

ANNEX II

Examples of positive developments for the rights of  
children in the context of international migration

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2012 Day of General Discussion of the Committee  
on the Rights of the Child

*The Rights of All Children in the Context of International Migration*

The table provided below is an **indicative and non-exhaustive compilation** of recent developments in all regions of the world that (can) have a positive impact on the rights of children in the context of international migration. The table is based on desk research and inputs provided by UNICEF field offices and by diverse partners, including civil society organizations and academic research institutions.

This compilation was prepared in **response to the specific request of the Committee on the Rights of the Child that the 2012 CRC DGD aims at identifying “principles and examples of good policies and practices in relation to children in international migration situations”**. In particular, **the table addresses some of the 24 indicative questions** identified by the Committee, providing some examples of: policies and practices, including bilateral and multilateral cooperation, that may contribute to the realization of the human rights of children in the context of international migration; strategies and partnerships between countries of origin, transit and destination intended at guaranteeing children’s rights in the context of migration; measures taken by States parties to prevent forced or unsafe migration of children; special protection procedures and coordination mechanisms applied to children in the context of migration through national child protection systems; national laws, regulations or policies adopted by States parties to promote the integration of migrant children and children born to migrant parents in countries of transit and destination, and to protect children from discrimination, xenophobia, abuse, violence and exploitation; policies and practices aimed at ensuring the economic, social and cultural rights of those children, regardless of their or their parents’ migration status; regularization programs that have impacted the rights of children in the context of international migration; and of inter-institutional cooperation, guided by the CRC standards and principles, and including civil society and child participation.

The examples below are **just a small sample of a much wider range of actions undertaken at the regional, national and local levels**. It would therefore be premature to draw any general conclusions from the information presented in this table, given its descriptive and somewhat anecdotal nature. However, it can at least be inferred from the concrete steps in this annex that there is **growing awareness among policy-makers** of the dire need to adopt targeted measures to further protect the rights of all those affected by international migration regardless of status, in particular children.

Examples of legislation, policies, programs, and case law	Theme	Country / Region	Practice	Description
<b>Rights-based migration legislation</b>	Non-detention of irregular migrants	Argentina	(Nº 25.871, 2004) on the principle of non-detention	Law stipulates that migrants should not be detained during deportation procedures before both administrative and judicial bodies. A judicial authority may authorize such a last resort measure only in exceptional cases.
		Venezuela	(No. 37.944, 24 May 2004, Article 46), interim alternative measures, explicit prohibition of detention	Legislation prohibits detention and provides several alternatives to detention which include a set of interim measures that may be adopted within a deportation procedure.
	Non-detention of children, both unaccompanied and with their families	Panama	(Nº 3, 2008, article 93)	Legislation includes a prohibition on detention of migrants less than 18 years of age.
	Access to social rights for all children, irrespective of their migration status	Belgium, France, Italy, Spain and The Netherlands	Migration laws / Education laws / Ministerial Circulars <sup>i</sup>	Explicit references to the right to education for all children regardless of immigration status in the legislation of Belgium, Italy, Spain and the Netherlands. A Ministerial Circular clarifies the same in France.
		Argentina, Greece, Portugal, Romania, Spain and Uruguay	Migration laws / Health care laws <sup>ii</sup>	Equal access to health care as nationals for undocumented children is provided by the laws in Greece (up to 14), Portugal, Romania and Spain.
	Access to health care for all migrants, regardless of status	Trinidad and Tobago, Belgium, France, Italy and The Netherlands	Migration laws / Health care laws	In Trinidad and Tobago, migrants, irrespectively of status, are entitled to health care on equal levels to nationals.  In Belgium, France, Italy and The Netherlands, undocumented migrants are excluded from the mainstream national insurance. However, parallel administrative systems have been put in place to enable them to access a range of health services on similar conditions to nationals.
	Family reunification, irrespective of migration status	Uruguay	Family reunification law (2008)	Law recognizes the right of all migrants to family reunification, due process of law and access to justice, regardless of status.
	Birth Registration	Thailand	Registration of children born to undocumented	The Government explicitly recognizes the right to birth registration of children born to undocumented migrant parents. UNICEF works with the Department of Provincial

			migrant parents (National HR Commission, 2008)	Administration, Ministry of Interior, to develop an online birth registration program that links information on each child born in a hospital to the civil registration system.
	Access to education and healthcare	Thailand	Decision to make access to education universal, regardless of the status of the child or the child's parents / caregivers (2005)  Introduction of universal health care scheme	Following intense lobbying from many agencies, the Government of Thailand decided (5 July 2005) to make education available to all people living in Thailand, including migrant children, regardless of their status, except for displaced persons in the temporary shelters where schools are provided. Since 2005, the Ministry of Education has implemented the regulation, directing schools to enroll all students, including those that do not have proper identification documents. Additionally, an amendment to laws that restricted migrant children from travelling outside their residential areas allows migrants to travel for study purposes without seeking permission. This measure has facilitated education for migrant children. <i>(See: Thailand Migration Report, IOM 2011, page 97).</i>  The introduction of the universal health scheme means that most children are able to receive basic health care services.  There are implementation challenges with both policies, but access to education and health are now recognized <i>de jure</i> .
<b>Rights-based migration policies, programs and initiatives</b>	Human rights of undocumented migrants	Europe	European Parliamentary Assembly, Resolution 1509 (2006) "Human rights of irregular migrants"  Council of Europe Recommendation 1985 (2011) and Report on Undocumented Children (2011)  EU Fundamental Rights Agency reports on the fundamental rights of undocumented migrants	Provisions relevant to children include: <ul style="list-style-type: none"> <li>✓ Art 12.4 – Non Detention</li> <li>✓ Art. 13.3. - Social protection</li> <li>✓ Article 13.2 - Health care</li> <li>✓ Article 13.6 - Education</li> <li>✓ Article 13.7 - Special protection and attention</li> </ul> The Council of Europe Parliamentary Assembly (PACE) released a report entitled 'Undocumented migrant children in an irregular situation: a real cause for concern' and issued a corresponding recommendation. Both provide recommendations regarding education, health care, housing, detention and exploitation ( <a href="http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta11/EREC1985.htm">http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta11/EREC1985.htm</a> )  The European Union Agency for Fundamental Rights (FRA) released 3 reports on the situation of migrants in an irregular situation in the European Union: one on access to health care, one on domestic work, and one thematic report. Each report presents a series of opinions/recommendations.
	Migration-related detention	United Kingdom	Announcement (May 2011)	The UK government pledged to end the detention of children for immigration purposes by May 2011. Children, both unaccompanied and with their families, will no longer be detained. <b>However, many are concerned that the</b>

			<p><b>proposed alternative – “pre-departure accommodation” – retains many of the defining features of detention, and will be used based on the same justifications, so does not represent a real alternative to detention, and will still have significant negative effects on children. Further, detention figures reveal that a number of children are still being detained, e.g. almost 700 children were detained in the four-month period between May and August 2011.</b></p>
	Belgium	<p>Establishment in practice of ‘Open return houses’, which are regulated by a royal decree: 14 mai 2009, <i>arête royal fixant le régime et les règles de fonctionnement applicables aux lieux d’hébergement au sens de l’article 74/8 de la loi du 15 décembre 1980</i></p>	<p>Belgium is often presented as an example of good practice, effectively having implemented an alternative to detaining families in closed centers, by establishing instead ‘open return houses’ (<i>maisons de retour</i>) with coaches to help families find a solution to their situation, in October 2008. ‘Open return houses’ were found to be largely successful, in terms of most families being able to regularise their stay or cooperate with a return process within the 2 months envisaged (the maximum duration of stay). Only 20% of families disappeared from the houses, or in a few exceptional cases, were liberated after 2 months without a resolution.</p> <p><b>Despite this, neither a prohibition of the detention of families with children, nor the policy of ‘open return houses’ were formalised in law. Furthermore, the government has announced proposals to create “family units” within closed detention centers.</b> A new article came into force on 27 February 2012, and states that “normally” a family would not be placed into a closed center, “unless this center is adapted to the needs of families with minor children”, and that “a family (...) may be detained in order to proceed to the deportation (...) in a center adapted to the needs (...) for a duration as short as possible.” This indicates a return to child detention.<sup>iii</sup></p>
	Spain	Migration Law	<p>In Spain <b>detention of children is prohibited by law.</b> Children are to be referred to “Protection of Minors” services and may only be detained with their parents when a judicial authority, the Attorney General’s office, and the detained parent(s) of the child in question request and agree to be accommodated together, always in a detention center with facilities that are appropriate for families.<sup>iv</sup> To date, such “family units” exist in at least three Spanish detention centers (Barcelona, Málaga and Algeciras). However, instances of detention of families have been reported in other centers.<sup>v</sup></p>

		Europe	Detention Conditions: STEPS Consulting Social Report on Detention Centers in EU Member States (2008), requested by the European Parliament <sup>vi</sup>	<p>This report clearly describes the extent of human rights abuses in migration-related detention centers in many E.U. countries.<sup>vii</sup> Its recommendations on detention policies and detention conditions included:</p> <ul style="list-style-type: none"> <li>✓ 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;</li> <li>✓ Alternative accommodation solutions should be implemented;</li> <li>✓ Minors should never be subject to forced return procedures;</li> <li>✓ All forms of detention for minors and families, particularly for unaccompanied minors, should be banned.</li> </ul>
	Deportation and Due Process of Law	Spain, Italy	Policy on non-deportation of children	<p>In Spain, children are only repatriated if in their best interests, e.g. for family reunification. However, civil society and U.N. monitoring mechanisms/bodies have questioned whether a full best interests determination occurs in practice.<sup>viii</sup></p> <p>In Italy, women, and their husbands, are entitled to a residence permit “for health care” during pregnancy and up to 6 months after the child’s birth.</p>
	Social Rights	South America	Declaration of South American Conferences on Migration (2007, 2008, 2009)	South American States declared that the social rights of all migrants must be fulfilled, regardless of their migration status, and the social rights of children and women should be ensured in particular. Also, the equal access to social services must be ensured to all migrants, irrespective of their migration status; and, children’s and women’s social rights should be protected and fulfilled.
	Social Rights (social security)	Europe	Council of Europe (Council of Europe Resolution, Human rights of irregular migrants No. 1509, Doc. 10924, 4 May 2006, para 134)	This Resolution recognizes that irregular migrants who made social security contributions should be able to benefit from them or be reimbursed if they are expelled from the country. At the least, irregular migrant workers should be able to draw fully on those benefits while in the country if and when the need arises.
	Social Rights (access to health care)	Argentina (2011)	<i>Plan Nacer</i>	The Ministry of Health broadened the package of quality health care benefits to include 225.000 migrant children that live in Argentina without access to health facilities.

	Unaccompanied Migrant Children	Mexico (from 2008)	Inter-Institutional Panel on Unaccompanied Child and Adolescent Migrants and Migrant Women and new Model for the Protection of the Rights of Migrant and Unaccompanied Repatriated Children and Adolescents	<p>The <b>Inter-Institutional Panel on Unaccompanied Child and Adolescent Migrants and Migrant Women</b> (composed by 18 government agencies such as the Foreign Ministry, the Migration Institute and the National Welfare Agency, as well as international organizations) developed and regularly refines an integrated model of protection for unaccompanied migrant children throughout the country.</p> <p>Annually, approximately 25,000 children and adolescents in situations of repatriation benefit from the integrated protection mechanism: the new <b>Model for the Protection of the Rights of Migrant and Unaccompanied Repatriated Children and Adolescents</b>, developed with UNICEF's technical support. This is a comprehensive mechanism, which includes immediate care responses, specialized attention, the communication between children and their families, and their safe return home where appropriate.</p> <p>As part of the system, and with UNICEF support, Mexico set up and trained a <b>special corps</b> of 320 <b>Child Protection Officers</b> within the National Institute of Migration in 2008. The migration officers were provided with specialist training and UNICEF capacity-building support in order to ensure the rights of children during any repatriation process, to detect any risks for their well-being and protection, and to refer repatriated children to the competent Mexican authorities for their care. The special corps has recorded higher rates of detection of and response to trafficking, sexual exploitation and violence and abuse against these children. Also, about 3,800 Mexican Migration Officials are learning about human rights and child rights through an on-line course.</p> <p><b>This strategy and model are being replicated through South-South cooperation</b> (in the form of partnerships and regional agreements) <b>and the provision of training to other countries in the region.</b> UNICEF, IOM and UNHCR have provided support to the Mexican Government to train nearly 400 Migration Officials from the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua in protecting children's rights, and these countries are setting up their own corps of Child Protection Officers within their respective migration institutions.</p> <p>The National Family Development System (NFDS) and the National Migration Institute (NMI) jointly operate eight <u>care units</u> in northern border states to provide essential services, rest and communication with families for repatriated children. In conjunction with non-governmental organizations, the NFDS also provides a network of 27 <u>shelters</u> to protect (unaccompanied) children and adolescents in transit. Some 21 <u>reception centers</u> provide free phone access to migrant children and adolescents and 10 <u>border centers</u> for unaccompanied migrant children and adolescents have been opened in the last two years.</p>
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	Children born to migrant parents and children victims of trafficking	Nicaragua (2011)	<i>Programa Amor</i>	The Ministry of Family (MIFAN) is implementing <i>Programa Amor</i> for the fulfilment of the rights of children and adolescents in conditions of vulnerability, including children of migrant mothers or deprived of their liberty and victims of sexual exploitation and trafficking.
	Children left behind	Moldova (2010)	National Action Plan on children left without parental care and census of children left behind	<p>The <b>Governmental Commission on children left without parental care as a result of migration</b>, with the support of line ministries, drafted a National Action Plan to alleviate the negative impact of migration on these children. The Ministry of Labor, Social Protection and Family, is accountable for Plan's overall coordination and supervision.</p> <p>The <b>National Action Plan on Children Left Without Parental Care adopted for 2010-2011</b>, addressed the multiple aspects of vulnerability of children left behind, including by: creation of social services for children at the community level; awareness-raising among the general public and potential migrants on the negative impact of migration on children; and capacity-building for professionals working with children (teachers, psychologists, police, health workers, etc.) on vulnerability of children left behind and protection of their rights. The Plan also envisaged the introduction of life-skills education in school curricula (not yet in place) and establishment of a monitoring and evaluation system of children left behind.</p> <p>As of May 2012, the Ministry of Labor, Social Protection and Family is carrying out a <b>census of children left behind</b> with the support of partners. The results of this census will be used for further strengthen the social protection system for these children.</p>
	Returning child migrants, including child victims of trafficking	Indonesia	Shelters for children affected by international migration	The Ministry of Social Affairs ( <i>Kemensos</i> ), runs 23 shelters across the country, which provide protection and support to children of international migrants, including returning Indonesian labor migrants, and returning child victims of trafficking. The shelters provide accommodation, food and basic necessities, psycho-social support, rehabilitation support, and return assistance (onward within Indonesia). <i>Kemensos</i> allocated a budget and staff including counsellors and social workers. They conduct assessments



				to find out if child victims of trafficking can return to their families (to determine whether return is in the child's best interests and whether the family is involved in trafficking). IOM helps with identifying child victims of trafficking and their referral to adequate support services at the local level through a network of more than 80 organizations throughout Indonesia.
	Protection of the rights of migrants and their families, including those left behind	Philippines	Philippines Overseas Employment Administration (POEA)  Overseas Workers' Welfare Administration (OWWA): access to social services, education and training	<p>The <b>Philippines Overseas Employment Administration (POEA)</b> is working to protect the rights of migrants and families left behind.</p> <p>According to a law adopted in 2007 (Republic Act 9422), POEA, which deals with recruiting, registering and verifying the qualifications of prospective migrants, is responsible for informing Filipino migrants of their rights as workers and as human beings, and is also charged with providing mechanisms to redress violation of migrants' rights. <b>POEA is revising its operational manual with the support of UNICEF to include children and families</b> in its <b>pre-departure programs</b>, as well as supporting the development of modules around <b>psycho-social reintegration</b> of migrants and their families and children so that they can better adjust to the Overseas Filipino Workers' (OFW) long absence.</p> <p>POEA's sub-office Overseas Workers' Welfare Administration (OWWA) manages a <b>trust fund</b> to support migrant workers and their families. The fund is pooled from US \$25 membership contributions of Filipino migrants or their overseas employers, who are eligible for a range of social services such as insurance, healthcare and family welfare including assistance loans.</p> <p><b>Migrant workers' children have access to education and training programs</b>, i.e. scholarships towards baccalaureate studies. In 2004, the <i>Tuloy-Aral</i> ("continuation of education") project was set up to aid children of former migrant workers in continuing their elementary and high school education. It provides US \$100 per year to the child beneficiary covering expenses on books, school supplies, materials, transportation, school contributions and allowance for the academic year.</p>
	Children and families left behind	Philippines (Government, in partnership with UN Agencies and civil society)	<i>Atikha</i> Overseas Workers and Communities Initiative: Providing life-skills, livelihood training and economic opportunities to children and families left behind	With the support by UNICEF and other partners, the NGO <i>Atikha</i> offers livelihood training and economic opportunities to help children and families left behind to become more self-reliant. Overall, the goal is to teach girls and boys the skills and knowledge needed to improve their talents and capabilities, as well as understand their rights and responsibilities as youth and citizens. <i>Atikha</i> developed a manual that serves as a guide for primary and secondary school teachers to integrate migration issues into lessons plan and school activities. It sensitizes boys and girls to the sacrifices of their migrant parents, to the values of education and savings and to the importance of maintaining good communication within the family. An assessment of the initiative revealed that it enhances

	<p>Children left behind</p> <p>Protection of poor and at-risk children, adolescents and youth</p>		<p>ECMI: Building capacities of girls and boys left behind</p> <p>UN Joint Program on youth, employment and migration</p>	<p>participants' responsibility towards savings, increases gender sensitivity and their entrepreneurial disposition, as well as their interest in education. It also increases their recognition of their parents' decision to migrate and the importance of communicating with them on a regular basis. <b>The Department of Education included Atikha's modules in the schools' curriculum in regions with large populations of children and families left behind.</b> It was cited as a good practice in conferences on migration (e.g. 2<sup>nd</sup> Global Forum on Migration and Development).</p> <p>In 2003, the Episcopal Commission of the Pastoral Care of Migrants and Itinerant People (ECMI), a faith-based organization, initiated the <b>Sons and Daughters of OFWs Formation Programme (SDOFP)</b> to strengthen family structures, affairs and relationships of migrants under the Comprehensive Overseas Filipino Workers Reintegration Programme (CORP). Originally implemented in one island group, SDOFP is now being carried out nationwide among partner schools. ECMI trains guidance counsellors and/or teachers on ways to develop a Sons and Daughters Club at the school, impart leadership skills, and augment the productivity of children left behind. In 2008, ECMI launched an achievement program known as <i>Gawad Anak</i> or TOSDOS Awards (the search for Ten Outstanding Sons and Daughters of OFW Student Achievers), in order to combat negative public perceptions of children left behind and encourage them to become active and responsible citizens. It is being developed in high schools, where migrants' kids are recognized for excellence in social, scholastic and extracurricular performance.</p> <p>UNICEF, UNFPA, ILO and IOM are partners with the Government in a three-year joint program entitled '<b>Alternatives to Migration: Decent Jobs for Filipino Youth</b>'. Funded by the Spanish MDG Achievement Fund, the endeavour has an estimated programme budget of US \$6 million, with two main objectives: to improve policy consistency and implementation by increasing stakeholder participation; and to augment access to decent work for women and men through partnerships. UNICEF took the lead regarding youth participation, and enhanced the training of counsellors and trainers who provide life-skills and vocational guidance to poor and at-risk adolescents and youth. The program is also strengthening systems to prevent and protect children, adolescents and youth from abuse, exploitation and trafficking.</p>
	<p>Care and protection of unaccompanied and separated children</p>	<p>South Africa</p>	<p>(Draft) Practice Protocols for the Tracing, Reunification or Alternative Care Placements of Unaccompanied</p>	<p>The Department of Social Development, with UNICEF's support, has developed draft protocols which provide structural practice guidelines for the care and protection of unaccompanied and separated children in South Africa.</p> <p><i>*N.B.: These protocols are still in draft form and have not yet been finalised nor agreed upon by the South African</i></p>

			and Separated Children in South Africa	<i>government.</i>
<b>Regularization laws and programs</b>	MERCOSUR	<p>Several agreements have been reached by MERCOSUR Member States, founded on the principles of equal treatment and non-discrimination, to strengthen the integration process and address the migration status of irregular migrants from Member States. These agreements address the migration status of irregular migrants from this sub-region and explicitly recognize the right of children to education, regardless of their migration status or the status of their parents.</p> <p>For instance:</p> <p>The <i>Agreement on Residency for Nationals</i> of the MERCOSUR Member Countries signed in 2002 and came into force in 2009, guarantees nationals from a country of the region to acquire a temporary (and after two years, permanent) residence in any of the countries of the region, as well as to receive the same treatment as the country nationals, including in the labor market. The vast majority of migrants in this region –both regular and irregular- come from neighbouring countries.</p>		
	Argentina	Patria Grande Program (2007-2010)	Patria Grande is a regularization program that has granted either temporary or permanent residence to 560,131 people. This has resulted in a decrease in unemployment and poverty.	
	Brazil	Brazilian Regularization Law No. 11.961, 2 July 2009	The main objective of the Regularization Law "on temporary residence for the foreign nationals in irregular status in the national territory and other provisions," approved by the Brazilian National Congress, is to provide residence permits for migrants in irregular status.	
	Chile	Regularization Program (2007)	<p>A regularization program was launched between November 5, 2007 and February 5, 2008 in which migrants from certain countries* that entered Chile before October 19, 2007 could access to temporary visa for one year.</p> <p>* Perú, Argentina, Bolivia, Brazil, Ecuador, Uruguay, Paraguay, Colombia, Venezuela, Panamá, Costa Rica, Nicaragua, El Salvador, Honduras Guatemala, México, Dominican Republic, Cayman Islands and Haiti</p>	
	Costa Rica	Protocol for inter-institutional coordination (2011)	The National Child Welfare Institute (PANI) and the National Bureau of Migration and Foreign Affairs designed three protocols to facilitate the migratory regularization of migrant children and adolescents, whose parents are placed in deportation proceedings, who are unaccompanied or wards of the State.	
	Europe	Research on regularization in	The European Commission (Directorate, General	

**Legal and Policy Reform Processes**

	E.U. countries (Baldwin, Kraller, 2009)	Justice, Freedom and Security) commissioned the International Centre for Migration Policy Development to undertake a study on practices in the area of regularizing third-country nationals staying irregularly in the Member States of the E.U. The study highlighted the outcomes of regularization programs including: social integration and cohesion, increased family protection, reduced marginalization, prevention of trafficking and exploitation, accurate data on immigrant population, and, regulation of informal sectors of the economy with improved protection of both foreign and local workers.
South Africa	Regularization of Zimbabwean nationals in South Africa	<p>The South African Department of Home Affairs released a <i>Special Dispensation Permit</i> to Zimbabwean nationals in South Africa.</p> <p>This permit allows for Zimbabwean nationals to reside and work in South Africa. Further provisions include a 90-day free visa for Zimbabwean nationals and a moratorium on deportations.</p> <p><i>*N.B.: The above-mentioned moratorium has now come to an end.</i></p>
Argentina, Uruguay, Ecuador, Constitutional Reform	Several Latin American countries have adopted new, more progressive migration laws and policies, recognizing equal human rights to (all) migrants and nationals, including the human right to migrate	<p>Migration Law – Social rights for undocumented migrants: Argentina has included provisions related to education and health care for undocumented migrants in its legislation.</p> <p>Constitutional reform and migrants’ rights: Ecuador adopted a new Constitution, which includes several paragraphs on the recognition and protection of migrants’ rights, regardless of migration status.</p>
Ecuador	<p>Social protection for migrants and their families</p> <p>Establishment of National Ministry for Migrants (2007)</p> <p>Stronger focus on children affected by migration</p> <p>Mainstreaming of employment, migration and youth into public policies</p>	<p>The Ecuadorian Government created social protection programs to support migrants and their families.</p> <p>The National Ministry for Migrants (SENAMI) was established with the goal of defining policies on migration, ensuring the human rights of migrants and their families are respected, and promoting human development.</p> <p>Children have been brought to the center of the national migration debate, and the relevance of framing human mobility policies instead migrant policies alone has been highlighted. This shift would benefit not only Ecuadorian migrants and their families but also immigrants to Ecuador, in the wake of increased refugees in the country.</p> <p>Migration, employment and youth have been mainstreamed into public policies. UNICEF, ILO, IOM, UNFPA and UNDP support Ecuador’s public policies related to youth, employment and</p>

		(since 2009)	<p>migration. Through advocacy and partnerships, this major initiative supported by Millennium Development Goals-Fund contributes to strengthening institutional capacities both at the national and provincial level. The strategy includes three components: a) advocacy and capacity development to strengthen public institutions and policies in youth, employment and migration; b) advocacy for legal framework on migration and capacity development of youth; and c) capacity development and partnerships for youth employment programs.</p> <p>This agenda is implemented through a partnership between SENAMI (National Secretariat for Migrants), MIES (Ministry of Economic and Social Inclusion), MRL (Ministry of Labor), MCDS (Ministry for Social Development and Coordination), municipalities, local youth organizations, local finance institutions and UN agencies. Through advocacy and capacity development, UNICEF is helping to strengthen SENAMI's leadership to address children's issues, promote public policies in migration, and coordinate and facilitate the implementation of the Joint Program.</p> <p>A key UNICEF contribution to this process has focused on knowledge development. When the joint program began its implementation in 2007, the analysis around children's rights and migration was very scarce. To fill this knowledge gap, together with SENAMI and ODNA, studies on children's rights and migration were produced and disseminated. This was instrumental in bringing children to the center of the migration debate in Ecuador. Using this evidence, UNICEF advocated for the inclusion of a human-rights based approach and children's rights issues into public policies on migration. Further, UNICEF called for an increased focus on human mobility policies instead of migrant policies. This means there should be a focus not only on the situation of Ecuadorian migrants abroad and their families left behind, but also on the rights of immigrants coming and living in Ecuador (such as Colombian and Peruvian citizens). To this end, UNICEF developed the <b>Manual of Procedures for the Protection of Children and Adolescents in Situations of Human Mobility</b> (<i>Manual de Procedimientos de Protección a Niños, Niñas y Adolescentes en Situación de Movilidad Humana</i>). The Manual builds capacity on protocols around family reunification, access to health and education for migrant children among other areas. It is a practical tool that provides a step-by-step, practical explanation of all procedures relevant to the protection of migrant</p>
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			<p>children and adolescents.</p> <p><u>Results:</u> The on-going MDG Fund Joint-Program in Youth, Employment and Migration has led to: (a) key knowledge generation on children's rights and migration; (b) mainstreaming of children and family rights in the new organizational structure of the SENAMI, for instance, through the creation of a new Under Secretariat on Migrants Rights Promotion in 2011; (c) shifting the focus from migrants to human mobility in public policies on migration. The Government has adopted the handbook, <i>Human Mobility and Children's Rights</i>, which outlines institutional procedures to address the claims of girls and boys affected by migration. The handbook was developed based on the voices of children and adolescents.</p>
	Ecuador	<p>Inter-ministerial and inter-sectorial cooperation</p> <p>Trafficking / child protection</p> <p>Training</p> <p>(2011)</p>	<ul style="list-style-type: none"> <li>• Establishment of networks against trafficking in persons and the mobility of children and adolescents.</li> <li>• With IAEN, 80 officials trained on child trafficking issues.</li> </ul>
	Costa Rica	Capacity development and HRBA to cooperation (2011)	<ul style="list-style-type: none"> <li>• The inclusion of children's rights in plans and policies was promoted, especially concerning the Action Plan of the National Coalition against Migrant Smuggling and Human Trafficking. Joint actions between the National Child Welfare Institute (PANI) and the National Bureau of Migration and Foreign Affairs (DGME) were strengthened through the development of protocols for inter-institutional coordination for the protection of the rights of migrant children and adolescents.</li> </ul>
	Haiti	<p>Inter-ministerial cooperation</p> <p>Training</p> <p>Trafficking / child protection</p> <p>(2011)</p>	<ul style="list-style-type: none"> <li>• Two legal reform processes are underway in order to design and propose to the Government and Parliament two draft laws related to child protection and human trafficking.</li> <li>• 1,000 civil servants, in 10 Departments, were sensitized on international standards on child protection international standards.</li> <li>• To prevent child trafficking, the Children Police Brigade (BPM) verified at least 18,000 travel documents of children at the international airport in Port au Prince, and the four main borders points</li> </ul>

			<p>of Malpasse, Ounaminthe, Anse-à-Pitre and Belladere. PNH, BPM, IBESR and Mairies work together to address the issues of child trafficking and children on the move.</p>
	<p>Germany</p>	<p>Readmission and repatriation of children and their families (2010)</p>	<ul style="list-style-type: none"> <li>• The province of North-Rhine Westphalia (home to 3,700 Kosovan Roma, Ashkali and Egyptians from Kosovo under threat of deportation) issued a decree requiring all authorities to take the best interests of the child into primary consideration, including the child's level of integration in Germany. Authorities were further instructed to review each case individually on humanitarian grounds and to avoid undue hardships.</li> <li>• The states of Bremen and Saxony-Anhalt issued decrees extending the criteria to be taken into account for residence titles on humanitarian grounds and providing for special considerations in the case of vulnerable groups, such as single females and minorities.</li> <li>• Following these decisions taken by several provincial Governments, the conference of interior ministers ('Innenministerkonferenz'), a twice-yearly gathering of all 16 German Ministers of Interior and senators, adopted a decision leading to an amendment of the 'Aufenthaltsgesetz', the law regulating residence titles.</li> <li>• As of 1 July 2011, paragraph 25a was added extending the right to acquire residence status for 15-21 year olds born in Germany or who arrived before their fourteenth birthday. To qualify, children and youth must prove that they have integrated well and have attended school 'successfully'. A residence title may now be granted on the grounds of a child's integration and school record, provided a family is able to earn a living independent of social assistance.</li> <li>• Critics of the recent amendment to the 'Aufenthaltsgesetz' argue that it enables only a few of the 87,200 persons with toleration status to qualify for residence status. It falls short of bringing a lasting solution to the 5,000 - 6,000 Roma, Ashkali and Egyptian children in Germany under threat of deportation,</li> </ul>

			including an estimated 3,500 children born, raised and schooled in Germany.
<b>Bilateral and Regional Cooperation</b>	Mexico and Costa Rica	Training (2011)	<ul style="list-style-type: none"> <li>The National Bureaus of Migration and Foreign Affairs of Costa Rica and Mexico are cooperating, with UNICEF support, to train immigration officers regarding unaccompanied children and legal standards. This is a sub-regional strategy for the protection of migrant children. The training was offered by the National Institute of Migration of Mexico.</li> </ul>
	Baltic Sea States	Unaccompanied and separated children	<ul style="list-style-type: none"> <li>The Council of the Baltic Sea States established a network of national contact points who meet regularly in order to build systems to respond to the needs of all separated and unaccompanied children arriving in the region.</li> </ul>
	Kosovo	Integration of repatriated children and their families (2010-2011)	<ul style="list-style-type: none"> <li>Government adopted revised 'Strategy for the Reintegration of Repatriated Persons' and approved an Action Plan.</li> <li>Government created 'Reintegration Fund' budgeted with EUR 3.4 million.</li> <li>New regulations and administrative instructions were drafted to instruct line ministries, mayors, municipal return officers and school directors how to receive and assist repatriated persons.</li> <li>While the legal and policy frameworks are in place, their implementation is still hampered. The biggest obstacles are the lack of a functioning monitoring framework at central level and limited implementation at local level. With the present system in place, it seems difficult for the Kosovo Government to deliver on its commitments detailed in the Strategy and Action Plan for the Reintegration of Repatriated Persons.</li> </ul>



	South Africa	Memorandum of understanding (MOU) between the Government of the Republic of South Africa and the Government of the Republic of Zimbabwe on Co-Operation in the Field of Social Development (2011)	<p>An MOU has been concluded by the Government of South Africa and the Government of Zimbabwe within the field of social development.</p> <p>The MOU seeks to develop cooperation ties between the South African Department of Social Development and the Zimbabwean Ministry of Labor and Social Development.</p> <p>A number of areas of cooperation and information-sharing have been identified, such as care services for vulnerable groups; implementation of international commitments on social development; and capacity building / retention of social welfare and development professionals.</p> <p>With the assistance of UNICEF South Africa and UNICEF Zimbabwe, the South African Department of Social Development and the Zimbabwean Ministry of Labor and Social Development have developed <i>draft Standard Operating Procedures (SOPs)</i> for the tracing, reunification, or alternative care placements of unaccompanied and separated children in South Africa and Zimbabwe. Following these SOPs, two provinces in South Africa (Limpopo and Gauteng) have developed <i>Interdepartmental Action Plans</i> on unaccompanied and separated children in cooperation with civil society partners.</p> <p><i>*N.B.: The Gauteng Action Plan has been completed and the Limpopo Action Plan is still work in progress.</i></p>	
<b>Case Law from National Courts</b>		Spain	Unaccompanied children (Constitutional Court, Case 183/2008)	Due process of law within repatriation procedures: right to a guardian and free legal services, right to be heard, right to an effective remedy before a Court.
			Deportation (Supreme Court Case-Law)	Deportation should not be the first option to address irregular migration.
			Access to social rights (Case 236/2007, Constitutional Court)	Rights to education and unionization must be fulfilled to all migrants, regardless their immigration status.

		The Netherlands	Access to child benefits (BR1905, Central Board of Appeal, 08/6595 AKW etc.	Under certain circumstances, it is necessary to provide undocumented families child benefits to protect the right to private and family life and duty to protect children.
			Access to internships for undocumented students (2 May 2012)	The Hague court found that Dutch national law (Aliens Employment Act or WAV) is in violation of Article 2 of the 1st Protocol of the ECHR by requiring students to have a residence permit in order to carry out an internship which is a compulsory part of an educational program.
		The UK	e.g. ZH (Tanzania) United Kingdom: Supreme Court, 1 February 2011	The best interests of the child and his or her attachment to the EU country must be considered in decisions regarding deportation
		High Court of South Africa	Non-detention of Children due to migration status (Case 22866/2004)	The Court investigated the circumstances of the detention of migrant children and made recommendations for future treatment. The Court also followed up on the situation and made further subsequent recommendations.
		Argentina Federal courts	(2002)	Access to Health Care, including HIV antiretroviral treatment.
			Argentina Supreme Court - Reyes Aguilera D. and others v. Estado Nacional- Ministerio de Desarrollo Social, (September 15th, 2007).	The Supreme Court overthrew a provision requiring a minimum of twenty years residence, in order to have access to social benefits. It underlined that the norm itself was in contravention of the Constitutional provision forbidding discrimination based on national origin.
		South Korea	Seoul High Court in South Korea (February 1 <sup>st</sup> , 2007)	Right of irregular migrant workers to associate. The Court recognized the Migrant Trade Union, composed of irregular migrants working in the country. South Korea's Government had previously rejected demands for the formation of a migrant workers' trade union on the grounds that irregular migrant workers did not qualify as workers under existing legislation.
		South Africa	Pretoria High Court- Centre for Child Law v Minister of Home Affairs,	Deportation of foreign unaccompanied children from South Africa. The Court held that the legal mechanisms for the protection of South African children found in the Constitution and the Child Care Act of 1983, apply equally to unaccompanied foreign children within South

			2005 (6) SA 50(T).	Africa's borders. Thus, whenever a foreign child is found in need of care, such child must be placed in a place of safety, his or her personal circumstances investigated by a social worker and a Children's Court inquiry opened, conducted and finalized.
		Trinidad and Tobago		The Court held that the rights and interests of children should be taken into account in proceedings which are mainly concerned with the rights and interests of adults.
	Domestic Institutions	México	National Commission for Human Rights Recommendation N 18/2010	Best interests of the child and legal representation. In the case of the girl named "V", 17 years old, 36-weeks pregnant that had been detained by federal agents (National Migration Institute, INM) due to her irregular migration status, in November 2008, the Commission stated that the authority had breached her rights to physical integrity, legality, and due process.
	Regional Bodies	African human rights protection system	African Commission on Human and Peoples' Rights - Union Inter Africaine des Droits de l'Homme et. al v. Angola, No. 159/96 (1997)	Prohibition of mass expulsions. The Commission stated that mass expulsions of any category of persons, whether on the basis of nationality, religion, ethnic, racial or other considerations "constitute a special violation of human rights".
		Inter-American Court of Human Rights	Advisory Opinion 18 (2003), on the <i>Juridical Condition and Human Rights of Undocumented Migrants</i>	International principles of non-discrimination prohibit discrimination against undocumented migrant workers in the terms and conditions of work. Governments can deny employment to undocumented immigrants but such workers are equally protected by human rights in the workplace once an employment relationship is established.
			Yean and Bosico v. Dominican Republic (2005)	Birth registration, right to a name and nationality: The Court developed standards on the rights of children born to migrant parents in countries of destination.
		Vélez Loor v. Panamá (2011)	Prohibits criminalization of irregular migration and points out that migration-related detention should only be an exceptional last resort measure	

			Advisory Opinion <i>on the protection of the rights of migrant children in the Inter-American Human Rights system</i>	The Niñ@sur initiative has positioned advocacy of the rights of migrant children in line with the Inter-American human rights system, requesting an advisory opinion from the Inter-American Court of Human Rights on <i>the protection of the rights of migrant children in the Inter-American Human Rights system</i> - <u>Pending</u> .
			Provisional Measures - Matter of Haitians and Dominicans of Haitian-origin in the Dominican Republic regarding Dominican Republic (2000-current)	The Court required the Dominican Republic to abstain from deporting or expelling some of the families; to permit the immediate return to its territory to some of the beneficiaries; to permit, within the shortest possible time, the family reunification of two of the families with their minor children in the Dominican Republic.
		Inter-American Commission of HR	The Haitian Centre for Human Rights et al. v. USA (1997)	Extraterritorial migration control, due process, right to asylum, physical liberty, and non-refoulement.
			Wayne Smith, Hugo Armendáriz vs. United States, Report 81/2010	The IACHR particularly emphasizes that the best interests of minor children and their right to family must be taken into consideration in a parent's removal proceeding.
		European Committee of Social Rights	DCI v. The Netherlands, (October 2009)	Recognizes the right to housing for undocumented children.
			FIDH v. France, (2004)	Right to health care of undocumented migrants with a particular emphasis on children:  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 questioned some restrictions on the right to health care against undocumented migrants, particularly children.
		European Court of Human Rights	Siliadin v. France (2005)	States' duties for protecting irregular migrant children who are victims of labor exploitation:  The Court pointed out a set of positive obligations under article 4 of the European Convention (prohibition of slavery, servitude, and forced and compulsory labor).

			Mubilanzila et al. v. Belgium (2006)	On the detention of unaccompanied children. The ECHR emphasized the extreme vulnerability of the girl due to her young age and the fact that she was an unaccompanied minor whose stay in Belgium was irregular. Among other things, the Court stated that for almost two months she was held in a facility that was designed for adults and which was in no way adapted to the needs of a child. The girl was not even assigned a qualified person who would be able to provide her with educational and other assistance. Furthermore, the ECHR noted that the girl's detention contributed to significant delays in the process of reunification with her mother. Given that in this case there was no threat that she would try to avoid checks by the Belgian authorities, her detention in a facility for adult foreigners staying irregularly served no purpose, and other measures could have been taken that would truly correspond to the interests of the child
			Muskhadzhiyev and Others v. Belgium (2010)	Detention of Chechen children. The Court stated their detention pending their removal was unlawful and their conditions of detention unacceptable. The Court noted that the children had been detained for over a month in a closed center that was inapt for the reception of children. The Court attached importance to the worrying state of health of the children, who exhibited serious physical and psychosomatic symptoms as a consequence of trauma. The Court also found a violation due to the detention of the children in a closed center for adults, under the same conditions as an adult person.
			Kanagaratnam and Others v. Belgium (December 2011)	The Court ruled that a violation of Article 3 had taken place in relation to three Sri Lankan children of Tamil origin who had been held in an immigration detention facility with their mother for four months in 2009. The ECHR stated that, by placing them in a closed center, the Belgian authorities had exposed the children to feelings of anxiety and inferiority and had risked compromising their development. Consequently, the situation experienced by the children had amounted to inhuman and degrading treatment, in violation of Article 3 of the Convention. The Court also found a violation of Article 5 §1 (right to liberty and security) due to the fact that by placing the children in a closed center designed for adult undocumented migrants, in conditions which were ill-suited to their extreme vulnerability as children, the Belgian authorities had not sufficiently guaranteed the children's right to liberty.

			<p>Popov v. France (January 2012)</p> <p>Conka v. Belgium (2002)</p>	<p>A Kazakhstani couple whose applications for asylum and residence permits were rejected were detained accompanied by their two children, who were born in France in 2004 and 2007 respectively, for a period of 2 weeks pending a planned deportation which did not occur. They were then released and later granted refugee status. The Court ruled that there had been a violation of Article 3 and Article 5 §§ 1 and 4 (right to liberty and security) in respect of the administrative detention of the children, and that there had been a violation of Article 8 in respect of the administrative detention of the whole family.</p> <p>Right to an effective remedy against a deportation measure, including guarantees of <i>suspensive</i> effect until remedy is decided.</p>
			<p>Niedzwiecki v. Germany, 58453/00 - 15 February 2006</p> <p>(Similar to: Okpisz v. Germany, 25 October 2005, Appl. No. 59140/00)</p>	<p>Right to Child benefits of non-nationals. The applicants in both cases were immigrants, in possession of residence permits for exceptional purposes. Their requests for child benefits were rejected as they were not in possession of unlimited residence permits or provisional residence permits, as required by law. The Court held that granting child benefits come within the scope of respect for family life The Court found no “objective and reasonable justification for the applicants to be treated differently”.</p>
	Access to housing/ shelter	European Court of Human Rights	<p>E.g. Gillow v. UK, judgment of 24 November 1986 (Application no. 9063/80), Buckley v. UK, 15 September 1996 (20348/92), Connors v. UK, 27 May 2004 (66746/01).</p>	<p>Article 3 and Article 8 can imply a positive obligation on States to avoid imposing “intolerable living conditions” that would breach these rights i.e. provide shelter.</p>
		European Union Court of Justice	<p>El Dridi v. Italy (April 2011)</p>	<p>Prohibits criminalization of irregular migration. The Court ruled that Member States may not provide for a custodial sentence, in order to remedy the failure of coercive measures adopted to effect a forced removal. This refers to the custodial sentence provided for by national legislation at issue in the main proceedings; on the sole ground that a third-country national continued to stay “illegally” on the territory of a Member State after an order to leave the national territory was notified to him and the period granted in that order had expired.</p>

			Judgment C-34/09 Ruiz Zambrano (Belgium)	The undocumented parent of an EU citizen child has the right to work and reside in the country of the child's citizenship.  European Court of Justice rulings establish jurisprudence for EU: courts in IRL, DK, AUST, UK have since asked for clarifications
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<sup>i</sup> BELGIUM: French speaking community: Article 40 of the Decree of 30 June 1998 as amended under the Decree of 27 March 2002. Dutch speaking community: Circular letter of 24/02/2003 from the Flemish Minister for Education on the right to education for children without legal residence status (replacing the circular of 24/06/1999). FRANCE : Circulaire 2002-063 du 20 mars 2002 "Modalités d'Inscription et de Scolarisation des élèves de nationalité étrangers des premier et second degrés". ITALY : Article 38 National Immigration Law T.U. 286/98 (Legislative Decree No. 286/1998 *Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero* (25 July 1998) and Article 45, D.P.R. 394/1999 *Decreto del Presidente della Repubblica 31 Agosto 1999, n. 394, e successive modificazioni, Regolamento recante norme di attuazione del testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero, a norma dell'articolo 1, comma 6, del decreto legislativo 25 luglio 1998, n. 286*. SPAIN: Point 3 of Article 10 of the Ley Orgánica 1/1996, de 15 de enero, de Protección Jurídica del Menor, de modificación parcial del Código Civil y de la Ley de Enjuiciamiento Civil. THE NETHERLANDS: Article 40.1 of the Law of 2 July 1981 concerning the Law of primary education (WPO) (Wet van 2 juli 1981, houdende Wet op het basisonderwijs and Article 27.1a of the Law of 14 February 1963 concerning the Law of secondary education (WVO) (Wet van 14 februari 1963 tot regeling van het voortgezet onderwijs

<sup>ii</sup> GREECE, Law No. 3386/2005 (2005), Article 84(1). ROMANIA Law on the protection and promotion of the rights of the child/ 272/2004, Article 43; Romania Law 95/2006 on healthcare reform, Article 213. PORTUGAL, Despacho do Ministério da Saúde number 25 360/2001; Decreto Lei Number 135/99, 22 April 1999. SPAIN, Ley Orgánica 4/2000 sobre derechos y libertades de los extranjeros en España y su integración social (2000).

<sup>iii</sup> See: PICUM Submission to the OHCHR Special Rapporteur on Migrants 2012 thematic report on detention, January 26, 2012 Brussels.

<sup>iv</sup> *Artículo 258.7 del Real Decreto 557/2011, de 20 de abril, por el que se aprueba el Reglamento de la Ley Orgánica 4/2000, sobre derechos y libertades de los extranjeros en España y su integración social, tras su reforma por Ley Orgánica 2/2009.*

<sup>v</sup> The study "Miradas tras las rejas" reports at least 13 instances in which families were detained in 2011 in an immigration detention center in Madrid (*Centro de Internamiento de Extranjeros de Aluche*). See:

[http://www.entreculturas.org/noticias/informe\\_pueblos\\_unidos\\_CIE\\_Aluche](http://www.entreculturas.org/noticias/informe_pueblos_unidos_CIE_Aluche)

<sup>vi</sup> Among its recommendations, the report stated: 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; Alternative accommodation solutions should be implemented as a matter of priority; Minors should never be subject to forced return procedures; All forms of detention for minors and families, particularly for unaccompanied minors, should be banned.

<sup>vii</sup> STEPS Consulting Social: 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.

<sup>viii</sup> UN Committee on the Rights of the Child, Concluding Observations: Spain, CRC/C/ESP/CO/3-4, 29 September 2010; Human Rights Watch, Spain: Migrant Children at Risk (2010), Returns at Any Cost. Spain's Push to Repatriate Unaccompanied Children in the Absence of Safeguards (2008).