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THE RIGHTS OF ALL CHILDREN IN THE CONTEXT OF INTERNATIONAL MIGRATION

**“CHILDREN IN THE CONTEXT OF MIGRATION
AND THE RIGHT TO FAMILY LIFE”***

Introduction

International migration impacts on the right to family life significantly and in different ways. Restrictive migration policies have considerable implications for the way families, parents and children migrate, often with detrimental consequences on children’s right to family life.

Within the international human rights legal framework, few rights have been so widely recognised as the right to family life.¹ In many of these instruments, States Parties have recognised ‘the family’ as a natural and fundamental element of society and, as such, deserving of the right to the broadest possible protection by society and State.

Human rights treaties, in particular the Convention on the Rights of the Child (CRC), grant unequivocal importance, recognition and protection to the right to family life (see box 1, Annex III). Many CRC provisions, including the Preamble², stress the special value of family life for children and reveal the interdependence between this right and other fundamental rights. Given the near-universal ratification of the CRC, the right to family life can arguably be accorded the status of an international norm. This right is particularly relevant to the situation of children in the context of migration.

Protecting family life presupposes a set of positive and negative obligations on the part of States Parties. Positive obligations require specific, affirmative measures directed towards guaranteeing and promoting the right to family life. Negative obligations require States Parties to abstain from acts and decisions that weaken or directly infringe on this right. In the context of migration, abstention requires that States Parties refrain from actions that violate CRC rights, including decisions that separate families.

This UNICEF submission focuses on challenges to children’s right to family life in the context of international migration. It briefly analyses the main CRC provisions and standards that directly or indirectly protect children’s right to family life, and how this right affects the situation of children and families in the context of migration. The core principles of the Convention – the best interest of the child, non-discrimination, the right to life and development, and the right to participation and being heard – are stressed throughout this analysis.

The paper goes on to analyse how children’s right to family life is respected or violated in the context of migration laws, policies and practices, in accordance with differing interpretations and applications of the CRC. Particular focus is placed on key migration law enforcement

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mechanisms that decisively impact family life: deportation, detention, family reunification and regularisation. The analysis demonstrates that if migration policies were to adequately consider children's right to family life, not only would the harms resulting from detention be avoided, but the rights violations ensuing from deportation would also be averted. The same is true of policies affecting the granting of residence on the basis of the right to family life, as currently takes place in many States.³

All the issues raised in this submission should be considered in relation to its main theme: the right to family life. An exhaustive analysis of detention, deportation, and access to economic and social rights would require a far lengthier treatment than we are able to provide here.

Annex I provides recommendations to improve the fulfilment of the right to family life for all children in the context of migration. Annex II provides a set of standards and offers a non-exhaustive compilation of promising examples, including legislation, policies, practices, civil society initiatives, and jurisprudence, that protect and guarantee the right to family life for children in the context of migration.

I. The Convention on the Rights of the Child and Children in the Context of Migration

The CRC is a key instrument for protecting children in the context of migration. States Parties must seek to ensure that Convention provisions and principles are fully reflected and given legal effect in relevant domestic legislation and policies (art. 4). These principles are: non-discrimination (art. 2), the best interests of the child (art. 3), the right to life, survival, and development (art. 6), and the right of the child to express views on all matters affecting him or her and to have these opinions taken into consideration (art. 12), and are fully articulated in the 2012 CRC DGD Background Paper.

Affirmed by its swift and wide-scale ratification,⁴ the CRC established a new paradigm in which States pledged to adopt a set of criteria for shaping all public policies impacting child rights. This commitment calls on States to apply the Convention transversally, across all relevant national laws and policies, as to create the conditions that permit all children within a State's jurisdiction to effectively exercise their rights. A single law that integrally protects children, with a single agency in charge of its implementation, is thus not sufficient to fulfil Convention requirements.

According to the CRC, the normative and institutional framework establishing integral protection for children should take primacy over existing laws or policies.⁵ This prioritisation must also be applied to all aspects of migration policy in which a right guaranteed by the CRC is at stake, including the right to family life. In the words of the United Nations High Commissioner for Human Rights,

[...] all authorities and institutions that come into contact with children in the context of migration are required to determine that their actions are primarily concerned with protecting the interests of the individual child. This principle should override all others; including conflicting provisions of migration policy should these arise.⁶

Migration laws, practices and procedures should be designed to fully and meaningfully protect children's rights. However, too often domestic politics take precedence over States' international obligations under the CRC.

II. The Convention on the Rights of the Child and the Right to Family Life

The Convention demonstrates the close connection between the right to family life and all other fundamental principles underlying child rights. Further, fulfilment of the rights enshrined in the Convention is intrinsically tied to, and contingent upon, the realisation of the right to family life (see box 2, Annex III). Protecting family life also requires ensuring that the civil, political, economic, social and cultural rights of parents and guardians are also protected. This comprehensive approach is indispensable to ensure that, as rights-holders, children can grow and develop with dignity and without discrimination.

1. Fundamental CRC Principles and the Right to Family Life

The right to family life in the context of migration cannot be completely understood unless it is analysed as an indivisible and interdependent part of the Convention, closely intertwined with its fundamental principles.

The *best interest of the child* (CRC art. 3) is a central, underlying criterion for assessing all decisions that may affect children's rights in the context of migration. This includes general measures related to the overall legal framework, institutional organisation, budget, training, and migration procedures of States Parties, such as: conditions for regularisation of status; restrictions on social rights for migrants; and procedures for family reunification, including conditions for children's entry in their parents' country of destination. The best interests principle is also fundamental to evaluating individual cases, such as the expulsion of migrant families, or of parents of children with legal status or nationality in the destination country.

The principle of *non-discrimination* (CRC art. 2) requires States Parties to "respect and ensure the rights set forth in the [...] Convention to *each child within their jurisdiction* without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, *national*, ethnic or social origin, property, disability, *birth or other status*" [emphasis added]. To assess the extent to which this principle is being respected, it is necessary to compare the effects of a State Party's regulation of the right to family life on children affected by migration with the impact on child nationals. The CRC requires that both groups within the State's jurisdiction be granted substantive equal treatment in the context of family life.

Similarly, the right to *life, survival and development* (CRC art. 6) plays an essential role in protecting the right to family life for children in the context of migration. Measures taken in the context of migration law enforcement, such as detention and deportation, have an immediate and negative impact on the living conditions of many children. Similarly, restrictions on employment rights or access to social services based on migration status severely affect the development of children of migrant families.

The right of family unity is closely linked to parents' responsibility to guarantee the material conditions necessary for child development,⁷ as well as to maintain caring bonds, provide for children's emotional and psychological development, and offer them moral and civic guidance. Article 27 of the CRC recognises the right to an adequate standard of living for every child. While the primary responsibility for securing living conditions that ensure a child's development lies with the parents or legal guardians, article 27 also calls upon States Parties to take appropriate measures to assist them in the implementation of this right, including through the provision of material assistance and support programmes, particularly

with regard to nutrition, clothing and housing. The cohesiveness of the family unit is essential for fully realising the co-responsibility of the family and the State for ensuring that all children living within the State's jurisdiction have an adequate standard of living, regardless of nationality or migration status. Furthermore, in article 18 CRC, States Parties agreed to render appropriate assistance to parents and legal guardians in performing their child-rearing responsibilities. Nevertheless, in many countries measures related to the enforcement of migration law present serious obstacles to parents' ability to fulfil their obligations.

Finally, States Parties committed to guarantee every child's right *to participate and be heard* (CRC art. 12) when making decisions and implementing procedures that affect the right to family life. Thus, child participation (applying the principle of progressive autonomy) must be guaranteed in decisions that could lead to the deportation of parents, as well as in procedures aimed at family reunification or at granting legal status to migrant families, among others.

2. Further CRC Articles Relevant to the Right to Family Life

Like other treaties⁸, the CRC prohibits arbitrary interference with family life (article 16). This basic protection is a relevant starting point for analysing the extent to which migration policies and procedures interfere with family life. A migration policy or procedure that results in "arbitrary interference with family life," is *prima facie* contrary to a State Party's international legal obligations under the CRC. To determine whether a particular policy or procedure constitutes "arbitrary interference", the guiding principles of the best interests of the child and non-discrimination can be used as interpretive tools. Article 16⁹ is complemented by a series of supporting provisions that are also relevant in the context of migration:

Article 9 states that children should not be separated from their parents against their will, except when such separation is deemed to be in the best interests of the child. Article 8 complements and reinforces this directive by requiring States Parties to respect a child's right to preserve his or her identity, including family relations. As discussed further below, this pair of articles is particularly relevant in the context of migrant detention, deportation and family separation. Both articles also provide strong support for the promotion of family unity and reunification, as well as regularisation of migration status.

Another vital aspect of the right to family life in the context of migration emerges from article 10 of the CRC. This provision requires positive, humane and expeditious responses by States to any application made by a child or his or her parents for entering or leaving a State for the purpose of family reunification. Thus States Parties should seek to ensure that all family reunification procedures foreseen in migration policies are designed to recognise the right to family life.

The following section examines in greater detail some of the current human rights challenges faced by children affected by migration with regard to their right to family life.

III. Main Challenges to the Right to Family Life for Children in the Context of Migration

1. Detention

Migration-related detention exposes children to particular vulnerabilities regarding their right to family life. Expert opinion provided to the Human Rights Council noted out that since infractions of immigration law are generally administrative in nature, they should not be considered crimes, and thus should never be subject to liberty-depriving punishments.¹⁰

In the case of children, detention should never be an option,¹¹ since this would contradict the principle of the best interests of the child and the spirit of the entire CRC, which only permits detention as a last resort for the shortest period of time *in procedures that are criminal in nature* (CRC art. 37).

Nevertheless, numerous States have resorted to detaining children, with and without their parents,¹² in contravention of CRC principles.¹³ Perhaps the most egregious misinterpretation of the CRC is the claim that placing children in detention facilities is necessary to keep the family unit intact, reflecting an erroneous and improper interpretation of the right to family life. Claiming that children should be detained to keep families together is not consistent with States Parties' positive obligation to ensure the best interests of the child, nor with the principles and rights that the Convention seeks to protect.¹⁴ The general rules of interpretation established by article 31 of the Vienna Convention on the Rights of Treaties and the pro-persona principle included in many human rights treaties prohibit this kind of rights-restrictive interpretation, noting that a legal provision cannot be interpreted in a way that curtails rights that the provision is intended to protect. Such interpretations are seen as a perversion of the law. Thus, the right to family life cannot be invoked to justify interference with other rights, such as personal liberty.

The impact of detention on family relations can be seriously detrimental, especially if while they are being held children see their parents' roles undermined by State authorities over a long period of time.¹⁵ Similarly, special attention should be given to the physical and psychological health of detained children, whether they are together with their families or unaccompanied.¹⁶

For this reason, in cases where it is necessary to shelter the migrant family, the only possible response according to the best interests of the child is for the family to be placed in a facility specially designed for families with children, in which no one is deprived of their liberty.¹⁷ Such centres should comply with a number of requirements in terms of infrastructure, activities and trained personnel, and be suited to the rights and interests of children. More importantly, in several countries undocumented families are not placed in a facility during administrative or judicial procedures related to their eventual deportation. They continue to live in their homes and take part in normal activities (and children continue to attend school) while such procedures are underway.

This approach can ensure that the best interests of the child are respected by harmonising the child's right to personal freedom with the right to family life. The CRC Committee has stressed that, as a general rule, child migrants and asylum-seeking families should not be detained.¹⁸

Migration-related detention affects the rights of children in many other ways, even when children themselves are not detained. Detention of parents has a substantial, often irreversible, negative impact on children's right to family life, as well as on many other child rights, especially where children are residents or citizens of the country of destination and parents are deported, or the family is separated.

Even when it does not lead to deportation, family separation due to detention has an immediate impact on child development, as well as on the psychological, spiritual, and material elements of the right to an adequate standard of living.¹⁹ The consequences are aggravated on a daily basis for the duration of parental detention. In such circumstances, the best interests of the child and other rights guaranteed by the Convention argue strongly that alternative measures to depriving parents of their liberty should be put in place.

2. Deportation

Some countries deport individuals on the basis of migration status. This order is typically made without taking these individuals' family circumstances into account, especially those of children that reside with parents in the country of destination.²⁰ This can occur both when children are legal residents or nationals of the destination country and in cases where the entire family has irregular migration status. In addition, evidence from many countries reveals a trend of increasingly harsh deportation and detention policies that negatively impact basic human rights, such as the right to family life.

Deportation impacts children's rights at many levels, far beyond family life. Articles 8 (right to maintain family relations) and 9 (right to not be separated from one's parents) need to be taken into consideration when enacting decisions that might affect children. However, family separation as a consequence of deportation impacts many other rights guaranteed by the CRC. For example, parental deportation has an immediate negative effect on the fulfilment of parents' obligations to their children (CRC art. 5), and can also affect children's mental and emotional health (CRC art. 24) and/or educational development (CRC art. 28). Among the consequences for children of detention, deportation and family separation shown by evidence to date are feelings of loss or abandonment, leading to anxiety; anger toward parents, sometimes resulting in acting out or displaying aggressive behaviours; and feelings of shame and isolation. Children may also become distressed or depressed, and experience loss of appetite, sleep problems, and decreased cognitive and academic performance.²¹

Moreover, decisions calling for deportation contradict CRC commitments by States Parties with regard to child development – a fundamental principle of the Convention, guaranteed by article 6. As stated earlier, States Parties have positive duties to take appropriate measures to assist parents (and others responsible for the child) in providing an adequate standard of living for their children (CRC art. 27). When families are separated as a result of deportation orders, parents and guardians are often no longer able to provide a standard of living adequate for the child's physical, mental, spiritual, moral and social development. Further, States Parties also have a duty to "render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities" (CRC art. 18.2). Separating families from their children is a clear violation of this duty. By deporting parents, States Parties prevent them from fulfilling their primary responsibility for the child's development, contradicting their obligations under the CRC. Deportation decisions also affect children's short- and long-term mental, spiritual, and moral development.

In addition, children are rarely allowed to participate in deportation hearings. Their right to be heard is hardly ever recognised, despite the fact that the decision adopted may severely affect their rights and development. Such procedures and resulting deportation orders involve practices that also contradict the principle of the best interests of the child, instead prioritising migration control policy objectives.²²

It is also important to note that expulsions usually entail a restriction on re-entering the country for a specified number of years or even indefinitely.²³ This additional sanction further exacerbates the infringement of CRC rights. In particular, by not expeditiously, positively, and humanely facilitating family reunification, making re-entry impossible infringes upon article 10 of the Convention (family reunification). The violation of this right is aggravated considerably when alternative measures are adopted, such as placing children into adoption in the destination country against their will and that of their parents.

Deportation measures also discriminate against children of migrant parents, since it is the parents' migration status that leads to undermining CRC rights. This is in breach of CRC article 2.2, which forbids any restriction to children's rights based on their parents' condition.

To remain in compliance with their commitments under the CRC, States Parties need to design mechanisms guaranteeing that the rights, opinions, and interests of children are taken into account during the deportation procedures of their parents, especially when they are residents or nationals of the country of origin.²⁴ Further, given that children cannot be expelled from their own country, the State Party's duty of protecting children and safeguarding their rights should be conducive to solutions that avoid family separation, such as granting residence status to the parents (see Annex II for examples of States that currently do so).

A holistic interpretation of the CRC should also constitute sufficient basis for States Parties to abstain from deporting irregular migrant families. Very often children migrated with their parents during infancy and have established strong social ties in the destination country. They may even have been born in host countries that do not recognise the principle of *jus soli*, and therefore do not grant them nationality. In these circumstances, or when children are fully integrated into the destination country, the impact of expulsion may severely affect the child's rights and development. A case-by-case examination is essential when considering the deportation of families. A range of alternative responses are available and should be considered, including regularisation of the entire family's status.

Through the CRC, States Parties are committed to give primacy to children's rights, including family life, above any other consideration or interest. This obligation should be considered when designing and implementing migration policies. Migration laws should guarantee the rights of children, including those potentially affected by deportation measures. Implementation of these laws must also be carried out carefully, so that no discrimination or abuse of rights occurs. This requires a strong focus on training competent officials and participation of children in deportation procedures, among others.

3. Family Reunification

In many cases migration entails physical separation of families, at least temporarily. Frequently parents (one or both) migrate alone, leaving their children behind in the country of origin until the parents become established. Increasingly, children are migrating

unaccompanied, leaving their parents and families behind. Family separation often is a result of legislative and economic obstacles that impede the migration of entire families that, when combined with stiff residence requirements in destination countries, infringe on the right to family life.

Policies that restrict family reunification are in stark violation of the right to family life, as set out in the CRC and other international treaties, as well as of other rights that are contingent on family life. Family reunification must be considered an essential part of this right for migrant individuals and families.

Article 10 of the CRC explicitly recognises the right of migrants to request authorisation for entrance and residence on behalf of their parents and children, and that family reunification is the goal of such guarantees.²⁵ States must therefore seek to ensure, both in law and in practice, the effective and speedy realisation of this right. The question of time is important, since prolonged family separation can have irreversible impacts on children.

Furthermore, the CRC Committee has highlighted that, in order to reconcile the principle of the best interests of the child with other principles and rights that may be at stake (i.e. the right to life, development, family life, and physical integrity, among others), the adoption of a procedure for determining the best interests of the child (BID Procedure)²⁶ is essential. Decisions in this regard must be made on a case-by-case basis. If repatriation is an option, there must be clear and strong evidence that such action is appropriate for a particular child in his or her particular situation. When family unity is in the best interests of the child, but evidence gathered indicates that repatriation is not an adequate measure, the family should be reunified in the destination country.²⁷

The Parliamentary Assembly of the Council of Europe has similarly stated that: “the right to respect for family life is a fundamental right belonging to everyone” and “reconstitution of the families of lawfully resident migrants and refugees by means of family reunion strengthens the policy of integration into the host society and is in the interest of social cohesion.”²⁸ Further, in his report on the protection of children in the context of migration (2009), the Special Rapporteur on the Human Rights of Migrants recommended that countries of origin and destination develop policies, programmes and bilateral agreements to preserve family unity, including facilitating family reunification and interaction among family members.²⁹

Nevertheless, to date many countries do not recognise the right to family reunification.³⁰ Even in those that do recognise this right, regulations often contain requirements and restrictions³¹ (such as socio-economic criteria, years of residence, etc.). Further, bureaucratic obstacles and administrative delays have a detrimental impact on the exercise of this right.³²

Some groups deserve special attention due to their particular vulnerability to restrictions on family reunification: the first is children left behind in migrant households in sending countries, who are at risk of suffering the consequences of family disruption, receiving insufficient care and control, falling into the hands of incompetent caregivers, or even being placed in an institution.³³ Other risks to these children arise when they engage in irregular, often unaccompanied, migration to reunite with their parents in destination countries. The second group includes migrant women seeking to reunite with their children. Gender inequalities make it virtually impossible for many women to successfully apply for family reunification, since they usually lack financial resources and the required supporting

documentation, do not have formal employment, and are unaware of administrative procedures. A third especially vulnerable group is children who are repatriated to the country of origin on the basis of the principle of family unity, even despite a lack of evidence that effective reunification can take place in the country of origin, or that the decision is in the best interests of the child.³⁴

When migration results in separating a child from his or her family, the child becomes more vulnerable to abuse, trafficking, exploitation and violence. Protecting the right to family life is critical to protecting the child's overall development and prospects for a decent life.

4. Regularisation

Irregular migration status exacerbates migrants' vulnerabilities. Measures that facilitate regularisation can ameliorate their situation, enhancing not only children's well-being, but also the protection of their right to family life. Regularisation is also an effective means to fulfil the principle of the best interests of the child and children's right to development.

Regularisation involves at least two different types of mechanisms: programmes adopted on an exceptional basis at a specific point in time to grant residence to all or part of the undocumented migrant population already present in the country, or permanent channels in a country's legislation that enable people to transition from irregular to regular migration status. Such channels are regulated by specific criteria that vary widely from country to country, such as: family or community ties, employment, education, years of residence, humanitarian concerns, etc.

The benefits of policies and programmes that allow migrants to regularise their status have been assessed and confirmed in different countries by governments, international organisations, and civil society actors.³⁵ These benefits are not only reaped by migrants, but also by societies as a whole, including in terms of human and economic development in countries of destination. Consequently, regularisation has a great impact on the lives of millions of families and children affected by migration, both in the short and long term.

Gender inequalities must be taken into account when analysing regularisation programs. *Women* typically have more precarious working conditions and unprotected jobs (for instance as domestic workers), and thus encounter more obstacles to obtaining residence status. This in turn increases their children's vulnerability to rights abuses, and has a considerable negative impact on their right to family life.

With regard to *unaccompanied children*, if the BID procedure determines that it is not in the best interests of the child to be repatriated to the country of origin, given that s/he must remain in the transit or destination country, s/he should be granted residence status. Further, as noted above, if family reunification is considered to be in the best interests of the child, parents or other family members should also be granted regular migration channels and status, to allow family reunification in the destination country.

Deportation measures have been shown to be prejudicial to *irregular migrant children living with their parents in countries of destination*, especially when the family has resided for a long time in the destination country or the child/ren left the country of origin at a very young age. Mechanisms aimed at providing these families with regular status (for instance, based on employment of one or both parents) can substantially improve the material, emotional,

housing, and health conditions of these children. Regularisation improves the social, economic and administrative situation of migrant families, allowing parents to better fulfil their obligations to their children, strengthening family ties and contributing to meaningful family life; thereby serving to fulfil the right to family life.

Finally, in the case of *children who are nationals of the destination country but born to irregular migrant parents*, regularisation is also relevant to the fulfilment of their rights, including family life. Many countries grant residence status to the parents of these children on the basis of the right to family life, allowing them to fulfil their parental obligations and ensuring that children's rights are not discriminated against based on the migration status (or, worse yet, detention and /or deportation) of their parents, in breach of CRC art. 2.2.

Irregular migration is a structural component of contemporary migration patterns. As the brief analysis above has outlined, regularisation constitutes an effective mechanism to reduce its negative effects on families, communities and societies. Regularisation also contributes to fulfilling the rights of children in the context of migration.

5. Protecting the right to family life of children in the context of migration through economic, social and cultural rights (ESCR)

So far, this paper has focused on the interdependence between children's right to family life and other fundamental rights recognised by the CRC and other international human rights instruments, and how this interdependence holds particular value for children in the context of migration and their families. This is also true in the case of the economic, social, and cultural rights (ESCR) of children affected by migration. ESCR strengthen family life, and in turn family life facilitates the realisation of ESCR.

The right to family life is neither exclusively limited to, nor completely fulfilled through, the mere fact of having a family and safeguards against arbitrary familial separation. This right can only be realised when each family member has an adequate opportunity to fulfil her/his respective role within the family unit. This particularly refers to parents, as those primarily responsible for their children's physical, psychological, emotional, moral, spiritual and material development. In this regard, as has been noted, States have an obligation to facilitate parents' fulfilment of their duty through different means (CRC art. 18 and 27).

Regularisation of migration status exemplifies the measures States can adopt to facilitate the fulfilment of children's rights and those of their families. Similarly, guaranteeing access to ESCR for all family members, regardless of nationality and migration status, is means of realising every child's right to family life, and the other rights that depend upon it.

Parents' potential for earning decent wages and having an adequate standard of living (art. 27 CRC) for the children who migrate with them obviously depends on their being able to access employment. Moreover, work and decent working conditions must be accompanied by respect for their labour rights (in the same conditions as nationals), as required by the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and ILO Conventions 97 and 143. Regular migration status is a prerequisite for parents' access to employment, including satisfactory labour conditions, whether they have entered regularly or whether have had opportunities for regularisation once in the destination country.³⁶

The right to adequate housing is also fundamental to a child's integral development, and is indispensable to protect privacy within the scope of family life. Again, the regular status of the migrant family, or the possibility of accessing legal residence, is necessary for avoiding the restrictions that migrants often face when attempting to access public housing programmes, either because of their irregular status or because they have not completed the minimum number of years of residence in the destination country.³⁷

Additionally, social protection programmes and social services guaranteed by the state to its nationals – such as conditional cash transfer programs, child care services, equal access to health services and education – should be accessible to migrant families under equal conditions. Migrants should also be able to benefit from social protection programmes designed to preserve family life, safeguarding an adequate standard of living and the right to development and survival guaranteed by the CRC.³⁸

Finally, adherence to the CRC dictates that the cultural identity of migrant families be taken into consideration during the planning and execution of migration policies, in such a way as to respect and value the culture of the origin country. Respect for customs, language and other integral elements of the parent's identity and the children's culture of origin can strengthen family relations by helping migrant families to harmonise with the culture of the host country. However, discriminatory practices and violations of migrants' cultural rights can lead to problems in the parent-child relationship, such as a child's rejection of the parents' culture. They can also undermine efforts at social integration in host countries.

In countries of origin, the separation of family members has some advantages for children or families left behind, but also can lead to vulnerabilities. Some studies point to the positive impact of remittances from migrating household members: they may help close the gender gap in education, putting girls in school and lowering their dropout rate; they may improve child health, particularly for girls; and they can contribute to reducing child labour.³⁹ Although remittances can be seen as a livelihood strategy that increases migrant families' capacity to invest in child health and education, special provisions must be in place to ensure management of social risks. The departure of a migrant can leave a family without access to social protection in those cases where insurance was linked to the person's employment.

Greater awareness is needed in countries of origin regarding the need to see children from migrant homes as a vulnerable population, and social protection policies should be designed or revised to provide the services these children need. Existing social protection policies could play a key role in addressing some of the risks for migrants' families and their children. Conditional cash transfers and other resource transfer schemes could help to ensure that families and children have adequate access to basic needs, and that investments in children are made (e.g. education, nutritional supplementation, etc.). Social programmes should include benefits for single-parent households resulting from migration and non-traditional caregivers, such as grandmothers or other relatives. Provisions should also be made for the special needs of female-headed households left behind due to migration.

IV. Conclusion

The preceding paragraphs highlight the particular importance of the right to family life in the context of global human mobility. The effects of migration inevitably alter the spontaneous course of a child's life, opening the door to the potential for increased vulnerability – or to healthy, integrated child development. The Convention on the Rights of the Child and other

human rights treaties serve as a necessary (and mandatory) guide for countries of origin, transit and destination to ensure that they take necessary measures, based on the best interests of the child, to guarantee the comprehensive protection of children. Conformity with these guidelines will help to ensure that the migration process allows children to experience the best possible development.

However, if countries maintain policies that restrict access to rights and migration enforcement mechanisms and procedures that do not take the best interests of the child into account, children affected by migration will face a panorama of greater vulnerability, exploitation and a family environment that is hardly conducive to appropriate child development. Simply put, it is not possible to satisfy the right to family life if other fundamental rights are ignored or if, as a consequence of migration policies lacking a child-rights perspective, other obstacles stand in the way of access to civil, economic, social and cultural rights.

This analysis raises some basic questions related to CRC core principles and the protection of the right to family life of children in the context of migration, which should be addressed: Is it reasonable that because of mere administrative infractions, measures for expulsion can result in separating families? Can the detention of entire families be acceptable, despite the detrimental effects on children, often especially damaging to family relationships? Can restrictions of social rights be justified based on migration status, despite the impact that these may have on child development and the fulfilment of familial obligations by parents?

The CRC provides a common response to these and similar questions: the rights recognised in article 2 should be fully guaranteed, without restrictions based on the condition of the child or the parents. Therefore, the best interests of the child should prevail over migration considerations, and the rights of children affected by migration should be equal to those of national children.

ANNEX I - RECOMMENDATIONS

1. Adopt legislation and institutional frameworks protecting children's best interests in the context of migration

Child protection legislation and institutional frameworks must prevail over migration laws and policies, and should be guided by CRC provisions and principles. Childhood authorities should intervene and have priority over migration authorities in all procedures and decision-making processes related to child migrants' entrance, stay, and repatriation. States should make clear in their legislation, policy, and practice that the principle of the best interests of the child takes priority over migration and other administrative considerations.

2. Include and apply the principle of family unity and reunification

The principle of family unity should be applied by authorities at all times, and families should never be separated by State action or left separated by State inaction, unless this is in accordance with the principle of the best interests of the child. In the case of irregular migrant parents, States should explore alternatives to detention and deportation in order to ensure children's right to family life, e.g. granting a residence permit on the grounds of family unity and the best interests of the child. Family reunification policies of transit and destination countries should enable children left behind to join their parents, or parents to join their children, in the destination country, thereby avoiding irregular and unsafe migration channels. To implement such procedures, States should consider the adoption of mechanisms that ensure the fulfilment of Article 10 of the CRC, addressing positive, humanitarian and expeditious attention to family reunification applications.

3. Prohibit deportation and detention that infringes children's rights

Parents should not be deported if their children are nationals of the destination country. Instead, their regularisation should be considered. Children should be granted the right to be heard in proceedings concerning their parents' admission, residence, or expulsion, and have access to administrative and judicial remedies against their parents' deportation order, to ensure that decisions do not negate their best interests. The best interests of the child should be a primary consideration when deciding on the deportation of a migrant family in irregular status. Alternatives more adequate to the child's best interests, including regularisation, should be established by law and through practice. Detention is never in the best interests of the child, and States should seek to ensure that child migrants are never detained due to their migration status or that of their parents. Detention of migrant parents can severely impact children's rights and development, including their right to family life, and detention of migrant families cannot be justified for the sake of family unity. Alternatives that consider the best interests of the child, along with children's rights to liberty and family life, should be developed and adopted.

4. Promote regularisation policies and ensure access to secure residence

Regularisation policies greatly contribute to migrants' integration into the host society, as well as to child development and the protection of family life. These benefits also lead to maximising migrants' contribution to human development in both sending and receiving societies. States should implement regularisation programmes that facilitate migrants' integration and uphold children's rights, including their right to family life. States should

ensure, by law and in practice, regular and accessible channels to obtain a residence permit, based on grounds such as family unit, labour relations, and social integration.

5. Ensure migrant families' access to economic, social, and cultural rights

Deprivation of economic, social, and cultural rights of migrant parents based on nationality or migration status impedes the fulfilment of their parental obligations towards their children's right to an adequate standard of living. Likewise, such deprivation negatively impacts family life. States should seek to ensure access to economic, social, and cultural rights for all migrants, regardless of their migration status. States should include this equal treatment to migrants in the design of social, childhood, and family protection policies.

ANNEX II

1. DETENTION AND THE PRINCIPLE OF FAMILY UNITY

1.1 PROMISING LEGISLATION AND PRACTICES ACROSS FIVE REGIONS

1.1.1 Legislation: Argentina

The National Immigration Law 25.871 on the principle of non-detention. Law stipulates that migrants should not be detained during deportation procedures before administrative or judicial bodies. A judicial authority may authorise detention as a last resort measure in exceptional cases.

1.1.2 Legislation: Panama

Migration Law (No.3, 22 February 2008), article 93. Legislation includes a prohibition on detention of migrants under 18 years of age.

1.1.3 Legislation: Spain

Migration Law (Article 62.4 of Organic Law 2/2009). In Spain the detention of children is prohibited by law. Children are to be referred to the “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 centre with facilities appropriate for families.

1.1.4 Legislation: Venezuela

Migration Law 37.944, 24 Article 46 on interim alternative measures, including explicit prohibition of detention. This legislation prohibits detention and provides several alternatives to detention, which include a set of interim measures that may be adopted within a deportation procedure.

1.1.5 Practice: The United Kingdom

United Kingdom: May 2011 announcement

The UK Government pledged to end the detention of children for immigration law enforcement purposes by May 2011. Children, both unaccompanied and with their families, would no longer be detained. However, this has not been codified in law. Further, many are concerned that the alternative – “pre-departure accommodation” – retains many of the defining features of detention and will be applied using the same justifications, and thus does not represent a real alternative to detention and will still have significant negative effects on children.

1.1.6 Practice: Belgium

Procedure for the assisted return of families

As part of the removal process, families with children are placed in so-called 'open return houses', open-access accommodation where they receive counseling from a return coach. Family members are allowed to exit the house, providing that one adult member of the family remains present in the unit at all times. Children are allowed to attend school, although there are practical difficulties (due to lack of available space in schools, short windows of time prior to the return, etc.). Families have access to health care in addition to an obligatory medical check-up upon entering the return houses.⁴⁰ However, neither a prohibition of the detention of families with children, nor the policy of ‘open return houses’ have been formalised in law. A new regulation came into force on 27 February 2012 allowing the

detention of families pre-deportation in closed centres, if the centre is adapted to the needs of families with children and for as short a duration as possible.⁴¹ The government has announced proposals to create “family units” within closed detention centres.

1.1.7 Court Ruling: European Court of Human Rights “Popov v. France”⁴²

A Kazakh couple whose applications for asylum and residence permits had been rejected was detained for a period of two weeks pending a planned deportation that ultimately did not transpire. They were accompanied by their two children, who were born in France in 2004 and 2007, respectively. The family was then released and later granted refugee status. The Court ruled that there had been a violation of Articles 3 and 5 §§ 1 and 4 (rights to liberty and security) in respect to 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.

1.1.8 Court Ruling: European Court of Human Rights “Kanagaratnam v. Belgium”⁴³

In a case brought by a Sri Lankan woman and her three children claiming that their stay in a (closed) detention center in early 2009 was in breach of Articles 3 and 5 of the European Convention on Human Rights, the ECtHR ruled that the detention breached the right to freedom of the children, and stated that detention centers do not provide adequate facilities for children.

1.1.9 Court ruling: Inter American Court of Human Rights “Velez Loo v. Panama (2001)”

The ruling prohibits criminalisation of irregular migration and points out that migration-related detention should only be an exceptional resort.

1.1.10 Court Ruling: France, Respect for the right to family life

In a ruling issued on 20 February 2012, the administrative tribunal of Mayotte released a father and his two children, a two-year-old and an eight-year-old, from detention at the Pamandzi detention center in Mayotte. The tribunal found that the conditions of detention undermined human dignity, not only for the children involved by the administrative detention of their parents, but also for the whole family. The detention thus amounted to inhumane and degrading treatment, prohibited by Article 3 of the European Convention on Human Rights.⁴⁴

1.1.11 Court Ruling: South Africa. High Court of South Africa, Case 22866/2004

The Court investigated the circumstances of the detention of migrant children held in a repatriation center and ordered that they be immediately removed and placed in an appropriate place of care or safety. The court stated that: a) a child’s best interests are of paramount importance in every matter concerning a child; b) unaccompanied foreign children that find themselves in the country irregularly should have legal representation appointed to them by the state; c) the detention of children in the Repatriation Centre is unlawful and invalid, and should cease immediately; and d) authorities have 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.

1.2 STANDARDS

Prohibit deportation and detention that infringes children’s rights

To fulfil the principles of the CRC, particularly the best interests of the child, parents should never be deported in cases where children are nationals of the destination country. Instead,

regularisation of their status should be considered. Children should be granted the right to be heard in proceedings concerning admission, residence and expulsion of their parents, and have access to administrative and judicial remedy against their parents' deportation order. The best interest of the child should be a primary consideration during decisions about the deportation of a migrant family with irregular status. Instead, States should develop alternatives more in line with children's best interests, including regularisation, and establish them in law and practice. Detention is never in the best interests of the child, so States should seek to ensure that child migrants are never detained due to their own migration status or that of their parents. Detention of migrant parents can severely impact children's rights and development, including their right to family life. Detention of migrant families cannot be justified for the sake of family unity. Alternatives that meet the best interests of the child, along with guaranteeing their right to liberty and to family life, should be adopted.

2. DEPORTATION, THE BEST INTERESTS OF THE CHILD AND THE PRINCIPLE OF FAMILY UNITY

2.1 PROMISING LEGISLATION AND PRACTICES ACROSS FIVE REGIONS

2.1.1 Legislation: Argentina

National Immigration Law 25.871 and the Law on the Recognition and Protection of Refugees 26.165 explicitly refer to the principle of family unity. According to article 70 of the Immigration Law, if an order of expulsion is issued for a migrant and it is proven that they are the spouse, parent, or child of a national, the order of expulsion shall be suspended and summary court proceedings for the regularisation of the family unit shall be initiated. If the kin is discovered during detention, the person shall be immediately freed. Article 22 of the same law recognises permanent residence for the family unit and extends it to the spouse, children, and parents of the Argentine national or resident.⁴⁵

2.1.2 Legislation: Brazil

Statute of the Foreigner 6815/1980. Article 75 of the Statute of the Foreigner 6815/1980 mandates that whoever has a Brazilian spouse cannot be expelled if they are not separated or divorced. Additionally, the law requires that the union be at least five-years old. Nor can the parent of a Brazilian child be expelled if the child is under their care or financial support.

2.1.3 Legislation: Uruguay

Article 52 of the Immigration Law 18.250 anticipates the possibility of non-expulsion for those with irregular status based on circumstances of kinship with a national and the social and personal condition of the migrant.

2.1.4 Practice: Spain

Policy on non-deportation of children. Spanish policy provides that children are only repatriated if it is in their best interests; e.g. for family reunification. However, civil society and U.N. monitoring bodies and mechanisms have questioned whether a full 'best interests' determination procedure is conducted in practice. In this regard, the CRC Committee recommended that Spain: (a) takes all necessary measures to prevent irregular procedures in the expulsion of unaccompanied children; (b) coordinates with Governments of countries of origin, especially Morocco, to ensure that when children are repatriated they are returned to family members willing to care for them or to an appropriate social service agency; and (c) guarantees that following the identification of an unaccompanied child, an analysis of his/her

individual circumstances is carried out, in light of the best interests of the child and the right of the child to be heard⁴⁶.

2.1.5 Court Ruling: European Court of Human Rights “Nunez v. Norway”⁴⁷

The European Court of Human Rights (ECtHR) held that the removal of the mother of two children and application of a two-year re-entry ban would breach her right to private and family life because it would have a strong negative impact on her children and would not be in their best interests. The court found that there had been a violation of Article 8 of the European Convention on Human Rights.

2.1.6 Court Ruling: European Court of Human Rights “Kanagaratnam v. Belgium”⁴⁸

In a case brought by a Sri Lankan woman and her three children claiming that their stay in a (closed) detention center in early 2009 was in breach of Articles 3 and 5 of the European Convention on Human Rights, the ECtHR ruled that the detention breached the right to freedom of the children, and stated that detention centers do not provide adequate facilities for children.

2.1.7 Court Ruling: Inter American Court of Human Rights (IACHR) “Wayne Smith, Hugo Armendariz and others vs. the United States of America”⁴⁹

Published in 2010, the background report on Wayne Smith and Hugo Armendáriz concerned a suit filed that year that dealt with a claim presented about a deportation decision that had been taken against both of them. According to the petitioners, in calling for deportation the State had violated, among other rights, the right to private and family life, the protection of the family, and the protection of maternity and childhood. With relation to the right to family life and the rights of the child (articles V, VI and VII of the American Declaration), the IACHR reiterated that States have the ability to control the entrance and stay of non-citizens [...] Nevertheless, when decisions result in family separation, the criterion for limiting this right must be restricted. In this way, the IACHR held that the State violated the rights of the victims enshrined in articles V, VI, and VII of the American Declaration by not separately considering the rights to family life and the best interests of the children in its deportation procedures.

2.1.8 Court Ruling: Brazil. “Tribunal de Justicia de Brasil Hábeas Corpus N° 217.409 - RR”⁵⁰

The Court of Justice of Brazil held that the expulsion of a foreign person is inadmissible when the spouse is financially dependent on that person, insofar as “the expulsion of a foreigner married to a Brazilian woman, or having a Brazilian child who is dependent on the parental earnings is forbidden.”

2.1.9 Court Ruling: Colombia. “Raquel Estupiñán Enríquez, Acción de tutela c/ Resolución 230 del Departamento Administrativo de Seguridad”⁵¹

The chamber of the Constitutional Court held that “[...] the protection of childhood is a primary and unavoidable duty for the State, which must serve to guarantee the prevalence of the rights of children [...] and must guarantee them to all children without any distinction or discriminatory consideration [...]” The deportation of a foreign national who is a mother or father of a child is contrary to children’s fundamental right to a natural and legal family. Deportation and a prohibition against re-entry can disrupt the bond between parents and children.

2.1.10 Court Ruling: Costa Rica. “Zhong Guaquan, a favor de Ai Li Zhong y Du Yu Yun contra el Director General de Migración y Extranjería s/amparo”⁵²

The Constitutional Court of Costa Rica held that the Constitution granted special State protection to the family. Accordingly, “no public policy, legal instrument, or regulation, or in general, active or passive administrative act shall tend towards the disintegration or dismembering of the family.” Moreover, it mentions that in the nuclear family, the mother occupies a very important role for the development of the child; therefore, the best interests of the child supersedes any possibility of depriving the child of the care, support, and presence of his or her mother.

2.1.11 Court Ruling: Japan. “Nagoya District Court 2009 (Gyo-U) N°19”⁵³

The Court noted that Article 3 of the CRC requires that the best interests of the child be taken into account when making any decision regarding that child, adding that it would be very difficult for a child born in the destination country who did not speak the language of the country of origin to be returned. The Court further found that it would not be in the child's best interests to be separated from his or her parents, and accordingly, any determination regarding the father, mother, and child should be made as one. Thus the deportation order was rescinded in its entirety.

2.1.12 Court ruling: South Africa. “Pretoria High Court. Centre for Child Law v. Minister of Home Affairs, 2005 (6) SA 50(T)

Regarding the 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 apply equally to unaccompanied foreign children within South Africa's borders. Thus, whenever a foreign child is found in need of care, such child must be placed in a safe location, and his or her personal circumstances must be investigated by a social worker; additionally, a Children's Court inquiry must be opened, conducted and finalised.

2.1.13 Court Ruling: United Kingdom. “Tanzania v. Secretary of State for the Home Department”⁵⁴

A Court of Appeal confirmed the Asylum and Immigration Tribunal's decision to return the mother, assuming that her children could reasonably be expected to follow her to Tanzania. However, the Supreme Court ruled that it would not be in the best interests of the children to move to Tanzania, given that they had British nationality, had been raised and educated all their life in the United Kingdom, and had social links and a good relationship with their father. This judgment established that, even in a decision concerning the return of a parent, as long as the decision affects children, the child's best interests are of primary importance. Indeed, in circumstances such as the one under review, the Court ruled that this is the primary consideration, prevailing over all other considerations.

2.2 STANDARDS

Adopt legislation and institutional frameworks protecting children's best interests.

Child protection legislation and institutional frameworks should prevail over migration laws and policies, guided by CRC provisions and principles. Childhood authorities should intervene and have priority over migration authorities in every procedure and decision regarding child migrants' entrance, stay, and repatriation. States should make clear in their legislation, policy and practice that the principle of the best interests of the child always takes priority over migration and other administrative considerations.

3. THE RIGHT TO FAMILY REUNIFICATION AND THE RINCPLE OF FAMILY UNITY

3.1 PROMISING LEGISLATION AND PRACTICES ACROSS FIVE REGIONS

3.1.1 Legislation: Canada

Immigration and Refugee Protection Act S.C. 2001, c. 27 recognizes the rights to unity and family reunification. According to Canadian legislation, a citizen or permanent resident of the country can solicit family reunification. For reunification with a foreign family member, the solicitor must be in an economic position to assume responsibility for the livelihood and social welfare of the family member or foreign spouse.⁵⁵

3.1.2 Legislation: Costa Rica

Migration Law 8764 authorizes residence for family members of nationals and foreign residents. Article 73 of the law requires clear evidence of mutual knowledge by the spouses in order to authorize the entry of a non-national. Additionally Article 78 states that foreigners with temporary residence during three consecutive years, their spouses, and family members in the first degree of kinship may choose to obtain the category of permanent residence.⁵⁶

3.1.3 Legislation: Uruguay

Migration Law 18.250 recognizes as inalienable the right to family reunification of migrants. Article 1 of the law guarantees the inalienability of the right to family unification for migrants.

3.1.4 Legislation: Mexico

The Immigration Law of 2011 establishes the best interests of the child as a primary criterion. Article 2 of the Immigration Law states that “[f]amily unity and the best interests of the child or adolescent, in addition to employment needs and humanitarian causes, are the primary criteria for admission and residence for foreigners seeking temporary or permanent residence in Mexico since the family unit is the substantive element for the creation of a healthy and productive social fabric of communities of foreigners in the country.” Article 10 states that “[t]he Mexican State guarantees the right of the preservation of family unity to migrants who attempt regular entry into the country or reside in its territory under regular status, as well as to those who attempt to regularize their migration status while in the country”. Finally, Articles 41, 52, and 55 of the same law regulate different aspects of family unity.

3.1.5 Legislation: Spain

Residence for parents of children who are Spanish nationals. The law on foreigners, 4/2000 (LOEX) Article 31.3 and Royal Decree 556/2000 regulated by LOEX Articles 123 to 130, foresees the possibility of obtaining temporary residence permits for the parents of children who have Spanish nationality under the framework of family settlement.⁵⁷

Family reunification for domestic partners. Spain adjusted its legislation in order to allow the reunification of domestic partners, granting residence for relationships of affection analogous to matrimony, under the condition that they meet the requisites for recognition in Spain.⁵⁸

3.1.6 Legislative reform: Denmark

Expedited government processing for children facing deportation. In light of numerous restrictions enacted by the previous government, the current Danish government has ordered

a process of legislative reform seeking to make the laws on family reunification more flexible, so that children are not kept apart from their families.⁵⁹

3.1.7 Regional legislation: California, United States

Legislative bill for the right to family unity. The Help Separated Families Act- HR6128 - is a 2012 bill introduced in the California legislature that seeks to keep immigrant families together and to ensure that migration status alone does not terminate migrants' parental rights.⁶⁰

3.1.8 Practice: Honduras

Ministry of Consular Protection: Within the scope of the program of the Ministry for Consular Protection, the following programmes are planned:

a) Assistance for the family members of migrants in procedures for requesting visas at different embassies; assistance for family members abroad with problems of chronic illness, violent accidents etc., as well as aiding the economically disadvantaged family members of Honduran migrants.

b) Legal accompaniment of underage children. Special treatment has been granted for accompanied or unaccompanied children that have been separated by the deportation or imprisonment of their parents, a situation that could put them into forced adoption.⁶¹

3.1.9 Civil society practice: Europe

The European Network of Migrant Women (ENoMW) has produced three short films illustrating the experiences of three migrant women affected by existing policies. The films highlight restrictions that prevent female migrant workers from reuniting with their children, barriers facing those on a spouse-dependent visa who want to leave a violent relationship, and finally, the difficulties faced by non-EU nationals who seek to join a partner in the EU.⁶²

3.1.10 Court ruling: Inter American Court of Human Rights “Provisional Measures – Matter of Haitians and Dominicans of Haitian-origin in the Dominican Republic regarding Dominican Republic (2000-present)

The Court required the Dominican Republic to: abstain from deporting or expelling some of the families; permit the immediate return to its territory of some of the beneficiaries; permit, within the shortest possible time, the family reunification of two of the families with underage children in the Dominican Republic.

3.1.11 Court Ruling: Argentina “Cribillero Juan Carlos v. Dirección Nacional de Migraciones”⁶³

This case deals with a Peruvian migrant who was expelled from Argentina without consideration of the existence of his family. The Court indicated that the separation of a father from his children as a result of expulsion constitutes a violation of the right to protection of the family, and therefore ordered his return to Argentina.

3.1.12 Court Ruling: Spain “Tribunal Supremo Español. Recurso de Casación 5348/2009”⁶⁴

Regarding the consular practice of re-examining and revoking favorable resolutions for family reunification, the Spanish High Tribunal stated that: the resolution by which temporary residence for family reunification is authorised is independently valid (and the requirements are completed by the same resolution that grants it), even though its efficacy and effects are subject to a visa being issued and obtained.

3.1.13 Court Ruling: European Court of Human Rights “Mubilanzila et al. v. Belgium (2006)”

On the detention of unaccompanied children, the ECtHR emphasized the extreme vulnerability of a migrant child 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 was in no way adapted to the needs of a child. The girl was not even assigned a qualified person to provide her with educational or other assistance. Furthermore, the ECtHR noted that the girl’s detention contributed to significant delays in the process of reunification with her mother. Given that 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.

3.1.14 Court Ruling: European Court of Human Rights “Muskhadzhiyev and Others v. Belgium (2010)”

Regarding the detention of Chechen children, the Court stated that detention pending their removal was unlawful and their conditions of detention were unacceptable. The Court noted that the children had been detained for over a month in a closed center that was unprepared to receive children. The Court attached importance to the children’s worrisome state of health; they 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 centre for adults, under the same conditions as an adult person.

3.1.15 Court Ruling: European Court of Human Rights “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 a migration detention facility with their mother for four months in 2009. The ECtHR stated that, by placing them in a closed centre, 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). By placing the children in a closed center designed for adult undocumented migrants, in conditions ill-suited to their extreme vulnerability as children, Belgian authorities had not sufficiently guaranteed the children’s right to liberty.

3.2 STANDARDS

Include and apply the principle of family unity and reunification.

The principle of family unity should be applied by authorities at all times, and families should never be separated by State action or left separated by State inaction except when it is in the best interests of the child. In the case of irregular migrant parents, States should explore alternatives to deportation to ensure the right to family life of their children; e.g. granting a residence permit on the grounds of family unity and the best interests of the child. Family reunification policies of transit and destination countries should enable children left behind to join their parents (or parents to join their children) in the destination country, thereby avoiding irregular and unsafe channels. To implement these procedures, States can design and adopt mechanisms to ensure the fulfillment of Article 10 of the CRC regarding positive, humanitarian and expeditious attention to family reunification applications.

4. REGULARISATION AND THE PRINCIPLE OF FAMILY UNITY

4.1 PROMISING LEGISLATION AND PRACTICES ACROSS FIVE REGIONS

4.1.1 Court ruling: The Court of Justice of the European Union, “Gerardo Ruiz Zambrano v Office national de l’emploi (ONEM)”⁶⁵

The Court of Justice of the European Union (CJEU) stated that Article 20 of the Treaty on the Functioning of the European Union (TFEU) is to be interpreted as precluding a Member State from refusing a third-country national with dependent minor children who are European Union citizens, the right of residence in an EU Member State. It also cannot refuse to grant a work permit to that third-country national, because such decisions deprive their children of the substantive enjoyment of the rights attached to the status of European Union citizenship.

4.1.2 Court Ruling: The Court of Justice of the European Union “El Dridi v. Italy (April 2011)”

Prohibiting the criminalisation of irregular migration, the Court ruled that Member States may not demand a custodial sentence to remedy the failure of coercive measures adopted to effect a forced removal. This refers to the custodial sentence provided for by the national legislation at issue in the main proceedings on the sole grounds that a third-country national continued to stay “illegally” in the territory of a Member State after an order to leave was issued to him and the period granted in that order had expired.

4.1.3 Court Ruling: European Court of Human Rights “Rodrigues Da Silva and Hoogkamer v. the Netherlands (Application No. 50435/99, 31 January 2006)”

The Court granted an irregular migrant mother (of a Dutch citizen child) the right to regularise her status, while taking into consideration the right to respect for private and family life and the child’s best interests to remain in the Netherlands with her Dutch father.

4.1.4 Court Ruling: European Court of Human Rights “Osman v. Denmark (Application No. 38058/9, 14 June 2011)”

The Court ruled that Danish authorities were in violation of Article 8 of the European Convention to Human Rights (the right to respect for private and family life) by denying a residence permit to a non-resident child who had spent many years residing in Denmark and whose family members were still residents. The Court awarded damages as it found that the best interests of the child had not been sufficiently taken into account, and indicated that her residence status should be reinstated.

4.1.5 Executive Order: United States, Deferred Action for Childhood Arrivals (DACA)

In June 2012, the Obama Administration issued an executive order to provide work permits to young migrants (no more than 30 years old) who entered the US before age 16, have lived in the country for at least five years, are in school, high-school graduates or military veterans in good standing, and have clean criminal records. This measure does not provide a permanent residence status, but grants a suspension of deportation proceedings and issues renewable temporary permits of residence.⁶⁶ The Migration Policy Institute has estimated that as many as 1.76 million young undocumented migrants could be eligible.⁶⁷

4.2 STANDARDS

Promote regularization policies and ensure access to secure residence.

Regularisation policies can greatly contribute to migrants' integration into host society, child development, and the protection of family life. These benefits also lead to maximising migrants' contribution to overall human development in both sending and receiving societies. States should develop regularisation programmes that facilitate migrants' integration and uphold children's rights, including their right to family life. States should ensure, by law and in practice, regular and accessible channels for access to a residence permit, based on grounds such as family unity, labour relations and social integration.

5. ACCESS TO ECONOMIC, SOCIAL AND CULTURAL RIGHTS AND THE PRINCIPLE OF FAMILY UNITY

5.1 PROMISING LEGISLATION AND PRACTICES ACROSS FIVE REGIONS

5.1.1 Legislation and Practice: Moldova

National Action Plan for the Protection of Children Left Behind:⁶⁸ The Governmental Commission on Children Left Without Parental Care as a result of migration, 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 the Plan's overall coordination and supervision. The National Action Plan adopted for 2010-2011 addressed multiple aspects of the vulnerability of children left behind through the creation of social services for children at the community level, awareness-raising among the general public and potential migrants, and capacity-building for professionals working with children (teachers, psychologists, police, health workers, etc.) on the 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 to track the situation of children left behind. As of May 2012, the Ministry has been carrying out a census of children left behind, with support from partners. The results will be used to further strengthen the social protection system for these children.

5.1.2 Practice: Philippines

Philippines Overseas Workers' Welfare Administration (OWWA): In the Philippines, the Overseas Workers' Welfare Administration manages a trust fund to support migrant workers and their families. It is pooled from a US\$25 membership fee for Filipino migrants or their employers. Workers who contribute are eligible for a range of social services including insurance, healthcare, and family assistance loans. Furthermore, their children have access to education and training programs as well as scholarships towards undergraduate studies. Likewise, the 'Tuloy-Aral' or 'Continuation of Education' project helps cover the expenses of elementary and high school students in need by providing them with US\$100 per year to pay for books, supplies, transportation, or other education costs.

5.1.3 NGO Practice: Philippines

Atikha Overseas Workers and Communities Initiative: The Atikha Overseas Workers and Communities Initiative offers livelihood training and economic opportunities to children and other relatives left behind to increase their self-reliance. The organisation also developed a manual that serves as a guide for primary and secondary school teachers in integrating

migration issues into lesson plans and school activities, sensitising students to the sacrifices of their migrant parents, the values of education and savings, and the importance of maintaining good communication within the family unit. The Department of Education has included these modules in the curricula of three sending regions, and the good results shown by preliminary evaluations and informal assessments suggest that the initiative will eventually be scaled up.

5.1.4 NGO Practice: Philippines

ECMI : Building capacities of girls and boys left behind

In 2003 the Episcopal Commission of the Pastoral Care of Migrants and Itinerant People (ECMI), a faith-based organisation, initiated the Sons and Daughters of Overseas Filipino Workers (OFWs) Formation Programme (SDOFP) to strengthen family structures, affairs and relationships among 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 counselors 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 Gawad Anakor TOSDOSAs Awards (the search for Ten Outstanding Sons and Daughters of OFW Student Achievers) to combat negative public perceptions of children left behind and encourage them to become active, responsible citizens. The initiative is being developed in high schools, where migrants' children are recognised for excellence in social, scholastic and extracurricular performance.

5.2 STANDARDS

Ensure migrant families' access to economic, social, and cultural rights.

Deprivation of economic, social and cultural rights of migrant parents based on nationality or migration status impedes the fulfillment of their parental obligations towards their children's right to an adequate standard of living. Likewise, such deprivation negatively impacts family life. States should ensure access to economic, social and cultural rights for all migrants, regardless of their migration status, and equal treatment for migrants should be mainstreamed into the design of social, childhood and family protection policies.

ANNEX III

Box 1

Right to Family Life in International Human Rights Law

Universal instruments

- *Universal Declaration of Human Rights – Arts. 12 and 16*
- *International Covenant on Civil and Political Rights – Arts. 17.1 23 and 24*
- *International Covenant on Economic, Social and Cultural Rights – Art. 12*
- *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families - Art. 44.*

Regional treaties

- *African Charter on Human and Peoples' Rights – Art. 18*
- *American Convention on Human Rights – Art. 17*
- *European Convention for the Protection of Human Rights and Fundamental Freedoms – Arts. 8 and 12*

Box 2

CRC Articles that protect the right to family life

<p>Article 5</p> <p><i>Harmonious relationship between the rights of children and responsible adults</i></p>	<p>Article 8</p> <p><i>Right to preserving family relations</i></p>	<p>Article 9</p> <p><i>Right to the integral protection of the family. Prohibition of family separation</i></p>	<p>Article 10</p> <p><i>Right to family reunification</i></p>	<p>Article 16</p> <p><i>Right to private life for the child and the family</i></p>	<p>Article 18</p> <p><i>Shared responsibility of parents and States</i></p>	<p>Article 27</p> <p><i>Right to an adequate standard of living and material assistance from the State and responsible adults</i></p>
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Fundamental CRC principles

<p>Article 2</p> <p><i>Principle of non-discrimination</i></p>	<p>Article 3</p> <p><i>Principle of the best interest of the child</i></p>	<p>Article 6</p> <p><i>Right to life, survival and development</i></p>	<p>Article 12</p> <p><i>Right of the child to be heard. Participation</i></p>
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ENDNOTES

¹ Another widely recognised right is the right to equality and non-discrimination, a key underlying principle of the entire human rights system, which reinforces and deepens protection of each and every right, including the right to family life.

² In the Preamble to the CRC, States Parties affirm that: “convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community.” Similarly, States Parties recognise that “the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.”

³ See some examples in Appendix II. See also, in Appendix III, the decision of the Court of Justice of the European Union (CJEU), Case C-34/09, 2011.

⁴ The Convention on the Rights of the Child is the most widely ratified of all human rights treaties. Since its adoption in November 1989, 195 countries have ratified the CRC.

⁵ See UNICEF, *Amicus Curiae submitted before the Inter-American Court of Human Rights*, UNICEF Regional Office for Latin America and the Caribbean (TACRO), 17 February 2012 (<http://corteidh.or.cr/soloc.cfm>).

⁶ See OHCHR, *Study of the Office of the United Nations High Commissioner for Human Rights 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*. A/HRC/15/29, 5th July 2010, § 24.

⁷ See Inter-American Court of Human Rights, *Advisory Opinion OC-18/03 Juridical Condition and Rights of Undocumented Migrants*, 17th September 2003.

⁸ Universal Declaration of Human Rights (UDHR), article 12; International Pact on Economic Social and Cultural Rights, article 10. 1; International Covenant on Civil and Political Rights, article 17; American Declaration of the Rights and Duties of Man, article V. Additional Protocol to the American Convention on Human, article 15.

⁹ Committee on the Rights of the Child; General Comment No. 6 (2005) "Treatment of unaccompanied and Separated Children outside Their Country of Origin" Thirty-ninth session 17, May-3 June 2005, § 29 and 30: “States parties must protect the confidentiality of information received in relation to an unaccompanied or separated child, consistent with the obligation to protect the child’s rights, including the right to privacy (art. 16). This obligation applies in all settings, including health and social welfare. Care must be taken that information sought and legitimately shared for one purpose is not inappropriately used for another. Confidentiality concerns also involve respect for the rights of others. For example, in obtaining, sharing and preserving information collected on unaccompanied and separated children, particular care must be taken in order not to endanger the well-being of persons still within the child’s country of origin, especially the child’s family members. Furthermore, information relating to the whereabouts of the child shall only be withheld vis-à-vis the parents where required for the safety of the child or to otherwise secure the “best interests” of the child”.

¹⁰ Human Rights Council. *Report of Special Rapporteur on the human rights of migrants*, Mr. François Crépeau. A/HRC/20/24, April 2, 2012.

¹¹ Seeking, Alejandra Lopez, Pace University. 'Alternatives to Detention' Unaccompanied Immigrant Children in the U.S. Immigration System. Digital, 2010.

¹² Committee on the Rights of the Child, Final Observations: Australia, CRC/C/15/Add.268, October 20, 2005, § 62. Like several other countries, Mexico’s Immigration Law stipulates a system of automatic detention for unaccompanied children based on criteria of public order and security. Similarly, the complementary Mexican Law on Refugees and Protection states that children and adolescents that request recognition of their refugee status or the application of a protective measure must await the decision of the respective authorities while remaining in custody, as a general rule, leaving up to the discretion of the administrative authority whether an alternative measure will be applied. ‘Boat Ride to Detention. Adult and Child Migrants in Malta.’ 2012. p. 38 and ss.”...Malta detains all age-disputed cases pending age determination, and applies a very low threshold for disputing the age of children. As a result, children may be detained for weeks or months, despite the availability of alternative facilities. During detention, children are detained with adults, without any accommodation for their young age, and with no access to school. Once determined to be children—and released to other accommodation—children do not receive adequate legal representation. Under international and European standards, unaccompanied children should never be detained for reasons related to irregular entry, and pending age determination the person claiming to be a child should be treated as such until the determination is complete.” See in: <http://www.hrw.org/sites/default/files/reports/malta0712ForUpload.pdf>

¹³ For more information see: International Detention Coalition. *Captured Childhood. Introducing a new model to ensure the rights and liberty of refugee, asylum seeker and irregular migrant children affected by immigration detention*, 2012. www.idcoalition.org.

¹⁴ See in Annex II the decision by the European Court of Human Rights, Cases Popov v. France, 2012; and Kanagaratnam v. Belgium, 2011.

¹⁵ See more in: Women Refugee Commission, detention of families in the US, "Locking up Family Values: The Detention of Immigrant Families", 2007, page 30: "Many children expressed anger or frustration with their parents for leading them into detention and for being powerless or unwilling to help. Some children asked or cried for their parents to sign for deportation so that they could go home."

¹⁶ See more in: Nando Sigona and Vanessa Hughes, "No Way Out, No Way In. Irregular migrant children and families in the UK", ESRC Centre on Migration, Policy and Society, University of Oxford, 58 Banbury Road, OX2 6QS, Oxford, UK, May 2012, p.8. See also: Carolyn Hamilton, Kirsten Anderson, Ruth Barnes, and Kamena Dorling, Children's Legal Centre, University of Essex and Child Protection Section, UNICEF, "Administrative detention of children: A global report" New York, 2011, pp. 59- 98.

¹⁷ See Human Rights Council, *Report of Special Rapporteur on the human rights of migrants*, Mr. Jorge Bustamante. A/HRC/11/7, 14 May 2009 § 62. Also, *Report of Special Rapporteur on the human rights of migrants*, Mr. François Crépeau. A/HRC/20/24, April 2, 2012. §40.

¹⁸ CRC Committee, Concluding Observations: Netherlands, CRC/C/NLD/CO/3, 27 March 2009, §67-68, <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-NLD-CO3.pdf>

¹⁹ See in: European Court of Human Rights, Application no. 55597/09, 2011. Council of Europe: European Court of Human Rights: "*Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*" 13178/03, 12 October 2006, available at: <http://www.unhcr.org/refworld/docid/45d5cef72.html> [accessed 18 September 2012]; and "A. v. the United Kingdom", judgment of 23 September 1998, Reports 1998-VI, p. 2699, § 22. See too: Prof. Carolyn Hamilton, Kirsten Anderson, Ruth Barnes, Kamena Dorling, Children's Legal Centre, University of Essex and Child Protection Section, UNICEF, "Administrative detention of children: a global report" New York, 2011, page 90; High Commissioner for Human Rights, Navi Pillay presented the annual report to the Human Rights Council in Geneva on 2 March 2012. Ms Pillay focused on the rights of migrants, calling on Member States to explore alternatives to migration detention that do not violate refugees' rights, especially those of children. The High Commissioner opposed the criminalization of irregular migration. Ms Pillay drew attention to the human rights violations experienced by migrants in the context of the Arab Spring, and their vulnerability:

<http://www.un.org/apps/news/story.asp?NewsID=41442&Cr=Human+rights&Cr1=#.UFjaZa42Td>

²⁰ For more information, see Applied Research Center, *Shattered Families. The Perilous Intersection of Immigration, Enforcement and the Child Welfare System*. Racial Justice Through Media, Research and Activism, November 2011.

²¹ American Psychological Association, *Immigration, Children and Families: What Professionals Need to Know*, at: <http://actagainstviolence.apa.org/immigration-info.html>

²² CRC art. 9 clearly states that separation from parents is permissible only if the measure is taken in order to guarantee the best interests of the child.

²³ UN Committee of Human Rights, *Final Observations: Hong Kong*, CCPR/C/HKG/CO/2, April 21, 2006, § 15.

²⁴ Human Rights Council. *Report of Special Rapporteur on the human rights of migrants*, Mr. Jorge Bustamante. A/HRC/11/7, 14 May 2009, §59.

²⁵ CRC art. 10. 1 states that: "In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner."

²⁶ The key elements of a BID Procedure are described in the 2012 CRC DGD Background Paper.

²⁷ Committee on the Rights of the Child, General Comment N° 6 (2005) Treatment of Unaccompanied and Separated Children Outside their Country of Origin, CRC/GC/2005/6 September 1, 2005, § 81-90.

²⁸ Parliamentary Assembly, Council of Europe, *Human mobility and the right to family reunion*. Recommendation 1686, 23 November 2004.

²⁹ Human Rights Council. *Report of Special Rapporteur on the human rights of migrants*, Mr. Jorge Bustamante. A/HRC/11/7, 14 May 2009 § 62. See Also, *Report of Special Rapporteur on the human rights of migrants*, Mr. François Crépeau. A/HRC/20/24, April 2, 2012. §87.

³⁰ Committee on the Elimination of Racial Discrimination, *Final Observations: Ireland*, CERD/C/IRL/CO/3-4, April 4, 2011, § 25.

³¹ Parliamentary Assembly, Council of Europe, *Committee on Migration, Refugees and Displaced Persons Position paper on family reunification*, 2 February 2012 § 12.

³² Cornelius, Wayne, *Reforming the Management of Migration Flows from Latin America to the United States*. The Center for Comparative Immigration Studies, University of California, Working Paper 170, December 2008.

³³ Cortes, Rosalía, *Children and Women Left Behind in labour sending countries: an appraisal of social risks*, Working Paper, August 2008.

³⁴ Children who have been returned to their country of origin or transit face a number of specific human rights concerns that should also be addressed, particularly concerning the impact of return policies on their mental health and development. See also UNICEF Kosovo in cooperation with Kosovo Health Foundation, “Silent Harm: A report assessing the situation of repatriated children’s psycho-social health,” March 2012.

³⁵ See, for example: IOM, *El impacto de la migración en Argentina, Cuadernos Migratorios No. 2*, 2012; Global Migration Group, *International Migration and Human Rights: Challenges and opportunities on the threshold of the 60th anniversary of the Universal Declaration of Human Rights*, Geneva, 2008; Baldwin-Edwards and Kraler (eds.), *REGINE. Regularisations in Europe*, Amsterdam University Press, 2009.

³⁶ See more at: Nando Sigona and Vanessa Hughes, “No Way Out, No Way In. Irregular migrant children and families in the UK”, ESRC Centre on Migration, Policy and Society, University of Oxford, 58 Banbury Road, OX2 6QS, Oxford, UK, May 2012, page 58.

³⁷ *Idem*.

³⁸ *Idem* at page 29-40.

³⁹ ILO-IPEC, “Migration and child labour. Exploring child migrant vulnerabilities and those of children left behind”, Working paper. International Labour Office, International Programme on the Elimination of Child Labour (IPEC) By Hans van de Glind, September 2010.

⁴⁰ Comparative Study on Practices in the Field of Return of Minors, HOME/2009/RFX/PR/1002 The European Council on Refugees and Exiles in strategic partnership with Save the Children (EU Office) Final Report December 2011, p. 39, 148.

⁴¹ Projet de loi insérant un article 74/9 dans la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, en ce qui concerne l'interdiction de détention d'enfants en centres fermés.

⁴² European Court of Human Rights, *Popov v. France*, 39472/07 and 39474/07, January 19, 2012.

⁴³ European Court of Human Rights, *Kanagaratnam v. Belgium* - 15297/09, December 13, 2011.

⁴⁴ PICUM Bulletin 14 March 2012, <http://picum.org/en/news/bulletins/32523/>.

⁴⁵ Article 22 – Every foreigner who, in order to establish him/herself definitively in the country, obtains validation of this status from the National Immigration Office, shall be considered a “permanent resident.” Additionally, the family members of native-born or naturalised Argentine citizens, including: spouse, children and parents. The children of native or naturalised Argentines born abroad shall be recognised as permanent residents. The authorities shall permit their free entrance and residence in the territory.

⁴⁶ CRC Committee, Concluding Observations: Spain, CRC/C/ESP/CO/3-4, October 1, 2010, § 60.

⁴⁷ European Court of Human Rights, *Nunez v. Norway*, no.55597/09, June 28, 2011. This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

⁴⁸ European Court of Human Rights, *Kanagaratnam v. Belgium* (no.15297/09), December 13, 2011.

⁴⁹ Inter-American Court of Human Rights. *Wayne Smith, Hugo Armendariz and others v. United States of America*, Report No. 8110, Case 12.562, Publication, July 12, 2010.

⁵⁰ Tribunal de Justicia de Brasil, *Hábeas Corpus N° 217.409 - RR* (2011/0207331-0), August 26, 2011.

⁵¹ Corte Constitucional de Colombia, “Raquel Estupiñán Enríquez, Acción de tutela c/ Resolución 230 del Departamento Administrativo de Seguridad”, Sentencia T-215/96 May 15, 1996.

⁵² Corte Suprema de Justicia de Costa Rica, *Zhong Guaquan, a favor de Ai Li Zhong y Du Yu Yun contra el Director General de Migración y Extranjería s/amparo*, November 26, 2002.

⁵³ Nagoya District Court. 2009 (Gyo-U) N°19. December 9, 2010.

⁵⁴ Supreme Court Government of the UK, *Tanzania v. Secretary of State for the Home Department* (2011) ZH (Tanzania) v Secretary of State for the Home Department [2011] UKSC4.

⁵⁵ Available at: <http://laws-lois.justice.gc.ca/eng/acts/I-2.5/FullText.html>

⁵⁶ Article 73: “Foreigners who meet the following requirements may choose the migration category of permanent resident: 1) The foreign person, his/her spouse and family members in the first degree of kinship that have enjoyed temporary residence during three consecutive years; 2) The foreigner with blood kinship in the first degree to a Costa Rican citizen; this will comprehend parents, minor children and grown children with a disability; 3) Those to whom the Commission of Limited and Asylum Visas grant this status. [...]” See also: CRC/C/CRI/CO/4, General Observations of Costa Rica, 10 Jun 2011, § 81.

⁵⁷ The Spanish nationality system is regulated by *ius sanguinis*. Nevertheless, if the children of foreign parents are born in Spanish territory and cannot be registered in the country of their parent’s nationality, they shall be assigned Spanish nationality designated *presumptive [por presunción]*. An example of these cases is that of children whose parents are Cuban nationals that have left the country without authorisation, a situation which results in automatic loss of Cuban nationality.

⁵⁸ Art. 17 LOEX and 53 Regulation LOEX.

⁵⁹ PICUM, Bulletin 17 January 2012.

⁶⁰ Available at: <http://roybal-allard.house.gov/>

⁶¹ Available at: www.dhmigrantes.cide.edu/presentaciones_taller_centroamerica.html

⁶² PICUM, Bulletin 1 February 2012

⁶³ Juzgado Nacional de Primera Instancia en lo Contencioso Administrativo Federal N° 8, Secretaría 15. Caso Cribillero Juan Carlos c/ Dirección Nacional de Migraciones s/ Amparo”.

⁶⁴ Tribunal Supremo Sala de lo Contencioso-Administrativo Sentencia November 15, 2011. Recurso de Casación No. 5348/2009.

⁶⁵ Court of Justice of the European Union, *Gerardo Ruiz Zambrano v Office national de l'emploi (ONEM)*, C-34/09, 8 March 2011.

⁶⁶ For more information see USCIS website: <http://www.uscis.gov/>

⁶⁷ Migration Policy Institute, Fact Sheet, “Relief from Deportation: Demographic Profile of the DREAMers Potentially Eligible under the Deferred Action Policy”, August 2012.

⁶⁸ National Action Plan for the Protection of Children left behind (Official Monitor of the Republic of Moldova, 2010, no. 87-90, art. 519).