

HANDBOOK OF INTERNATIONAL HUMAN RIGHTS STANDARDS APPLICABLE TO MIGRANT CHILDREN AND ADOLESCENTS




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Save the Children





handbook

of international
human rights standards applicable to
migrant children
and adolescents

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BUENOS AIRES, ARGENTINA. SEPTEMBER, 2014.

LIST OF ACRONYMS

ACHR: American Convention on Human Rights
BID: Best Interest Determination
CEDAW: Convention on the Elimination of All Forms of Discrimination Against Women
CRC/GC: Committee on the Rights of the Child/General Comments
CRC: Convention on the Rights of the Child
ECLAC: Economical Commission for Latin America and the Caribbean
FC: Foster Care
HRC: Human Rights Council
IACHR: Inter-American Commission on Human Rights
IAHR Court: Inter-American Court of Human Rights
ICCPR: International Covenant on Civil and Political Rights
ILO: International Labour Organisation
ILPA: Immigration Law Practitioners' Association
IOM: International Organisation for Migration
IPPDH: Institute of Public Policies on Human Rights
Mercosur: Southern Common Market
NGO: Non-governmental organisation
OAS: Organisation of American States
PICUM: Platform for International Cooperation on Undocumented Migrants
RELAF: Latin American Foster Care Network
STC: Save the Children
UN: United Nations
UNHCHR: United Nations High Commissioner for Human Rights
UNHCR: United Nations High Commissioner for Refugees
UNICEF: United Nations Children's Fund
UNICEF-LACRO: United Nations Children's Fund-Latin American and Caribbean Regional Office
UNLA: University of Lanús

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PART ONE



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rationale

of the standards and
guidelines for their application

I. INTRODUCTION

The impact of the Convention on the Rights of the Child (CRC) has been very important: it is the human rights treaty with the greatest international acceptance and recognition, with 194 ratifications by countries all around the world, which bring it close to achieving universal ratification.

The effect of the CRC on the adoption of legislative measures and institutional reforms by the Latin American countries is also undeniable, in particular its effect on the enactment of specific legislation and children's and adolescents' codes in several countries. This has notoriously increased the internal visibility and recognition of rights of this particular group of the population¹.

Nevertheless, in spite of the high consensus in acknowledging children and adolescents as human rights holders and subjects of special protection, migrant children are usually overlooked in the development of national laws and policies. There is no doubt that one of the main issues affecting children who are in the context of migration is their invisibility, which leads to an absence of the topic of migrant children in child protection laws and policies².

The United Nations Special Rapporteur on the Human Rights of Migrants has highlighted the special vulnerability of children during the entire migratory process. Migrant children, especially those unaccompanied or separated from their families, are in a situation of great vulnerability since they are exposed to several threats, such as prostitution, child trafficking, abuse or exploitation, especially when it comes to girls³.

While documented migrants face several difficulties, migrant children of irregular status, whether alone or accompanied by their families, are more susceptible to suffering the violation of their rights in every phase of the migratory process. In many cases, they are viewed as lawbreakers rather than human rights holders that must be provided with special protection by the States in whose jurisdictions they are. Therefore, they are denied the most basic protections and, due to their irregular status, children and their families have good reasons to be afraid and avoid going to the public officials for protection.

It is important to note that the standards and principles described in this Handbook are based on the universal and regional human rights instruments and on the United Nations (UN) monitoring mechanisms, as well as on those of the inter-American system. That is to say, they are standards that come from treaties and mechanisms accepted by the States in full exercise of their sovereignty.

It must be taken into consideration that the key point of view of this entire Handbook is that the protection and fulfilment of children's rights are a priority over any issue of security and over any migration policy. That is to say, every person under 18 years of age must be acknowledged as a child and, therefore, their rights must be comprehensively fulfilled despite them being a migrant and despite their migration status.

Ultimately, the purpose of this Handbook is that the paradigm brought in by the CRC can also reach those who have migrated and whose rights are affected by migration policies, in particular, by the conditions of entry, stay or departure from a country that is not their home country.

¹ Since the ratification of the Convention on the Rights of the Child, the vast majority of the Latin American Countries have adopted national child care and protection laws and codes. This was done in Argentina (2005), the Plurinational state of Bolivia (1999), Brazil (1990), Colombia (2006), Costa Rica (1998), Ecuador (2003), El Salvador (2009-2010), Guatemala (2003), Honduras (1996), Mexico (2000), Nicaragua (1998), Paraguay (2001), Peru (1992), Dominican Republic (2003), Uruguay (2004) and in the Bolivarian Republic of Venezuela (2000).

² UNICEF-LACRO and UNLA (2009). Estudio sobre los estándares jurídicos básicos aplicables a niños, niñas y adolescentes migrantes en situación migratoria irregular en América Latina y el Caribe. Estándares jurídicos básicos y líneas de acción para su protección. Buenos Aires, February.

³ Special Rapporteurship on the Human Rights of Migrants (2010). Human Rights Council, Session 11 (A/HRC/11/7), May 14.

II. OBJECTIVES OF THIS HANDBOOK

This Handbook is the result of the work of three organisations that share the need of developing a strategy for the protection of the migrant children's rights. RELAF, Save the Children and UNICEF produced this document as a tool for the necessary improvements in the matter, in particular with regard to the training of the technical operators and professionals responsible for the protection of the migrant children's rights.

The main goals of the Handbook are:

- **To serve** as a base document that can be integrated into the legal strategies used by both migration and child protection officials, in order to move forward in the articulation of the child care and protection and the system of migration regulation, and to achieve a better comprehensive protection of migrant children's rights.

- **To contribute** to a better understanding of the international legal standards concerning migrant children's rights.

- **To provide** support for the staff of the organisations that work on child care and protection issues to get acquaintance with the standards of migrant children and adolescents.

This Handbook's aim is also to serve as a conceptual framework for the training of the organisations that promote migrant children's rights in all the countries of the region, and of the operators of both the child care and protection system and system of migration regulation. For these trainings, the Handbook can be complemented with other methodological tools and practices that lead to a better understanding of its contents (case studies, specific regulations of the countries where the trainings are carried out, local statistics, etc.).

This Handbook can also be used as a guideline or reference tool for different governmental areas, academics, and non-governmental grass-roots and international organisations that intend to guarantee the fulfilment of the rights of migrant children and of children affected by migration.

III. CATEGORIES OF CHILDREN AND ADOLESCENTS AFFECTED BY MIGRATION

There is no homogeneous profile of children affected by migration. Migrant children can be accompanied by their parents or legal guardians, by other adults (separated children) or can be alone (unaccompanied children). Children born in the countries to which their parents migrated and children left behind by their migrating parents and who are prone to end up migrating in the future to join their families are also considered.

- **Children and adolescents that remain in their countries of origin:** sons and daughters that remain in their countries of origin when their parents migrate.

- **Children and adolescents unaccompanied or separated:** the Committee on the Rights of the Child, in its General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin, defines unaccompanied children as minors who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so. Likewise, the Committee defines separated children as children who have been separated from both parents, or from their previous legal or customary primary care-giver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members ⁴.

⁴ Committee on the Rights of the Child (2005). General comment No. 6: Treatment of unaccompanied and separated children outside their country of origin. 30th period of sessions (CRC/GC/2005/6), May 17 – June 3.

○ **Children and adolescents who migrate with their families:** children who cross international borders along with their relatives (with both their parents or with one of them) or with their legal or regular guardians.

○ **Children and adolescents born in the countries of destination:** children born in the countries of destination should, under the *Ius Soli* principle, be granted, in most nations, the citizenship of the country of destination. This legal principle is one of the main ways to obtain citizenship, as it states that a person has the right to be granted the citizenship of the country in which they are born. The other principle, *Ius Sanguinis*, states that a person has the right to receive the citizenship of their parents. Some countries adopt only one of these principles while others adopt both. These children aren't normally migrants, but their parents are; therefore, depending on their parents' migration status, these children can be affected by migration laws and policies.

○ **Returning children and adolescents:** children born in the countries of destination of their migrant parents or who migrated with their parents, and who return to their countries of origin alone or accompanied, whether voluntarily or as a result of a deportation or repatriation procedure.

While the situation of children who remain in their countries of origin under the care of relatives after their parents migrate is highly relevant, this Handbook does not cover the structural causes of the migration, family remittances, the adoption or absence of specific policies for these children, or the issue of children who migrate unaccompanied to meet their families.

Likewise, children's right to seek asylum under particular circumstances and the application of specific standards on the field of international humanitarian law are acknowledged but are not covered in this Handbook, for it focuses on the standards of human rights relative to migrant children.

The description of the applicable standards done in this Handbook focuses on children who are migrating or have already done so, as well as on the response that the States should provide to these children –in particular with regard to transit and destination- to guarantee the fulfilment of their rights.

IV. INTERNATIONAL INSTRUMENTS RELEVANT TO THE PROTECTION OF MIGRANT CHILDREN'S RIGHTS

The Universal Declaration of Human Rights is undoubtedly the primary instrument of international human rights law and, possibly, the most important of the 20th century. It emphasises that every human being is born free and equal in dignity and rights, that every person is equal before the law, which must provide equal protection to every person, and that every person will enjoy all human rights and fundamental freedom regardless of their race, colour,

sex, language, religion, citizenship or social belonging, economic situation, birth or any other condition. Thereby, in spite of their condition as migrants or whatever their migration status may be, children are human rights holders and, therefore, all treaties of the UN system and of the Inter-American System are applicable to guarantee the comprehensive protection of their rights.

Major human rights treaties

United Nations System⁵



⁵ In addition to the nine core UN treaties, several other treaties are of special relevance. These are: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime; the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the UN Convention against Transnational Organized Crime; and some ILO conventions, such as the Convention concerning Migration for Employment (No. 97, Revised, 1949) and its supplementary provisions (No. 143, 1975), the Convention concerning Minimum Age for Admission to Employment (No. 138, 1973), the Convention on the Worst Forms of Child Labour (No. 182, 1999), and the Convention on Domestic Workers (No. 189, 2011).

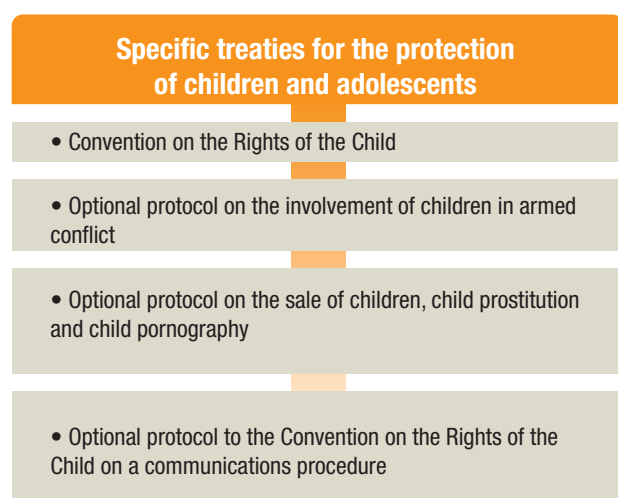
While all human rights treaties are applicable to the comprehensive protection of children's rights, undoubtedly the most important legal text is the CRC, that puts together in a single treaty all civil, political, economic, social and cultural rights of children, considering each of these to be necessary and complementary of one another in order to assure the comprehensive protection of children.

The CRC draws from the concept of considering children as human rights holders and states that, as such, they should enjoy the same rights and guarantees adults enjoy, in addition to those that are applicable to them considering their special condition as minors.

The rights acknowledged in the CRC and other human rights treaties are binding. This obliges States to take on all necessary measures (administrative, legislative, budgetary, etc.) in order to guarantee the fulfilment of these rights⁶.

This also means that the countries must adopt the necessary measures to adequate their legislations and institutions to the provisions of the CRC, so that the fulfilment of the rights of children can be achieved⁷.

This derives in several obligations of the member States concerning the fulfilment of every right to the children under their jurisdictions, without discrimination. This obviously includes migrant children and adolescents, as well as sons and daughters of migrants, regardless of their migration status.



⁶ Morlachetti, A. (2013). Comprehensive national child protection systems: legal basis and current practice in Latin America and the Caribbean. UNICEF/Social Development Division, CEPAL, January.

⁷ Committee on the Rights of the Child (2003). General comment No.5: general measures of implementation of the Convention on the Rights of the Child. Paragraph 18.

Main human rights instruments of the Inter-American System



Of course, there are treaties applicable specifically to the protection of the rights of migrants and their families, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. It is also important to mention the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children (2003), and the covenants of the International Labour Organisation .

In addition to these treaties, there are several instruments from the monitoring mechanisms of the UN and Inter-American Human Rights systems, which apply specifically to the issue of both child protection and migration. These include important references to standards for the protection of migrant people.

The work of the UN Committees that interpret the treaties through comments and general recommendations is particularly important. Many have been adopted by the Committee on the Rights of the Child and other are relevant to the rights of migrant children and will be mentioned as sources of the standards described throughout this Handbook.

⁸ Convention on Migrant Workers (Revised, No. 97, 1949); Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (No. 143, 1975); and Convention concerning Decent Work for Domestic Workers (No. 189, 2011).

⁹ The Committee on the Rights of the Child is a body made up of 18 independent experts which supervises the implementation of the Convention on the Rights of the Child. It also supervises the application of the Optional Protocol to the Convention on the Rights of the Child concerning the involvement of children in armed conflicts and the Optional Protocol on the sale of children, child prostitution and child pornography. All member states must present regular reports to the Committee, in order to assess the progress made towards the fulfilment of the obligations set by the Convention (art. 43). All states must present a report two years after their adhesion to the Convention, and every five years thereafter. (art. 44)

UN Committees' General comments that set standards for the protection of the rights of migrants

Specific comments regarding the protection of the rights of migrants

- Committee on the Elimination of Racial Discrimination (2004). General recommendation No. 30: discrimination against non-citizens.
- Rights Committee (1986). General comment No. 15: the position of aliens under the Covenant.
- CEDAW Committee (2008). General recommendation No. 26: women migrant workers.
- Committee for the Protection of the Rights of All Migrant Workers and Members of their Families (2011). General comment No. 1: migrant domestic workers.

Comments of the Committee on the Rights of the Child that set standards for the protection of the migrant children's rights ⁹

- General comment No. 6: treatment of unaccompanied and separated children outside their country of origin (2005).
- General comment No. 12: the right of the child to be heard (2009).
- General comment No. 14: the right of the child to have his or her best interests taken as a primary consideration (2013).

There are also special procedures that receive reports of particular cases of human rights violations in order to analyse them and to provide technical assistance. While the work of all Rapporteurships – both those of the UN and of the Inter-American System - is important to preserve the rights of children and of migrant persons, the most important for the purpose of this Handbook is the work of the Special Rapporteurship on the sale of children, child prostitution and child pornography, and the specific rapporteurships on the rights of migrants.

Rapporteurships with specific mandate for the protection of the rights of children and migrants

- The mandate of the Special Rapporteur on the human rights of migrants was created in 1999 by the Commission on Human Rights and was renewed by the Human Rights Council. It involves all countries, regardless of their ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, of December 18, 1990.

- In 1996, the Rapporteurship on Migrant Workers and Members of Their Families of the Inter-American Commission on Human Rights was created. Its mandate currently involves assuring the respect for the rights of several groups, such as migrants and their families, asylum seekers, refugees, seekers and recipients of subsidiary protection, stateless persons, trafficking victims, internally displaced persons, and other groups of people vulnerable in the context of human mobility.

Within the Americas, the Inter-American Court of Human Rights¹⁰ and the Inter-American Commission on Human Rights¹¹ have had a growing role in the creation of international standards on the rights of children and migrant persons.

It is important to clarify that the comments and general recommendations do not refer to factual situations or specific cases. They represent general interpretations of a treaty's provisions that intend to define more accurately the obligations of the States towards the treaty and the content of the rights that the treaty establishes.

In the section 5 of this Handbook, which is about the protection of children in alternative care, there will be a special reference to the UN Guidelines for the alternative care of children.

¹⁰ The Inter-American Court on Human Rights was established in 1978 with the implementation of the American Convention on Human Rights, which provides the Court's legal basis and basic guidelines for its structure, operation, and competence. The Court is formed by seven judges, each being nominated and chosen for a period of six years by the members of the American Convention. The Court has contentious and consultative competences. The first one can be executed if the state has acknowledged the Court's jurisdiction to handle and hear cases against it. The second one relies on the power to consult the Court about the interpretation of the regulations of the American Convention or about other treaties concerning the protection of human rights in the states. In addition, at the request of an OAS member state, the Court is authorised to give an opinion about the compatibility between the state's internal laws and the aforementioned international instruments.

¹¹ The Inter-American Commission on Human Rights is an OAS entity in charge of promoting and protecting human rights in the American continent. It has several duties, the most important being that of processing contentious cases or individual petitions. It receives reports of human rights violations from any person, group of persons or non-governmental organisations.

In its consultative and contentious competences, the Inter-American Court on Human Rights has substantially contributed to the implementation of the CRC in the region of the Americas. It did so in particular by affirming that both the American Convention on Human Rights and the CRC are part of the extended body that rules on the matter and that promotes the acknowledgment of children and adolescents as human rights holders.

Consultative work of the IAHR Court

- The right to information about consular assistance in the framework of the guarantees of the due process of law (OC-16/99) (1999).
- Juridical condition and Human Rights of the Child (OC-17/02), August 28. "A" Series No. 17 (2002).
- Juridical condition and rights of the undocumented migrants (OC-18/03), September 17. "A" Series No. 18 (2003).
- Consultative Opinion requested by Mercosur, to be adopted in September, 2014. The request was presented in order to have the IAHR Court better determine the obligations of the States regarding the policies to be adopted concerning children and their or their parent's migration status in light of the American Convention on Human Rights, the American Declaration of the Rights and Duties of Man and the Inter-American Convention to Prevent and Punish Torture.

PART TWO



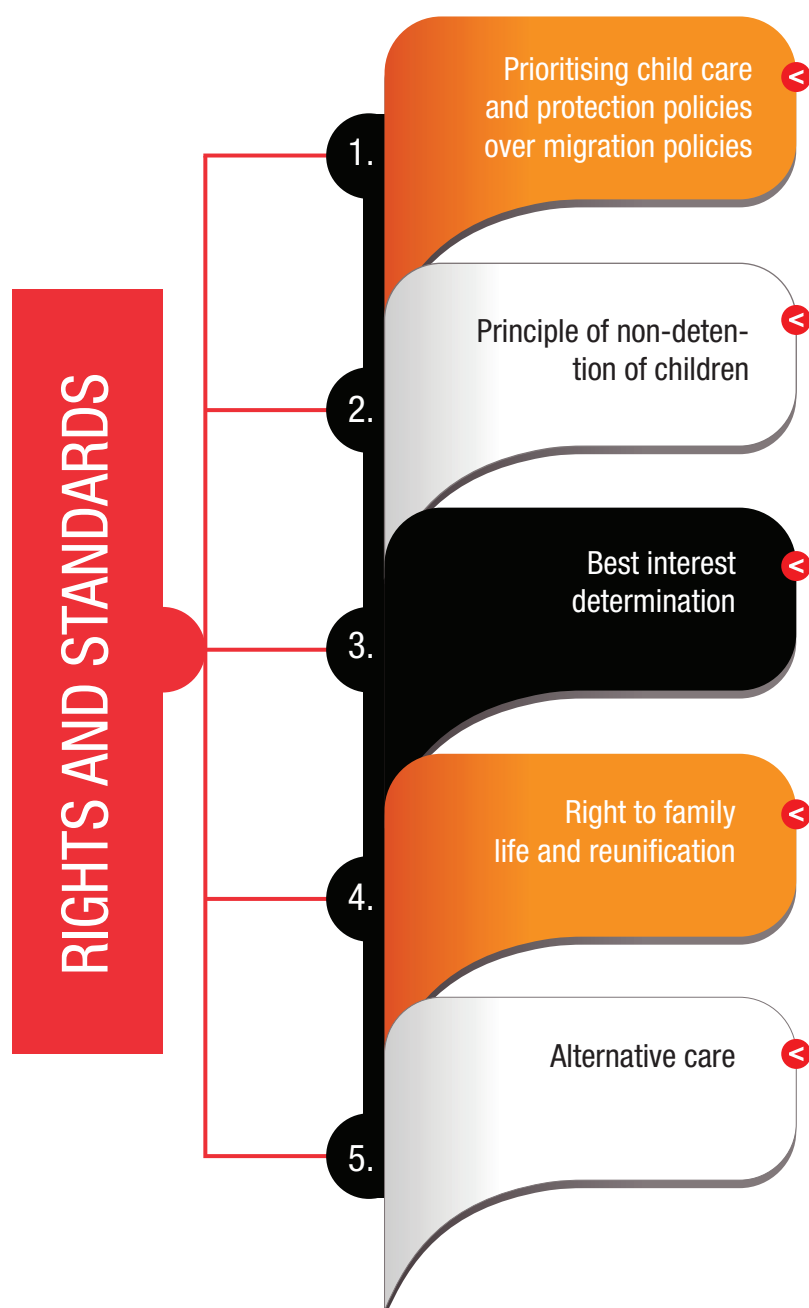


rationale

of the standards and
guidelines for their application

RIGHTS STANDARDS APPLICABLE TO MIGRANT CHILDREN

The main standards and principles applicable to procedures concerning migrant children are described in this part of the Handbook. These are: **1)** special protection measures and prioritizing interventions by child care and protection officials; **2)** the principle of non-detention of migrant children; **3)** the best interest determination procedure concerning the admission and stay in the country of destination; **4)** the children's right to family life (including the right to family reunification); **5)** the legal guarantees that should be applied in the status determination processes that involve children (including the right to be heard).



I. PRIORITY OF CHILD PROTECTION OVER MIGRATION POLICIES

Firstly, it is of upmost importance to prioritise the legal and institutional child care and protection framework over the legal and institutional migration framework. That is, children's status as children must prevail over their status as migrants when it comes to migration policies, laws and procedures¹².

This transversal principle must be kept in mind for the interpretation of all considerations included in this Handbook.

According to the United Nations High Commissioner for Human Rights (UNHCHR), all public officials and institutions that assist migrant children must determine the protection of their rights as a priority. This principle should prevail over all others, including cases in which child care and protection regulations are conflicting with migration laws¹³.

Nevertheless, a common issue appears in the countries' practices: measures based on security and migratory control prevail over the obligation that every State has to protect children, in accordance with the Convention on the Rights of the Child (CRC). The lack of consideration of the best interest of the child (stated in article 3 of the CRC), which should guide every decision and policy that could affect the child, has a direct impact on migrant children's rights.

.....

The current background is worrying: the situation of migrant children is determined almost exclusively by their condition as migrants and, therefore, by national policies concerning migration. In these cases, interventions from public officials involved in child care and protection is usually very limited or non-existent. It is also common for the existing child care and protection programmes to not take migrant children into consideration appropriately¹⁴.

.....

Application of the CRC to migrant children

...State obligations under the Convention apply within the borders of a State, including with respect to those children who come under the State's jurisdiction while attempting to enter the country's territory. Therefore, the enjoyment of rights stipulated in the Convention is not limited to children who are citizens of a State party and must therefore, if not explicitly stated otherwise in the Convention, also be available to all children - including asylum-seeking, refugee and migrant children - irrespective of their nationality, migration status or statelessness.

Committee on the Rights of the Child (2005).

General comment No. 6: Treatment of unaccompanied and separated children outside their country of origin, paragraph 12.

Several procedures and practices that affect rights and guarantees are applied under the States' power to regulate the influx and permanence of foreigners in their territories. These circumstances have a specific impact on children, in particular on those who migrate separated and/or unaccompanied.

¹² Crawley (2006). *Child First, Migrant Second: Ensuring that Every Child Matters*. London, ILPA.

¹³ UNHCHR (2010). *Study on challenges and best practices in the implementation of the international framework for the protection of the rights of the child in the context of migration*. (A/HRC/15/29), June 5, paragraph 24.

¹⁴ Comment on migrant childhood in Latin America and the Caribbean by UNICEF. Consultative Opinion on migrant childhood requested by Argentina, Brazil, Paraguay and Uruguay before the Inter-American Court on Human Rights. Buenos Aires, December 2013.

Obstacles to the fulfilment of migrant children's rights

Committee on the Elimination of Racial Discrimination (2004). General recommendation No. 30: discrimination against non-citizens.

- Lack of regulatory harmonization regarding the protection of migrants' (and specifically migrant children's) human rights, both between national migration laws and international and multilateral agreements, and between national migration laws themselves.

- Absence of a children's rights approach in the migration policies of the countries of the region.

- Absence of adequate procedures targeting the identification of children's rights violations.

- Regulations that should adapt to the international standards, such as:
 - > The prohibition to criminalise irregular migration (Chile);
 - > The acknowledgement of the right to family life and of the family reunification principle (except in Argentina and Uruguay);
 - > Procedures to assign legal guardians to children;
 - > Lack of formalisation of the treatment of unaccompanied children in the borders;
 - > Lack of acknowledgement in the regulations of the best interest of the child.

IPPDH (2012). *La Implementación de los acuerdos del Mercosur relativos a la protección de los derechos de los niños, niñas y adolescentes Migrantes. Estudios e investigaciones. Diagnóstico y lineamientos para la acción.*
MERCOSUR Institute of Public Policies on Human Rights.

As a result of the application of the CRC in policies targeting migrant children, four essential requirements must be met:

○ **1. All migrant children** must be protected by means of the full application of the Convention on the Rights of the Child, without discrimination of any kind. Children directly affected by migration –whether accompanied or unaccompanied, documented or undocumented, or in any other situation– must enjoy the fulfilment of their rights¹⁵.

○ **2. All decisions**, measures and practices concerning the entry, permanence and departure of children and/or their parents in the countries must be determined by the principle of the best interest of the child, as required by the CRC in all situations.

○ **3. The other principles stated** in the Convention must be fully guaranteed. These are: the principle of non-discrimination (Article 2), of survival and development (Article 6), and of respect for the views of the child (Article 12).

○ **4. A Best Interest Determination** process must be applied in each and every particular case of unaccompanied children.

In short, revising the migratory regulations and procedures currently applicable to migrant children and their parents in order to adapt them to the requirements of the CRC is an unavoidable and urgent duty of the countries. This means that these mechanisms must be designed to ensure the comprehensive protection of children rather than to achieve specific migratory goals¹⁶.

¹⁵ Committee on the Rights of the Child (2012). The Rights of All Children in the Context of International Migration, Day of General Discussion, Background and Paper. August.

¹⁶ Comment on migrant childhood in Latin America and the Caribbean by UNICEF. Consultative Opinion on migrant childhood requested by Argentina, Brazil, Paraguay and Uruguay before the Inter-American Court on Human Rights. Buenos Aires, December 2013.

2. PRINCIPLE OF NON-DETENTION OF CHILDREN

The first fundamental standard concerning migration is that an irregular entry to a different State and the expiration of the authorisation to stay in that State are not crimes. Therefore, they should not be punished with the deprivation of liberty.

This has been repeatedly highlighted by human rights organisations, which affirm that criminalising irregular entries is beyond the States' legitimate interest of controlling and regulating irregular migration, and could lead to unnecessary detentions¹⁷. As stated by the Special Rapporteurship on Migrant Workers of the Inter-American Commission on Human Rights, "(...) undocumented migrants, at worst, infringe administrative regulations. They are not criminals nor suspects of a crime"¹⁸.

It is very important to note that, regardless of the terminology and euphemisms that each country may use to refer to the situation of deprivation of liberty – accommodate, apprehend, secure, intern, retain, hold, etc. –, when a person is unable to leave the place where they are being retained by their own will, they are clearly being deprived of their liberty. In these circumstances all international standards concerning the right to personal freedom and other associated rights should be applied.

What does "deprivation of liberty" mean?

The Inter-America Commission on Human Rights has noted that deprivation of liberty implies any form of detention, imprisonment, institutionalisation, or custody of a person in a public or private institution which that person is not permitted to leave at will, by order of or under de facto control of a judicial, administrative or any other authority, for reasons of humanitarian assistance, treatment, guardianship, protection, or because of crimes or legal offenses. This category of persons includes not only those deprived of their liberty because of crimes, infringements or non-compliance with the law (whether they are accused or convicted), but also those who are under the custody and supervision of centres for migrants, refugees, asylum or refugee status seekers, stateless and undocumented persons, and any other similar institution the purpose of which is to deprive persons of their liberty.

Committee on the Rights of the Child (2005).

General comment No. 6: Treatment of unaccompanied and separated children outside their country of origin, paragraph 12.

¹⁷ For example, the IACHR Court in *Vélez Loor v. Panama* (Preliminary exceptions, merits, reparations and costs). Sentence of November 23, 2010. "C" Series, No. 218.

¹⁸ Second Progress Report of the Rapporteurship on Migrant Workers and Members of their Families (2001).

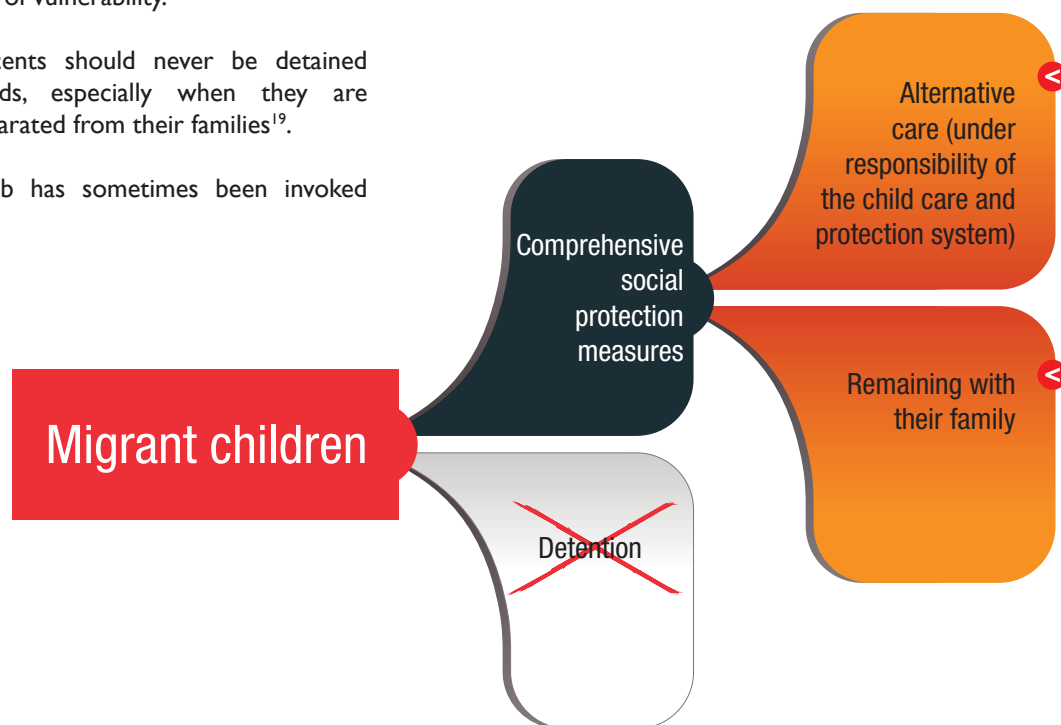
Therefore, any form of deprivation of liberty of migrants must be exceptional. It must only be applied in very specific cases and for a very short period, if it is considered to be a necessary measure to assure a person's appearance within a deportation process.

Given that the detention of adults should be applied as an exceptional measure, the detention of children should be even more exceptional. Due to the special vulnerability of children in an irregular migration situation, the application of the principle that prohibits their detention because of migratory reasons should be strengthened.

The principle of non-detention of migrant children is an essential standard to protect migrant children's rights, along with the principle that requires the adoption of specific child care and protection measures tailored to the different situations of vulnerability.

Children and adolescents should never be detained on migration grounds, especially when they are unaccompanied or separated from their families¹⁹.

The CRC article 37.b has sometimes been invoked



to legitimise the precautionary detention of migrant children, arguing that the CRC does not prohibit it and only warns it must be used exclusively as a measure of last resort. However, this article only applies to cases in which children are facing a criminal law process, and does not apply to administrative offences²⁰.

It has also been suggested that certain circumstances –e.g. preservation of family unity– justify the confinement of children along with their parents in a migrant detention facility. In a report on the rights of migrant children, the Special Rapporteur on the Human Rights of Migrants (2009) stated that “the ideal human rights approach would necessarily mean the adoption of alternative measures for the whole family; therefore, the States should create policies to accommodate the entire family in locations other than closed internment facilities”.

That is to say, the solution is not to place the entire family in detention facilities but in open facilities aimed to the protection of the children and their families while the migration process is resolved.

As a consequence of the principle of non-detention of migrant children, countries must seek appropriate forms of accommodation, such as open reception facilities and other forms that aim to protect migrant children and to guarantee their fundamental rights. Ideally, these facilities should belong to the child care and protection system, and should be staffed by its personnel. These issue will be covered in the section on alternative care standards.

¹⁹ Committee on the Protection of the Rights of all Migrant Workers and Members of their Families (2013). General comment No. 2: Rights of Migrant Workers in an Irregular Situation and Members of their Families. August 28, paragraph 33.

²⁰ Comment on migrant childhood in Latin America and the Caribbean by UNICEF. Consultative Opinion on migrant childhood requested by Argentina, Brazil, Paraguay and Uruguay before the Inter-American Court on Human Rights. Buenos Aires, December 2013. Paragraph 92.

3. BEST INTEREST DETERMINATION AND ITS IMPORTANCE IN THE ADMISSION AND IN EVERY STATUS DETERMINATION PROCESS THAT AFFECTS MIGRANT CHILDREN AND ADOLESCENTS

a. Introduction

Every decision taken within a status determination process must be guided by the best interest of the child. This priority comes from the principle of the best interest of the child, stated in article 3 of the CRC. It means that the best interest of the child will be considered a priority in all measures and policies adopted by administrative public officials, judges and institutions.

Committee on the Rights of the Child and the triple perspective of the best interest

- a. A substantive right: that is, the children's right to have their best interest taken as a primary consideration, and the guarantee that their right will be implemented whenever a decision is to be made concerning a child.
- b. A fundamental, interpretative legal principle: if a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child's best interests should be chosen. The rights enshrined in the Convention and its Optional Protocols provide the framework for interpretation.
- c. A rule of procedure: whenever a decision is to be made that will affect a specific child, an identified group of children or children in general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned. Assessing and determining the best interests of the child require procedural guarantees.

Committee on the Rights of the Child (2013). *General comment No. 14: the right of the child to have his or her best interests taken as a primary consideration (article 3, paragraph 1) (CRC/C/GC/14), May 29.*

In these cases, the best interest determination (BID) process is the most important tool to ensure the respect, protection and guarantee of migrant children's rights.

This process implies an evaluation of all the relevant aspects of each particular case, so that the decisions that best protect the rights of the child can be taken throughout the different stages of the migratory process. Therefore, a case-by-case analysis that respects all procedural guarantees will be needed. This analysis will result in the determination of the solutions that, in both the short and the long term, fit the best interest of every child, and in the determination of the best way to carry out these solutions in a manner that respects the child's rights.

The Committee on the Rights of the Child has pointed out that the best interest determination requires a clear and detailed assessment of the child's identity –including citizenship, characteristics of the upbringing, ethnicity, cultural and linguistic context– and of the particular vulnerable situation and basic protection needs of migrant children²¹.

States are the duty bearers of several obligations towards migrant children which emerge from the Convention on the Rights of the Child. Fundamentally, States must have a protocol or legislation that clearly establishes the aspects to be considered in each case, and that guarantees the participation of children and adolescents during the process.

²¹ Committee on the Rights of the Child (2005). General comment No. 6, op. cit., paragraph 20.

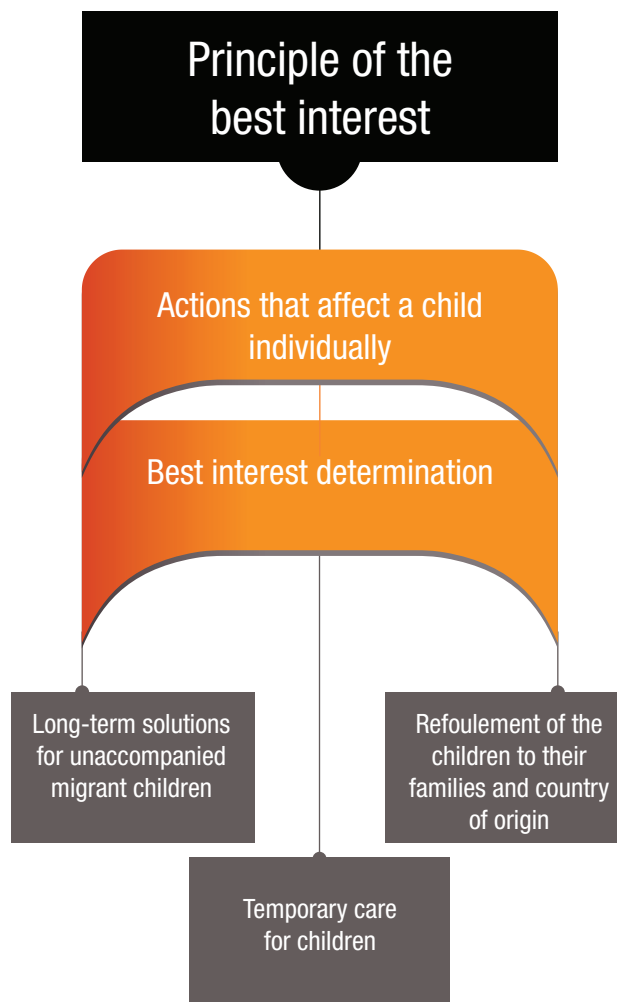
The UNHCR made a substantial contribution to the development of an action protocol and guidelines for determining the best interest of the child. These guidelines define the best interest determination (BID) as the formal process with strict procedural safeguards designed to determine the child's best interests for particularly important decisions affecting the child.²² According to UNHCR, this process should facilitate adequate child participation without discrimination, involve decision-makers with relevant areas of expertise, and balance all relevant factors in order to assess the best option.

All children's rights enshrined in both international (CRC and other treaties) and national (internal) legislations must be considered for the BID. The international and national law provisions that are best suited for the fulfilment of children's rights must always be applied.

The decision-maker's main task is to identify the available options for each case and the one among them that assures the fulfilment of the child's rights and, therefore, is the most appropriate to achieve their best interest. Every option's impact on both the short and the long term must be analysed before deciding which one is the most appropriate, bearing in mind the particular circumstances of each case.

According to the Committee on the Rights of the Child, the child's best interest determination requires a clear and deep evaluation of the child's identity, particularly of their citizenship, their characteristics of upbringing, ethnicity, cultural and linguistic context, and of their particular vulnerabilities and basic protection needs²³, given the indivisible and interdependent nature of the CRC and its articles. The BID should preferably rely upon the child care and protection measures that belong to the child care and protection system of the country of destination, as long as they are consistent with international standards.²⁴

Best interest determination process



Source: table adapted from the *Guidelines on determining the best interest of the child (2008)*

²² UNHCR (2008). Guidelines on determining the best interest of the child. May.

²³ Committee on the Rights of the Child (2005). General comment No. 6: Treatment of unaccompanied and separated children outside their country of origin. 39th period of sessions (CRC/GC/2005/6), paragraph 20.

²⁴ UNHCR (2008). Guidelines on determining the best interest of the child. May.

The principle of the best interest should be considered not only in terms of results, but also in terms of means. Therefore, it is essential to fully respect the due process in every procedure or measure that concerns children and adolescents.

The right to due process has a key role in preserving migrants' human dignity, for it protects them from having their rights violated during status determination processes. It is important to note that the right to due process is considered both by the International and the Inter-American Human Rights systems an indispensable tool to achieve migratory policies and procedures that are in full accordance with human rights standards.

In its Advisory Opinion on Juridical Condition and Rights of the Undocumented Migrants, the IAHRC Court described the basic human rights principles that must rule the OAS member States' migration policies. The Court specifically stated that the States are able to establish control mechanisms for the entry and departure of undocumented migrants into and from their territories, provided these mechanisms be always applied in strict accordance with the guarantees of the due process and respect for human dignity.²⁵

States must, at the very least, respect the following guarantees of the due process in status determination processes that involve migrant children:

- **Right** to have a translator or interpreter, free of cost.
- **Right** to free legal assistance.
- **Right** to appeal any decision before an authority or court.
- **Right** to express themselves and be heard in the framework of mechanisms appropriate to the age, upbringing and development of the child.
- **Right** to be offered consular assistance.
- **Right** to have an independent guardian to ensure the protection of the best interest of every child.²⁶
- **Right** to freely and privately meet with their lawyers, guardians and consular representatives.

The children's right to be heard during the entire judicial or administrative procedure that involves them must be guaranteed, in accordance with article 12 of the CRC. This article states that "States Parties of the Convention shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child".²⁷

The right to be heard

- States Parties are obliged to guarantee the fulfilment of this right, especially with regard to children who face particular obstacles to express their opinions (children who belong to minorities, migrant children, and children who do not speak the main language of a territory).

- Children who arrive in a new country are in especially vulnerable condition. Because of this, it is particularly important to fully respect their right to express themselves during the migration and asylum procedures.

- Migrant children must be provided with all relevant information concerning their rights and available services—including means of communication and the migration and asylum procedures—in their own language, so that they can express themselves, be heard, and so that their opinion is taken into account during the proceedings.

- Migrant children must be appointed a free guardian or advisor.

- In order to determine their best interest, asylum-seeking children may need updated information on the whereabouts of their families and on the situation in their countries of origin.

Committee on the Rights of the Child (2009). *General comment No. 12: the right of the child to be heard.*

²⁵ AHR Court (2003). Juridical condition and rights of the undocumented migrants. (OC-18/03), September 17.

²⁶ The designation of a competent guardian is a key procedural safeguard to ensure the respect for the best interest of unaccompanied or separated children. A child is not able to request asylum or start other status determination process until a tutor is appointed. If an unaccompanied or separated child requests asylum or engages in other administrative or judicial processes, a legal representative will be appointed to them in addition to the guardian. (Committee on the Rights of the Child, 2005. General comment No. 6: Treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, September 1, paragraph 21).

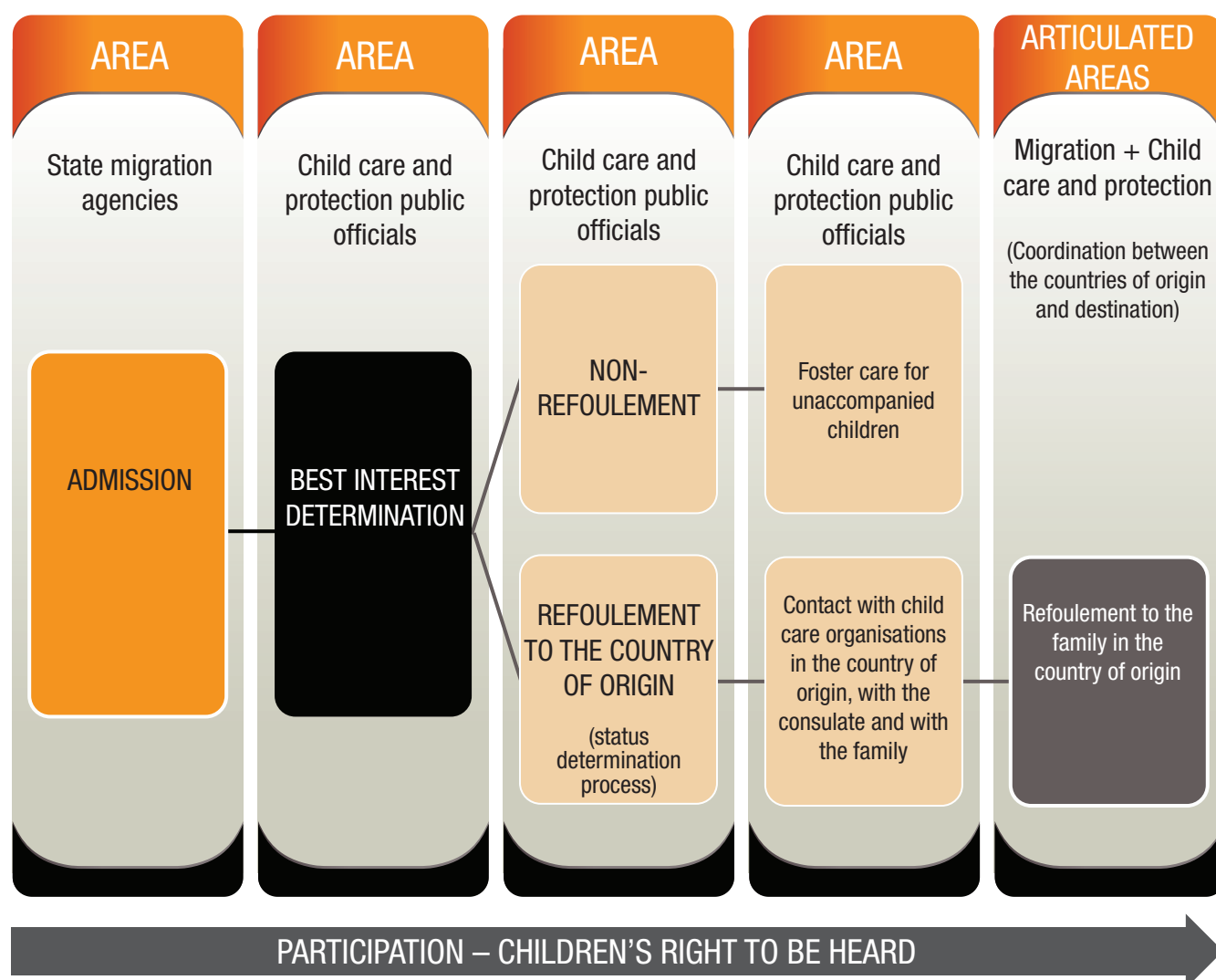
²⁷ Convention on the Rights of the Child (1989), article 12.

In its General Comment No. 12, The Committee on the Rights of the Child states the judicial obligation of the States Parties to acknowledge the right to be heard and ensure its fulfilment. This means that the States Parties must directly guarantee this right by adopting all necessary measures, including the different procedures to denounce its violation.

Since the measures taken by the States concerning the migration of adults have a direct impact on these adults' sons and daughters (in particular on the right to family unity), children's right to be heard must be guaranteed also in the migratory procedures of entry, stay and departure that involve their parents.

CIRCUIT OF INSTITUTIONAL INTERVENTIONS AND BEST INTEREST DETERMINATION PROCESS, BOTH DURING ENTRY AND STAY IN A NEW TERRITORY

CIRCUITS: areas, procedures and actors responsible for the guarantee of the rights of migrant children



)Currently, State migration agencies are almost exclusively the ones to interact with migrant children and their migrant parents or families. Child care and protection public officials sometimes intervene through specific assistance and protection programmes. This is opposite to the children right's approach based on the CRC: child care and protection public officials should be in charge of these status determination processes, while migration public officials should only adopt the administrative measure that best fits the solutions proposed by the competent state bodies.²⁸

Therefore, these state bodies should have action protocols to be applied in all cases in which migrant children or sons and/or daughters of migrant adults are involved, in order to ensure these children's best interest at the time of their entry, and to evaluate their possible stay, refoulement, or other appropriate measure.

²⁸ Comment on migrant childhood in Latin America and the Caribbean by UNICEF. Consultative Opinion on migrant childhood requested by Argentina, Brazil, Paraguay and Uruguay before the Inter-American Court on Human Rights. Buenos Aires, December 2013. Paragraphs 174 and 175.

Either irregular or undocumented migrants, NEVER ILLEGAL MIGRANTS

- The Special Rapporteur on the Human Rights of Migrants noted that the expression “illegal migrant”, widely used in the context of the criminalization of irregular migration, is not recognised in international law. “Irregular migrant” and “undocumented migrant”, as defined in article 5 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, are the internationally accepted terms to describe the situation of migrants who do not have or lost the appropriate documents to allow them to reside or work in a specific territory.
- Describing human beings as “illegal” is not in accordance with human dignity, in particular because of the meaning of the term “illegal”. Due to its use in penal law and in the criminal justice system, this term causes prejudice and a suspicion of criminality against migrants.

Special Rapporteurship on the Human Rights of Migrants (2010), paragraphs 28 and 29

- *“The Committee is of the view that the term ‘in an irregular situation’ or ‘undocumented’ is the proper terminology when referring to their status. The use of the term ‘illegal’ to describe migrant workers in an irregular situation is inappropriate and should be avoided as it tends to stigmatize them by associating them with criminality”.*

Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (2013). General comment No. 2: the rights of migrant workers in an irregular situation and members of their families, paragraph 4.

b. Admission

The authorization to enter and stay in a country is an unavoidable requirement for the best interest determination –in particular of those migrant children who are unaccompanied or separated from their families.

Rejecting the admission of an unaccompanied or separated child at the border goes directly against the BID principle.

As noted by the Committee on the Rights of the Child, the attempts to find long-term solutions for unaccompanied or separated children outside their country of origin must be put into practice,

when possible, as soon as the condition of these children as unaccompanied or separated is determined. The HRC also states that allowing migrant children to enter the territory to be a precondition to the initial assessment process, and that “the assessment process should be carried out in a friendly and safe atmosphere by qualified professionals who are trained in age and gender-sensitive interviewing techniques”.²⁹

Therefore, it is necessary to develop a border control system that avoids the automatic rejection of children in the border, and that makes it possible for them to be interviewed, in order to begin the process to determine their care and protection needs. This is necessary to guarantee the non-refoulement of children, since refoulement could be a serious threat to their rights, to their physical integrity and to their lives.

²⁹ Committee on the Rights of the Child (2005). General comment No. 6: Treatment of unaccompanied and separated children outside their country of origin. 39th period of sessions (CRC/GC/2005/6), paragraphs 20 and 79.

the children’s socioeconomic conditions “in an age and gender-sensitive manner and should, for example, take into account the particularly serious consequences for children of the insufficient provision of food or health services”.³¹

The implementation of the criteria set by the Committee concerning the *refoulement* of unaccompanied children can be decided only after the best interest of the child determination. “Non rights-based arguments, such as those relating to general migration control, cannot override best interests considerations”.³²

Finally, children must be fully informed and consulted. Their opinions, age and the time spent outside their country of origin are key factors in this process.

³⁰ ACHR, article 22.8. Inter-American Convention to Prevent and Punish of Torture, article 13.4. UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 3. ICCPR, articles 6 and 7. European Convention for the Protection of Human Rights and Fundamental Freedoms, articles 2 and 3.

³¹ Committee on the Rights of the Child (2005). General comment No. 6, op. cit., paragraphs 27 and 84.

³² Committee on the Rights of the Child (2005). General comment No. 6, op. cit., paragraph 85.

c. Principle of non-refoulement

Since the adoption of the Geneva Convention in 1951, the principle of non-refoulement has changed until becoming an absolute rule (*Ius Cogens*) that admits no exception or derogation. It has also been explicitly incorporated into several International Human Rights Law instruments.³⁰ More specifically, States are not allowed to expel or return any person to a different country, should this imply a risk of violation of human rights, especially of the right to life, freedom and physical integrity.

The Committee on the Rights of the Child made an extensive analysis on the importance of respecting the principle of non-refoulement in the case of unaccompanied migrant children. Undoubtedly, the violation of this principle not only can lead to serious consequences, but also indicates an absent or deficient BID process in the rejecting country.

The Committee highlighted the importance of a previous assessment of the risk of refoulement. This assessment must not only consider the threats to the children’s right to freedom, life and physical integrity, but also

d. Gender-sensitive approach

The gender-sensitive approach allows to understand the migration of women and girls as a particular social phenomenon within the general migration phenomenon. This differentiation enables the analysis of the social, political and cultural environment in which humans migrate and enables the identification of the differences between the migration of women and of men.

Given the high number of migrant girls, it is necessary to incorporate a gender-sensitive approach in order to guarantee the human rights of young girls during the entire status determination process.

A gender-sensitive approach in the migration phenomenon

- Considering discrimination faced by women and young girls during the entire migratory process.
- Taking multiple discrimination into account, since gender-based discrimination is usually articulated with discrimination on other grounds, such as age, ethnicity, poverty, etc.
- Acknowledging the fact that gender inequality conditions migrant's incorporation and integration into their destination societies.
- Promoting the adoption of laws and policies in order to eradicate both direct and indirect discrimination against migrant women and girls.
- Incorporating this approach in best interest determination processes in order to identify situations of gender-based violence in the country of origin as a ground for non-refoulement.
- Reforming laws, policies and programmes in order to improve the protection of migrant women and girls in the destination countries, and to achieve their integration.

Acknowledging that the majority of domestic workers are women and girls, in 2008 the Committee on the Elimination of Discrimination against Women issued a General recommendation on women migrant workers. This focused on to the topics of gender in the labour market, the prevalence of gender-based violence, and the feminisation of poverty and economic migration. The Committee calls all States to incorporate a gender-sensitive approach in order to better understand the issues faced by women and girls, and to allocate resources to prevent gender-based discrimination during the entire migratory process.³³

In the aforementioned report, the Committee on the Elimination of Discrimination against Women expressed

³³ CEDAW (2008). General recommendation No. 26: women migrant workers.

³⁴ Ibidem.

its concern on the fact that women migrant workers, including adolescents, face threats that men were not exposed to. This was so because, in gender-insensitive environments, women have fewer mobility opportunities and restrained access to information on their rights and entitlements. This gender imbalance is also reflected in traditional female roles and gendered labour markets. Domestic labour, informal labour and certain sex-related “forms of recreation” were the occupations in which the presence of women prevailed.³⁴

In February, 2011, the Committee on the Protection of the Rights of all Migrant Workers and Members of their Families made a General comment on migrant domestic workers, in which it set special protection measures for migrant children. The Committee stated that States must make sure that migrant children do not perform any kind of domestic work that may endanger their health or their physical, mental, spiritual or social development. In addition, States must refrain from adopting policies aimed at employing migrant children in domestic work, and must ensure their access to free primary and secondary education on the basis of equality of treatment with nationals.

In June, 2011, the ILO adopted its Convention 189 concerning Decent Work for Domestic Workers. This Convention sets the first global standards that recognize the rights of about 100 million domestic workers around the world (most of which are women and girls). The Convention calls States to protect all domestic workers from abuse, harassment and violence. It also requires a minimum age for domestic workers and, in the case of minors, it requires that their domestic work does not interfere with their education.

e. Social protection measures

It is crucial for child care and social protection policies to explicitly incorporate migrant children as persons in a particular vulnerable situation that require special protection.

Social rights legislations, policies and programmes that regulate matters such as health and education (among others) seldom mention the issue of migrants.

This regulatory and programmatic omission usually leads to the absence of programmes that appropriately address migrant children's needs and rights, especially when these children are not accompanied by their parents. The invisibility of migrants' vulnerability has a particular impact on children in the different situations they go through during their migration experience. This can happen when children are unaccompanied –and undocumented– in the countries of destination, when they migrate along with their families without a legal residence permit, and in cases of first generation migrant children whose parents are irregular migrants.

When there is no explicit mention to migrant children in the norms, the interpretation of each situation is left to the laws or resolutions of the implementing public body, or to the will of public officials, hospital or school directors. These often decide arbitrarily on the enjoyment –or not– of fundamental rights, such as health or education. All children must have unrestricted

enjoyment of their social rights, regardless their status of accompanied, unaccompanied or separated migrants, or of first generation migrant children.

The countries' first obligation is not to obstruct the fulfilment of migrant children's social rights. In order to accomplish this, they must abstain from adopting any measure or policy that may restrict children's access to services because of their migration status.

Countries must also actively promote the enjoyment social rights, especially health and education. States must guarantee the right of unaccompanied or separated children to education, health and social protection.

In the case of children who migrated and live with their parents, material assistance must be guaranteed by the social protection system. This should provide them with the means necessary to achieve a decent living, as stated in article 27 of the CRC.

The Committee on the Rights of the Child on the social rights of migrant children

- All unaccompanied or separated children, regardless of their status, will have full access to education in the host country. States must register unaccompanied or separated children as soon as possible with the appropriate school authorities and assist them in maximising their learning opportunities.

Committee on the Rights of the Child (2005). *General comment No. 6, op. cit., paragraphs 41 and 42.*

- States parties have the fundamental obligation to ensure, at least, the enjoyment of essential levels of every right, including primary health care, guaranteeing access to health centres and services without discrimination –particularly without discrimination against vulnerable or marginalised groups.

Committee on the Rights of the Child (2003). *General comment No. 4: Adolescent Health and Development in the Context of the Convention on the Rights of the Child (CRC/GC/2003/4). June, paragraph 38.*

- The Committee on the Rights of the Child has urged States to guarantee the access of all children to appropriate and effective services, including programmes of health, care and education specifically designed to promote their wellbeing. Particular attention should be paid to the most vulnerable groups of young children and to those who are at risk of discrimination (article 2). This includes children from migrant families.

Committee on the Rights of the Child (2005). *General comment No. 7: Implementing child rights in early childhood, paragraph 24.*

Table continued in the following page

The Committee on the Rights of the Child on the social rights of migrant children

- Legal identity is often a prerequisite for access to a number of fundamental rights. Children of migrants in an irregular situation, in particular those born in a host State that does not recognize their existence, are vulnerable throughout their lives. States parties are obliged to ensure that children of migrant workers are registered soon after birth, irrespective of the migration status of their parents, and provided with birth certificates and other identity documents (art. 29). States parties shall not require migrant workers to present a residence permit in order to register a child, as this would effectively deprive migrant children in an irregular situation of their right to birth registration, which can also deny them access to education, health services, employment and other rights.

Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (2013). General comment No. 2: the rights of migrant workers in an irregular situation and members of their families.

4. RIGHT TO FAMILY LIFE AND REUNIFICATION

The right to family life, which is recognised for all human beings in international human rights treaties,³⁵ can be severely affected by migration. In many cases, migration leads to temporary family separation. Usually, children are left alone in their country of origin when the parents –both or one of them– or responsible adults migrate on their own. Likewise, children increasingly migrate unaccompanied, leaving their parents behind in their country of origin or searching for one or both of them in the country of destination.

In this Handbook, a broad definition of family is used which is not restricted to the traditional mother and father “roles” designated as the exclusive head of the household. Instead, a definition is promoted that acknowledges several kinds of family arrangements that are present in the communities from which children migrate.

The policies and measures adopted by countries concerning the entry, stay and departure of migrants may

.....

In the report “The Right of Boys and Girls to a Family. Alternative Care. Ending Institutionalization in the Americas” (IACHR, UNICEF), the IACHR contests the existence of any traditional or limited concept of family, on the grounds that this would interfere with the persons’ right to private life, and that there are diverse kinds of families in today’s society.

.....

³⁵ See Convention on the Rights of the Child (articles 8, 9, 10, 16); International Covenant on Economic, Social and Cultural Rights (article 10); International Covenant on Civil and Political Rights (articles 17, 23); International Convention on the Elimination of All Forms of Discrimination against Women (article 16); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (article 14).

have a decisive impact on the unity or separation of the family. Therefore, the right to family life can be positively or negatively affected by the decision on an immigration or residence permit application, or by a measure taken on the possible expulsion of children, or their parents or responsible adults.

The protection of the right to family life involves a series of positive and negative obligations from the countries. On one hand, it implies the adoption of specific measures to guarantee and promote that right. On the other hand, it implies abstaining from taking measures that illegally obstruct and interfere with family life. In the context of migration, this means that countries must refrain from adopting measures that violate rights acknowledged in the CRC (e.g. public officials should not adopt measures that separate families, such as the expulsion of the father, mother, or adult responsible for the child).

Indeed, some countries order the deportation of people based solely on their migration status, regardless of their family situation (in particular, regardless the situation of children who live with the soon-to-be deported migrant in the country of destination). This can happen both when the entire family has an irregular migration status and when the family's children have a residence permit or citizenship of the country of destination (e.g., due to being first generation migrants).

The right to family life in the CRC

ARTICLE 8	ARTICLE 9	ARTICLE 10	ARTICLE 16	ARTICLE 18	ARTICLE 27
Right of the child to preserve their identity and family relations	Principle of non-separation of the family	Right to family reunification	Right of the child to not be subjected to arbitrary or unlawful interference with their family	Parents responsible for the upbringing and development of the child and States' assistance for the parents in the performance of their child-rearing responsibilities	Material assistance and States' support programmes, particularly with regard to nutrition, clothing and housing

The right to family unity must be the guiding criterion for every status determination process, and the existence of a BID process in each particular case is crucial. In most cases, the presumption is that family unity is in the best interest of children. However, the evidence gathered may lead to conclude that this is not the case, or that repatriation is not an appropriate measure to take. Either way, family reunification must take place in the country of destination or in a third country.³⁶

It must be highlighted that family reunion in the country of origin is not to be considered a possible alternative should it lead to the violation of the child's rights or should it not follow the child's best interest.³⁷

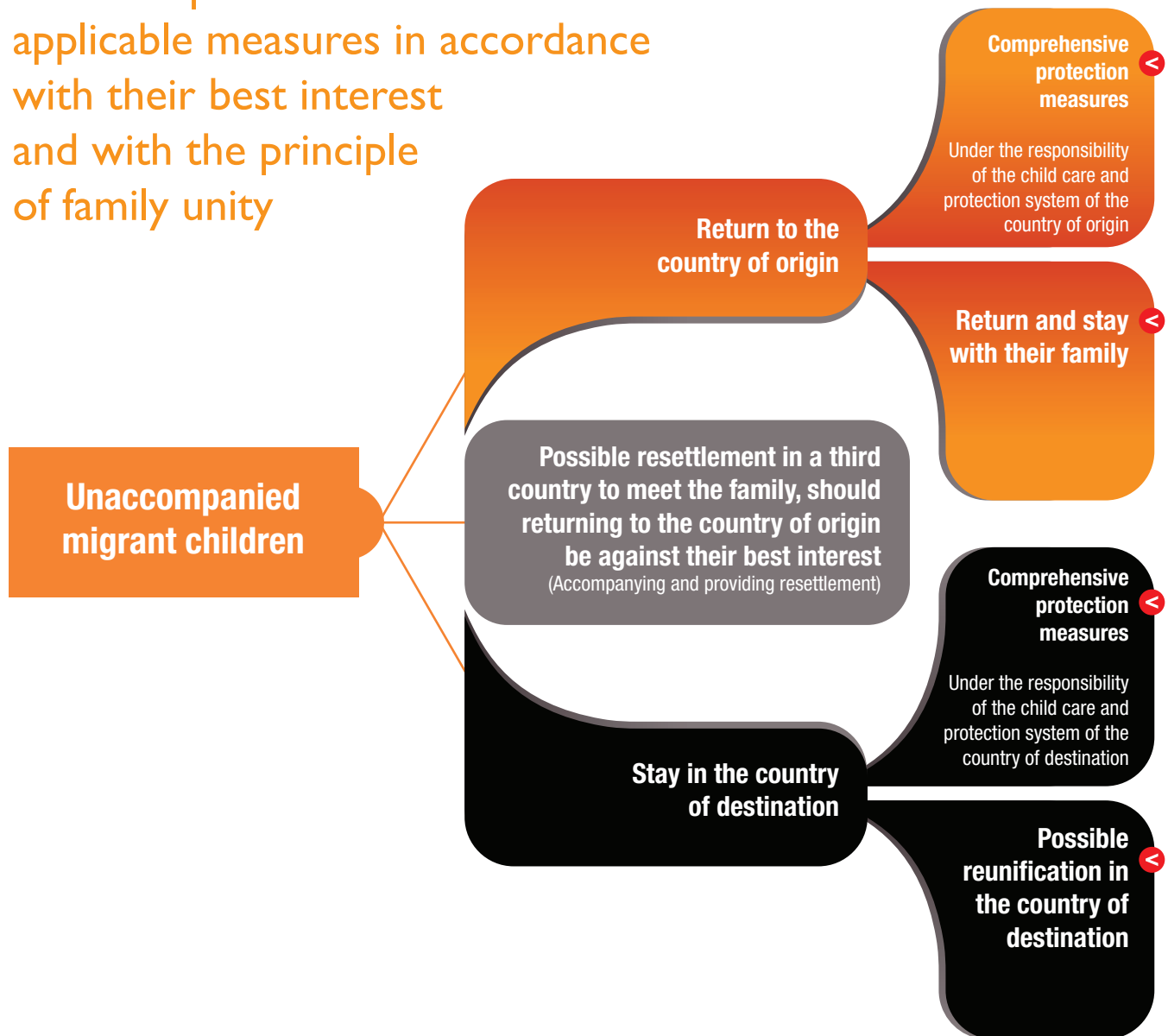
Article 10 of the CRC

In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner.

³⁶ If family reunification in the country of origin is not possible, be it due to legal obstacles that prevent repatriation, be it due to repatriation not being in the best interest of the child, the obligations set in articles 9 and 10 of the Convention should come into effect and should govern the host country's decisions on family reunification. In this context, states are reminded that all "applications by a child or his or her parents to enter or leave a state Party for the purpose of family reunification shall be dealt with by states Parties in a positive, humane and expeditious manner" and "shall entail no adverse consequences for the applicants and for the members of their family" (article 10, paragraph 1). According to the paragraph 2 of this article, countries of origin shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country" (Committee on the Rights of the Child. General Comment No. 6, op. cit., paragraph 83).

³⁷ Committee on the Rights of the Child. General comment No. 6, op. cit., paragraphs 81 and 82.

Unaccompanied children: applicable measures in accordance with their best interest and with the principle of family unity



When the children's responsible adult(s) migrate leaving their children behind in their country of origin, the factors that restrict or hinder family reunification can be the cause of irregular migration of unaccompanied children looking for their migrant parents.

This increases the risk of children to become victims of trafficking and prostitution, and to be exposed to several other threats to their rights, lives and physical integrity. Even if children actually enter the country in which their parents are, the sanctions laid down for infringements of migratory regulations and the lack of regularisation mechanisms in the country of destination may not only hinder family reunification but also lead to expulsion, entry bans and other kinds of penalties.³⁸

In short, countries should adopt a broader approach on family life and should create policies and regulatory frameworks in line with international human rights law. This transformation should aim to facilitating family reunification and drastically reducing the numbers of deportations of irregular migrants causing family separation (in particular separation of children from their parents).

³⁸ Alonso, Ceriani and Morlachetti (2012). "Políticas migratorias, movilidad humana y derechos de la niñez en América Latina y el Caribe", en Lettieri, M. (ed). Protección internacional de refugiados en el sur de Sudamérica. UNLA.

5. ALTERNATIVE CARE

a. Introduction

This section presents general standards applicable to the alternative care of children and adolescents who lack parental care and who are, for different reasons, outside their country of origin.

These standards are based on the principles arising from the human rights instruments previously presented in this Handbook, in particular from the Guidelines for the alternative care of children (approved by the UN General Assembly on December 18, 2009, through Resolution 64/142). The Guidelines reaffirm the Universal Declaration of Human Rights and the Convention on the Rights of the Child, and deepen the scope of the latter concerning the protection of children and adolescents deprived of parental care or who are at risk of losing it.

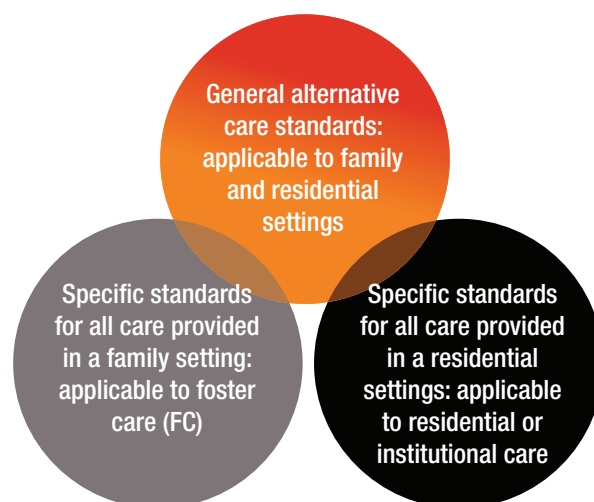
GUIDELINES FOR THE ALTERNATIVE CARE OF CHILDREN

- Guidelines to prevent separation.
- Guidelines for separation procedures.
- Guidelines for the provision of alternative care.
- Guidelines for the children's reintegration into their family and community (or other stable solutions).
- Guidelines for alternative care in special situations (natural disasters, armed conflicts, children outside their countries of origin)

As described in the Foundation of this Handbook, the Convention on the Rights of the Child (CRC) calls to protect those children who cannot live with their parents or cannot remain in a stable family environment. Nevertheless, the CRC does not cover in detail the adequate measures to guarantee the protection of children's rights in these situations. The Guidelines

intend to fill this gap by providing clear and consensual criteria concerning the operation of the programmes and institutions that provide alternative care for children.

The guidelines described here refer to two different alternative care settings. Children deprived of parental care can be placed in family-based care (foster care programmes), or can be placed in residential care (residential care institutions).



Alternative care for migrant children in Latin America and the Caribbean is provided almost exclusively in residential or institutional settings, characterized by their "deprivation of liberty".³⁹ Not a single State of the region has developed or implemented family-based alternative care for migrant children. However, in other regions foster care is currently a care option for children outside of their country of origin.

³⁹ RELAF and ISS (2013). "Amicus Curiae sobre niñez migrante en América Latina y el Caribe". Consultative opinion on migrant childhood requested by Argentina, Brazil, Paraguay and Uruguay before the Inter-American Court on Human Rights. Mexico City, October.

For instance, in 2014 Italian statistics showed a strong increase in the numbers of foreign children in relation to the total number of children in FC. According to data from 2011, out of 29,388 children between 0 and 17 years of age who were outside their families of origin, 12,397 children were living in FC (of which 2,108 were migrants), and 14,991 in residential institutions. A noticeable inter-annual increase in the numbers of foreign children living in FC was evidenced: in 1999, they represented 6%; in 2007, 14%; in 2008, 16%; and in 2011, 17%.⁴⁰

The Inter-American Commission on Human Rights provides an overall approach to the alternative care of migrant children in its report “The Right of Boys and Girls to a Family. Alternative Care. Ending Institutionalization in the Americas”. In it, the IACHR states that special protection measures must first consider keeping children with their parents or extended family, for this is the measure most consistent with their rights. If it is not possible or if it is not in the best interest of the child, special protection measures must alternatively consider the integration of the child into a foster family. In its conclusions, the IACHR establishes that institutional or residential care should be limited to those cases in which it is necessary and appropriate on the basis of the best interests of the child. Also, it should be guaranteed that the child does not stay in a residential or institutional care facility longer than it is strictly necessary. In addition, the IACHR makes a call to replace big residential institutions with small foster centres that provide individualised quality attention, and are organised to resemble a family and community environment, sensitive to the child’s cultural background.

The report made by the regional UNICEF office includes both the applicable human rights standards and statistical information on the situation of institutionalised children in the countries of the region. This information demonstrates the indiscriminate use of institutionalisation as a measure of first resort for the different stakeholders responsible for the protection of the rights of children deprived of parental care.⁴¹

Broadly speaking, the Guidelines stress that every child in alternative care entitled to have their fundamental rights respected, and that the competent public officials are responsible for ensuring that respect. In the next paragraphs, the basic principles that shall guide alternative care of children will be exposed. These principles must be considered along with the principles arising from the instruments previously described in this Handbook.

All standards previously outlined in this Handbook (the principles of non-detention, non-discrimination, and the right to family life and reunification) are particularly relevant when it comes to alternative care.

⁴⁰ Ministero del lavoro e delle politiche sociali e Università degli Studi di Padova. Parole nuove per l’affidamento familiare. March, 2014.

⁴¹ UNICEF-LACRO (2013). La situación de los niños, niñas y adolescentes en las instituciones de protección y cuidado en América Latina y el Caribe. Panama

b. General principles

THE NECESSITY PRINCIPLE

It establishes that children should be placed in alternative care only when such care is regarded as genuinely needed, and after having discarded other options that do not involve family separation. Strategies to prevent situations and conditions that may lead to the separation of migrant children from their families must be prioritised.

THE SUITABILITY PRINCIPLE

It establishes that, when alternative care is genuinely needed, this must be provided in a suitable and appropriate way. All care settings must fulfil general minimum standards concerning, for instance, infrastructure and staffing, regime, funding, protection, and access to basic services (especially health and education). Another aspect to suitability is the importance of matching the care setting to the needs of every child concerned. This means that a range of family and residential care options are in place, and that there is a clear procedure to find the most suitable care setting for every child in line with their best interest.

In the Latin American and the Caribbean regions, there is no such variety of alternative care settings. This leads to

children being frequently detained or “secured” in institutions that do not meet their specific needs and that violate their rights. This is the case, among others, of the Estación Migratoria Siglo XXI (Migration Center XXI Century) in Tapachula, Mexico, where living conditions that violate the rights of migrants in general and of migrant children in particular were documented.⁴²

Discrimination against institutionalised migrant children is expressed in many ways: not only in policies of persecution and restriction that target a particular group within institutions, but also in the prejudice and stereotypes that govern the practices of public officials and operators. For instance, facing an increasing presence of children from indigenous peoples in institutions, a Panamanian authority stated that indigenous peoples “are very prone to abandon their children”.⁴³ This is a simple example of the prejudiced approach of some public officials and its resulting practices.

PRINCIPLE OF SPECIFICATION

It implies the need for targeted policies for specific social groups affected by a particular situation of structural inequality and vulnerability, such as migrant children and the sons and daughters of migrants. This inequality is evident in the fact that structural poverty is the main factor affecting migrants in the region.

This context of structural vulnerability is followed by the specific risks and threats to which children are exposed during their migration journey. Transit from Central American countries through Mexico to the North exposes children to extremely harmful situations: kidnapping, robbery, rape, accidents, among others. All alternative care measures must take this special situation of vulnerability into account.

PRINCIPLE OF DEINSTITUTIONALISATION

It indicates that States must develop all possible actions and policies to prevent children from being placed in institutions. During 2009, 2010 and 2011, 5,692, 4,043 and 4,160 children were detained within Mexican territory and placed in Migration Centres.⁴⁴ Moreover, several studies have shown an increase in the number of migrant children detained in institutions over the past years. Applying this principle requires designing strategies to provide alternatives to the placement of migrant children in institutions, and careful and sensitive strategies to assure that children unnecessarily institutionalised due to their status as migrants can leave the institutions. In these strategies, the institutions’ operators must have an active role by working towards concrete de-institutionalisation results.

⁴² Centro de DDHH Fray Matías de Córdova (2013). Segundo Informe sobre Derechos Humanos y condiciones de vida de las personas migrantes en el Centro de Detención de la ciudad de Tapachula, Chiapas. March.

⁴³ RELAF and UNICEF (2013). Discriminación en las instituciones de cuidado de niñas, niños y adolescentes. Buenos Aires, May. Page 25.

⁴⁴ Ceriani Cernadas, P. (coord.) (2012). Niñez detenida. Los derechos de los niños, niñas y adolescentes en la frontera México-Guatemala. Tapachula y Lanús. UNLA/ Centro de DDHH Fray Matías de Córdova. Chapter 7, page 7.

c. Standards for alternative care in family and residential settings

The following standards are valid for the different kinds of formal care: family-based care and residential care

1. Appropriate care: The most appropriate form of care must be determined through an assessment of the particular situation and background of each child, such as their ethnicity, religious and cultural beliefs. These must be considered even within the same country if more than one language is spoken (due to the presence of diverse ethnic groups), or if different religious beliefs coexist alongside a predominant religion.

2. Assessment process: gathering as much information as possible will allow for an assessment of the child’s situation of vulnerability, the reasons why they are unaccompanied or separated from their family, and the social context and family situation in their country of habitual residence. In all cases, the assessment must consider the need to protect the confidentiality of children and the need to take due caution to avoid any form of re-victimisation.

3. Transitory nature of alternative care: alternative care, in its two forms, shall be a temporary measure of protection. The professionals involved must periodically review this measure, assessing the evolution of the migrant child's situation and the possibilities for integration into their family of origin.

4. Periodic review of the placement: the alternative care measure must be reviewed at least once every thirty days with the aim of preventing an unnecessarily prolonged stay in alternative care.

5. Alternative care projects: all organisations that provide alternative care for children must have written policy and practice statements in accordance with the UN Guidelines for the alternative care of children. The organisations must state their institutional aims and their methods and standards for the recruitment, monitoring, supervision and evaluation of qualified and suitable carers to ensure said aims are achieved.

6. Protection and care: migrant children must be protected from kidnapping, trafficking, sale, and from any other form of exploitation to which they could be subjected.

7. Children victims of trafficking and/or kidnapping: children who were victims of trafficking or prostitution shall be offered the emotional support and treatment that their special situation requires. Notably, they should be provided with an appropriate post-traumatic psychological treatment, and with legal counselling in order to take criminal proceedings against their aggressors. Measures to avoid re-victimisation and to ensure the child's safety and integrity must be taken at all moments.

8. Access to health and education: unaccompanied migrant children who are in any form of alternative care must be offered comprehensive medical attention in accordance with their needs. They must also have access to educational activities in accordance with their age, language and cultural identity.

9. Children's identity: migrant children's original practices and traditions must be preserved in the country of destination so that children can develop their own identity.

10. Obtaining documentation: all documentation that guarantees the identity of the child must be obtained.

11. Child participation and the obligation to listen: migrant children placed in alternative care must have access to a known, effective and impartial mechanism to present their complaints and concerns on the treatment received and the care conditions. Assemblies in which children can express themselves openly can also be implemented, and a letterbox can be created in which children deposit their private written comments.

12. Knowing their rights: migrant children must know the rights they are entitled to. For this purpose, it is necessary to provide them with clear and accessible sources of information in accordance with their age and maturity (for instance, RELAF and UNICEF's child-friendly version of the UN Guidelines "Your right to live in a family and to be cared for in all the situations of your life").

13. Family reunification: caretakers of both alternative care forms must facilitate and maintain the links between children and their family of origin and/or with any other attachment figures from their community, in order to facilitate reunification attempts. The necessary processes for tracing the unaccompanied child's family should be in place as soon as the child is taken into care.

14. Frequent communication: if appropriate, migrant children should be guaranteed frequent communication with their family of origin and/or with any other attachment figures from their community. This is vital to preserve the links that will facilitate future reintegration efforts, and can be arranged via telephone calls or other forms of communication, such as Internet.

15. Help to return: reintegration efforts must take place when a relative or significant attachment figure is located, can prove their bond with the migrant child, is accepted by the child as their main caregiver, and is suitable as a caregiver. In all cases, it should be guaranteed that the return to their country of origin is safe. A child should never be returned in an arbitrary or forced way.

16. Non-refoulement: as previously mentioned in this Handbook, unaccompanied migrant children who are in alternative care must not be returned to the country of habitual residence if after assessing their situation, it is considered that they would be in danger or lack a suitable caregiver if returned to his or her country.

17. Trusted adult: migrant children in alternative care must have access to a trusted adult, chosen from among their carers and other people responsible for their protection, in whom they can confide in total confidentiality.

18. Facilities for supervised contacts: all alternative care environments shall have adequate facilities for supervised contact between children and any meaningful attachment figures, as well as with consulate officials or other public officials that intervene in their situation.

19. Fostering community ties: all children must be guaranteed access to education and to all services necessary to foster their biological, psychological and social development. These services must not be provided inside the alternative care setting in which children are temporarily living (unless this is against the child's best interest), in order to maintain the ties of children with the communities in the country other than that of habitual residence.

20. Network of articulated supportive services: with the purpose of fostering the interaction and integration of migrant children and their families into the new social environment, a network of supportive services should be created. This will facilitate the progress of the interventions and will provide the perspectives of different professionals on actions taken.

21. Provide care with respect and understanding: caretakers of both alternative care forms must have a relationship with the migrant child in their care in which respect and understanding are fundamental.

22. Authorisation: both the organisations that provide alternative care for migrant children and the spaces they use must be authorised by the competent authorities.

23. Suitability of caregivers: all people involved in the provision of alternative care for children (whether in direct contact with them or not) must be properly assessed in order to secure their suitability.

24. Qualification of caregivers: caregivers must be selected and evaluated by qualified and experienced professionals and professional teams to determine their suitability to provide alternative care for separated children.

25. Training of caregivers: caregivers must be trained before they take the responsibility to look after children.

In addition to this, complementary training courses should be offered at regular intervals.

26. Continuous assessment and reviews: these assessments will focus on their ability to perform their tasks in accordance with the orientations of these standards.

27. Support and guidance: caregivers will be offered guidance and advice by experienced and qualified professionals throughout the care process.

28. Functions and responsibilities: caregivers (be it designated caregiver or entity) must:

- a) Ensure the protection of the rights of the child and, in particular, ensure that the child has appropriate care, accommodation, healthcare, developmental opportunities, psychosocial support, education, and linguistic support;
- b) ensure migrant children have access to a legal representation and to other forms of assistance, if necessary, and that their right to be heard is respected, so that their opinions can be taken into account by the competent authorities in the decision making process. Caregivers must also make sure that children are informed and advised regarding their rights;
- c) Contribute to the identification of a suitable permanent and stable solution in the best interest of the child;
- d) Liaise with the different organisations that can provide services to the children;
- e) Assist children throughout the status determination and the subsequent family reunification process;
- f) In cases where repatriation or family reunification is recommended caregivers should ensure that this is in the best interest of the child;
- g) Help the child to keep in contact with their family.

29. Code of conduct for workers: every organisation that provides any form of alternative care must develop a staff code of conduct that defines the roles and functions of each of the persons involved in the process.

30. Stability in the care setting: alternative care must be stable, avoiding the movement of children through different locations. Alternative care must guarantee the child a stable home and provide the security of a continuous and secure link with their caregivers, fostering the establishment of meaningful relations with adults and peers while the placement lasts.

31. Creation of individual records: qualified professionals and teams from the alternative care programmes should create and periodically update individual files (records, folders) for every child. These files should be available for consultation by the children, and to be taken in case of transfers to any other family or residential setting to facilitate future planning by caregivers and professionals, to guarantee the continuation of care, and to facilitate interventions.

32. Records' contents: records should contain information on the situation that caused the placement of the migrant child in alternative care, and on the reports based on periodical evaluations. The records should follow the child throughout the alternative care period and should be always consulted by the professionals and operators responsible for their care and by the public officials involved in the process.

33. Records available to the children: the records should be made available to migrant children within the limits of their right to privacy and confidentiality. Before, during and after the consultation of the records, the child should be offered appropriate counselling.

34. Access to information: children should be informed of their legal situation and status determination process. This information must be provided in a kind and appropriate language, in accordance with their age and maturity.

35. Confidentiality of record information: all professionals and caregivers involved in the provision of alternative care should respect the right to privacy and treat the information on records as confidential information about the child.

36. Religious practices: foster families and care institutions that are responsible for the care of migrant children shouldn't try to encourage or persuade children to participate in daily or ceremonial religious practices (e.g. prayers and confessions). Children should freely decide whether or not to participate in religious services or rituals.

d. Specific standards for foster care

1. Selection of foster families: foster families should be selected after an assessment of their suitability to fulfil this role. The decision to place a specific child with a specific family should be made taking into account the particular needs of the child and the profile of the foster family.

2. Ties between the foster children and their family of origin: these ties will be maintained and fostered whenever appropriate and possible. Facilitating and mediating contact will be the responsibility of the caregivers, who will be supervised and given counselling by the appropriate qualified professionals and operators.

3. Foster family responsibilities: families responsible for the care of migrant children should guarantee their access to health, education, and the integral protection of their rights. To do so, they should have access to all public services and, when appropriate, should be given priority to access benefits or services.

4. Support to foster families: foster families should be offered the support of specialized services (specific social programmes) that contribute to their task. This includes training and services that periodically monitor and assess the family's performance and the situation of the child in their care.

5. Foster families' associations: foster families may create support associations aiming to facilitate mutual exchange of experiences and support. In addition, these associations can have a pivotal role in influencing the implementation and development of public policies for children deprived of parental care.

6. Value of foster families' experiences: the experiences of foster families should be valued and their voices heard both during the initial assessments and when planning the appropriate action plan for the child in their care. Given that the family has built a meaningful link with the migrant child, it is able to appropriately contribute to the care process and its termination.

e. Specific standards for residential care

1. Small-groups homes: residential care facilities should care for small number of children under conditions that resemble a family environment as much as possible (known as “family-like” care).

2. Personalised care: all migrant children in residential care should enjoy personalised care from the care providers and caregivers, regardless of the number of children placed in the institution, so as to avoid the depersonalising effect typical of institutional culture.

3. Limitations of the use of residential care: placements in residential care should be limited to situations where it is specifically appropriate taking into account the needs of the migrant child in alternative care. In such instances the residential care facility should provide special care and benefits to their development.

4. Children over the age of three: migrant children placed in institutions must be over the age of three. Babies and young children must be looked after exclusively in family based care, for institutional care is not the appropriate option for them.

5. Short stay: all efforts should be made so that the placement of a migrant child in an institution is temporary until a family based care alternative is viable. Likewise, the necessary mechanisms so that the status determination process is resolved as soon as possible should be in place to avoid unnecessarily prolonged stays.

6. Specialised staff: institutions that care for migrant children should be adequately staffed with professionals qualified in migration issues.

7. Staff with good communication skills: operators should be properly trained to establish a fluid communication with children placed in institutions, especially in countries that host migrants from countries where a different language is spoken, or from indigenous peoples.

8. Professionals trained to deal with particular individual conditions: migrant children living in institutions have the right to be offered support and assistance from professionals and operators in accordance with their particular individual conditions.

9. Right to be heard: spaces should be in place in institutions in which children can voice their opinions regarding their situation. Institutions must ensure that the mechanisms that guarantee the right of children to be heard are in place, and that their opinions regarding the living conditions and co-habitation rules are considered.

10. Life conditions: the life conditions of institutions that care for migrant children cannot resemble those of a prison. A residential care institution for migrant children cannot be a place of confinement. All children must be guaranteed free movement and access to all common areas within the institution.

11. Co-habitation rules: co-habitation rules and time schedules set by the institution must adapt to the children's particular needs, rather than the other way around. Given that the operating conditions of care institutions cannot resemble those of a detention centre, a flexible co-habitation environment that encourages activities of leisure must be fostered.

12. Progressive autonomy: migrant children living in institutions must be encouraged to grow a progressive autonomy, that is, to gradually develop the exercise of their rights and their potential, through their involvement in activities such as sports, arts, debate workshops, etc.

13. Uprooting: residential care institution must minimise the harmful effects of uprooting on migrant children, by means of avoiding operating norms and measures that tend to standardise and homogenise the care of migrant children without proper consideration of their cultural particularities. All efforts should be made by institutions to avoid the strong disruption of the migrant child's educational, cultural and social life which is caused by uprooting.

14. Groups of siblings: groups of siblings must be placed together; and separate placement should be an exceptional measure. When they cannot be placed together, continued contact between them should be guaranteed whenever it is deemed necessary. Separating groups of siblings should never be imposed as a punishment or disciplinary measure.

15. Physical and/or psychological violence: the use of physical or psychological violence as a disciplinary measure is strictly prohibited. Physical aggression, torture, degradation, threats, blackmail, humiliation, irony, verbal aggression, isolation, solitary confinement or any other form of physical or psychological violence are strictly prohibited and do not constitute valid nor acceptable means for controlling the behaviour of children.

16. Medication: the use of medication or drugs to control the behaviour of children is strictly prohibited. The use of such substances should have aims other than that of establishing order and discipline, and will only be provided under medical prescription, such prescription being based on therapeutic needs, duly diagnosed and treated.

17. Stigmatisation: all pertinent measures should be taken to prevent migrant children in institutions from being stigmatized for being in this situation, mainly preventing them from being negatively identified as “migrants” and as “children without parents” or “separated from their families”.

18. Building a network: residential care institutions will build a network of supportive services, plans and programmes (both governmental and non-governmental) that are helpful and necessary for the care of migrant children.

19. Integration into the community: migrant children should be offered formal and informal recreational and educational activities outside of the institution. Their participation in community spaces for support and inclusion that allow them to socialize with their peers should be fostered.

20. Conflict resolution: institutions must actively work to diffuse conflicts that might arise between migrant children, by working towards the integration of children that come from different countries or communities and focusing on diffusing conflicts based on racist or xenophobic prejudice. Moreover, all efforts should be made to ensure that these pre-existing conflicts are not used as a disciplinary measure by the caregivers.



EPILOGUE

As was mentioned in the introduction, this Handbook aims at synthesising the main concepts and standards concerning the protection of the rights of migrant children in the Latin American and Caribbean regions. To this end, it first described the main guidelines that emerge from the international normative framework, followed by a number of basic guidelines that should guide both the design and implementation of public policies and the concrete operation of the entities responsible for guaranteeing the protection of migrant children.

We expect this document to guide the development of training activities for technical operators and professionals responsible for the protection of migrant children's rights, and ultimately for the much needed institutional and normative transformation of migration public policies.

This Handbook was not conceived as a guide or protocol that can be applied directly to provide guidance to concrete institutional practices. Thus, its concepts can be applied in the elaboration of protocols or guides for action provided that the standards have previously been tailored to each country's specific reality. This is of particular significance because each state of the region presents particularities with regard to their normative and institutional frameworks, and the specific problematic issues surrounding migrant children.

It is also expected that this document will contribute to advancing the articulation between the child protection system and the system of migration regulation towards the effective protection of migrant children's rights. As stressed throughout this Handbook, the child care and protection normative and institutional framework must have primacy over migration policies and regulations. Moreover, the degree of efficiency of the policies targeting migrant children within

a given child care and protection system will largely depend on the efficacy with which the articulation between the two sectors is made. The specific challenges and obstacles to this articulation in each country go beyond the scope of this handbook. Nevertheless, it is expected that the guidelines and concepts it provides will be useful in achieving said articulation.

Lastly, it should be highlighted that these standards were designed against the background of the issues facing children in the region. Even though the causes and consequences of migration were not addressed in this handbook, we expect it to contribute to a contextual understanding of the issue of migration. This understanding should lead the efforts towards not only the respect for migrant children's rights, but also towards the reduction and eradication of migration whenever it is motivated by violations of children's rights in their countries of origin: lack of opportunities and denial of basic rights.

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handbook

of international
human rights standards applicable to
**migrant children
and adolescents**

This Handbook aims at synthesising the main concepts and standards concerning the protection of the rights of migrant children in the Latin American and Caribbean regions. To this end, it describes the main guidelines that emerge from the international normative framework, and provides a number of basic guidelines that should guide both the design and implementation of public policies and the concrete operation of the entities responsible for guaranteeing the protection of migrant children.

We expect this document to guide the development of training activities for technical operators and professionals responsible for the protection of migrant children's rights, and ultimately for the much needed institutional and normative transformation of migration public policies.

The Handbook's description of the applicable standards focuses on children who are migrating or have already done so, as well as on the responses they should be offered by the transit and destination states to guarantee the fulfilment of their rights.