



OFFICE OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL ON
VIOLENCE AGAINST CHILDREN

Violence against children on the move

From a continuum of violence to a continuum of protection



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Office of the Special Representative of the Secretary-General on Violence against Children and
Universidad Iberoamericana

2020

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Acronyms

ASEAN	Association of Southeast Asian Nations
CRC	Convention on the Rights of the Child
EU	European Union
FRA	The European Union Agency for Fundamental Rights
GRETA	Group of Experts on Action against Trafficking in Human Beings
HCCH	Hague Conference on Private International Law
IACHR	Inter-American Court of Human Rights
ICSE	International Child Sexual Exploitation image database
IDC	International Detention Coalition
ILO	International Labour Organization
IOM	International Organization for Migration
MERCOSUR	Mercado Común del Sur (the Southern Common Market)
NGO	Non-governmental organization
NHRI	National Human Rights Institution
SAARC	South Asia Association for Regional Cooperation
SIPINNA	System of Integral Protection for Children and Adolescents, Mexico
SRSG	Special Representative of the United Nations Secretary-General
UASC	Unaccompanied and separated children
UN	United Nations
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNODC	United Nations Office on Drugs and Crime
UNOHCHR	United Nations Office of the High Commissioner for Human Rights

Glossary

Asylum

Protection granted by a nation State to anyone who has left a country for political reasons. Article 14(1) of the 1948 Universal Declaration of Human Rights asserts that, "(e) everyone has the right to seek and to enjoy in other countries asylum from persecution."

who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of, or in order to avoid the effects of, armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized border."

Asylum seeker

The International Organization for Migration defines an asylum seeker as a person who seeks safety from persecution or serious harm in a country other than his or her own and awaits a decision on the application for refugee status under relevant international and national instruments.

Irregular migration

Movement that takes place outside the regulatory norms of the sending, transit or receiving countries. According to the International Organization for Migration, there is no clear or universally accepted definition of irregular migration.

Migrant

The International Organization for Migration defines a migrant as any person who is moving or has moved across an international border or within a State away from his/her habitual place of residence, regardless of (1) the person's legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) what the length of the stay is.

Migration

According to the International Organization for Migration, migration is the movement of a person or a group of persons, either across an international border, or within a State. It is a population movement, encompassing any kind of movement of people, whatever its length, composition and causes; it includes migration of refugees, displaced persons, economic migrants, and persons moving for other purposes, including family reunification.

Country of origin

A country that is a source of migratory flows, be they orderly or irregular.

Internally displaced persons (IDPs)

According to the 1998 Guiding Principles on Internal Displacement, internally displaced persons are, "persons or groups of persons

Non-refoulement

Non-refoulement is a core principle of the 1951 *Convention Relating to the Status of Refugees*. Article 33(1) of this instrument refers to the obligation of States not to refoule, or return, a refugee to, “the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” This principle is now considered a rule of customary international law.

Orderly migration

According to the International Organization for Migration (IOM), orderly migration is the movement of a person from her or his usual place of residence to a new place of residence, in keeping with the laws and regulations governing exit of the country of origin and travel, transit and entry into the destination or host country. See Annex 4 for more on the particular mandate of the IOM.

Receiving country

The country of destination or a third country. In the case of return or repatriation, also the country of origin.

Refugee

Article 1(A)(2) of the 1951 *Convention Relating to the Status of Refugees* defines a refugee as an individual who is outside his or her country of nationality or habitual residence and who is unable or unwilling to return due to a well-founded fear of persecution based on his or her race, religion, nationality, political opinion, or membership of a particular social group.

Separated children

Under paragraph 8 of *General Comment No. 6 of the Committee on the Rights of the Child* relating to the treatment of unaccompanied and separated children who find themselves outside their country of nationality, separated children are defined as those who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.

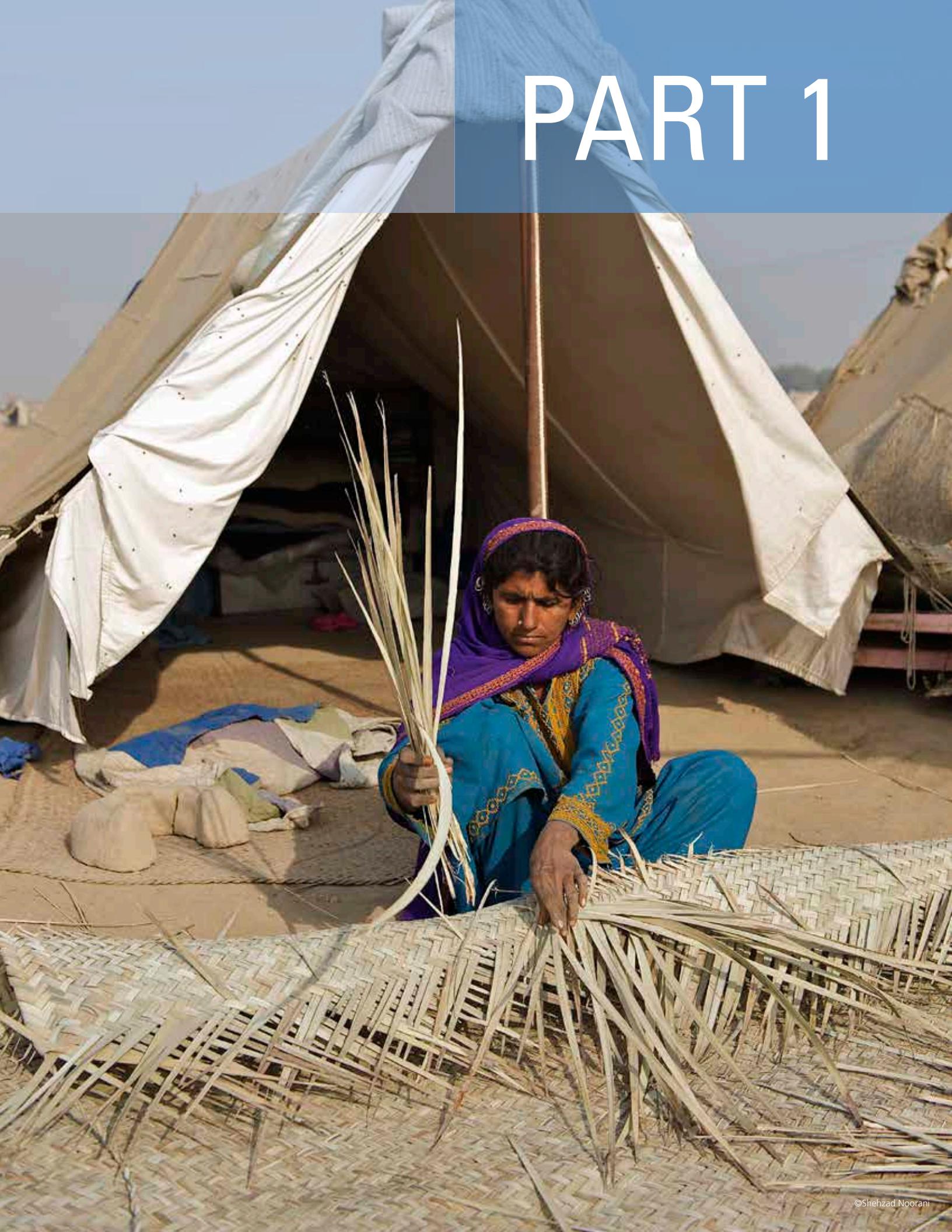
Smuggling of migrants

Article 3 of the *Smuggling of Migrants Protocol*, supplementing the 2000 *United Nations Convention against Transnational Organized Crime*, defines the smuggling of migrants as the “procurement, to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.” Smuggling, unlike trafficking, does not require an element of exploitation, coercion, or violation of human rights: it generally involves a consensual contractual agreement with the migrant ‘client’ that typically terminates upon arrival at destination.

Unaccompanied and separated children

Under paragraph 7 of *General Comment No. 6 of the Committee on the Rights of the Child*, relating to the treatment of unaccompanied and separated children who find themselves outside their country of nationality, unaccompanied children are defined as children 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.

PART 1



Introduction

BOX 1

Key facts on migration

- There are an estimated 244 million international migrants worldwide.¹
- Recent years have seen rising migration and displacement as a result of conflict, persecution and climate change, coupled with a profound lack of human security and opportunity.
- The number of people forced from their homes has almost doubled: from 42.3 million in 2012 to more than 70 million today.²
- They include almost 26 million refugees, over half of whom are under the age of 18.
- In 2016, more than 75,000 asylum applications in 70 different countries were lodged by unaccompanied or separated children (UASC) who were at particular risk of exploitation and abuse.³
- In all, 85 per cent of the world's displaced people live in developing countries.⁴
- Every minute, an estimated 20 people are forced to flee to escape violence, persecution or conflict.
- There are currently almost 4 million stateless people worldwide under the mandate of the UN High Commissioner for Refugees (UNHCR), who are often denied a nationality and other basic human rights.

Background

Every minute, 20 people – many of them children – are forced from their homes by violence, persecution or conflict. While children account for less than one third of the global population, they make up more than half of today's refugees worldwide.⁵

Recent years have seen growing numbers of children and adolescents on the move,

alone or with their families, within and across countries. Some may move by choice, aiming to learn new skills and make good use of their talents, improve their education, or explore new options – often in the world's growing cities – to reach their full potential. They may choose to widen their horizons through exposure to new cultures, languages and social contexts, or move to join family members.

For many other children, however, there is no semblance of choice in the decision to leave home. It is, instead, a desperate measure to find a safe haven from political instability, conflict, natural disasters, violence and exploitation. And whether they move by choice, or have no alternative, migration is fraught with dangers for every child, including the risks of falling victim to violence, exploitation and abuse.

Quick facts: Why do children move?

- Almost 1 in 10 children live in areas affected by armed conflicts
- More than 400 million live in extreme poverty.⁶

Children's freedom from violence is an ethical and a legal imperative that cannot be met with complacency. Today, violence is a daily threat for children on the move, especially those who travel unaccompanied or separated from their families, and is often part of a continuum. They may hope to out-run it, only to find that it is a constant companion at every stage of their journey – part of a continuum characterized by fear, insecurity, and impunity.

Children who are on the move are, in reality, being left very far behind: their rights denied and their basic needs unmet. For so many of them, the vision of the 2030 Agenda of a world free from fear and from violence is a distant illusion.

From home to destination: a continuum of violence

Children who have left home may have been driven out by horrific events in marginalized communities that are riven by violence, including the murder, rape or disappearance of friends and loved ones. They may have been exposed to, or coerced and manipulated into, criminal activities, risking violence or even death if they refuse to participate. The most marginalized children in such communities are locked into a vicious cycle of exclusion, stigmatization and violence, and may be viewed – and treated – as criminals.⁷

Given their devastating daily realities, children are willing to risk uncertain and perilous journeys to find somewhere safe and security. Very often, the journey is far more dangerous than they could have imagined, with human traffickers and other criminals ready to exploit them at every turn, and



frequent hostility from the communities they encounter along the way.

While all migrant and refugee children are in constant danger, girls may face particularly severe risks of abuse and exploitation. They may even be sold into marriage by their desperate families, either to 'protect' them from the risk of rape or to acquire the citizenship of their husband.

Even when they reach their destination, children often lack the protection to which they are entitled. They can be perceived as interlopers, rather than victims who cross borders to find safety. They may lack proper documentation and will rarely speak or understand the local language. For the most part, they are simply too frightened to report abuse or to speak about the trauma they have endured. And they may not ask for help, including medical care, for fear of undermining any pending decisions on their status, or because of an often valid fear of arrest, detention or deportation.

Many children end up in crowded facilities, often with adults. They may find themselves caught up in fast-track proceedings that include fast-return processes, where their best interests are barely considered, and with a heightened risk that they will be returned to the situations from which they fled.

They may well be deprived of their liberty, with their detention justified by invoking the need to protect them from, for example, trafficking, or to keep them secure while their families are traced or decisions are made about their return to their country of origin: aims that could all be achieved without the use of detention. The detention of children is

never in their best interest and is, in effect, an additional punishment for children who have already been through so much.

While their fate is being decided, children in detention facilities may endure humiliation, physical attacks and sexual abuse.

They often lack access to any child protection authority, age- or gender-sensitive protection determination processes or legal representation. Few, if any, have access to information about their rights or ways to seek redress for any acts of violence they have endured.

Time and time again, children on the move experience fear, anxiety, panic, depression, sleep disorders, mental health problems, increased risk of self-harm and an aggravated sense of hopelessness, with a severe impact on their development and well-being.

The best interests of the child: the core principle for children on the move

With international standards serving as a guide, it is crucial to safeguard the rights of all children who fall under the jurisdiction of the state, including asylum-seeking, refugee, migrant and stateless children. Acting in the best interests of the child is the core principle that must be a primary consideration in all decisions affecting any child, and refugee and migrant children in particular wherever they are – in transit or destination countries.

In destination countries, for example, this principle should be applied at every stage: in identification and registration procedures;

during relevant proceedings when the child's views must be taken into account; and whenever the possibility of their return to their home country is envisaged. Every child must be informed about their rights and legal safeguards, have access to child-friendly information and counselling, and be given a genuine chance to participate in (and influence) the decisions that concern them, including efforts to seek redress for incidence of violence.

Similarly, this principle is critical to ensure safe, dignified and child gender- and culturally sensitive age-assessment procedures, which should only be conducted when there is a serious doubt about the age of the child. Such procedures should be carried out by a multidisciplinary team of well-trained professionals with full respect for the dignity of the child and sensitivity to the trauma he or she may have endured. In every age-assessment procedure, children should benefit from the special protection to which they are entitled.

Upholding the best interests of the child is crucial in the case of unaccompanied or separated children (UASC), who have no adult relative to speak or act for them. The prompt appointment of a guardian, therefore, is seen as a key measure to uphold the best interests of these children at all times. This process has, however, been undermined by lengthy procedures, a dearth of effective vetting processes to identify suitable and qualified guardians, and a lack of harmonized standards to provide clarity about their roles and responsibilities.

The best interests of children are also hampered by the absence of effective

monitoring systems for guardianship, as well as easily accessible and safe complaint procedures. Together, these challenges have compromised the identification and reporting of abuse and the prompt and effective response measures that are needed to support child victims.

The principle demands efforts to enable children to grow up in a caring and nurturing family environment. In June 2017, the International Expert Consultation on Violence Against Children on the move⁸ (which led to the production of this report) reinforced calls for greater respect for family unity and for special protection for children separated from their families for two reasons. First, to ensure that family unity is preserved when children travel together with their family. Second, to ensure that any request for family reunification is considered in a positive, humane and expeditious manner, as called for by the Convention on the Rights of the Child (CRC).

This is one area where there have been important legislative developments. In Latin America, for example, several countries have formally recognized the protection of family life as a right for all migrants, including children. In some cases a humanitarian visa or resident permit may be issued for the purpose of family reunification.

The 2016 New York Declaration for Refugees and Migrants⁹ specifies that responsibility for the care of children on the move lies with national child protection authorities, not border or security officials. To support children on the move effectively, child protection systems must be cohesive and well-resourced, with quality services and

staff who are well-trained and are able to interview and communicate with children, understand the risks they face and promote their resilience.

Child protection must be supported by effective inter-agency collaboration across all relevant government departments, and by cross-border and regional cooperation. This will help to promote synergies to mobilize support and resources to support children on the move, as well as durable solutions and the continuity of care and protection. It will support children's empowerment, social inclusion and resumption of an independent life, while protecting them against discrimination, re-victimization, violence, or any other violation of their rights.

It is self-evident that children must be protected from violence at all times and wherever they are, including in reception facilities and accommodation centres. If they are to really appreciate their safety and freedom from fear, abuse and exploitation, children need to feel respected, cherished and

supported. They are entitled to child-sensitive counselling, support and redress, and the impunity currently enjoyed by those who perpetrate violence against them must be brought to an end.

Independent national children's rights institutions have a critical role to play here and have voiced serious concerns about the detention of migrant and asylum-seeking children, as well as their placement with adults to whom they are not related. Such placement heightens the risks of harassment and abuse, while failing to give due consideration to children's best interests, such as the use of non-custodial alternatives, including family-based care.

One region-wide example of efforts to encapsulate the best interest principle can be seen in the Council of Europe's Action Plan on Protecting Refugee and Migrant Children in Europe (Box 2). Others can be found in Annex 1, which outlines a range of international and regional instruments.

BOX 2

A region-wide approach: The Council of Europe's Action Plan¹⁰

In May 2017, the Council of Europe adopted its *Action Plan on Protecting Refugee and Migrant Children in Europe*. The Plan concerns all children who arrive or have arrived in the territory of any Council of Europe Member State, including asylum-seeking, refugee and migrant children.

Based on existing international human rights and humanitarian standards, the Action Plan emphasizes the needs of unaccompanied children and has three main pillars:

- ensuring their access to rights and child-friendly procedures
- providing effective protection, and
- enhancing the integration of children who will remain in Europe.

Important dimensions of the Action Plan include:

- the establishment of an effective guardianship system in each Member State
- provision of appropriate shelter for children and their families during emergencies and mass arrivals
- provision of assistance to children and families in restoring family links and reunification
- avoiding resorting to the deprivation of liberty of children on the sole ground of their migration status, and
- ensuring children's protection from violence, including trafficking and sexual exploitation.¹¹

The importance of data and evidence

The consolidation of data and evidence on these situations is essential to identify the risk factors; to inform decisions on violence prevention, early detection and response; to enhance the skills of professionals and the capacity of institutions; and to sustain and monitor progress and evaluate the impact of interventions. Careful, ethical and participatory evaluation and research involving the children concerned is a crucial dimension of this process.

The online U-Report Opinion Poll on migrant and refugee children is one example. Conducted by the Office of the Special Representative in cooperation with UNICEF,

the poll found that a large percentage of the more than 170,000 young people surveyed identified violence as a key reason for children's decision to leave their communities and seek safety in another country. The poll confirmed that violence remained one of the most serious challenges they faced during their journey, as well as an ongoing risk once they arrived in a destination country (Box 3).

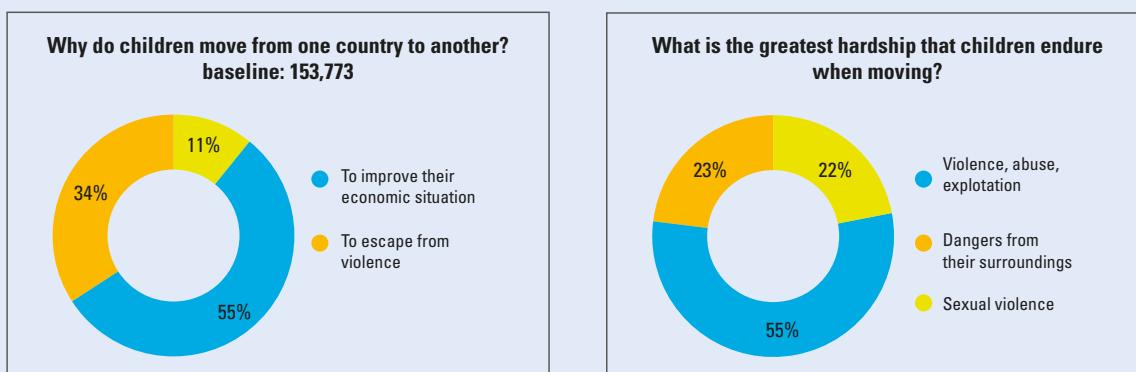
BOX 3

U-Report Opinion Poll on Children's and Young People's Perception of Children on the Move

U-Report is a free social messaging tool for community participation, designed to address issues that the population cares about. Through online polls, it allows young people around the world to speak out on key areas of concern, to support child rights and improve their own communities.

In 2017, the Office of the Special Representative of the Secretary-General on Violence against Children and UNICEF conducted a joint U-Report Opinion Poll on Children and Young People's Perception of Children on the Move, especially migrant and refugee children.¹² Of the more than 173,000 children and young people surveyed, 82 per cent considered migration to be a human right.

While around half of them believed that children who move from one country to another are motivated by a desire to improve their economic situation, more than half saw the desire to escape violence as the main motivation. Further, half of them considered that moving from one country to another is itself a dangerous process. When asked to name the worst hardships that children must face when moving, 55 per cent of respondents identified violence, abuse and exploitation. The remainder identified sexual violence as another serious danger. When asked about the most important challenges migrant and refugee children face, 33 per cent suggested accessing services, while 28 per cent suggested discrimination.



The children and adolescents surveyed had clear recommendations to governments to ensure the protection of the rights of migrant and refugee children:

- 53 per cent responded that they should improve conditions in the country of origin
- 34 per cent suggested the provision of support during transit, and
- 11 per cent indicated that children should be allowed to stay in their country of destination.
- Only 2 per cent saw the deportation of migrant and refugee children as a relevant measure.

The Global Compacts: a breakthrough for children on the move

The global compacts on refugees and migration represent a strong international pledge to protect children on the move. Together, they are a strategic opportunity to strengthen child protection institutions; safeguard children's rights and ensure their care and safety; promote durable solutions; rapidly identify and address risks; and fight impunity.

The Global Compact for safe, orderly and regular migration, adopted on 19 December 2018¹³, upholds the principle of the best interests of the child at all times as a primary consideration in all situations concerning children in the context of international migration, including UASC. It also promotes existing international legal obligations in relation to the rights of the child in its unity of purpose.¹⁴

In addition to an emphasis on the best interests principle (including family reunification), the Global Compact urges countries to take the following actions.

- Strengthen measures to reduce statelessness, including by registering migrants' births and providing nationality to children born in the territory of another State.¹⁵
- Review relevant policies and practices to ensure they do not create, exacerbate or unintentionally increase vulnerabilities of migrants, including by applying a human rights-based, gender- and disability-responsive, and age- and child-sensitive approach.¹⁶
- Cater for migrant children in national

child protection systems by establishing robust procedures for their protection in relevant legislative, administrative and judicial proceedings and decisions, as well as in all migration policies and programmes that have an impact on them. These include consular protection policies and services, and cross-border cooperation frameworks, aiming to ensure that the best interests of the child are appropriately integrated, consistently interpreted and applied in coordination and cooperation with child protection authorities.¹⁷

- Protect UASC at all stages of migration through the establishment of specialized procedures for their identification, referral, care and family reunification. Provide them with access to health care services (including mental health), education, legal assistance and the right to be heard in administrative and judicial proceedings, by swiftly appointing a competent and impartial legal guardian to address their particular vulnerabilities and discrimination, protect them from all forms of violence, and provide access to sustainable solutions that are in their best interests.¹⁸

The Global Compact on Refugees, adopted on 17 December 2018¹⁹, outlines measures to improve cooperation on key issues that affect refugee children, including the following:

- increasing international collaboration and responsibility-sharing to ensure the best interests of the child
- saving lives and establishing appropriate care, including alternatives to detention for children

- combatting discrimination
- ending all forms of sexual and gender-based violence, trafficking in persons, sexual exploitation and abuse, and harmful practices
- promoting complementary pathways for children and families to access international protection while keeping families together
- promoting gender equality and the empowerment of women and girls, as well as facilitating the meaningful participation of all people concerned, including refugee children and youth.

A way ahead

We must transform the continuum of violence that shapes the lives of children on the move into a continuum of protection for their fundamental rights. Guided by international standards, including the CRC, it is crucial to safeguard the rights of all children who fall under the jurisdiction of the state without any discrimination, including asylum-seeking, refugee, migrant and stateless children.

It is time to strengthen child protection institutions that should care for children on the move and back them with adequate resources. We need stronger monitoring tools

to ensure children's care, safety and well-being and promote durable solutions. We should identify and address potential risks to children long before children are in danger. And we must tackle the impunity that shields those who harm any child.



draws these threads together, setting out recommendations for all key players.

Finally, a set of Annexes features contributions from a range of organizations and experts on key concerns and approaches to tackle the violence that affects so many child refugees, migrants and asylum-seekers.

This thematic report looks primarily at the situation and safeguards for child refugees and migrants in Europe and Latin America. As a result, it does not claim to capture the full picture of the issues confronting such children in every region. However, by providing a snapshot of these two regions, the report hopes to highlight the pressing need for additional information on the many millions of children who are currently on the move worldwide.

NOTES

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PART 2



The continuum of violence and its impact on children

Children on the move face violence, exploitation and abuse at every stage of their journey. First, in their country of origin, where violence of one form or another is often the determining factor in their decision to leave. Second, during their journey, which is fraught with risk from start to finish. Third, at their destination, where appropriate measures for their protection may not be available or may be denied to them. And finally, if they are repatriated back to their country of origin, they may find themselves facing the same violence that drove them away. The cumulative impact is particularly severe for children who are unaccompanied or separated from their families.

The nature and type of exploitation children encounter while they are on the move is often shaped by their gender. While boys are at risk of being forced to join criminal networks or conscripted as fighters by armed groups or national armies, girls are particularly at risk of abuse and sexual exploitation. They may be lured by traffickers, abducted, or forced into early marriage by parents who see this as a way to protect them against sexual abuse, to ease economic pressures on the family, or secure a nationality. Girls in war zones or in

refugee or internally displaced settings are particularly vulnerable to such pressures.

Young girls are at even higher risk of child marriage during and after humanitarian crises. According to a study by the UN Population Fund (UNFPA) child marriage was far less common in Syria before the outbreak of its civil war. Some estimates show child marriage rates to be four times higher among Syrian refugees today than among Syrians before the crisis.²¹

Trying to escape violence: the beginning of the journey

A child's decision to leave home is often informed by the pressing need to find a safe haven from political instability, conflict, natural disaster, persecution and violence. Children may have witnessed horrific scenes, including arbitrary executions, sexual violence or forced disappearances. They may have been exposed to street crime and community violence, systematic extortion or harassment from gang members who mobilize support within schools and neighbourhoods.

In some cases, children are manipulated by elements of organized crime and are forced to take part in criminal activities, including acting as lookouts or runners where drugs or arms are trafficked or smugglers congregate. Those who refuse to cooperate are likely to face violent retribution, and even death. Children in the most marginalized communities where such activities often take place become locked into a vicious circle of exclusion, stigmatization and violence. They often come to be perceived as criminals themselves, feared by members of their communities and criminalized by the authorities.²²



Available evidence confirms violence as a critical factor in children's decisions to migrate. A 2015 survey of 200 migrant children and adolescents in Honduras, for example, found that 64 per cent cited violence as the main reason for their decision to migrate. Similarly, children and adolescents from El Salvador reported that violence and the threat of violence, poverty, deprivation of human rights, and the need to reunite with family members were the main reasons for leaving home. For Mexican children, migration was driven primarily by the wish to join family members, find greater opportunities, and increasingly to escape the violence perpetrated mainly by drug cartels, gangs and other criminal networks.²³

These results tally with those emerging from an extensive study by the United Nations High Commissioner for Refugees (UNHCR) on the reasons why children are displaced from El Salvador, Guatemala, Honduras and Mexico.²⁴ Its data reveal that 58 per cent of the 404 children interviewed were forcibly displaced because they suffered or faced harms that indicated a potential or actual need for international protection. Given that the study was designed specifically to be representative and statistically significant, this means that, in general, 58 per cent of all UASC from these four countries would also require international protection on arrival in the United States of America.²⁵ Box 5 looks more closely at the regional picture and the response of one country – Mexico – to such challenges.

BOX 5

Special Contribution: Mexico's commitment to migrant children

By Ricardo A. Bucio Mújica, National System of Integral Protection for Children and Adolescents (SIPINNA)

The Latin America and the Caribbean Region is characterized by a serious increase in violence, inequality and poverty, while suffering the effects of climate change. These factors have determined, to a large extent, recent population movements as people search for better living conditions.

A 2016 study by the World Bank indicates that the region is the most violent in the world, with an average of some 24 homicides per 100,000 inhabitants – well above the average for other regions worldwide.²⁶ This violence has a direct impact on the development and well-being of the region's more than 195 million children and adolescents.

The vulnerability that causes such a complex situation for the development of children and adolescents leads them to take a number of paths, including:

- falling victim to crime, which negatively impacts their physical and psychosocial evolution
- involvement in crime, thereby transmitting to new generations the same conditions of inequality, marginalization, violence and poverty
- embarking on the difficult migration route to the north of the continent to seek work, reunite with their families, and escape violence.

As a country of origin, transit and destination for migrant girls and boys, Mexico has the challenging task of establishing mechanisms of coordination across various levels of the administration. It must also ensure permanent dialogue among legislative and judicial powers to generate public policies that safeguard the human rights of children and adolescents within the national territory, in one of the most dynamic migratory routes in the world.

In 2016 alone, more than 40,500 records of foreign children and adolescents were presented to the Mexican migration authority. Most of these were from the Northern Triangle of Central America (Guatemala, Honduras and El Salvador). In all, 44 per cent of these children were traveling without the company of an adult person, placing them in a situation of still greater vulnerability to organized crime, trafficking, sexual exploitation and other forms of violence.

The Mexican State's measures to safeguard the rights of migrant children and adolescents are shaped by a framework consisting of: The 2014 *Law on the Rights of Children and Adolescents, aligned with the Convention on the Rights of the Child (CRC); the New York Declaration for Refugees and Migrants* adopted by the General Assembly of the UN in September 2016; and the Advisory Opinion of the Inter-American Court of Human Rights (IACtHR) on the rights of children in the context of migration. These measures set out nine crucial criteria.

1. Observance of the principle of the best interests of the child in all proceedings involving migrant children, accompanied or unaccompanied.
2. Co-responsibility of authorities at all levels of the administration and State institutions (executive, legislative and judicial) to protect, safeguard and restore the rights of migrant children and adolescents regarding their legal security and their fundamental rights to life, protection and the highest attainable standard of health.
3. Observance of the principle of the best interests of the child in all proceedings involving migrant children, accompanied or unaccompanied.

BOX 5 Continued

4. Co-responsibility of authorities at all levels of the administration and State institutions (executive, legislative and judicial) to protect, safeguard and restore the rights of migrant children and adolescents regarding their legal security and their fundamental rights to life, protection and the highest attainable standard of health.
5. Development of alternative measures to the detention of migrant children and the prevention of their criminalization.
6. Agreement on mechanisms necessary to progressively prevent the institutionalization of unaccompanied migrant children and adolescents, by giving priority to alternative care options established in the country's legal framework, such as foster families.
7. Obligation of the Mexican State to identify foreign children and adolescents who require international protection, with a view to their recognition as refugee or asylum seekers.
8. The crucial importance of family reunification.
9. The obligation to listen to migrant children and adolescents at all times, to garner their opinions, and to understand their concerns and needs.

The Government's Sistema de Protección Integral de los Derechos de las Niñas, Niños y Adolescentes (SIPINNA) aims to coordinate and articulate public policies on children to guarantee their rights. SIPINNA has adopted a policy instrument called '25 by 25', with 25 national priority objectives for all children to be fulfilled by the year 2025. These objectives are aligned with the 2030 Sustainable Development Goals.

One of the objectives focuses on the protection and safeguarding of the rights of migrant and asylum-seeking children. The social, political and economic conditions of Mexico and the wider region make this a complex goal to achieve. It requires great political will at all levels (federal, state and municipal) that transcends the administrative periods of any single government. It requires the allocation of public budgets, and it calls for civil society organizations, the private sector and the media to work together toward a common goal.

Above all, it requires an important cultural change that challenges the prejudices and stereotypes generated by – and rooted in – society that perpetuate the vulnerability of these children and adolescents. Safeguarding the protection of migrant and refugee children is Mexico's commitment: one that is both necessary and urgent.

Violence as a constant companion during a child's journey

Having left home, children on the move often spend a long time in transit – sometimes months, or even years. Whether their journey was spurred by fear and violence or by a lack of opportunities, children are the migrants who are most vulnerable to harassment, exploitative relationships, trafficking and abuse.

The sheer physical dangers of the journey can be too much: some die from dehydration, malnourishment, suffocation or accidents, including road traffic accidents and drowning at sea. Others face violence, exploitation and abuse at the hands of people they encounter on their journey. And as they cross borders in search of a safe destination country, children on the move are commonly perceived as unwelcome interlopers, rather than victims at risk of violence who need support.

A study by UNICEF and the International Organization for Migration (IOM) reveals that young migrants and refugees from sub-Saharan Africa are particularly vulnerable,²⁷ with their testimonies describing harsh treatment and being targeted for exploitation because of their skin colour. Other factors, such as a young person's level of education and whether they are travelling alone, were also found to influence the degree of risk they face.

For example, of all those travelling for less than three months on the Central Mediterranean migratory route, adolescent boys from sub-Saharan Africa with no education and travelling alone face the highest risk of exploitation (89 per cent). If they are travelling in a group and have secondary education, the risk decreases to 73 per cent. The risk of exploitation for adolescent boys with the same characteristics from other regions is significantly lower, at 38 per cent.²⁸ It is important to note, however, that there is no 'acceptable' level of exploitation or abuse.

In Latin America, 42 per cent of unaccompanied children and adolescents from Central America who were detained and repatriated from Mexico reported at least one incident of abuse between the time they left home and their deportation. According to a study by Catholic Relief Services,²⁹ most of these abuses occurred while they were in transit, when they were apprehended, or in detention. The most common abuses reported were robbery, extortion and intimidation, but the abuses mentioned most often during all stages of their migration were verbal and physical.

Some unaccompanied children become victims of economic exploitation in their country of origin or along their route as they try to finance their journey, and others are prepared to work for months without pay in order to repay the debts they have incurred. Unaccompanied children with little money explained that they must regularly run errands for traffickers, prepare meals and do other work in camps.

Children and young people are also at risk of violence in camps and other facilities. In mid-2015, hotspots were created in the locations in Europe where migrants and refugees were arriving to provide rapid identification, primarily through fingerprinting, screening to identify protection needs, and filtering for the purpose of processing asylum applications or returning individuals to their country of origin.³⁰ These hotspots have created the risk of prolonged periods of detention because of the lack of specialized shelters to accommodate unaccompanied children, exposing them to the risk of yet more violence.³¹

By mid-2017, nearly 14,000 asylum seekers, including over 5,000 children, were accommodated on five Greek islands.³² Conditions were described as degrading, inhumane and detention-like, contributing to depression, anxiety, self-harm and attempted suicide among children as young as nine.³³ Essential services were lacking, and many children and their families were living in tents by the sea in harsh weather conditions without beds or electricity, and were struggling to access adequate food, hot water and healthcare.

Uncertainty and fear of being sent back to Turkey have led to fights and other incidence of violence among asylum-seekers, putting unaccompanied children at high risk.³⁴ The risk of sexual abuse has also been high, with children often having to share sanitary facilities, tents or rooms. Children and women

who have lived in constant fear of violence are often too afraid to speak out about the situation.³⁵ Greece has put in place a set of 25 policy objectives to address the situation facing refugee and migrant children who have arrived in the country (Box 6).

BOX 6

Special Contribution: National independent child rights institutions play a critical monitoring role

By George Moschos, former Greek Ombudsman for Children

Greece has been the main entry point into Europe for refugees and migrants in recent years, with hundreds of thousands of children arriving since 2015. Following the closure of the Balkan routes and the adoption of the EU/Turkey agreement in 2016, thousands of young people were stranded in the country. Despite a decrease in 2017, more than 500 children continued to arrive every month, of whom approximately 100 were unaccompanied.

The effective protection of these children is a difficult task, given the magnitude and diversity of the child population affected, together with the fluid nature of the economic crisis and related austerity measures put in place in Greece. In addition, there are longstanding shortfalls of targeted provisions for migrant children in policy and legislative frameworks, alongside deficiencies in the development of an efficient national child protection system. These gaps hinder the implementation of a holistic approach to address migration-related risks, including violence against children.

Children are likely to experience different forms of violence throughout their journey and their stay in the country, including domestic, peer-to-peer and state violence, smuggling and trafficking, and enforced involvement in illegal activities. The manifold risks that can be identified in various settings are often increased by additional vulnerabilities associated with the status of the child (regular or irregular), her or his family situation (accompanied or not), and other practical barriers, mainly concerning language, lack of information and awareness of child rights, and the existing inequalities and obstacles in accessing services.

The Greek Ombudsman and, in particular, the Deputy Ombudsman for Children, is an independent authority for children's rights and holds a crucial mandate to strengthen the capacity of the system to prevent and respond to violence against children, including children affected by migration. As a national, independent children's rights institution, the Ombudsman for Children, has developed a mechanism to monitor the situation of children on the move with the support of UNICEF.

The main objective has been to respond to the various situations and overlapping vulnerabilities of children in different contexts upon arrival, reception or departure, or at the early stage of their integration. To inform this process, a mapping exercise was carried out to identify the main sites where children are concentrated, the agencies involved and all available data sources. Subsequently, a concrete monitoring plan was developed.

This mechanism consists of three interlinked and complementary components: regular inspection visits; complaints procedures concerning violations of child rights; and collaboration with local agencies and non-governmental organizations (NGOs).

BOX 6 Continued

Component 1: Regular inspection visits

Regular inspection visits take place in locations where migrant children are likely to be found: first reception and identification centres in border areas; open reception sites and other first- and second-line reception facilities on the mainland; informal sites such as squats and spontaneous settlements; and closed and detention facilities. Since January 2016, many hundreds of targeted visits have been conducted across the country to identify specific risks and child-rights violations, especially for those children who cannot be easily reached, and to develop specific interventions for their protection. During a series of inspection visits to places of detention in 2016, for example, several unaccompanied minors were identified in appalling conditions, awaiting their placement in appropriate reception shelters that had limited capacity. Consequently, there was an open call to avoid the detention of children, and the Government scaled up its efforts – in line with proposals from the Ombudsman – to establish safe spaces within open reception sites, where unaccompanied children can be transferred temporarily until their final placement in special shelters. In general, the site visits by the Ombudsman have been combined with meetings, reports and public interventions, supporting measures to defend and secure the rights of children on the move.

Component 2: Complaints procedures concerning violations of child rights

In addition to investigation procedures for specific violations of the rights of children on the move, the Ombudsman developed actions directed at: a) child victims, or children at risk of victimization, to enhance their access to complaint mechanisms; and b) local and refugee communities, including children's families, to raise awareness of their responsibilities with respect to the rights of the child and the prevention of discriminatory or violent behaviour. Child- and family-friendly information materials have been produced and disseminated in collaboration with the Greek Ministry of Education and other social partners.

Component 3: Direct collaboration with local agencies and non-governmental organizations

This has been achieved through the establishment of a Network for the Rights of Children on the Move. This Network, coordinated by the Deputy Ombudsman for Children, works at both the monitoring and advocacy levels. In this way, it contributes to the development of evidence-based and concerted joint advocacy messages to encourage relevant authorities to respond swiftly to child protection recommendations. In addition, it facilitates cooperation between the State and civil society organizations that offer direct services for the children concerned. The Network has 20 members, including child-focused NGOs, three international organizations (IOM, UNICEF and UNHCR), and the Migrants Department of the Municipality of Athens. The activities initiated by the Network include a series of advocacy actions on relocation and family reunification procedures, emphasizing the need to safeguard legal pathways to migration, alongside respect for the rights of the family.

Cooperation among institutions for child rights in different countries should be further developed and promoted to safeguard a continuum of protection for children's in all migratory phases. With this aim, the Ombudsman participates in and collaborates with the European Network of Ombudspersons for Children, promoting joint actions of members of this Network with a view to ensuring the protection of children on the move.

Similar challenges were reported in reception camps in northern France during the first half of 2016. Dedicated sites for unaccompanied children were found to be full, leading to a desperate lack of accommodation, while some temporary centres lacked the necessary infrastructure to receive and house unaccompanied children. This left children with little option but to declare themselves

adults or to find an older 'cousin' or 'uncle' to accompany them. Both strategies left children vulnerable to manipulation and abuse by adults.³⁶

Sexual violence was also found to be a pressing risk for girls and boys on the move, including the exchange of sexual services for the promise of passage to the UK, or to pay

for their journey. Afghan boys were found to be particularly vulnerable to sexual violence because of a harmful practice called *batcha bazi*, which sees adult men engaging in sexual relations with pre-pubescent boys.³⁷ Indeed, the fear of rape was one of the biggest concerns among the Afghan children interviewed for the study, especially when traffickers and their companions had been drinking.³⁸

The precarious living conditions in the French camps, together with a lack of education and other meaningful activities for children's development and well-being, was found to have a harmful and direct impact on children's psychological health.³⁹ Many children tried to escape and continue their journey to the UK, and, according to some estimates, children accounted for half of the migrants who died in 2016 while trying to cross the English Channel.⁴⁰

Violence and re-victimization in destination countries

Children often face discrimination and misperceptions once they reach a destination country and fail to receive the protection to which they are entitled. At times perceived as a threat, these children are often feared and marginalized by host communities. They frequently face suspicion on the part of the authorities, a situation exacerbated by a lack of proper documentation and an inability to speak the local language; and they experience indifference or even abuse at the hands of state officials, including border guards, immigration officials and staff in reception or detention facilities.⁴¹ Children are particularly vulnerable to fast-track processes where their best interests are scarcely considered, and

there is a high risk that they will be returned to the situation from which they initially fled.⁴²

Existing international standards and national policies to protect children and adults on the move are often poorly implemented, creating risks for the care and protection of this vulnerable population. As a result of the lack of specialized facilities, unaccompanied children are often accommodated in crowded first reception and transit facilities. Furthermore, the existing accommodation options and the care and child protection measures available to children who are already nationals of the host country may not be equally available to foreign unaccompanied children.⁴³

At destination, as in transit, children are at risk of humiliation, physical attacks, sexual abuse and exploitation. They often lack support from protection authorities, and have little or no access to care, safe accommodation, legal representation or child-friendly information about their rights or ways to protect their own safety. Children are often reluctant to seek help, report abuse or share information with the authorities in the country of destination because they are afraid that telling their story might have negative consequences, including being returned to their country of origin. They may also be under pressure from third parties to reveal only certain parts of their story or to provide false information.

Prolonged uncertainty about their status leaves these children in a legal limbo. Not surprisingly, they lose confidence in the institutions and measures intended to guarantee their rights, safety and well-being, and many go missing – deciding to take their

Quick facts: Missing unaccompanied children in Europe

- According to Europol, more than 10,000 unaccompanied children went missing in Europe in 2015 alone.⁴⁵
- In February 2016, a staggering 90 to 95 per cent of unaccompanied children in Hungarian reception centres went missing, as did 80 per cent of those in Slovenian facilities.
- Of the 4,749 unaccompanied child and adolescent refugees considered missing in Germany in January 2016, 431 were under 13 years of age.
- In May of the same year, 1,829 unaccompanied children seeking asylum were registered as missing with the Swedish Migration Agency.⁴⁶

chances outside the system. That decision may well expose them to the risks of street crime, community violence, systematic threats and extortion and harassment by organized crime networks and gang members. It may also bring them into the sphere of influence of smugglers and human traffickers. In addition, children risk becoming involved with the justice system if they travel without the necessary documents and if they engage in illegal or criminal activities to make a living (or are persuaded or forced to do so).

Their situation is often exacerbated by a lack of effective coordination between child protection, asylum or migration systems. These challenges lead to the promotion of detention as a preferred ‘solution’ offered by authorities to protect migrants from the hazards they may face at their destination.⁴⁴

Detention

Camps set up in response to an emergency or to accommodate those awaiting registration and identification procedures may restrict the freedom of movement and liberty of the children and families they house. While they may be larger and more open than closed

detention institutions, the restrictions they place on liberty can amount to administrative detention.⁴⁷ The widespread lack of adequate reception facilities can also result in the use of



administrative detention for unaccompanied children. Children may, in addition, be held in administrative detention because they are unable to prove their age and are assumed to be adults.⁴⁸

Children, and girls in particular, risk being deprived of liberty as a way to protect them from crimes in the name of honour, trafficking or other forms of violence. However, a measure intended to provide a safe environment does not always offer the desired protection. On the contrary, it may place children at risk of further violence, deter them from reporting this violence, and keep them confined against their will.

The detention of migrant and asylum-seeking or refugee children is also used to prevent their disappearance or protect them from trafficking, facilitate family tracing; or to ‘hold’ them while considering options for their return to their countries of origin. Children may also be detained because the receiving country is unable or unwilling to appoint guardians for them while decisions are made to repatriate them or criminalize their migration or asylum-seeking.

Detention is never in the best interest of any child. It can have severe physical and psychological consequences for children, undermining their development and well-being. It is an additional form of punishment when imposed on traumatized migrant, asylum-seeking or refugee children who have already fled from violence and who have faced harassment, abuse and exploitation at each step of the way. The impact on the mental health of children who have spent time in detention can be extreme and contributes to countless cases of severe

depression, anxiety, panic, sleep disorders, self-harm, post-traumatic stress disorder and persistent nightmares.⁴⁹

Despite its damaging effects, national authorities continue to detain children on the move as a way to manage migration, organize deportation and deter the arrival of new asylum-seekers. Detention facilities housing children are often unregulated and are closed to outside scrutiny, with violence rarely monitored, reported or investigated. As a result, violence against children in these facilities often goes unpunished and remains hidden.

Trafficking risks

The *Global Report on Trafficking in Persons* from the United Nations Office on Drugs and Crime (UNODC) recognizes that while no country is immune to trafficking, some migrants are particularly vulnerable, particularly children from countries that have a high level of organized crime or that are affected by conflict.⁵⁰ Between 2012 and 2014, more than 500 different trafficking flows were detected around the world. The share of domestic trafficking cases that is detected has also increased significantly in recent years: some 42 per cent of detected victims between 2012 and 2014 were trafficked within their own country.⁵¹

In 2014, women accounted for most of the detected victims (51 per cent), while children comprised 28 per cent (20 per cent girls; 8 per cent boys), and men 21 per cent. Women and girls accounted for 96 per cent of the 23,000 victims trafficked for sexual exploitation who were detected and reported between 2012 and 2014. Several other forms of exploitation

were also identified: forced begging, sale of children, forced marriage, online sexual exploitation, production of sexual abuse images, organ removal and recruitment as child soldiers.⁵²

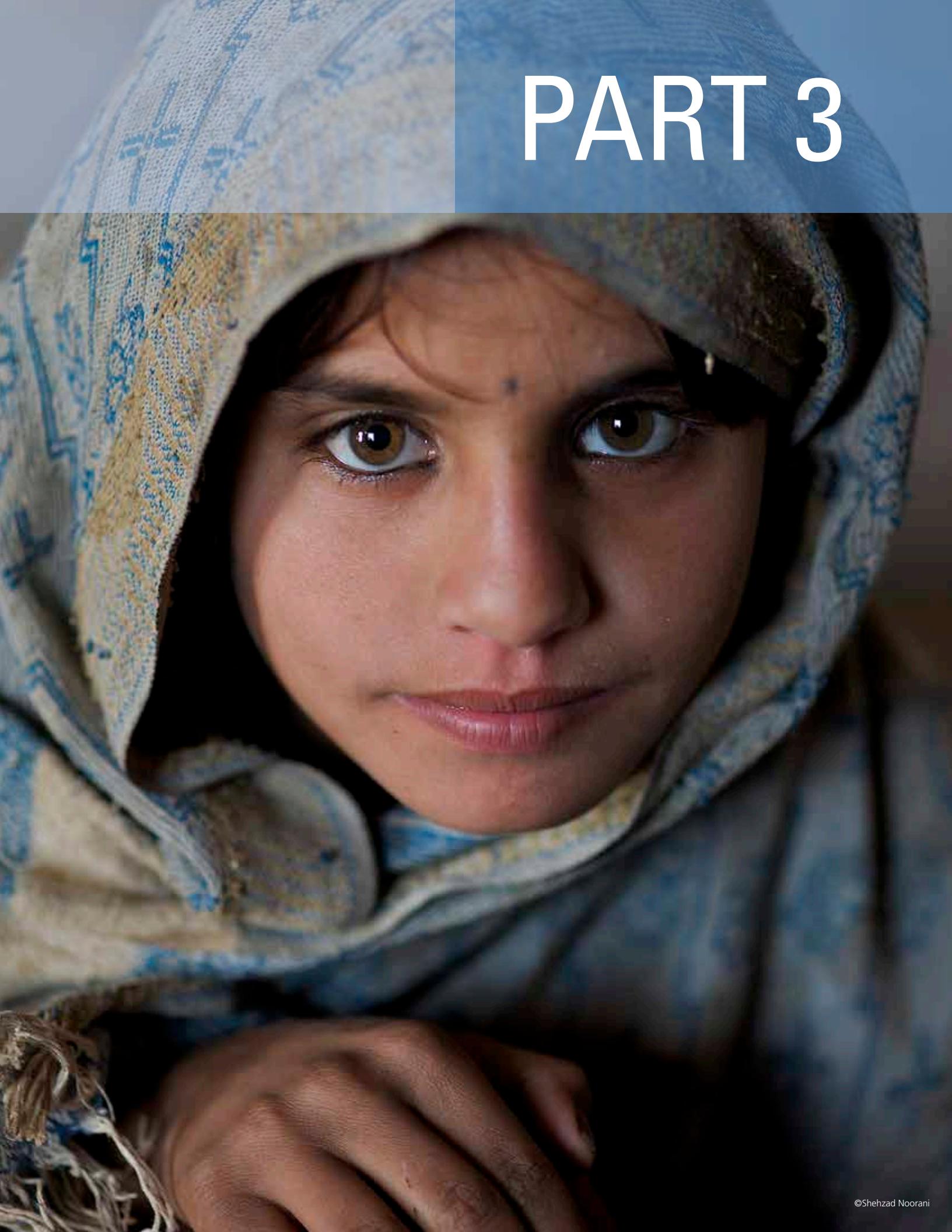
Child trafficking, especially in violent conflicts, has led to sexual enslavement, forced

marriage and a trade in girls. Such tactics are used openly by groups in Iraq, Nigeria, Somalia and Syria. The nexus between trafficking, armed conflict and organized crime is well documented, as is the sexual enslavement of girls, boys and women by armed groups to recruit fighters, and the use of trafficking to finance terrorist activities.⁵³

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PART 3



Ensuring a continuum of protection

It is time to transform the continuum of violence outlined in the previous section to a continuum of protection for children on the move. This requires a comprehensive approach that combines guiding principles with minimum standards to prevent – as well as respond to – the violence they face.

Creating a continuum of protection entails a wide range of measures that are embedded in legislation, policy and practice to create a protective environment for children on the move. It requires multi-disciplinary interventions from a range of actors within and across borders, including: child protection authorities, law enforcement agencies, and migration officials; professional groups such as social workers, paediatricians and health personnel, teachers and the judiciary; independent child rights institutions; and civil society.

GUIDING PRINCIPLES

Safeguarding the best interests of the child at all times

The principle of the child's best interests is a concept intended to ensure both the full and effective enjoyment of all the rights recognized

in the CRC and the holistic development of every child.⁵⁴ As such, it is an indispensable element of violence prevention and response.

In Latin America, for example, the best interests of the child in the context of migration and human mobility are becoming increasingly recognized by domestic law. Article 2, principle VII of Ecuador's 2017 Law on Human Mobility establishes that, '*[i]n the context of the best interest of children and adolescents, in all processes and procedures related to human mobility, account shall be taken of the laws regulating the matter, such as the principle of special treatment of children and adolescents and their rights to a family, family life and to be consulted in all matters affecting them*'.⁵⁵ The same article goes on to assert that, '*In no case may they [children and adolescents] be arrested due to faults in administrative procedures*'.

Safeguarding the best interests principle was also highlighted as a key concern at the expert consultation organized in Mexico in June 2017 by the SRSG on Violence Against Children and the Iberoamericana University, in cooperation with UN partners and civil society organizations (see Annex 5 for more information on the University's perspective on this issue).

Participants focused on the best interests of the child on the move, including upon arrival in a transit or destination country, in identification and registration procedures, during relevant proceedings when the child's views must be taken into account, and when the child's return or the deportation of a family member are envisaged. The consultation stressed that children should be informed about their

rights and legal safeguards at all stages, have access to child-friendly information and counselling and be given a genuine opportunity to participate in and influence relevant decisions, including decisions to seek redress for incidence of violence. The need for rights-based approaches has also been emphasized by the Inter-American Court of Human Rights (IAHCR) (Box 7).

BOX 7

Special Contribution: The Inter-American Court of Human Rights (IAHCR)

By Romina Sijniesky, Senior Attorney, IAHCR

In its Advisory Opinion OC-21/2014 on *Rights and Guarantees of Children in the context of Migration and/or in need of International Protection*, the Inter-American Court of Human Rights (IAHCR) addressed the obligations that are imposed on States to prevent and effectively respond to violence against children on the move.⁵⁶ In the Court's view, States should embrace a human rights-based approach when designing, enacting and implementing their immigration policies for persons below 18 years of age, in which children's rights, protection and comprehensive development prevail over any consideration of their nationality or migratory status. The Court called upon States to treat children on the move first and foremost as children.

Given the array of situations that may lead children to leave their country of origin and the varied risks that they may endure on their journey, the Inter-American Court highlighted that States have a duty to identify those who require international protection, including (but not limited to) refugees and asylum seekers. Aware that not all cases reach the threshold for international protection, the Court noted that other situations in which the rights of the child are impaired and that result in displacement from their country of origin could also entail complementary protection or humanitarian assistance. Therefore, in the context of mixed migration flows and new factors that force children to flee from their countries of origin, such as violence perpetrated by non-State actors and organized criminal groups, the Court found that host States have a duty to adequately assess specific situations of the risk of rights violations in the child's country of origin, transit or destination. Such initial assessment procedures must be performed in a child-friendly environment by qualified professionals, with guarantees of safety and confidentiality.

In determining the need for protection, as well as providing children with the adequate and individualized special measures of protection, the Inter-American Court also deemed it necessary to consider personal factors, such as disability, membership of an ethnic minority group, or living with HIV/AIDS, as well as the particular characteristics of the situation of vulnerability of the child, such as being a victim of trafficking, or migrating separated from or unaccompanied by their family.

The Inter-American Court indicated that the strictest diligence is required of the border authorities to identify the different situations that require them to intervene in a timely, adequate and fair manner. In this vein, border authorities should not prevent the entry of foreign children into national territory, even when they are alone, or require them to produce documentation that they may not have.

When identifying the need for specific protection or the potential need for protection of the child, the State must ensure the case is referred to the competent authorities, e.g. to a procedure for refugee status determination and/or statelessness determination, or to a complementary protection mechanism to effectively address the different needs and requirements for protection. In addition, the host State must evaluate the need and pertinence of adopting comprehensive measures of protection to ensure the life, survival and development of the child.

Safeguarding the child's rights to liberty, security and justice

Every child has the fundamental human rights to liberty, security and justice. However, as noted in the previous chapter, children on the move are often denied liberty, and are held in immigration detention centres, prisons, cells for military personnel or military bases. They may also be confined in airports, ports, transit and 'international' zones, harbour facilities or on islands, and subjected to involuntary transportation in vehicles, airplanes, boats or other forms of transport.⁵⁷

They may be housed in conditions that threaten their security and well-being, alongside adults in situations characterized by high levels of stress and limited access to essential services. Those who are subjected to violence may be denied access to the justice that is their right, struggling to report the violence they have endured and to get any redress (Box 8).



Victor Augusto Mendivil

BOX 8

Special Contribution: Safeguarding the right to access justice for children on the move

By Felipe González Morales, UN Special Rapporteur on Human Rights of Migrants

In 2015, more than 31 million children were living outside their country of birth.⁵⁸ They may migrate with family members, or are separated from them and travel alone, often without regular status and the protection that comes with it. Children on the move are particularly vulnerable to exploitation, violence and abuse, and are often exposed to multiple forms of stigmatization and discrimination during their journey, based on their race, ethnicity, colour, language, religion, and their national or social origin.

If they are to seek redress for any human rights violation, access to justice is key. It is a fundamental right in itself and, at the same time, a prerequisite for the protection and promotion of all other human rights. However, it can become extremely difficult for children on the move to access justice, as they face many barriers. They may, for example, be afraid to make complaints for fear of harassment, reprisals against them or their families, detention and deportation. The unknown social and cultural environment, language barriers, their age and level of development often make it impossible for them to be aware of or assert their rights. Furthermore, justice systems can be very intimidating for children, and proceedings concerning their immigration status are complicated to understand.

Children are sometimes not accepted or seen as individual rights holders under domestic jurisdictions. During the migratory process, decisions are frequently taken on their behalf without any explanation of the consequences or implications for their life. Legislation, policies and procedures concerning the treatment and participation of children in immigration proceedings are rarely adapted to children's rights and needs or may even be discriminatory towards them.

The following principles should apply.

- Migration laws and policies should be guided by the principle of the best interests of the child, to ensure that the minimum requirements of the rights afforded specifically to children under the CRC are met.
- Child-friendly procedures should be in place for all children arriving or transiting through a State's territory, so their immediate or long-term needs can be met.
- Children must be provided with all relevant information on their entitlements and the services available, including means of communication, complaints mechanisms, and the immigration and asylum process to make their voices heard and be given due weight in proceedings.⁵⁹ This must be done in a timely, child-sensitive and age-appropriate manner in their own language.
- A child-sensitive migration policy means that children's right to be heard is fully respected with regard to all immigration and other related proceedings, and their informed prior consent to decisions, in line with their evolving capacities, is sought (CRC, Article 12).

Safeguarding the child's right to be heard

The child's right to be heard is enshrined in Article 12 of the CRC and is vital to both prevent and address violence. Children often have the capacity to make an important

contribution to their own protection and that of their peers. To support this capacity, children should be provided with information about their rights and the procedures and services available to them in a child-friendly manner and in a language they can understand. Consulting them in a sensitive and appropriate manner is also an important

way to gather information about their family situation and any potential protection issues. The voices and experiences of children on the move are also needed to inform policy and programme development.

Despite the moral imperative and practical advantages of listening to children, there are several significant obstacles to their full participation that must be overcome. For example, discriminatory gender norms rob girls of the opportunity to express their opinions or recount their experiences. They may also be too afraid or inhibited to disclose relevant information, including their exposure to gender-based violence, because of stigma or the risk – real or perceived – of being criminalized and detained.⁶⁰ Furthermore, asylum authorities may choose to interview only the male head of household, or may fail to provide same-sex interviewers and interpreters to allow girls to present their claims in a safe and gender-sensitive environment. Girls may be interviewed in the presence of their husband or another male family member to whom they feel an attachment, but who may, in fact, be the perpetrator of violence and abuse, or even a trafficker.⁶¹ A shortage of female staff and lack of confidentiality also prevent female victims of violence, trafficking or other forms of abuse and exploitation reporting their situation and seeking help.⁶²

In West Africa, a broad approach to the protection of children on the move is being promoted through bilateral agreements between different States. These aim to incorporate the guiding principles of the child's best interests and the child's right to participate in and influence decision-making processes that are relevant for their future.⁶³

Safeguarding the principle of non-refoulement

Non-refoulement is a core principle of the 1951 *Convention Relating to the Status of Refugees*. Article 33(1) of this instrument refers to the obligation of States not to refoule, or return, a refugee to, "the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion." This principle is now considered a rule of customary international law.⁶⁴



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journey

Protection in transit

The risk of violence against children is exceptionally high in transit zones and camps, and there is an urgent need for an integrated response from the entire range of actors involved in the reception and care of children and families in these facilities.⁶⁵ Practical measures such as gender-segregated tents and sanitary facilities, better lighting and child-friendly spaces run by UN agencies or NGOs can make these facilities safer for children. It is critical to transfer children quickly, especially those who are unaccompanied or separated, from camps to facilities where better care and accommodation are available. They should also have full access to procedures to claim international protection.

Important measures to strengthen protection for children on the move have been taken at regional and national levels. In Latin America, the *Regional Guidelines for the Comprehensive Protection of Children and Adolescents in the Context of Migration*⁶⁶ provide crucial guidance for the effective and comprehensive protection of children and adolescents during the migration process, including: prior to departure; in transit countries and at their destination; and during their integration or return to their countries of origin and subsequent reintegration. The Guidelines call on States to cover a child's immediate needs, such as food, medical care, psychological care and clothing, wherever they are in their migration journey. Box 9 illustrates what can happen when such protection is lacking.

BOX 9

Trauma at every stage: one girl's journey from Afghanistan to Sweden

An interview by Human Rights Watch with a 16-year-old girl from Afghanistan who travelled to Europe alone illustrates the risks facing unaccompanied girls. She reported that she had been raped repeatedly by a smuggler in Turkey, who held her captive for 12 days. Traumatized, she continued her journey across the border into Greece, where she was threatened by a group of boys who pushed her, "and tried to get a chance to do something bad."

When she finally reached Sweden, she was placed in a group home with boys. She told her social worker that she wanted to be placed somewhere without boys because of the rape and sexual harassment she had experienced: "*I told the social worker what happened to me. From the beginning, I told them I don't want to be in a camp with 15 boys.*"

Despite the gravity of her situation, her request went unheard. Furthermore, apart from a general health check-up, she received no medical care, and her social worker failed to refer her for any post-rape care or psychological support.

Cross-border cooperation

Children on the move often cross many borders to reach their destination, facing a high risk of being sold, kidnapped, exploited or trafficked. Cross-border cooperation is vital to prevent and investigate violence against children on the move, combat impunity and provide assistance to child victims. Yet the lack of such coordination across borders by national authorities continues to place children at risk of further abuse, re-trafficking and re-victimization.

A child may, for example, be subject to numerous age assessments, interviews and procedures that may generate inconsistent findings (e.g. different age determinations) and exacerbate their trauma. Children may be returned to their country of origin without prior assessment of status and protection needs.

Quick facts: An example of cross-border cooperation on child sexual exploitation

The International Child Sexual Exploitation (ICSE) database is hosted by INTERPOL, which has 190 member countries.⁶⁷ The database offers specialized investigators worldwide instant access to data and tools to upload and analyse seized child (sexual) abuse material. Investigators in 47 countries, plus EUROPOL, are connected to the ICSE database and every INTERPOL member country has a National Central Bureau, which links national police to the global network.

In practice, international cooperation among States tends to focus on law enforcement and criminal proceedings, with less consideration for the protection and assistance of victims or the principle of non-refoulement.⁶⁸ Another challenge is that cross-border cooperation may focus only on trafficking, overlooking the many other risks faced by children on the move.

The 1996 *Hague Child Protection Convention*, which has 49 Contracting Partners, is an initiative of the Hague Conference on Private International Law, an intergovernmental organization with 83 members (82 States and the European Union).⁶⁹ The Convention addresses cross-border issues that are highly relevant to children on the move:

- international abduction
- children placed in alternative care arrangements abroad
- children who have been subjected to cross-border trafficking and other forms of exploitation and abuse, including sexual abuse
- children who are refugees or unaccompanied, and
- children who relocate internationally with their families.⁷⁰

The Convention's general framework for cooperation attempts to avoid legal and administrative conflicts and to build the structure for effective international cooperation in child protection matters between the different legal systems. In this respect, the Convention has the potential to bridge legal systems with diverse cultural or religious backgrounds.⁷¹

Protection for children on arrival: Reception

Children arriving in a new country may well find that their hardships are not over. Conditions on national borders are often harsh and can entail arbitrary border closures and push-backs, xenophobic attacks, violence by State authorities and other actors, restricted access to asylum procedures and lack of appropriate assistance.⁷²

Children can also be subjected to repeated interviews during which they are questioned time and again about their age, family relations and motives for travelling.⁷³ As a result, their encounters with border guards, immigration authorities and law enforcement officials can be particularly intimidating and may place them at risk of discrimination, harassment, violence and abuse. The training of border guards, in particular, is one way to ease the stress faced by children on the move (Box 10).

BOX 10

Training border guards in Europe

A training package developed by Frontex, the European Border and Coast Guard Agency, in 2011 aims to help European border guards combat trafficking in human beings. The *Frontex Anti-Trafficking Training Manual* was developed to raise awareness of human trafficking as a serious crime and a violation of human rights, and to train border guards to identify and deal with potential victims of this crime. It includes a training manual and a handbook on risk profiles⁷⁴

The manual emphasizes the circumstances of vulnerable groups, such as children and other people in need of international protection.⁷⁵ The *Handbook on Risk Profiles on Trafficking in Human Beings* is a collection of profiles of potential victims from different parts of the world and of the traffickers who bring them to Europe. By identifying specific profiles of traffickers, the Frontex package aims to increase detection and support the dismantling of criminal groups.⁷⁶

One key way to facilitate the humane processing of children at reception points and to minimize the associated trauma is to decriminalize irregular migration. Reflecting the decisions of the Inter-American Court of Human Rights (IACtHR), recent legislation on migration in Latin America is moving toward the establishment of irregular migration as a non-criminal act and ensuring the promotion of safer conditions for migrants through regularization processes.

National legislation is, increasingly, reflecting this view. The 2016 *Migration Code of Guatemala*, for example, establishes that, “no person shall be subject to criminal sanctions for his or her condition of human mobility.”⁷⁷ Similarly, the 2017 *Organic Law on Human Mobility of Ecuador* determines that in no case may a person’s detention be ordered for administrative misconduct.⁷⁸ Under the Law, when the best interest of the child or adolescent requires the maintenance of the family unit, the imperative of non-deprivation of liberty will be extended to their parents, without prejudice to the alternative measures that could be dictated in migration control. Brazil has also moved in a similar direction: Article 3 of its *Migration Law* of 2017 recognizes that Brazilian migratory policy is governed by the principles of non-criminalization of migration and the repudiation of collective deportation or deportation practices.⁷⁹

One positive consequence of recognizing irregular migration as a non-criminal act for children and their families is the regularization of their status. Regularization allows for safer conditions and greater access to child protection systems for children. In Latin America, regularization is a process

formally recognized in the legislation of Argentina,⁸⁰ Brazil⁸¹ and Uruguay.⁸²

To prevent the disappearance of children and the consequent risk of their abuse or trafficking, well-trained child protection professionals (rather than immigration, border enforcement or police officers) should support child- and gender-sensitive identification and registration procedures and participate in the initial assessments of a child’s needs. Each child should benefit from identification immediately on arrival at a port of entry or as soon as their presence in the country becomes known to authorities.⁸³

It is essential, therefore, that child protection officers at the point of entry are authorized to refer the child’s case to child protection experts and multi-disciplinary teams for further screening, interviewing, assistance and protection.⁸⁴ The process of ascertaining a child’s identity should include collection of biodata and recording of essential information including the child’s citizenship, and the citizenship and identity of their parents and siblings. Furthermore, each child’s vulnerabilities must be assessed, and cases of violence recorded and followed up. In cases where children are traveling without their primary caregivers, their reasons for being unaccompanied or separated must be noted.

Age determination

Determination of a child’s age is essential to ensure special protection in accordance with the CRC and its optional protocols. Many States, however, fail to comply with their obligations under international law to receive and protect children in a manner that



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recognizes their specific vulnerability. As a result of unreliable age assessments, older children are often identified and treated as adults, increasing the risk of their detention. Children themselves may even claim to be adults because they fear being placed in a children's facility where they would be prevented from continuing their journey.

Lack of documentation is a widespread problem among children on the move, and one that significantly complicates any procedure to establish their age. In some cases, identity documents have been lost, destroyed or confiscated by traffickers or smugglers in the course of the journey; in others, such documentation is not commonplace in the child's country of origin. There is also, however, a pervasive 'culture of disbelief' that surrounds unaccompanied migrant children, with border, immigration

and law enforcement officials, as well as social services, often denying children the benefit of the doubt when establishing their age.⁸⁵

The principle of the best interests of the child is essential for safe and dignified age assessment procedures that are child- and gender-sensitive and culturally appropriate and that give due consideration to the trauma the child may have endured. Such assessments should only be conducted when there are serious and valid doubts about the age of the child and should only be carried out by a multidisciplinary team of well-trained professionals.

Where there is doubt about a child's age, she/he should still benefit from the special protection to which every child is entitled. This means that the age declared by the child should be accepted as fact until it is confirmed or refuted, within a reasonable period of time, by the procedures established for this purpose. Until that time, individuals who have declared that they are under the age of 18 should be provided with the care given to children and adolescents.

This principle is expressed in article 10.3 of the Council of Europe Convention on Action against Trafficking in Human Beings: "*[w]hen the age of the victim is uncertain and there are reasons to believe that the victim is a child, he/she shall be presumed to be a child and accorded special protection measures pending verification of the age.*"⁸⁶

Relevant authorities, including health centres and forensic services, should determine a child's age using the least invasive and intrusive methods available. Examination of sexual maturity should be prohibited,

and medical procedures such as examining dental and wrist-bone X-rays should be used only as a last resort. These methods have a two to three-year margin of error and are considered ill-suited as a way to settle many age disputes.⁸⁷ Any age assessment should be undertaken in a safe setting using scientific criteria, taking into consideration psychological maturity, gender, cultural, cognitive and behavioural factors.⁸⁸

The SRSG on Violence against Children cooperates with the Council of Europe's Drafting Group of Experts on Children's Rights and Safeguards in the context of

migration, which has been developing standards on guardianship and age assessments. This Group has found that age assessments are routinely carried out without respect for the dignity and rights of the child, and contrary to a number of safeguards, including the principle of last resort. They may even take place when available documentation is consistent with the age claimed by the child. Essential safeguards should, therefore, be observed before, during and after age assessment. Box 11 sets out an example of regional guidelines on the identification and protection of migrant children.

BOX 11

MERCOSUR Regional Guidelines on identification and protection of migrant children⁸⁹

In Latin America, Guidelines adopted by the Mercado Común del Sur (the Southern Common Market) specify measures relevant to the identification of migrant children and the assessment of their protection needs. The first addresses issues associated with identification, while the second deals with referrals.

Step One: Determining the situation of the unaccompanied or separated child or adolescent and specify rights violations. This is the initial stage of identification and assessment for referral. First, it involves assessing whether the child is unaccompanied or separated, and establishing their nationality (or, where it is the case, their statelessness) to ensure that the care they receive is consistent with their status. Second, it requires the identification of situations that may require urgent or emergency care, and the collection of information on the reasons for the child's departure from their country of origin, their separation from their family (where this is the case), their specific vulnerabilities, and any other factor that may reveal the need for some form of international protection.

Step Two: Mechanisms for referral to the organization(s) responsible for the adoption of measures for protection and care. Upon completion of the identification and information gathering process, the official involved will make the necessary referrals to the organizations responsible for responding to the specific needs of the child. Importantly, under applicable immigration laws, some form of immigration entry status or authorized access to the territory must be guaranteed, provisionally or temporarily, to avert the risk of the child being denied entry or returned to their country of origin. This also ensures that immediate basic rights to food, hygiene, health services and social security are respected. To guarantee the principle of non-refoulement, immigration officials should gather and analyse relevant information to determine the associated return risks.

Special protection for unaccompanied and separated children

Despite their unique vulnerability, UASC are often neglected during and after reception. Many do not even register as asylum-seekers because they have valid fears of being sent back home or prevented from continuing their journey.⁹⁰

In some countries, children are registered as 'accompanied' without adequate assessment of their relationship with the adult who is accompanying them. In other cases, border guards only register children's personal data and do not record whether they are accompanied at all.⁹¹ In such circumstances, children may be placed in the same accommodation as the adults with whom they are travelling, which permits any abuse and exploitation to continue.

The challenges to identifying family links between a separated child and an accompanying adult include lack of documentation and the cost of DNA tests to

establish family relations. Children may also be too afraid to disclose the true nature of their relationship with the accompanying adult because of threats against the child or their family.

In the UK, guidance for local authorities has been developed for the provision of support for unaccompanied children who are seeking asylum and child victims of trafficking. Unaccompanied and trafficked children often have complex needs, and the guidance requires special measures to be in place to address these needs as soon as the child comes under the care of the local authority. This support is most effective when provided in the context of a stable, trusting and ongoing relationship with the child, in a situation where he or she feels secure. As part of planning for their protection, children should be asked about what would help them to feel safe.

SOS Children's Villages also aim to care for and protect children who are without parental care in other parts of the world (Box 12).

BOX 12

Special Contribution: SOS: 'Let children be children'

By Ana Fontal, Global refugee Coordinator, SOS Children's Villages

The SOS Children's Villages initiative supports children who are without parental care or at risk of losing that care in 134 countries. They include displaced children in countries of origin, in countries of first refuge, during their journey to safety, and in the countries where they find new homes.⁹² In Austria, SOS Children's Villages cares for around 300 of the 3,300 unaccompanied children living in the country through small group homes, semi-independent living, foster care and integration and education programmes.

Several obstacles prevent unaccompanied children in Austria from receiving quality care on the same basis as Austrian children deprived of parental care.

- Before unaccompanied children are transferred to facilities under the responsibility of the provinces and run by civil society organizations or private companies, they can remain for several months in large-scale federal reception centres without a guardian being assigned to them and without any proper assessment of their specific needs.

BOX 12 Continued

- Sufficient public funding is not allocated to the care of unaccompanied children. Although they are legally entitled to the same services as other children deprived of parental care, the daily rates assigned to organizations hosting them are often much lower than the fees granted by the Government for Austrian children.
- Schooling is not compulsory after the age of 15, and continuing studies beyond this age is difficult for children who have not completed the mandatory school years in Austria (often the case for refugee children). Under legislation that came into force in August 2017, children under the age of 18 who have completed nine years of schooling and who are permanent residents in Austria are obliged to pursue education or training. This law, however, does not apply to asylum seekers.
- Long asylum procedures force children who are often already under considerable stress to endure long periods of uncertainty that have a negative impact on their capacity to rebuild their lives in a new country.

The following are key lessons learnt through our work in Austria and elsewhere.⁹³

- **All efforts should be made to keep children in, or return them to, the care of their family unless this is against their best interests.** Families should be supported through universal, targeted social services, psychosocial support and by allowing early access to labour markets for parents and caregivers so families are able to stay together. Family reunification provisions should be implemented with full respect for the child's right to family life, including through the removal of barriers (e.g. deadlines for applying for family reunification, waiting periods before applying for family reunification, and material and income requirements).
- When children are unaccompanied or separated, **States should provide alternative care arrangements that are adequately equipped and funded to meet children's needs and ensure their best interests, such as family and community-based solutions (UN Guidelines for the Alternative Care of Children).**
- Children have diverse aspirations, needs, skills and strengths. **Support must be tailored to each individual child and be based on their participation in planning and through continuous monitoring.**⁹⁴
- Having trust in themselves and others is difficult for unaccompanied children who have fled war and human rights violations and who have been exposed to violence and abuse during their journey. **Appropriate funding should be allocated to initiatives that ensure they have strong supporting networks, including through stable carers and guardians.**
- When children are unaccompanied or separated, families can still play a protective role. **Dialogue with families of origin helps to ensure the best interests of the child**, including by reducing risk of unaccompanied children relying on smugglers.
- Further, **providing information and legal assistance yields satisfactory results** in supporting children to pursue legal and safe channels to seek protection, family reunification and resettlement, as well as voluntary return when it is in their best interests.
- Migration detention exposes children to abuse and neglect, undermines their psychological and physical well-being and is never in their best interest. **Children must not be detained for reasons related to their migration status, or that of their parents or care givers.**
- **Migrant and refugee children should have full access, on an equal basis with national children, to mainstream services** such as education, training and health care for the entire duration of their stay in a given State.
- **Quality care and social inclusion of refugee and migrant children and young people** are long-term investments that bring social and economic value to local societies. Initiatives to enable people to get to know each other are crucial to building mutual understanding and addressing fears among the local population, including early access to labour market for migrants and refugees, the provision of accommodation in the local community, integration in mainstream services (e.g. schools) and involvement in leisure activities.
- **The private sector should develop its potential for increasing employment opportunities for underprivileged groups**, including migrants and refugees, and for promoting inclusive and tolerant communities.
- **Sufficient public funding should be allocated** to ensure that programmes supporting children can become sustainable.

Appointing a guardian

The UN Guidelines on Alternative Care stress that "*[n]o child should be without the support and protection of a legal guardian or other recognized responsible adult or competent authority at any time.*"⁹⁵ As soon as it is determined that a child on the move is unaccompanied or separated, competent authorities (judicial or other) should be notified to appoint a guardian, or adviser to act as such, until the child comes of age or leaves the territory or jurisdiction of the State on a permanent basis.⁹⁶

A guardian's duties include ensuring effective respect for – and exercise of – the rights of the child; providing the child with information on all decisions and evidence presented during all legal processes; and ensuring the right of the child to participate throughout. The right of the child to be heard must also be guaranteed in relation to the appointment of the guardian and any subsequent review or assessment of that appointment.⁹⁷

In principle, an accompanying adult can be appointed as a guardian if the appropriate authorities determine that their intentions and actions are motivated by the wish to protect the child. Assessments of this kind are, however, very difficult, because some adults may abuse the child's trust and exploit that child for personal gain. Travelling with adults is no guarantee of the safety and well-being of a separated child, particularly if those adults are unable to provide adequate care, are abusive, or involved in smuggling or trafficking.⁹⁸

If no suitable guardian can be found among the child's relatives or within the child's

family environment, the care of the child becomes the responsibility of national child protection authorities. A court or other competent authority can appoint staff of the institution or entity designated by law, or people who would be natural choices to perform the guardianship duties. Such arrangements are often used in cases of unaccompanied children and child victims of trafficking who have been exploited and identified outside their country of origin.⁹⁹

There are significant differences across countries and regions in the way guardianship is organized, and systems often function poorly or are non-existent. A comprehensive study on guardianship systems for children deprived of parental care across the Member States of the EU found that the quality of services, the degree of protection, and the roles, qualifications and competences of guardians vary substantially from one State to another.¹⁰⁰

This situation was exacerbated by Europe's migration crisis in 2015 and the consequent increase in the number of unaccompanied children entering the region. As well as lengthy appointment procedures, there were difficulties in recruiting qualified guardians, and some were found to be neither independent, nor impartial. The guardians who were recruited were often assigned too many children for practical purposes. Furthermore, most EU Member States lack independent monitoring mechanisms other than their court systems and have no child-friendly complaint mechanisms that are available to migrant children.¹⁰¹

Participants in the Expert Consultation organized by the SRSG on Violence against

Children and the Iberoamericana University in June 2017 noted similar findings; that the process of appointing a guardian is often undermined by lengthy procedures, lack of access to justice, and the absence of vetting processes to identify qualified guardians and harmonized standards to provide clarity about their roles and responsibilities. Furthermore, the capacity of guardians to ensure the best interests of the child is compromised when these guardians are responsible for large numbers of children. Another frequent challenge is the lack of an effective and independent monitoring system, together with a safe complaints procedure. This compromises the identification of abuse and exploitation to which children may have been subjected, as well as the adoption of prompt and effective response measures.

In response to the challenges of establishing an effective guardianship system in the EU, the European Agency for Fundamental Rights (FRA) has developed a handbook providing guidance to policy makers and national authorities on how to manage and strengthen their guardianship systems (see Annex 3 for areas raised by FRA as being of particular concern).¹⁰² This notes that guardians should act as a link across the child protection system, specialist agencies, schools, health services, judiciary and police, lawyers and legal representatives. They should have the authority to be present in all planning and decision-making processes related to the child, including appeal and immigration hearings, and decisions regarding the child's care and accommodation.¹⁰³

Regular review and oversight mechanisms to monitor the quality of the exercise of guardianship are important to ensure respect

for the best interests of the child and prevent their re-victimization. Furthermore, children have a right to be informed and to be heard in relation to decisions concerning guardianship and legal representation. They also have the right to access confidential, safe, child- and gender-sensitive mechanisms should they wish to file a complaint. The FRA handbook also calls on States to establish a national guardian's database to facilitate oversight and enhance the functioning of guardianship systems.

Alternative care

Child protection systems are not always readily available in the places where children



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on the move are located and, when such systems are available, they are rarely adapted to children's needs or the risks they face.¹⁰⁴ There is often a shortage of shelters that specialize in receiving and assisting child victims of violence, and those that exist cannot always ensure that the diversity and disparity of children is taken into consideration on a case-by-case basis, as required by the *Guidelines on the Alternative Care of Children*.¹⁰⁵

The *Guidelines* cover different types of informal and formal care for unaccompanied and separated children. These can include kinship care by extended family or close friends of the family who are known to the

child, foster care, residential care (such as transit centres in emergency situations), and all other short- and long-term residential care facilities, including group homes and supervised independent living, whether run by public or private actors.¹⁰⁶

In practice, a wide array of care arrangements is available to cater to the specific circumstances of each child. The question is whether they are being used. While children below the age of 15 should ideally be placed in foster care, older children may prefer small group homes or semi-independent supervised living.¹⁰⁷

Nidos, the Dutch organization for guardianship, has piloted a foster care model where children are placed in families from the same cultural community to which they belong. Through this experience, Nidos has found that children feel supported by people who understand where they have come from and what they are going through. However, as with every foster family, regular follow-up is essential, including detailed vetting through, for example, the guardianship institution, as is close monitoring to detect any harm – or potential for harm – to the child immediately.¹⁰⁸

In Latin America, article 11 of Guatemala's migration code is an important legal landmark for the care and protection of unaccompanied children and children separated from their families. It establishes that migrant children of other nationalities who are not accompanied by, or who are separated from their families; who are pregnant or with children; or who are married couples, have the right to be cared for in specialized programmes in houses that are authorized



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by the State in accordance with specific principles: in no case may border entry be refused to unaccompanied or separated children or adolescents; and children and adolescents may not be deported if it is not in their best interests.¹⁰⁹

Family unity, tracing and reunification

UNICEF has noted that States often adopt policy measures that govern the entry, permanency or departure of migrants and that these can have a decisive impact on the unification or separation of a family. Decisions on applications to enter a country or to obtain or renew a residency permit, or on the possible expulsion of a child or his or her parents from the territory, can all have an impact on the right of a child on the move to life in a family setting.¹¹⁰

It is essential that States observe special criteria to guarantee children that right. This includes prioritizing a child's right to family life when considering the expulsion or deportation of the child or their parents, and respecting the child's right to family reunification when they request permission to enter another State for that purpose.

The right to family reunification is established under articles 9 and 10 of the CRC. Article 9 requires States to ensure that, "*a child shall not be separated from his or her parents against their will, except when [...] such separation is necessary for the best interests of the child.*" Article 10 refers directly to this provision and provides that, "*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." Article 16 of the CRC prohibits arbitrary or unlawful interference with the child's family life, while article 22 requires States Parties to: "*trace the parents or other members of the family of any refugee child to obtain information necessary for reunification with his or her family.*"

The EU Charter of Fundamental Rights has several provisions relevant to family reunification rights. Article 7 guarantees the right to respect for family life, while the non-discrimination clause in article 21 prohibits discrimination on an open-ended list of grounds. This reflects the principle of equality in EU law which means that if refugees are in the same situation as others who receive protection, they cannot be treated differently without a clear justification.

MERCOSUR has also reaffirmed the necessity of providing special protection to family life, calling on States to adopt appropriate mechanisms and authorities to assess each case individually and consider the specific circumstances of the persons involved. This includes the following.

- Assessing individual cases involving family separation, employing either skilled professionals from the area of institutional migration, or through inter-agency cooperation and technical reports made by professionals from organizations specializing in protecting the rights of children and adolescents.
- Ensuring that children and adolescents involved in the procedure are heard, and that their opinions are taken into account.

- Prioritizing actions to preserve family unity and adopting alternatives to separation as a result of expulsion. These might include regularization of the parents or the provision of support for the social integration of the family.
- Ensuring that the exceptional decision to separate a family is based on the principle of the best interests of the child, and that due consideration is given to the impact of this decision on the child's enjoyment of their rights, including cases where the child or adolescent has been subjected to mistreatment, abuse or neglect by their parents, or in cases where the parents live separately and residence decisions must be taken.

To conduct the appropriate assessments, the responsible authorities should take into account a number of parameters, while considering the best interests of the child at all times. These include the migration history of family members, the duration of their stay in the host country, and the extent of their ties to that country. The responsible authorities should also consider the nationality and residence status of the child or children of any person who is to be expelled, as well as the likely impact of the resulting family breakdown.

Alternatives to deprivation of liberty, including family and community-based protection measures

The UN Rules for the Protection of Juveniles Deprived of their Liberty define 'deprivation of liberty' as: "*any form of detention or imprisonment or the placement of a person*

in a public or private custodial setting, from which that person is not permitted to leave at will, by order of any judicial, administrative or other public authority."¹¹¹ Such settings include police custody, administrative detention, involuntary hospitalization and institutional custody of children, including children with disabilities and those with child protection needs.¹¹² The detention of any child because of their migration status or that of their parents is a violation of their rights and contravenes the principle of the best interests of the child.

Article 37 of the CRC stresses the importance of avoiding deprivation of liberty for children, including children on the move, and considering instead, non-custodial and comprehensive measures of protection in their favour. Article 37(b), provides that, "*[n]o child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law*" and shall be used only as a last resort for the shortest appropriate period of time.¹¹³

The child's right to liberty is supported by article 16 of the Convention on the Rights of Migrant Workers: "*1. Migrant workers and members of their families shall have the right to liberty and security of person. [...] 3. Any verification by law enforcement officials of the identity of migrant workers or members of their families shall be carried out in accordance with procedures established by law. 4. Migrant workers and members of their families shall not be subjected individually or collectively to arbitrary arrest or detention.*"¹¹⁴

While alternatives to detention are available, many countries use these only for a small

fraction of children and families. In most cases, actions focus on the enforcement of migration policies and the control of migrants, rather than ensuring the care, protection and welfare of children.¹¹⁵ Over the past five years, the International Detention Coalition (IDC) has undertaken research to identify positive alternatives to the detention of migrants that respect fundamental rights, are less expensive and are equally or more effective than traditional border controls. To date, IDC has identified over 250 examples of alternatives¹¹⁶ from 60 countries around the world. The research has also revealed that migrants who are catered for by alternatives to detention comply with the rules of the legitimate authority at rates of between 70 and 99 per cent.¹¹⁷

A recent report by the FRA shows positive results from investing in human rights-based, child-friendly alternatives to detention in European countries including Italy, Malta, Portugal, Spain and the UK,¹¹⁸ with Ireland successfully prohibiting the detention of immigrant children. Civil society organizations across Europe are developing case management-based alternatives to detention and sharing information and best practices through the European Alternatives to Detention Network.¹¹⁹

In Latin America, Mexico's Supreme Court of Justice published a 'Protocol of Action for those who provide justice in cases involving migrants and subjects of international protection' in 2015.¹²⁰ While not binding, this document assists judges in the task of delivering justice in cases involving migrants and those subject to international protection in line with the highest national and international standards. The Protocol includes



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recommendations related directly to children on the move, including their prioritization for support, non-deprivation of liberty and legal assistance.

Whenever children are detained in a migratory station, which should only happen in exceptional circumstances, great care must be taken to ensure that conditions are adequate. Children and adolescents must, remain in an area separated from the adult population unless, in reviewing the best interests of the child, it is decided that the child's right to remain in the family unit outweighs other considerations. Furthermore, children and adolescents are entitled to have regular contact with friends and relatives, as well as their guardian or tutor.

Mechanisms to monitor places of detention and other facilities¹²¹

The overall goals of oversight, inspection and monitoring are:

- to ensure compliance with the rights of the child, including the safeguards provided under international human rights law and standards
- to prevent violence, and
- to ensure accountability for perpetrators of violence.

None of these are possible without appropriate monitoring mechanisms. In the absence of such mechanisms, all forms of detention leave children vulnerable to violence and abuse, and those who perpetrate violence against children in these facilities often go unpunished. It is just as important to empower children to report violence to the appropriate authorities through safe, child- and gender-sensitive counselling, complaints and reporting mechanisms. These should be widely available and easily accessible, whether a child is accompanied or unaccompanied.

Important additional guidance includes: *UN Model Strategies on the Elimination of all Forms of Violence against Children in the Field of Crime Prevention and Criminal Justice*¹²²; *UN Standard Minimum Rules for the Administration of Juvenile Justice*¹²³; and *UN Rules for the Protection of Juveniles Deprived of their Liberty*.¹²⁴ For children without parental care, the Guidelines for Alternative Care set out steps for an independent monitoring mechanism.

To be effective, national monitoring mechanisms to prevent violence against

children who are deprived of their liberty should be backed by sufficient resources to carry out their functions to the highest possible standard. Such mechanisms should have the following characteristics.¹²⁵

1. A legal mandate that safeguards their autonomy and independence. Whether part of the administrative system or external institution, monitoring mechanisms must be established by law, and must enjoy autonomy and functional, organizational and financial independence, including in relation to the appointment of their members and their financial viability.

2. Extensive powers to safeguard children's protection and safety. Monitoring mechanisms must have clear roles and responsibilities and broad powers defined by law. These include: the right to access any place of deprivation of liberty, including through unannounced visits; the right to access any necessary information and to request reports before, during and after the inspection and to receive a prompt response; the right to receive complaints directly from children; and the authority to make public the results of their inspections and recommendations, while preventing any public disclosure of information that could place a child at risk.

3. A clear human rights mandate. Such a mandate enables monitoring mechanisms to prevent and address any act of torture or other form of violence. It also enables them to protect the rights of children deprived

of liberty, including the right to a good quality education, the highest possible standard of physical and mental health, and access to due process and legal safeguards.

- 4. Age- gender- and child-sensitive complaints mechanisms.** It is crucial to ensure easy and safe access for children deprived of liberty to counselling, complaints and reporting systems, and inspection and monitoring mechanisms. These mechanisms should take children's views and experiences into consideration, both to identify and pursue incidence of violence through administrative and criminal investigations, and to establish the accountability of perpetrators.
- 5. Access to sound data and standardized qualitative and quantitative monitoring tools.** These elements are essential to inform an accurate and objective system for monitoring places of detention, guiding strategic legal and policy reforms, strengthening child-sensitive proceedings, and safeguarding the rights of children deprived of liberty. Qualitative data can include surveys, interviews with children and staff, and individual assessments and recommendations resulting from the inspection.

Information generated by mechanisms that monitor places of deprivation of liberty should both complement comprehensive child protection systems and trigger interventions by these systems to prevent and respond to violence against children, while mobilizing health, education and other relevant services. When a child's rights have been violated, steps should be taken to

ensure appropriate reparation and to make available measures to support their physical and psychological recovery, rehabilitation and social reintegration wherever necessary.¹²⁶

The IDC, the Association for the Prevention of Torture and UNHCR have developed a practical manual on monitoring immigration detention that includes a focus on children.¹²⁷ The manual aims to ensure that monitoring visits are consistent, effective, independent and evidence-based. They should also aim to improve conditions of detention; avert the risk of arbitrary or unlawful detention, torture and other forms of ill-treatment; and prevent refoulement.¹²⁸

National Human Rights Institutions (NHRIs) and national Ombuds for Children have a critical role in monitoring the rights of the child.¹²⁹ In line with the Paris Principles,¹³⁰ NHRIs must have the power to consider individual complaints and petitions and carry out investigations, including those submitted on behalf of, or directly by, children, and to ensure that children have access to effective remedies for any violations of their rights.¹³¹ NHRIs should have the power to support children who are taking cases directly to court, to take cases concerning children forward in the name of the NHRI, and to intervene in cases to inform the court about the human rights issues involved.¹³²

Access to justice

In most countries worldwide, children who have been the victims of, or witnesses to, crimes face serious barriers to seeking and obtaining justice. This is particularly true for children on the move who are separated or unaccompanied. The *UN Guidelines on*

Children as Victims and Witnesses of Crime provide safeguards that are very relevant to their situation,¹³³ promoting a child- and victim-centred approach and recognizing the right of children to have their best interests given primary consideration.¹³⁴

Interviews, examinations and other forms of investigation involving child victims and witnesses of crime should be conducted by trained professionals, using a respectful and thorough approach.¹³⁵ All interactions with these children should be conducted in a child-sensitive manner in a suitable environment that accommodates their special needs, in line with their abilities, age, intellectual maturity and evolving capacities,

and conducted in the language they use and understand.¹³⁶ To assist implementation, UNODC and UNICEF have developed a *Handbook for Professionals and Policymakers on Justice in Matters Involving Child Victims and Witnesses of Crime*,¹³⁷ together with a child-friendly version of the UN Guidelines.¹³⁸

Provision of free legal assistance is crucial to children's access to justice. In Latin America, four countries -Argentina, Ecuador, Mexico and Uruguay – have migration laws that recognize the right to access justice and legal representation for migrants and their families (Box 13).¹³⁹



BOX 13

Domestic legislation on the right to access to justice and legal representation for migrants and their families in Latin America

Argentina: *Migration Law 25.871, 2010*, Article 86: Foreign nationals in the national territory who lack economic means will have the right to free legal assistance in administrative and judicial procedures that could result in denial of entry, return to their country of origin, or expulsion from Argentine territory.

Ecuador: *Organic Law on Human Mobility, 6 February 2017*, Article 12: Regarding right of access to justice, in the case of Ecuadorians living abroad, the Ecuadorian State must comply with guarantees of due process on equal terms with the nationals of the receiving State. In exceptional cases, where there has been a violation of the human rights of an Ecuadorian citizen or group of Ecuadorian people who do not have economic resources, the State may provide legal assistance and support during the process.

Mexico: *Migration Law, 25 May 2011*, Article 11: In any case, regardless of immigration status, migrants shall have the right to seek and access justice, in keeping with the right to due process, as well as to submit complaints on human rights, in accordance with provisions contained in the Constitution and other applicable laws. In the procedures applicable to migrant children and adolescents, their age shall be taken into account and their best interests shall be given priority.

Uruguay: *Migration Law, 17 January 2008*, Article 9: Immigration irregularity shall in no case prevent the foreign person from having free access to justice and health establishments. The authorities of these centres will implement the necessary services to provide migrants with the information that makes it possible to regularize them in the country.

In a comparative study, the European Council on Refugees and Exiles examined systems of legal assistance for unaccompanied children in migration and asylum procedures in seven European transit and destination countries: Austria, Belgium, Bulgaria, Denmark, Italy, Spain and the United Kingdom. The study considered all forms of legal assistance provided to unaccompanied children, including legal advice and legal representation in court, as well as the various actors that provide legal assistance, such as independent qualified lawyers and legal staff from NGOs.¹⁴⁰ The study aimed to contribute to a common approach to legal assistance to guarantee unaccompanied children's rights to effective remedy and justice, and to raising awareness and developing standards on legal assistance for such children.

On the basis of this study, the European Council on Refugees and Exiles developed the *Guiding Principles for Quality Legal Assistance for Unaccompanied Children* to safeguard the right of unaccompanied children to quality legal assistance in asylum and migration procedures. The *Guiding Principles* also aim to support an effective response to violence against children and the prevention of their re-victimization (Box 14).

BOX 14

The Guiding Principles for Quality Legal Assistance for Unaccompanied Children developed by the European Council on Refugees and Exiles¹⁴¹

Principle 1: Legal assistance for unaccompanied children is provided with the aim of ensuring the rights of each child in a manner that fully respects these rights.

Principle 2: The provision of legal assistance draws on, and contributes to, the child protection system.

Principle 3: Prompt and effective access to quality legal assistance is ensured.

Principle 4: The framework within which legal advisors provide legal assistance enables them to ensure the participation and engagement of unaccompanied children.

Principle 5: Legal advisors have enough time and appropriate resources to prepare and provide legal assistance for unaccompanied children.

Principle 6: Legal advisors working with unaccompanied children possess the necessary qualifications, knowledge, skills and attitudes and are fully independent in their function and role.

Principle 7: Qualified, trained and independent interpreters are available to ensure effective communication between the child and his or her legal advisors.

Principle 8: Independent mechanisms to monitor and evaluate the quality of legal assistance are established.

Principle 9: Sufficient funding is provided to ensure legal assistance. Legal advisors have access to information, training and expertise to support quality legal assistance.

Access to asylum proceedings

Article 22.1 of the CRC requires States Parties to: "... take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights ..."

This provision upholds the principle of equal protection to children with refugee status

and children who are seeking that status. However, CRC provisions cover *all* children within a country's jurisdiction. This means that children who have been refused refugee status are protected as long as they remain in that country,¹⁴² including visiting children, children of migrant workers, refugees and undocumented children. The principle provides broad protection and entitles each child to receive immediate assistance and support while their situation and best interests are being assessed.

States must fully respect the principle of non-refoulement that is derived from

international human rights, humanitarian and refugee law, including obligations under article 33 of the 1951 Convention Relating to the Status of Refugees,¹⁴³ and article 3 of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.¹⁴⁴ In fulfilling their obligations under these Conventions, States must not return any child to a country where there are substantial grounds to believe they may be subjected to irreparable harm, such as torture and other serious forms of violence, either in the country to which they are to be sent or in any other country to which the child may subsequently be removed. Such non-refoulement obligations apply regardless of whether these rights violations are perpetrated by State or non-State actors, and whether such violations are the direct intention, or are the indirect consequence of action or inaction in protecting children.¹⁴⁵

Children of all ages who seek asylum, including unaccompanied or separated children, have the right to enjoy access to asylum procedures and other complementary mechanisms that provide international protection. If facts that become known during the identification and registration process indicate that a child may have a “well-founded fear” that they may face persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, or otherwise need international protection, that child should be referred to the asylum procedure and, where relevant, to mechanisms that will give them complementary protection under international and domestic law. This holds true even if a child is unable to articulate a concrete fear explicitly.¹⁴⁶

When assessing the refugee claims of unaccompanied or separated children, States should take into account the positions developed by UNHCR in exercising its supervisory functions under the Convention Relating to the Status of Refugees.¹⁴⁷ This entails a duty to:

- develop child- and gender-sensitive national asylum procedures
- prioritize the processing of separated and unaccompanied children who are seeking asylum
- provide qualified and free legal or other representation for unaccompanied and separated children, and
- ensure an age- and gender-sensitive



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application of the Convention through the recognition of child-specific manifestations and forms of persecution.¹⁴⁸

The Committee on the Rights of the Child identifies the persecution of kin, under-age military recruitment, trafficking of children for prostitution and sexual exploitation, and female genital mutilation as just some of the child-specific forms and manifestations of persecution that may justify the granting of refugee status if such acts are related to one of the grounds of the 1951 *Refugee Convention*.¹⁴⁹ Other examples include, but are not limited to, family and domestic violence, forced or underage marriage,

bonded or hazardous child labour, forced labour, forced prostitution and child pornography, violations of survival and development rights, and statelessness as a result of loss of nationality and its attendant rights.¹⁵⁰

The UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status*¹⁵¹ provides an authoritative interpretation of the Convention Relating to the Status of Refugees. Because the same definition of a refugee applies to all individuals regardless of their age, it may be difficult to apply the criteria of “well-founded fear” in the case of children. If a child is accompanied by one or both parents, or another family member on whom they depend and who requests refugee status, the child’s own refugee status should be determined according to the principle of family unity.

According to the *Handbook*, the question of whether an unaccompanied child can qualify for refugee status must be determined in the first instance according to the degree of her or his mental development and maturity, an assessment that requires the involvement of experts.¹⁵² It also notes that children cannot be expected to provide adult-like accounts of their experiences and may struggle to articulate their fear for a range of reasons: trauma, parental instructions, lack of education, distrust of State authorities or people in positions of power, the use of ready-made testimony prepared by smugglers, or fear of reprisals.

Children may also be too young or immature to evaluate what information is important or to interpret what they have witnessed or experienced in a way that an adult can



easily understand. Some children may omit or distort vital information or be unable to differentiate the imagined from the real. The *Handbook* aims to help the relevant professionals factor such challenges into their assessments of, and support for, the child.

Access to consular protection and visas

Consular authorities play a fundamental role in providing access to legal and psycho-social protection for children on the move in countries of transit and destination.¹⁵³ In Latin America, both Ecuador and Guatemala have made specific reference to the important role of consular authorities in their legislation on migration.¹⁵⁴

Consular functions and roles for the protection of children during detection and reception in countries of transit and destination are also recognized and determined in the *Regional Guidelines for the Comprehensive Protection of Children and Adolescents in the Context of Migration*¹⁵⁵ drawn up in El Salvador in 2016 in the context of the Regional Conference on Migration in the Americas. These Guidelines establish actions to promote children's protection, including unaccompanied children, during detection and reception in transit and destination countries. Key Guideline recommendations regarding consular authorities include the following.

- Verify immediately the identity and nationality of children and adolescents, and his/her family ties.
- Ensure that staff of embassies and consulates are trained to provide information, care and specialized

protection to migrant children and adolescents.

- Identify local entities to facilitate access to legal guidance and accompany children and adolescents, safeguarding their access to justice, particularly for asylum seekers.
- Establish consular mechanisms for the protection of children, including mobile consulate units.
- Strengthen consular networks, especially at the border to: improve care of migrant children in transit; provide them with documentation; ensure adequate conditions for their return; coordinate civil society organizations to ensure protection of their rights.

One innovative and extremely useful measure for providing protection for children on the move and their families is the legal possibility for States to grant special visas. Such visas afford protection to people who do not fulfil all the requirements for recognition as refugees, including children fleeing persecution from criminal organizations (Box 15).

Child-friendly information

The provision of child-friendly information goes hand-in-hand with the child's right to be heard, as established under article 12 of the CRC. As a general principle, the child's right to be heard reflects the concept of children's agency. This perspective views children not only as vulnerable persons in need of special protection, but also as informed decision makers, rights holders and active members of society. It is often the case, however, that migrant and refugee children are given no opportunity to have their views taken into account.

BOX 15

Granting special visas in Brazil and Peru

Brazil's 2017 Migration Law allows two types of special visas to be granted: one for "humanitarian reception",¹⁵⁶ another for family reunion purposes. Visas for humanitarian reception are covered under article 14 of the law, which establishes that temporary visas can be granted to immigrants who come to Brazil with the purpose of establishing residence for a specified period of time, and who are seeking refuge from at least one of the following scenarios: "... situations of serious or imminent institutional instability, armed conflict, major disaster, environmental disaster or serious violation of human rights or international humanitarian law ..." Under article 37, a visa for the purpose of family reunion can be granted to: the spouse or partner of the petitioner, without discrimination; the child of an immigrant who has a residence permit; an immigrant who has a Brazilian child; anyone who is the sibling of a Brazilian citizen, ascending or descending to the second degree, or of an immigrant who holds a residence permit; or anyone who has a Brazilian either under his/her guardianship or a Brazilian as a guardian.

In Peru, the 2017 Migration Law allows a humanitarian visa to be granted to a foreigner who is in the national territory and does not meet the requirements for access to asylum or refugee status but is nevertheless in a situation of great vulnerability or danger to life should he/she abandon Peruvian territory. It can also be granted to a foreigner who requires protection due to a grave threat to, or a violation of their fundamental rights. Likewise, it can be granted to asylum seekers and those who have migrated due to natural and environmental disasters, those who have been trafficked, unaccompanied children and adolescents, and stateless persons. Peru's humanitarian visa also applies to people outside the national territory in exceptional situations of internationally recognized humanitarian crisis, and who request to come to Peru to obtain protection. Importantly, the visa granted by the Ministry of Foreign Affairs allows the holder to engage in economic activities.¹⁵⁷

Child protection authorities are not always present in European reception camps at crucial moments, including when children register with migration authorities. As a result, there is rarely anyone available to inform children about their rights and to respond to their questions and concerns in a child-friendly manner.¹⁵⁸ In addition, there have been many challenges in gathering confidential statements from children in European camps, including the constant control of children by adults, general overcrowding, and reception conditions that make it almost impossible to establish positive and trusting relationships with them.

One important way to overcome these obstacles is to train professionals and practitioners to communicate with children

in their own language. Another is to offer activities in places that are reserved only for children, where confidentiality and safety are guaranteed.¹⁵⁹ Community leaders can also play an important role in protecting unaccompanied children. As they tend to be older and have a higher level of education than many other migrants, they enjoy a high degree of respect and often act as mediators during any conflicts.¹⁶⁰ Most have a good knowledge of the challenges unaccompanied children face within their own communities and are in a position to talk to them about their protection from violence and other important topics.¹⁶¹

Printed materials in appropriate languages that are clear and visually engaging can help children to grasp their situation, as can explanations from appropriately trained staff

and community leaders in reception camps and other facilities.

Information and communications technologies (ICTs) can provide important opportunities for children on the move to remain informed at every stage of their journey. While in their country of origin, access to updated child-friendly information is vital to raise their awareness of their rights, highlighting the risks they may face if they leave home, and helping them plan a relatively safe route prior to departure.

During their journey, access to ICTs can be crucial to help them keep in touch with family members or connect with other children in similar situations. Children can also use these technologies to connect with child protection systems, child helplines or hotlines and other organizations to report violence and seek counselling and support. For children who have access to smartphones, a number of apps have been designed to help them plan their journey and set up automatic alerts in case of emergency. Other apps can make it possible for those responsible for the safety of children to track their movements to ensure that they reach their selected destination.

The role of the interpreter becomes paramount when children on the move are unable to speak the language of their country of destination. Great care is needed here because interpreters can have a significant influence on the information-gathering process in asylum procedures and criminal investigations in the way they present a child's story, and the stylistic and semantic choices they make. Any inaccurate interpretation can compromise the coherence

and accuracy of a child's statement, leading to decisions being taken on the basis of information that is wrong.

Durable and sustainable solutions in the best interests of the child

Children require security and stability for healthy development, regardless of their migration status. This means that options concerning their future must be long-term and sustainable, not short-term measures that may exacerbate their sense of insecurity. Sustainable solutions require economic resources, and where these are unavailable, international cooperation is vital to make up the shortfall. These solutions include:

- integrating children (and, as relevant, their families) into the community in the country they have reached
- returning to their country of origin (sometimes to be reunited with their family, if this is in their best interests), or
- integration in a third country.

When the solution for a child involves moving to another State, the authorities of both States share a responsibility to ensure the 'continuum of protection'. National child protection systems must provide the necessary continuum and care, and this requires monitoring at national, regional and international levels to identify gaps or weaknesses and to take remedial action.¹⁶²

Finding a durable solution should also recognize the right to recovery and social reintegration of victims of violence. Given that the impact of violence for traumatized children can be long lasting and require

specialized care, recovery and reintegration should support their normal growth and development. It is vital, therefore, that child victims of violence have the opportunity to develop social networks and participate in age-appropriate activities, including attending school.¹⁶³ The provision of safe and secure accommodation and care is also critical for durable solutions, particularly for child victims of trafficking.¹⁶⁴

Findings from countries across Europe indicate that the current identification and provision of comprehensive, durable solutions for unaccompanied and separated children tend to be narrowly focused and rarely based on an adequate determination of the child's best interests.¹⁶⁵ Furthermore, family reunification in European countries tends to be seen as taking place in 'destination countries', without considering

other options that may be in the best interests of the child, including family reunification in a third – and safe – country.¹⁶⁶

The Initiative for Child Rights in the Global Compacts aims to pull many of these threads together, setting out the fundamental actions that must be taken by all States that are hosting refugee, migrant and asylum-seeking children, particularly those who are unaccompanied and separated. It outlines the duty of care on States to ensure that children live in a safe and family-like environment, can build social relationships, can plan for the future and can rely on State support, wherever they are (Box 16).

In this way, the Global Compacts represent a clear step towards the continuum of protection that is the right of all children on the move.

BOX 16

The Initiative for Child Rights in the Global Compacts¹⁶⁷

- Ensure each child is in a safe and family-like environment as soon as possible. When reviewing options, the risks associated with each possible solution must be assessed, i.e. this assessment should look beyond the simple identification of a new home and anticipate whether this option will be compatible with the child's best interests in the future or whether it potentially entails unacceptable risks.
- Enable the child to develop stable social relationships, ideally by remaining with other family members or in contact with them, or, otherwise, by placing the child in a family-like environment and promoting independent living as a child approaches the age of 18.
- Enable the child to develop plans for the future by providing each child with a stable environment and supporting his/her capacity to plan ahead. For a child in care, this involves preparing a personal care plan for and with the individual child and his/her family. The plan should cover schooling, training and employment opportunities, access to health care, accommodation, protection and integration. For unaccompanied children, the plan should set out steps for proper transfer of care and custodial responsibilities for their integration.
- Ensure continuity of care between organizations caring for a child, and between States when a child moves from one country to another. This can be facilitated by case management, inter-country case management, and multilateral or bilateral agreements.¹⁶⁸

NOTES

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PART 4



Recommendations

Cooperation and coordination between all actors, and across all sectors, is essential to achieving lasting change. If we are serious about providing children on the move with the continuum of protection and support they require – and which is their right under international law – concerted and comprehensive action is essential across eight key areas:

- legislation and national policies
- capacity building and operational guidance
- protection from all forms of violence
- access to services
- recovery and social integration
- cooperation across regions and among countries
- oversight, inspection and monitoring, and
- the collection and analysis of data and research.

Legislation

The development of comprehensive legislation and national policies and agendas is crucial for real and sustainable progress on the prevention and elimination of violence against children on the move. To be effective, these elements should be:

- mainstreamed into national planning processes
- coordinated by a high-level focal point with leading responsibilities in this area
- supported by adequate human and financial resources, and
- evaluated effectively.

Legislation must recognize and safeguard the supremacy of the human rights of all children on the move and prohibit and deter incidence of violence through both comprehensive and specific legislation. Specific legislative measures should ensure the following.

1. Prohibit immigration detention and provide a legal basis for a wide range of alternatives for unaccompanied and accompanied children and their families.
2. Decriminalize irregular migration.
3. Continuously review legislation and remove any provisions that are discriminatory, as well as provisions that criminalize children who are victims of trafficking, sexual exploitation and other forms of violence, and children who are coerced into engaging in criminal activities.

4. Guide the work of (and provide minimum standards for) institutions and professionals working with and for children on the move on non-discrimination, the best interests of the child, and the child's right to be informed, express their views and be heard.
 5. Guide the identification of victims of violence and ensure their protection, redress, recovery and social reintegration.
 6. Eliminate impunity for traffickers, smugglers and others involved in the abuse and exploitation of children.
 7. Provide child-sensitive counselling, reporting and complaint mechanisms
- that are easily accessible to children and keep them safe from the risk of reprisals.
8. Ensure the inspection and independent monitoring of facilities housing children on the move.
 9. Integrate legislative changes into a broader strategy to promote and protect the rights of children on the move, including their rights to family reunification and access to asylum or international protection.

Capacity building and operational guidance

To be effective, child protection systems dealing with children on the move must be cohesive and well resourced, with quality services and well-trained staff who have the capacity to communicate with children in an appropriate manner, understand the risks they face and promote their resilience. All measures intended to build the capacity of such staff should be based on clearly defined standard procedures to determine the best interests of the child and guarantee the child's right to be heard.

1. Strengthen the capacity of border guards and immigration and asylum officers to identify and interview children in a child- and gender-sensitive manner and consider the specific information provided by children on their country of origin and their grounds for asylum.
2. Ensure that child protection staff who have the power to make referrals to more specialized staff are present at all times.
3. Invest in training, including multi-disciplinary and inter-country training,



for officials and professionals working with and for children on the move by raising awareness of the standards established in the CRC and support staff through the provision of technical advice, supervision and mentoring. Training should sensitize professionals and officials to the risks and indications of violence, including exploitation and trafficking, and how to communicate with possible victims and support them.

4. Develop standard operating procedures and routines for the identification and referral of, and assistance to, children who are victims of – or at risk of – violence, exploitation and trafficking, and children who are missing from care and reception centres.
5. Ensure that age-assessment procedures are age-, gender- and culturally-sensitive, dignified, safe and reliable, and conducted only in cases where there are serious doubts about the age of a person. The assessment should be multidisciplinary and carried out with the child's full consent and in a way that fully respects the child's dignity. Any medical examination should use the least invasive methods.
6. Ensure that, for all unaccompanied and separated children, a qualified guardian is appointed promptly and takes up their functions swiftly. Minimum quality standards for guardianship services must be established and respected, and a guardianship institution geared to the best interests of the child must be in place to provide effective support, supervision and monitoring. Guardianship services should be integrated into national child protection systems to support guardians and to

ensure a link between the child and all relevant agencies, procedures and services.

Protection from all forms of violence

It is imperative to protect all children from all forms of violence in every setting, including reception facilities and accommodation centres. If they are to live in safety, free from fear, abuse and exploitation, children must feel valued, respected and supported.

1. Provide safe, orderly, regular migration and admission pathways to reduce the need for dangerous, irregular movement, and ensure that children and families have access to the territory of transit and destination countries so that they do not have to resort to smugglers or traffickers.¹⁶⁹
2. Ensure effective firewalls between child protection services and immigration enforcement in keeping with the principle that children on the move, regardless of their migration status, are, first and foremost, children and must be treated as such.
3. Ensure adequate, safe, child-friendly spaces for children in first reception centres and camps, including well-lit areas and separate sanitation facilities.
4. Ensure prompt referral of children and families to specialized child-friendly accommodation.
5. Process children's asylum and immigration applications and family reunification requests as a matter of priority.
6. Establish an effective system of guardianship – with appropriate vetting

- for guardians – to deter children from running away.
7. Provide child-friendly reporting systems for incidence of violence and eradicate impunity for those who perpetrate violence against children.

Access to services, recovery and social integration

Violence, often extreme in nature, can affect children on the move at any stage of their journey. All children on the move, therefore, regardless of their age, must be given access to the services for counselling, support and redress that are already available within the national systems for alternative care, protection and welfare. These services should focus on the following actions.

1. Promote child-centred, multi-disciplinary and interagency cooperation to ensure tailored support and follow-up for every child.
2. Make available immediate, longer-term alternative care for unaccompanied and separated children, recognizing the right of every child to express an opinion about options for their care and living arrangements. This should also

- include appropriate services for after-care to support young persons in their transition into adulthood in the country of destination, after return to their country of origin or their resettlement in a third country.
3. Ensure effective and reliable access to health care for migrant and asylum-seeking children, including care for chronic diseases and disabilities, dental health, sexual and reproductive health, and mental health. Make psychosocial counselling and treatment available to address issues such as self-harm, suicidal thoughts and substance abuse.
 4. Ensure access to education and skills training for children on the move, whether in transit or at destination.
 5. Make child-sensitive reporting and complaints mechanisms accessible for children and ensure that child victims of violence, abuse, exploitation or trafficking have access to child-sensitive justice procedures and specialized services for their recovery and rehabilitation of child victims of violence, including multi-disciplinary one-stop shops such as Children's Houses (Box 17).

BOX 17

Barnahus: Children's Houses

The *Barnahus* or Children's House model that originated in Scandinavia offers comprehensive, multi-disciplinary and interagency services under one roof for children who are victims of or witnesses to violence and is being used increasingly to support unaccompanied children and child victims of trafficking. In a child-friendly environment, professionals at the Barnahus collect evidence through forensic interviews and medical examinations and offer case assessments and treatment.

All processes are documented to secure evidence that will inform the asylum procedure or other relevant proceedings, that is admissible in court, and that is highly probative. This integrated approach helps to prevent the repeated interviewing of children, reduces their stress and anxiety, and creates an environment of trust that enables children to tell their story and disclose their experiences of violence.¹⁷⁰

Cooperation across regions and among countries

National child protection systems should be supported by effective inter-agency collaboration among all relevant government departments, as well as through cross-border and regional cooperation. The synergies generated by such cooperation are important for mobilizing and coordinating support and resources to support children on the move and for promoting durable solutions and continuity of care that are in the best interests of the child. The following actions are needed to reinforce such cooperation.

1. Ratify and implement The Hague Conventions, particularly the 1996 Hague Child Protection Convention, to enable practical cooperation on issues arising from articles 9 (3), 10 (2), 11, 22 and 35 of the CRC.
2. In countries of destination, harmonize and accelerate procedures for family reunification for unaccompanied children who have been granted international protection, avoiding undue delays. Enable family reunification in a safe country for child victims of

exploitation and trafficking who have been forced into exploitative situations as a result of threats to their family members in the country of origin.



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3. Strengthen cooperation among destination countries on preparation for, and follow-up and monitoring of, the return of children, when return is in the child's best interests.
4. Ensure that the return of a child to her or his country of origin – where an appropriate procedure concludes that this is in the best interests of the child – is dignified and safe, including through longer-term monitoring and safeguards to ensure the continuity of their care and protection.
5. Address the child's motivation for flight and displacement, including economic, social or political fragility, armed conflict and widespread generalized or sexual violence.
6. Promote cooperation and information-sharing among law enforcement agencies, both within countries and across borders.
7. Strengthen cross-border cooperation to assist child victims and to prevent, investigate and prosecute violence against children online and offline, including trafficking for sexual or economic exploitation, slavery, child/forced marriage and other harmful practices, drug trafficking, extortion, abduction, torture and ill-treatment.

Oversight, inspection and monitoring

National human rights institutions have a central role in ensuring that children on the move, once identified, receive the full range of support and services required to address their specific vulnerabilities. They also have a role to play in guaranteeing that the rights of children are fully protected, regardless of

whether they are to remain in the national territory, move to a third country for purposes of family reunion, or (when judged to be in their best interests) return to their country of origin. Parliamentarians and specialized NGOs can also conduct important monitoring tasks as follows.

1. Engage national human rights institutions, such as Ombudspersons for children, in the independent monitoring of the human rights situation of children on the move to strengthen the implementation of international and regional obligations.
2. Ensure that all placements by competent authorities of children on the move in transit and at destination are subject to periodic review and inspection.

Data and research

Collecting evidence and consolidating good quality, disaggregated data related to children on the move is crucial to inform decisions on violence prevention, early warning and response. Such efforts inform and enhance the skills of professionals and the capacity of institutions, help to sustain and monitor progress, and support the evaluation of the impact of interventions. Careful, ethical and participatory evaluation and research involving the children concerned are key to this process and require the following.

1. The development of mechanisms and indicators to gather quantitative and qualitative data on children on the move at all stages in their migration cycle, including data disaggregated by age, gender, nationality and residence status.

2. The strengthening of systems to identify and register child migrants and asylum seekers to ensure they are fully functional and practicable. Ensure that these systems are used as an instrument to safeguard the human rights and best interests of children and enable cross-border communication on specific cases with a view to tracking children who move within regions, including those who go missing.
3. Improve support for quality research and analysis into the situation of children on the move that engages and involves girls and boys as well as the professionals and officials who work with and for them. These analyses should inform public and political debate, law reform, and policy-making and practice at all levels.

NOTES

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ANNEXES



Annex 1: International and regional laws and standards

International instruments

The 1951 *Convention relating to the Status of Refugees (The Refugee Convention)* and its 1967 protocol set the global standard for refugee protection and enjoy near universal ratification. Initially, the 1951 Convention promoted the protection of European refugees in the aftermath of World War II, but the 1967 Protocol expanded its scope as displacement spread around the world. Together they remain the cornerstone of refugee protection.¹⁷¹

The 1989 *Convention on the Rights of the Child* (CRC), with its three optional protocols, provides a sound foundation for the protection of the rights of children on the move, including asylum-seeking, refugee, and migrant children, irrespective of their nationality or statelessness, or their immigration status.¹⁷² Under its provisions, States parties are required to respect and ensure the rights of all children under their jurisdiction. This obligation extends to the adoption of all measures needed to ensure that the child is protected against all forms of violence or discrimination owing to her or his status, activities, or the opinions expressed, or beliefs held by her or his parents, guardians or family members.¹⁷³

The 1990 *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*¹⁷⁴ recognizes that all migrants have access to a minimum degree of protection and benefit from equality of treatment and the same working conditions as nationals. It also proposes actions to eradicate clandestine movements by addressing misleading information that incites people to migrate irregularly and proposing sanctions against traffickers and those who employ undocumented migrants.

The 2000 *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*¹⁷⁵ commits States to prevent and combat trafficking in persons, protect and assist victims of trafficking, and promote cooperation among States. Under the Protocol, the consent of the child to any form of trafficking is irrelevant to the identification of a child victim. The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons."¹⁷⁶

The 2000 *Protocol against the Smuggling of Migrants by Land, Sea and Air*¹⁷⁷ supplements

the *UN Convention against Transnational Organized Crime* of 2000, the purpose of which is “to promote cooperation to prevent and combat transnational organized crime more effectively.”¹⁷⁸ The Convention and its supplementing protocols¹⁷⁹ promote international cooperation across a wide range of measures, such as prevention, joint investigations and prosecution, extradition, mutual legal and technical assistance and protection of victims and witnesses.¹⁸⁰ *The Protocol* was adopted in 2000 and aims to protect the rights of *migrants* and reduce the power and influence of *organized criminal groups* that abuse them.

To assist States in their implementation efforts, the international community developed a wide range of UN standards that seek to protect the rights of children and provide recommendations relevant for the prevention of and response to violence against children, including migrants and refugees. These include the *UN Study on Violence against Children*,¹⁸¹ the *Guidelines for the Alternative Care of Children*,¹⁸² the *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*,¹⁸³ and the *UN Model Strategies on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice*.¹⁸⁴

In September 2016, the UN General Assembly held a high-level plenary meeting on large movements of refugees and migrants and adopted the *New York Declaration on Refugees and Migrants*. *The Declaration* recognizes that women and children are especially vulnerable during the journey from their country of origin to the country of arrival: “women and children may be exposed to discrimination and exploitation,

as well as sexual abuse and physical and psychological abuse, violence, human trafficking and contemporary forms of slavery.” The Declaration also identifies measures that must be adopted to address these vulnerabilities.¹⁸⁵

As well as important provisions for migrants and refugees, *The New York Declaration* included commitments of special relevance for children on the move. In particular, it envisaged:

- the start of negotiations leading to an international conference and the adoption of a global compact for safe, orderly and regular migration in 2018
- the development of guidelines on the treatment of migrants in vulnerable situations, which is particularly important for the increasing number of unaccompanied children on the move, and
- a more equitable sharing of the burdens associated with hosting and supporting the world’s refugees.

In November 2017, the UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Committee on the Rights of the Child adopted two joint *General Comment on the general principles regarding the human rights of children in the context of international migration*, with the objective of providing authoritative guidance on legislative, policy and other appropriate measures to fully protect the rights of these children.¹⁸⁶ This document addresses the human rights of all children in the context of international migration, whether they have migrated with their parents or primary caregivers,

are unaccompanied or separated, have returned to their country of origin, were born to migrant parents in countries of transit or destination, or remained in their country of origin while one or both parents migrated to another country, and regardless of their or their parents' migration or residence status.¹⁸⁷

The *General Comment* confirms that States should ensure that children in the context of international migration are treated first and foremost as children.¹⁸⁸ States parties are encouraged to ensure that the authorities responsible for children's rights have a leading role, with clear decision-making power, on policies, practices and decisions that affect the rights of these children.

Comprehensive child protection systems at national and local levels should mainstream into their programmes the situation of all children in the context of international migration, including origin, transit, destination and return countries. The General Comment reaffirms that States parties to the CRC have a duty to ensure that principles and provisions therein are fully reflected and given legal effect in relevant domestic legislation, policies and practices.¹⁸⁹ The four overarching principles are:

- *Non-discrimination (article 2):* Any differential treatment of migrants must be lawful and proportionate, in pursuit of a legitimate aim and in line with the child's best interests and international human rights norms and standards. Similarly, States parties should ensure that migrant children and their families are integrated into receiving societies through the effective realization of their human rights and access to services in an equal manner with nationals.¹⁹⁰

- *The best interests of the child (article 3):* The public and private spheres, courts of law, administrative authorities and legislative bodies have an obligation to ensure that the best interests of the child are assessed and taken as a primary consideration in all actions affecting children. States parties shall ensure that the best interests of the child are taken into full consideration in immigration law, planning, implementation and assessment of migration policies and decision-making on individual cases, including in granting or refusing applications on entry to or residence in a country, decisions regarding migration enforcement and restrictions on access to social rights by children and/or their parents or legal guardians.¹⁹¹

- *The right to life, survival and development (article 6):* At any point during the migratory process, a child's right to life and survival may be at stake owing to, *inter alia*, violence as a result of organized crime, violence in camps, push-back or interception operations, excessive use of force of border authorities, refusal of vessels to come to her or his aid, or extreme conditions of travel and limited access to basic services. Unaccompanied and separated children may face further vulnerabilities and can be still more exposed to risks such as gender-based, sexual and other forms of violence and trafficking for sexual or labour exploitation.
- *The right of the child to express his/her views in all matters affecting him/her, and to have those views taken into account (article 12):* Children may

have their own migration projects and motivations, and policies and decisions cannot be effective or appropriate without understanding these and facilitating the full participation of every child. Children should be provided all relevant information, on their rights, services available, means of communication, complaints mechanisms, immigration and asylum processes and their outcomes.

Regional instruments

Africa

In Africa, the most important protection instruments are the 1969 *Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa*, the 1981 *African Charter on Human and People's Rights*, the 1990 *African Charter on the Rights and Welfare of the Child*, the 2000 *Cairo Declaration*, the 2006 *African Youth Charter*, the 2006 *International Conference on the Great Lakes Region* and its *Protocol on the Protection of and Assistance to Internally Displaced Persons*, and the 2009 *Kampala Convention* (on protection of and assistance to IDPs in Africa).

The Americas

In the Americas, regarding migration, particularly the status of non-citizens and stateless persons, article 1.1 of the 1969 *American Convention on Human Rights* establishes the obligation of States parties to respect and ensure the rights and freedoms recognized in the Convention to all persons subject to their jurisdiction, without discrimination as to race, colour, sex, language, religion, political or other

opinion, national or social origin, property, birth or other status. Article 24 stipulates "all people" are equal before the law without discrimination. Article 22 of the Convention is of particular relevance to the situation of children on the move; it establishes the scope and content of the right to movement and residence, be it within the territory of which a person is a national, or in the context of international migration. Though article 22 of the Convention has been said to address "freedom of movement and residence", the article contains rights and obligations that go beyond such considerations.¹⁹²

The 1984 *Cartagena Declaration on Refugees* recommends that Latin American states extend the definition of refugee contained in the 1951 *Convention Relating to the Status of Refugees* and its 1967 Protocol, in order to respond to pressing protection situations in the region. Significantly, the *Cartagena Declaration* identifies, "generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order as situations that force individuals to flee their country."¹⁹³

Subsequently, the *San Jose Declaration and Plan of Action*¹⁹⁴ was developed as a result of a high-level round table held in Costa Rica in July 2016 with the governments of Belize, Canada, Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Panama and the United States, and the participation of Argentina, Brazil, Chile and Uruguay, to address crucial protection needs in the Northern Triangle of Central America. The Declaration includes specific commitments to: prevent and address root causes of displacement in, and migration from, countries of origin; and enhance

asylum and protection responses in transit, destination and asylum countries.

Europe and Central Asia

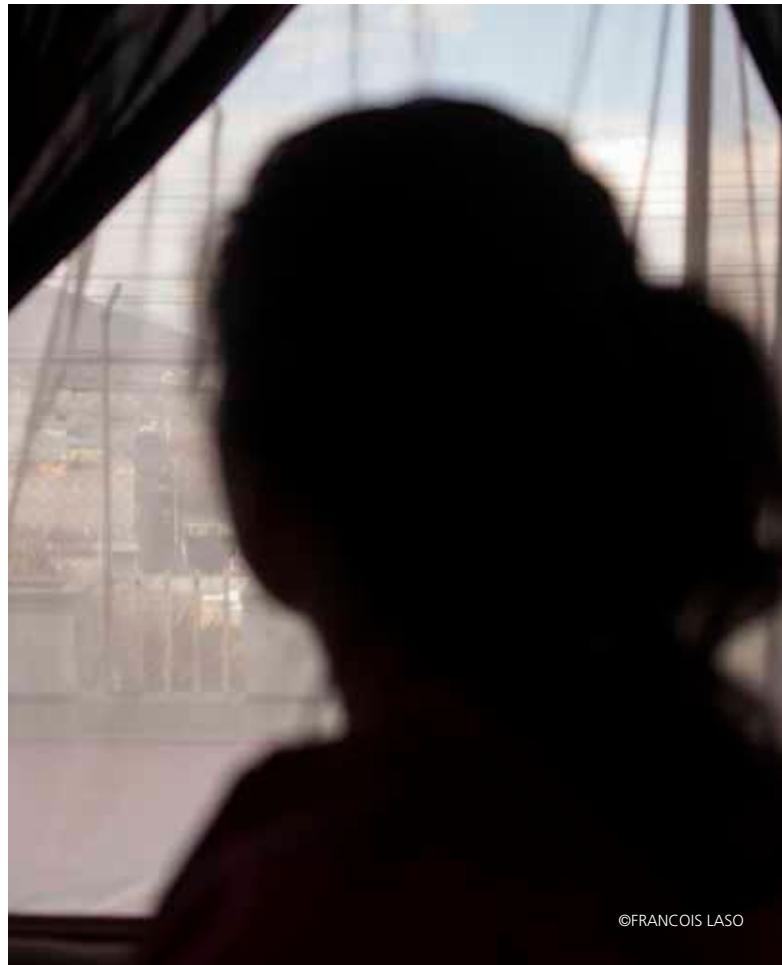
The 1953 *European Convention for the Protection of Human Rights and Fundamental Freedoms*¹⁹⁵ protects civil and political rights and is complemented by several protocols. The 1961 *European Social Charter*¹⁹⁶ guarantees social and economic rights related to health, employment, housing, education, social protection and welfare, placing specific emphasis on non-discrimination and protection of vulnerable persons such as children, migrants and persons with disabilities. The Revised Charter of 1996 is gradually replacing the initial 1961 treaty.¹⁹⁷

The 2005 *Council of Europe Convention on Action against Trafficking in Human Beings*¹⁹⁸ applies to both national and transnational trafficking, whether or not related to organized crime. Recognizing that, in some cases, trafficking victims arrive in a country legally as tourists, future spouses, artists, domestic staff, au pairs, migrants or asylum seekers, the Convention applies both to victims who entered or are presently living in the territory of the receiving Party illegally, and to those who legally entered or are legally present in the country.¹⁹⁹

The 2010 *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse* (the *Lanzarote Convention*) establishes various forms of sexual abuse of children as criminal offences. Preventive measures identified under the Convention include the screening, recruitment and training of people working in contact with children; making children aware of the risks

of sexual exploitation and abuse and building their capacity to protect themselves; and the introduction of monitoring measures for offenders and potential offenders.

The 2000 *Charter of Fundamental Rights of the European Union*²⁰⁰ includes fundamental human rights to dignity, security, asylum and respect for private and family life, while prohibiting torture and inhuman or degrading treatment or punishment, slavery and forced labour, and collective expulsions. Article 24.1 states “children shall have the right to such protection and care as is necessary for their well-being”, underlining the child’s right to express his/her views freely, requiring such views be taken into consideration in



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accordance with the child's age and maturity. Other EU legislative instruments relevant to children on the move include: *Family Reunification Directive* (2003)²⁰¹; *Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims* (2011)²⁰²; *EU Asylum Procedures Directive* (2013)²⁰³; *Dublin III Regulation* (2013)²⁰⁴; and, the *Reception Conditions Directive* (2013).²⁰⁵

In Central Asia, the *Almaty Declaration* of 2011 recognizes the protection needs of refugees, establishing fair asylum procedures and ensuring non-refoulement.

The Middle East

The 1992 *Declaration on the Protection of Refugees and Displaced Persons in the Arab World* reaffirms the need to protect refugees, specifically Palestinian refugees; the 1994

Arab Convention on Regulating the Status of Refugees in Arab Countries sets out clear standards for the treatment of refugees; and the *Arab Charter on Human Rights*, adopted in 2004 by the League of Arab States, recognizes most civil and political rights, and specific economic, social and cultural rights.

In 2019 the Arab Economic and Social Development Council adopted the Arab strategy for the protection of refugee and displaced children in Arab countries. the strategy was adopted from the Arab Economic and Social Development Summit.²⁰⁶

Oceania

In Oceania, key human rights elements for regional cooperation and integration are included in the 2005 *Pacific Plan*. Other agreements addressing migrant children's rights include: the 2002 *Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime* (which establishes cooperation on irregular migration, smuggling and trafficking) and the subsequent 2016 *Declaration* in which Asia Pacific countries recognize the need for a comprehensive strategy to address exploitation and expand safe, legal migration pathways. The 2013 *Jakarta Declaration on Addressing Irregular Movement*, signed by Australia, New Zealand and Papua New Guinea is a non-binding mechanism to enhance cooperation on irregular migration.

South Asia

The South Asia Association for Regional Cooperation (SAARC) *Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia* enacted in

2002 reaffirms commitments under the CRC, including non-discrimination, birth registration and the prevention of child labour. The SAARC *Convention on Preventing and Combatting Trafficking in Women and Children for Prostitution*, adopted in 2002, and the *Kathmandu Declaration* of 2014, reinforce measures to prevent trafficking and exploitation of women and children and improve management of labour migration from South Asia.

Southeast Asia

The Association of Southeast Asian Nations (ASEAN) 2007 *Declaration on the Protection and Promotion of the Rights of Migrant Workers* commits States of origin and destination to strengthen the rights of migrant workers. The 2015 ASEAN *Convention Against Trafficking in Persons, Especially*

Women and Children, recognizes that trafficking in persons constitutes a human rights violation and an offence to the dignity of human beings.²⁰⁷ It is complemented by the 2015 ASEAN *Plan of Action Against Trafficking in Persons, Especially Women and Children*, which provides specific action plans to address common regional challenges in areas of prevention of trafficking in persons; protection of victims; law enforcement and prosecution of crimes of trafficking in persons.²⁰⁸ ASEAN's 2016 *Regional Plan of Action on the Elimination of Violence Against Children* strengthens protective policies for stateless, migrant and asylum-seeking children. The 2007 *Joint Declaration of the Coordinated Mekong Ministerial Initiative against Trafficking* is a government-led process bringing together six countries in the Greater Mekong Sub-region in an alliance to combat human trafficking.

Annex 2: Special Contribution: The mandate of the United Nations High Commissioner for Refugees for the protection of children

By Volker Turk, former Assistant High Commissioner for Protection, UNHCR

The United Nations High Commissioner for Refugees (UNHCR) has been entrusted with the mandate to provide international protection to refugees and, together with Governments, to seek permanent solutions for persons within its core mandate.

Paragraph 8(a) of the UNHCR Statute and the Preamble of the 1951 Refugee Convention²⁰⁹ confer responsibility upon UNHCR to supervise the application of all international conventions for the protection of refugees. The High Commissioner has a mandate with respect to refugees globally, regardless of their location, whether in emergency or protracted asylum-seeker and refugee situations, as well as in mixed movements involving asylum-seekers and refugees. The activities the High Commissioner is required to carry out for refugees are set out both in the Statute of UNHCR²¹⁰ and in subsequent UN General Assembly and Economic and Social Council (ECOSOC) resolutions. The UN General Assembly and, to some extent, ECOSOC, have developed the mandate further to include returnees, stateless persons

and, under certain conditions, internally displaced persons.

The UNHCR Statute places the High Commissioner and his/her Office at the centre of the international refugee response system. The High Commissioner's responsibilities, combined with his/her advocacy and supervisory role, also mean that the post-holder must retain an oversight and monitoring role, within the UN response, over the delivery of services to refugees. UNHCR's refugee response, as set out in the Refugee Coordination Model²¹¹ (and, for mixed situations, the 2014 Joint UNHCR-OCHA Note on Mixed Situations²¹²), is an integral yet distinct element in the overall humanitarian coordination architecture.

Protection of children

Children constitute an estimated 31 per cent of the total world population. Yet in 2016, children constituted 51 per cent of the total refugee population globally, up from 41 per cent in 2009.

Given the high proportion of children among displaced populations and the fact

that boys and girls face unique protection risks, responding to their specific needs is a key priority for UNHCR. UNHCR works with children and their families, communities, States and other partners to reduce risks, strengthen child protection systems, and create a protective environment for children. UNHCR's overall approach to the protection of children is described in its 2012 *Framework for the Protection of Children*.²¹³ The framework is underpinned by its global strategies on education, detention, sexual and gender-based violence and a global plan to end statelessness. In terms of case management and the continuum of care for individual children, UNHCR follows the *Guidelines on Determining the Best Interests of the Child*.

UNHCR is working with states to strengthen protection and solutions for children on the move as a follow up to the *New York Declaration*²¹⁴, ensuring that children's rights are at the heart of the Global Compacts on Refugees and Migrants. UNHCR works with NGOs, States and international organizations on the *Initiative on Child Rights in the Global Compacts*²¹⁵ to ensure that child rights are at the heart of these two global compacts. This work includes consultations with UNHCR's Youth Advisory Council (currently being established together with the Women's Refugee Commission and other partners involved in the organization of the Global Refugee Youth Consultations) on the elements to be included in the *Programme of Action for the implementation of the Global Compact on Refugees*.

The protection of refugee children is an important component in the Global Compact on Refugees. The outcomes and recommendations of the 2016 High

Commissioner's Protection Dialogue²¹⁶ will be fully integrated into the development of the comprehensive refugee response and the Global Compact on Refugees adopted in 2018. Good practices, identified gaps and proposed corrective actions will be documented and form part of the comprehensive refugee response.

Working with governments to strengthen policies and practices in relation to unaccompanied and separated children

UNHCR has worked with a number of States to strengthen policies and practice for separated and unaccompanied children on the move. These include the following.

- The European Union (EU), where UNHCR is working with Governments and civil society on a 'Roadmap to Strengthened Policies and Practices for UASC', following extensive consultations in 2016.
- Also, in the EU, UNHCR continues to work with States on the recommendations made in 'Safe and Sound' (2014), with specific roundtables with Governments in Northern Europe.
- In the Middle-East, UNHCR works with countries like Jordan to strengthen the protection of refugee children with inclusion in national systems, enabling their access not only to health care and education but also to formalized alternative care, an important safeguard for unaccompanied and separated children.
- UNHCR work with the Government of Mexico to strengthen Best Interests Procedures for unaccompanied and separated children as part of the

enactment of the Child Rights Law and Regulations, which create a National Child Protection System with a new Federal Office for the Protection of Children's Rights.

Strengthening protection and assistance, including education, for separated and unaccompanied children in first countries of asylum

From 2014 to 2016, UNHCR implemented a regional child protection initiative ('Live, Learn & Play Safe') in Egypt, Ethiopia, Sudan and Yemen: the first child protection initiative developed by UNHCR for regional, rather than national, implementation.²¹⁷ The initiative targeted, in particular, children on the move across the Horn of Africa to address their needs for protection, assistance and durable solutions. It also aimed to better inform and protect children against dangerous and potentially life-threatening actions including onward movement and trafficking. The Regional Initiative demonstrated that the strengthening of child protection systems in various locations has had a positive impact on the well-being of individual children and strengthened the overall child protection response.

It also highlighted the importance of education as an essential component of protection and assistance for children on the move. They should have access to quality education within a few months of their arrival. Quality education plays a protective and transformative role, and can bring hope to children, youth and families on the move. Education can provide knowledge and competencies to participate fully in communities and society and can also provide protective networks of peers and mentors.

Ending detention of children on the move

Detention of children is particularly serious, given the devastating effect it may have on their physical, emotional and psychological development, even if they are not separated from their families. In this context, UNHCR's position is that children should not be detained for immigration-related purposes, regardless of their legal/migratory status or that of their parents, and detention is never in their best interests. Appropriate care arrangements and community-based programmes need to be in place to ensure adequate reception of children and their families. UNHCR has been working with States to ensure that alternatives to detention are developed, for children, as per the Beyond Detention global strategy.²¹⁸

Recognizing the special vulnerability of certain groups, strong legal standards have been adopted by the international community to protect their rights. This includes migrants and their families, who often lack knowledge of the laws and language of their host country, and who may face open hostility from the population and, at times, from the authorities.

Some children need specific protection because of the situations they left behind, the circumstances in which they travel, the conditions they face on arrival, or because of personal characteristics such as their age, gender, disability or health status. For these children, it may be especially important to ensure that their human rights are respected, protected and fulfilled. The *Principles and Guidelines on the human rights protection of migrants in vulnerable situations* provide crucial guidance in this regard (Box 18).

BOX 18

Principles and Guidelines on human rights protection of migrants in vulnerable situations²¹⁹

As co-Chair of the Global Migration Group (GMG)²²⁰, the United Nations Office of the High Commissioner for Human Rights (UNOHCHR) has worked with relevant UN partners to promote a set of Principles and Guidelines on the human rights protection of migrants in vulnerable situations.

This aims to address the human rights situation of those migrants who may not qualify as refugees under the Convention relating to the Status of Refugees, yet who are in vulnerable situations and, therefore, in need of the protection provided by the international human rights framework.²²¹

This exercise is based on the recognition that the twin foundational elements of the human rights framework are the need to promote human dignity and to alleviate situations of vulnerability to human rights abuses. The need to recognize and address vulnerability underpins the legal obligation of states to respect, protect and fulfil human rights. A migrant “in vulnerable situations” is, therefore, someone who is unable, effectively, to enjoy his or her human rights and who, accordingly, is entitled to call on a duty-bearer’s heightened duty of care.

The vulnerable situations that migrant children face can arise from a range of factors that may intersect or coexist simultaneously, influencing and exacerbating each other, and also evolving or changing over time as circumstances change. As a matter of principle, and in order to ensure that every migrant child is able to access appropriate protection for his or her rights, the situation of each child must be assessed individually.

The Principles are drawn directly from international human rights law and related standards including humanitarian law, as well as refugee law, criminal law, international labour law, and the law of the sea, and are enshrined in treaty law, customary international law and general principles of law.

The Guidelines that follow each Principle elaborate international best practice and are designed to assist States (and other stakeholders) to develop, strengthen, implement and monitor measures to protect and promote the human rights of migrants in vulnerable situations. They are derived from authoritative interpretations or recommendations by international human rights treaty bodies and special procedure mandate holders of the Human Rights Council, as well as other expert sources.

Annex 3: Special Contribution: Four areas of particular concern for the European Union Fundamental Rights Agency (FRA)

By Michael O'Flaherty, Director of
the European Union Fundamental
Rights Agency

1. Immigration detention of children

This remains a serious issue in the European Union (EU), as illustrated in the FRA report *European legal and policy framework on immigration detention of children* published in June 2017.²²² The report takes the rights of the child to protection and care set forth in article 24 of the EU *Charter of Fundamental Rights* as starting points when examining the content of the right to liberty and security. It outlines the main safeguards of fundamental rights provided for in EU and human rights law to prevent unlawful and arbitrary detention.

It also describes practical examples from Member States, drawing on promising practices wherever possible. In so doing, it aims to assist asylum and migration practitioners in implementing policies in line with the law, so that the immigration detention of children ends or becomes truly exceptional.

2. Guardianship for migrant and asylum-seeking children deprived of parental care

Guardians are a key element of a protection system for children who are temporarily or permanently deprived of their family environment and cannot have their interests represented by their parents. There are great disparities between the types of guardianship provided to children in and within EU Member States. In 2014, to support Member States in addressing the challenges identified, FRA, in cooperation with the European Commission, developed a handbook *Guardianship for children deprived of parental care*, to contribute to the protection of child victims and to the prevention of child trafficking. The handbook is complemented by a comparative report.²²³

3. Child protection in the aftermath of 2015 arrivals

Since September 2015, FRA has been publishing regular updates on fundamental rights challenges faced by EU Member States that are affected by increased arrivals

of asylum seekers and irregular migrants. These updates also cover child protection. In February 2016, FRA compiled the main findings in a thematic focus report. The report describes recurrent difficulties in identification of children at risk, including the lack of clear guidance, limited qualified staff, and time pressure due to the speed of transfer from initial facilities at entry points and onward travel. Not all organizations working with children on the ground have internal training and are aware of how to keep children safe.

4. Labour exploitation of migrant children

In 2014, FRA released the findings of a comprehensive research project on severe labour exploitation. Although the report mainly covers adults, chapter 1.4 summarizes the findings concerning children. Expert interviews and case studies indicate that efforts are needed to enable child welfare services to react to cases of child labour in a more effective and targeted manner.

Annex 4: Special Contribution: International Organization for Migration (IOM)

By Agueda Marin, Senior Regional Specialist on Protection of Migrants, IOM

Children and youth are at the heart of our organization's global mandate on migration. Because there is no one homogenous profile of a migrant child, the International Organization for Migration (IOM) strives to address children's individual needs to guarantee a continuum of protection against violence, abuse, exploitation and trafficking during all phases of the migration cycle.

The work of IOM in relation to children is set primarily in the framework of international law, in particular the Convention on the Rights of the Child (CRC), through the implementation of a broad range of projects and initiatives that address the needs and interests of children and youth worldwide, both directly and indirectly. IOM has a distinctive protection portfolio that leverages its expertise, compliance to international standards and operational capacities.

Children are increasingly engaging in migration, in particular in the context of multiple, large scale migration movements. To strengthen the capacity of States and

partners, as well as to inform its own programming, IOM is engaged in data and research projects to bolster data information management and improve data availability. An example of data collection is the 'Missing Migrant Project', which tracks the deaths of migrants, including refugees, who have gone missing along mixed migration routes worldwide.²²⁴

Key findings

- The annual proportion of child victims of trafficking assisted by IOM ranged from 15 to 30 per cent in the decade between 2006 and 2016; however, in the most recent annual caseload, from 2016, children comprised only 14 per cent of victims who received assistance.
- In 2016, IOM assisted 1,253 unaccompanied children to return voluntarily to their countries of origin. This number represents an increase compared to the 580 unaccompanied children returned in 2015. The overall figures, however, have spiked since 2015, causing a subsequent increase in the number of children returned.

Continuum of violence and protection

- In countries of origin, prevention activities such as awareness raising, capacity building, and community stabilization targeting individuals, families and communities are key to addressing the structural causes of migration as well as to prevent risky migration. In Central America, for example, IOM has implemented street theatre and virtual campaigns directed at adolescents, in close coordination with local government, which is ultimately responsible for having protection mechanisms in place. Children left behind are as vulnerable as migrant children to violence, abuse, and exploitation because of the breakdown of family units: there is often a lack of clarity about who has parental authority, leaving a key protection gap. Any protection policy on children in the context of migration has to address the differentiated needs of children left behind.
- In countries of transit, vulnerabilities are heightened for children, especially those who are unaccompanied. Because smuggling routes usually pass through isolated, perilous and remote areas, protection-oriented services might be very limited and access to justice almost nonexistent. This provides a context of impunity for smugglers and the perpetrators of violence. Strengthening consular protection, promoting NGO networks, and raising awareness in transit communities have all been demonstrated to be good strategies to counteract the negative effect of violence against migrant children in transit.
- In countries of destination, language restrictions, inadequate housing, ineffective access to public social services, especially education and health, and lack of employment opportunities for adolescents who are legally able to work are among the main protection challenges for migrant children. Guaranteeing children access to the protection systems already in place for national children is of crucial importance. This includes: access to identity documents, access to a legal tutor, guaranteeing well-being and safety for children fleeing violence, and access to family or appropriate specialized care, if the family is not located.
- Finally, facilitating the voluntary return of migrant children requires safeguarding procedures and reintegration. Reintegration is of utmost importance if children are returning to the same context of violence from which they originally fled. The option to relocate elsewhere, while providing a full-scale reintegration service, is key to promoting their well-being, that of their family and of their community. Context-specific programming to counteract the structural causes of migration should also be a high priority.

Recommendations

The work of IOM is founded on the principles of the CRC and aims to protect migrant children from violence, exploitation and/or abuse throughout the migration cycle. On this basis, the key recommendations are as follows.

- Promote an integrated approach to national child protection systems and access to basic services for migrant children by facilitating unhindered access to national child protection systems on the same basis as national children. This allows access to essential services at all points along the migration route.
- Protect migrant children from violence, exploitation and/or abuse during the whole migration cycle by addressing roots causes and ensuring timely and adequate identification of special needs and appropriate referral and care.
- Reinforce child-friendly procedures to safeguard children as part of the process of voluntary return and reintegration by implementing

sustainable, long-term solutions based on the determination of the best interests of the child.

Finally, IOM supports the ‘Initiative for child rights in the Global Compacts’²²⁵ to raise awareness of – and accountability for – the rights of children on the move and those affected by migration. The initiative builds on six key thematic areas of child rights in the *New York Declaration for Refugees and Migrants*, specifically:

- non-discrimination and integration
- the best interest of the child
- child access to services
- ending child immigration detention
- promoting durable solutions, and
- child protection.

Annex 5: Special Contribution: Universidad Iberoamericana, Mexico City

**By David Fernández-Dávalos, sj,
President of the University**

The history of humankind has always been marked by human mobility. Events that have shaped the course of history at the global and regional levels have often been influenced or determined by the movement of people. Our world, in that sense, is to a large extent the result of such movements. And as the available data show, our world continues to be changed and enriched by the millions of people who migrate each year.

In February 2017, Pope Francis addressed the participants of the International Forum on 'Migration and Peace' and, among other things, he said that "*[i]n its essence, to migrate is the expression of that inherent desire for the happiness proper to every human being, a happiness that is to be sought and pursued*".²²⁶ So, although moving from one place to another has always implied certain risks, migration has been strongly motivated by the pursuit of happiness, better living conditions, or even the pursuit of knowledge.

It is distressing to witness, however, on the one hand, that the conditions that push

people to migrate around the globe have become ever more dramatic and horrifying. And, on the other hand, it is equally distressing to see how social attitudes and public policies towards migration have been unfoundedly nourished with ignorance and fear: fear of 'the other', fear of diversity, and how this has affected the experiences of migrants during their journeys.

To better understand the background and complexity of this reality, one can turn to the Encyclical Letter *Laudato Si'* on care of our common home, published on 24 May 2015. Clearly inspired by Jesuit values, the Encyclical not only exposes and invites us to reflect on the socio-environmental crisis that is marking the 21st century, but also its consequences in terms of degradation, oppression and violence. Additionally, it calls us to identify and reject the throwaway culture "*which affects the excluded [e.g. migrants and refugees] just as it quickly reduces things to rubbish*".²²⁷

It seems contrary to all logic that in an era of vindication of human dignity through treaties, conventions, protocols and declarations, starting with the Universal Declaration of Human Rights and the Charter

of the United Nations, we are witnessing such levels of destruction with a rise in forced displacements and an intensified criminalization of migration.

Although not sufficiently recognized at the global level, my own country, Mexico, is in one of the most disquieting regions in the world, with both internal displacement (the result of failed security and drug-related policies and militarization), and a growing number of displaced persons entering Mexican territory to flee from persecution and inhumane conditions in Central America, and increasingly from Venezuela and other countries. In this context, children on the move are especially vulnerable, facing extremely high risks of suffering from different forms of violence in their countries of origin, in transit, in the destination country and during and after their return to their home country.

In 2012 the Global Ignatian Advocacy Network released a fundamental document that sets out the Society's global programme and strategies to promote the rights of migrants and refugee entitled "For a culture of hospitality and inclusion" and which states, among other things, that borders are consolidating as corridors of death.²²⁸ And indeed they are. Physical, psychological and sexual violence, harassment, detention, torture, human trafficking and disappearances are just some of the abuses and human rights violations that children who have been displaced by force may suffer as a result of the aforementioned fear, ignorance, degradation and throwaway culture.

The adoption of the 2016 New York *Declaration for Refugees and Migrants* and

the two global compacts on refugees and migration are a combined source of hope. Nonetheless, it will need a large dose of political will to nail down sufficient and adequate commitments, including those oriented towards the protection of children, as well as to fulfill them.

Recalling the words of former United Nations Secretary-General, Kofi Annan in 2005, when addressing the UN Human Rights Commission in Geneva on the 11th anniversary of the start of the Rwanda genocide, "*the era of declaration is now giving way, as it should, to an era of implementation.*"²²⁹ In that sense, the two global compacts must be the means to finally ensure that migration-related human rights standards are effective in benefiting the most vulnerable groups.

Regarding children on the move, it is worth celebrating the publication of a very timely thematic report by the UN Special Representative of the Secretary-General on Violence against Children. By co-organizing and hosting the International Expert Consultation '*Violence against children on the move: from a continuum of violence to a continuum of protection*' at the Universidad Iberoamericana Mexico City on 27-28 June 2017, our university sought to aid the Special Representative in developing a document that will become an essential tool for governments and other stakeholders, including civil society organizations worldwide, to ensure the fulfillment of children's rights in the context of migration and forceful displacement.

Meanwhile, through its different apostolates, including education, advocacy and research, the Society of Jesus will work continuously

to transcend borders and vindicate human dignity through contemplation and action. To mark the 40th anniversary of the Jesuit Refugee Service, the 35th General Congregation of the Jesuits reaffirmed that "*attending to the needs of migrants, including refugees, internally displaced, and trafficked people, continues to be an apostolic preference of the Society.*"²³⁰

This and other commitments were renewed during the 36th General Congregation in 2016,

with a deep conviction that the service of faith and the promotion of justice are indissolubly united and at the core of our mission. In carrying out the latter we will echo the call from Pope Francis to "*take care of the young, who in a threefold way are defenseless: they are children, they are foreigners, and they have no means to protect themselves.*"²³¹

(August 2017)

NOTES

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