

International Detention Coalition

Human rights for detained refugees,
asylum seekers and migrants

Zero Drafts of the Global Compacts on Migration and Refugees *Analysis by the International Detention Coalition*

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Envisioning a world without unnecessary immigration detention

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ABOUT THE IDC

The International Detention Coalition (IDC) is a unique global network of over 300 non-governmental organisations, faith-based groups, academics and practitioners in more than 77 countries that advocate for and provide direct services to refugees, asylum-seekers and migrants in administrative detention. We are the only international organisation focused explicitly on immigration detention and alternatives to detention. With an international Secretariat based in Melbourne, Australia, the IDC works globally through Regional Coordinators in Africa, the Americas, Asia-Pacific, Europe, and the Middle East & North Africa (MENA).

SUMMARY

The Zero drafts of two new global compacts – one on [migrants](#) and one on [refugees](#) – are now available. These compacts turn the political commitments of the New York Declaration, adopted unanimously by all 193 UN Member States during the High-Level Summit to address large movements of refugees and migrants in September 2016, into a set of actionable commitments for State implementation.

While commitments remain weak in both compacts for people affected by immigration detention, there are significant opportunities for IDC and its members to advocate for and support those commitments that promote humane and effective responses to large movements of migrants and refugees.

Notably, through the New York Declaration, Member States have already committed to pursue alternatives to immigration detention and to work towards ending child immigration detention. During the current drafting phase of the global compacts, IDC will be working with partners to strengthen language and commitments in both compacts to ensure these principles are transposed into action. A key strategy for the IDC has been to develop 2 roadmaps that outline milestones for States to achieve in the coming years: one for ensuring no child is detained and one for ensuring alternatives to detention are implemented.

Here, the IDC analyses the opportunities and challenges presented by the Zero Drafts for expanding alternatives to immigration detention and for upholding the normative standard that children should never be detained. The analysis of the Zero Draft of each compact below includes key messages for you to use in your advocacy work ahead.

THE MIGRATION COMPACT

The Zero Draft of the Global Compact for Safe, Orderly and Regular Migration (the Global Compact on Migration or GCM) was released on February 5, 2018 after a series of informal thematic sessions, regional and stakeholder consultations, and a stocktaking meeting.

The document is entering into intergovernmental negotiations – which will involve six negotiation rounds to take place at UN Headquarters in New York co-facilitated by Switzerland and Mexico. Between February and July 2018, the GCM Zero Draft will be discussed and redrafted, and is expected to be formalized in December 2018.

Overall, the Zero Draft is a wide-ranging and ambitious document although the language is broad and does not commit to many concrete outcomes.

As it enters in the negotiation phase, the Zero Draft sets up a cooperative framework built around 22 broad objectives that are to be fulfilled by a set of actionable commitments to operationalize and implement each objective and to outline the process for follow-up and review.

Alternatives to Detention in the Compact on Migration

Objective 13 urges States to use migration detention only as a last resort and work towards alternatives sets the agenda for alternatives to detention. The opening sentence states:

We commit to take a human rights-based approach to any detention of migrants, using detention as a last resort only and working to create alternatives.

It then identifies 7 actionable commitments including that States “implement and expand alternatives to detention, including non-custodial measures.” Additional commitments under this Objective include improving monitoring of migration detention; consolidating a comprehensive database of alternatives and facilitating exchanges on successful practices; reviewing legislation and policies to ensure detention is lawful and incorporates procedural safeguards; guaranteeing minimum detention standards; and training government authorities.

The current wording of the Zero draft establishes a strong foundation to work with States to ensure detention is only used as a last resort and to make alternatives a reality. However, if States are to deliver on the commitment and pursue alternatives by embracing a rights-based approach to the governance of migration, effective non-custodial engagement-based alternatives need to be articulated in greater detail.

The IDC encourages its members to seize this unique opportunity and engage nationally with their governments to promote positive practices, policies and learnings.

Key messaging and resources for members to consider in their advocacy on alternatives to detention in the GCM should focus on the wide range of good practices and examples of alternatives to detention available globally. Importantly, IDC and international research shows that:

- There are numerous [positive practices](#), learnings and examples of alternatives to detention that be used to assist States in implementing and expanding alternatives.
- Alternatives based on [engagement and on a collaborative approach](#) to resolving migration matters can effectively meet government objectives regarding compliance and case-resolution while upholding human rights.
- Successful alternatives rely on shifting the emphasis away from security and restrictions to a pragmatic and proactive community-based approach based on human-rights.
- Alternatives to detention are, on average [80%, cheaper than detention](#).
- Alternatives to detention are [highly effective](#), with up to 95% appearance rates for unresolved cases and up to 69% independent departure for refused cases.
- Alternatives to detention are less harmful than migration detention, upholding a person's wellbeing, resilience and capacity to deal with all challenges including return if necessary

The IDC has a number of tools that can be used to guide advocacy on alternatives to immigration detention in the GCM:

- The [Roadmap on implementing Alternatives to Detention](#) in the Global Compacts
- The [Alternatives to Detention Database](#), detailing examples of alternatives around the world

Ending child detention in the Compact on Migration

Through the NY Declaration, all UN Member States have committed “to work towards the ending” of immigration detention of children. Objective 13 of the Zero Draft of the GCM moves beyond the commitment to “work towards” ending this practice into the commitment to “ending the practice of child detention in the context of international migration”. It further establishes that alternatives should be provided “that allow children to remain with their family members or guardians in non-custodial contexts, including community-based arrangements.” Separately, under Objective 7, States “commit to uphold the principle of the best interests of the child as the primary consideration in issues where children are concerned.”

The IDC welcomes the improvement of the language from the NY Declaration as a significant step forward. A key task for advocates will be to ensure this language is protected and retained through the inter-governmental negotiation process.

We remain concerned that the Zero Draft fails to highlight and clarify that, in line with obligations under the CRC, the detention of children based on their immigration status or that of their parents/guardians is a child rights violation, and never in a child's best interest. We recommend that the Compact refer to this standard to ensure there is no confusion regarding the rights of children in relation to immigration detention. This pre-emptive measure will ensure that children are not inadvertently seen to be included in the commitment to use migration detention as a last resort (which is also stated in Objective 13).

Thirty eminent child rights organizations have already collaborated to analyze the Zero Draft of the GCM in terms of the best interests of children. That analysis by the Initiative on Child Rights in the Global Compacts can be found [here](#).

Suggested language for advocating your own State representatives on ending child detention in the GCM includes:

- Ensuring they understand that immigration detention is a child right’s violation and never in the best interests of the child, as established by the CRC/CRM Joint General Comments found [here](#) and [here](#)
- Highlighting the [negative impact of immigration detention](#) on the rights and wellbeing of any child
- Reaffirming the Secretary General’s [recent recommendation](#) that:

Member States should also focus on alternatives to detention for migrants and, in particular, ending the detention of child migrants. Given that the global compact is an agreement among Member States, its credibility will rest on well-defined national commitments. [Article 59]

- Highlighting the practical community models and legislative reform that States can employ to ensure no child is detained

The IDC has developed a number of tools that can be used to assist with this advocacy:

- The [Roadmap to Ending Child Detention](#), developed with the Initiative for Child Rights in the Global Compact
- The [Global Campaign to End Child Immigration Detention](#)
- The Next Gen Index, which ranks States on how child-sensitive their migration systems are
- Our briefing paper [Never in a child’s best interests](#): A review of laws that prohibit child immigration detention
- The [Alternatives to Detention Database](#), detailing examples of alternatives around the world and is searchable for child-specific content

The Compact on Migration: A call, and an opportunity, to work towards implementation

“Making migration work for all”. Under this heading, UN Secretary General António Guterres presented his input to the Zero Draft of the GCM and the intergovernmental negotiations ahead. The report strongly emphasizes that implementation is key. “It is now time to build on our commitments rather than keep repeating them.”

The SG report calls for a number of recommendations that are useful for IDC Members to highlight in their advocacy, including:

Article 17 highlights the need to address the policies and practices that put migrant children in danger - including immigration detention

Article 44 highlights the need to de-criminalise migration, and urges States to work towards ending child immigration detention, stating:

Even if this is only for short periods of time, it has grave and lasting effects on a child’s mental health and development, and always contravenes the principle of the best interest of the child

Article 47 highlights the significant human rights abuses migrants face while in detention
Article 59 calls for States to develop whole-of-government national action plans, with a focus on developing alternatives.

Member States should also focus on alternatives to detention for migrants and, in particular, ending the detention of child migrants. Given that the global compact is an agreement among Member States, its credibility will rest on well-defined national commitments.

The Zero Draft echoes this message by calling for implementation of its actionable commitments while acknowledging that this can only be achieved by efforts at global, regional and national levels engaging all migration actors. Despite this forward-looking language, it is yet to be seen which follow-up mechanism states agree upon and, foremost, how the implementation phase unfolds once the final outcome document is formalized.

THE REFUGEE COMPACT

The Zero Draft of the Global Compact on Refugees (GCR) was released on January 31, 2018 after a series of informal thematic discussions and a stocktaking meeting.

The document is now entering into six rounds of formal consultations with States and other relevant Stakeholders in a process convened and led by UNHCR in Geneva. Between February and July 2018, the GCR Zero Draft will be discussed and redrafted, and is expected to will be presented in the High Commissioner's 2018 Annual Report to the UN General Assembly.

The Global Compact on Refugees is made up of two main bodies of text: the Comprehensive Refugee Response Framework (CRRF) and the Programme of Action. The CRRF is found in Appendix II of the New York Declaration, but it is not repeated in the text of the Zero Draft. The Programme of Action is found in the Zero Draft.

As noted above, Section II of the New York Declaration established a set of commitments that apply to both the compact on migrants and the compact on refugees. That section included, in paragraph 33, State commitments to pursue alternatives to immigration detention and to work towards ending child immigration detention. As described above, these commitments have been transposed into the Zero Draft of the Compact on Migration. However, these commitments have not been transposed in the Zero Draft of the Compact on Refugees.

Alternatives to Detention in the Compact on Refugees

The GCR does not specifically address the use of immigration detention with refugee populations or establish a commitment on alternatives to immigration detention. The only placement option referred to in the GCR is reception. The absence of a clear commitment on alternatives to detention may make it more difficult to directly advocate for the use of alternatives with States that are detaining refugees and other people of concern. However, the GCR is an addition to the existing global protection framework and, as such, does not need to re-articulate all protections previously established.

Importantly, the GCR notes that promoting self-reliance and resilience during determination procedures increases a person's preparation for the future, including return (see paragraphs 49 and 65). This reflects the research evidence that an engagement-based approach leads to more effective systems including sustainable case resolution outcomes. Such an approach includes early engagement, meeting basic needs, respecting fundamental rights and keeping people well-informed through determination procedures.

Key messaging and resources for members to consider in their advocacy on alternatives to detention in the GCR should:

- Focus on the wide range of positive practices and examples of placement and support options for refugees and persons of concern globally.
- Highlight the strengths of engagement and on collaboratively working to identify and respond to protection needs.
- Highlight that successful community-based options rely on shifting the emphasis away from security and restrictions to a pragmatic and proactive approach based on human-rights.

Specifically, advocates are encouraged to:

- ensure reception arrangements foreseen in Section 1.2 do not allow for restrictions on freedom of movement,
- support the language of Section 2 that foresees meeting the needs of refugees in a way that also supports host communities through mainstreaming of support
- support the language of ‘meeting the accommodation needs of refugees and host communities’ in Section 2.4; and
- ensure the commitment to “supporting conditions and opportunities favourable to voluntary and sustainable repatriation” in paragraph 67 is maintained in such a way that detention is not introduced along with involuntary return procedures

The IDC has a number of tools that can be used to guide advocacy on alternatives to immigration detention in the GCM:

- The [Roadmap on implementing Alternatives to Detention](#) in the Global Compacts
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Ending child detention in the Compact on Refugees

The GCR does not articulate the ways in which Member States can implement their commitment to work towards ending child immigration detention.

The only directly relevant content is found in Footnote 23, which refers to UNHCR’s Detention Guidelines of 2012. UNHCR’s detention guidelines were drafted before the Committee on the Rights of the Child clarified that immigration detention is never in a child’s best interests. As a result, those guidelines do not prohibit child immigration detention but rather allow it as a last resort. UNHCR has since adopted and widely disseminated its position that child immigration detention is a rights violation and should be prohibited. The footnote would be more accurate if it referenced UNHCR’s current position on this matter.

The footnote would also be strengthened by reference to the Joint General Comment on State obligations regarding the human rights of children in the context of international migration issued by the Committee on Migrant Workers and the Committee on the Rights of the Child. This is because the Joint General Comment offers a detailed review of State obligations to protect the best interests of children in the context of international migration, including for children with protection needs.

The IDC advocates that Footnote 23 of the GCR is amended to include references that offer States more comprehensive guidance on implementation of children’s rights in the context of international migration, and that reflect UNHCR’s current position regarding children and immigration detention.

Specifically, Footnote 23 of the GCR would be more accurate if it read:

²³ Care arrangements and other services may include alternative temporary care arrangements (see “Guidelines on alternative care for children” (A/RES/64/142)), guardianships, psychosocial support, and family tracing. See also UNHCR “Field handbook for the implementation of UNHCR BID guidelines”; “UNHCR’s position regarding the detention of refugee and migrant children in the migration context” and the United Nations Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, and Committee on the Rights of the Child. “Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return” (CMW/C/GC/4-CRC/C/GC/23).

The GCR does include a number of commitments relating to children, notably:

- Identification and registration of children as persons with special needs (para 37)
- Safe spaces in arrival, transit, registration and other communal areas (para 43)
- Best interests assessment and/or determination (para 43)
- Alternative care arrangements, including integration with State child protection systems, for unaccompanied and separated children (para 43)
- Integration into State education systems (para 53)
- Integration into State health care systems (para 55)
- Meeting the specific needs of women and girls (para 63)
- Strengthening child protection (para 64)

A number of UNHCR publications provide useful guidance for States on how to address the specific needs of refugee and asylum-seeking children, including those who are unaccompanied or separated. These include:

- UNHCR, and UNICEF. Safe & sound: What states can do to ensure respect for the best interests of unaccompanied and separated children in Europe.
- UNHCR. Options paper 1: Options for governments on care arrangements and alternatives to detention for children and families.
- UNHCR. 2014. Child protection issue brief: Alternative care.

It is our role as civil society to support and work together with UNHCR, States and other relevant stakeholders to ensure that the final outcome document truly upholds child protection and reflects existing rights and standards. Thirty eminent child rights organizations have already collaborated to analyze the Zero Draft of the GCR in terms of the best interests of children. That analysis by the Initiative on Child Rights in the Global Compacts can be found [here](#).

Suggested points to raise when advocating your own State representatives on the GCR include:

- Highlighting the negative impact of immigration detention on the rights and wellbeing of any child
- Ensuring government representatives know that immigration detention is a child right's violation and never in the best interests of the child, as established by the CRC/CRM Joint General Comments ([here](#) and [here](#))
- Highlighting the numerous community models and legislative reforms that States can employ to ensure no child is detained

The IDC has developed a number of tools that can be used to assist with this advocacy:

- The [Roadmap to Ending Child Detention](#), developed with the Initiative for Child Rights in the Global Compact
- The [Global Campaign to End Child Immigration Detention](#)
- The Next Gen Index, which ranks States on how child-sensitive their migration systems are
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- The [Alternatives to Detention Database](#), detailing examples of alternatives around the world and is searchable for child-specific content

CONCLUSION

IDC looks forward to continue working together with States during the upcoming negotiations and beyond to implement and prioritize non-custodial community- and rights-based alternatives to detention; to end unnecessary immigration detention by using this process to further ensure detention is used only as a measure of last resort; and to fulfil their commitment to end the practice of child immigration detention in line with human rights standards and the best interest of all children.

If you would like to find out more and discuss how this can be used in your national context, feel free to get in touch with IDC's Advocacy Coordinator, Silvia Gomez, at sgomez@idcoalition.org