of the Committee on the Rights of the Child (2017), para. 32 (h).

<sup>38</sup> Joint general comment No. 4 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 23 of the Committee on the Rights of the Child (2017), para. 5.

<sup>39</sup> Ibid., paras. 11–13, and [A/74/136](#), para. 124.

<sup>40</sup> United Nations Network on Migration, "Regular pathways for admission and stay for migrants in situations of vulnerability".

<sup>41</sup> UNICEF working paper, "Family unity in the context of migration" (2018).

human rights. The right to family life should be explicitly included in all such agreements, including for those working in low-wage sectors.

55. States should assess whether the return of children or their parents would constitute arbitrary interference with the right to family and private life, given the best interests of the child as primary consideration. The Committee on the Rights of the Child and the Committee on Migrant Workers recommend that States provide avenues for status regularization for migrants in an irregular situation, who are residing with their children, particularly when a child has been born or has lived in the country of destination for an extended period of time, or when return to the parent's country of origin would be against the child's best interests.<sup>42</sup> Safe returns should be ensured, with full respect for children's human rights.

56. Permanent and rights-based regularization mechanisms need to be integrated into national frameworks and should take into account, among other factors, the enduring emotional, personal, economic and social ties that children and their families may have developed to the destination country.<sup>43</sup>

57. Strengthened cooperation is needed among States involved in the origin, transit and destination of migrant children, with better information-sharing and coordination on family reunification procedures for children on the move across borders.<sup>44</sup>

58. States must make every effort in domestic, bilateral and regional processes to trace and reunite unaccompanied or separated children with their families, in accordance with the best interests of the child and with awareness that reunification in the country of origin may not always be in their best interests.<sup>45</sup> Family reunification must never be used to justify expedited returns that lack due process and procedural safeguards, and due regard needs to be paid to the confidentiality that may be required for children and families who are seeking asylum in situations of persecution.<sup>46</sup>

## IV. Children separated from their families in situations of armed conflict

### A. Causes of family separation

59. Situations of armed conflict are a major driver of family separation. In such contexts, large numbers of children are trafficked, abducted and recruited by armed forces and armed groups in their countries of origin, transit or return; girls are forced to marry members of the parties to the conflict; abandoned or rejected children are born out of sexual violence; and children are detained due to their own actual or alleged association with armed groups or for their family's association with such groups.<sup>47</sup> Other children are separated, or orphaned, because of the illness or death of a parent or family member. Children born of sexual violence in conflict are often abandoned, orphaned, rejected by or separated from their caregivers and

<sup>42</sup> Joint general comment No. 4 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 23 of the Committee on the Rights of the Child (2017), para. 29.

<sup>43</sup> United Nations Network on Migration, "Regular pathways for admission and stay for migrants in situations of vulnerability", para. 20.

<sup>44</sup> Joint general comment No. 4 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 23 of the Committee on the Rights of the Child (2017), paras. 64–65, and joint general comment No. 3 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 22 of the Committee on the Rights of the Child (2017), paras. 48–51.

<sup>45</sup> See Committee on the Rights of the Child, general comment No. 6 (2005) and joint general comment No. 4 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 23 of the Committee on the Rights of the Child (2017), para. 65.

<sup>46</sup> OHCHR and Global Migration Group, *Principles and Guidelines, Supported by Practical Guidance, on the Human Rights Protection of Migrants in Vulnerable Situations*, principle 9.

<sup>47</sup> See Security Council resolution 2331 (2016), [A/71/303](#) and Committee on the Rights of the Child, general comment No. 24 (2019).

communities for multiple reasons, including the trauma or stigmatization resulting from sexual violence.

60. In 2020, more than 3,200 children were detained for their or their family members' actual or alleged association with armed groups.<sup>48</sup> Children must not be detained solely for such reasons. Such detention is never in a child's best interests and alternatives to detention must be prioritized whenever possible.

61. Increasing numbers of children are unaccompanied or separated from their families due to the serious challenges that fragile humanitarian situations pose to transit and destination countries. Child protection systems in the context of conflict tend to be absent or inadequate, child protection services may be poorly coordinated and refugee camps lack adequate capacity to host children in specialized and separate facilities.<sup>49</sup>

62. Children living in conflict situations are particularly exposed to risks, such as recruitment and use by parties to conflict, rape and other forms of sexual violence, killing and maiming and abduction. Children are also frequently recruited, abducted and trafficked across borders, making family tracing and reunification even more challenging.

63. Furthermore, in situations of armed conflict children are often subject to smuggling or trafficking, or may go missing while trying to reach relatives in another country.<sup>50</sup> The aftermath of humanitarian disasters leads to separated children becoming particularly vulnerable to being sold or illegally adopted. The situation is exacerbated by the breakdown of institutions and the lack of border controls in fragile settings.

## **B. Human rights implications for children affected by family separation in situations of armed conflict**

64. Unaccompanied and separated children in situations of armed conflict face a great risk of violence, exploitation and abuse due to losing the care and protection of their family. Children who have been detained by parties to a conflict for their actual or alleged association with armed groups are at higher risk of being subjected to violence, including physical or sexual violence or torture, and to facing inhumane detention conditions and even being re-recruited. Children in such situations are also at heightened risk of further violations of their rights, including food insecurity and malnutrition.<sup>51</sup>

65. Children's rights to identity and nationality are often violated in such contexts. Civil registration procedures, practices and records are often directly affected by conflict, placing children at risk of statelessness. Specific groups, such as children born out of sexual or gender-based violence, refugee children and children associated with non-State armed groups, face particular challenges to securing their identity through birth registration and nationality. Denial of equal nationality rights for women, which prevents them from conferring their nationality on their children and spouses, greatly restricts the access of children to their nationality or causes family separation.<sup>52</sup>

66. Regional initiatives to address statelessness and strengthen civil registration and vital statistics systems have helped to promote good practices with respect to birth registration at the national level.<sup>53</sup>

67. Political and other barriers often prevent children from effectively accessing remedy, consular or legal assistance and best interest procedures in situations of armed conflict. As a

<sup>48</sup> [A/75/873-S/2021/437](#), para. 4.

<sup>49</sup> [A/72/164](#), para. 53.

<sup>50</sup> *Ibid.*, para. 31.

<sup>51</sup> International Committee of the Red Cross, *Inter-agency Guiding Principles on Unaccompanied and Separated Children* (January 2004).

<sup>52</sup> See submission from the Office of the Special Representative of the Secretary-General for Children in Armed Conflict.

<sup>53</sup> Office of the United Nations High Commissioner for Refugees, "Ending statelessness within 10 years", p. 5.

result, their rights are further denied, particularly in cases concerning younger children, who cannot claim their rights independently.

68. In situations of armed conflict, the barriers that generally affect children crossing borders for migration or other reasons are compounded. In particular, the children affected face time-consuming and inefficient family reunification and resettlement procedures, poor living conditions in camps and in transit, and the risk of being placed in detention. These factors contribute to children's avoidance of the child protection system in transit and destination countries. Further legal, policy and procedural barriers prevent family reunification in the context of armed conflict and humanitarian crises, for example in cases where refugees can only apply for family reunification if they have residency status, which may take years to achieve.<sup>54</sup>

### C. Preventing separation and supporting family reunification

69. States should trace the parents or other members of a child's family in order to obtain the information necessary for family reunification; that should include refugee children and children affected by armed conflict. In situations of armed conflict, standard operating procedures are required for the rapid handover of children, actually or allegedly associated with armed groups, to relevant civilian child protection actors in furtherance of family reunification.<sup>55</sup>

70. Child reintegration programmes are more effective when framed within broader formal and informal child protection interventions that prioritize prevention and comprehensive response services, including adequate investment in child protection and in strengthening education and health-care systems. It is crucial that such programmes emphasize the aspects of social reintegration that support and engage parents, families and communities, and that promote psychosocial recovery, address stigma and encourage social cohesion.<sup>56</sup>

71. If it is not feasible and in the best interests of the child to be reunited with their family members, for example when the family cannot be located or is not able to take sufficient care of them, an alternative caregiver or guardian should be assessed and appointed to support the child's progress towards a durable alternative care solution.

72. National legislation, policies, and practices on countering violence by armed groups must treat children as victims, irrespective of any association with such groups, and provide solutions that uphold the rights of the child, giving due consideration to their best interests.

73. To better guarantee the right of all refugees to family reunification, States should consider ratifying the Convention relating to the Status of Refugees and its 1967 Protocol, as well as the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, and should consider endorsing the Principles and Guidelines on Children Associated with Armed Forces or Armed Groups and the Paris Commitments to protect children unlawfully recruited or used by armed forces or armed groups.

74. In line with international law, States must explicitly prohibit and criminalize the recruitment and use of children in hostilities by armed forces and armed groups.

<sup>54</sup> See submission from the Office of the Special Representative of the Secretary-General for Children in Armed Conflict.

<sup>55</sup> See Convention on the Rights of the Child, art. 22, Committee on the Rights of the Child, general comment No. 24 (2019), para. 100, and Security Council resolution 2427 (2018), para. 19.

<sup>56</sup> Global Coalition for Reintegration of Child Soldiers, "Gaps and needs for successful reintegration of children associated with armed groups or armed forces" (2020).

## V. Children separated from their families in the contexts of terrorism and countering terrorism

### A. Causes of family separation

75. Certain counter-terrorism policies provide for significant flexibility in the measures that can be taken against children exploited by terrorist groups,<sup>57</sup> without due consideration being given to the best interest of the children, such as, for instance, the worrying trend of treating children as terrorist suspects rather than primarily as victims of terrorism. Also of concern is the prosecution of children as adults for terrorism-related offences rather than applying juvenile justice standards in accordance with international human rights law.<sup>58</sup>

76. Individuals may also be deprived of their nationality as a counter-terrorism measure, including on grounds of having family ties to individuals suspected of having fought with groups designated by the Security Council as terrorist groups. Children affected are at risk of being made stateless, sometimes without being afforded due process guarantees, in contravention of international law. They are also at particular risk of forcible recruitment by terrorist and other armed groups.<sup>59</sup>

77. Family separation can occur, for example, when States deprive adults, including mothers, of their nationality while they are present in a conflict zone outside their country of origin for their alleged association with or membership of a group designated by the Security Council as a terrorist group. That has been the case with respect to third country nationals held in areas controlled by de facto authorities. Some children of such individuals are repatriated alone on a case-by-case basis to their countries of origin. As a result, children of the same family may no longer share the same nationality as their parents, siblings and other family members, and may be permanently separated from their families.<sup>60</sup> Moreover, depriving children or their parents of their nationality can in practice void any claims that they have on their country of origin to repatriate or otherwise assist them, causing further long-term or permanent family separations.<sup>61</sup>

78. Other children are separated from their mothers and held in detention centres for counter-terrorism purposes on what the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has described as spurious grounds. That includes boys as young as 12, who are separated from their mothers and detained for their presumed association with groups designated by the Security Council as terrorist groups, or even for unspecified reasons.

79. Inconsistent policies exist for the return of children who have been forcibly recruited by Islamic State in Iraq and the Levant (ISIL) and other groups designated by the Security Council as terrorist groups,<sup>62</sup> and background checks on family members can further delay the processing of family reunification cases due to increasingly strict criteria being applied over a protracted period of time. Children are sometimes separated from their families on counter-terrorism grounds for protracted, open-ended periods.

<sup>57</sup> The term “terrorist group” is used in the present report in accordance with Human Rights Council resolutions 37/27 and 45/11 and does not represent an acknowledgement or recognition on the part of OHCHR of any designation of a group as terrorist by a State or a regional or international organization.

<sup>58</sup> [A/76/273](#), para. 16.

<sup>59</sup> [A/HRC/40/28](#), para. 34.

<sup>60</sup> See “Position of the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on the human rights of adolescents/juveniles being detained in North-East Syria” (May 2021).

<sup>61</sup> *Ibid.* See also [A/74/270](#), para. 57; [A/76/273](#), paras. 39–43; [A/HRC/40/28](#), para. 66; and [A/HRC/45/27](#), para. 37.

<sup>62</sup> Child Justice Advocacy Group, “Bringing children home: a children’s rights approach to returning from ISIL” (2020).

## **B. Human rights implications for children affected by family separation in the contexts of terrorism and counter-terrorism**

80. Some counter-terrorism measures resulting in the separation of children from their families constitute an arbitrary interference in children's right to privacy and a family life and lead to an array of further rights violations. The Special Rapporteur on terrorism has noted patterns of boy children being forcibly separated from their mothers, deemed no longer children by the detaining authorities, based on an arbitrary set of assumptions that their move to teenage years justifies the deprivation of family support and the positionality of the child within their family structure. The Special Rapporteur on terrorism has also noted that the harm of separation for a child creates long-term and often irreparable damage, limiting their psychosocial development and depriving them of nurture and connection, and that it constitutes a breach of their right to protection as a child and a fundamental infringement of the right to family life.<sup>63</sup> Such separation also puts such children at risk of violence and abuse, and seriously affects the enjoyment of their economic, social and cultural rights. Children accused or suspected of being associated with groups designated by the Security Council as terrorist groups and prevented from returning to their country of origin, risk having to subsist "in a situation of legal limbo with no meaningful access to the 'right to have rights'"<sup>64</sup> and facing arbitrary detention and family separation.

81. As a result of their exploitation, children already victimized by groups designated by the Security Council as terrorist groups experience considerable stigma and discrimination, including in public discourse and policy discussions, heightening further their risk of exploitation, abuse and exclusion. In that context, punitive approaches adopted by some States that lead to the separation of children from their parents and siblings, with little or no consideration of their rights, result in lasting consequences for the child in the form of negative impacts on their opportunities for rehabilitation and social reintegration, which in turn may have serious consequences for their lifelong development and for broader society.

## **C. Preventing separation and supporting family reunification**

82. States should adopt preventive interventions to tackle the social factors and conditions conducive to the rise of terrorism and violent extremism, including measures to protect children against exploitation by terrorist groups. Further research is needed on the impacts of terrorism on children and the drivers of terrorist exploitation of children. Counter-terrorism policies and programmes should be grounded in the available empirical evidence, rather than untested theories, such as the narrative of radicalization.<sup>65</sup> Furthermore, in line with their international obligations, States should explicitly prohibit and criminalize the recruitment and use of children in hostilities by non-State armed groups, including terrorist groups.

83. All children who have been exploited by terrorist groups should be recognized primarily as victims of human rights abuses, including acts of terrorism, their rights as children prioritized and primary consideration given to their best interests. Children should never be deprived of their identity or nationality, even if they have been exploited by a designated terrorist group, or come from a family with presumed associations with such groups.

84. The treatment and handling of children should be provided through child protection, child welfare and social service providers, on the basis of child justice laws and policies. Children who have been exploited by terrorist groups need access to long-term gender- and age-appropriate rehabilitation and reintegration programmes and should not be placed in detention.<sup>66</sup>

<sup>63</sup> "Position of the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on the human rights of adolescents/juveniles being detained in North-East Syria", p. 9.

<sup>64</sup> *Ibid.*, p. 11.

<sup>65</sup> *A/HRC/40/28*, para. 68.

<sup>66</sup> *Ibid.*, para. 54.

85. Children formerly exploited by terrorist groups who are detained must have access to the necessary juvenile justice services, rehabilitative health care and psychosocial support, and reintegration programmes, both in detention and upon release.<sup>67</sup> Further, measures to decrease stigma and discrimination against children who have been exploited by extremist groups are essential to their rehabilitation and reintegration. States must also ensure access to justice for children instrumentalized by terrorist groups and must facilitate the voluntary repatriation of their nationals without delay, in compliance with the principle of non-refoulement, prioritizing and maintaining family unity in accordance with the best interests of the child.

## VI. Conclusions

86. Children have the right to grow up in a family environment, in an atmosphere of happiness, love and understanding. Family life is the foundation of a child's nurturing, protection and lifelong development. The present status quo in which a patchwork of approaches and priorities are applied to family reunification is failing children, perpetuating a global crisis affecting the multitude of children worldwide who have been separated from their families.

87. At the advisory meeting, held on 16 July 2021, at which experts were consulted on priorities for advancing the rights of children separated from their families, participants identified the need for child rights principles to help guide decisions and policies affecting children. In the present report, the High Commissioner has delineated a range of key principles in that regard:

(a) Children must be treated as children in all circumstances and guaranteed their rights under international human rights law, including the right to be with their families unless it is not in their best interests. Legislation, policies and practices countering violence by armed groups must treat children first and foremost as victims, irrespective of their exploitation by such groups;

(b) Prevention is fundamental to protecting the rights of children facing family separation. States must refrain from actions that result in arbitrary family separation or other interference in the right to family life and must also take positive action to protect family unity, including by addressing the factors that trigger migration;

(c) The term "family" should be interpreted and applied in a broad sense, as stated by the Committee on the Rights of the Child, to include biological, adoptive or foster parents, or, where applicable, members of the extended family or community, as provided for by local custom. Any interpretation should fully respect the principle of equality and non-discrimination, including the equal treatment of women, and give primary consideration to the best interests of the child;

(d) All children have the right to a legal identity, including a name and nationality. All children must be registered immediately at birth and provided with access to functioning civil registration systems, a legal identity and a nationality;

(e) Security or other related policies must fully comply with international human rights law, including the rights of the child. States should ensure that such policies and their implementation do not constitute an arbitrary interference in the right of children to privacy and a family life;

(f) The best interests of the child must be taken as the primary consideration in all actions affecting children who have been separated from their families and all decisions taken relating to family reunification. That applies to all decisions and procedures concerning a child's entry, residence or return, their placement or care and the detention or expulsion of a parent;

(g) The right to grow up in a family environment must be respected, protected and fulfilled for every child without discrimination on the grounds of their and their parents' or

<sup>67</sup> See Committee on the Rights of the Child, general comment No. 6 (2005), paras. 56–57.

legal guardians' age, gender, nationality, migration status, exploitation by armed groups, disability status, or any other grounds;

(h) The need to keep the family together is not a valid justification for the detention of children. The detention of any child for reasons related to their parents' or their legal guardians' migration status is a violation of child rights and is never in a child's best interest;

(i) All children have the right to an equal standard of protection. Appropriately trained personnel from the authorities responsible for children's rights, protection and welfare should be involved in decisions and processes affecting children's rights, in particular the determination of their best interests;

(j) Children have the right to be heard and must be provided with relevant information in their own language, in a timely, child-sensitive and age-appropriate manner in order to make their voice heard and given due weight in proceedings.

## **VII. Recommendations**

88. States should address all family reunification matters involving children in accordance with the rights of the child and in a positive, humane and expeditious manner. All children everywhere are equal in dignity and in rights that cannot be overlooked, limited or negated because of their specific situation, including in the contexts of migration, armed conflict and counter-terrorism.

89. The policies and practices of States should take into account the particular vulnerability of children separated from their families during or as a result of their journeys across borders, who are also victims of human rights violations due to armed conflict, to actions in the context of terrorism and counter-terrorism or to severe deprivation of their economic, social and cultural rights. As a consequence of family separation, such children can face multiple further violations of their rights, notably through violence, abuse, exploitation, deprivation of liberty and neglect.

90. States should urgently tackle the ongoing gaps and shortfalls in international cooperation and national laws, policies and practices, which are exacerbating the situation of vulnerability for children separated from their families, and are inconsistent with international human rights law, including the rights of the child.

91. States should cooperate to develop and implement global, gender-responsive child rights-based guiding principles on family reunification.

92. States should further develop a global strategy for family reunification, prioritizing enhanced international cooperation and capacity-building to prevent the separation of children from their families in the first place and to expedite the reunification of children who have already been separated. The child rights principles outlined above provide key guardrails for policy and practice in this regard.

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