

MIGRATION, CHILDREN AND HUMAN RIGHTS: CHALLENGES & OPPORTUNITIES

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This is a working document. It has been prepared to facilitate the exchange of knowledge and to stimulate discussion.

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“Migration should be positioned within the context of a human rights framework that provides protection for all children, adolescents and women affected by migratory processes. States that are parties to international human rights treaties are obligated to offer protection to the rights of non-nationals as well as direct protection to children as long as they remain in their territory.

“Whether on their own or with family, children are increasingly becoming migrants in search of survival, security, improved standards of living, education or protection from abuse. Also affected are children left behind by one or both parents and children living in areas with high migration rates. Policies should take cognizance of how migration affects these children and protect their rights by enhancing access to benefits of migration while simultaneously protecting against vulnerabilities.”

(Global Migration Group, 2008:52-3)

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KEY MESSAGES & RECOMMENDATIONS

KEY MESSAGES:

- **All stakeholders¹ should adopt a Comprehensive Rights-based Approach** that addresses the entire process of migration² from a child, gender, and non-discrimination perspective in order to effectively address children and adolescents' needs and rights within the migration-development nexus. In particular, this approach should address:
 - **Development policies in countries of origin to ensure that migration is a choice, not a necessity** (e.g. poverty reduction strategies, adolescent education, access to employment, childhood protection programs, etc.);
 - **Border control measures in transit and destination** (e.g. avoid child migration-related detention, involve child protection officers in migration control procedures, ensure the best interests of the child in procedures of reunification, repatriation, and acquisition of a residence permit);
 - International policies (development, cooperation, trade, investment, etc.) meant to ensure human and sustainable development to every human being, and migration;
 - Policies based on human migration patterns in each region, including child mobility and irregular migration, that seek to facilitate regular avenues for migration; and
 - **Social and economic policies in countries of destination** (e.g. policies on education, health care, social security, labour, juvenile justice, family life, sexual and reproductive health, etc.).
- **A comprehensive rights-based approach must address the two main policy gaps (a double deficit) that exist within current legislation and policies:**
 - The absence of a child rights-based perspective in migration policies and legislation in countries of origin, transit, and destination; and
- The absence of a migrant perspective (namely, accounting for the specific needs and conditions of migrant children and adolescents) in childhood policies meant for the protection and promotion of children's rights.
- **The Concluding Observations and General Comments or Recommendations of Human Rights Treaty Bodies (e.g. CRC, CEDAW, HRC, CESCR, CERD) should serve as key references** for designing and implementing a comprehensive rights-based approach to migration and development policies.
- **Policy Coherence is essential within a comprehensive rights-based approach** in relation to the migration-development nexus. This includes not only gathering data, identifying best practices, and developing institutional reform plans, but also ensuring coherence among policies designed in different areas of each government, including those promoted at the international level.
- **A comprehensive rights-based approach should address the root causes of migration**—namely rights deprivations suffered by migrants, particularly children and adolescents, in their country of origin. Root causes constitute one of the cornerstone issues that must be fully addressed in order to achieve effective, durable, and legitimate responses to challenges linked to international migration. States should introduce an age, gender, and non-discrimination rights-based approach to the root causes of migration. This approach should explicitly create and ensure basic conditions in countries of origin to guarantee the “right to *not* migrate” both for children and their families. A gender perspective within this approach is indispensable, as there have been a rising number of women migrating due to gender disparities in their origin countries and within labour markets in destination countries. A non-discrimination and inclusive perspective is crucial to understand how migration affects those who are most marginalised and discriminated.
- **Causes of irregular child and adolescent migration, both in cases of children and adolescents who migrate with their parents and unaccompanied, should be given special attention** in debates, discussions, and initiatives to address the root causes of migration. Irregular migration is closely linked to restrictive laws in countries of destination, lack of avenues for regular migration, extreme vulnerability in countries of origin, absence of information, and, cross-cutting the aforementioned factors, increased human trafficking and smuggling networks.

¹ This includes states, i.e. all levels of government, regional, and international organizations, civil society, non-governmental organizations, and the private sector.

² This includes migration within and between both developing and developed countries.

- **A comprehensive rights-based approach to migration requires adopting a holistic notion of development, in which both the right to development and the notion of sustainable development are critical components.** States have a duty to ensure the right to development to everyone (which entails the full realization of all human rights). The commitment to guarantee sustainable development (with its three pillars of economic development, social development, and environmental protection) should be fully incorporated into a comprehensive approach to addressing the migration-development nexus.
- **Children and adolescents left behind by migrant parents should receive particular attention in public policies.** In many cases, states do not account for the special situation of children and adolescents left behind nor ensure that public policies address their particular needs and vulnerabilities. The realisation of their human rights, including their right to development, requires that states, as key duty-bearers under international law, design and implement legislation and policies aimed at respecting, protecting, and fulfilling such rights.
- **Deep revision is needed of existing migration laws and policies that may affect migrants in order to incorporate a child, gender, and non-discrimination-perspective as well as implement the provisions of the CRC, CEDAW, and other human rights treaties.** During this revision process, which is needed in countries of origin, transit, and destination, the following core principles should be fully recognized for all migrants, especially children and adolescents, as well as children born to migrants in countries of destination: Universality, Non-discrimination, Best Interests of the Child, and Gender Equality.
- **In the context of the current economic crisis, a comprehensive approach to migration should address the impacts of decreased remittances and reduced employment in countries of origin.** Policies and programmes that support and protect children and adolescents (including social protection, basic health care and nutrition, education, and child protection services) must be maintained and, where possible, expanded to accommodate households in at-risk areas severely impacted by diminishing remittance flows.

KEY RECOMMENDATIONS:

The following are recommendations for countries of origin, transit, and destination that should be considered by states with a comprehensive rights-based approach in order to effectively address the circumstances of children and adolescents affected by migration, whether within their own country or between both developing and developed countries.

Countries of origin, transit, and destination

- Ensure a comprehensive and coherent rights-based approach to migration and development policies, including a child, gender, and non-discrimination perspective
- Include adequate provisions in general laws to ensure that all children have an equal right to protection and support, regardless of their nationality or immigration status and in accordance with the CRC
- Build up or strengthen data on international migrants, including gender and age dimensions

Countries of origin

- Tackle root causes of migration, including irregular migration, ensuring that child and gender dimensions are considered
- Develop policies to address the specific vulnerabilities of children and adolescents left behind and ensure their rights, particularly their economic, social, and cultural rights, including their right to development
- Ensure participation of children and adolescents left behind in policies that affect them, especially those programmes meant to ensure their rights, including their right to reunite with their parents in the host country.

Countries of transit

- Develop or strengthen strategies that advocate for a child rights-based approach to the design of policies that aim to ensure migrants' rights while they are in transit to another country
- Develop policies and practices to address mixed migration flows
- Develop and strengthen measures aimed at preventing the increasing number of deaths of migrant adults and children during transit
- Facilitate cooperative work by institutions in countries of transit with those located in countries of origin and destination

Countries of destination

- Guarantee the economic, social, and cultural rights of migrant children and adolescents and their right to family
- Ensure the inclusion of migrant children in childhood policies
- Strengthen a rights-based approach, with child and gender dimensions, to international development cooperation policies
- Prevent detention and criminalization of migrant children and adolescents
- Avoid deportation of children and adolescents, both unaccompanied and with their parents, as a punitive measure

- Ensure family reunification of unaccompanied children and adolescents, either in the country of origin or destination, according to their best interest
- Create regularization policies to facilitate family reunification
- Involve child protection officers, trained with a rights-based approach, in migration policies that may impact children and adolescents, both unaccompanied and with their parents
- Develop indicators on migrants' rights within the enforcement of migration control policies
- Address discrimination, including racism and xenophobia
- Review policies adopted at the bilateral or international level that may negatively impact development and human rights in developing countries, i.e. policies that impact the root causes of migration

States, regional and international organizations, civil society and non-governmental organizations

- Work together to narrow the protection gap for **unaccompanied migrant children** by:
 - Reforming law and policy;
 - Improving data collection, research, and evaluation;
 - Developing practical tools to support member states; and
 - Funding relevant organizations, actors and projects.³

³ See General Recommendations for EU Action in relation to Unaccompanied and Separated Children of Third Country Origin, Save the Children, UNHCR, IOM and UNICEF, Brussels, September 15, 2009.

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1. Background

1.1. Overview

General migration statistics

International migration flows have increased substantially over the past decades. Today, an estimated 214 million migrants⁴, nearly three percent of the world population, live outside their country of birth. Despite the lack of accurate and disaggregated data⁵, it is well known that this figure includes millions of migrant children and adolescents, who have either migrated with their parents or unaccompanied. There are also a significant number of children, up to 18 years of age⁶, who are affected by migration—either directly or indirectly.⁷

Migrants under the age of 20 constitute the largest group within the total migrant population in Africa (27%), followed by the Caribbean, Central and South America (19%), Asia (17%), Oceania (15%), and Europe and Northern America (11%). There are regional variations among migrants under 20 years of age. In Europe & Northern America, Africa and Oceania, 15 to 19 year-olds represent 39, 34, and 32 percent of the total migrant population under the age of 20, respectively. In Asia, 10 to 14 year-olds represent 26 percent of all migrants under 20, while in Latin America and the Caribbean, 5 to 9 year-olds account for 27 percent of the total migrant population under 20 years of age.⁸

Causes of migration

In general, migration is a strategy by which individuals and families can escape exposure to risk by moving to a safer region or country. The main causes of migration, both South-South and South-North, are intrinsically linked to human rights deprivations in countries of origin, such as poverty, inequalities, gender-based discrimination, and lack of opportunities. Additionally, migrants may be escaping various kinds of abuse and violence, as well as armed conflict.⁹ Indeed, while states are primarily responsible for the human rights of individuals within their jurisdictions, effective realization of these rights increasingly

⁴ The term "migrant" is understood to mean "any person who lives temporarily or permanently in a country where he or she was not born, and has acquired some significant social ties to this country" (UNESCO, Glossary: Migrants and Migration). Thus, the term "migrant" includes those who enter a country irregularly, through trafficking or fleeing from human rights violations, as well as immigrants who are regularly and permanently present in a country.

⁵ See, for instance, PICUM (2008), Special Rapporteur on the Human Rights of Migrants (2009), and Yaqub / UNICEF (2009).

⁶ As UNICEF's mandate is strongly linked to the Convention on the Rights of the Child, this document employs the definition in Article 1, in which the term "children" involves any child and adolescent under the age of 18 years.

⁷ Both adults and children are affected by the migration process based on their decision to migrate to another country in the short and long term. Notwithstanding, we acknowledge that migrants and their families are also affected by migration law, policies, and practices in countries of origin, transit, and destination, which may impact their lives, rights, and opportunities.

⁸ This data is from the UN Global Migration Database (<http://esa.un.org/unmigration>), which is a joint work of UNICEF with UN/DESA and the SU/SSC. Much of the data comes from national censuses, and most countries report population data in 5 year intervals. For this reason, for many countries, data is available for age groups 0-4, 5-9, 10-14 and 15-19.

⁹ For these reasons, it has been repeatedly emphasized that deprivation of human rights in countries of origin is a foremost migration push factor (see, among others, GMG, 2008; OSIWA, 2008; Save the Children, 2008; UN Economic Commission for Africa, 2006; UN Economic Commission for Latin America and the Caribbean, 2007; UN Committee on ESCR, Concluding Observations on Bolivia, and The Philippines, 2008; UNICEF TACRO, 2006).

depends on policies and decisions adopted at several interconnected levels, including the regional and international level.

Migration is also a private coping strategy that presents opportunities for migrants and their families (e.g., increased income, access to employment, improved standard of living, and remittances that provide individuals and families with greater access to private/public social insurance schemes). However, the fulfilment of such opportunities is often constrained by a number of factors in countries of transit and destination: “[I]mproved financial status may prompt a family or some members of it (particularly adolescents) to use their resources to try and migrate in search of new opportunities”. Accordingly, it is important, “to make sure that programmes aimed at increasing family income are accompanied by initiatives designed to ensure that improved financial status does not become a ‘passport’ to unsafe migration” (ILO-UNICEF, 2009b).

In this context, the Special Rapporteur on the Human Rights of Migrants has highlighted that “the potential benefits of migration may be eroded for both undocumented children and children with an irregular status, who are exposed to the denial of rights” (2009:22). Indeed, even when a migration project becomes very positive (i.e., when it facilitates access to regular residence, decent employment, and other basic rights, as well as the ability to send remittances to relatives who have remained in country of origin), most of migrants should have had equal opportunities and access to all their basic rights in their country of origin. In other words, despite the positive outcomes of migration, the root causes of migration have forced migrants to migrate out of necessity, and often as a last resort.

Constraints on the rights of migrant adults, adolescents, and children

Children and adolescents may be at greater risk than adults of experiencing rights constraints and violations due to factors either directly or indirectly linked to migration, including migration law and policies. Indeed, the Special Rapporteur on the Human Rights of Migrants has stressed the particular vulnerability of children and adolescents in the context of the entire migration process, particularly those who are undocumented and unaccompanied (Special Rapporteur on the Human Rights of Migrants, Human Rights Council, 11th Session, A/HRC/11/7, 14 May 2009). In cases where migration becomes a survival strategy, migration from the poorest households may include younger family members in more vulnerable situations (Arjan de Haan, 2009). Additionally, children and adolescents crossing international borders, mainly females, may be especially vulnerable to trafficking, abuse, sexual violence, and exploitation. Overall, children and adolescents affected by migration have to cope with many constraints to their basic rights. The fundamental problem they face is their *invisibility* or the general absence of a child perspective within migration laws and policies, as well as childhood policies, which results in the deprivation their rights (in countries of origin, transit, and destination), discrimination, and even exploitation.

On a separate note, it is often stated that international migrants are not among the poorest within their communities. Indeed, in many cases, those who are most excluded or suffer extreme poverty (namely, deprivation of all their human rights) are usually not able to migrate, or they are barely able to move within their province or country. Those who have the chance to migrate to, for instance, Europe or North America, especially through regular channels, usually have better access to resources. However, in millions of other

cases, migrants have been part of the most excluded groups in their countries of origin, especially in the context of South-South migration between neighbouring countries. Statistics on illiteracy, educational background, and the health condition of migrants may serve as indicators of such deprivations and exclusion.

Overall, while the decision to migrate (or not), and where to go, may vary according to several factors (e.g., geographical location, personal prerogative, family ties, costs, migration laws, etc.), the vast majority of migrants have suffered some kind of constraint on their rights in their country of origin, as it will be highlighted below.

Irregular migration as the only option for many migrants

Due to the rights constraints faced by migrants in their country of origin, as well as other factors such as the absence of regular avenues for migration, as well as migrants' socio-economic condition and skills, irregular migration may be the only way that many people are able to utilize migration as a survival strategy. Unfortunately, the level of danger and abuse attributed to irregular migration exacerbates the vulnerability of these migrants (i.e. thousands of migrants die every year around the world, and others, particularly children, adolescents, and women, fall into trafficking networks and face exploitation and abuses). Furthermore, upon arrival to the country of destination, many migrants are still subject to rights constraints, such as discrimination and xenophobia, despite the positive outcomes of migration, such as access to employment, housing, and other social rights (e.g., education for their children).

Unaccompanied child and adolescent migration

In some regions, migration, including child and adolescent migration, has been a historical and traditional strategy or practice. In many cases, the decision to migrate is a result of family and community planning, in which children and adolescents play an active role. For instance, child mobility in West Africa is considered both a historical phenomenon and a solution, not a problem (see Massart, 2009; Ndao, 2009). Nevertheless, whether in the case of unaccompanied migrant children and adolescents, migrant families (especially irregular migrant families who migrate due to a lack of opportunity), and children and adolescents left behind, migration is almost always linked to rights deprivations in the country of origin.

1.2. Goals and Approaches of this Paper

In general, this paper argues that in order for current debates, discussions, and initiatives to effectively address children and adolescents' needs and rights within the migration-development nexus, all stakeholders should adopt a comprehensive rights-based approach that addresses the entire process of migration from a child, adolescent, gender, and non-discrimination perspective. More specifically, this paper has two main purposes:

- 1) It aims to contribute to current discussions within the Global Forum on Migration and Development (GFMD) in order to highlight: (i) the particular situation of children and adolescents within the migration-development nexus and, (ii) the significant gaps within legislation and policies that inhibit the formulation of effective and rights-based responses relating to children, adolescents, and migration; and

- 2) Through this paper, UNICEF seeks to become increasingly involved in the current initiatives of states, civil society, UN agencies, and other stakeholders, which aim to develop and implement public policies and legislative reforms that ensure the respect, protection, and fulfilment of the rights of all migrant children and adolescents and others affected by migration, irrespective of their migration status.

Box 1: The Convention on the Rights of the Child and Other Human Rights Treaties Concerning Children in the Context of Migration

Human rights treaties as well as standards produced by universal and regional human rights mechanisms are essential for evaluating the degree to which states have fulfilled their human rights duties within migration and migration-related policies. Notably, the Convention on the Rights of the Child is the central reference regarding children's rights. While the CRC must be applied universally (i.e. without any discrimination based, for instance, on the nationality or migration status of the child or his/her parents), the effective realization of children's rights in the context of migration is one of the most serious challenges currently faced by the Convention. Indeed, periodic observations made by the Committee on the Rights of the Child (as well as by the CESCR, CERD, CEDAW, CMW, and HRC) confirm the gravity and magnitude of constraints on migrants' rights. These constraints have a considerable impact on children and adolescents, particularly when they or their parents are undocumented migrants in countries of transit and destination.

The International Human Rights Framework

As the title of this paper suggests, the situation of children and adolescents within the context of migration and development will be examined using the international human rights framework. This approach is utilized on the basis of several rationales (see **Box 2** for further rationale, including the rationale for the use of this approach for migration policies in host countries):

- 1) It provides a legal structure with an established set of obligations and duty-bearers;
- 2) UN agencies, such as UNICEF, have a mandate and commitment to promote a rights-based approach both in their initiatives and in the childhood policies for which they advocate;
- 3) It enhances development and emergency work by approaching issues not solely from a needs-based approach, but from a more holistic and sustainable rights-based approach (Jonsson/UNICEF, 2003); and
- 4) The main objective of policies and programmes should be to fulfil human rights (OHCHR, 2006).

Outline of this paper

Essentially, through this paper, UNICEF intends to contribute to the improved visibility of children and adolescents' rights within the migration and development nexus. **Section 1** will conclude with a brief description of the categories of children and adolescents affected by migration, and **Section 2** will highlight the two main policy gaps regarding children and adolescents in the context of migration.

Section 3 will outline the approach espoused by this paper—a comprehensive, rights-based approach to migration from a child, gender, and non-discrimination perspective. Sections 3.1-3.5 will discuss the particular importance of this approach in: (1) effectively addressing the root causes of migration; (2) employing a comprehensive notion of development; (3) addressing the rights of children and adolescents left behind; (4) ensuring a gender and diversity sensitive child-rights perspective in migration policies in countries of transit and destination; and (5) conceiving strategies for legislative and policy reform.

The last section of this paper, **Section 4**, will provide a set of recommendations aimed at developing or strengthening public policies in order to ensure a comprehensive, rights-based approach to children and adolescents’ needs and rights in the context of migration and development.

Box 2: Human Rights, Migration & Public Policies in Democratic Societies

Ensuring migrants’ rights is a multiple-win situation for several reasons:

1. Guaranteeing the human rights of all persons within states’ jurisdictions is key for the legitimacy of public policies: “[they] lend moral legitimacy and the principle of social justice to the objectives of human development”;
2. As democracy is defined by human rights, and human rights are a substantive dimension of democracy, then fulfilling migrants’ rights strengthens and legitimates democracy;
3. Human Rights and Rule of Law are inseparable and complementary;
4. Democracy, development, and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing;
5. Rights of migrants are a *sine qua non* condition for social and equal integration in host societies;
6. Such rights-based integration is an important tool for guaranteeing social cohesion;
7. Ensuring migrants’ rights prevents social exclusion, poverty, and disparities among members of society;
8. Public policies aimed to fulfil human rights for everyone within a society are a key component of either reaching or reinforcing human and sustainable development in the medium and long-term;
9. While child rights-based public policies are absolutely critical for ensuring sustainable development, there must also be a child-perspective within migration policies;
10. Protection of migrants’ rights increases their contribution to countries of origin through remittances to their families; and
11. Last, but not least, attention to human rights concerns plays an important, instrumental role in advancing economic goals of equity and efficiency, as well as poverty reduction.

Sources: De Lucas, 1994; Ferrajoli, 2005; Mahanl and Marks, 2007 ; UNDP, 2000; Vazquez, 2002

1.3. Categories of children and adolescents affected by migration

It is first necessary to identify the diverse groups of children and adolescents affected by migration and the diverse ways in which migration can impact their lives and rights either positively or negatively.

Children and adolescents left behind in countries of origin

Many migrants leave their children in the country of origin¹⁰, while they migrate (either temporarily or permanently) to another country, which impacts children in a variety of ways (UNICEF, 2008a). Family members who stay behind, most notably children, may be at risk of losing substantial access to social protection. For instance, restrictions in host countries can impede or delay family reunification, and the migration of a family member can also leave a family without insurance, in cases where insurance is linked to the migrant family member's employment. In some host countries, children left behind may be relatively ignored by governmental agencies because they are considered privileged in comparison to children who do not receive remittances. As a result, children left behind are not considered a part of the main target groups of traditional social protections.

Unaccompanied migrant children and adolescents

The Committee on the Rights of the Child has stated that unaccompanied children are those "children, as defined in article 1 of the Convention, 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" (Committee on the Rights of the Child, 2005: para. 7).¹¹ Within this definition, the Global Migration Group (GMG) further classifies unaccompanied migrant children into four broad categories, defined by purpose of travel:

- a) Children who travel in search of opportunities, whether educational or employment related;
- b) Children who travel to survive – to escape persecution or war, family abuse, dire poverty;
- c) Children who travel for family reunification – to join documented or undocumented family members who have already migrated; and
- d) Children who travel in the context of exploitation, including trafficking (GMG, 2008:7).

¹⁰ In the Philippines, there are around three to six million (10 to 20 percent) children left behind, one million in Indonesia, half a million in Thailand. Around 218,000 Ecuadorian children had at least one parent living abroad in 2005 (UNICEF, 2008).

¹¹ "Unaccompanied children" (also called unaccompanied minors) are children, as defined in article 1 of the Convention, 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 (Committee of the Rights of the Child, General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, 1 September 2005, p. 7).

Separated children and adolescents

According to the CRC Committee (2005, para. 8), separated children are “children, as defined in article 1 of the Convention, who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. This may, therefore, include children accompanied by other adult family members”.¹² Their reasons for migrating may be similar to unaccompanied children, and on many occasions, relatives accompany separated children to help them reunite with their parents.¹³

Children and adolescents who migrate with their families

Despite the fact that many migrant adults still leave their children behind in their country of origin (either temporarily or permanently¹⁴), there has been an increase in the number of adults who migrate with all or some of their children (Save the Children, 2008). In these cases, the decision to migrate is made by the parent(s), without necessarily consulting the child.

Children born to migrant parents in the country of destination

Regardless of whether they have been granted citizenship in the country where they were born (based on either the *Ius Solis*¹⁵ principle or legal duties for preventing statelessness), children born in destination countries (that is, children who are not migrants) may be affected in several ways by migration laws and policies. They may suffer family separation due to the deportation of one or both parents based on their migration status. Additionally, policies and practices may restrict their access to certain rights (e.g., education, health care, birth certification, and access to a name and a nationality) due to their irregular migration condition or that of their parents. Furthermore, the extent to which the human rights of migrant parents are respected may be critical for the well being of the entire family. Finally, children born in countries of destination may be impacted by integration policies and increasing xenophobia and racism, even when they are nationals of the destination country.

2. Policy Gaps

The rights of all children and adolescents affected by migration processes are a matter of growing concern for the global community. Despite the fact that governments, policy-makers, UN agencies, academia, and civil society organizations have gradually begun

¹² See Committee of the Rights of the Child, General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, 1 September 2005, p. 8.

¹³ See, for instance, European Court of Human Rights, *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, 2006.

¹⁴ It should be stressed that temporary migration is becoming permanent because of different factors, such as the continued existence or aggravation of the structural causes that prompted their initial temporary migration from their country of origin. Also, migrants have remained in the destination country due to increasingly restrictive migration laws and policies in host countries (International Migration Institute, 2009). Along with the obstacles to or impossibility of applying for family reunification, these circumstances may severely impact children left behind, particularly their right to family life and their decision to migrate irregularly (UNICEF, 2008d:40).

¹⁵ *Ius Solis* is one of two main ways of acquiring nationality, meaning that a person is entitled to acquire the nationality of the country where he/she is born. The other main principle (*Ius Sanguinis*) entails the acquisition of one's nationality based on the nationality of one's parents. Some countries adopt either the *Ius Solis* or *Ius Sanguinis* criterion, while others utilize both criteria.

to include the issues of children and migration on their agendas, there are still a great deal of challenges and perspectives that have not been taken into account. In particular, there are two significant policy gaps, or a *double deficit*, that should be considered:

a) A child rights-based perspective is generally absent from migration policies in countries of origin, transit, and destination. The Special Rapporteur on the Human Rights of Migrants has asserted that there is a general absence of an “age” approach in migration policies (Special Rapporteur on the Human Rights of Migrants, 2009; Bhabha-UNICEF, 2008; UNICEF TACRO-UNLa, 2009). Until recently, migration has been discussed mainly in terms of adult male movement, and migrant children have been considered dependents—passive, vulnerable, and exploited (Touzenis/IOM, 2008). Indeed, the Special Rapporteur has affirmed that children affected by migration may suffer rights deprivations and abuses that are different from those suffered by adults, and a lack of distinction between adults and children in migration policies may imply the denial of migrant children’s rights (Special Rapporteur on the Human Rights of Migrants, 2009).

The absence of a child rights-based perspective is particularly prevalent in transit and host countries. As will be described below, arbitrary detention and deportation of migrant children, the deprivation of their human rights (such as education and health care), and the lack of integration policies focused on adolescents (both nationals and immigrants) is evident in several countries. Additionally, bilateral agreements signed with countries of origin, on issues such as circular migration, repatriation, and joint border controls, also reveal a lack of child and adolescent-sensitive policies regarding migration management and control at both national and international levels. This invisibility of children is accompanied by a general lack of data on international migration, particularly data disaggregated by age and data on undocumented migrant children and adolescents.

b) Childhood policies, meant for the protection and promotion of children’s rights, have not taken into account the specific conditions and needs of migrant children.¹⁶ In general, the invisibility of migrant children within childhood policies may impact the scope of opportunities for and general well being of migrant children and adolescents (and those of migrant background) in the short and long run. It may also indicate whether or not an integration policy exists in a host society.

This invisibility is particularly evident in transit and destination countries, particularly in regard to juvenile justice policies and social policies related to children and adolescents (e.g., education, school dropout rates, adolescent employment and training programs, language barriers, birth registration obstacles, anti-child exploitation programs, and domestic workers’ protection). In countries of origin, many childhood policies do not promote job opportunities for adolescents, and development policies often do not account for child and adolescent migration (neither children nor adolescents who migrate with families nor those who migrate unaccompanied, regularly or irregularly).

¹⁶ Based on this gap, UK civil society has advocated for the government expression “Every Child Matters” in order to push for the inclusion of migrant children in public policies concerning children.

3. The Need for a Comprehensive and Coherent Rights-based Policy Approach to Migration, with an Age, Gender, and Non-discrimination Dimension

A comprehensive rights-based approach should address the entire process of migration, starting with the root causes in the country of origin and taking into account age, gender, and non-discrimination perspectives. In this regard, the Human Rights Council has recently stated that:

[P]olicies and initiatives on the issue of migration, including those that refer to the orderly management of migration, should promote holistic approaches that take into account the causes and consequences and challenges and opportunities of the phenomenon and full respect for the human rights and fundamental freedoms of migrants, with due regard for the specific needs of children in vulnerable situations, such as unaccompanied children, girls, children with disabilities and those who may be in need of international refugee protection.¹⁷

The Special Rapporteur on the Human Rights of Migrants has adopted a similar position (see **Box 3**).

Box 3: A rights-based approach to child-related migration policies

The Special Rapporteur on the Human Rights of Migrants has strongly encouraged states to, “mainstream a child rights-approach to migration into national plans, programmes and policies”, adopt a human rights-based approach in all policies and programmes aimed at addressing the situation of children in the context of migration, and “consider the impact of migration on children in the elaboration and implementation of national development frameworks, poverty reduction strategies, human rights plans of action¹, and programmes and strategies for human rights education and the advancement **within** of the rights of the child. States are also encouraged to adopt and develop programmes and policies to address significant gaps remaining in social policies and other areas where the protection of the migrant child is yet to be mainstreamed”.

Source: Special Rapporteur on the Human Rights of Migrants, 2009:81-83

At the 3rd meeting of the GFMD (Athens, November 2009), Session 1.1 focused on “Mainstreaming migration in development planning—Key actors, key strategies, key actions”. As the Special Rapporteur on the Human Rights of Migrants has stressed, children are undoubtedly *key actors* in the entire process of migration. Within this context, it is critical to ensure a child and adolescent-perspective within a comprehensive rights-based approach to the following types of migration and development policies and initiatives:

¹⁷ Human Rights Council, *Human Rights of Migrants: migration and the human rights of children*, Resolution A/HRC/12/L.16, October 1st, 2009.

- Social and economic policies in countries of destination (e.g., policies on education, health care, social security, labour, juvenile justice, family life, sexual and reproductive health, etc.);
- Development policies in countries of origin aimed at preventing migration as a necessity (e.g. poverty reduction strategies, adolescent education, access to employment, childhood protection programs, etc.);
- International policies (development, cooperation, trade, investment, etc.) meant to ensure human and sustainable development to every human being, including migrants;
- Policies based on human migration patterns in each region, including child mobility and irregular migration, aimed at facilitating regular avenues for migration; and
- Border control measures in transit and destination countries (e.g., avoiding the migration-related detention of children; including child protection officers in migration control procedures; ensuring the best interests of the child both in procedures of reunification, repatriation, and acquisition of residence permits).

Policy coherence, which has been discussed during GFMD debates and was further considered in Athens 2009 (Roundtable 3), is a critical component of a comprehensive rights-based approach to migration and development. Policy coherence should imply not only gathering data, identifying best practices, and developing institutional reform plans, but also requires ensuring consistency among policies designed in different areas of each government, including those promoted at the international level. For instance, while developing states may design policies aimed at improving the human development and well being of persons within their jurisdiction, these policies will not be effective unless states also design policies to tackle corruption and avoid armed conflicts, as well as prevent persecution and discrimination of groups within their society. Similarly, migration management policies in developed countries are affected by bilateral and global level trade regulations that increase disparities between and within countries and regions, forcing people to migrate out of necessity.

The human rights framework is a fundamental way to address policy incoherence. That is, international human rights principles (i.e. non-discrimination, best interests of the child, progressiveness and universality, and child development) should guide the design or reform of such policies, and standards provided by international human rights bodies (e.g. CRC, CESCR and CEDAW) should represent the minimum level of protection ensured by those policies (see **Box 4**).

Box 4: Database on Human Rights, Children, and Migration

The database recently constructed by UNICEF and the National University of Lanús (UNLa) compiles the elements of the Concluding Observations of UN Human Rights Committees (CEDAW, CESCR, CMW, CRC, and HRC) concerning children, human rights, and migration. This collection confirms the relevance of the human rights of children throughout the entire migration process—i.e. from the root causes of migration to migrant children and adolescents' rights in countries of transit and destination. The observations of these Committees can be seen as key practical guidelines for: 1) envisaging whether or not policies, practices, and laws are aligned with international standards; and 2) drawing a comprehensive rights-based map on migration, children, and development, with a gender dimension.

Source: www.hrcam.org

As the following sections will illustrate, a comprehensive rights-based approach to migration and development should, as a minimum, include the following components: 1) attention to the root causes of migration, including irregular migration; 2) adoption of a comprehensive notion of development; 3) guarantee of a rights-based approach in countries of transit and destination; and 4) creation of a set of initiatives aimed at legislative and policy reform that guarantee a child, gender, and non-discrimination dimension.

3.1. Addressing the Roots Causes of Migration

Session 1.3 of the 2009 GFMD meeting in Athens discussed “Addressing the root causes of migration through development, specifically in light of the current global economic crisis”. This conversation was significant given that root causes constitute one of the cornerstone topics that must be fully addressed in order to achieve effective, durable, and legitimate responses to challenges linked to international migration. Children and adolescents are among the main groups affected by such root causes, and accordingly, a comprehensive right-based approach requires adopting a child and adolescent perspective.

An examination of the root causes of migration

A holistic examination of the *root causes of migration* should include an assessment of the following types of issues:

- Poverty or unemployment resulting from the weakness or unwillingness of states of origin to ensure human rights for everyone within their jurisdiction;
- The effects of unequal human development and rights deprivations, stemming from such factors as international trade rules, structural adjustment programs, and debt bondage;
- Low wages, high levels of unemployment, structural poverty, and lack of opportunity, as the main economic factors that fuel out-migration (African Union, 2006; Robinson, 2004);

- Gender inequity within public policies, including development policies;¹⁸
- Disparities between rural and urban areas, especially within developing countries, evident in public policies that contradict international human rights standards, particularly regarding equal access to economic, social, and cultural rights¹⁹.
- Absence of international policies aimed at avoiding international economic asymmetries, agricultural subsidies that may impede fair competence and trade at the global level, and the consequences of a lack of sustainable development and structural poverty (South American states Declaration, Montevideo, 2008);
- Consequences of international armed conflicts, in particular their impact on children and adolescents;
- The lack of coherence in development policies, cooperation among agencies, and use of a rights-based approach, as well as the impact of these issues on children and adolescents;
- The impact of climate change on policies and practices concerning the right to a sustainable environment, as well as the absence of policies aimed at ensuring the human rights of those most vulnerable to climate change; and
- International and national disparities that impact the rights of the majority of children and adolescents around the world, particularly the violation of their right to life, survival, and development, without any discrimination (Art. 6, CRC).

Ensuring the right to *not* migrate

The world distribution of opportunities is extremely unequal, and this inequality is a key driver of human movement (UNDP, 2009). Indeed, it has been repeatedly stressed that human rights deprivations (economic, social, cultural, civil, and political) are among the main causes of migration. Evidence from many countries and regions of the world confirms this problem (see, e.g. Belguendouz, 2009; ECLAC, 2007; Fion de Vletter, 2006; Grant, 2005; Lahlou, 2005). In particular, the lack of opportunities in communities of origin has been the most prominent motivation for the migration of families and their children. Hence, a critical issue to be addressed with a comprehensive rights-based approach from child, adolescent, gender, and non-discrimination perspectives is how exactly to ensure the “right to *not* migrate” both for children and their families and ensure, as a corollary, that migration is undertaken as a choice, not a necessity. A gender perspective within this approach is particularly important, as there are a rising number of women migrating due to gender disparities in their country and due to gender disparities within labour markets in destination countries.

International processes may also impact the development and human rights of people in countries of origin, thereby affecting their need to migrate or not. Indeed, at the World Conference on Population and Development, it was asserted that:

¹⁸ See UN Committee on Economic Social and Cultural Rights, Concluding Observations, Paraguay, E/C.12/PRY/CO/3, 4 January 2008, p. 14 and 24; UN Committee on the Elimination of All Forms of Discrimination Against Women, Concluding Observations, El Salvador, CEDAW/C/SLV/CO/7, 7 November 2008.

¹⁹ On these international standards see, for instance, see General Comment no. 14 of the Committee on Economic, Social, and Cultural Rights, *The right to the highest attainable standard of health* (article 12 of the International Covenant on Economic, Social and Cultural Rights), 11/08/2000. E/C.12/2000/4.

"[I]nternational economic, political and cultural interrelations play an important role in the flow of people between countries... [As well,] international economic imbalances, poverty and environmental degradation, combined with the absence of peace and security, human rights violations and the varying degrees of development of judicial and democratic institutions are all factors affecting international migration" (Cairo, 1994, para. 10.1).

Reaching this goal (i.e. ensuring the "right to *not* migrate") involves a wide range of policies, players, and issues to be addressed. In part, it is the duty of developing states to ensure human dignity to all individuals within their jurisdiction, a duty that is deeply connected to migration. As the OHCHR has stressed, "the Cairo World Conference urged governments to make the option of not migrating a viable one for all people, and to this end, it called on governments to promote human rights and good governance, and to strengthen democracy" (OHCHR, 2008, para. 30; see also Liwsky, 2008). Gender-related causes of migration must be fully considered by developing states in order to make not-migrating a viable option for women and girls (see CEDAW Committee, 2008).

The Root Causes of Irregular Migration

Particular attention should be given to the causes of irregular child and adolescent migration, in cases of those who migrate with their parents or unaccompanied. Irregular migration is closely linked to restrictive laws in countries of destination, lack of avenues for regular migration, extreme vulnerability in countries of origin, absence of information, and, cross-cutting the aforementioned factors, increased human trafficking and smuggling networks. Accordingly, "keeping migration channels open and helping people to use them in a regular, safe, and easy way is an important step in preventing illegal migration, smuggling and trafficking" (ILO and UNICEF, 2009):

"Globalization has encouraged the free movement of goods, services and capital. But barriers to cross-border movement of unskilled individuals are still firmly in place, and globalization of markets has not been paralleled by globalization of the work force and labor markets. National sovereignty in immigration matters remains the rule, and a sharp discordance between the number of individuals who wish to migrate and the legal opportunities for them to do so has fueled irregular migration" (Mary Robinson, 2004).

At present, the absence of regularization and reunification policies in countries of destination together with the absence of a child and adolescent-protection approach to migration policies may influence the irregular migration of children and adolescents who seek to reunite with their parents in countries of transit or destination, including those who become trafficking victims (Cornelius, 2008; Escobar García, 2009; Hein de Haas, 2005; International Migration Institute, 2009). Furthermore, in light of the current economic crisis, it must be stressed that irregular migration may increase, particularly due to: (1) the existence of increasingly restrictive controls in some countries of destination, as well as restrictions on legal avenues for migration (including family reunification); and (2) a rise in unemployment and social exclusion in some countries of origin.

Ultimately, "a holistic approach that applies human rights standards to both the fundamental causes and impacts of irregular migration may, in the long run, reduce the human rights violations against irregular migrants by reducing their desperation and vulnerability" (GMG, 2008:81).

Child and Adolescent Mobility and Freedom of Movement

Intrinsically linked to discussion on the root causes of migration is freedom of movement, i.e. the universal right to move across borders in order to, *inter alia*, seek a decent life for oneself and one's family. Regardless of whether and to what extent this right is recognized, and its implications for duty-bearers, the reality is that few people are able to migrate regularly and by choice to another country. In other words, few people have access to the freedom of movement.

Indeed, in a globalized and increasingly interconnected world, in which disparities within and between countries and regions have increased, opportunities and authorization to move to another country are also unequally distributed. Almost 20 years ago, Carens (1992) asserted that citizenship in the modern world is a "lot like feudal status in the medieval world. It is assigned at birth; for the most part, it is not subject to change by an individual's will and efforts; and it has a major impact on that person's life chances [...] modern practices of citizenship and state control over borders [...] tie people to the land of their birth almost as effectively".

Nowadays, certain migration policies and increasingly unequal development have deepened this problem. Despite the fact that some aspects of globalization (e.g., improved transportation and communication, regional integration processes, free trade agreements, etc.) should lead to more open avenues for human mobility, few people enjoy the freedom of movement. Nevertheless, as Bauman (1998) stated, stratified human mobility may contribute to the increased stratification of society, and not the globalization of human development, benefits, and rights, including the right to freedom of movement.

Nevertheless, freedom of movement has been recognized at regional levels in different areas of the world, such as the European Union and West Africa (ECOWAS). In South America, MERCOSUR state members have ratified an agreement that entitles all individuals of those countries to migrate and live in the territories of other member states²⁰. In West Africa, the IOM asserts that freedom of movement contributes to reducing the social and demographic pressure in areas of departure and limits migrants' tendency to settle permanently in the host areas²¹. However, in every region there are many practical restrictions to regular migration:

"[C]hoices are rarely, if ever, unconstrained. "This is evident for those who move to escape political persecution or economic deprivation, but it is also vital for understanding decisions where there is less compulsion. Major factors relating to the structure of the economy and of society, which are context-specific but also change over time, frame decisions to move as well as to stay" (UNDP, 2009:7)

In this context, children and adolescents face particular constraints to utilizing movement or migration as a way of improving their well being. These constraints are often the result of migration policy restrictions, age, socio-economic condition, nationality, and ethnic origin. Therefore, discussion is needed on how to enhance regular avenues for migration (particularly for children and adolescents) that ensure, without any discrimination, that people are able to move—either internally or internationally—in order to access a decent life for themselves and their families, and that also recognize traditional regional mobility patterns.

²⁰ Acuerdo de Libre Residencia de los Estados Partes y Asociados del MERCOSUR, signed in Brasilia, 2002.

²¹ <http://www.droit-migrations-ao.org/en/page.php?pg=2&c=43&lib=Law+and+Migration+in+West+Africa>.

3.2. Adopting a Comprehensive Notion of Development

Defining development

Just as the migration and development nexus must be addressed in a comprehensive and coherent manner (GFMD, 2007, 2008, and 2009), the meaning of *development* also has to be understood in an all-inclusive way. That is, the adoption of a comprehensive rights-based approach to migration requires adopting a holistic notion of development, in which both the right to development and the notion of sustainable development are critical components. Indeed, the duty to ensure the *right to development* to everyone (which entails the full realization of all human rights²²) and the commitment to guarantee *sustainable development* (with its 3 pillars of economic development, social development, and environmental protection²³) are principles that should be fully incorporated into a comprehensive approach to effectively address the needs and vulnerabilities of children within the migration-development nexus.

Rights-based approaches to development recognize that in order to achieve human development outcomes, human rights must be realized by those whose development is at stake (Jonsson/UNICEF, 2003). Since migrant children and adolescents are considered key actors in the development process, their rights should be protected and fulfilled. Moreover, they should not be regarded simply as scale model adults. They should be considered on their own terms, as development subjects requiring a distinctive and particular approach (White, 2002). According to UNDP, “sustainable human development seeks to expand choices for all people—women, men and children, current and future generations—while protecting the natural systems on which all life depends” (UNDP, 1998).

In this regard, it must be borne in mind that sustainable human development (i.e. the expansion of people’s choices and creation of conditions for equality so that people may realize their full potential) can only be realized if all human rights (economic, social, cultural, civil, and political) are promoted, preserved, and defended (UNICEF, 1999). Consequently, a comprehensive rights-based approach should involve not only an analysis of how migration impacts development, but also an analysis of how current development policies impact migration. The challenge of mainstreaming this approach to development is clearly on the international agenda. However, “it has to be acknowledged that there is a very long way to go before such approaches become the norm” (Alston and Robinson, 2005). This wait may be even longer when it comes to comprehensively addressing the root causes of migration.

Implications for policymaking

Discussions and policy initiatives at local, national, and international levels must take into account the obstacles, opportunities, and challenges to achieving sustainable development and to ensuring the right to development for all individuals, particularly those in developing countries living in more vulnerable conditions. This includes hundreds of millions of children and adolescents, some of who will migrate or attempt to migrate in the future. As verified by many reports (e.g. HRW, 2008; PICUM, 2009; UNDP, 2009:53) and in

²² *Declaration on the Right to Development*, adopted by the UN General Assembly, A/RES/41/128, 4th December, 1986.

²³ *Declaration on Sustainable Development*, Johannesburg, A/Conf.199/20, 4th September, 2002.

the concluding observations of United Nations Committees (such as the CRC and CESCR), migrant children and adolescents are usually among the most impoverished members of their society, particularly in developed countries (see www.hrcam.org). Undocumented migrant children and adolescents living in developing countries face significant rights constraints and deprivations (see **Box 5**).

Attention to children and adolescents' rights with a gender and non-discrimination dimension is a cornerstone to achieving multi-level strategies for sustainable development and the right to development: "if states do create favourable conditions for broad-based national development, migrants are likely to reinforce or perhaps even accelerate...already positive trends by investing and returning (temporarily or permanently) to their origin countries" (Hein de Haas et al., 2009:54). In particular, considering the aforementioned invisibility of children and adolescents within migration policies, comprehensive rights-based strategies should involve an examination of how existing policies (e.g. policies on migration, childhood, education, and labour, among others), are meant to guarantee migrant children and adolescents' rights, including their right to development.

Both the international community and key actors at governmental and civil society levels have been increasingly addressing the challenge of ensuring a child rights-based approach to public policies related to migration and development. As Save the Children (2008) has stressed, states must ensure "that children on the move are visible in all relevant national and international policy discussions. The rights of children on the move must be a key component and appropriately integrated in the development and implementation of national and international policies and programmes on child protection, child labour, migration, poverty reduction, development and decent work".

Implications for the Millennium Development Goals

The 2009 GFMD meeting also addressed ways to make the "migration-development nexus work for the achievement of the Millennium Development Goals" (GFMD 2009, Roundtable 1). In this regard, it should be borne in mind that MDGs (i.e. ending poverty and hunger, universal education, gender equality, child health, maternal health, combating HIV, and environmental sustainability) are intrinsically linked to the root causes of migration and all the MDGs are either directly or indirectly linked to the wellbeing and basic rights of children and adolescents. While the MDGs present a key opportunity to enhance the enjoyment of human rights around the world, they will only be achieved in a sustainable way if human rights obligations are respected and strengthened in states' strategies aimed at achieving the MDGs.²⁴ Therefore, the MDGs should be addressed using a comprehensive notion of development and a comprehensive rights-based approach.

²⁴ Office of the High Commissioner of Human Rights, OHCHR, *Millennium Development Goals and Human Rights*, see www2.ohchr.org/english/issues/millennium-development.

Box 5: Undocumented migrant children in developing countries

- Along the borders of South Africa and Mozambique, undocumented migrant children, often **under the legal age of employment**, can be found working in the informal sector. Boys have been found working as farm labourers on Mozambican farms, while some children are found working in local bars and restaurants. Some girls in South Africa work at *spaza* (an informal shop) or do housework.
- Many girls have become **sex workers**, although this was not part of their initial plan. Informal settlements in Rwanda, near Musina, and in South Africa are well known for the number of girls, many of them migrants, working as sex workers.
- Many of the girls living in the Rwandan settlement also appear to have young children. Not only does this type of work compromise their rights as children, it also introduces additional dangers such as **HIV and Aids, early pregnancy, violence, and exploitation**. In Mozambique, Zimbabwean female sex workers charge less than their Mozambican counterparts, and girls as young as 12 years have been documented as working in this trade.
- Most of these children are living in **substandard accommodation**. Some might be renting rooms that they share with others and are subject to the whims of landlords and overcrowding. Others are living in shacks in informal settlements with inadequate water or electricity. Some live in old buildings and old mine workers' hostels. Others, mostly boys in border towns, are living on the streets, sleeping in the bush or near taxi ranks and rubbish dumps. Some children in Johannesburg are living in shelters for children, separated from adult caregivers, or in tiny rooms full of people and no beds. In many cases, children living on the borders intended to save money to send back to their families. However, the majority were struggling to survive on the money they earned, let alone able to save money. They frequently **went without meals and other necessities** in order to save a little money.

Source: Save the Children, Children on the Move, UK, 2007

3.3. Addressing the Rights of Children and Adolescents Left Behind

Moving beyond the focus on remittances

It has been stated that, because of remittances, children and adolescents left behind may live in better conditions than other members of their community who do not have relatives abroad. On the contrary, children and adolescents left behind by migrant parent(s) may be left in particularly vulnerable situations, at risk of being abused or trafficked, having their basic rights jeopardized, as well as becoming vulnerable to the psychological and social impacts of family separation (UNICEF/Cortes, 2008a; UNICEF, 2008d). In many cases, states do not account for the special situation of children and adolescents left behind and do not ensure that public policies address their particular needs and vulnerabilities. Attention has mainly focused on how remittances impact children's well being.

While it is very important to evaluate the extent to which remittances may improve children and adolescents' well being (e.g. regarding education, health care, and housing), it is also important to remember that neither remittances nor international cooperation for development can replace national development policies. Likewise, migration alone cannot guarantee the realization of children and adolescents' rights to protection, quality education,

parental guidance, and full participation in society. Nor can migration modify ingrained gender roles that allocate domestic work to girls and mothers and might limit their right to access paid work and higher education. Migration provides a means to overcome financial constraints and facilitates contact between different cultures, in many ways enriching the sending regions. But it is important to bear in mind that cooperative interventions of governments, international organizations and migrants' organizations must push for development and the equalization (UNICEF-Cortés, 2008).

The need for policies and legislation to ensure rights

As outlined in the CRC, states must ensure a range of human rights to every child within their jurisdiction, irrespective of any private income received from their migrant parents. Indeed, as key duty-bearers under international law, states must design and implement legislation and policies aimed at respecting, protecting, and fulfilling the rights of children and adolescents. Legislation and policies should consider the particular situation of each individual, family, community, and social group, and the particular situation of children and adolescents left behind. Furthermore, states must avoid both legal and de facto discrimination (both direct and indirect), and prevent social exclusion in order to ensure children and adolescents' well being.

Additionally, states should respect children and adolescents' right to participation in all policies and programmes that may affect them, including the design, implementation, and evaluation of public policies and programmes meant to, inter alia: (1) address their particular needs and fulfil their rights, including their economic, social and cultural rights, and their right to development; (2) facilitate, if appropriate and according to their best interest and will, family reunification in host countries where their parents live; and (3) ensure a gender approach regarding the situation of girls left behind by their migrant parents.

Gender disparities

In assessing the impact of migration on human rights, states must pay special attention to the gender related impacts of migration (Special Rapporteur on the Human Rights of Migrants, 2009). For instance, it has been widely evidenced that the impacts of parental migration include gender disparities, such as inequalities in girls' access to education due to a gendered distribution of household duties (see UNICEF-Cortés, 2008; UNICEF-UNDP, 2007). These impacts should be fully considered when formulating policies meant to respect, protect and fulfil the rights of children and adolescents left behind.

Constraints on the right to family reunification

Children and adolescents left behind may face several constraints to reunification with their parents in countries of destination. On many occasions, they must wait years to reunite with their migrant parent(s). In this regard, both states of origin and destination should develop strategies and policies intended to avoid such waiting periods and ensure family reunification within a reasonable time frame (Special Rapporteur on the Human Rights of Migrants, 2009). While states of origin should facilitate proper documentation and advocate bilaterally and internationally for flexible and rights-based policies on family reunification, host states should amend their migration policies and practices in order to ensure the right of any child to family life, including family reunification.

3.4. Ensuring Age, Gender, and Non-discrimination Dimensions in Migration Policies in Countries of Transit and Destination

The invisibility of children and adolescents in migration policies and discussions, which has been described throughout this report, is uniquely acute in countries of transit and destination, particularly in destination countries. While the ethnic and national origin of these children and adolescent should not lead to any unequal treatment (e.g., in their access to jobs, training, and educational opportunities), many migrant children (both with their families and unaccompanied) and children born to migrant parents may face several constraints on their rights in countries of transit and destination.

In many countries, deep revision is needed of existing migration laws and policies that may affect migrants in order to incorporate age, gender, and non-discrimination dimensions, as well as all provisions of the CRC, CEDAW, CERD and other human rights treaties. Indeed, any initiative aimed at addressing these constraints should include a range of proposals for the full incorporation of these dimensions in migration laws and policies. It is also critical that the migrant-perspective is present within all policies affecting children and adolescents. In particular, during this revision process, the following core principles should be fully recognized for all migrants, especially children and adolescents, as well as children born to migrant parents in countries of destination:

- Universality, which implies the development of a legal framework that effectively protects and fulfils the rights of *all* children and adolescents, including migrants regardless of their migration status (UNICEF, 2008c; CRC, Committee Concluding Observations);
- Non-discrimination, based on prohibited grounds (such as nationality and migration status);
- Best interests of the child, child participation, and child development; and
- Gender equality.

Strategies to promote these legislative and policy reforms should highlight the intrinsic connections between the human rights of all migrants (particularly children and adolescents) and sustainable human development, democracy, and rule of law. As indicated by the title of Session 2.1 of the 2009 GFMD, the protection of migrants' rights is essential for an equal inclusion strategy as well as a key tool for social development.²⁵ As members of society who are entitled and able to effectively exercise their human rights, migrants can play an active role in the social and economic development of the host country and even their country of origin, particularly when rights such as education, health care, social security, and employment are fulfilled ensuring equal opportunities and gender equity.

The following pages highlight the types of rights constraints faced by migrant children and adolescents, as well as children of migrant background, in countries of transit and destination. The human rights principles mentioned above, among others, should guide policies aimed at dealing with these types of rights constraints.

²⁵ Session 2.1 of GFMD 2009 was on "Inclusion, protection and acceptance of migrants in society – linking human rights and migrant empowerment for development".

Human rights constraints while in transit

Migrant adults and children may spend significant periods of time in transit countries due to restrictions that have been increasingly adopted by both Southern and Northern countries of destination and transit (Mghari, 2008; Hein de Haas, 2005). Children and adolescents on the move may also be subjected to deportation and detention measures during transit and criminalization based on their migration status (Special Rapporteur on the Human Rights of Migrants, 2009, para. 22, 25, 40; UNICEF, 2008b). Moreover, there is a great deal of evidence of abuse and violence suffered by women and adolescent girls both at border controls in transit countries and during their journey (APDH, 2008; Foro Migraciones, 2005).

Protection of migrant children and adolescents in transit and destination countries, especially those who are travelling unaccompanied and undocumented, should be based on an integral rights-based approach, namely, the guarantee of their civil and political as well as economic, social, and cultural rights. However, this implies a much wider focus than the protection measures linked to the fight against child and adolescent trafficking. In fact, only a very small percentage of human international mobility, including child and adolescent mobility, is connected to human trafficking. Therefore, an approach that focuses solely on trafficking might have perverse effects, such as: increasing the clandestine nature of such movement; exacerbating the vulnerability and oppression of these children and adolescents; and impacting well-established social and cultural practices associated with such movements (Massart, 2009). On the contrary, it should be emphasised that most people involved in those movements require protection policies meant to ensure all their rights, especially when it comes to social groups as children (particularly, unaccompanied) and undocumented migrants.

Child and adolescent migration-related detention in transit and destination

The absence of a child and adolescent perspective within migration-related detention policies implies that children and adolescents are treated as adults, in violation of international human rights standards. The CRC, in addition to other well-established human rights principles, explicitly states that children should only be detained as a measure of last resort, and, in particular, migrant children should not be detained based on their migration status or that of their parents (see **Box 6**).

Box 6: Migrant children's detention and Best Interests

Detention of children will never be in their best interest, neither those who are unaccompanied nor those with their families. Therefore, alternative measure should be provided to all children within migration control procedures.

Sources: UNICEF Australia (2003); Special Rapporteur on Human Rights of Migrants (2009); STEPS Consulting Social / European Parliament (2007)

Despite fundamental standards that renounce the detention of migrant children and adolescents, legislation and practices in many Southern and Northern countries demonstrate that there is still a long way to go in order to ensure children and adolescents' rights within migration control policies (see, among others, Human Rights Watch, 2009; Inter-American Commission on Human Rights, 2009; Special Rapporteur on the Human Rights of Migrants, 2009; UNICEF TACRO / UNLa, 2009). Examples of arbitrary migration-related detention laws and practices include:

- Legislation regarding migration-related detention that does not distinguish children from adults;
- A lack of alternative measures for adults and children;
- The general absence of basic guarantees of due process, either in law or practice, such as the rights to a guardian, legal representative, an impartial judicial process, and an interpreter;
- The absence of an established maximum length of detention;
- The absence of childhood officials in detention centres, as well as a general lack of social service provisions, such as education and health care;
- The detention of unaccompanied adolescents below 18 years old and detention facilities that are unsuited for children and/or their families;
- The use of prison-like facilities for administrative detention; and
- The criminalization of irregular migrants, including children and adolescents, i.e. irregular migration is considered a criminal offence.

Additionally, there is a considerable lack of information regarding the experiences of migrant children (both unaccompanied and with their families) within migration control measures (e.g., information about their treatment at borders and in detention centres). Indicators on these issues are absent in most transit and destination countries, and both intra-government and civil society monitoring of these issues is quite poor.

Finally, it has to be borne in mind that the detention of parents due to their migration status may impact their children (i.e. children born in destination), particularly their right to development, family life, and mental health, among others. Therefore, adopting a child-rights approach, which considers the child's best interests, will require alternative policies to address the migration status of their parents, including measures that facilitate regularization, access to social rights, and family unity, rather than detention and deportation.

Child deportation or repatriation in transit and destination countries

Similarly, the absence of a child perspective has been widely evidenced in deportation policies. In many countries, children (both unaccompanied and with their families) may be deported for breaching migration law (e.g., irregular entry, expired residence permit, etc.) with no consideration for their particular rights and needs. Children's parents may be deported with no consideration for the consequences of family separation. Furthermore, within most of these procedures, the principle of the Best Interest of the Child is not respected, and due process of law is far from being ensured in many transit and

destination countries. Children are generally not granted the right to be heard within their parents' deportation processes (Special Rapporteur on the Human Rights of Migrants, 2009; UNICEF TACRO, 2009).

Equally problematic is the fact that, in some countries children cannot be deported and repatriation of unaccompanied children to their country of origin cannot occur unless it is in the child's best interest (e.g. in order to facilitate family reunification). Furthermore, decisions regarding deportation and repatriation are often made without due process, and family reunification has often not been effectively arranged between states of origin and destination (APDH, 2008; HRW, 2008).

Moreover, in most countries, migration processes do not include specific steps aimed at ensuring the right of every child to be heard, neither in procedures concerning their migration status nor the status of their parents. Children should be fully entitled to participate in both administrative and judicial proceedings that may lead to their parents' deportation, if appropriate according their age and maturity, in order to ensure their rights are respected throughout the process. Finally, children and adolescents must be fully entitled—by law and in practice—to participate in any proceeding on their own entry and stay in the host country, regardless of whether they are unaccompanied while seeking to reunite with their parents:

“Children who come to a country following their parents in search of work or as refugees are in a particularly vulnerable situation. For this reason it is urgent to fully implement their right to express their views on all aspects of the immigration and asylum proceedings. In the case of migration, the child has to be heard on his or her educational expectations and health conditions in order to integrate him or her into school and health services. (...) The Committee emphasizes that these children have to be provided with all relevant information, in their own language, on their entitlements, the services available, including means of communication, and the immigration and asylum process, in order to make their voice heard and to be given due weight in the proceedings. A guardian or adviser should be appointed, free of charge...” (Committee on the Rights of the Child, General Comment No. 12, *The Right of the Child to be Heard*, CRC/C/GC/12, 20 July 2009, § 123-124).

In addition to the aforementioned examples of the absence of an age perspective in many migration control policies, recent reports have highlighted migration control policies that may be in breach of international law, particularly policies at sea. Consequently, children and adults may be suffering violations of their rights to asylum and due process, as well as the principle of non-refoulement (Ceriani Cernadas, 2009; HRW, 2009; UNHCR, 2009).

Finally, it should be noted that, within the context of the current international economic crisis, some states have adopted stricter enforcement of migration laws, including harsher deportation and detention policies, such as raids against irregular migrants, abuses at borders, criminalization of irregular migrants, and deportation of parents of children born in destination countries.²⁶

²⁶ See, for instance: Itano, Nicole, *Greece plans to lock up illegal migrants*, Global Post, 13 July 2009; Amnesty International, *Italy: Senate must stop controversial Bill*, 29 June 2009; HRW, *US: Immigration Policy Harms Women, Families*, 24 June 2009.

Economic and social rights in transit and destination countries

There are several key issues that should be taken into consideration regarding the economic and social rights of migrant children and adolescents in countries of destination. First, there is an intrinsic relationship between social rights and achieving social integration into the host society. Social cohesion, equitable human development, as well as democracy and rule of law, may be reinforced if social rights are realized for all individuals, without discrimination based on nationality or migration status, and if child and gender perspectives are ensured (Special Rapporteur on the Human Rights of Migrants, 2009; Touzenis/IOM, 2008:42; Pisarello, 2005; De Lucas, 2004). The CRC Committee has observed that discrimination against migrant children and adolescents (particularly those who are undocumented) and asylum seekers, in the context of their economic and social rights, is hampering social integration, social progress, and justice.²⁷ Furthermore, every constraint on the social rights of migrant children and adolescents also presents an obstacle to sustainable and human development principles and goals, both in the short and long run.²⁸

It should be emphasized that the Committee on the CRC and other UN human rights committees have stressed repeatedly that states should ensure economic and social rights to all children within their jurisdiction, irrespective of their nationality, origin, migration status, and any other grounds prohibited by the principle of non-discrimination.²⁹ This core principle of international human rights law has been recognised as *jus cogens*, that is, an imperative international regulation that cannot be ignored under any circumstance.³⁰ However, evidence from several key actors, particularly UN Committees (such as the CRC and CESCR³¹), suggests that contrary to international human rights principles, the degree to which the basic social rights of migrant children and adolescents (such as the rights to education, housing, health care, and an adequate standard of living) are fulfilled is affected by their nationality and migration status (see also PICUM, 2009; Medecins du Monde, 2009; UNICEF-UNLa, 2008; Regional Thematic Working Group on International Migration, 2008). This is particularly true for undocumented children's access to education (see **Box 7**).

Nevertheless, some states have developed legislation and policy reform strategies in order to ensure that all children, irrespective of their nationality and migration status, are effectively entitled and able to access education, equal in condition to the access enjoyed by nationals. As described in **Box 8**, Argentina, a Southern destination country, passed a new law in 2004 that includes clear recognition of the rights to education and health care of undocumented migrant children. In 2008, Uruguay adopted a similar provision (Law No. 18.250, January 2008, article 11).

Other constraints on migrant children and adolescents' social rights can be attributed to the absence of a gender dimension in laws and policies, as well as factors related to the

²⁷ CRC, Concluding Observations: France, CRC/C/FRA/CO/4, 11 June 2009, para. 30; and CRC/C/15/Add.240, 30 June 2004, para. 18.

²⁸ CRC/C/15/Add.240, 30 June 2004, para. 18.

²⁹ Examples are available in the UNICEF-UNLa database on children, migration, and human rights (www.hrcam.org).

³⁰ See Inter-American Court of Human Rights (2003).

³¹ For instance, on the right to education, see Committee on the Rights of the Child (CRC/C/NLD/CO/3, 2009; CRC/C/CHL/CO/3, 2007; CRC/C/SAU/CO/2, 2006), Committee on Economic, Social, and Cultural Rights (E/C.12/SWE/CO/5, 2008), Committee on Migrant Workers (CMW/C/ECU/CO/1, 2007; CMW/C/EGY/CO/1, 2007), Committee on the Elimination of all Forms of Discrimination against Women (CEDAW/C/DEU/CO/6, 2009; CEDAW/C/FRA/CO/6, 2008), and Committee on the Elimination of all Forms of Racial Discrimination (CERD/C/NZL/CO/17, 2007). For more examples of this, as well other social rights of migrant children, see www.hrcam.org.

current economic crisis. In particular, migrant female children and adolescents may suffer particular rights deprivations (e.g. as domestic workers) based on the general absence of a gender dimension within migration laws and policies. They are therefore left in vulnerable conditions due to increased gender-related gaps, social exclusion, and poverty. Additionally, the current economic crisis may also lead to increased constraints on the social rights of migrant children and adolescents. For instance, restrictions on migrant workers' rights may in turn negatively impact the well being and human rights of children (ILO, 2009).

Box 7: Right to education of undocumented children

A third of the developed countries in our sample, including Singapore and Sweden, did not allow access to education for children with irregular status, while the same was true for over half of the developing countries in the sample, including Egypt and India. In particular, in the United Arab Emirates, children with irregular migrant status do not have access to education services. In Belgium, education is free and a right for every person, but not compulsory for irregular children. In Poland, education for children between 6 and 18 years of age is a right and is compulsory, but children with irregular status are excluded for funding purposes, which may lead the school to decline enrolment to such children.

On the one hand, poverty and discrimination (formal and informal) can inhibit access to basic services. Even if children with irregular status have the right to attend a state school, there may be barriers to their enrolment. In several countries (e.g. France, Italy, and the United States), fears that their irregular situation will be reported have deterred migrant children from enrolling. In South Africa, close to a third of school-aged non-national children are not enrolled for a combination of reasons, including inability to pay for fees, transport, uniforms, and books and exclusion by school administrators. Those who are enrolled in school regularly report being subjected to xenophobic comments by teachers or other students.

On the other hand, undocumented migrant children and adolescents are highly impacted by inadequate or discriminatory educational provision. In particular, the undocumented population (predominantly low-income Latinos) in the US has historically had an extremely low school completion rate. According to the 2000 Census, only 40 percent of undocumented Latino males between 18 and 24, who arrived in the United States before the age of 16, had completed high school or obtained a GED (an equivalent qualification).

A third of the migrant flow from developing countries is aged 12 to 24. Young undocumented migrants suffer problems when they reach the end of the period in which schooling is legally mandated and free of charge. For example, in the US, in 2006, there were an estimated 1,075,000 undocumented youth between the ages of 5 and 24 (Batalova and Fix 2006) for whom legal status presented a serious challenge to their ability to access education. Federal law does mandate that these migrants receive free schooling up to the age of 18. However, the undocumented cannot receive funding to attend colleges (particularly public institutions) in the United States. Indeed, 360,000 of the 1,075,000 undocumented youth from the 2006 study were already in this position, as they were over the age of 18.

Source: UNDP Human Development Report 2009

Box 8: Right to education of undocumented migrants – Good Practices

Migration Law, Argentina (No. 25.871, article 7):

Under no circumstance shall irregular migration be a reason to impede a migrant student's admission to any educational institute, either private or public, national, provincial and municipal, primary, secondary, tertiary, and university. Authorities from all educational institutions must provide orientation and advice regarding administrative procedures meant to remedy migration irregularity.

Social rights constraints linked to migration control policies

Some constraints to the enjoyment of human rights by migrant children and adolescents, including their economic and social rights, are linked to migration control mechanisms. Many migration laws and policies, including some recently adopted, oblige various civil servants and individuals to report undocumented migrants to migration authorities. Some of these provisions are imposed on health care and education workers, as well as landlords who would like to rent housing to migrants (UNICEF TACRO / UNLa, 2010; HUMA Network, 2009). Consequently, these provisions inhibit migrants from seeking medical assistance, sending their children to school, or obtaining a place of residence:

“Even if children with irregular status have the right to attend a state school, there may be barriers to their enrolment. In several countries (e.g. France, Italy, the United States), fears that their irregular situation will be reported have been found to deter enrolment. In South Africa close to a third of school-age non-national children are not enrolled, for a combination of reasons including inability to pay for fees, transport, uniforms and books, and exclusion by school administrators, while those in school regularly report being subjected to xenophobic comments by teachers or other students” (UNDP, 2009:58).

In some cases, this obligation to denounce undocumented migrants also applies to members of the judiciary, which prohibits migrants from standing before a judge in order to defend their human rights. Therefore, migrant workers' access to justice is limited, particularly in matters concerning their labour rights. According to the Inter-American Court of Human Rights:

“[At] times, undocumented migrant workers cannot even resort to the courts of justice to claim their rights owing to their irregular situation. This should not occur; because, even though an undocumented migrant worker could face deportation, he should always have the right to be represented before a competent body so that he is recognized all the labour rights he has acquired as a worker” (ICHR, 2003, § 159).

Additionally, recent laws that criminalize irregular entry into a country or irregular stay (defined as the lack of, or expired, legal residency) constitute a clear threat to the social rights of migrants, who are unable to enjoy these rights for fear of being detained or convicted while seeking access to social services.³² Moreover, existing legislation criminalizes organizations that offer aid to migrants, even those who are living in particularly vulnerable conditions.³³ Instead of protecting the rights of people in vulnerable situations, as international human rights standards demand, these measures increase the

³² For instance, see Italy, *Disposizioni in materia di sicurezza pubblica*, Legge 15 luglio 2009, n. 94, Gazzetta Ufficiale n. 170, 24 luglio 2009, <http://www.parlamento.it/parlam/leggi/090941.htm>.

³³ See Huma Network - Médecins du Monde (2009), on this kind of regulations in countries of the European Union.

vulnerability of certain individuals, particularly undocumented migrants, who are further marginalized and denied access to basic rights. Moreover, these constraints obstruct social cohesion and integration, as well as impede equal human development in both the short and long-term.

Cultural rights of migrant children and adolescents, and children of migrant background, in destination countries

Other constraints on the rights of migrant children and adolescents, as well as children of migrant background, include the deprivation of their cultural rights in destination countries. In particular, many destination countries of South-South and South-North migration, lack intercultural policies meant to facilitate the social integration of migrants. In addition, most countries that do have such policies or programmes do not include an age perspective. In this regard, it is critical that intercultural policies start recognizing—by law and in policies and practice—the cultural rights of all migrants, as well as the multicultural character of host societies. In order to ensure the cultural rights of migrant children and adolescents, as well as children of migrant background, states should include measures to ensure that children and adolescents are able to enjoy, practice, and develop their culture, and cultural identity. These measures should include, *inter alia*:

- Negative obligations, namely that states should not interfere arbitrarily in children and adolescents’ cultural rights and practices. In this regard, the Committee on Economic, Social, and Cultural Rights has asserted that states should pay particular attention to the protection of the cultural identities of migrants, as well as their language, religion, and folklore, and should not prevent migrants from maintaining cultural links with their countries of origin³⁴.
- Positive duties meant to facilitate and create conditions to effectively exercise such rights. This would include the use of an intercultural approach to all public policies, not only those directly related to migrants (i.e. such policies should not be unidirectional towards migrants, but should be directed to all groups and members of society, including nationals).

Issues, such as language barriers, in accessing education and health care, intercultural programmes at school, and cultural practices related to adolescent women and their sexual and reproductive rights³⁵, should be fully taken into account by public policies. Finally, transit and destination countries should fully respect cultural rights of migrant children and adolescents who belong to indigenous peoples.³⁶

³⁴ CESCR, General comment No. 21, *Right of everyone to take part in cultural life (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights)*, E/C.12/GC/21, 21 December 2009, § 34.

³⁵ See CRC Committee, General Comment 4, *Adolescent health and development in the context of the Convention on the Rights of the Child*, CRC/GC/2003/4, 1 July 2003, § 13, 16, 38.

³⁶ Among others, see Yescar/Trujano/IOM (2008).

Family Life and Family Reunification

The right to family life, a right recognized for every human being in many international human rights treaties³⁷, may be severely affected by migration, particularly in the context of family reunification. Indeed, family reunification has been identified as a key element of integration policies, as well as a right that should be promoted and fulfilled within migration policies (see **Box 9**).

Box 9: Family Reunification

South American countries have stressed that family reunification must be considered the right of all migrants, as well as a core element for better integration into host societies. Similarly, Santiago's Declaration on Migratory Principles adopted by Mercosur States and Associates, asserts that the importance of family reunification is a necessary element for the stability of immigrants as a family and a fundamental base of society.

Sources: V South American Conference on Migration, La Paz November 2004; Santiago Declaration on Migration Principles, 17th May, 2004.

Despite individual or family decisions that may lead to family separation, migration policies can impede or obstruct family reunification and even generate family separation. The following examples highlight existing constraints on family reunification and the effective realization of migrants' right to family life:

- Economic constraints may pose serious difficulties for family reunification. In the case of adults who migrate irregularly, it may be either harder or more dangerous to do so with their children. Many children (both unaccompanied and with their families) die, get hurt, or suffer abuses (including sexual harassment) throughout the migration process.
- Adult irregular migration status in countries of destination could lead to family separation if a deportation order is enforced without taking into consideration the right to family unity, as well as children and adolescents' rights.
- Family reunification procedures, meant to bring children and adolescents left behind to the host country where parents are living, may be too restrictive. Consequently, many children and adolescents remain alone in countries of origin or decide to migrate irregularly to reunite with their families.
- Children may face restrictions regarding family reunification. In many countries, children born to migrant parents have no rights to bring or keep their parents with them, though similarly situated adults do have those rights to family unity or reunification (Bhabha, 2007).

³⁷ Such as the Convention on the Rights of the Child (arts. 8, 9, 10, 16); International Covenant on Economic, Social and Cultural Rights (art. 10); International Covenant on Civil and Political Rights (arts. 17, 23); Convention for the Elimination of All Forms of Discrimination Against Women (art. 16); International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (art. 14).

- Children and adolescents may also be prevented from leaving their country of origin in order to reunite with their parents abroad as a result of tax debts that parents might have accrued (UNDP, 2009).
- The irregular migration status of parents in destination countries, along with restrictive regularization mechanisms (and the absence of regularization plans), may become a long-term obstacle to family reunification.

Birth registration

In many transit and destination countries, children born to migrant parents face difficulties in obtaining birth certificates. This restriction not only affects the right to a birth certificate (CRC, art. 7; MWC, art. 29), but also several other intrinsically connected human rights, such as the right to a name and to be recognised as a person before the law. In addition, this restriction also presents obstacles to the right to a nationality (either the nationality of the country where the child was born or the country of his/her parents), which in turn can lead to statelessness. Finally, these constraints may also affect rights such as education and health care.

Usually, the migration status and national origin of migrant parents are the causes of such restrictions even though international human rights standards have repeatedly highlighted that children should never be subjected to such constraints under any circumstance. A parent's condition cannot be used to deny or arbitrarily curb children's rights (Save the Children, and Forced Migration Studies Programme, 2009; UNICEF TACRO-UNLa, 2009; Special Rapporteur on the Human Rights of Migrants, 2009; Interamerican Court of Human Rights, Case Yean and Bosico, 2005; see also www.hrcam.org, 2009).

Xenophobia

UN Committees have also widely demonstrated that migrant children and adolescents may face xenophobia in countries of transit and destination. Xenophobia may be present in schools, expressed in the rhetoric of public servants, and may even lead to violence. Within the context of the economic downturn, evidence suggests that there is an increase in violence and xenophobia against migrants, including children and adolescents. Moreover, migrants who have been victims of xenophobia and racism, including children and adolescents, have faced constraints on their effective access to justice, legal advice, and protection services (see www.hrcam.org).

Regularization Policies

Regularization programs are a key element of migration policies. According to the Office of the High Commissioner for Human Rights (2008, para. 47), migrant regularisation programmes:

“have two complementary goals: on the one hand, they incorporate workers who are in the ‘underground’ economy into the formal economy, and so increase their contributions to national tax and social security revenues; on the other hand they are designed to limit worker exploitation and abuse. This approach recognises that migrants who do legal and decent work are likely to contribute more to development than those who are economically exploited and socially excluded”.

Additionally, regularization programs have been considered an act of social justice, as they provide identity to undocumented migrants, protect them from abuses, and facilitate their

effective integration into the host society (including labour markets and the civil service), while also providing human capital to host countries and transparency to public policies.³⁸

[I]t has been strongly argued that control measures alone are insufficient to tackle irregular migration and that a comprehensive approach is required, including the need to adopt a package of more 'constructive' measures. The protection of the rights of this vulnerable group forms an integral aspect of such a comprehensive approach which also comprises the need to address informal labour markets where both national and migrant workers are found; provide more regular avenues for migrant workers to be able to meet the demand for labour in *all* sectors of a destination country's economy; and give serious consideration to the regularization of those with irregular immigration status. (GMG, 2008:43)

Recently, several destination countries (both in the South and North) have implemented regularization programs for migrants who have been living in their territory without a residence authorization. Despite the particularities of each case, these initiatives highlight that regularization is a measure that results in a range of positive outcomes for migrants and the host society. Indeed, regularization plans are considered an effective and appropriate tool for development. It must be stressed that regularization programs should pay particular attention to those children and adolescents who have been victims of any kind of abuse or exploitation, including trafficking. Granting them legal residence, along with other protection measures, should not be conditional on their collaboration in the investigations or trials of their persecutors, as is the case in some countries.

The Right to Development in Transit and Destination Countries: Social Rights, Family Life, and Regularization Policies

Constraints on the rights of migrant children and adolescents, as well as children of migrant background, as has been described above, may severely impact their short and long-term development. In this regard, it is important to highlight that one of the core principles of the CRC is the right to life, survival, and development. As the Inter-American Court of Human Rights stressed in a case related to child rights, the fundamental right to life includes not only the right of every human being *not* to be deprived of his life arbitrarily, but also the right that s/he will not be prevented from having access to the conditions that guarantee a dignified existence".³⁹

In addition, the right to survival and development are intrinsically linked to several human rights, such as: family relations and parental guidance; birth registration, name, and nationality; access to appropriate information; health and access to health care services; benefit from social security; a decent standard of living; and education (UNICEF, 2009, 16). As has been examined throughout this paper, migrant children and adolescents, as well as children of migrant background, may face constraints to all these rights, due to their nationality, their unaccompanied condition, or their migrant background (i.e. their immigration status or that of their parents). Accordingly, public policies in both transit and

³⁸ See, among others, OHCHR, 2008, para. 47; Fifth South American Conference on Migration, Declaration of La Paz, 26 November 2004, para. 17; Ibero-American Forum on Migration and Development, Cuenca, Ecuador, 10-11 April 2008, Final Report, Session IV, Integration of Migrants, para. E.

³⁹ Inter-American Court of Human Rights, *Case of the "Street Children" (Villagrán-Morales et al.) v. Guatemala.*, Judgment of November 19, 1999, § 144.

destination countries should address and reverse these constraints, in order to ensure the right to development for all children and adolescents.

In order to address and reverse these constraints, it has to be taken into account that those measures adopted within migration policies that are directed at adults, also impact the rights of their children, including their right to development. While national legislation may consider parents key duty-bearers in their children's development and well being, international human rights law requires that states create the conditions that enable parents to fulfil their obligations to their children. The CRC concretely recognises the role, rights, and duties of parents, extended families, or communities, as primary caregivers and protectors of children; however, this recognition involves states' obligation to support the family in its role, and to step in when the family is unable, or fails, to act in the best interests of children (UNICEF, 1998:10).

Rights constraints within migrations laws, policies, and practices

Constraints included in migration laws, policies, and practices, may impede or restrict the ability of parents to fulfil their responsibilities. This can impact the rights of their children in the short term, and increase disparity and unequal development in the long term. Such impediments within migration laws, policies and practices include: restrictions on birth registration of children born to undocumented migrant parents, discrimination in access to economic and social rights, lack of policies meant to fight against xenophobia, among other issues.

Amnesty International has highlighted that poor working and economic conditions for migrant adults affect the general health and welfare of their children, including premature babies, who have an increased risk of serious illness or death. Indeed, migration laws that forbid undocumented migrants from accessing employment, create serious obstacles for migrant parents in providing for the basic needs of their family (including child development and adequate standard of living). The right to work is a basic right recognized for every person in the ICESCR and the Universal Declaration of Human Rights, and is a key condition for accessing other rights (e.g., food, housing, social security, etc.); however, millions of migrants are not entitled to exercise this right due to an administrative offense (namely, their irregular migration status). This constraint on migrant parents' right to work undoubtedly impacts their children's right to development.

In addition, migrant parents' access to work is also a critical condition for social integration, which also impacts their children's well being and development in the host country. In this regard, it has been stated that:

"Although integration into the labour market does not necessarily guarantee social integration, it is a major step with respect to immigrants' ability to function as autonomous citizens in the host country. It also helps to ensure acceptance of immigration by the host-country population and the sustainability of migration policy over the long term. Thus, a successful integration policy is a major challenge and countries have sought to implement reform recently to pursue this goal" (OECD, 2009:7).

This severe constraint on social integration may last for years in the absence of regularization policies and programmes in many transit and host countries. Programmes (either permanent regularization avenues, or extraordinary regularization plans) that enable migrants to obtain residence authorization, including a work permit, might be a critical measure not only for social integration, social cohesion, and designing effective public

policies (including on social services), but also to ensure the rights of children and adolescents.

In this regard, Latin American states have considered regularization programs an act of social justice, as they provide identity to undocumented migrants, protect them from abuses and facilitate their effective integration into the host society (including labour markets and the civil service), while also providing human capital to host countries and transparency to public policies⁴⁰. Additionally, as stated by the OHCHR:

“migrant regularisation programmes typically have two complementary goals: on the one hand, they incorporate workers who are in the ‘underground’ economy into the formal economy, and so increase their contributions to national tax and social security revenues; on the other hand they are designed to limit worker exploitation and abuse. This approach recognises that migrants who do legal and decent work are likely to contribute more to development than those who are economically exploited and socially excluded” (OHCHR, 2008, § 47)

3.5. Conceiving strategies for Legislative and Policy Reform

In order to ensure this very integrated and comprehensive rights-based approach to children, human rights, and migration, it is crucial that countries of origin, transit, and destination develop a wide and sustainable strategy for legislative and policy reform. Reforms should ensure that migrant children and adolescents, as well as those born in transit and destination countries, are fully incorporated into child-related policies, including social protection programmes. Additionally, legislation, policies, and practices should be reviewed in order to eliminate any kind of discrimination against migrant children and children born in host countries. Initiatives aimed at promoting legislative reform at the national and regional level should incorporate existing good practices of the integration of human rights standards into migration policies and international agreements related both to migration and issues that impact migration, all the while ensuring an age, gender, and non-discrimination dimension.

The human rights approach to legislative reform “related to the CRC[,] is an approach based on the full recognition of the equal rights of children, boys and girls, as subjects of rights in society...[,] an approach that is directed towards the effective implementation of such legislation in all segments of society and all aspects of children’s lives” (UNICEF, 2008c:2). It follows that this process should include all migrant children and adolescents within society, irrespective of their nationality or migration status or that of their parents. Additionally, practices that obstruct the access of migrant children and adolescents, and children born in destination countries, to social rights should be identified in order to develop strategies to overcome such problems.

It is important to note that legislative reform encompasses more than merely writing new laws. Implementing the CRC and CEDAW requires developing children, adolescents, and women’s rights through law, policy, budgetary, and institutional reform at the national and international level:

[L]egislative reform involves reviewing and reforming not only laws but those things necessary to effectively implement them—legal and other governmental institutions, social and economic policies, budget allocations, and the process of reform in the

⁴⁰ See, among others, Fifth South American Conference on Migration, Declaration of La Paz, 26 November 2004, § 17; Ibero-American Forum on Migration and Development, Cuenca, Ecuador, 10-11 April 2008, Final Report, Session IV, Integration of Migrants, § E.

country. From a rights perspective, legislative reform is a complex process that should be a catalyst for broad measures that transform the legal and administrative frameworks that define and direct relations amongst the government, individuals, and private actors...A human rights-based approach (HRBA) to legislative reform takes into account the reality behind law reform. Effective reform must be participatory and must take into account the budgetary, policy, and institutional requirements for effective implementation of the law (UNICEF, *Supporting the Realization of Children's Rights through a Rights-Based Approach to Legislative Reform*, NY, January 2007, 11).

Additionally, states party to the CRC are duty-bound to ensure that its provisions and principles are fully reflected and given legal effect in relevant domestic legislation (Art. 4). As stated by the Committee on the CRC in General Comment No. 5, it is important to ensure that domestic law reflects the identified general principles in the Convention (Art. 2, 3, 6 and 12).⁴¹ It is also crucial that all relevant "sectoral" laws consistently reflect the principles and standards of the Convention. In the case of any conflict between an international treaty, such as the Convention, and domestic legislation, predominance should always be given to the Convention, in light of Article 27 of the Vienna Convention on the Law of Treaties⁴² (Committee on the Rights of the Child in general comment No. 6).

4. Policy Recommendations

At the 12th Session of the Human Rights Council on the "Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development", the Council called upon States to:

- 1) "[P]romote and protect effectively the human rights and fundamental freedoms of all migrants, especially those of children, regardless of their status, in conformity with the Universal Declaration of Human Rights and the international instruments to which they are party"; and
- 2) "[T]ake appropriate measures to promote and protect effectively the rights of children who are left behind in their country of origin by migrating family members".⁴³

Considering the brief analysis presented in this paper, UNICEF proposes the following set of recommendations, which espouse the aforementioned recommendations of the Human Rights Council and are intended to contribute to a comprehensive rights-based

⁴¹ Principles are formulated, in particular, in articles 2, 3, 6 and 12.

Non-discrimination: The CRC protects every child regardless of nationality or migration status and guarantees all of their rights.

Best Interests of the Child: CRC Article 3 states 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."

Life, Survival and Development and adequate Standard of Living (Articles 6 and 27): The right to survival is related to the right to an adequate standard of living, the highest attainable standard of health, nutritious food and clean drinking water.

The Right of the Child to be Heard (Article 12): Children have the fundamental right to formulate opinions about all matters that affect them and to express their opinions. The CRC establishes the principle that children's views should be heard and given due attention, taking into account "the age and maturity of the child".

⁴² Vienna Convention on the Law of Treaties. Article 27: Internal law and observance of treaties. A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.

⁴³ See Human Rights Council (2009), Human rights of migrants: migration and the human rights of the child, Twelfth session, Agenda item 3, Promotion and protection of all human rights, civil, Political, economic, social and cultural rights, including the right to development, A/HRC/12/L.16, Geneva, 2nd October, 2009, Para. 3-4.

approach to the migration-development nexus, with age, gender, and non-discrimination dimensions.

4.1. Children and Adolescents in Countries of Origin

From the perspective of countries of origin, there are two central issues that should be addressed using a comprehensive rights-based approach to migration with age, gender, and non-discrimination dimensions: (1) the root causes of migration and their impact on migrant children and adolescents, both with their families and unaccompanied, regularly and irregularly; and (2) children and adolescents left behind by their migrant parents.

Human Rights, Children and Addressing the Root Causes of Migration

- Age, gender and non discrimination-sensitive⁴⁴ social protection policies must be formulated and enforced in political strategies. Matters such as granting universal access to education, health care, and other basic services in developing countries, as well as decent employment, gender equity, and the strengthening of democracy and rule of law, should be included in the discussion and management of social protection policies in the context of international migration.
- Effective policies can reduce the need to migrate, and human rights can guide linked migration-development policy initiatives at the national, regional, and international level (GMG, 2008:80). Moreover, including notions of comprehensiveness, coherence, and shared-responsibility within these policies may result in much stronger and integrated impacts.
- Initiatives should promote both the necessity of addressing the root causes of migration within existing dialogues (e.g. GFMD) and policies in countries of destination meant to promote the voluntary return of migrants to their countries of origin.
- Civil Society, as well as children and childhood associations, should be able to effectively participate in the designing and enforcing of such policies.
- Analysis of how the current economic crisis may exacerbate the root causes of migration should be performed and then integrated into initiatives that aim to overcome the crisis and minimize its negative impacts.

Causes of Irregular Migration

- Policies should take into account that migration is often out of necessity (particularly irregular migration) and evidence has shown that migration control measures might not be the most appropriate way to address the issue. Instead, comprehensive and coherent policies on migration and development should be promoted, particularly regarding root causes and avenues for regular migration.

⁴⁴ The fundamental principles of a child-sensitive social protection system are that it: 1) promotes a coherent legal framework to protect the rights of women and children; 2) addresses the age- and gender- specific risks and vulnerabilities of children; 3) intervenes as early as possible to prevent irreversible impairment to children; and 4) makes special provisions to reach children who are most vulnerable.

- A set of initiatives (such as research, advocacy strategies, policy discussions, etc.) should be designed to examine irregular migration in order to develop legislative and policy reforms designed to effectively address this challenge.

Children and Adolescents Left Behind in Countries of Origin

- States should develop legislation and policies meant to consider the vulnerabilities and needs of these children and adolescents. In particular, states should design measures, including bilateral agreements, aimed at facilitating family reunification, in accordance with the families' wishes and the best interests of the children in each case (see Special Rapporteur on the Human Rights of Migrants, 2009, para. 33-39).
- Policies aimed at preventing trafficking of children and adolescents left behind should also be promoted, ensuring child, gender, and non-discrimination perspectives.
- States of origin should design effective policies that aim to mitigate the negative impacts of the economic crisis, including preventing an increase in school dropout and ensuring access to health care and other social rights.
- In light of the fact that the economic and financial crisis is having considerable impacts on children and adolescents left behind (e.g. decreased remittances from migrant parents), states should ensure access to social protection for all children and adolescents, including: adequate child and maternal nutrition, access to basic services for the poorest and most marginalized, support for families and caregivers in their child care role, child protective services and assistance in accessing other services and entitlements.

4.2. Children in Countries of Transit

- Strategies should be developed or reinforced that advocate for a child rights-based approach to the design of policies aimed at ensuring migrants' rights while they are in transit to another country. Any measure that may affect them (such as the decision to temporarily or permanently stay in the transit country, the conditions of such a stay, the authorization to continue their journey, their repatriation to the country of origin, as well as social protection policies) should be guided by human rights obligations (e.g. non discrimination, best interests of the child, due process, access to justice, and progressiveness) and ensure child and gender perspectives.
- Cooperative work by institutions in countries of transit with those located in countries of origin and destination is extremely important for producing comprehensive knowledge on the migration processes of children and adolescents in transit, as well as their needs and vulnerabilities. Subsequently, this knowledge can be used to advocate for comprehensive, durable, rights-based solutions.
- An examination is needed of the origins of and more efficient measures to prevent, the increasing number of deaths of migrant adults, adolescents, and children during transit (which is often the result of dangerous journeys by sea and through the desert, among others). This analysis should include an examination of the impacts of restrictive policies adopted by transit and destination countries (see, for instance, Spijkerboer, 2007: 127-139; Cuttita, 4-5; Khachani, 2006, 27-30).

- In several countries it has become increasingly important to develop a rights- and child-based approach to policies and practices dealing with mixed migration flows (Van Hear et al., 2009). Indeed, effective policies with a rights-, age-, gender-, and non discrimination-perspective should be adopted in order to ensure protection for all children and adolescents within mixed flows (e.g. asylum seekers and migrants). This is a crucial concern for destination countries and will be examined further in the following section.
- Civil society organizations should be entitled to access information on migration policies and practices, as well as to participate in the discussion and design of such measures.

4.3. Children in Countries of Destination

Detention of Migrant Children

- Provisions that criminalize irregular migrants, especially children and adolescents, should be removed from migration law and policies (Special Rapporteur on the Human Rights of Migrants, 2009).
- As a general principle, migration laws and policies should ensure the non-detention of children and adolescents based on their migration status or irregular entry. Similarly, legislation should expressly include alternative measures to child detention, which should only be applied as a measure of last resort (CRC, art. 37; CRC Committee Concluding and General Observations; Special Rapporteur on the Human Rights of Migrants, 2009). Furthermore, policies should guarantee the enforcement of such alternatives by administrative and judicial authorities.
- Access to justice and judicial revision of detention decisions should be ensured (immediately and periodically). Due process of law should be guaranteed to migrant children both in law and practice, including the right to a guardian and legal representative (CRC Committee, 2005; Special Rapporteur on the Human Rights of Migrants, 2009).
- Evidence from several countries suggests that adolescents are being detained who are above a particular age but below 18 years old. As stated by article 1 of CRC, standards on non-detention should be ensured for all children both in law and in practice.
- The detention of children and adolescents through border control measures, such as interception at sea, should be addressed with a child protection approach. Similarly, migration authorities responsible for the mistreatment of children should be held fully accountable (HRW, 2008).
- The placement of migrant children and adolescents in centres, such as detention centres, should be addressed with a child protection approach, rather than a punitive or disciplinary approach.

- Independent monitoring bodies, which incorporate age, gender, and non-discrimination perspectives, should be created to ensure full respect for human rights standards at detention centres.
- The social rights of children and adolescents in detention centres should be ensured, particularly their rights to education, health care, and recreation.
- Civil society should be entitled to access any locale where migrants are housed during migration control procedures, particularly centres (both open and closed) where children and adolescents may be housed.

Deportation and Repatriation of Migrant Children, Adolescents, and their Parents

- As a general principle, the repatriation of migrant children and adolescents from countries of destination should not involve deportation or anything of a punitive nature. A protection-approach, based on the child's best interests, should be ensured. Children and adolescents cannot be held responsible for breaching migration law (particularly in the case of unaccompanied children).
- Repatriation of unaccompanied children and adolescents should be the chosen course of action only if it is in the child's best interest, such as when the repatriation is necessary to ensure family reunification in the country of origin (Special Rapporteur on the Human Rights of Migrants, 2009). If repatriation to the country of origin is not in the child's best interest, states should consider ensuring family reunification in the country of destination. It follows that, by law and in practice, there should be a procedure to ensure that the child's best interest is the primary consideration in any decision.
- Decisions on either repatriation or granting residence should be made on a case-by-case basis, ensuring the child's best interests and expressed wishes, and should consider whether the conditions are suitable in the country of origin, among other factors and rights-based principles (UNICEF, 2008b).
- Due process should be ensured, including the right to be heard and to access justice, and when necessary, the right to an interpreter. For unaccompanied children and adolescents, the right to a guardian and a legal representative is critical (CRC Committee, 2005; Special Rapporteur on the Human Rights of Migrants, 2009).
- In deportation procedures resulting from their parents' immigration status, children and adolescents should be able to participate, depending on their maturity level. As deportation may impact the rights of children or adolescents (e.g. the right to family life), competent authorities should guarantee the right of children or adolescents to be heard, and their best interests should be the primary consideration before adopting a decision. It follows that legislation should expressly incorporate children and adolescents' participation in any migratory procedure which may impact their rights, including deportation resulting from their parents' migration status.
- Policies aimed at controlling mixed migration flows at borders or beyond (e.g. in international or foreign waters) should incorporate specific tools meant to protect children and adolescents' rights (see HRW, 2009). In particular, legislation and

policies must include mechanisms that ensure the following: the right to asylum, due process of law, child-sensitive protection measures, a full respect for the principle of non-refoulement, as well as durable solutions, such as granting legal residence and facilitating family reunification. Furthermore, legislation should ensure that children and adolescents cannot be subjected to an immediate prohibition of entry to or removal from the territory, and instead, their cases should be addressed in a child-friendly manner, diligently and expeditiously (UNICEF, 2008b).

- Since the start of the current economic crisis, there has been an increase in the number of deportations and arbitrary deportations. In this context, responses must be reinforced by criteria such as the best interest of the child and a child-protection approach, rather than a punitive approach that may increase xenophobia, social exclusion, and the exploitation or abuse of migrant children and adolescents.

Indicators on the Rights of Migrants within the Enforcement of Migration Control Policies

- States should produce information, particularly periodic indicators, on cases of violence and ill treatment of migrants, disaggregated by age and sex.
 - Issues such as the ill treatment of children in detention centres and during repatriation procedures should be expressly included.
 - Public institutions, such as local and national human rights mechanisms, should monitor this information as well as the measures adopted to prevent such situations.
 - Civil society organizations should be able to participate in periodic evaluations, debates, and policies based on the indicators.
 - In some countries, it may be necessary to create specific public observatories for this information to ensure civil society participation.

Social Rights of Children and Adolescents

- Countries of destination should develop comprehensive legislative and policy reform plans, ensuring civil society participation, intended to fully and effectively ensure and protect the social, economic and cultural rights of migrant children and adolescents, and children born to migrant parents. Nationality and migration status cannot be grounds for denying or restricting these rights. For example, education, health care, social security, access to employment and labour training, among other social rights, should be fulfilled at an equal level to nationals.
- Both direct and indirect discrimination regarding migrant children and adolescents' access to social rights must be addressed and removed from legislation, policies, and practices.
- The particular needs and vulnerabilities of migrant children and adolescents, children born to migrant parents, as well as unaccompanied children and adolescents, should

be taken into account in social and childhood policies in countries of transit and destination.

- Child and adolescent victims of labour or sexual exploitation should receive special consideration in public policies and programmes meant to ensure their rights, including their rights to health care, education, access to justice and legal residence.
- Migration policies must adopt a comprehensive age, gender, and non-discrimination approach, particularly regarding the social rights of female children and adolescents.
- States should develop indicators, with the participation of civil society and international agencies, aimed at periodically reviewing the effective access of migrants (including undocumented migrants) to all social rights. Discrimination based on nationality and migration status, both by law and de facto, should be expressly included, and data should be disaggregated by age and sex.
- Migration laws that forbid undocumented migrants from accessing employment, create serious obstacles for migrant parents in providing for the basic needs of their family (including child development and adequate standard of living). Constraints on the right to work must be reformed in light of the fact that this constraint undoubtedly impacts children and adolescents' right to development.

Right to Family Life

- States should develop—at national, bilateral, and global levels—migration policies meant to facilitate family migration as well as family reunification.
- Migration control policies, including border control and deportation procedures, should fully ensure (both in law and in practice) the right to family life.
- Migrant children and adolescents, particularly those who are unaccompanied, should be entitled to reunification with their family in the host country, especially if it is in their best interests.

Xenophobia and Racism

- States should develop or strengthen programmes, ensuring civil society participation, meant to tackle xenophobia in public servants' speeches and in the media, as well as xenophobia at school against migrant children and adolescents, and children of migrant background.
- States should implement or reinforce measures aimed to protect victims of xenophobia and racism and ensure their right to access justice.
- States should monitor judicial system responses to allegations of xenophobia and race crimes against migrants, with child and gender perspectives.
- States should develop or enforce intercultural policies, particularly within policies that affect children and adolescents.
- States should foster the participation of migrant children and adolescents in the design and implementation of such policies.

- States should implement intercultural policies aimed at raising children in an environment that accepts and values differences, discouraging racism and xenophobia.

Regularization Policies

- Within a set of migration policies aimed at ensuring migrants' rights and social integration (including family reunification) as well as addressing criminalization and marginalization, states should include flexible and accessible regularization mechanisms.
- States of transit and destination should consider developing general regularization programmes.
- Child protection policies for child and adolescent victims of abuse and exploitation should include measures related to granting legal residence as a durable solution, considering the best interests of the child.

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