



# International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

## Convention on the Rights of the Child

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Committee on the Protection of the Rights of All  
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Committee on the Rights of the Child

### Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return\*

#### I. Introduction

1. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention on the Rights of the Child contain legally binding obligations that relate both in general and specifically to the protection of the human rights of children and migrants. Both Conventions contain several provisions that establish specific obligations related to the rights of children in the context of international migration in the countries of origin, transit, destination and return.<sup>1</sup>

2. The present joint general comment was adopted at the same time as joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration. While that general comment and the present one are stand-alone documents in their own right, the two complement each other and should be read and implemented together. The drafting process included a series of global and regional consultations held between May and July 2017 with representatives of key stakeholders and experts, including children and migrant organizations, in Bangkok, Beirut, Berlin, Dakar, Geneva, Madrid and Mexico City. In addition, the Committees received more than 80 written contributions from States, United Nations agencies and entities, civil society

\* The present joint general comment should be read in conjunction with joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration.

<sup>1</sup> States parties to the Convention on the Rights of the Child are obliged, in terms of article 4 on implementation of rights, read with article 2 on non-discrimination, to undertake measures regarding economic, social and cultural rights to all children within their jurisdictions, to the maximum extent of their available resources and with a view to achieving progressively the full realization of these rights without prejudice to obligations that are immediately applicable according to international law. See Committee on the Rights of the Child, general comment No. 19 (2016) on public budgeting for the realization of children's rights, paras. 28-34.



organizations, national human rights institutions and other stakeholders from every region of the world between November 2015 and August 2017.

## **II. Legal obligations of States parties to protect the rights of children in the context of international migration in their territory**

### **A. Age**

3. The definition of the child under the Convention on the Rights of the Child provides rights and protection until the age of 18. The Committees are concerned that children between 15 and 18 years tend to be provided much lower levels of protection, and are sometimes considered as adults or left with an ambiguous migration status until they reach 18 years of age. States are urged to ensure that equal standards of protection are provided to every child, including those above the age of 15 years and regardless of their migration status. In accordance with the Guidelines for Alternative Care of Children,<sup>2</sup> States should provide adequate follow-up, support and transition measures for children as they approach 18 years of age, particularly those leaving a care context, including by ensuring access to long-term regular migration status and reasonable opportunities for completing education, access to decent jobs and integrating into the society they live in.<sup>3</sup> The child should be adequately prepared for independent living during this transition period, and competent authorities shall ensure adequate follow-up of the individual situation. The Committees additionally encourage States to take protective and support measures beyond the age of 18 years.

4. To make an informed estimate of age, States should undertake a comprehensive assessment of the child's physical and psychological development, conducted by specialist paediatricians or other professionals who are skilled in combining different aspects of development. Such assessments should be carried out in a prompt, child-friendly, gender-sensitive and culturally appropriate manner, including interviews of children and, as appropriate, accompanying adults, in a language the child understands. Documents that are available should be considered genuine unless there is proof to the contrary, and statements by children and their parents or relatives must be considered. The benefit of the doubt should be given to the individual being assessed. States should refrain from using medical methods based on, inter alia, bone and dental exam analysis, which may be inaccurate, with wide margins of error, and can also be traumatic and lead to unnecessary legal processes. States should ensure that their determinations can be reviewed or appealed to a suitable independent body.

### **B. Right to liberty (articles 16 and 17 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; article 37 of the Convention on the Rights of the Child)**

5. Every child, at all times, has a fundamental right to liberty and freedom from immigration detention.<sup>4</sup> The Committee on the Rights of the Child has asserted that the detention of any child because of their or their parents' migration status constitutes a child

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<sup>2</sup> General Assembly resolution 64/142, annex.

<sup>3</sup> See Committee on the Rights of the Child, report of the 2012 day of general discussion on the rights of all children in the context of international migration, paras. 68-69. Available from [www.ohchr.org/Documents/HRBodies/CRC/Discussions/2012/DGD2012ReportAndRecommendations.pdf](http://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2012/DGD2012ReportAndRecommendations.pdf).

<sup>4</sup> Convention on the Rights of the Child, art. 37; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, arts. 16 and 17; Universal Declaration of Human Rights, arts. 3 and 9; International Covenant on Civil and Political Rights, art. 9.

rights violation and contravenes the principle of the best interests of the child.<sup>5</sup> In this light, both Committees have repeatedly affirmed that children should never be detained for reasons related to their or their parents' migration status and States should expeditiously and completely cease or eradicate the immigration detention of children. Any kind of child immigration detention should be forbidden by law and such prohibition should be fully implemented in practice.

6. Immigration detention is understood by the Committees as any setting in which a child is deprived of his/her liberty for reasons related to his/her, or his/her parents', migration status, regardless of the name and reason given to the action of depriving a child of his or her liberty, or the name of the facility or location where the child is deprived of liberty.<sup>6</sup> "Reasons related to migration status" is understood by the Committees to be a person's migratory or residence status, or the lack thereof, whether relating to irregular entry or stay or not, consistent with the Committees' previous guidance.

7. In addition, both the Committee on the Rights of the Child and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families have emphasized that children should not be criminalized or subject to punitive measures, such as detention, because of their or their parents' migration status.<sup>7</sup> Irregular entry and stay do not constitute crimes per se against persons, property or national security.<sup>8</sup> Criminalizing irregular entry and stay exceeds the legitimate interest of States parties to control and regulate migration, and leads to arbitrary detention.

8. The Committee on the Rights of the Child, in relation to unaccompanied and separated children, stated in 2005 that children should not be deprived of their liberty and that detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status or lack thereof.<sup>9</sup>

9. The Committees emphasize the harm inherent in any deprivation of liberty and the negative impact that immigration detention can have on children's physical and mental health and on their development, even when they are detained for a short period of time or with their families. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has stated that "within the context of administrative immigration enforcement ... the deprivation of liberty of children based on their or their parents' migration status is never in the best interests of the child, exceeds the requirement of necessity, becomes grossly disproportionate and may constitute cruel, inhuman or degrading treatment of migrant children".<sup>10</sup>

10. Article 37 (b) of the Convention of the Rights of the Child establishes the general principle that a child may be deprived of liberty only as a last resort and for the shortest appropriate period of time. However, offences concerning irregular entry or stay cannot under any circumstances have consequences similar to those derived from the commission

<sup>5</sup> See Committee on the Rights of the Child, report of the 2012 day of general discussion, para. 78. See also the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court (A/HRC/30/37, annex), in particular principle 21, para. 46, and guideline 21.

<sup>6</sup> Deprivation of liberty is defined in article 4 (2) of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment as "any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority". Rule 11 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty states: "For the purposes of the Rules, the following definitions should apply: ... (b) The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority."

<sup>7</sup> See Committee on the Rights of the Child, report of the 2012 day of general discussion, para. 78.

<sup>8</sup> See Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, general comment No. 2 (2013) on the rights of migrant workers in an irregular situation and members of their families, para. 24.

<sup>9</sup> See Committee on the Rights of the Child, general comment No. 6 (2005) on treatment of unaccompanied and separated children outside their country of origin, para. 61.

<sup>10</sup> See A/HRC/28/68, para. 80.

of a crime.<sup>11</sup> Therefore, the possibility of detaining children as a measure of last resort, which may apply in other contexts such as juvenile criminal justice, is not applicable in immigration proceedings as it would conflict with the principle of the best interests of the child and the right to development.

11. Instead, States should adopt solutions that fulfil the best interests of the child, along with their rights to liberty and family life, through legislation, policy and practices that allow children to remain with their family members and/or guardians in non-custodial, community-based contexts while their immigration status is being resolved and the children's best interests are assessed,<sup>12</sup> as well as before return. When children are unaccompanied, they are entitled to special protection and assistance by the State in the form of alternative care and accommodation in accordance with the Guidelines for the Alternative Care of Children<sup>13</sup> When children are accompanied, the need to keep the family together is not a valid reason to justify the deprivation of liberty of a child. When the child's best interests require keeping the family together, the imperative requirement not to deprive the child of liberty extends to the child's parents and requires the authorities to choose non-custodial solutions for the entire family.<sup>14</sup>

12. Consequently, child and family immigration detention should be prohibited by law and its abolishment ensured in policy and practice. Resources dedicated to detention should be diverted to non-custodial solutions carried out by competent child protection actors engaging with the child and, where applicable, his or her family. The measures offered to the child and the family should not imply any kind of child or family deprivation of liberty and should be based on an ethic of care and protection, not enforcement.<sup>15</sup> They should focus on case resolution in the best interests of the child and provide all the material, social and emotional conditions necessary to ensure the comprehensive protection of the rights of the child, allowing for children's holistic development. Independent public bodies, as well as civil society organizations, should be able to regularly monitor these facilities or measures. Children and families should have access to effective remedies in case any kind of immigration detention is enforced.

13. In the view of the Committees, child protection and welfare actors should take primary responsibility for children in the context of international migration. When a migrant child is first detected by immigration authorities, child protection or welfare officials should immediately be informed and be in charge of screening the child for protection, shelter and other needs. Unaccompanied and separated children should be placed in the national/local alternative care system, preferably in family-type care with their own family when available, or otherwise in community care when family is not available. These decisions have to be taken within a child-sensitive due process framework, including the child's rights to be heard, to have access to justice and to challenge before a judge any decision that could deprive him or her of liberty,<sup>16</sup> and should take into account the vulnerabilities and needs of the child, including those based on their gender, disability, age, mental health, pregnancy or other conditions.

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<sup>11</sup> See Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, general comment No. 2, para. 24. See also Committee on the Rights of the Child, report of the 2012 day of general discussion, para. 78. Along the same lines, see the report of the Working Group on Arbitrary Detention (A/HRC/13/30), para. 58; and the report of the Special Rapporteur on the human rights of migrants (A/HRC/20/24), paras. 31 and 38.

<sup>12</sup> See Committee on the Rights of the Child, report of the 2012 day of general discussion, para. 79.

<sup>13</sup> See Committee on the Rights of the Child, general comment No. 6, paras. 39-40.

<sup>14</sup> See A/HRC/20/24, para. 40; *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, Advisory Opinion OC-21/14 of 19 August 2014*, Inter-American Court of Human Rights, para. 159; and A/HRC/28/68, para. 80.

<sup>15</sup> See the Guidelines for the Alternative Care of Children.

<sup>16</sup> See United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, in particular guideline 18 (see A/HRC/30/37, para. 100).

**C. Due process guarantees and access to justice (articles 16, 17 and 18 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; articles 12 and 40 of the Convention on the Rights of the Child)**

14. Access to justice is a fundamental right in itself and a prerequisite for the protection and promotion of all other human rights, and as such it is of paramount importance that every child in the context of international migration is empowered to claim his/her rights. The responsibility of States parties requires structural and proactive interventions to ensure fair, effective and prompt access to justice. The Committee on the Rights of the Child, in its general comment No. 5 (2003) on general measures of implementation of the Convention, held that an effective remedy requires effective, child-sensitive procedures. It further outlined that such procedures should guarantee the adoption of certain specific measures in order to ensure that administrative and judicial proceedings are adapted to the needs and development of children, and that the best interests of the child is a primary consideration in all such proceedings.

15. The Committees are of the view that States should ensure that their legislation, policies, measures and practices guarantee child-sensitive due process in all migration and asylum administrative and judicial proceedings affecting the rights of children and/or those of their parents. All children, including children accompanied by parents or other legal guardians, should be treated as individual rights holders, their child-specific needs considered equally and individually and their views appropriately heard and given due weight. They should have access to administrative and judicial remedies against decisions affecting their own situation or that of their parents, to guarantee that all decisions are taken in their best interests<sup>17</sup> Measures should be taken to avoid undue delays in migration/asylum procedures that could negatively affect children's rights, including family reunification procedures. Unless it is contrary to the child's best interests, speedy proceedings should be encouraged, provided that this does not restrict any due process guarantees.

16. Children should be able to bring complaints before courts, administrative tribunals or other bodies at lower levels that are easily accessible to them, e.g., in child protection and youth institutions, schools and national human rights institutions, and should be able to receive advice and representation in a child-friendly manner by professionals with specialized knowledge of children and migration issues when their rights have been violated. States should ensure standardized policies to guide authorities in offering free, quality legal advice and representation for migrant, asylum-seeking and refugee children, including equal access for unaccompanied and separated children in local authority care and undocumented children.<sup>18</sup>

17. More specifically, and in particular in the context of best interest assessments and within best interest determination procedures, children should be guaranteed the right to:

- (a) Access to the territory, regardless of the documentation they have or lack, and to be referred to authorities in charge of evaluating their needs in terms of protection of their rights, ensuring their procedural safeguards;
- (b) Be notified of the existence of a proceeding and of the decision adopted in the context of the immigration and asylum proceedings, its implications and possibilities for appeal;
- (c) Have the immigration proceedings conducted by a specialized official or judge, and any interviews carried out in person by professionals trained in communicating with children;
- (d) Be heard and take part in all stages of the proceedings and be assisted without charge by a translator and/or interpreter;

<sup>17</sup> See Committee on the Rights of the Child, report of the 2012 day of general discussion, para. 75.

<sup>18</sup> Human Rights Council resolution 25/6. See also *Advisory Opinion OC-21/14 of 19 August 2014*, Inter-American Court of Human Rights, paras. 108-143.

(e) Have effective access to communication with consular officials and consular assistance, and to receive child-sensitive rights-based consular protection;

(f) Be assisted by an attorney trained and/or experienced in representing children at all stages of the proceedings and communicate freely with the representative, and have access to free legal aid;

(g) Have the application and procedures involving children be treated as a priority, while ensuring ample time to prepare for proceedings and that all due process guarantees are preserved;

(h) Appeal the decision to a higher court or independent authority, with suspensive effect;

(i) For unaccompanied and separated children, have appointed a competent guardian, as expeditiously as possible, who serves as a key procedural safeguard to ensure respect for their best interests;<sup>19</sup>

(j) Be fully informed throughout the entire procedure, together with their guardian and legal adviser, including information on their rights and all relevant information that could affect them.

18. The Committees recognize the negative impacts on children's well-being of having an insecure and precarious migration status. The Committees therefore recommend that States ensure that there are clear and accessible status determination procedures for children to regularize their status on various grounds (such as length of residence).

19. The Committees are of the opinion that a comprehensive interpretation of the Convention on the Rights of the Child with articles 7 (a), 23 and 65 (2) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families should imply the development and implementation of effective consular protection policies which include specific measures directed to protecting children's rights, such as providing ongoing training to consular staff on the two Conventions, as well as on other human rights instruments, and promoting protocols on consular protection services.

## **D. Right to a name, identity, and a nationality (article 29 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; articles 7 and 8 of the Convention on the Rights of the Child)**

### **1. Birth registration**

20. The lack of birth registration may have many negative impacts on the enjoyment of children's rights, such as child marriage, trafficking, forced recruitment and child labour. Birth registrations may also help to achieve convictions against those who have abused a child. Unregistered children are at particular risk of becoming stateless when born to parents who are in an irregular migration situation, due to barriers to acquiring nationality in the country of origin of the parents as well as to accessing birth registration and nationality at the place of their birth.<sup>20</sup>

21. The Committees urge States parties to take all necessary measures to ensure that all children are immediately registered at birth and issued birth certificates, irrespective of their migration status or that of their parents. Legal and practical obstacles to birth registration should be removed, including by prohibiting data sharing between health providers or civil servants responsible for registration with immigration enforcement authorities; and not requiring parents to produce documentation regarding their migration status. Measures should also be taken to facilitate late registration of birth and to avoid financial penalties for

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<sup>19</sup> See Committee on the Rights of the Child, general comment No. 6, paras. 20-21 and 33-38.

<sup>20</sup> According to article 1 of the Convention relating to the Status of Stateless Persons, a stateless person is "a person who is not considered as a national by any State under the operation of its law".

late registration. Children who have not been registered should be ensured equal access to health care, protection, education and other social services.

22. Should a child's identity documents have been procured irregularly on his or her behalf and the child requests the restoration of his or her identity documents, States parties are encouraged to adopt flexible measures in the best interests of the child, specifically by issuing corrected documents and avoiding prosecution where falsification has been committed.

## **2. Right to a nationality and safeguards against statelessness**

23. Article 7 of the Convention on the Rights of the Child places emphasis on the prevention of statelessness by specifying that States parties shall ensure the implementation of the rights of a child to be registered, to a name, to acquire a nationality and to know and be cared for by his or her parents. The same right is enshrined for all children of migrant workers in article 29 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

24. While States are not obliged to grant their nationality to every child born in their territory, they are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he or she is born. A key measure is the conferral of nationality to a child born on the territory of the State, at birth or as early as possible after birth, if the child would otherwise be stateless.

25. Nationality laws that discriminate with regard to the transmission or acquisition of nationality on the basis of prohibited grounds, including in relation to the child and/or his or her parents' race, ethnicity, religion, gender, disability and migration status, should be repealed. Furthermore, all nationality laws should be implemented in a non-discriminatory manner, including with regard to residence status in relation to the length of residency requirements, to ensure that every child's right to a nationality is respected, protected and fulfilled.

26. States should strengthen measures to grant nationality to children born in their territory in situations where they would otherwise be stateless. When the law of a mother's country of nationality does not recognize a woman's right to confer nationality on her children and/or spouse, children may face the risk of statelessness. Likewise, where nationality laws do not guarantee women's autonomous right to acquire, change or retain their nationality in marriage, girls in the situation of international migration who married under the age of 18 years may face the risk of being stateless, or be confined in abusive marriages out of fear of being stateless. States should take immediate steps to reform nationality laws that discriminate against women by granting equal rights to men and women to confer nationality on their children and spouses and regarding the acquisition, change or retention of their nationality.

## **E. Family life (articles 14, 17 and 44 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; articles 9, 10, 11, 16, 18, 19, 20 and 27 (4) of the Convention on the Rights of the Child)**

27. The right to protection of family life is recognized in international and regional human rights instruments, including the Convention on the Rights of the Child and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Therefore, this right should be fully respected, protected and fulfilled in relation to every child without any kind of discrimination, regardless of their residency or nationality status. States should comply with their international legal obligations in terms of maintaining family unity, including siblings, and preventing separation, which should be a primary focus, in accordance with the Guidelines for the Alternative Care of Children. Protection of the right to a family environment frequently requires that States not only refrain from actions which could result in family separation or other arbitrary interference in the right to family life, but also take positive measures to maintain the family unit, including the reunion of separated family members. The

Committee on the Rights of the Child, in its general comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, states that the term “parents” must be interpreted in a broad sense to include biological, adoptive or foster parents, or, where applicable, the members of the extended family or community as provided for by local custom.

## 1. Non-separation

28. The right to family unity for migrants may intersect with States’ legitimate interests in making decisions on the entry or stay of non-nationals in their territory. However, children in the context of international migration and families should not be subjected to arbitrary or unlawful interference with their privacy and family life.<sup>21</sup> Separating a family by deporting or removing a family member from a State party’s territory, or otherwise refusing to allow a family member to enter or remain in the territory, may amount to arbitrary or unlawful interference with family life.<sup>22</sup>

29. The Committees are of the view that the rupture of the family unit by the expulsion of one or both parents based on a breach of immigration laws related to entry or stay is disproportionate, as the sacrifice inherent in the restriction of family life and the impact on the life and development of the child is not outweighed by the advantages obtained by forcing the parent to leave the territory because of an immigration-related offence.<sup>23</sup> Migrant children and their families should also be protected in cases where expulsions would constitute arbitrary interference with the right to family and private life.<sup>24</sup> The Committees recommend that States provide avenues for status regularization for migrants in an irregular situation residing with their children, particularly when a child has been born or has lived in the country of destination for an extended period of time, or when return to the parent’s country of origin would be against the child’s best interests. Where the expulsion of parents is based on criminal offences, their children’s rights, including the right to have their best interests be a primary consideration and their right to be heard and have their views taken seriously, should be ensured, also taking into account the principle of proportionality and other human rights principles and standards.

30. The Committees are concerned about cases where children are separated from parents and placed in alternative care by child protection systems when there are no concerns related to parental abuse and neglect. Financial and material poverty, or conditions directly and uniquely attributable to such poverty, should never be the sole justification for removing a child from parental care, for receiving a child into alternative care or for preventing a child’s social reintegration. In this regard, States should provide appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities, including by providing social benefits and child allowances and other social support services regardless of the migration status of the parents or the child.

31. The Committees are also of the opinion that based on article 18 of the Convention on the Rights of the Child, a comprehensive approach to the child’s right to a family environment in the context of migration should contemplate measures directed at enabling parents to fulfil their duties with regard to child development. Considering that irregular migration status of children and/or their parents may obstruct such goals, States should make available regular and non-discriminatory migration channels, as well as provide permanent and accessible mechanisms for children and their families to access long-term

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<sup>21</sup> See Human Rights Committee, general comment No. 15 (1986) on the position of aliens under the Covenant, para. 7.

<sup>22</sup> Human Rights Committee, communications No. 2009/2010, *Ilyasov v. Kazakhstan*, Views adopted on 23 July 2014; No. 2243/2013, *Husseini v. Denmark*, Views adopted on 24 October 2014; No. 1875/2009, *M.G.C. v. Australia*, Views adopted on 26 March 2015; No. 1937/2010, *Leghaei and others v. Australia*, Views adopted on 26 March 2015; and No. 2081/2011, *D.T. v. Canada*, Views adopted on 15 July 2006.

<sup>23</sup> See *Advisory Opinion OC-21/14 of 19 August 2014*, Inter-American Court of Human Rights, para. 280.

<sup>24</sup> See Committee on the on the Protection of the Rights of All Migrant Workers and Members of Their Families, general comment No. 2 (2013), para. 50.



regular migration status or residency permits based on grounds such as family unity, labour relations, social integration and others.<sup>25</sup>

## 2. Family reunification

32. Under article 10 of the Convention on the Rights of the Child, States parties are to ensure that applications for family reunification are dealt with in a positive, humane and expeditious manner, including facilitating the reunification of children with their parents. When the child's relations with his or her parents and/or sibling(s) are interrupted by migration (in both the cases of the parents without the child, or of the child without his or her parents and/or sibling(s)), preservation of the family unit should be taken into account when assessing the best interests of the child in decisions on family reunification.<sup>26</sup>

33. In the case of undocumented children in the context of international migration, States shall develop and implement guidelines, taking particular care that time limits, discretionary powers, and/or lack of transparency in administration procedures should not hinder the child's right to family reunification.

34. In the case of unaccompanied or separated children, including children separated from their parents due to the enforcement of immigration laws, such as the parents' detention, efforts to find sustainable, rights-based solutions for them should be initiated and implemented without delay, including the possibility of family reunification. If the child has family in the country of destination, the country of origin or a third country, child protection and welfare authorities in countries of transit or destination should contact family members as soon as possible. The decision as to whether a child should be reunited with his or her family in the country of origin, transit and/or destination should be based on a robust assessment in which the child's best interests are upheld as a primary consideration and family reunification is taken into consideration, and which includes a sustainable reintegration plan where the child is guaranteed to participate in the process.

35. Family reunification in the country of origin should not be pursued where there is a "reasonable risk" that such a return would lead to the violation of the human rights of the child. When family reunification in the country of origin is not in the best interests of the child or not possible due to legal or other obstacles to return, the obligations under article 9 and 10 of the Convention of the Rights of the Child come into effect and should govern the State's decisions on family reunification therein. Measures for parents to reunify with their children and/or regularize their status on the basis of their children's best interests should be put in place. Countries should facilitate family reunification procedures in order to complete them in an expeditious manner, in line with the best interests of the child. It is recommended that States apply best interest determination procedures in finalizing family reunification.

36. When a country of destination refuses family reunification to the child and/or to his/her family, it should provide detailed information to the child, in a child-friendly and age-appropriate manner, on the reasons for the refusal and on the child's right to appeal.

37. Children that remain in their countries of origin may end up migrating irregularly and unsafely, seeking to be reunited with their parents and/or older siblings in destination countries. States should develop effective and accessible family reunification procedures that allow children to migrate in a regular manner, including children remaining in countries of origin who may migrate irregularly. States are encouraged to develop policies that enable migrants to regularly be accompanied by their families in order to avoid separation. Procedures should seek to facilitate family life and ensure that any restrictions are legitimate, necessary and proportionate. While this duty is primarily for receiving and transit countries, States of origin should also take measures to facilitate family reunification.

<sup>25</sup> See Committee on the Rights of the Child, report of the 2012 day of general discussion, para. 91. See also article 69 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

<sup>26</sup> See Committee on the Rights of the Child, general comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, para. 66.

38. The Committees are aware that insufficient financial resources often hinder the exercise of the right to family reunification and that the lack of proof of adequate family income can constitute a barrier to reunion procedures. States are encouraged to provide adequate financial support and other social services to those children and their parent(s), siblings and, where applicable, other relatives.

**F. Protection from all forms of violence and abuse, including exploitation, child labour and abduction, and sale or traffic in children (articles 11 and 27 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; articles 19, 26, 32, 34, 35 and 36 of the Convention on the Rights of the Child)**

39. Children in the context of international migration, in particular those who are undocumented, stateless, unaccompanied or separated from their families, are particularly vulnerable, throughout the migratory process, to different forms of violence, including neglect, abuse, kidnapping, abduction and extortion, trafficking, sexual exploitation, economic exploitation, child labour, begging or involvement in criminal and illegal activities, in countries of origin, transit, destination and return. Such children are at risk of experiencing violence by State or non-State actors or witnessing violence against their parents or others, particularly when travelling or residing in an irregular manner. The Committees draw the attention of States to article 6 of the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children under which the judicial or administrative authorities of the Contracting State have jurisdiction to take measures directed to the protection of the child's person or property with regard to refugee children and children who, due to disturbances occurring in their country, are internationally displaced and are present on the territory as a result of their displacement.

40. The Committees are also aware that restrictive migration or asylum policies, including criminalization of irregular migration, the absence of sufficient safe, orderly, accessible and affordable regular migration channels or lack of adequate child protection systems, render migrant and asylum-seeking children, including unaccompanied or separated children, particularly vulnerable to suffering violence and abuse during their migration journey and in the countries of destination.

41. It is essential that States take all necessary measures to prevent and combat the illicit transfer and non-return of children as well as the worst forms of child labour, including all forms of slavery, commercial sexual exploitation, the use of children for illicit activities, including begging, and hazardous work, and protect them from violence and economic exploitation. The Committees recognize that children face gender-specific risks and vulnerabilities which should be identified and specifically addressed. In many contexts, girls may be even more vulnerable to trafficking, especially for purposes of sexual exploitation. Additional measures should be taken to address the particular vulnerability of girls and boys, including those who might have a disability, as well as children who are lesbian, gay, bisexual, transgender or intersex persons, to trafficking for the purposes of sexual exploitation and abuse.

42. Undocumented migrant children and parents dependent on residence or work permits, who can easily be made undocumented by their sponsor/employer, face risks of being reported to the immigration authorities by public service providers or other officials or by private individuals. This limits their enjoyment of human rights, including protection and access to justice, and makes them more vulnerable to violence and to labour and other types of exploitation and abuse,<sup>27</sup> and could be the result of policies prioritizing the detection of migrants in irregular status instead of their protection from violence, abuse and exploitation, making children more vulnerable to experiencing violence or witnessing

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<sup>27</sup> See Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, general comment No. 2, para. 2.

violence against a family member. Among other measures, effective firewalls between child protection services and immigration enforcement should be ensured.

43. For migrant children for whom there are indications of trafficking, sale or other forms of sexual exploitation or who may be at risk of such acts or of child marriage, States should adopt the following measures:

- Establish early identification measures to detect victims of sale, trafficking and abuse, as well as referral mechanisms, and in this regard carry out mandatory training for social workers, border police, lawyers, medical professionals and all other staff who come into contact with children
- Where different migration statuses are available, the most protective status (i.e., asylum or residence on humanitarian grounds) should be applied and granting such status should be determined on a case-by-case basis in accordance with the best interests of the child
- Ensure that the granting of residence status or assistance to migrant child victims of sale, trafficking or other forms of sexual exploitation is not made conditional on the initiation of criminal proceedings or their cooperation with law enforcement authorities.

44. Furthermore, States should take the following actions to ensure the full and effective protection of migrant children from all forms of violence and abuse:

- Take effective measures to ensure that they are protected from any form of slavery and commercial sexual exploitation and from being used for illicit activities or from any work that would jeopardize their health, safety or morals, including by becoming party to relevant conventions of the International Labour Organization
- Take effective measures to protect them from all forms of violence and abuse, regardless of their migration status
- Recognize and address the gender-specific vulnerable situations of girls and boys and children with disabilities as potential victims of trafficking for sexual, labour and all other forms of exploitation
- Ensure comprehensive protection, support services and access to effective redress mechanisms, including psychosocial assistance and information about those remedies, for migrant children and their families reporting cases of violence, abuse or exploitation to police or other relevant authorities, regardless of their migration status; children and parents must be able to safely report to police or other authorities as victims or witnesses without any risk of immigration enforcement as a result
- Recognize the important role that can be played by community services and civil society organizations in regard to the protection of migrant children
- Develop comprehensive policies aimed at addressing the root causes of all forms of violence, exploitation and abuse against migrant children, including adequate resources for their proper implementation

**G. Right to protection from economic exploitation, including underage and hazardous work, employment conditions and social security (articles 25, 27, 52, 53, 54 and 55 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; articles 26 and 32 of the Convention on the Rights of the Child)**

45. With due respect to international labour standards related to the minimum age for admission to employment and the prohibition and elimination of the worst forms of child labour, not all work carried out by migrant children who are above legal working age is exploitative or undertaken in hazardous conditions. The Committees remind States that migrant children above working age, irrespective of their status, should enjoy equal treatment to that of national children in respect of remuneration, other conditions of work and terms of employment.

46. States should take all appropriate legislative and administrative measures, including a gender dimension, to regulate and protect the employment of migrant children with respect to the minimum age of employment and hazardous work. Given the specific risk to which migrant children are exposed, States shall also ensure that, in both law and practice, all necessary measures, including the provision of appropriate penalties, be taken by the competent authority to guarantee the effective enforcement of the provisions of the Convention on the Rights of the Child and relevant international standards and that migrant children:

- Enjoy fair terms of employment as well as decent working conditions, in line with internationally accepted standards
- Enjoy specific protective measures regulating the hours and conditions under which children can work
- Are subject to periodic medical examinations attesting to their fitness for work
- Have access to justice in case of violation of their rights by public or private actors, including by ensuring effective complaints mechanisms and a firewall between labour rights and immigration enforcement

47. With respect to social security, migrant children and their families shall have the right to the same treatment granted to nationals, insofar as they fulfil the requirements provided for by the applicable legislation of the State and the applicable bilateral and multilateral treaties. The Committees consider that in cases of necessity, States should provide emergency social assistance to migrant children and their families regardless of their migration status, without any discrimination.

48. In cases of migrant families, including with children born to migrant parents, the Committees stress the interdependence between parental responsibilities for the upbringing and development of the child under articles 5 and 18 of the Convention on the Rights of the Child and labour rights for migrant workers under relevant provisions of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Therefore, States should, as far as possible, take measures to ensure that the rights at work of migrant parents, including those in an irregular situation, are fully respected.

#### **H. Right to an adequate standard of living (article 45 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; article 27 of the Convention on the Rights of the Child)**

49. States should ensure that children in the context of international migration have a standard of living adequate for their physical, mental, spiritual and moral development. As provided in article 27 (3) of the Convention on the Rights of the Child. States, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

50. States parties should develop detailed guidelines on standards of reception facilities, assuring adequate space and privacy for children and their families. States should take measures to ensure an adequate standard of living in temporary locations, such as reception facilities and formal and informal camps, ensuring that these are accessible to children and their parents, including persons with disabilities, pregnant women and breastfeeding mothers. States should ensure that residential facilities do not restrict children's day-to-day movements unnecessarily, including de facto restriction of movement.

51. States should not interfere with children's right to housing by means of measures which prevent migrants from renting properties. Measures should be taken to ensure that migrant children, regardless of their status, are able to access homeless shelters.

52. States should develop procedures and standards to establish firewalls between public or private service providers, including public or private housing providers, and immigration

enforcement authorities. Similarly, States should ensure that irregular migrant children are not criminalized for exercising their right to housing and that private actors, such as landlords and civil society organizations, who facilitate their exercise of this right are also not criminalized.

53. The Convention on the Rights of the Child stipulates that States parties shall respect and ensure the rights set forth in the Convention to each child within its jurisdiction without discrimination of any kind; this includes discrimination against children on the basis of their or their parents' migration status. The Committees therefore urge States parties to provide equitable access to economic, social and cultural rights. States are encouraged to expeditiously reform legislation, policies and practices that discriminate against migrant children and their families, including those in an irregular situation, or prevent them from effectively accessing services and benefits, for example social assistance.<sup>28</sup>

## **I. Right to health (articles 28 and 45 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; articles 23, 24 and 39 of the Convention on the Rights of the Child)**

54. The Committees acknowledge that a child's physical and mental health can be affected by a variety of factors, including structural determinants such as poverty, unemployment, migration and population displacements, violence, discrimination and marginalization. The Committees are aware that migrant and refugee children may experience severe emotional distress and may have particular and often urgent mental health needs. Children should therefore have access to specific care and psychological support, recognizing that children experience stress differently from adults.

55. Every migrant child should have access to health care equal to that of nationals, regardless of their migration status. This includes all health services, whether preventive or curative, and mental, physical or psychosocial care, provided in the community or in health-care institutions. States have an obligation to ensure that children's health is not undermined as a result of discrimination, which is a significant factor contributing to vulnerability; the implications of multiple forms of discrimination should also be addressed.<sup>29</sup> Attention should be paid to addressing the gender-specific impacts of reduced access to services.<sup>30</sup> In addition, migrant children should be provided full access to age-appropriate sexual and reproductive health information and services.

56. States are encouraged to emphasize a holistic approach to the right to health. Their national plans, policies, and strategies should address the health needs of migrant children and the vulnerable situations in which they may find themselves. Migrant children should have access to health services without being required to present a residence permit or asylum registration. Administrative and financial barriers to accessing services should be removed, including through the acceptance of alternative means of proving identity and residence, such as testimonial evidence.<sup>31</sup> In addition, the Committees urge States to prohibit the sharing of patients' data between health institutions and immigration authorities as well as immigration enforcement operations on or near public health premises, as these effectively limit or deprive migrant children or children born to migrant parents in an irregular situation of their right to health.<sup>32</sup> Effective firewalls should be put in place in order to ensure their right to health.

57. Discrimination can often exacerbate insufficient financial and legal protection, and may force migrant children to postpone treatment until they are seriously ill. Attention

<sup>28</sup> See Committee on the Rights of the Child, report of the 2012 day of general discussion, para. 86.

<sup>29</sup> See general comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health, paras. 5 and 8.

<sup>30</sup> See Committee on the Rights of the Child, report of the 2012 day of general discussion, para. 86.

<sup>31</sup> See Committee on the Rights of the Child, report of the 2012 day of general discussion, para. 86.

<sup>32</sup> See Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, general comment No. 2, para. 74.

should be paid to resolving the issues surrounding complicated health services that require prompt and extensive responses, in which discriminatory approaches may severely affect the health of migrant children and significantly delay their treatment and recovery period. The commitment of health professionals should be first to their patients and to upholding children's health as a human right.

58. Restrictions on adult migrants' right to health on the basis of their nationality or migration status could also affect their children's right to health, life and development. Therefore, a comprehensive approach to children's rights should include measures directed at ensuring the right to health to all migrant workers and their families, regardless of their migration status, as well as measures aimed at ensuring an intercultural approach to health policies, programmes and practices.

**J. Right to education and professional training (articles 30, 43 and 45 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; articles 28, 29, 30 and 31 of the Convention on the Rights of the Child)**

59. All children in the context of international migration, irrespective of status, shall have full access to all levels and all aspects of education, including early childhood education and vocational training, on the basis of equality with nationals of the country where those children are living. This obligation implies that States should ensure equal access to quality and inclusive education for all migrant children, irrespective of their migration status. Migrant children should have access to alternative learning programmes where necessary and participate fully in examinations and receive certification of their studies.

60. The Committees strongly urge States to expeditiously reform regulations and practices that prevent migrant children, in particular undocumented children, from registering at schools and educational institutions. States should also develop effective firewalls between educational institutions and immigration authorities and prohibit the sharing of students' data as well as immigration enforcement operations on or near school premises, as these practices limit or deprive migrant children or children of migrant workers in an irregular situation of their right to education. To respect children's right to education, States are also encouraged to avoid disruption during migration-related procedures, avoiding children having to move during the school year if possible, as well as supporting them to complete any compulsory and ongoing education courses when they reach the age of majority. While access to upper-level education is not compulsory, the principle of non-discrimination obliges States to provide available services to every child without discrimination on the basis of their migration status or other prohibited grounds.

61. States should put in place adequate measures to recognize the child's former education by acknowledging previously obtained school certificates and/or issuing new certification based on the child's capacities and capabilities, to avoid creating stigmatization or penalization. This is equally applicable to countries of origin or third countries in the case of return.

62. The principle of equality of treatment requires States to eliminate any discrimination against migrant children and to adopt appropriate and gender-sensitive provisions to overcome educational barriers. This means that, where necessary, targeted measures are needed, including additional language education,<sup>33</sup> additional staff and other intercultural support, without discrimination of any kind. States are encouraged to dedicate staff to facilitating access to education for migrant children and to promoting the integration of migrant children into schools. In addition, States should take measures aimed at prohibiting and preventing any kind of educational segregation, to ensure that migrant children learn the new language as a means for effective integration. State efforts should include the provision of early childhood education as well as psychosocial support. States should also

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<sup>33</sup> See article 45 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

provide formal and non-formal learning opportunities, teacher training and life skills classes.

63. States should develop concrete measures to foster intercultural dialogue between migrant and host communities and to address and prevent xenophobia or any type of discrimination or related intolerance against migrant children. In addition, integrating human rights education, including on non-discrimination, as well as migration and migrants' rights and children's rights, within education curricula would contribute to preventing in xenophobic or any form of discriminatory attitudes that could affect migrants' integration in the long term.

### **III. International cooperation**

64. The Committees reaffirm the need to address international migration through international, regional or bilateral cooperation and dialogue and through a comprehensive and balanced approach, recognizing the roles and responsibilities of countries of origin, transit, destination and return in promoting and protecting the human rights of children in the context of international migration, so as to ensure safe, orderly and regular migration, with full respect for human rights and avoiding approaches that might aggravate their vulnerability. In particular, cross-border case management procedures should be established in an expeditious manner in conformity with the Convention on the Rights of the Child, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto and the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children. In addition, cooperation could include initiatives aimed at strengthening financial and technical assistance as well as resettlement programmes to countries which host a large number of displaced persons, including children, from other countries and are in need of assistance. All practices should be fully in line with international human rights and refugee law obligations.

65. In order to ensure that this comprehensive and balanced approach is consistent with the best interests of children, child protection/welfare agencies should have a key role in the development of any international, regional or bilateral agreements that affect the rights and treatment of children in the context of international migration. Bilateral, regional and international initiatives should be encouraged in order to facilitate family reunification, implement best interest assessment and determination, and guarantee children's right to be heard and due process safeguards. Such initiatives should ensure access to justice in cross-border situations where children whose rights are affected in the country of transit or destination need it after they have returned to the country of origin or gone to a third country. In addition, States should ensure the participation of children and civil society organizations, including regional intergovernmental institutions, in these processes. States should also avail themselves of technical cooperation from the international community and United Nations agencies and entities, including the United Nations Children's Fund and the International Organization for Migration, for the implementation of migration policies in respect of children in line with the present joint general comment.

### **IV. Dissemination and use of the joint general comment and reporting**

66. States parties should disseminate widely the present joint general comment to all stakeholders, in particular parliaments, governmental authorities, including child protection and migration authorities and personnel, and the judiciary, at all national, regional and local levels. It should be made known to all children and all relevant professionals and stakeholders, including those working for and with children (i.e., judges, lawyers, police and other law enforcement entities, teachers, guardians, social workers, staff of public or private welfare institutions and shelters, and health-care providers), the media and civil society at large.

67. The present joint general comment should be translated into relevant languages, and child-friendly/appropriate versions and formats accessible to persons with disabilities should be made available. Conferences, seminars, workshops and other events should be held to share good practices on how best to implement it. It should also be incorporated into the formal pre- and in-service training of all concerned professionals and to technical staff in particular, as well as to child protection, migration and law enforcement authorities and personnel, and should be made available to all national and local human rights institutions and other human rights civil society organizations.

68. States parties should include in their reports under article 73 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and article 44 of the Convention on the Rights of the Child information about the measures guided by the present joint general comments that they have implemented and their outcomes.

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