

Toward a **Regional Mechanism**  
for the **Comprehensive Protection**  
of **Migrant and Refugee**  
**Boys, Girls and Adolescents**



Conferencia Regional sobre Migración  
Regional Conference on Migration



IOM - OIM  
International Organization for Migration  
Organización Internacional para las Migraciones



UNHCR  
ACNUR  
La Agencia de la ONU para los Refugiados



International Labour Organization

Toward a **Regional Mechanism**  
for the **Comprehensive Protection**  
of **Migrant and Refugee**  
**Boys, Girls and Adolescents**





# INDEX

Foreword.....	5
I. Introduction.....	7
II. Basic Concepts and Background.....	9
III. Objectives.....	11
IV. Nature of the Regional Mechanism.....	11
V. Guiding Conceptual Framework.....	11
VI. Definitions.....	12
VII. Guiding Principles.....	13
APPENDIX.....	19





# FOREWORD

In its almost 20 years of existence, the Regional Conference on Migration (RCM) has focused its work on three central themes: Migration Policy and Management, Human Rights, and Migration and Development.

The actions implemented by RCM under these three central themes are oriented toward capacity-building within each country, with strong coordination and cooperation at a regional level. In this regard, a large part of the efforts have been aimed at strengthening respect for and protection of the human rights of migrants in the region, and in recent years the majority of initiatives have focused on providing assistance and protection to migrant boys, girls and adolescents – especially those who are unaccompanied.

This topic has been addressed since the inception of RCM. However, it was consolidated as part of the Plan of Action at the VIII Meeting of RCM held in May 2013 in Mexico. In addition, as a result of different activities (workshops, seminars, specific meetings, etc.), Member States of RCM approved various documents oriented toward achieving the objective of capacity-building on this matter; and I am referring to this objective because the documents are a support tool that can be adjusted to the specific migration plans, programmes and policies implemented by each country to protect the rights of migrant boys, girls and adolescents. The documents are listed below:

- Regional Guidelines for Special Protection in Cases of Repatriation of Child Victims of Trafficking, approved at the XII RCM, held in the United States in 2007.
- Regional Guidelines for the Assistance to Unaccompanied Children in Cases of Repatriation, approved at the XIV RCM, held in Guatemala in 2009.
- Regional Guidelines for the Preliminary Identification of Profiles and Referral Mechanisms for Migrant Populations in Vulnerable Situations, approved at the XVIII RCM, held in Costa Rica in 2013.

These regional instruments are important references for each country, since all of them consider, among other aspects, the best interest of the boy, girl or adolescent and full respect for their human rights. Furthermore, the instruments were developed in collaboration with diverse international organizations, including the International Organization for Migration (IOM) and the United Nations High Commissioner for Refugees (UNHCR).

In addition to these achievements, RCM has taken actions with renewed vigour to provide comprehensive protection to migrant boys, girls and adolescents, including two seminars/workshops conducted with support from IOM, UNHCR, the International Labour Organization (ILO) and the United Nations Children's Fund (UNICEF). The first seminar/workshop was held in San José, Costa Rica in March 2012



and the second one in La Antigua Guatemala, Guatemala, in August 2013. Expert officials from Ministries of Foreign Affairs, Directorates of Migration, Child Protection Institutions and Ministries of Labour of Member States of RCM participated at both events.

As a result of the workshops, the Government of Guatemala developed this document with support from IOM, UNHCR, ILO and UNICEF, with the objective of advancing toward the establishment of a truly regional mechanism to protect boys, girls and adolescents.

The document, as stated in its title, is a proposal for principles that seek to guide Member States of RCM in taking actions to protect the rights of migrant boys, girls and adolescents in each country. The approval of the document at the XIX RCM held in Managua, Nicaragua in June 2014 took place under very special circumstances: the humanitarian crisis of unaccompanied boys, girls and adolescents migrating through the region, with United States as their final destination.

The primary objective of the document is to guide the efforts of the Ad Hoc Group on Migrant Boys, Girls and Adolescents, which was approved at the XIX RCM as well. However, it should be noted that the document and the Ad Hoc Group did not arise from the humanitarian crisis but are a result of the above-mentioned efforts implemented within the framework of RCM throughout the years, and especially in the past three years.

Thus, beyond using this tool as a platform for the actions of an Ad Hoc Group, Member States are encouraged to use and adjust it to the extent possible and continue advancing toward the achievement of one of the main objectives of RCM: to protect the rights of every migrant boy, girl and adolescent in the region at all costs.

A handwritten signature in black ink, appearing to read 'Oliver Bush', written over a white background.

**Oliver Bush**  
**Coordinador de la Secretaría Técnica**  
**CRM**



## Hacia un Mecanismo Regional de Protección Integral de la niñez y adolescencia migrante y refugiada

### I. Introduction

In many regions, including the Americas, migration movements are becoming increasingly “mixed” and more complex<sup>1</sup>. Current migration flows include migrants – regular and irregular – with diverse profiles. Some of these persons may belong to various groups that can be in particularly vulnerable situations: asylum and refuge seekers; migrants victims of trafficking and migrant smuggling; stranded migrants; migrants and refugees victims of violence and psychological trauma during the migration process or other persons in vulnerable situations such as pregnant women; boys, girls and adolescents travelling with their parents or unaccompanied or separated from their families; persons with disabilities; or senior citizens<sup>2</sup>.

Every migration flow includes persons with different vulnerabilities that require special assistance. Migrants in vulnerable situations, often travelling in an irregular manner, are at risk of being subjected to violations of their rights. Persons most at risk include migrant boys, girls and adolescents – whether unaccompanied, separated, asylum or refuge seekers, victims of trafficking, economic migrants, or others.

Migrant and refugee boys, girls and adolescents are highly prone to suffering accidents and being subjected to labour or sexual exploitation; forced labour and the worst forms of child labour; maltreatment and physical and sexual abuse; and violence based on discriminatory and xenophobic attitudes and practices. In addition, they have difficulty gaining access to basic services such as health care, education and an adequate standard of living.

Furthermore, the populations described above are at risk of becoming victims of organized transnational crime – migrant smuggling and trafficking or abduction or being forced to transport drugs and other illegal materials.

In addition, these populations have difficulty gaining effective effective access to the justice system without any discrimination. Moreover, deprivation of liberty and expulsion without due process of law and without considering the Best Interest of the Child is another practice that directly affects the well-being of migrant boys, girls and adolescents.

1. Today the number of international migrants worldwide is higher than ever before. 214 million international migrants were recorded in 2010. If this population group continues to increase at the same pace as in the past 20 years, the number of international migrants could reach 405 million worldwide in 2050. See IOM, World Migration Report 2000. The Future of Migration: Building Capacities for Change. Preface.

2. See IOM: Irregular Migration and Mixed Flows: IOM's Approach. 98<sup>th</sup> Session of the Council. MC/INF/297. October 19, 2009, p. 1.



3. Ibid, paragraph 20.

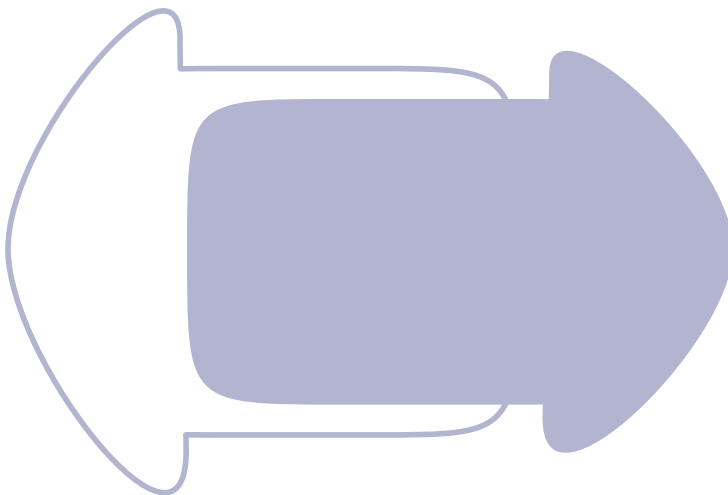
4. IACHR. Comments on the Advisory Opinion on Boys, Girls and Adolescents before the Inter-American Court of Human Rights, op. cit., pp. 7 & 8.

5. See in this regard: UNHCR. Policy Development and Evaluation Services. A Global Review: UNHCR's Engagement with Displaced Youth. Geneva, 2006, p. 20.

6. See UNHCR Global Trends 2012: Displacement, The New 21st Century Challenge. 2012 in Review: Trends at a glance, p. 3.

As expressed by the Special Rapporteur on the Human Rights of Migrants, "Age is not a common variable of disaggregated statistical data on international migration, which remains as the most difficult component of population change to measure"<sup>3</sup>. As a result of the lack of disaggregated data, the specific problems faced by boys, girls and adolescents within the context of international migration tend to be overlooked, since the magnitude of such issues cannot be recognized<sup>4</sup>.

Furthermore, in regard to forced displacement (within or beyond the borders of States), almost half of the persons suffering this situation worldwide are boys, girls and adolescents. Thus, 46% of refugees worldwide and 47% of the internally displaced persons<sup>5</sup> at a global level are boys, girls and adolescents. In 2012, close to 21.300 refugee status applications were submitted by unaccompanied or separated boys, girls and adolescents in 72 countries. This is the highest figure that has been recorded since UNHCR began collecting this type of data in 2006<sup>6</sup>. In fact, the situation of boys, girls and adolescents leaving their country of origin as a result of violence and crime also is a palpable reality in the region.







## II. Basic Concepts and Background

Within the context of the Regional Conference on Migration (RCM), States have adopted guidelines that are essential to addressing the protection of migrant and refugee boys, girls and adolescents in the hemisphere. The guidelines include the following:

- “Regional Guidelines for Special Protection in Cases of the Repatriation of Boys, Girls and Adolescents Victims of Trafficking” (April 2007).
- “Regional Guidelines for the Assistance to Unaccompanied Migrant Boys, Girls and Adolescents in Cases of Repatriation” (July 2009).
- “Regional Guidelines for the Preliminary Identification and Referral of Migrants in Vulnerable Situations” (June 2013).

Through these instruments, Member States of RCM have recognized the systemic vulnerability of boys, girls and adolescents at various stages of the migration process and have expressed their continuous commitment to provide protection and assistance, with the aim of implementing specific actions to ensure that the rights of boys, girls and adolescents are safeguarded.

At the Vice-Ministerial Meeting held in June 2011, Vice-Ministers decided to approve the initiative of the International Organization for Migration (IOM) to hold a “Regional Forum on policies based on studies by UNHCR, IOM and UNICEF, among others, on unaccompanied migrant boys, girls and adolescents, with collaboration from interested international organizations”. The workshop was held in San José, Costa Rica on March 27-28, 2012. The primary results include the identification of strategic issues relating to the protection of migrant boys, girls and adolescents and the development of national action plans to be implemented within one year.

Following up on this first event and on the initiative of the Government of Guatemala and the Office of the First Lady of Guatemala, a Seminar on Migrant Boys, Girls and Adolescents was held in La Antigua, Guatemala in August 2013. A series of conclusions and recommendations were generated as a result of this meeting to address the risks and vulnerabilities of boys, girls and adolescents at every stage of the migration process, based on four central themes: (1) Prevention of irregular migration (awareness-raising



on the risks of migration); (2) reception and psychosocial assistance; (3) consular protection and repatriation; and (4) reintegration and integration.

One of the most significant recommendations of the Seminar addresses the need to promote the development of a regional mechanism such as the establishment of a permanent committee on migrant boys, girls and adolescents, including representatives from each country in the region, with the aim of preventing violations of the rights of migrant boys, girls and adolescents and the risks they face throughout the migration process.

In addition, within the framework of the Meeting of the Regional Consultation Group on Migration of the Regional Conference on Migration (RCM) held in San José, Costa Rica on November 18-19, 2013, the following was confirmed in writing: "Take note of the proposal by Guatemala to submit a document entitled '*Esquema y principios hacia un eventual Mecanismo Regional de Protección Integral de niñez y adolescencia migrantes*' (Outline and principles toward a regional mechanism for the comprehensive protection of migrant boys, girls and adolescents) for consideration. The document will be disseminated by the Technical Secretariat in order to get input from the Member States within a period of two months."

Thus, this document seeks to lay the groundwork for dialogue and discussion on the importance of advancing toward a mechanism such as the one proposed within the framework of RCM. Undoubtedly, the mechanism will place the challenges relating to the situation of migrant boys, girls and adolescents in the region at the centre of the discussions and common actions by Member States. It is only through sustained solidarity and continuous efforts of all involved actors that this issue can be addressed.





### III. Objectives

The primary purpose of the proposed Regional Mechanism for the Comprehensive Protection of Migrant and Refugee Boys, Girls and Adolescents is to promote collaboration between Member States of RCM in providing protection, assistance and aid to migrant and refugee boys, girls and adolescents and to create a space for networking, information exchange and on-going dialogue, with the aim of fostering the development of effective actions to provide comprehensive protection to boys, girls and adolescents – whether separated, accompanied by their parents or unaccompanied – in migration processes, from the moment when they are identified and received in countries of destination to their integration, return and reintegration in countries of origin, always safeguarding their rights and considering the Best Interest of the Child.

### IV. Nature of the Regional Mechanism

The proposed mechanism would be implemented as an Ad-hoc Working Group including relevant authorities, within the framework of the Regional Conference on Migration, and would be based on the methodologies of the existing Liaison Officer Networks for Migrant Smuggling and Trafficking and for Consular Protection.

To implement the proposed mechanism, a guiding document will be available as a framework for discussion and dialogue, to guide actions relating to the protection and assistance to migrant and refugee boys, girls and adolescents in the region (Appendix).

The guiding document will not affect the obligations and duties of countries under international law, including international humanitarian law, international human rights regulations, international refugee law and protection against non-refoulement, where applicable.

### V. Guiding Conceptual Framework

The Ad-hoc Working Group could be based on the following definitions and basic principles for protection to migrant and refugee boys, girls and adolescents:



## VI. Definitions

### Child (Boy or Girl):

The Convention on the Rights of the Child states that “a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.” (Article 1)

### Adolescent:

For the purposes of this mechanism, an adolescent means every human being over the age of twelve years and below the age of eighteen years and will only be used to differentiate among different types of protection.

### Migrant:

This term applies to persons, and family members, moving to another country or region to better their material or social conditions and improve the prospect for themselves or their family.<sup>7</sup>

7. International Migration Law. Glossary on Migration, IOM, 2006, p. 41.

### Unaccompanied Boys, Girls and Adolescents:

Boys, girls and adolescents 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.<sup>8</sup>

8. Committee on the Rights of the Child (CRC): General Comment No. 6 (2005). Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, 39<sup>th</sup> Session, CRC/GC/2005/6, September 1, 2005, paragraph 7.

### Separated Boys, Girls and Adolescents:

Boys, girls and adolescents who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives.<sup>9</sup>

9. Ibid, paragraph 8.

### Boys, Girls and Adolescents Victims of Trafficking:

Boys, girls and adolescents that are victims of the behaviour of trafficking in persons as established in Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, which complements the United Nations Convention Against Transnational Organized Crime, and in accordance with the internal legislation of each State.

### Refugee Boys, Girls and Adolescents:

Boys, girls and adolescents that fulfil the requirements to be recognized as refugees under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and in accordance with the internal legislation of each State.



## VII. Guiding Principles

### a. The Boy, Girl or Adolescent as a Subject of Law

An appropriate protection approach needs to be implemented to ensure that every boy, girl and adolescent is considered as a full subject of law. Boys, girls and adolescents are persons with the same rights as adults and with other special rights and needs, since they are still growing up.

### b. The Best Interest of the Child

The best interest of the child is regulated in Article 3.1 of the United Nations Convention on the Rights of the Child (CRC) which establishes that: “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” At an international level it has been understood that “the principle of the Best Interest of the Child [...] is based on the dignity of the human being, the specific characteristics of the boys, girls and adolescents and the need to promote their development, enabling them to fully realize their potential.”<sup>10</sup>

This principle should be respected at all stages of the migration process. At these stages, the determination of the best interest of the child should be documented in order to inform every decision.<sup>11</sup>

### c. Equality Before the Law and Non-Discrimination

The Convention on the Rights of the Child (CRC) establishes in Article 2 that States Parties shall ensure that boys, girls and adolescents are not discriminated against for any reason whatsoever related to them, their parents or legal guardians. In addition, States shall respect and ensure the rights set forth in the Convention to each child within their jurisdiction without discrimination of any kind. Consequently, States have the obligation not to introduce discriminatory regulations into their laws, to eliminate discriminatory regulations and to combat discriminatory practices.<sup>12</sup>

The enjoyment of rights is not limited to boys, girls, and adolescents nationals of the country, but also includes alien boys, girls and adolescents irrespective of their migration status. In addition, this principle calls for differentiation between protection needs based on age, gender and diversity.

10. Inter-American Court of Human Rights. The Case of Bulacio Vs. Argentina. Merits, Reparations and Costs. Judgment of September 18, 2003. Ser. C, No. 100, paragraph 163.

11. Committee on the Rights of the Child, Articles 18, 19 & 20.

12. Inter-American Court of Human Rights. Juridical Condition and Rights of the Undocumented Migrants. Advisory Opinion OC-18/03, September 17, 2003. Ser. A, No. 18, paragraph 88.



13. Inter-American Court of Human Rights. Juridical Condition and Rights of the Undocumented Migrants. Advisory Opinion OC-18/03, September 17, 2003. Ser. A No. 18, paragraph 112.

14. Ibid.

15. Ibid, paragraph 112.

16. Committee on the Rights of the Child (CRC): General Comment No. 6 (2005). Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, 39<sup>th</sup> Session, CRC/GC/2005/6, September 1, 2005, paragraph 23. Available at: [http://www.unicef.org/protection/files/CRCGC6\\_EN.pdf](http://www.unicef.org/protection/files/CRCGC6_EN.pdf)  
See UNHCR. Refugee Protection and Mixed Migration: The 10-Point Plan in action. Introduction. Geneva, 2010. Available at: <http://www.unhcr.org/50a4c2b09.pdf>.

17. Written Comment by UNICEF on Migrant Boys, Girls and Adolescents in Latin America and the Caribbean. Request for an Advisory Opinion on Migrant Boys, Girls and Adolescents submitted by Argentina, Brazil, Paraguay and Uruguay to the Inter-American Court of Human Rights, paragraph 46.

At an international level, it is stated that migrants are generally in a vulnerable situation as subjects of human rights<sup>13</sup> and that “this leads to the establishment of differences in their access to the public resources administered by the State.”<sup>14</sup> Cultural prejudices about migrants also exist that lead to reproduction of the situation of vulnerability; these include ethnic prejudices, xenophobia and racism, which make it difficult for migrants to integrate into society.<sup>15</sup> For migrant boys, girls and adolescents, given their twofold vulnerable situation as boys, girls and adolescents and as migrants, their rights and guarantees are particularly affected by discriminatory behaviour against them.

#### d. Life, Survival and Development

Article 6 of the CRC establishes that States Parties shall provide protection, to the maximum extent possible, against violence and exploitation (including physical, economic, psychological and emotional exploitation, among others) which would jeopardize a child’s inherent right to life, survival and development. Migrant boys, girls and adolescents may be exposed to “various risks that affect the life, survival and development; for example, trafficking for purposes of sexual or other exploitation or involvement in criminal activities which could result in harm to the child, or in extreme cases, in death.”<sup>16</sup>

This principle is a key element in the procedure to determine the best interest of migrant boys, girls and adolescent in implementing appropriate actions to protect them from significant risks or dangers and assessing the different consequences of various solutions in the longer term (repatriation to the country of origin, staying in the country of destination, etc.) It is essential to assess the impact on the life and development of boys, girls and adolescents of decisions such as, for example, ordering the detention and expulsion of their parents; granting or denying a residence permit to a family of migrants with irregular migration status or to parents of children born in the country of destination; approving a request for family reunification and ensuring access to social rights.<sup>17</sup>

#### e. The Family Unit

Article 9 of the CRC establishes that “States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.” As stated in international standards, “the child has the right to live with his or her family, which is responsible for satisfying his or her material, emotional, and psychological needs. Every person’s



right to receive protection against arbitrary or illegal interference with his or her family is implicitly a part of the right to protection of the family and the child, and it is also explicitly recognized by Articles 12(1) of the Universal Declaration of Human Rights.<sup>18</sup>

**f. Effective Access to Protection Procedures and Procedural Guarantees**

The adoption of special measures for the protection of boys, girls and adolescents is a responsibility of the State as well as the family, community and society to which the boy, girl or adolescent belongs. Every State, social or family decision involving any restriction to the exercise of any right of a boy, girl or adolescent should consider the principle of the Best Interest of the Child and rigorously observe the provisions governing this matter. Effective access to child protection procedures (for example, in cases of trafficking or potential trafficking; violations within the context of migrant smuggling; refugees or refugee seekers; or based on any other humanitarian reason) is essential, to safeguard the rights of boys, girls and adolescents.

These protection considerations and the regulations of due legal process, adjusted to the specific reality of each boy, girl or adolescent, should be reflected in regulations on legal or administrative procedures relating to the rights of boys, girls and adolescents and, as the case may be, of their legal guardians.

**g. Participation and the Right to an Opinion**

Article 12 of the CRC establishes that “States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.”

In this regard, to allow for a well-informed expression of such views and wishes, it is imperative that such children are provided with all relevant information concerning, for example, their entitlements, services available, especially including means of communication, the right to consular notification (for refugee status applicants expressly requested by the boy, girl or adolescent or his or her legal guardian the principle of confidentiality should be observed), the asylum process or the process to be protected as a victim of trafficking, family tracing and the situation in their country of origin. Such information must be provided in a manner that is appropriate to the maturity and level of understanding of each child. As participation is dependent on reliable communication, where necessary, interpreters should be made available at all stages of the procedure.<sup>19</sup>

18. Inter-American Court of Human Rights. Juridical status and human rights of the child. Advisory Opinion OC-17/02, August 28, 2002, Ser. A No. 17, paragraph 71.

19. Committee on the Rights of the Child (CRC): General Comment No. 6 (2005). Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, Op. cit., paragraph 25.



20. Committee on the Rights of the Child (CRC): General Comment No. 6 (2005). Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, *Op. cit.*, paragraph 29 & 30.

21. UNHCR. Asylum Processes (Fair and efficient asylum procedures). Global Consultation on International Protection. EC/GC/01/12. May 31, 2001.

22. See UNHCR. Improving asylum procedures: comparative analysis and recommendations for law and practice, Detailed Research on Key Asylum Procedures Directive Provisions. A UNHCR research project on the application of key provisions of the Asylum Procedures Directive in selected Member States, *op. cit.*, paragraph 99.

23. See UNHCR. Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, *op. cit.*, paragraph 200.

24. Inter-American Court of Human Rights. The Case of Vélez Looz Vs. Panama. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2010 Ser. C, No. 218, paragraph 171.

25. See in this regard: UNHCR, Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers, February 26, 1999, Guideline No. 6.

26. Committee on the Rights of the Child (CRC): General Comment No. 6 (2005). Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, *op. cit.*, paragraph 63.

### **h. Confidentiality**

States parties must protect the confidentiality of information received in relation to an unaccompanied or separated child, consistent with the obligation to protect the child's rights, including the right to privacy (Article 16 of the CRC). This obligation applies in all settings, including health and social welfare. Care must be taken that information sought and legitimately shared for one purpose is not inappropriately used for that of another. In obtaining, sharing and preserving the information collected in respect of unaccompanied and separated children, particular care must be taken in order not to endanger the well-being of persons still within the child's country of origin, especially the child's family members.<sup>20</sup>

In this regard, it is essential to respect at all stages the confidentiality of refugee status applications involving boys, girls and adolescents.<sup>21</sup> Every refugee status applicant should be informed as soon as possible during the procedure, in a language that is understood by the applicant, about his or her right to confidentiality of the procedures. The interviewer should ensure that the applicant is aware that not only the interview but the entire procedure shall remain completely confidential<sup>22</sup>, with the aim of creating an atmosphere of trust for the applicant.<sup>23</sup>

### **i. Detention as a Measure of Last Resort**

Article 37 of the CRC establishes that no child shall be deprived of his or her liberty unlawfully or arbitrarily and that detention of a boy, girl or adolescent shall be used only as a measure of last resort and for the shortest appropriate period of time. In addition, international standards establish that the irregular entry of a migrant to the country should not lead to penal actions and therefore, detention should not be the rule but a measure of last resort and only for the purpose of immigration control.<sup>24</sup>

For the specific cases of boys, girls and adolescents victims of trafficking or refugee status applicants, and especially due to their extremely vulnerable situation, detention is inherently undesirable and should be seen as a measure of last resort that may only be applied when it has been established that it is absolutely necessary in a specific case<sup>25</sup>. A code of ethics of protection, assistance and non-detention should govern every interaction with boys, girls and adolescents in situations of this kind, and the primary consideration should be to ensure the best interest of the child<sup>26</sup>.





### j. Non-refoulement

Appropriate measures shall be taken to ensure that a child who is applying for 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 (Article 22, CRC). In this regard, the express prohibition of placing in any way a refugee or refuge seeker at the borders of the territories where his or her life or liberty are in danger should be respected. This principle applies to any behaviour leading to devolution, expulsion, deportation, return, extradition, rejection at the border or non-admittance, and that would place the refugee or refuge seeker in a risk situation.

Furthermore, boys, girls and adolescents that are refugee seekers should enjoy specific procedural and evidentiary guarantees to ensure that fair decisions are made in processing their refugee status applications. To this end, appropriate and safe procedures should be developed and integrated for boys, girls and adolescents, and an atmosphere of trust should be created at all stages of the process. Clearly, for this right to be effective and in order to ensure the best interest of boys, girls and adolescents the prohibition of devolution (non-refoulement) should be fully respected, and migration authorities should take care to use all available information in determining the situation or status of the boy, girl or adolescent.

The obligation of non-refoulement, which is a basic norm of international refugee law, is supported in addition by customary international law<sup>27</sup> and complemented by the prohibitions of devolution contained in and developed under international human rights law, which prohibits the expulsion of any person when there are grounds to believe that he or she will be subjected to torture or other cruel, inhuman or degrading treatment or other forms of serious harm.<sup>28</sup>

### k. Presumption of Minority

For the purposes of the CRC, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier. Some laws guarantee protection for underage persons to individuals under 21 years of age. This is not against any of the provisions of the Convention. In ensuring the best interest of the child, if in doubt whether a person is underage, it shall be presumed that he or

27. UNHCR, Note on the Principle of Non-Refoulement, November 1997, available at: <http://www.unhcr.org/refworld/docid/438c6d972.html>, and UNHCR, Declaration of States Parties to the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees, January 16, 2002, HCR/MMSP/2001/09, paragraph 4.

28. United Nations Assembly, Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, December 10, 1984, United Nations, Treaty Series, Vol. 1465, page 85, Article 3(1); United Nations General Assembly, International Covenant on Civil and Political Rights, December 16, 1966, United Nations, Treaty Series, Vol. 999, page 171, Article 7; and Organization of American States, Inter-American Convention to Prevent and Punish Torture, Article 13.



she is a boy, girl or adolescent until the contrary is proven, with the intention of ensuring under all circumstances the provision of the protection and care required for the well-being of the person.





## APPENDIX

### Toward a Regional Mechanism for the Comprehensive Protection of Migrant and Refugee Boys, Girls and Adolescents

This Appendix has been designed as a guide for discussion and dialogue within the framework of the Ad-hoc Working Group, to guide actions related to protection and assistance to migrant and refugee boys, girls and adolescents in the region. The Guide draws on discussions, recommendations and commitments generated within the framework of the Regional Conference on Migration (RCM).

The Guide suggests mechanisms for providing effective protection and comprehensive assistance to boys, girls and adolescents at all stages of the migration process, from the moment when they are identified and received in countries of destination to their return, integration and reintegration into countries of origin, always safeguarding their rights and considering their best interests. This includes actions prior to departure.

In addition, it is recommended that the actions to provide assistance to migrant boys, girls and adolescents be implemented in coordination with competent institutions specializing in boys, girls and adolescents. Furthermore, it is recommended that direct interventions that are implemented within the framework of this Guide be carried out by staff that has been trained on providing assistance to these populations.

Moreover, it is recommended that relevant efforts be aligned with civil society organizations (SCOs) and international organizations with the aim of effectively implementing the Guide. In addition, intersectoral, intra-institutional, inter-institutional, bilateral and regional coordination is required.

#### Actions to be Promoted by States within the Framework of the Mechanism

##### a. Protection Actions Before Departure

###### *a.1 Actions to identify vulnerable situations*

*Several categories of boys, girls and adolescents exist that could be considered to be particularly prone to migrating due to certain special situations that they face. States are called upon to provide appropriate conditions to ensure that these boys, girls and adolescents exercise their right to decide not to migrate or, if they decide to migrate, to do this in a humane and orderly manner.*



i. Boys, girls and adolescents living on the streets

*Public policies need to be in place in each State to prevent situations of boys, girls and adolescents living on the streets through affirmative actions at home, family integration programmes, foster homes, specialized shelters, school reintegration with appropriate education programmes and psychosocial support, and access to health care and food. In addition, States should especially prioritize the assistance to boys, girls and adolescents living on the streets in border regions.*

ii. Boys, girls and adolescents victims of trafficking

*It is essential for each State to have specific tools in place to identify boys, girls and adolescents victims of trafficking at an internal level, primarily those that are transferred from rural to urban or border areas. The Regional Conference on Migration has established clearly defined mechanisms for the identification of victims of trafficking, including indicators applicable to boys, girls and adolescents victims of trafficking that have not yet been taken across borders. As a starting point, these tools should be used in health facilities, labour inspection actions, customs screenings, border patrols, and rescue actions in maquila factories or brothels, among many others. The tools that exist at a national and local level should be implemented appropriately, not only to identify cases but above all, with the objective of providing assistance and protection in a timely manner. Any timely and appropriate intervention in national territory helps to significantly reduce the risk of revictimization.*

iii. Boys, girls and adolescents in situations of child labour and victims of the worst forms of child labour

*Migration flows are primarily composed of working age populations, including a significant number of boys, girls and adolescents that join migration processes as part of their first incursions into the labour market. Therefore, the migration of boys, girls and adolescents is closely linked to child labour and its worst forms. Due to their conditions, these populations are in much more vulnerable situations and are more prone to becoming victims of abuse, maltreatment, discrimination and violations of their rights. States need to collect and analyse sufficient data on boys, girls and adolescents that migrate for economic reasons. Furthermore, public policy and different programmes aimed at eradicating child labour and protecting working adolescents should consider the distinctive characteristics of migrant populations.*

*Indigenous working migrant boys, girls and adolescents are in especially vulnerable situations. Therefore, this issue should be addressed with a rights-based and intercultural approach. Any strategy aimed at addressing the situation of boys, girls and adolescents migrating for economic reasons, especially trans-border migration, should be multidimensional and consider the situation in a comprehensive manner, implementing coordinated efforts in countries of origin and destination. In addition, awareness-raising efforts should be implemented to inform families about the risks of child labour and to offer viable alternatives. In the countries where poverty is closely linked to child labour and migration, obstacles should*



*be eliminated that prevent migrant populations – including irregular migrants – from joining social protection programmes, such as conditional or non-conditional cash transfers, since this has proven to have an impact on the reduction of child labour.*

- iv. Boys, girls and adolescents with family members who have migrated (father, mother or primary caretaker) that stay behind in the country of origin

*Public policy on migration with a human face is comprehensive to the extent that it considers not only the migrant but also the members of the migrant's family that stay behind – especially children. The social cost of the migration of parents often leads to an imbalance in the structure or functionality of the family. For example, older children are forced to take on the inappropriate burden of caring for and ensuring the well-being of their younger siblings. Therefore, countries of origin should place special emphasis on establishing programmes aimed at building affective bonds and distributing responsibilities in a fair manner within the family. In addition, counselling programmes for boys, girls and adolescents, programmes to prevent students from dropping out of school and extra-curricular activities should be implemented, among others.*

- v. Boys, girls and adolescents whose lives, physical integrity, liberty or other basic rights are at risk.

*Boys, girls and adolescents that have suffered domestic abuse and adolescents that have been threatened by gangs or other organized crime groups are highly prone to migrating in an unplanned and independent manner and thus, without any access to emotional support or protection resources. In implementing efforts to combat the impact of widespread violence, States should pay special attention to the impact of such measures on the migration of boys, girls and adolescents, through programmes aimed at strengthening their resilience and willingness to stay in their country of origin while protecting their physical integrity.*

- vi. Boys, girls and adolescents with deceased parents

*a.2 Referral to competent State institutions in charge of providing protection to boys, girls and adolescents in vulnerable situations*

*a.3 Implementation of internal protection mechanisms for boys, girls and adolescents in vulnerable situations*



## **b. Reception of Alien Boys, Girls and Adolescents and Immediate Protection and Assistance**

From the moment of reception, it is essential to implement the “Regional Guidelines for the Preliminary Identification and Referral of Migrants in Vulnerable Situations” adopted by the Regional Conference on Migration (RCM) in June 2013, in order to provide the required protection to boys, girls and adolescents.

For unaccompanied and/or separated boys, girls and adolescents, the reception guidelines included in General Comment No. 6 (2005) of the Committee on the Rights of the Child, “*Treatment of unaccompanied and separated children outside their country of origin*”<sup>1</sup> should be implemented. For victims of trafficking, the Recommended Principles and Guidelines on Human Rights and Human Trafficking – presented to the Economic and Social Council as an addendum to the report of the United Nations High Commissioner for Human Rights Report (2002) – and the IOM Handbook on Direct Assistance to Victims of Trafficking should be considered. For refugee seekers or refugee status applicants, the guidelines included in the document entitled “*Refugee Protection and Mixed Migration: The 10-Point Plan in Action*” by the United Nations High Commissioner for Refugees<sup>2</sup> should be taken into account.

### *b.1 Initial Identification and Appropriate Protection*

Upon detecting the presence of a migrant boy, girl or adolescent in the country, relevant government authorities should prioritize identifying if the child is accompanied, unaccompanied or separated, a potential victim of trafficking or refugee seeker or in any other risk situation that requires humanitarian assistance. Urgent actions to be implemented upon detection include the following:

- i. Meet immediate assistance needs, including actions oriented toward reducing physical and psychological injuries.
- ii. Identify migrants in vulnerable or risk situations, including but not limited to unaccompanied boys, girls and adolescents; child victims of trafficking; refugees or refugee seekers; victims of labour or sexual exploitation, forced labour and the worst forms of child labour; victims of maltreatment and physical and sexual abuse, including abuse and violence as a result of discriminatory and xenophobic attitudes and practices.
- iii. Verify the identity and nationality of the boy, girl or adolescent.
- iv. Non-refoulement of boys, girls and adolescents whose lives, liberty or integrity are at risk in case of return, expulsion or rejection.

<sup>1</sup> CRC, General Comment No. 6, **Treatment of unaccompanied and separated children outside their country of origin**. Op. cit.

<sup>2</sup> See UNHCR. *Refugee Protection and Mixed Migration: The 10-Point Plan in Action*. Introduction. Geneva, 2010. Available at: <http://www.unhcr.org/cgi-bin/tehis/vtx/home/pendocPDFViewer.html?docid=4a855cd52e&query=10-Point%20Plan%20in%20action>.



- v. Boys, girls and adolescents accompanied by relatives: verify family ties and assess risks considering the best interest of the child.
- vi. Registration: Data should be recorded and documents should be issued as soon as possible. An interview should be conducted by an expert considering the age and gender of the boy, girl or adolescent, in a language that the child can understand, appropriate according to age and culturally sensitive, to confirm his or her nationality and identity as well as the identity of both parents. For unaccompanied boys, girls and adolescents, the interviewer should explore the reasons why the child has been separated or is unaccompanied and identify vulnerable situations.
- vii. Review systems to search for missing boys, girls and adolescents, including the required coordination actions with relevant States.

#### *b.2 Designating a Legal Guardian*

In order to ensure the protection of unaccompanied boys, girls and adolescents a guardian should be designated as soon as they have been identified as such, to ensure that a protection approach is implemented that is based on the boy, girl or adolescent as a full subject of rights.

#### *b.3 Family Tracing*

For unaccompanied boys, girls and adolescents, actions should be initiated as soon as possible to trace the family through the consulate, except for boys, girls and adolescents that express a well-founded fear of persecution which requires initiating the procedures for determining the status of refugee and maintaining strict confidentiality. In such cases, other suitable means should be sought to trace family members of the boy, girl or adolescent. In every case, it should be established if family tracing is the most appropriate action or not in order to ensure the protection of the best interest of the child.

#### *b.4 Determining the Best Interest of the Child*

Determining the best interest of the child through existing relevant procedures is essential in making decisions that may affect the lives and rights of migrant boys, girls and adolescents or children of migrants, in cases of unaccompanied or separated boys, girls and adolescents. This involves adopting appropriate protection actions in accordance with each specific situation and respecting the rights of the boy, girl or adolescent<sup>3</sup>. The decisions relating to family reunification, voluntary repatriation, resettlement or local integration will probably have a crucial long-term impact on the life of the boy, girl or adolescent. Before making such decisions the best interest of the child should be established to ensure that appropriate attention is paid to the rights of the boy, girl or adolescent. The following aspects should be considered:

<sup>3</sup> UNICEF – Regional Office for Latin America and the Caribbean (TACRO). Written comment by UNICEF on Migrant Children in Latin America and the Caribbean. Request for an Advisory Opinion on migrant boys, girls and adolescents submitted by Argentina, Brazil, Paraguay and Uruguay to the Inter-American Court of Human Rights. Buenos Aires, December 2013.



- The most appropriate lasting solution, and
- The right time to implement the solution.

The objective of every process to determine the best interest of a boy, girl or adolescent is to meet all his or her protection needs, to take the opinion of the child into account and to lead to a lasting solution to the situation of each boy, girl and adolescent. Actions to find lasting solutions, with a special focus on unaccompanied or separated boys, girls and adolescents, should be initiated without delay and, if possible, immediately after determining for each case if the boy, girl or adolescent is unaccompanied or has been separated from his or her family. According to criteria based on the rights of the boy, girl or adolescent, the process to find a lasting solution begins with an assessment of the possibility of family reunification (which should be considered, in general, in accordance with the best interest of the child, unless this exposes or could expose the boy, girl or adolescent to situations of abuse or neglect)<sup>4</sup>.

If it is not possible to find a lasting solution in accordance with the best interest of the child and if the boy, girl or adolescent has been integrated into his or her community, temporary assistance actions should be maintained and the case should be reviewed as soon as possible<sup>5</sup>.

### **c. Protection Actions in Integration Processes**

As established by the Committee on the Rights of the Child, integration into the host country is the primary option if the return to the country of origin is found to be impossible for legal or de facto reasons. The integration into the host country should be based on a stable legal system (including a residence permit) and should be governed by the rights stipulated in the Convention on the Rights of the Child<sup>6</sup>.

Once a decision has been made that the boy, girl or adolescent (especially unaccompanied or separated boys, girls or adolescents) shall stay in the community, relevant authorities shall assess the situation of each boy, girl or adolescent and shall subsequently determine – in consultation with the boy, girl or adolescent or his or her legal guardian – determine the appropriate long-term arrangements in the new community and other actions necessary to facilitate integration, considering the following aspects<sup>7</sup>:

- i. The stay of the boy, girl or adolescent in a specialized temporary care and protection centre should be ensured – or in a permanent centre, if the boy, girl or adolescent does not have any relatives in the country that could receive him or her (observing the principle of non-detention, as a rule).

<sup>4</sup> See CRC, General Comment No. 6, **Treatment of unaccompanied and separated children outside their country of origin**. Op. cit., paragraph 79.

<sup>5</sup> UNHCR Guidelines on Determining the Best Interest of the Child. May 2008. Available at: <http://www.refworld.org/docid/48480c342.html>

<sup>6</sup> See CRC, General Comment No. 6, **Treatment of unaccompanied and separated children outside their country of origin**. Op. cit., paragraphs 89 & 90.

<sup>7</sup> Ibid.





- ii. For unaccompanied or separated boys, girls and adolescents, appropriate provisions should be made to ensure that a legal guardian accompanies the child at all times.
- iii. The boy, girl or adolescent should have access to basic services in accordance with his or her rights (care, education, technical education, health, health care). The validation of the level of education is an essential step in the education process of every boy, girl or adolescent. In addition, special attention should be paid to other considerations in view of the vulnerable situation of the boy, girl or adolescent; for example, additional training should be provided in the language spoken in the host country.
- iv. It should be ensured that the boy, girl or adolescent obtains the adequate documents, with the objective of enabling him or her to access basic services and rights, in accordance with the best interest of the child.
- v. Access to relevant administrative and legal procedures for the protection of boys, girls and adolescents should be ensured at all times.
- vi. Access to livelihoods and comprehensive development should be ensured according to the specific situation of each boy, girl or adolescent, considering age, gender and other personal considerations.
- vii. Protection should be ensured and discrimination and xenophobia against boys, girls and adolescents should be prevented.
- viii. The option of finding an extended, foster or adoptive family should be considered for boys, girls and adolescents in the host country, if this is considered to be the most appropriate solution to ensure the best interest of the child and his or her integration in the host country. To this end, relevant national procedures should be followed.

#### **d. Protection Actions in Return Processes**

In regard to actions to implement in return processes of boys, girls and adolescents, the “Regional Guidelines for Special Protection in Cases of the Repatriation of Child Victims of Trafficking” (April 2007) and the “Regional Guidelines for the Assistance to Unaccompanied Migrant Boys, Girls and Adolescents in Cases of Repatriation” (July 2009) should be considered. Both have been adopted within the framework of the Vice-Ministerial Meeting of the Regional Conference on Migration (RCM).



#### **e. Protection Actions in Processes of Reception and Reintegration in the Country of Origin**

Given that the return to the country of origin cannot be considered if a reasonable risk exists of violations of the human rights of the boy, girl or adolescent (in compliance with the principle of non-refoulement), return could only be considered, in principle, if it is in the best interest of the boy, girl or adolescent. As highlighted by the Committee on the Rights of the Child, in order to determine this the following aspects need to be taken into account, among others<sup>8</sup>:

- i. Considering personal and public security and other aspects in the process (gender, age and culture), especially socioeconomic conditions that the boy, girl or adolescent will encounter upon his or her return. To this end, an assessment of the existing conditions in the country should be conducted.
- ii. The importance of keeping records of boys, girls and adolescents that have returned to the country, to be used in generating relevant data analyses.
- iii. Identifying immediate assistance needs and vulnerable or risk situations, including but not limited to unaccompanied boys, girls and adolescents; child victims of trafficking; refugees or refuge seekers; victims of labour or sexual exploitation, forced labour and the worst forms of child labour; victims of maltreatment and physical and sexual abuse, including abuse and violence as a result of discriminatory and xenophobic attitudes and practices.
- iv. The interventions should be conducted considering age and gender of the boy, girl or adolescent, in a language that he or she can understand and in a culturally appropriate manner.
- v. The existence of mechanisms to provide individualized assistance to boys, girls and adolescents.
- vi. The opinions of the boy, girl or adolescent and their caretakers should be taken into account.
- vii. The degree and characteristics of the integration of boys, girls and adolescents in the country of destination from which they return and the length of absence of their country of origin, in order to determine their real needs in the reintegration process.
- viii. The right to maintain their identity, including nationality, name and family ties.
- ix. The desirability of continuity in the upbringing of the boy, girl or adolescent and considering the ethnic, religious, cultural and linguistic background of the boy, girl or adolescent.
- x. If the parents or members of the extended family are unable to care for the boy, girl or adolescent, the return to the country of origin should not be implemented, in principle, without prior

<sup>8</sup> Ibid, paragraphs 84-88.



safe and specific arrangements to ensure assistance and guardianship of the boy, girl or adolescent upon his or her return to the country of origin.

- xi. Tracing the family, always considering the best interest of the child.
- xii. The importance of designating a legal guardian if family members are unable to take on this role.
- xiii. In the same manner as in integration processes in countries of destination, access to livelihoods and comprehensive development should be ensured in the reintegration process into the country of origin, in accordance with the specific situation of each boy, girl or adolescent and considering age, culture, gender and other personal conditions. In addition, protection should be ensured and discrimination and xenophobia against returned boys, girls and adolescents should be prevented.
- xiv. The reintegration of boys, girls and adolescents should be regularly monitored during a determined period of time, in accordance with relevant programmes established by competent national institutions.

