

# **Examples of Good Practices in the Implementation of the International Framework for the Protection of the Rights of the Child in the Context of Migration**

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United Nations Children's Fund (UNICEF) \*

**DRAFT**  
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## I. Introduction

### 1. Background

Today, an estimated 214 million migrants, nearly three percent of the world population, live outside their country of birth. This figure includes millions of migrant children and adolescents, who have either migrated with their parents or unaccompanied.

While migration is a strategy used by individuals and families to escape exposure to risks by moving to a safer region or country, it can also be a strategy used for upward social mobility, to access better job opportunities, education and health care. When individual, family and community vulnerabilities become the main driver of migration, they are clearly and intrinsically linked to human rights deprivations in countries of origin. This includes poverty, inequalities, gender-based discrimination, lack of opportunities, as well as abuse, violence, and armed conflict. Migration is also a coping strategy that presents opportunities for migrants and their families.

Depending on the modality of migration—regular, irregular, legal, illegal, short/long term, with or with families—migrants, particularly children and adolescents, may be vulnerable to human rights deprivations throughout the entire process of migration. Increasingly restrictive migration policies can contribute to exacerbating vulnerabilities, particularly in case of undocumented migrants. The fundamental problem faced by children and adolescents is their invisibility: the absence of a child perspective within migration laws and policies, and the absence of a migrant perspective in childhood policies. This results in the deprivation of their rights, discrimination and even exploitation.

In depth analyses is needed of existing migration laws and policies that may affect all migrants to determine whether or not age and gender-sensitive responses are in place. This means that the analyses take into account the core principles of human rights including: universality, non-discrimination, best interest of the child, and gender equality. The principle of non-discrimination is essential for the operationalization of the provisions of the CRC, CEDAW and other human rights treaties.

### 2. OHCHR Study on challenges and best practices in the implementation of the international framework for the protection of the rights of the child in the context of migration

In resolution 12/6 adopted by the Human Rights Council on 1 October 2009 entitled “Human Rights of Migrants: Migration and the Human Rights of the Child”, the Office of the High Commissioner for Human Rights (OHCHR) was requested “to prepare a study on challenges and best practices in the implementation of the international framework for the protection of the rights of the child in the

context of migration, in consultation with relevant stakeholders, including States, regional organizations, civil society organizations and national human rights institutions, and requests that the study be available on the website of the Office prior to the fifteenth session of the Council, and to disseminate it to all relevant international forums” (Para. 8).

UNICEF was requested to provide examples of good practice<sup>1</sup> with particular regard to:

- (a) National legislation, policies and practice, including mechanisms to assess and address challenges in the implementation of the international framework for the protection of the rights of the child in the context of migration;
- (b) Joint efforts and strategies available at the bi-lateral, regional and international levels to assess and address challenges in the implementation of the international framework for the protection of the rights of the child in the context of migration; and
- (c) The work of National Human Rights Institutions and other relevant stakeholders.

The present document represents UNICEF’s contribution of examples of Good Practices. This document explores and describes different programs in countries of origin, transit and destination, aiming in each case to provide background information as well as a description of the policy or programme in question.

Examples have been provided for each of the three categories specified by OHCHR. Though it is important to note that, while these are submitted in response to a request for Best Practices, in general, the literature is not conclusive about the results and success of each of the experiences described herein nor does this set of examples represent an exhaustive list.

The thirty examples provided touch on a variety of human rights and child protection initiatives, including legislative and policy reform that aim to protect the rights of a number of categories of vulnerable children and women including unaccompanied children, children migrating irregularly, children who have been repatriated, etc.

The first section includes a set of national policies, laws, and practices meant to promote, protect or fulfil the rights of migrant children and children affected by migration (e.g., children left behind). In addition, this section also includes a number of judgments by national courts, as the judiciary can play a key role in monitoring migration policies and assessing them against international human rights standards.

The second section, on joint efforts at bi-lateral and regional level, contains examples of bilateral initiatives intended to ensure consular protection to migrants in host countries, and regional programmes and activities adopted by either governments (MERCOSUR Member States) or regional bodies (EU agencies) regarding key migrants’ rights issues: regularisation policies and detention

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<sup>1</sup> UNICEF tends towards the term “good practices” rather than “best practices as “the term ‘best practices’ is contentious given the range of UNICEF programming and the specific contexts of operation in each country and for this reason the term ‘good practices’ is being used” (PPP Manual, 2009 page 288).

conditions. It is UNICEF's view that good practices in this area are particularly important but also difficult to identify. It is hoped that this study will provide further mapping of this area, allowing specific gaps to be identified.

Under the final section, "The work of National Human Rights Institutions and other relevant stakeholders", we have included a number of capacity building initiatives undertaken by UNICEF and other agencies with government and/or civil society. A subsection consolidating the recommendations made by UN treaty bodies on the subject has also been included.

#### **Additional inputs submitted to OHCHR for the HRC study**

UNICEF was also asked to provide relevant information on challenges in the implementation of the international framework for the protection of the rights of the child in the context of migration, including in relation to:

- (a) The situation of separated and unaccompanied migrant children;
- (b) Access to social services (ensuring, inter alia, protection of the right to health, housing, education, water and access to sanitation), including for migrant children in an irregular situation;
- (c) Legislative framework and practice in the context of detention and repatriation, including mechanisms to ensure protection from refoulement and to ensure family unity;
- (d) Criminalization of irregular migration;
- (e) Access to the right to identity, including birth registration; and
- (f) Protection of children left behind in countries of origin.

UNICEF has provided OHCHR the following inputs:

- 1) "Migration, Children and Human Rights, Challenges and Opportunities" (UNICEF in collaboration with National University of Lanús, Draft, February 2010)
- 2) "Economic, Social, And Cultural Rights Of Migrant Children And Children Born To Migrant Parents: Constraints, Good Practices, Challenges And Recommendations", submitted by UNICEF DPP to the Office of High Commissioner of Human Rights (UNICEF in collaboration with the National University of Lanús, January 2010)
- 3) "Migration, Development and Children Left Behind: A Multidimensional Perspective", (Rodolfo de la Garza, forthcoming 2010)
- 4) Human Rights, Children and Migration Database ([www.hrcam.org](http://www.hrcam.org)), prepared in collaboration with the National University of Lanús: The database contains a compilation of excerpts from the concluding observations of UN Human Rights Committees (CEDAW, CAT, CESCR, CMW, CRC, and HRC) related to children, human rights and migration from the past decade (2000-2010). This interactive tool aims to highlight the standards established by UN Human Rights Committees concerning the rights of children in the context of migration, and therefore contribute to initiatives meant to improve the respect, promotion, protection, and effective fulfilment of their rights
- 5) A Strategic Review and Assessment of Attempts to Protect 'Children on the Move' From Abuse and Exploitation, Mike Dottridge, December 2009

### 3. Outline of good practices included in this document

Country/Region	Practice	Description
<b>National Legislation, Policies and Practice including Mechanisms to Assess and Address Challenges in the Implementation of the International Framework for the Protection of the Rights of the Child in the Context of Migration</b>		
ARGENTINA	Regularization – Patria Grande program	Patria Grande is a regularization program that has granted either temporary or permanent residence to 560,131 people.
	Migration Law – Social rights for undocumented migrants	Argentina has included provisions related to education and health care for undocumented migrants in its legislation
BELGIUM, ITALY & THE NETHERLANDS	Right to education for irregular migrants	There are explicit references to the right to education for irregular migrants in the legislation of Belgium, Italy and the Netherlands
BURUNDI	Accelerated language education for repatriated children	The Ministry of Education and local partners designed an integrated plan of action and budget in early 2007 to respond to the educational needs of repatriated children.
ECUADOR	Constitutional reform and migrants’ rights	Ecuador adopted a new constitution, which includes several paragraphs on the recognition and protection of migrants’ rights, regardless of their immigration status
	Social protection programs to support return migrants and their families	Ecuador created a National Ministry for Migrants (SENAMI) in 2007, which was established to define policies on migration, ensure the human rights of migrants and their families are respected, and promote human development. The “Welcome Home” program created for return migrants is described.
FRANCE	Right to health for undocumented migrant children	France has made provisions to extend healthcare to undocumented migrants
GUATEMALA / MEXICO	Primary education for migrant children (PRONIM)	Migrant indigenous children have the option to start or continue their studies in schools located on the farms on which they live. The schools are a joint effort between the farm owners and the PRONIM program. The program aims to promote an intercultural approach to pre-primary and primary education for the children of farm labourers.
PANAMA	Non-detention of migrant children	Panama has included in its legislation a prohibition on detaining migrants less than 18 yrs of age



Country/Region	Practice	Description
PHILIPPINES	Filipino Migrant Welfare Fund	The migrant welfare fund is pooled from USD 25 membership contributions of Filipino migrants or their overseas employers, as well as other sources. Migrants who contribute are eligible for insurance and healthcare, education and training, social services and family welfare, and the Tuloy-Aral project to aid the less fortunate children of former overseas workers complete their education.
SOUTH AFRICA	High Court: Unaccompanied children in detention – Liberty, due process and effective protection policies	The Court investigated the circumstances of the detention of migrant children and made recommendations on future treatment. The Court also followed up on the situation and made further recommendations some time later.
SPAIN	Constitutional Court: Repatriation of unaccompanied migrant children for family reunification in country of origin, right to be heard, due process, and access to legal protection	The Court highlighted the right of the child to be heard in the circumstances of unaccompanied children facing repatriation or deportation
	Right to health for undocumented migrant children	Spain has made provisions to extend healthcare to undocumented migrants
URUGUAY	Family reunification law	Uruguay recognizes the right to family reunification, due process and access to justice in its legislation
VENEZUELA	Alternatives to detention	Venezuela has prohibited detention and included several alternatives to detention in its legislation
<b>Joint Efforts and Strategies Available at the Bilateral, Regional and International Levels to Assess and Address Challenges in the Implementation of the International Framework for the Protection of the Rights of the Child in the Context of Migration</b>		
EUROPEAN COMMISSION	Research on regularization programmes and mechanisms	The European Commission (Directorate, General Justice, Freedom and Security) commissioned the International Centre for Migration Policy Development to undertake a study on practices in the area of regularisation of illegally staying third-country nationals in the Member States of the EU.
EUROPEAN PARLIAMENT	Migrant detention conditions	The European Parliament Committee on Civil Liberties, Justice and Home Affairs, commissioned a study on the conditions for migrants and asylum seekers in reception, detention or transit centres in twenty-five European countries

Country/Region	Practice	Description
GUATEMALA, MEXICO	Building the capacities of migration authorities	UNICEF has been working to build the capacities of migration authorities to protect the rights of migrants and their families, training a body of Child Protection Officers who are charged with protecting the rights of unaccompanied migrant children and adolescents on Mexico's northern and southern borders
MERCOSUR	Regularization	Several agreements, founded on the principles of equal treatment and non-discrimination, have sought to strengthen the integration process and address the migration status of irregular migrants from member countries
<b>The Work of National Human Rights Institutions and Other Relevant Stakeholders</b>		
CHINA / UNDP	Capacity building in promoting social inclusion for migrant workers and their families	Assisting the government in enhancing their capacity in the areas of management and service delivery to incorporate migrant workers and their families within social policy and reform of administrative systems serving migrant populations
EUROPEAN COMMITTEE ON SOCIAL RIGHTS	Access of undocumented child migrants to the right to health care	In <i>FIDH v. France</i> , the European Committee on Social Rights examined a complaint based on article 13 (right to health care) and 17 (rights of the child) of the European Social Charter. The complaint had questioned some restriction on the right to health care against undocumented migrants, particularly children.
EUROPEAN COURT OF HUMAN RIGHTS	Protection of unaccompanied child migrants against labour exploitation	In <i>Siliadin v. France</i> , the Court pointed out a set of positive obligations under article 4 of the European Convention (prohibition of slavery, servitude, and forced and compulsory labour)
INTER-AMERICAN COURT OF HUMAN RIGHTS	Right to birth registration, to a name, a nationality and access to education	In <i>Yean and Bosico v. Dominican Republic</i> , the Court developed standards on the rights of children born to migrant parents in countries of destination.
LATIN AMERICA / UNFPA	Regional project on sexual and reproductive rights of young and women migrants	UNFPA Latin America and the Caribbean has developed a line of work on the sexual and reproductive health of migrant women and adolescents. Its purpose is to promote the human rights of migrant women and adolescents and strengthen programs on sexual health care and reproductive health, including HIV/AIDS and gender-based violence in border areas of selected countries (Guatemala, Mexico, Colombia, Ecuador and Argentina-Bolivia).

Country/Region	Practice	Description
LAVIA / CIVIL SOCIETY	Guide for Young People Considering Migration	The International Organization for Adolescents (IOFA) worked with NGOs in Latvia (Youth Health Centre Council of Latvia and GENDERS Community Youth Organization) to develop a guide for young Latvians who were considering to go abroad to earn a living.
MEXICO / UNICEF / IOM / UNHCR	Capacity building on migration, children and human rights	UNICEF, together with IOM and UNHCR, has supported the strengthening of government and civil society capacity on several fronts including: capacity to gather information and generate statistics; securing a new model for the protection of unaccompanied migrant children; and building capacity in the migration institute
MOROCCO / UNICEF	Capacity building on migration, children and human rights	<p>Capacity building activities include:</p> <ul style="list-style-type: none"> <li>- Building a strong institutional and policy environment</li> <li>- Increasing information capacity at the High Planning Commission and other government partners</li> <li>- Increasing the capacity of the Moroccan Ministry of Social Development to deal with unaccompanied children</li> <li>- Building policy-making capacity with government and civil society partners</li> <li>- Building implementation capacity with government and other social partners</li> </ul>
PHILIPPINES	Economic and social services to overseas Filipinos and families left behind	Atikha is an NGO providing economic and social services to overseas Filipinos and families left behind. Its main areas of action are to increase awareness of migration realities, increase savings consciousness, promote the importance of education, promote peer counseling and develop financial literacy.
SOUTH AFRICA / UNICEF	Situation Analysis of migrant children in South Africa	Report “For Better Implementation of Migrant Children’s Rights in South Africa”
UN COMMITTEES	Standards on the protection of migrants	UN Treaty Bodies have been developing a set of standards regarding the human rights of migrants, particularly child migrants.
WEST AFRICA	Child mobility and integrated protection	This initiative aims to attain a better understanding of the mobility of children in West and Central Africa, as well as greater knowledge of child protection mechanisms within children’s communities and families

## 4. UNICEF Working General Principles on Human Rights and Children Affected by Migration

### Comprehensive Human Rights Based Approach:

- The fundamental challenge faced by children and adolescents in the context of migration is the **general absence of a child perspective within migration laws and policies**, as well as a **migrant perspective within childhood policies**, which result in the deprivation of their rights, discrimination, and even exploitation.
- All stakeholders should adopt a **Comprehensive Human Rights-based Approach** that addresses the entire process of migration and includes a child, gender and non-discrimination perspective. As stressed by the Human Rights Council in October 2009, this approach should be holistic “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”. This approach should also address the specific needs and vulnerabilities of children left behind.
- **A Comprehensive Human Rights Based Approach must include a focus on gender equality.**
  - Women and girls represent almost fifty percent of the international migrant population,<sup>2</sup> accounting for the phenomena known as the feminization of migration. Women may migrate to escape constraining gender norms, sexual violence and abuse, social stigma, and pressure to marry or to follow a spouse who has migrated. However, migration laws and policies generally lack a gender perspective. On the contrary, migration laws and policies often maintain or exacerbate gender inequality in host countries, which has a particular effect on migrant women and girls.
  - Girls and women are particularly vulnerable to rights violations throughout the entire migration process. Gender discrimination and the resultant weaker position of many women within their societies is often a root cause of their greater vulnerability. Female migrant workers are usually concentrated in low-wage, precarious occupations. Irregular migration status may exacerbate this exploitation, as they may accept adverse conditions for fear of being exposed or deported. The migration of mothers tends to bring about significant changes in family dynamics, as female children left behind are frequently required to assume the traditional role of their mother and may also be forced into child labour, particularly in the context of the current economic crisis.<sup>3</sup>
- **A holistic notion of development should be adopted within a Comprehensive Human Rights-based Approach.** States have a duty to ensure the right to development (which entails the full realization of all human rights) and guarantee sustainable development (i.e. the 3 pillars of economic development, social development, and environmental protection) for everyone.<sup>4</sup>

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<sup>2</sup> *Trends in International Migrant Stock: The 2008 Revision*, UN/DESA, 2009.

<sup>3</sup> *Give Girls a Chance – Tackling Child Labour, a Key to the Future*, International Labour Organization (ILO), 2009

<sup>4</sup> Declaration on the Right to Development, General Assembly Resolution A/RES/41/128, 4 December 1986, Article 1: “The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.”

- **Policy coherence is also essential within a Comprehensive Human Rights-based Approach.** This includes not only gathering data, identifying good 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 Human Rights-based Approach requires children’s participation, both as a right and a process** (CRC, Article 12). Migration laws and policies and other policies that affect migrant children must ensure the realization of children’s right to be heard, as required by the CRC. In addition, legislative and policy design or reform must be participatory, ensuring that children have the space, possibility, and due assistance to participate in the entire process. Furthermore, integration policies and programmes in host societies should ensure the active participation of migrant adolescents and those born to migrant parents.
- **A Comprehensive Human Rights-based Approach that addresses the entire process of migration requires consideration for South-South migration, internal migration, and the causes of irregular migration,** particularly the irregular migration of children and adolescents who migrate either 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, lack of information, gender inequality, and, cross-cutting the aforementioned factors, increased human trafficking and smuggling networks.

#### **Legislative and Policy Reform:**

- A Comprehensive Human Rights-based Approach requires that stakeholders approach the entire process of migration including a child, gender and non-discrimination perspective. In that regard, **States must reform their migration laws and policies to conform to international standards.**
  - International human rights principles (i.e. universality and inalienability, indivisibility, interdependence and interrelatedness, equality and non-discrimination, participation and inclusion, accountability and rule of law) and CRC principles (i.e. non-discrimination, best interests of the child, universality, and child development) should guide the design or reform of migration and childhood policies.
  - Standards provided by international human rights bodies (e.g., CRC, CEDAW, HRC, CERD, CESCR), including the Concluding Observations and General Comments/Recommendations, should represent the minimum level of protection ensured by those policies.
- **The following policy areas should be targeted for reform:**
  - Development policies, including social and economic policies, in countries of origin, to ensure that migration is a choice not a necessity (e.g., poverty reduction strategies, child and adolescent education, access to employment, childhood protection programs, etc.);
  - Social and economic policies in countries of transit and destination (e.g., policies on education, health care, social security, labour, juvenile justice, family life, sexual and reproductive health, intercultural integration, etc.). The Economic, Social and Cultural Rights of migrant children and children born to migrant parents should be fulfilled. Discrimination based on nationality and migration status should be removed from legislation, policies, and practices; and xenophobia and racism against migrant children and adolescents (and those of migrant background) must be duly addressed through a set of policies, including

- education, prevention and prosecution, and granting victims access to justice and proper reparation;
- International policies meant to ensure human and sustainable development to every human being (e.g., development, cooperation, trade, investment, etc.);
  - Border control measures in countries of transit and destination (e.g., avoid detention of children, involve child protection officers in control procedures, and ensure the best interests of the child in procedures of reunification, repatriation, and acquisition of a residence permit);
  - Migration policies based on human migration patterns in each region, including child mobility and irregular migration, that seek to facilitate regular avenues for migration through a Comprehensive Human Rights-based Approach; and
  - The potential vulnerability of children to the worst forms of child labour in the context of migration.
- **Children left behind should receive particular attention in public policies.**
    - In many cases, states do not account for the special situation of children left behind. The realisation of their human rights, including their right to development, entails that states, as key duty-bearers, design and implement legislation and policies aimed at respecting, protecting, and fulfilling such rights.
    - Greater attention must be paid to the effects of the economic crisis on children and families left behind in order to mitigate negative impacts and design policy interventions that will improve the developmental prospects for these families and children in the medium and long term.
    - States of origin should develop comprehensive policies to support the families and caregivers of children of migrant parents in their child-rearing responsibilities. Policies should be oriented at mitigating the psychosocial impacts of migration on children by providing programs for caregivers on parenting skills, gender sensitivity, and management of peer relationships. These programs must be sensitive to migrant communities' own cultural values and mores, especially regarding gender roles, youth participation and the mitigation of risky behaviours.
  - **States should not only focus on reforming laws and policies but must also ensure that laws and policies are implemented in practice.**
    - Monitoring and evaluation (including data and indicators) are necessary to ensure the effective realization of rights for children affected by migration.
    - Policies and programmes should aim to build the capacities of civil servants, migration authorities, security forces, as well as judges and other state representatives on human rights issues, particularly on migrants' rights, including a child, gender and non-discrimination perspective.

#### **International Cooperation:**

- States' must strive to **regularize the status of their migrant populations and improve working conditions through international or bilateral negotiations.**

- Migrant sending countries should engage in **dialogue with receiving countries to ensure bilateral agreements that allow migrant workers to take their children abroad**, in order to **avoid children being left behind** by parents working abroad (especially mothers) and to allow the full and harmonious realisation of children's needs.
- National governments should focus on **designing and implementing co-development strategies between countries within particular migration corridors**. Policies and legal frameworks should focus primarily on reducing social, economic, educational, and health inequalities between countries. This should be the basis for incorporating migration, its causes, and consequences into countries' developmental strategies aimed at maximizing migration's developmental potentials, while reducing its negative consequences.

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## II. National legislation policies and practice including mechanisms to assess and address challenges in the implementation of the international framework for the protection of the rights of the child in the context of migration

### 1. Argentina

#### Regularization - Patria Grande Program<sup>5</sup>

##### Background

Argentina is both a destination country and a sending country for people migrating to developed countries. Its role as a destination country distinguishes it from other countries in the region, reflected in the stock of registered foreigners – 1,500,000 immigrants or 3.91% of the total population. Most immigrants are from neighbouring countries (Paraguay, Bolivia, Chile, Uruguay, Brazil, and Peru). The arrival of Paraguayans and Bolivians has increased since the eighties; and immigrants from Peru represent one of the fastest growing communities of the past 30 years, from 8,002 persons in 1980 to 87,546 in 2001.

##### Patria Grande

Argentina has sought to integrate undocumented migrants into Argentina's society through a massive regularization program, Patria Grande, which has granted either temporary or permanent residence to 560,131 people. A total of 776,742 regularization procedures have taken place under Patria Grande and Decree 1169/04.

This program falls under the framework of the Migratory Law (Act 25875), which establishes that any citizen of a MERCOSUR country or associate country (Brazil, Paraguay, Uruguay, Bolivia, Chile, Peru, Venezuela, Colombia, and Ecuador) with no criminal background can obtain legal residence in Argentina. The vast majority of immigrants from the MERCOSUR region obtained their regularization in the period between 2006 and 2007 under the Patria Grande program. According to official information, the states that most benefited from the program are: Paraguay (50.8%), Bolivia (27.8%), and Peru (13.2%).

Both the regularization program and the new law were adopted in the context of the worst economic crisis in the country's history. In that regard, it is relevant to note that promoting regularization and enforcing equal rights for nationals and migrants have been explicitly used by the state as effective tools for overcoming the crisis.

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<sup>5</sup> Texido, Ezequiel. (2008). Perfil Migratorio de Argentina. Organización Internacional para las Migraciones. Dirección Nacional de Migraciones Argentina.



## **Migration Law, Argentina (No. 25.871, 2004) - Social Rights for Undocumented Migrants**

### Social rights, education and health care of undocumented migrants

*Article 6* establishes that the State, within its entire jurisdiction, will ensure equal access for immigrants and their families to the same conditions of protection, shelter, and rights enjoyed by nationals, particularly in reference to social services, public goods, health, education, justice, labour, employment and social security.

*Article 7* states that under no circumstance shall the irregular status of an immigrant prevent his or her admission as a student to an educational institution, whether public or private, national, provincial or municipal, primary, secondary, tertiary or university. The authorities of educational institutions should provide guidance and advice on the procedures necessary to remedy the effects of irregular migration.

*Article 8* states that foreigners shall not be denied nor restricted access to the right to health, social care and medical care, regardless of their immigration status. The authorities of health facilities should provide guidance and advice on the procedures necessary to remedy the effects of irregular migration.

## **2. Belgium, Italy & the Netherlands**

### **Right to education for irregular migrants<sup>6</sup>**

There are explicit references on the right to education for irregular migrants in the legislation of Belgium, Italy, and the Netherlands.

- Belgium has constitutional protection for the right to education, which is accompanied by legislation that puts this principle into practice. Responsibility for the implementation of this principle falls under the governments of the different linguistic communities (French and Flemish). Article 40 of the Decree of 30 June 1998, as amended under the Decree of 27 March 2002, establishes that “Provided they are accompanying their parents or persons holding parental authority, minors residing unlawfully in the territory, shall be admitted to local schools. Head teachers shall also accept enrolments of unaccompanied minors. In such cases they must ensure that the minor takes the requisite steps for registration with an institution apt to exercise parental authority over him or her”.
- In Flanders, a letter circulated by the Flemish Minister of Education grants these children the right to attend school. Moreover, this text guarantees that school headmasters are not required to inform the police about the administrative status of children and their parents, and it guarantees that they will not be arrested within the vicinity of the school.

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<sup>6</sup> Undocumented Children in Europe: Invisible Victims of Immigration Restrictions PICUM (2008) - Platform for International Cooperation on Undocumented Migrants.

- Italy guarantees migrants the right to instruction in the same manner as it does for Italian citizens regardless of migration status. The 1998 Immigration Act integrated the framework for the right to education for non-Italian students into national legislation.
- Children residing in the Netherlands are legally required to attend school. This requirement extends to school-age children of asylum seekers and irregular residents. For undocumented children, there is specific legislation regarding both primary and secondary school that clearly states that a check on the child's migration status before admission is forbidden until the age of 18.

### **3. Burundi**

#### **Accelerated language education for repatriated children<sup>7</sup>**

##### Background

The massive repatriation of migrants from the United Republic of Tanzania is putting pressure on providers of social services in return areas. The reintegration of returnees remains a substantial challenge, especially in terms of provisions of education, water, sanitation, and hygiene.

##### Accelerated language education for repatriated children

The Ministry of Education and local partners designed an integrated plan of action and budget in early 2008 to respond to the educational needs of repatriated children. This plan included the construction of classrooms in returnee areas and other special programs to address the educational needs of different categories of children. These include: the Early Childhood Development Programme; a pilot Intensive Language Program for primary and secondary school-aged children coming from a different education system; a Teacher Emergency Package for out-of-school children aged (9-14) who desire to return to school; and vocational training for youth.

An intensive French and Kirundi Language Program was piloted by the Ministry of Education with support from UNICEF and WFP. Returnee children, identified by the Provincial office of the Ministry of Education and registered by parents, participated in an intensive language programme at two boarding school facilities in two provinces with very high concentrations of returnees (Makamba and Bururi) in order to prepare for the start of the Burundian school year in mid-September.

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<sup>7</sup> UNICEF Humanitarian Action in Burundi (2009)  
[http://www.unicef.org/har09/files/har09\\_Burundi\\_countrychapter.pdf](http://www.unicef.org/har09/files/har09_Burundi_countrychapter.pdf)  
[http://www.unicef.org/har09/index\\_burundi.php](http://www.unicef.org/har09/index_burundi.php)

## 4. Ecuador

### Constitutional Reform and Migrants' Rights (2008)

Despite its profile as a country of origin, Ecuador has also become a transit and destination country in the past few years, mainly for Colombian migrants and asylum seekers. It is in this context that Ecuador adopted a new Constitution, which includes several paragraphs on the recognition and protection of migrants' rights, regardless their immigration status:

- *Article 9* says that foreigners who are in Ecuadorian territory have the same rights and duties as Ecuador according to the Constitution. All persons are equal and enjoy the same rights, duties and opportunities.<sup>8</sup>
- *Article 11.2* says that no one shall be discriminated against on grounds of ethnicity, place of birth, age, sex, gender identity, cultural identity, marital status, language, religion, ideology, political affiliation, criminal record, socio-economic status, **immigration status**, sexual orientation, health status, HIV status, disability, physical difference, nor by any other distinction, personal or collective, temporary or permanent, which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise of rights. The law shall punish any discrimination.<sup>9</sup>
- *Article 40* recognizes individuals' right to migrate and states that no human shall be identified nor considered as illegal due to his/her migration status.<sup>10</sup>

### Social protection programs to support return migrants and their families<sup>11</sup>

#### Background

Since the year 2000, more than 1 million Ecuadorian men and women have migrated, representing 10% of the country's total population and approximately 20% of the economically active population. According to the 2001 Census, 57% of those leaving the country were between the ages of 18 and 30 years, and 80% were between 18 and 40 years. Adolescents cited the lack of employment opportunities, a non-inclusive labour market, and the persistence of regional and social inequalities as reasons for migrating (Acosta, et al 2006).

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<sup>8</sup> Art. 9.-Las personas extranjeras que se encuentren en el territorio ecuatoriano tendrán los mismos derechos y deberes que las ecuatorianas, de acuerdo con la Constitución. Todas las personas son iguales y gozaran de los mismos derechos, deberes y oportunidades.

<sup>9</sup> Art.11.2- Nadie podrá ser discriminado por razones de etnia, lugar de nacimiento, edad, sexo, identidad de género, identidad cultural, estado civil, idioma, religión, ideología, filiación política, pasado judicial, condición socio-económica, **condición migratoria**, orientación sexual, estado de salud, portar VIH, discapacidad, diferencia física; ni por cualquier otra distinción, personal o colectiva, temporal o permanente, que tenga por objeto o resultado menoscabar o anular el reconocimiento, goce o ejercicio de los derechos. La ley sancionará toda forma de discriminación.

<sup>10</sup> Art. 40.- Se reconoce a las personas el derecho a migrar. No se identificará ni se considerará a ningún ser humano como ilegal por su condición migratoria.

<sup>11</sup> <http://www.senami.gov.ec/>

In a study in the province of Cañar, which included surveys of 1,150 households, the two main drivers of migration identified by parents were ensuring economic security for their household and supporting their family, though economic security was the most common cause for migration. On average, nine out of ten parents from the province migrated in search of work. This data, combined with the conditions of inequality and lack of employment opportunities in the district, reveals the current socio-economic status of homes in the province (Escobar García, 2008). Thirty-one percent of Ecuadorian migrants left children under 18 years of age behind. In the canton of Cañar, this figure is even greater, as 61% of migrants (almost double the country average) left children and adolescents behind (Escobar García, 2008).

### SENAMI

In response to high levels of out migration, the Government of Ecuador created a National Ministry for Migrants (SENAMI) in 2007, which was established to define policies on migration, ensure that the human rights of migrants and their families are respected, and promote human development. In particular, SENAMI has designed the “**Bienvenidos a Casa**” (Welcome Home) **Program** to support return migrants and their families by offering:

- **Tax exemptions** for household belongings (including cars) and work equipment up to US\$15,000;
- Access to a **Human Development Fund** for returnees who start a business in a migration-prone area (the fund makes provision for child protection services);
- **Preferential access for migrants to loans** that provide US\$5,000 at 5% interest rate for five years; and
- Government **Housing Vouchers** for migrants and/or their families. The voucher is a unique, direct non-refundable subsidy provided by the Government of Ecuador through the Ministry of Urban Development and Housing (MIDUVI). The voucher acts as economic support for migrants and/or their families as a reward for their efforts to save money to buy a house.

## 5. France

### **Right to Health for Undocumented Migrant Children<sup>12</sup>**

A system created specifically for undocumented migrants, “State Medical Assistance” (Aide Médicale de l’Etat - AME) allows undocumented migrants and their dependants, who have been residing in France for more than three months and who are below a certain economic threshold, to access publicly subsidized health care upon compliance with certain conditions. For undocumented migrants who do not comply with these conditions, only emergency care is covered by the state, with the exception of children who are entitled to access all types of health care free of charge regardless of their eligibility for

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<sup>12</sup> Source: Access to Health Care for Undocumented Migrants in Europe - PICUM Platform for International Cooperation on Undocumented Migrants (2007)

AME. The assistance is initially granted for one year but can be renewed, and eligibility documentation has to be shown every time undocumented migrants seek care, tests or medicine.

To cover expenses incurred by hospitals for providing inpatient and outpatient emergency care to undocumented migrants not eligible for AME, a special fund was created in 2004 – “fonds de soins d’urgence.” The state distributes funds to hospitals on a case-by-case basis. The fund is managed by the national “caisse nationale d’assurance maladie” and the departmental “caisses primaires d’assurance maladie”.

In order to be reimbursed, hospitals have to prove that the patients do not have any other coverage and report on the emergency nature of the care provided. Access to emergency care for undocumented migrants is organized through the health care centre offices (Permanences d’Accès aux Soins de Santé), which are in charge of providing medical and social support to underprivileged persons thereby facilitating their access to health care in public hospitals. Nonetheless, it is rather difficult to locate these types of units in most public hospitals. There are also great differences among hospitals in terms of the existence and organization of this service for socially excluded patients.

## **6. Guatemala and Mexico**

### **“Primary Education for Migrant Children” (PRONIM)**

#### Background – Migration from Guatemala<sup>13</sup>

Guatemala is a country of origin, transit, and destination for migrants. Migration has become the main survival strategy for many impoverished people seeking to improve their living conditions and ensure greater opportunities for future generations. The main destination of international migration is the United States, followed by Mexico and Canada respectively. Most migrants originate from rural areas (56.7%) and the remainder come from urban areas (43.3%). Approximately one third of Guatemala’s indigenous population has migrated and lives abroad. Many indigenous migrate to Chiapas, Mexico, from the Guatemalan border areas of San Marcos, Huehuetenango, Quetzaltenango, and Quiché. Consequently, the border region between Guatemala and Mexico is a dynamic place whose economy depends on migrant labour flows formed by agricultural workers, domestic workers, service workers, and the migration of children and adolescents.

#### Migration of Indigenous Children and Adolescents

The migration of children and adolescents from El Naranjo, Guatemala to Mexico is part of an ancient process of the Mam indigenous group. Children are not just companions, but are players in the migration process. Mexico is the place where they find work and thus secure the family's livelihood in immediate terms. Children and adolescents can migrate on their own provided they are at least 16 years of age and have a document that demonstrates parental permission. However, most of them cross the

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<sup>13</sup> Carol Girón. (2009). “The effect of Migration on Children and Adolescents from El Naranjo, Malacatán (San Marcos, Guatemala) to Southern Mexico”. Publication of FLACSO, AECID and UNICEF.

border as guests of other adult family members. This ease of crossing the Mexican border is based on an agreement published by the Secretary of the Interior of Mexico, which was intended to establish institutions for the placement of Guatemalans and Belizeans seeking to serve as temporary agricultural workers in the states of Chiapas, Quintana Roo, Tabasco and Campeche.

#### Education on the Guatemalan and Mexican Side

The level of schooling of the population in El Naranjo, Guatemala is low. Due to a lack of resources for hiring more teachers and expanding infrastructure, the State has failed to ensure access to education for children from El Naranjo, even access to primary education. Conversely, on the Mexican side of the border, migrant indigenous children have the option to start or continue their studies in schools located on the farms on which they live. These schools are a joint effort between the owners of the farms and the government program “Primary Education for Migrant Children” (PRONIM). The program aims to promote an intercultural approach to pre-primary and primary education for migrant children of farm labourers.

The specific objectives<sup>14</sup> of the program include:

- Coordinate monitoring, evaluation and adjustment of the national education proposal for elementary education with an intercultural approach for the children of migrant workers.
- Estimate the educational needs of children of preschool-age of temporary and settled migrant workers to be used as an input for the respective health care proposal.
- Implement, evaluate and adjust the system of evaluation, accreditation and certification of primary-level studies among children in families and settled migrant workers.
- Coordinate the operation of information system for the program’s coverage.
- Assist in the coordination of interagency efforts in relation to primary level education services for the children of settled migrant farm workers.

## **7. Panama**

### **Non detention of migrant children**

#### Panamá, Migration Law (No. 3, 22nd February, 2008), Article 93

Panama’s legislation provides that the detention of migrants only applies to people over 18 years of age. According to Article 93, the National Immigration Service will provide short-stay shelters for housing foreign violators of the national immigration law.<sup>15</sup> Regulations will be developed for the operation of these shelters and minimum standards of service, ensuring respect for human rights. Only those persons

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<sup>14</sup> PRONIM webpage (<http://www.pronim.es.tl/OBJETIVOS.htm>)

<sup>15</sup> “El Servicio Nacional de Migración creará albergues preventivos de corta estancia destinados a mantener, a órdenes de la institución, a los extranjeros infractores de la legislación migratoria”.

over eighteen years of age can be housed in these shelters.<sup>16</sup> The minors will be put under the protection of Ministry of Social Development, which will communicate with the diplomatic or consular representative of the minor's country of origin or residence, if that country of origin is accredited by the Republic of Panama, and if not, with a friendly government.<sup>17</sup> Advocacy and technical assistance to the Government were provided jointly by UNICEF, OHCHR, UNHCR and IOM in the preparation of the draft Law.

## 8. Philippines

### Filipino Migrant Welfare Fund<sup>18</sup>

#### Background

The Commission on Filipinos Overseas has estimated that in 2007 there were approximately 8.7 million Filipinos living overseas; 3.6 million of them were permanent migrants, 4.1 temporary migrants, and more than 900,000 irregular migrants. The top five major destination countries of overseas Filipinos were the U.S., Saudi Arabia, UEA, Canada, and Australia.

Given the impact of Overseas Filipino Workers (OFWs) on the economic development of the Philippines, the government has enacted laws to protect migrants' welfare. In particular, the POEA was created in 1982 through Executive Order 797 to promote and monitor the overseas employment of Filipino workers. A new law (RA 9422) requires that the Philippine Overseas Employment Administration (POEA) inform OFWs of their rights as workers and as human beings and provide mechanisms to redress violation of their rights as necessary. The law mandates that Filipino workers only be deployed to countries with which the Philippines "has concluded bilateral labour agreements or arrangements" and "guarantee to protect the rights of Filipino migrant workers," as well as "observe and/or comply with the international laws and standards for migrant workers."

The Overseas Workers Welfare Administration (OWWA), under the umbrella of the Department of Labor and Employment (DOLE), is the lead government agency tasked to protect and promote the wellbeing of overseas Filipino workers and their dependents. The OWWA is a single trust fund pooled from USD 25 membership contributions of Filipino migrants or their overseas employers, as well as some funds from other sources. In 2008, the agency managed/settled 269,565 welfare cases that were reported by OFWs/families, who visited or called the overseas posts, regional welfare offices, or 24/7 Operations Centre. Filipino migrants who contribute to the fund are eligible for the following services:

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<sup>16</sup> "El reglamento desarrollará el funcionamiento de estos albergues preventivos, los estándares y servicios mínimos, velando por el respeto de los derechos humanos. Sólo podrán albergarse en ellos personas mayores de dieciocho años de edad".

<sup>17</sup> "Las personas menores de edad serán puestas bajo la protección del Ministerio de Desarrollo Social, y se comunicará al representante diplomático o consular de su país de origen o residencia, si éste estuviere acreditado en la República de Panamá, o a un gobierno amigo en caso que no lo estuviere".

<sup>18</sup> International Organization for Migration, <http://www.iom.int/jahia/Jahia/lang/en/pid/1OWWA>.

OWWA, <http://www.owwa.gov.ph/index.php?page=2008-performance-highlights>

- **Insurance and Healthcare:** A member is covered with life insurance for the duration of their employment contract. A member is also entitled to disability and funeral coverage. OWWA also charges an additional 900 pesos (approximately USD 18.00) for health coverage administered as part of PhilHealth and left behind family members of the worker are covered under this plan.
- **Education and Training Programs:** Members or their beneficiaries have access to scholarships in the form of a per-semester grant towards any 4-5 year baccalaureate course. There is also financial assistance available for members to participate in programs offered through the Philippines' Technical Education and Skills Development Authority (TESDA) or the Microsoft-administered Tulay Education Program that provides information technology training and access to technology.
- **Social Services and Family Welfare:** Members are provided with a range of services to facilitate immediate repatriation wherever necessary, including airport assistance, domestic transport, temporary shelter, etc. A reintegration program, including community organizing, capacity building and other social preparation activities is also provided. To facilitate the reintegration process further, members can apply for a loan upon return to the Philippines. Finally, the OWWA also provides a pre-departure loan and family assistance loan in coordination with government financing institutions.
- **The Tuloy-Aral Project:** This program was launched on December 16, 2004, to aid the less fortunate children of former OFWs, as well as very poor and needy children in order to continue their elementary and high school education in the Philippines. The Philippine Overseas Labor Offices (POLOs) assist in promoting the project and identifying OFWs who are successful, financially stable and in good standing to act as prospective donors. OFW organizations may also volunteer to act as donors. Donors are requested to provide a USD 100 per year to the child-beneficiary to enable him/her to continue elementary or high school education. The amount helps cover expenses such as books, school supplies, materials for projects, transportation, authorized school contributions, and allowance for the whole school year. OWWA Family Welfare Officers are responsible for monitoring each child's progress in school. The Tuloy-Aral Project is being replicated in all regions of the country.
- **Reintegration Program:** The program covers two major components of reintegration – economic and psychosocial. The psycho-social component includes community organizing or organizing of OFW family circles and services, such as social counselling, family counselling, stress debriefing, and training on capacity building, value formation, etc. The economic component includes social preparation programs for livelihood projects or community-based income generating projects, skills training, and credit facilitation and lending. At present, the economic component has two loan programs: the OWWA-NLSF Livelihood Development Programs for OFWs and the OFW Groceria Project.



## 9. South Africa

### High Court: Unaccompanied migrant children in detention – Liberty, Due process, and Effective Protection Policies

The High Court of South Africa (Transvaal Division), in its Judgment of September 13, 2004 (Case 22866/04), ruled on a case submitted by the Centre for Child Law, regarding the situation of unaccompanied migrant children detained in a Repatriation Centre. The complainant argued that a number of children were detained with adults, and were facing imminent and unlawful deportation. Immediately after the complaint was submitted, the Court granted an interdict preventing the execution of any deportation measure against those children. The Court also appointed a curator for the children who was to investigate the circumstances of their detention, and make recommendation to the Court on future treatment and legal proceeding to enforce their rights.

A few months later, after evidence showed that some recommendations had not been carried out—in particular regarding the situation of those children under provisions of Child Care Act—the Court stated the following:

- Persons within our territorial boundaries benefit from the protection of our courts and the Constitution;
- A child's best interests are of paramount importance in every matter concerning a child;
- Any child who appears to have no parent or guardian must be brought before a Children's court for an inquiry to determine whether the child is in need of care or whether the child should be removed to a place of safety;
- Unaccompanied foreign children that find themselves in the country illegally should have legal representation appointed to them by the state;
- The detention of children in the Repatriation Centre is unlawful and invalid, and should cease immediately. Furthermore, the manner in which these children are being deported is unlawful and shameful;
- The order granted is merely the first step towards finding proper solutions to the problem presented faced by unaccompanied foreign children in South Africa. Therefore, the respondents have a duty to liaise with each other, to find a solution, and to work on detailed practical arrangements to ensure that unaccompanied foreign children are dealt with in accordance with the principles set out in legal instruments, such as the Constitution, the Convention on the Rights of the Child, and the African Charter on the Rights and Welfare of the Child.

## 10. Spain

### **Constitutional Court: Repatriation of Unaccompanied Migrant Children for Family Reunification in Country of Origin – Right to Be Heard, Due Process, and Access to Legal Protection<sup>19</sup>**

The Constitutional Court of Spain highlighted the right of the child to be heard (in particular, before a court) in the circumstances of unaccompanied children that face repatriation or deportation measures. In this particular case, the legal guardian of the child (a local government) had ordered the repatriation of the child, alleging that family reunification would take place in the country of origin. The decision was adopted before granting the child a hearing before a court in order to hear his opinion. The Court asserted:

- The right of minors who are capable of forming their own views to be heard in any judicial or administrative proceedings affecting them, either directly or through a representative or an appropriate body, are enshrined in the Convention on the Rights of Child, ratified by Spain, and in the law, which recognizes minors' right to be heard both in the home as well as in any administrative or judicial proceeding in which they are directly involved and leading up to a decision affecting their personal, family or social situation.<sup>20</sup>
- In cases concerning the personal or family situation of a minor, who was seventeen years of age at the time authorization was granted for repatriation, and who enjoyed due process in Juvenile Court in an effort to realize her/his right to be heard, s/he should be granted a hearing before the decision of an administrative authority.<sup>21</sup>
- The lack of a hearing before a competent court and a decision that does not to recognize the child's capacity to defend her/his rights before the law constitutes an infringement on the right to be heard and, therefore, the right to effective judicial protection.<sup>22</sup>

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<sup>19</sup> Case 183/2008 (December 22, 2008)

<sup>20</sup> El derecho de los menores que estén en condiciones de formarse un juicio propio a ser escuchados en todo procedimiento judicial o administrativo que le afecte, ya sea directamente o por medio de representante o de un órgano apropiado, aparece recogido en la Convención de Derechos del Niño, ratificada por España, y la normativa reconoce el derecho de éste a ser oído tanto en el ámbito familiar como en cualquier procedimiento administrativo o judicial en que esté directamente implicado y que conduzca a una decisión que afecte a su esfera personal, familiar o social;

<sup>21</sup> En un caso que afecta a la esfera personal y familiar de un menor, que, con diecisiete años de edad en el momento de resolverse sobre la autorización para la repatriación, gozaba ya del juicio suficiente para ser explorado por el Juzgado de Menores, con el fin de hacer efectivo el derecho a ser oído, se le debió haber otorgado una audiencia antes de resolver la pretensión deducida por la autoridad administrativa.

<sup>22</sup> La falta de audiencia ante el tribunal competente, y la decisión de no reconocer al niño la capacidad procesal para defender sus derechos ante la justicia, constituye una vulneración del derecho a ser oído y, por lo tanto, al derecho a la protección judicial efectiva.

## Right to Health for Undocumented Migrant Children<sup>23</sup>

Regardless of their immigration status, migrants are entitled to register with local governments. This is a requirement for, inter alia, access to education and health care. In theory, foreigners registered in their municipality enjoy the same rights as citizens, irrespective of their immigration status.

The 4/2000 Aliens Act on the Right and Freedom of Foreigners universalized the right to health care and extended this right to irregular migrants through a registration procedure called “empadronamiento”. The migrant must register with the municipality in order to obtain the “sanitary card” required to consult a doctor. To do so, the migrant must show her/his passport and a document proving residence in that municipality, as well as fill out a registration form. Access to this documentation is not easy in practice, due to barriers such as fear, lack of information, and administrative obstacles created by certain city councils, such as councils that demand documents the migrant may not have. When migrants are unable register, pregnant women and minors are entitled to health care through the social security’s emergency service. However, without a “sanitary card” doctors are unable to prescribe drugs.

## 11. Uruguay

### Family reunification law

#### Background

The existence of obstacles to family reunification may contribute to the irregular entry of children (if an unaccompanied child is seeking to reunite with his or her parents in destination) or may extend the length of irregular residence (if a family is applying for family-based residence within the host country). This situation can prolong or increase social exclusion and the deprivation of social rights.

#### Migration Law 18.250 Art. 1 (2008)

Under Migration Law 18.250, the State recognizes as an inalienable right of migrants and their families, notwithstanding their immigration status, the right to migrate, the right to family reunification, due process and access to justice.

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<sup>23</sup> Source: IOM. (2007). Migration and the Right to Health: A Review of European Community Law and Council of Europe Instruments. International Migration Law.

## 12. Venezuela

### Alternatives to detention

Venezuela, Migration Law (No. 37.944, 24 May, 2004), Article 46

According to Migration Law No. 37.944, for the purpose of ensuring the enforcement of deportation or removal action, the competent authority may impose on a foreigner, who is subject to the procedure covered by this chapter, the following precautionary measures:

- 1) Periodic reporting to the competent authority
- 2) Prohibition from leaving the location in which s/he resides without corresponding authorization
- 3) Provision of adequate monetary bail, for which the economic condition of the foreigner must be taken into account
- 4) Residence during the administrative procedure in a designated locality
- 5) Any other measure deemed appropriate to ensure compliance with the competent authority's decision provided that the measure does not involve deprivation or restriction of the right to personal liberty

### III. Joint efforts and strategies available at the bilateral, regional and international levels to assess and address challenges in the implementation of the international framework for the protection of the rights of the child in the context of migration

#### 13. European Commission

##### Research on Regularisation Programmes and Mechanisms

In December 2007, the European Commission (Directorate, General Justice, Freedom and Security) commissioned the International Centre for Migration Policy Development (ICMPD) to undertake a “Study on practices in the area of regularisation of illegally staying third-country nationals in the Member States of the EU”. The survey carried out by ICMPD was published in 2009.<sup>24</sup>

All regularisation programmes and mechanisms adopted by EU Members States between 1996 and 2007 are described in this extensive report. Furthermore, an important contribution of this survey is that it compiles a variety of relevant reasons and goals that may justify regularisation policies. Among these objectives and benefits, the following are noteworthy:

- Promoting social integration and social cohesion;
- Correcting certain labour market deficiencies, notably informal employment and the resulting exploitative labour conditions;
- Increasing Family Unification and Protection;
- Reducing marginalisation and increasing access to social rights and services;
- Regularisation is an important tool for migration management;
- Preventing trafficking, particularly of women and children;
- Acquiring accurate data on immigrant populations, which may contribute to dealing with false figures being spread in xenophobic communication, speeches etc;
- For some NGOs, regularisation is a way of recognizing the contribution of the informal undocumented sector in building the economy and socio-cultural richness of the host country; and
- Last but not least, Trade Unions stated that regularisation offers an opportunity to regulate informal sectors of the economy and thereby protect the interests of irregular migrants working

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<sup>24</sup> Martin Baldwin-Edwards and Albert Kraler –Eds.-, REGINE, Regularisations in Europe, Pallas Publications, Amsterdam, 2009

under conditions of informality and illegality, while also protecting the interests of both legal migrants and the local population.

## 14. European Parliament

### Migrant detention conditions

In December 2006, the European Parliament Committee on Civil Liberties, Justice and Home Affairs, commissioned a study on the conditions for migrants and asylum seekers in reception, detention or transit centres in twenty-five European Union countries. The final report of this survey, carried out by Steps Social Consulting, was submitted to the Parliament in December 2007.<sup>25</sup> The following conclusions and recommendations of the report are worth noting:

- Definition of reception conditions within European Union should be based on reinforcement of asylum seekers protection, with the objective of preparing them for social inclusion. Reception systems should not be used as means of control for aliens requiring protection.
- Detention should be the exception to the rule and used as a last resort when alternative, more relaxed measures have failed, in accordance with the provisions set out in international law on refugees and human rights.
- Detention should not be used as a policy to manage immigration flux.
- Special attention should be paid to the situation of isolated women and mothers with children.
- Detention of identified vulnerable persons in closed centres should be banned.
- Alternative accommodation solutions should be implemented in priority, to avoid systematic confinement.
- The application of Prison regime rules and conditions in administrative detention centres should be avoided, in particular concerning:
  - Possibility of freedom of movement within the centres;
  - Possibility to have contacts with external persons (telephone, visits);
  - Ban of placement of detainees in isolation cells for disciplinary reasons; and
  - Moderate internal regulations and ban of handcuffs use.
- Duration of detention must be strictly limited to the time required to organise the removal procedure. Long duration of detention and inactivity are factors that may contribute to create vulnerability.
- Access to rights and health should be secured in all administrative detention places for third country nationals.
  - Access to rights should be secured by:

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<sup>25</sup> STEPS Social Consulting, The conditions in centres for third country national (detention camps, open centres as well as transit centres and transit zones) with a particular focus on provisions and facilities for persons with special needs in the 25 EU member states, Brussels, December 2007

- A clear legal procedure in the national law and systematic control of the detention by judicial ruling;
  - Presence of translators at all steps of the procedure;
  - Access to independent legal support through access to independent and neutral organizations; and
  - Access of Non Governmental Organisations to close centres.
- Access to health should be secured by:
- Permanent presence of independent medical and psychological teams;
  - Free access to these teams; and
  - Possibility to be released for medical reasons upon independent medical advice and certificate.
- Removal back to the country of origin should be done only if complete security conditions are met. In-depth study has to be done to guarantee the returnee’s security

Regarding child detention in these centres, the report concluded that:

- Minors should never be subject to forced return procedures.
- All forms of detention for minors and families, particularly for unaccompanied minors, should be banned. Alternative solutions such as the obligation to report regularly to police authorities have been tested in some countries and have to be considered.

This type of survey can be considered a good practice for producing and gathering accurate information that might lead to a set of proposals and initiatives meant to ensure a rights-based approach to migration control policies, particularly regarding arbitrary detention policies and/or practices. In this sense, information such as that included in that report may contribute to promoting policies that, in line with international standards, recognize migration-related detention as an exceptional measure that should only be adopted as a last-resort.

## **15. Guatemala & Mexico**

### **Building the capacities of migration authorities**

(Additional information on this program and other capacity building initiatives can be found below at “No. 28. Mexico/UNICEF/IOM/UNHCR”)

#### Background

The economic crisis is still severely impacting Guatemala, especially vulnerable communities, and is also affecting the development opportunities of children and adolescents in areas of high out-migration. At the request of the Guatemalan government and partners, UNICEF Guatemala has provided technical support to buttress the capacity of consular services. This work has included efforts to address the

increased number of migrants returning from abroad, particularly unaccompanied migrant children returning from Mexico.

### Building the Capacity of Migration Authorities to Protect the Rights of Migrants and their Families

In August 2009, at the behest of the organizers of the Regional Conference on Migration, UNICEF Guatemala and UNICEF Mexico were requested to assist in the drafting of guidelines for the care of unaccompanied migrant children with key regional experts. These guidelines were officially adopted one month later in a meeting in Guatemala. At the same Regional Conference on Migration, Mexican government officials introduced a new initiative to train a body of “Oficiales de Protección a la Infancia” (OPIs), who are charged with protecting the rights of unaccompanied migrant children and adolescents on Mexico’s northern and southern borders.

Following the conference, in October 2009, The Guatemala “Dirección General de Migración” and Consular Services Authorities, in collaboration with Mexican officials, agreed to launch “Oficiales de Protección a la Infancia” in Guatemala. UNICEF Guatemala has been involved in providing training to both Guatemalan and Salvadoran OPIs in charge of receiving unaccompanied migrant children and adolescents on their borders and accompanying them through the repatriation process to their countries of origin. In particular, UNICEF Guatemala has been working to introduce a child protection focus in these institutions.

## **16. MERCOSUR**

### **Regularization**

Within the framework of MERCOSUR (Southern Common Market - Argentina, Brazil, Paraguay, and Uruguay), several agreements have been founded on the principles of equal treatment and non-discrimination, and have sought to strengthen the integration process and address the migration status of irregular migrants from member countries. It is important to highlight that these agreements explicitly recognized the right of children to education, regardless their migration status or the status of their parents.

- In 2002 an Agreement on Residency for Nationals of the MERCOSUR member countries was signed. According to this agreement immigrants from a country of the region who acquire a temporary or a permanent residence visa in another MERCOSUR country will receive the same treatment as the country nationals, including in the labour market.
- At the same time, the Agreement on Regulating the Migration of MERCOSUR nationals was concluded making it possible to regularize immigrants without their having to return to their countries of origin.
- In 2004, a regularization program was established for natives of MERCOSUR countries and associated states: Bolivia, Brazil, Chile, Colombia, Ecuador, Paraguay, Peru, Uruguay and Venezuela.



- In addition, Argentina has signed several bilateral agreements, including those signed with the Republic of Peru and Bolivia and the Additional Protocols, which seek to achieve the following:
  - Promote the integration of persons who have been admitted to Argentina as permanent residents;
  - Ensure every person who applies to be admitted to Argentina on a permanent or temporary basis enjoys non-discriminatory (in terms of rights and guarantees) admission criteria and procedures;
  - Ensure the right to family reunification; and
  - Recognize that migrants and their families will have the same rights as nationals of the host country.
- Since 2004, several Latin-American countries have adopted regularization programmes. Besides the “Patria Grande” Program implemented in Argentina, the following should be highlighted:
  - Brazil: Regularization of undocumented migrants (2009)
  - Mexico: Regularization of undocumented migrants who entered into Mexico before 2008 (November 2008-May 2011)
  - Chile: Regularization program for irregular Latin-American and Caribbean migrants (2007-2008)
- States have been highlighting the benefits for both migrants and host societies in regional summits. In this regard, many Latin American states have considered regularization programs acts of social justice, as they provide identity to undocumented migrants, protect them from human rights 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.<sup>26</sup>

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<sup>26</sup> Source: 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.

## IV. The work of National Human Rights Institutions and other relevant stakeholders

### 17. China/UNDP

#### Capacity Building in Promoting Social Inclusion for Migrant Workers and their Families (UNDP)<sup>27</sup>

##### Background

- **Actors involved:** UNDP, China International Centre for Economic and Technical Exchanges (CICETE); Ministry of Human Resources and Social Security (MOHRSS); National Development and Reform Commission (NDRC)
- **Duration:** Three years (2007-2010)

In China, UNDP addresses the rights and needs of domestic migrant workers and their families that are often not well reflected in social security and access to public social services. UNDP assists the Chinese government at multiple levels in enhancing their capacity in the areas of management and service delivery to incorporate migrant workers and their families within social policy and reform of administrative systems serving migrants populations. In addition to employment opportunities and migrant access to social security and compensation and rehabilitation for workers' injuries, policy will be oriented towards migrant access to basic education for children, general health and maternal care and housing.

### 18. European Committee on Social Rights

#### Access of undocumented child migrants to the right to health care

In the case *FIDH v. France* (September 8, 2004), the European Committee on Social Rights examined a complaint based on articles 13 (right to health care) and 17 (rights of the child) of the European Social Charter, submitted by the International Federation of Human Rights. The complaint had questioned some restriction on the right to health care against undocumented migrants, particularly children. In its decision, the Committee stated the following:

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<sup>27</sup> From "Mainstreaming Migration into Development Planning, A handbook for policy-makers and practitioners", forthcoming (2010)

**27.** The Charter was envisaged as a human rights instrument to complement the European Convention on Human Rights. It is a living instrument dedicated to certain values which inspired it: dignity, autonomy, equality and solidarity.

**28.** Indeed, according to the Vienna Declaration of 1993, all human rights are “universal, indivisible and interdependent and interrelated” (para. 5). The Committee is therefore mindful of the complex interaction between both sets of rights.

**29.** Thus, the Charter must be interpreted so as to give life and meaning to fundamental social rights. It follows inter alia that restrictions on rights are to be read restrictively, i. e. understood in such a manner as to preserve intact the essence of the right and to achieve the overall purpose of the Charter.

**30.** As concerns the present complaint, the Committee has to decide how the restriction in the Appendix ought to be read given the primary purpose of the Charter as defined above. The restriction attaches to a wide variety of social rights in Articles 1-17 and impacts on them differently. In the circumstances of this particular case, it treads on a right of fundamental importance to the individual since it is connected to the right to life itself and goes to the very dignity of the human being. Furthermore, the restriction in this instance impacts adversely on children who are exposed to the risk of no medical treatment.

**31.** Human dignity is the fundamental value and indeed the core of positive European human rights law – whether under the European Social Charter or under the European Convention of Human Rights and health care is a prerequisite for the preservation of human dignity.

**32.** The Committee holds that legislation or practice which denies entitlement to medical assistance to foreign nationals, within the territory of a State Party, even if they are there illegally, is contrary to the Charter.

**36.** Article 17 of the Revised Charter is further directly inspired by the United Nations Convention on the Rights of the Child. It protects in a general manner the right of children and young persons, including unaccompanied minors, to care and assistance.

## **19. European Court Of Human Rights**

### **Protection of unaccompanied child migrants against labour exploitation**

In the case *Siliadin v. France* (Application no. 73316/01, 26 July 2005), the European Court of Human Rights has pointed out a set of positive obligations under article 4 of the European Convention (prohibition of slavery, servitude, and forced or compulsory labour).

The case referred to an adolescent unaccompanied girl, subjected to forced servitude and domestic labour. As to the facts, the Court asserted:

The Court notes that the applicant arrived in France from Togo at the age of fifteen years and seven months with a person who had agreed with her father that she would work until her air ticket had been reimbursed, that her immigration status would be regularised and that she would be sent to school (para. 109);

In reality, the applicant worked for this person for a few months before being “lent” to Mr and Mrs B. It appears from the evidence that she worked in their house without respite for about fifteen hours per day, with no day off, for several years, without ever receiving wages or being sent to school, without identity papers and without her immigration status being regularised (para. 110).

Then, in its judgment, the Court stated:

The Court considers that, together with Articles 2 and 3, Article 4 of the Convention enshrines one of the basic values of the democratic societies making up the Council of Europe (para. 82);

In those circumstances, the Court considers that limiting compliance with Article 4 of the Convention only to direct action by the State authorities would be inconsistent with the international instruments specifically concerned with this issue and would amount to rendering it ineffective. Accordingly, it necessarily follows from this provision that Governments have positive obligations, in the same way as under Article 3 for example, to adopt criminal-law provisions which penalise the practices referred to in Article 4 and to apply them in practice (para. 89);

The Court notes that, in the instant case, although the applicant was not threatened by a “penalty”, the fact remains that she was in an equivalent situation in terms of the perceived seriousness of the threat. She was an adolescent girl in a foreign land, unlawfully present in French territory and in fear of arrest by the police. Indeed, Mr and Mrs B. nurtured that fear and led her to believe that her status would be regularised (para. 118);

Children and other vulnerable individuals, in particular, are entitled to State protection, in the form of effective deterrence, against such serious breaches of personal integrity (para. 143);

The Court observes that, in the instant case, the applicant, who was subjected to treatment contrary to Article 4 and held in servitude, was not able to see those responsible for the wrongdoing convicted under the criminal law (para. 145).

## 20. Inter-American Court of Human Rights

### Right to child registration, to a name, a nationality, and access to education

In the case *Yean and Bosico v. Dominican Republic* (Judgment of September 8, 2005), the Inter-American Court of Human Rights developed standards on the rights of children born to migrant parents in countries of destination. Among the considerations of the Court, it worth highlighting the following:

This Court has stated that the cases in which the victims of human rights violations are children are particularly serious. The prevalence of the child's superior interest should be understood as the need to satisfy all the rights of the child, and this obliges the State and affects the interpretation of the other rights established in the Convention when the case refers to children. Moreover, the State must pay special attention to the needs and the rights of the alleged victims owing to their condition as girl children, who belong to a vulnerable group (para. 134);

The determination of who has a right to be a national continues to fall within a State's domestic jurisdiction. However, its discretionary authority in this regard is gradually being restricted with the evolution of international law, in order to ensure a better protection of the individual in the face of arbitrary acts of States. Thus, at the current stage of the development of international human rights law, this authority of the States is limited, on the one hand, by their obligation to provide individuals with the equal and effective protection of the law and, on the other hand, by their obligation to prevent, avoid and reduce statelessness (para. 140);

The Court considers it should mention that the obligation to respect and ensure the principle of the right to equal protection and non-discrimination is irrespective of a person's migratory status in a State. In other words, States have the obligation to ensure this fundamental principle to its citizens and to any foreigner who is on its territory, without any discrimination based on regular or irregular residence, nationality, race, gender or any other cause (para. 155);

In view of the above, and considering the right to nationality of the children of migrants in the Dominican Republic according to the pertinent constitutional provision and the international principles concerning protection for migrants, the Court considers that: (a) The migratory status of a person cannot be a condition for the State to grant nationality, because migratory status can never constitute a justification for depriving a person of the right to nationality or the enjoyment and exercise of his rights; (b) The migratory status of a person is not transmitted to the children, and (c) The fact that a person has been born on the territory of a State is the only fact that needs to be proved for the acquisition of nationality, in the case of those persons who would not have the right to another nationality if they did not acquire that of the State where they were born (para. 156);

The Court considers that the Dominican Republic failed to comply with its obligation to guarantee the rights embodied in the American Convention, which implies not only that the

State shall respect them (negative obligation), but also that it must adopt all appropriate measures to guarantee them (positive obligation), owing to the situation of extreme vulnerability in which the State placed the Yean and Bosico children, because it denied them their right to nationality for discriminatory reasons, and placed them in the impossibility of receiving protection from the State and having access to the benefits due to them, and since they lived in fear of being expelled by the State of which they were nationals and separated from their families owing to the absence of a birth certificate (para. 173).

## **21. Latin America/UNFPA<sup>28</sup>**

### **Regional Project on Sexual and Reproductive Rights of Young and Women Migrants**

UNFPA Latin America and the Caribbean has developed a line of work on the sexual and reproductive health of migrant women and adolescents. Its purpose is to promote the human rights of migrant women and adolescents and strengthen programs on sexual health care and reproductive health, including HIV/AIDS and gender-based violence in border areas of selected countries (Guatemala, Mexico, Colombia, Ecuador and Argentina-Bolivia).

The action lines of the project are:

- Development of a regional campaign on sexual and reproductive health, including HIV/AIDS and gender violence among migrant women and adolescent.
- Strengthening of the foundations of socio-demographic information on migrant women and adolescent, with particular emphasis on issues of sexual and reproductive health, HIV/AIDS and gender and sexual violence.
- Development of diagnostics and systematization of legislation, policies, programs and interventions concerning the right to health and the prevention of gender-based violence.
- Support for organizations and networks of migrant women and adolescent to promote reproductive rights and awareness.
- Creation of a bank of good practice and materials.
- Identification of proposals for overcoming barriers to access and capacity development in the area of health for migrant populations.
- Strengthening and development of models of care and management in the area of sexual and reproductive health and gender-based violence among migrant women and adolescents in border areas.

In this context, Argentina has formed an inter-sectoral roundtable composed of different national government agencies, such as: Ministry of Health, Ministry of Interior, Ministry of Justice and Human

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<sup>28</sup> <http://unfpa.org/public/site/lac/cache/offonce/pid/5421;jsessionid=C8F117AF5A2DA166AABD1412CBE757C8>

Rights and Ministry of Foreign Affairs, International Trade and Worship. In this forum, communication materials are developed with the aim of promoting the right to health (with emphasis on issues of sexual and reproductive health) for migrants. NGOs, especially representatives of associations of migrant women have been actively involved in the production of materials, and two pamphlets have been produced – one aimed at all health centers in the country and the other at migrants. These documents emphasize that free and unrestricted access to health services cannot be restricted or denied because the migration status of the person.

This forum is also conducting the "Campaign for Sexual and Reproductive Rights of Women Migrant" comprised of a series of radio messages produced by civil society organizations and representatives of associations of migrant women, which will be disseminated throughout the country through a network of community radio.

## **22. Latvia/Civil Society**

### **Guide for Young People Considering Migration<sup>29</sup>**

The International Organization for Adolescents (IOFA) worked with NGOs in Latvia, the Youth Health Centre Council of Latvia and the GENDERS Community Youth Organization, to develop a guide for young Latvians who were considering to go abroad to earn a living.<sup>30</sup> In the context of a campaign that was designed chiefly to prevent Latvian girls and young women being trafficked, they identified a series of precautions that seemed likely to reduce the chances of someone being trafficked. At the end of the campaign, a survey of almost 350 young people who were intending to leave the country within the next six months recorded their state of preparedness on ten counts.

More than half (64 per cent) of those questioned had been exposed to some of the campaign's messages and almost half (47 per cent) reported having seen or heard the campaign messages from three or more sources. The authors concluded that it was essential for the audience they wanted to reach to see the same campaign messages two or more times, rather than only once.

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<sup>29</sup> From "A Strategic Review And Assessment Of Attempts To Protect 'Children On The Move' From Abuse And Exploitation", Mike Dottridge, December 2009

<sup>30</sup> Boak, Alison, Amy Boldosser and Ofronama Biu (eds.) (2003), *Smooth Flight. A Guide to Preventing Youth Trafficking*, IOFA, New York. The guide was available on a UN-run web-site ([www.seerights.org](http://www.seerights.org)), but this has been closed. It stresses the importance of collecting information from young people, so that any initiative intended to influence them would be based on evidence from their experiences, rather than just their hopes and fears. They reached five conclusions based on the results of a baseline survey of more than 3,000 young people (*Smooth Flight*, pages 45-49):

1. "Most youth want to go abroad and are going abroad to work at young ages;
2. Most youth do not take adequate steps to prepare for going abroad to work;
3. The experience of most youth who went abroad to work was different than they had anticipated;
4. A substantial number of young people reported that they experienced unsafe working conditions, including violence perpetrated by their employers, while working abroad;
5. Young people were unlikely to contact the authorities if they encountered problems while working abroad."

Ideally, the information collected in this survey should have been complemented later with evidence on whether some or all of these precautions proved effective. This could have been done by questioning young migrants about their migration experience after they returned to Latvia, collecting information from both people who had taken precautions and those who had not, to check whether the precautions had brought any real benefit.

IOFA reported in 2008 that the Community Response to Trafficking (CRT) programme developed in Latvia was being replicated in the Dominican Republic, together with an NGO there, the Centro de Orientación e Investigación Integral (COIN) and three organizations situated in different types of community, one affected by tourism, the second in a town and the third in a rural area.<sup>31</sup>

## **23. Mexico/UNICEF/IOM/UNHCR**

### **Background**

As a country of migratory origin, transit and destination, tackling issues related to migration are important in Mexico. UNICEF's Country Office has given increasing priority to protecting the rights of children in this context in recent years. The UNICEF Office has, together with IOM and UNHCR, supported the strengthening of government and civil society capacity on several fronts, to the extent that Mexico now exercises leadership in international fora on the rights of children in migration.

### **Capacity to gather information and generate statistics**

UNICEF has promoted greater desegregation by age group and gender in routine government information gathering and statistics generation. The National Geography and Statistics Institute (INEGI) and National Population Council (CONAPO) regularly produce information on migration trends. Since 2008 the Migration Institute now has separate figures on children in migration. Since 2001, the National Welfare Agency DIF has been producing statistics on the profile of children in temporary shelters for migrant children on the northern and southern border. Trends in the profile of some 92,000 children passing through these shelters between 2001 and 2007 were analyzed with UNICEF support.

UNICEF supported the Northern Frontier College to design a module on children in migration to be regularly applied in migration surveys on the northern frontier. Similar efforts are being pursued with the Southern Frontier College. The Foreign Ministry collects statistics from its Consulates in the United States on protection offered to unaccompanied and accompanied migrant children. UNICEF has offered technical assistance for the design of more integrated information systems between the Foreign Ministry, Migration Institute and National Welfare Agency, in order to ensure better tracking of and more integrated services for unaccompanied migrant children.

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<sup>31</sup> IOFA (2008), Newsletter winter 2008, accessed on 31 July 2009 at <http://www.iofa.org/newsletter/IOFA%20Newsletter%202008%20winter%20FINAL.pdf>



## **Securing a new model for the protection of unaccompanied migrant children**

Since 1999 UNICEF has supported a programme for migrant children on the northern frontier, in which the National Welfare Agency has taken the lead in setting up transitory shelters for children identified as unaccompanied.

Since 2007, UNICEF has supported more integrated efforts between several agencies (in particular the Foreign Ministry, Migration Institute and National Welfare Agency) to develop an integrated model of protection for unaccompanied migrant children. Inter-sectoral cooperation has been vital to this effort and is secured through an the Inter-Institutional Panel on Unaccompanied Child and Adolescent Migrants and Migrant Women, established in March 2007. The panel brings together some 17 institutions ranging from public authorities to United Nations agencies (UNICEF, IOM, UNHCR, UNIFEM). In 2009, it secured an increased national budget allocation in Congress for the new protection model for unaccompanied children, and is developing an operational manual for better inter-agency implementation. Over 20,000 children a year in situations of repatriation (either migrating to or from Mexico) now count on this system for their protection, including immediate care, specialized attention and separate accommodation from adults, as well as communication with and safe return to their families and communities of origin. Within the model the following new services have been developed:

- To ensure immediate and appropriate care for repatriated children, eight special care units for children have been set up next to Migration Units in northern border areas. Medical attention is offered and basic needs (such as food, water, rest and communication with their families) are met before they are interviewed to evaluate their situation. These care units are run jointly by child protection (DIF) and migration services (INM).
- A network of some 27 transitory shelters is run directly or in conjunction with non-governmental organizations, by child protection services (DIF), to protect children identified as unaccompanied. Contact is made with the children's families and arrangements are made for their safe return home.
- A special corps of Child Protection Officers was created within the Mexican National Migration Service (INM) in 2008. By 2010, 330 of these officers, or "OPIs", were trained in child rights and in sensitive interviewing techniques to better detect the situation and special risks of each child passing through immigration services.
- Mexican Consulates in the United States of America give priority attention to cases of unaccompanied children, which are communicated to them by the local or federal authorities.
- Telephone lines have been installed in migration units and special care units have been established in 21 states so that migrant children, especially those from other countries, can contact their families free of charge, reducing the considerable anxiety caused by separation. UNICEF helped to leverage this support for migrant children from its private sector ally, the telecommunications corporation Nextel, which provides the lines and calls free of charge.

## **Building capacity in the Migration Institute**

UNICEF has been providing technical support for the development of internal norms for the function of Child Protection Officers in the Migration Institute. In particular, technical support has been provided regarding the design and delivery of bi-annual training modules for new Child Protection Officers in the Migration Institute. UNICEF, UNHCR, IOM, the National Welfare Agency and the Refugee Council provided these modules. The staff of the Mexican Migration Institute has now delivered these modules to their counterparts in Guatemala and El Salvador, and UNICEF, IOM and UNHCR field offices have participated in trainings, more of which are planned for Costa Rica and Nicaragua. A notable result of the establishment of a special corps of Child Protection Officers in the Migration Service is the reported increase in detection of and response to cases of trafficking, sexual exploitation and violence affecting unaccompanied children. Claims for international protection made by unaccompanied children in Mexico increased from 4 in 2007 to 22 in 2009.

Technical support has also been provided to the Migration Institute in the drafting and revision of Regional Guidelines on the Protection of Unaccompanied Children in Migration 2008-2009. Regional Guidelines for the Protection of unaccompanied children in cases of repatriation were approved in July 2009 within the Regional Conference on Migration (CRM). The guidelines will be applied in all 11 member states in North and Central America and the Dominican Republic. As Pro-Tempore President of the CRM, Mexico has defined an agenda to implement the Guidelines and includes cross border cooperation in the training of migration authorities and the strengthening of protections mechanisms in the member states.

## **24. Morocco/UNICEF**

### **Capacity Building on Migration, Children and Human Rights**

#### Background

Migration has been and remains a significant issue for Morocco. The number of Moroccans living abroad and sending money home is significant. Some three million Moroccans, more than ten percent of the country's population, are currently living abroad; and in 2007, Morocco received about 7 billion USD in remittances, the second largest source of foreign exchange after tourism.

While remittances sent by Moroccan migrants contribute to the well-being of the families left behind, there is still a lack of research on the potentially negative impact of migration. In 2003 and 2006 respectively, the High Commission for Planning (HCP) conducted studies on the impact of remittances. Data taken from the 1999 Household Living Standards Survey and the 2001 Household Consumption and Expenditure Survey showed that remittances have contributed to improved standards of living for a significant portion of the population. In fact, in 1999, the poverty rate fell from 23% to 19%, and in 2001, it fell from 16% to 15%. However, these figures do not tell us which groups actually benefit from

remittances (i.e. women, men, girls, boys, etc), nor do they identify the impact of remittances on specific areas, such as health, education, and access to information.

#### Strong institutional and policy environment

The government of Morocco has established a strong institutional and policy environment to address issues related to migration. This includes a ministry that supports Moroccans living abroad, the Council of Moroccan Community Abroad charged with undertaking research to inform public policies in the area of migration, as well as foundations that provide welfare services to Moroccan citizens living abroad, such as Fondation Hassan II des Marocains Résidents à l'Étranger and Fondation Mohamed V de Solidarité.

#### Information capacity - High Planning Commission & other government partners

According to a recent agreement, UNICEF has pledged to strengthen its partnership and collaboration with the High Commission of Planning (HCP) and the National Observatory on Children's Rights, specifically in the collection and analysis of social indicators relating to children. Through this support, the country office aims to enhance the capacity of policymakers in their creation of child-centred policies to combat child poverty and deprivation.

Within the above framework, UNICEF is providing technical assistance to support the HCP in the implementation of a first ever survey to assess the social impact of international migration and remittances on children left-behind and their extended families. The survey will use innovative methods to identify specific impacts on different groups of the population and will enable the government to assess the direct impact of the current economic crisis on migrant households and children.

UNICEF will provide further technical assistance, as well as financial resources to achieve the intended results of the aforementioned study in the 2010/2011 biennium. In particular, the country office will assist in a multidimensional analysis of child poverty and deprivation, updating information on child labour on the basis of employment survey data, establishing an information system for disseminating data on the MDGs and the National Action Plan for Children, and facilitating the dissemination of data and results collected.

#### Unaccompanied Child Migrants - Moroccan Ministry of Social Development

In addition to being actively involved in supporting policy research on the social impact of migration and remittances on families left behind, UNICEF Morocco is also working to protect the rights of children and adolescents affected by migration. Specifically, the country office has focused on the situation of unaccompanied migrant minors and has given priority to research and advocacy in close partnership with the Moroccan Ministry of Social Development, Family and Solidarity, as well as the Spanish Agency for International Development.

In an effort to ensure the protection of unaccompanied migrant children and adolescents during the repatriation process, UNICEF has worked closely with the Ministry of Social Development in elaborating

a manual of procedures and mechanisms for concerted and voluntary repatriation. In the same vein, the country office has collaborated with the National Institute for Social Work, based in Tangier under the umbrella of the Ministry of Social Development, in conducting research on unaccompanied minors, including an analysis of the structural causes of unaccompanied child migration and a forthcoming literature review of existing evidence related to this issue. Both studies will raise awareness and inform advocacy campaigns about the risks associated with unaccompanied child migration and will identify strategies to protect these children. UNICEF will also continue to support the Moroccan government in the creation of a national strategy to prevent unaccompanied child migration.

#### Building policy-making capacity with government & civil society partners

Since 2007, the UN Interagency Thematic Group on Migration has embarked on an ongoing policy dialogue, held in Rabat, on the extent to which migration can contribute to development and poverty alleviation, the socioeconomic alternatives to migration, and ways to guarantee sustainable reintegration of returnees into their communities. The dialogue has produced a platform, to be implemented between 2008 and 2011, to enhance a policy framework that would facilitate improved responsiveness to all dimensions of migration issues.

In May 2009, the country office co-organized the First National Forum on Social Policy and Children's Rights. The forum was previously a working-level partnership between governmental institutions, civil society, and UNICEF, and in 2009, it was institutionalized at the highest political level. The findings of UNICEF's studies on the impact of migration and remittances on children left behind were presented in order to highlight policy implications and the need to consider children left behind a vulnerable population.

#### Building implementation capacity with government & other social partners

At present, in order to build stronger partnerships, create greater national capacity, as well as assemble evidence to inform policy making, UNICEF is working in collaboration with UNIFEM and UNDP on a programme supporting the newly created family courts. The programme aims to ensure effective application of the family law, allowing equal access to justice and greater protection for children and women.

## **25. Philippines**

### **Economic and social services to overseas Filipinos and families left behind**

#### Background

The most vulnerable are undocumented migrants. The legal status of migrants is a social protection issue in itself, since undocumented migrants are denied rights accorded to legal and registered migrants. Undocumented migrants often cannot access social security benefits and formal legal services in host

countries, and often cannot reveal their identities, which limits their ability to send money home to their families.

Since government agencies can only do so much in extending services to the large amount of Filipinos abroad, access to social services is a major concern. Filipinos often must rely on themselves or on social networks in order to access the needed services for distressed compatriots abroad and left behind. Filipino self-help groups, networks, and associations have helped undocumented migrants facing these and similar constraints. In addition, non-government organizations and foundations are working to provide services to migrant Filipinos and their families.

### Atikha<sup>32</sup>

Atikha is one of the leading non-government organizations providing economic and social services to overseas Filipinos and families left behind. Atikha aims to help address the social cost of migration and leverage the development potential of migration. Its main areas of action are:

- **Increase awareness of migration realities:** Most children are unaware of the living and working conditions of their parents living overseas. Awareness of the reality of their parents' situations helps children cope with separation and makes them more responsible.
- **Increase savings consciousness:** Monthly remittances become a symbol of parents' love and affection. Atikha has organized the Batang Atikha Savers Club, an organization of youth savers working to counter the growing consumerism and discourage dependency among children of overseas Filipinos.
- **Promote the importance of education:** A growing disinterest in attaining higher education is observed among children of OFWs even though 25.42% of migrants' income is spent on their education. A good education ensures that children will only migrate by choice, and not out of necessity.
- **Promote peer counselling:** Since children usually confide in their peers, training in peer counselling provides children of OFWs with knowledge and skills in that regard.
- **Develop financial literacy:** Atikha works to promote financial literacy among children, OFWs, caretakers, and other adult members of the family and by providing information on the psychosocial impact of migration, coping mechanisms, savings schemes, and investment instruments.

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<sup>32</sup> <http://www.atikha.org/index.php>

## **26. South Africa/UNICEF**

### **Situation Analysis of Migrant Children in South Africa**

UN agencies have been increasingly developing and supporting initiatives meant to promote the human rights of migrants, along both with civil society and governmental bodies. As well, some country offices have conducted activities intended to identify the main gaps and constraints for migrants' rights in a particular country or region. In this regard, UNICEF South Africa has recently elaborated the Report "For Better Implementation of Migrant Children's Rights in South Africa" (2009).

This report outlines the situation facing children who migrate across international borders to South Africa. It includes analysis on the policy framework that should guide migrant children's access to rights in South Africa, as well as, among other issues, on existing studies on child migration with a view to identifying children's access to their rights as well as pointing to gaps in information. Finally, the report makes recommendations for intervention by the United Nations Children's Fund (UNICEF) and other partners for strengthening migrant children's access to basic rights in South Africa.

These kinds of initiatives may be encouraged in other countries and regions, where UN agencies, in partnership with key stake-holders, might launch projects that aim to increase knowledge of the situation of migrants' rights, monitor policies and practices, and advocate for progressive measures for ensuring their rights.

## **27. UN Committees**

### **Standards on the protection of migrants**

UN Treaty-Bodies have been developing, through periodic review of State Parties, a set of standards regarding the human rights of migrants, and particularly on child migrants (for a comprehensive compilation of these standards, see [www.hrcam.org](http://www.hrcam.org)). Among these standards, the following are especially noteworthy:

- "...[T]he enjoyment of rights stipulated in the Convention is not limited to children who are citizens of a State party and must therefore, if not explicitly stated otherwise in the Convention, also be available to all children - including asylum-seeking, refugee and migrant children - irrespective of their nationality, immigration status or statelessness" (CRC Committee, General Recommendation No. 6, para. 12).
- "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. (...) [T]hese 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).

- The ground of nationality should not bar access to Covenant rights, e.g. all children within a State, including those with an undocumented status, have a right to receive education and access to adequate food and affordable health care. The Covenant rights apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation" (CESCR, General Comment No. 20, Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/20, 2 July 2009, para. 30).
- Some Committees have pointed out that States must launch comprehensive massive public education campaigns, to prevent and combat negative societal attitudes towards migrants<sup>33</sup> as well as develop a culture of tolerance in the society at large through all possible channels, including schools, media and the law.<sup>34</sup>
- Committees have also recommended that States should closely monitor the incidence of and combat racism and xenophobia, and promote intercultural understanding and tolerance among all groups in society.<sup>35</sup> Complementing these measures, public officials must also be trained, including the staff of all governmental and public institutions, especially those working in the area of migration, on the elimination of discrimination against migrants, especially with respect to the equal rights of all children in the territory of the State, and to combat their social marginalization and stigmatization.<sup>36</sup>

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<sup>33</sup> Committee on the Rights of the Child (CRC), Concluding Observations on Libyan Arab Jamahiriya (CRC/C/15/Add.209, 4 July 2003, para. 26); Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), Concluding Observations on Mexico (CMW/C/MEX/CO/1, 20 December 2006, para. 24), Ecuador (CMW/C/ECU/CO/1, 5 December 2007, para. 20), Bolivia (CMW/C/BOL/CO/1, 29 April 2008, PARR. 22), Syrian Arab Republic (CMW/C/SYR/CO/1, 2 May 2008, para. 24), El Salvador (CMW/C/SLV/CO/1, 27 November 2008, para. 24), Azerbaijan (CMW/C/AZE/CO/1, 30 April 2009, para. 25); Committee on the Elimination of Racial Discrimination (CERD), Concluding Observations on Spain (CERD/C/64/CO/6, 28 April 2004, par. 10).

<sup>34</sup> CRC, Concluding Observations on Croatia, CRC/C/15/Add. 243, 1 October 2004, para. 22.

<sup>35</sup> CRC, Concluding Observations on Sweden (CRC/C/15/Add.248, 30 March 2005, para. 19); CESCR, Concluding Observations on Denmark (E/C.12/1/Add.102, 14 December 2004, para. 24), and Spain (E/C.12/1/Add.99, 7 June 2004, para. 25).

<sup>36</sup> CRC, Concluding Observations on Dominican Republic (CRC/C/DOM/CO/2, 11 February 2008, para. 28); CMW, Concluding Observations on Mexico (CMW/C/MEX/CO/1, 20 December 2006, para. 24), Egypt (CMW/C/EGY/CO/1, 25 May 2007, para. 21), Ecuador (CMW/C/ECU/CO/1, 5 December 2007, para. 20), Bolivia (CMW/C/BOL/CO/1, 29 April 2008, PARR. 22), Syrian Arab

- Similarly, States must take administrative and judicial measures in order to prevent and eliminate de facto discrimination against foreigners, and in particular, children.<sup>37</sup> Likewise, it must be ensured that cases of discrimination against children in all sectors of society are addressed effectively, including with disciplinary, administrative or –if necessary– penal sanctions.<sup>38</sup> In turn, States should review and monitor their laws and regulations in order to ascertain whether they clearly prohibit discrimination against non nationals and guarantee the right to equal treatment and non-discrimination.<sup>39</sup>
- States must take the necessary steps to prevent questioning, arrests, searches and interrogations which are based on physical appearance, colour or membership of a racial or ethnic group, or any profiling, and severely punish acts of ill treatment committed by law enforcement officials against non-citizens.<sup>40</sup>
- In relation to child migrants in detention centres, the Committees have stated that States must bring the conditions of children in immigration detention into line with international standards when such detention is considered necessary and in the best interests of the child.<sup>41</sup> They should also: consider creating speedily an independent guardianship/support institution for unaccompanied immigrant children<sup>42</sup>; provide culturally sensitive family services and guarantee periodic review of the detention of children detained in the context of immigration<sup>43</sup>; establish enough special reception centres for unaccompanied minors, with special attention to those who have been victims of trafficking and/or sexual exploitation, and ensure that the stay in these centres is for the shortest time possible and that access to education and health is guaranteed during and after the stay in a reception centre<sup>44</sup>; simplify its approach regarding the procedures for requesting asylum and take all necessary measures to expedite them and to ensure they take into account the special needs and requirements of children, in particular unaccompanied children, including the designation of a legal representative, the placement of such children in centres, and their access to health care and education.<sup>45</sup>

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Republic (CMW/C/SYR/CO/1, 2 May 2008, para. 24), El Salvador (CMW/C/SLV/CO/1, 27 November 2008, para. 24), and Azerbaijan (CMW/C/AZE/CO/1, 30 April 2009, para. 25).

<sup>37</sup> CRC, Concluding Observations on Germany, CRC/C/15/Add.226, 26 February 2004, para. 24.

<sup>38</sup> CRC, Concluding Observations on United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/4, 20 October 2008, para. 25.

<sup>39</sup> Committee on the Rights of the Child (CRC), Concluding Observations on Dominican Republic (CRC/C/DOM/CO/2, 11 February 2008, para. 28); Committee on Economic, Social and Cultural Rights (CESCR), Concluding Observations on Norway (E/C.12/1/Add.109, 23/06/2005, para. 27).

<sup>40</sup> Committee on the Elimination of Racial Discrimination (CERD), Concluding Observations on Austria (CERD/C/AUT/CO/17, 22 September 2008, para. 18).

<sup>41</sup> CRC, Concluding Observations on Australia (CRC/C/15/Add.268, 20 October 2005, para. 64).

<sup>42</sup> CRC, Concluding Observations on Australia (CRC/C/15/Add.268, 20 October 2005, para. 64).

<sup>43</sup> CRC, Concluding Observations on The Kingdom of the Netherlands (CRC/C/NLD/CO/3, 30 January 2009, para. 68).

<sup>44</sup> CRC, Concluding Observations on Italy, CRC/C/15/Add.198, 18 March 2003, para. 46.

<sup>45</sup> CRC, Concluding Observations on Switzerland, CRC/C/15/Add.182, 7 June 2002, para. 51.



## 28. West Africa

### Child Mobility and Integrated Protection

Based on research spearheaded by the Plan International West Africa Regional Office (WARO) and Terre des Hommes (TdH), ENDA, Plan International WARO, Save the Children, TdH, and UNICEF WCARO have been developing an initiative known as the child mobility project with the shared goal of attaining a better understanding of the mobility of children in West and Central Africa, as well as greater knowledge of child protection mechanisms within children's communities and families. The premise of the study is that the protection approach should be based on an integrated and thorough understanding of mobility patterns (including social rules), as well as causes and consequences, that goes beyond the issue of trafficking. This will then assist in the advocacy and promotion of policies and practices intended to improve/ensure the protection of children on the move in the region.

The following key conclusions and recommendations have emerged from the Mobility Project thus far:

- Child trafficking is a criminal form of mobility and must be prevented;
- The protection of children on the move is not limited to the fight against child trafficking;
- Child mobility resulting from choice is organized within the communities and incorporates measures to secure their movements;
- Even if mobility can have positive effects on children, it increases their vulnerability and the necessity of taking appropriate measures of protection and support; and
- Child protection for children on the move needs to consolidate social norms, national laws and international standards.