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**PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS,  
CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL  
RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT**

**Report of the Special Rapporteur on the human rights of migrants,  
Jorge Bustamante\* \*\***

**Summary**

The present report is the fourth submitted to the Human Rights Council by the Special Rapporteur on the human rights of migrants, Jorge Bustamante, since his appointment in July 2005. The report covers the activities carried out by the Special Rapporteur in 2008, in accordance with Council resolution 8/10.

In the thematic section of the report, he focuses on the protection of children in the context of migration, recalling the obligation of the State to ensure the protection of all children in all stages of the migration process. The Special Rapporteur presents an overview of the international legal framework applicable, proposes a conceptual framework and refers briefly to three categories of children affected by the migration process: those left behind by migrating family members; migrant children moving across borders; and migrant children in host countries. The Special Rapporteur concludes the report with recommendations for further consideration and action by States and other stakeholders.

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\* The present report was submitted late to reflect the most recent information available.

\*\* As the present report greatly exceeds word limitations currently allowed under relevant General Assembly resolutions, the footnotes are reproduced in the language of submission only.

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## **I. ACTIVITIES OF THE SPECIAL RAPPORTEUR**

### **A. Country visits**

1. Since his appointment to the mandate in July 2005, the Special Rapporteur has requested invitations to visit the following countries: Australia, Bahrain, Canada, Guatemala, India, Indonesia, Italy, Japan, Malaysia, Mauritania, Mexico, the Philippines, Qatar, the Republic of Korea, Romania, Senegal, South Africa, Spain, Thailand and the United Kingdom of Great Britain and Northern Ireland. He has visited Indonesia, the Republic of Korea and the United States of America.

2. During the period under review, the Special Rapporteur visited Guatemala (A/HRC/11/7/Add.3) and Mexico (A/HRC/11/7/Add.2). The visits to be undertaken in 2009 are under discussion. The Special Rapporteur would like to thank the Government of the countries that have responded positively to his requests for visits and to urge Governments that have not yet done so to provide a response.

### **B. Communications with Member States**

3. From 1 January 2008 to 6 March 2009, the Special Rapporteur sent a total of 26 communications alleging violations of the rights of migrants to 19 Member States and received 10 responses from the concerned Governments. The Special Rapporteur thanks all Governments that responded to his communications for their collaboration and reminds Governments that have not yet responded to do so and to address all the concerns raised in each communication. A summary of all communications sent during the period under review are included in an addendum to the present report (A/HRC/11/7/Add.1).

### **C. Other activities**

4. The activities of the Special Rapporteur are carried out in accordance with Council resolutions 8/10 and 9/5. General Assembly resolutions 62/132 and 63/184 provide further thematic guidance to the Special Rapporteur.

5. On 6 March 2008, the Special Rapporteur participated in a parallel event on the theme "Challenges of Irregular Migration", organized by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Geneva Office of the Friedrich Ebert Foundation.

6. From 1 to 3 June 2008, the Special Rapporteur participated in a training programme organized in Sweden by the Raoul Wallenberg Institute of Human Rights and Humanitarian Law and the Inter-American Institute for Human Rights on international and regional human rights systems.

7. From 23 to 27 June 2008, the Special Rapporteur attended the fifteenth meeting of special rapporteurs/representatives, independent experts and chairpersons of working groups of the special procedures of the Council, held in Geneva, and participated in the drafting of the report submitted to the Council at its tenth session (A/HRC/10/24). He also participated in the seminar

on the theme “Working with the United Nations special procedures system to fight torture and other forms of ill treatment by acting on their economic, social and cultural root causes”, organized by the World Organization against Torture in Geneva.

8. From 30 July to 2 August 2008, the Special Rapporteur participated in a workshop on immigration and integration organized by the University of Jaén (Spain).
9. From 24 to 26 August 2008, the Special Rapporteur participated in the Regional Durban Conference in Abuja, as part of the preparations for the Durban Review Conference, held in Geneva in April 2009.
10. From 11 to 13 September 2008, the Special Rapporteur participated in the third World Social Forum on Migrations, held in Rivas Vaciamadrid (Spain).
11. On 30 September and 1 October 2008, the Special Rapporteur attended the International Conference on the Protection of the Rights of Children in the Context of International Migration, in Mexico City, organized by OHCHR and the Government of Mexico.
12. On 24 and 25 October 2008, the Special Rapporteur and the Special Rapporteur on contemporary forms of slavery, including its causes and consequences participated in the 2008 joint regional consultation on migrant domestic workers, organized by the Asia Pacific Forum on Women, Law and Development, the Coordination of Action Research on AIDS and Mobility and the Global Alliance against Traffic in Women, in Manila.
13. From 27 to 29 October 2008, the Special Rapporteur attended the second Global Forum on Migration and Development, in Manila.
14. On 7 November 2008, the Special Rapporteur participated in the fifth International Congress on Migration and Development, organized by the University Rafael Landívar and the Migrants Jesuit Service, in Guatemala.
15. On 13 November 2008, the Special Rapporteur participated in the 2008 Robert G. Mead Jr. lecture at the Center for Latin American and Caribbean Studies at the University of Connecticut, Hartford, Connecticut (United States of America).
16. On 18 November 2008, the Special Rapporteur attended the working group on United States-Mexico migration at the Centre Woodrow Wilson, in Washington, D.C.
17. The Special Rapporteur issued four joint statements in 2008.

## **II. THEMATIC ISSUES: THE PROTECTION OF CHILDREN IN THE CONTEXT OF MIGRATION**

### **A. Migration and the international protection afforded to children**

#### **1. General background on migration and children**

18. Children have always been part of migration and affected by it in different ways. Children left behind by migrant family members are affected by migration in countries of origin. Children

on the move are affected at the pre-departure stage in countries of origin and in countries of transit and destination at the passage and arrival stages. Children in host countries are affected at the post-arrival and long-term stay and integration stages of the migration process.

19. Children can migrate in various ways. Children move across borders with their parents or are accompanied by extended family members or other adults and within mixed migratory flows.<sup>1</sup> Children are also increasingly seeking migration opportunities to move across borders autonomously and unaccompanied. Falling prey to transnational organized crime and exploitation practices including smuggling, trafficking in persons and contemporary forms of slavery, which are described, in some instances, as abusive forms of migration,<sup>2</sup> may also be a part of the migration experience for many children.

20. There is no accurate statistical information on the number of children involved in the international migration process.<sup>3</sup> Age is not a common variable of disaggregated statistical data on international migration,<sup>4</sup> which remains as the most difficult component of population change to measure.<sup>5</sup>

21. Like adult migration, child migration is influenced by the political, social, economic and environmental situation. This includes new global phenomena such as climate change, the food crisis and the financial and economic crisis.<sup>6</sup> Child-specific phenomena such as child abuse and domestic violence may also influence the movement of children across borders.

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<sup>1</sup> Mixed migratory flows are defined as “complex population movements, including refugees, asylum-seekers, economic migrants and other migrants”. See International Migration Law, *Glossary on Migration*, International Organization for Migration, 2004, p. 42.

<sup>2</sup> See, for example, the introduction by the United Nations High Commissioner for Human Rights to the Recommended Principles and Guidelines on Human Rights and Human Trafficking (E/2002/68/Add.1).

<sup>3</sup> The United Nations Global Migration Database includes data from official statistical sources, that do not always include age as a variable for disaggregating data (<http://esa.un.org/unmigration/>).

<sup>4</sup> Information available at the World Migrant Stock database includes five variables; age was not included among them. See World Migrant Stock: the 2005 Revision Population Database, available at <http://esa.un.org/migration/>.

<sup>5</sup> See *World Migration 2008: Managing Labour Mobility in the Evolving Global Economy*, International Organization for Migration, 2008.

<sup>6</sup> See *The State of the World's Refugees. Human Displacement in the New Millennium*, Office of the United Nations High Commissioner for Refugees, 2006.

22. Migration potentially enhances the child's opportunities and future choices.<sup>7</sup> However, many forms of migration, like the treatment of children during the migration process, can also pose serious threats to the child's rights. Evidence suggests, for example, that the potential benefits of migration may be eroded for both undocumented children and children with an irregular migration status,<sup>8</sup> who are exposed to the denial of rights, such as arbitrary deprivation of liberty and limited or no access to health-care services and education.

23. Children who are unaccompanied<sup>9</sup> or separated from their parents<sup>10</sup> are particularly vulnerable to human rights violations and abuses at all stages of the migration process. Some special procedures have documented, for example, that unaccompanied children looking for asylum are often at risk of deportation without access to the protection measures to which they are entitled. They have also documented that unaccompanied children, especially the most vulnerable categories such as victims of sale of children or trafficking in persons, are often treated like adult irregular migrants (E/CN.4/1999/71).

24. The lack of distinction between adult and child migrants is therefore a major challenge that a number of States still have to overcome. National migration laws do not always include a child rights perspective and usually lack specific provisions on children. Additionally, most public policies on children do not yet include the specific needs and protection to be afforded to the child in the context of migration. The treatment of migrant children as adults may lead to harmful practices, for example, when irregular migration is criminalized (A/HRC/7/12), or when deportation and detention procedures do not comply with the protection that should be given to children in those circumstances.

25. The protection of the child during migration demands the consideration of issues related to irregular migration, since they may affect the child's enjoyment of human rights. For example, the criminalization of irregular migration addressed by the Special Rapporteur in a previous

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<sup>7</sup> For an in-depth study of the positive impact of migration on human development, see *Human Development on the Move*, Human Development Report, United Nations Development Programme (forthcoming in September 2009).

<sup>8</sup> Irregular migration remains as low as 10 to 15 per cent of the global international migration stock. See *Towards a Fair Deal for Migrant Workers in the Global Economy*, Report VI, International Labour Organization, 2004, para. 37.

<sup>9</sup> Children referred to as "unaccompanied" are those separated from parents or other relatives, or as not being cared for by an adult who, by law or custom, is responsible for doing so. See Committee on the Rights of the Child, general comment No. 6 on treatment of unaccompanied and separated children outside their country of origin (HRI/GEN/1/Rev.8), para 7.

<sup>10</sup> Children referred as "separated" are those that may be accompanied by adult family members or caregivers. See Committee on the Rights of the Child, general comment No. 6, para. 8.

report (A/HRC/7/12) has proven to be at the origin of ill-treatment and other human rights abuses. This is of particular concern in the case of children, especially those unaccompanied and undocumented, in countries of transit and destination where irregular migration is sanctioned with imprisonment, particularly when migration management policies are yet to mainstream a child rights approach.

26. The protection of children during migration necessarily implies a gender dimension, since women and girls account for almost 50 per cent of international migrant stock.<sup>11</sup> The need to take into consideration the special vulnerability of the girl child to gender-based violence and discrimination<sup>12</sup> is illustrated, inter alia, by the impact that additional restrictions on travel owing to male guardianships may have on the number of girls resorting to irregular channels to migrate. The gender dimension of migration also includes issues of trafficking in persons for purposes of sexual exploitation, forced labour and other forms of exploitation,<sup>13</sup> as well as other abuses to which the girl child is more vulnerable during migration, such as the request of sexual favours in exchange for protection or for the promise to cross borders.<sup>14</sup>

27. In the light of the above, the Special Rapporteur deems it important that a discussion on the protection of children in the context of migration be held. In the present report, he refers to the international legal framework applicable to children in the context of transnational human mobility, reminding States of their obligation to ensure the protection of all children at all stages of the migration process.

28. The Special Rapporteur also highlights some of the specific vulnerabilities of children, especially of unaccompanied or separated children, in the migration process, and presents an overview of some of the issues affecting the realization of the human rights of the child in the context of migration.

## **2. International legal framework and responsibility of the State**

29. Existing international human rights instruments are aimed at protecting the rights of all human beings, including children. The rights of the child are also recognized in several

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<sup>11</sup> International Migration Report 2006: A Global Assessment, Department of Economic and Social Affairs, 2009.

<sup>12</sup> See General Assembly resolution 62/140.

<sup>13</sup> See General Assembly resolution 63/156.

<sup>14</sup> See “The girl child and armed conflict: recognizing and addressing grave violations of girls’ human rights”, prepared by Dyan Mazurana and Kristopher Carlson, Expert Group Meeting, Elimination of All Forms of Discrimination and Violence against the Girl Child, Florence, Italy, 25-28 September 2006.

international human rights treaties<sup>15</sup> including the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which contains several provisions on the rights of children of migrant workers.<sup>16</sup>

30. The Convention on the Rights of the Child is the most comprehensive legal instrument on the protection of the child, enshrining a set of universal rights that constitute the minimum standards that States must ensure for every child under their jurisdiction, without discrimination of any kind, including, but not limited to, on the grounds of age, sex, nationality, migration or stateless status of the child, his or her parents or legal guardians (art. 2.1).

31. In article 1, the Convention defines a child as “every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier”. Although the Convention neither focuses on child migration nor defines the migrant child, its provisions are of the highest relevance to ensure the adequate protection of all children in all circumstances, including therefore all stages of the migration process.

32. States parties to the Convention must ensure that its provisions and principles are fully reflected and given legal effect in relevant domestic legislation (art. 4).<sup>17</sup> States parties are also to be guided, in all its actions concerning children, by the overarching principles of non-discrimination (art. 2), the best interests of the child (art. 3), the right to life, survival and development (art. 6) and the rights of the child to express his or her views in all matters affecting him or her and to have them taken into account (art. 12 and general comment No. 5).

33. The international legal framework also recognizes the particular vulnerability of certain categories of children affected by migration, such as unaccompanied or separated children, as well as child victims of transnational organized crime.

34. With regard to unaccompanied and separated children, the Committee on the Rights of the Child, in its general comment No. 6, mentions, for example, the rights of the child to a guardian in procedures related to border control, repatriation and deportation, and to a legal representative;

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<sup>15</sup> See the International Covenant on Civil and Political Rights, arts. 14.1, 18.4, 23.4, 24; the International Covenant on Economic, Social and Cultural Rights, arts. 10.1 and 3, 12.2 (a), 13.3; the Convention on the Elimination of All Forms of Discrimination against Women, arts. 5 (b), 9.2, 11.2 (c), 16.1 (d)-(f), 16.2; and the International Convention on the Rights of Persons with Disabilities, arts. 3 (h), 4.3, 7, 8.2 (b), 16.5, 18.2, 23.1 (b), 23.2-5; 24.2 (a), 24.3 (c), 25 (b), 30.5 (d).

<sup>16</sup> Arts. 4, 12.4, 17.6, 29, 30, 44.2, 45.2-4.

<sup>17</sup> See also Committee on the Rights of the Child, general comment No. 5 on general measures of implementation for the Convention on the Rights of the Child, paras. 18-25, and general comment No. 6, para. 14.



the principle of non-refoulement, which in the case of children should be construed as including socio-economic conditions in countries of origin; and family reunification entitlements in countries of origin and destination.

35. The minimum measures that should be taken into consideration in the process of initial assessment once unaccompanied or separated children enter a country of transit or destination is also addressed in general comment No. 6; they include prioritized identification of a child as separated or unaccompanied immediately upon arrival at ports of entry or as soon as their presence in the country becomes known to the authorities including age assessment (art. 8); prompt age appropriate and gender sensitive registration and determination of the identity of the child, in a language the child understands, by professionally qualified persons; the recording of further information in order to meet the specific needs of the child, including the reasons for being separated or unaccompanied; and an assessment of particular vulnerabilities, such as health, physical, psychosocial, material and other protection needs, including those deriving from domestic violence, trafficking or trauma.

36. Children who are victims of transnational organized crime should be identified as such in accordance with existing international standards. Therefore, child victims should not be regarded as criminals or irregular migrants, but as victims entitled to appropriate assistance and measures of protection. Applicable legal instruments, such as the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and the two protocols supplementing the United Nations Convention against Transnational Organized Crime contain similar provisions emphasizing that States parties should take appropriate measures to protect the rights and interests of child victims of those practices and adapt procedures that take into consideration their special needs and vulnerabilities. Furthermore, principle 1 of the Recommended Principles and Guidelines on Human Rights and Human Trafficking (E/2002/68/Add.1) suggests, that children who are victims of trafficking should be identified as such, while principle 8 recommends that special measures be taken for their protection and support.

37. Additional international legal instruments may complement the general legal framework in specific circumstances. For example, in cases of detention of unaccompanied migrant children, legal instruments dealing with consular relations<sup>18</sup> and with human rights in the context of the administration of justice<sup>19</sup> may play an important role for the protection of the child. Maritime law is relevant in cases of the interception and rescue of migrant children at sea,<sup>20</sup> and

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<sup>18</sup> See for example the Vienna Convention on Consular Relations, art. 36, para. 1 (b).

<sup>19</sup> See for example the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice and the Guidelines for Action on Children in the Criminal Justice System.

<sup>20</sup> See for example the United Nations Convention on the Law of the Sea, art. 98.

international humanitarian law is to be considered in, for example, the case of children under 15 years of age, orphaned or separated from their families as a result of international armed conflicts.<sup>21</sup> This is also the case of provisions on contemporary forms of slavery<sup>22</sup> and international labour standards on child labour and forced labour.<sup>23</sup>

38. Treaty bodies have issued general recommendations providing guidance to ensure the respect of human rights in the context of migration. This is the case of the two general recommendations on non-citizens issued by the Committee on the Elimination of Racial Discrimination,<sup>24</sup> general recommendation No. 26 on women migrant workers issued by the Committee on the Elimination of Discrimination against Women and the general comment on the position of aliens under the International Covenant on Civil and Political Rights issued by the Human Rights Committee.<sup>24</sup>

39. The international legal framework applicable to the protection of children in the context of migration is complemented by a number of resolutions adopted by the Commission on Human Rights, the Human Rights Council and the General Assembly. Special mention should be made of Council resolution 9/5, in which the Council expressly recognizes the vulnerability of migrant children and calls upon States to protect the human rights of migrant children, particularly unaccompanied children, ensuring that the best interests of the child are a primary consideration in their policies of integration, return and family reunification.

40. In their resolutions on the protection of migrants, the General Assembly and the Council call upon States to promote and protect effectively the human rights of all migrants, regardless of their migration status, especially those of women and children, and highlight specific concerns related to their protection. For example, the Assembly, in its resolutions 62/157 and 63/184, and the Council in its resolution 9/5, urge States to ensure that repatriation mechanisms allow for the identification and special protection of persons in vulnerable situations and take into account, in conformity with their international obligations and commitments, the principle of the best interest of the child and family reunification. Furthermore, the obligation of the State to respect the human rights of the large and growing number of migrants, especially women and children, who place themselves in a vulnerable situation by attempting to cross international borders without the required travel documents, is recognized by the Assembly in its resolutions 63/184 and 62/157 and the Council in its resolution 9/5.

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<sup>21</sup> See, *inter alia*, the fourth Geneva Convention relating to the Protection of Civilian Persons in Time of War (1949), art. 24.

<sup>22</sup> Slavery Convention of 1926, as amended in 1953.

<sup>23</sup> The International Labour Organization (ILO) has also adopted relevant legal instruments, such as the Declaration on Fundamental Principles and Rights at Work (1998).

<sup>24</sup> See HRI/GEN/1/Rev.8.

41. The international legal framework for the protection of the child applies irrespective of the migration status of the child or his or her parents or family members. Notwithstanding the State's prerogative to determine the conditions of entry and stay of non-nationals on its territory and to sanction violations to its migration laws and regulations, no human being under the jurisdiction of a State should be devoid of protection; the State has the obligation to respect human rights during its engagement with children affected by migration, regardless of their or their parents' migration status.

### **3. Protection gaps**

42. Most migration laws do not adopt a children's rights perspective, nor do they have specific provisions on children. This issue should be addressed in part by harmonizing migration law with the Convention on the Rights of the Child and other relevant international and regional human rights instruments.

43. For instance, in cases of deportation and detention, children suffer the same consequences (and receive the same treatment) as adults, which often results in the deprivation of children's rights. For that reason, public policies and programmes should ensure the protection of children from detention and deportation, and migration laws should include concrete regulations to fulfil children's rights and needs in such circumstances. In particular, these laws should include such children's rights principles as detention as a last resort; priority and alternative measures to detention; and prohibition of deportation of unaccompanied children as a punishment for irregular migration status. Additionally, States should only repatriate children as a measure of protection, for instance, to ensure family reunification (in cases where it is in the child's best interests) and due process of law, including their right to be heard and their right to a guardian and a legal representative. A children's rights perspective in migration law and policies, together with the rights-based approach, would therefore ensure both that the particular needs and rights of children be expressly included (the principle of "childhood integral protection" should be fully incorporated in migration law and policies) and that all human rights will be recognized for all migrant children, irrespective of age, sex, nationality or migration status.

44. The second general gap concerns public policies aimed at children. In many countries, policies meant for the protection of the rights of the child (most of them based in the Convention on the Rights of the Child) have not yet taken into account the specific conditions and needs of migrant children (in the United Kingdom of Great Britain and Northern Ireland, civil society has highlighted the government expression "Every child matters", in order to advocate for the inclusion of child migrants in public policies on childhood). This gap is evident in policies concerning, inter alia, education (such as access, dropping out and language barriers), health care, birth registration, adolescent professional training and commercial exploitation.

## **B. Children in the migration process**

### **1. Children left behind**

45. The term "children left behind" refers to children raised in their home countries or in their countries of habitual residence who have been left behind by adult migrants responsible for them, such as one or both parents, extended family members, legal guardians or caregivers. Children left behind may be actually better off in their new circumstances, such as in the case of

those benefiting from remittances allowing them greater access to health care and education. However, children left behind may also be neglected, as in the case of those raised without any type of parental care or guidance, abandoned by migrating parents or extended family members and with no or limited access to social services.

46. The impact of migration on children left behind is difficult to measure.<sup>25</sup> Many factors may play a role in assessing how migration may affect the rights of children left behind.<sup>26</sup> For example, some studies indicate that remittances help to reduce the overall level of poverty and promote economic development in countries of origin,<sup>27</sup> while others suggest that parental absence creates new challenges, including family instability, a greater burden on the household and social stigmatization.<sup>28</sup>

47. Children left behind might also be at greater risk of psychosocial trauma, violent behaviour, drug abuse and teenage pregnancy.<sup>27</sup> Previous findings by the mandate also indicate instances when children left behind were obliged to take on huge tasks inappropriate to their age and were subject to physical, psychological and sexual abuse by relatives or neighbours to whom they were entrusted during their parents' absence (E/CN.4/2002/94/Add.1). Instances where households endured increased economic and psychological vulnerabilities such as families left behind, sometimes weighed down by debt, exploited by moneylenders and exposed to pressure and control from relatives because of their dependency on remittances have also been documented by the Special Rapporteur in some of his country visits.

48. Social policies in countries of origin or residence - for example, the kind of social support available for the protection of children and the specific living situation of the child in his or her country of origin or residence (whether the child has access to education, shelter, health care and

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<sup>25</sup> See for example the Migration measurement challenges described by the Department of Economic and Social Affairs and UNICEF at the Global Forum on Migration and Development, 2007, available at the website [www.gfmd-fmmd.org](http://www.gfmd-fmmd.org).

<sup>26</sup> See for example A.L. D'Emilio, B. Cordero, B. Bainvel et al. "The impact of international migration: children left behind in selected countries of Latin America and the Caribbean", working papers, UNICEF, 2007.

<sup>27</sup> The role of remittances has been a significant focus of studies by the Food and Agriculture Organization of the United Nations (FAO), the International Fund for Agricultural Development (IFAD) and the World Bank. See for example R. Vargas-Lundius, G. Lanly, M. Villareal and M. Osorio, *International migration, remittances and rural development*, IFAD-FAO, 2008 and D. Ratha and Z. Xu, *The Migration and Remittances Factbook 2008*, World Bank, 2008.

<sup>28</sup> See the paper submitted by UNICEF on its policy and programme work on international migration and development (UN/POP/MIG-7CM/2008/17), seventh coordination meeting on international migration, Department of Economic and Social Affairs, New York, 20-21 November 2008.

sanitation), and whether the State protects the child against the many hazards and dangers including those posed by national and transnational organized crime, intermediaries, employers, or working conditions - are a key factor in determining the impact of migration on children left behind.<sup>29</sup>

49. The attention of the Special Rapporteur has been drawn to the migration of health professionals as a serious impediment to the delivery of health-care services to the population in communities characterized by high levels of migration. This has also affected the provision of health-care services to children in some countries of origin.<sup>30</sup> In this connection, the Special Rapporteur welcomes efforts made by some host countries to transform migration challenges for countries of origin into opportunities for cooperation. A good example is the pilot project “Migration and Development for Africa”, launched by the International Organization for Migration (Helsinki) with the support of the Ministry of Foreign Affairs of Finland, which promotes the return of qualified professionals of Somali background on a temporary basis to Somaliland and Puntland to assist and share their skills with local health authorities, civil society organizations, hospitals and universities.<sup>31</sup>

50. Assessing the human rights impact of migration on children left behind also includes a gender dimension that requires careful consideration by the State. Research studies carried out in the Latin American region, suggest, for example, that children left behind may be affected differently by the absence of their mother compared to the father, given that when a family member migrates, relations are redefined and subsequent changes in roles and responsibilities affect the daily life of the child. Furthermore, studies by the International Labour Organization (ILO) in Tajikistan suggest that the prolonged absence of the male head of the household often leaves the rest of the family destitute.<sup>32</sup>

51. The inclusion of measures to promote family unity and facilitate the reunion of children with their parents in host countries is also necessary to address adequately the special needs and protection of children left behind. Many parents and other family members initially migrate

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<sup>29</sup> See A. Whitehead and I. Hashim, “Children and migration”, background paper for DFID Migration Team, March 2005. See also “The impact of international migration: children left behind in selected countries of Latin America and the Caribbean”, UNICEF, 2007.

<sup>30</sup> Delanyo Dovlo, *The Brain Drain and Retention of Health Professionals in Africa*, Accra, September 2003. Available at [http://siteresources.worldbank.org/INTAFRREGTOPTEIA/Resources/dela\\_dovlo.pdf](http://siteresources.worldbank.org/INTAFRREGTOPTEIA/Resources/dela_dovlo.pdf).

<sup>31</sup> See International Organization for Migration, “Strengthening the health sector in Somaliland and Puntland through the engagement of Somali diaspora health professionals from Finland”, available at <http://iom.fi/content/view/212/8>.

<sup>32</sup> ILO, Migrants in times of economic crisis: ILO/UNDP join forces to make Tajik migration safe, 16 December 2008.

without children, but subsequently plan to bring them to a host country. Therefore, it is important that States of origin develop policies and strengthen bilateral, regional and international cooperation to reduce the number of unaccompanied children seeking to join their parents or other family members in host countries through regular channels.

## 2. Children on the move

52. Children on the move are migrant children taking an active part in the migration process, particularly at the passage and arrival stages in countries of transit and destination. They may be found, inter alia, migrating with their family members or independently, to seek opportunities at both the educational and employment levels. They may also be found entering host countries to rejoin migrant members of the family, being relocated or sent by families to stay with relatives or friends in third countries or, as the Special Rapporteur has documented, sent by family members to find work abroad and send part of their earnings home (E/CN.4/2005/85/Add.1).

53. Children may also be forcibly on the move, such as when falling prey to transnational organized crime and exploitation networks. The Special Rapporteur has received reports about growing numbers of trafficked children,<sup>33</sup> which in some instances is a consequence of oppressive or abusive home conditions, poverty or the absence of economic opportunities in the home region.<sup>34</sup>

54. Unaccompanied and separated children on the move may face greater vulnerabilities and risks<sup>35</sup> including discrimination, sexual and other forms of violence, and being coerced into begging, drug dealing or prostitution by criminals or criminal organizations (E/CN.4/2005/85/Add.3).

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<sup>33</sup> For example, in Italy, trafficked minors made up a third of irregular arrivals in 2000 and approximately 15,000 unaccompanied minors arrived in the United States that year. See Commission on Human Security, *Human Security Now*, New York, 2003, available at [www.humansecurity-chs.org/finalreport/English/FinalReport.pdf](http://www.humansecurity-chs.org/finalreport/English/FinalReport.pdf).

<sup>34</sup> See Jayati Ghosh, "Migration and gender empowerment: recent trends and emerging issues". Human development research paper, April 2009, available at: [http://hdr.undp.org/en/reports/global/hdr2009/papers/HDRP\\_2009\\_4.pdf](http://hdr.undp.org/en/reports/global/hdr2009/papers/HDRP_2009_4.pdf).

<sup>35</sup> See "*Population mobility and AIDS*", UNAIDS, February 2001, available at [http://data.unaids.org/Publications/IRC-pub02/JC513-PopMob-TU\\_en.pdf](http://data.unaids.org/Publications/IRC-pub02/JC513-PopMob-TU_en.pdf). According to the World Health Organization (WHO), large numbers of migrants die each year while being smuggled by land or sea, and smuggled migrants on the move may face hardships, including starvation and psychologically challenging circumstances. See Helena Nygren-Krug, "International Migration, Health and Human Rights", *Health and Human Rights Publication Series*, No. 4, WHO, 2003.

55. Frequent human rights issues affecting children on the move also include deportation and repatriation. The Special Rapporteur wishes to draw the attention of States to the numerous allegations he has received of cases of children being expelled at international borders, thus endangering their well-being and physical integrity (E/CN.4/2002/94 and Add.1).
56. With regard to the deportation of children of migrants and the importance of respecting the best interests of the child in such procedures, the Special Rapporteur believes that the concerns set out below should be borne in mind.
57. Consideration could be given to the principle of non-deportation of unaccompanied children, whereby children should be repatriated only if it is in their best interest, namely, for the purpose of family reunification and after due process of law. The enforcement of this principle would require public policies and a legal framework in both countries. In this regard, the Special Rapporteur regrets that the recently adopted European Union directive on return (2008/115/EC) authorizes the deportation of children migrants in the same sense as adults (art. 10), despite some specific protection measures. No distinction is made on the nature of the deportation, which in both cases is a “punitive approach” instead of a “protection approach”, as stressed by the Committee on the Rights of the Child<sup>36</sup> and other human rights institutions.<sup>37</sup>
58. The possibility of reunification in the country of destination, as suggested by the Committee on the Rights of the Child in its general comment No. 6 (paras. 81-90) could also be considered. Furthermore, it might be mentioned expressly that, within these procedures, States should fulfil “age appropriate” due process of law, including, inter alia, rights to a guardian, a legal representative, free legal aid, access to jurisdiction, effective remedy, an interpreter if necessary and to be heard.
59. Mechanisms are also needed to ensure children’s rights and perspectives within the deportation procedures of their parents (based on their migration status), especially their right to be heard. While States tend to consider the rights of the adults involved in these procedures (including the right to the family unit), there is no specific mechanism that considers the rights of their children.
60. Another major concern of the Special Rapporteur with regard to children on the move relates to the particular vulnerability of children who are unaccompanied, undocumented and/or entering countries irregularly, including within mixed migratory flows, to unlawful or arbitrary deprivation of liberty.<sup>38</sup> The Committee on the Rights of the Child has asserted that

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<sup>36</sup> See CRC/GC/2005/6.

<sup>37</sup> European Network of Ombudspersons for Children, Statement on the EU Return Directive of 18 June 2008, 30 June 2008. See also STEPS consulting social study for the European Parliament, “The conditions in centres for third country national (detention camps, open centres as well as transit centres and transit zones), with a particular focus on provisions and facilities for persons with special needs in the 25 EU member states.”

<sup>38</sup> See “Migration, asylum and trafficking-related detention”, information note No. 7, Dignity and Justice for Detainees week, OHCHR, October 2008.

unaccompanied children should not be detained because of migration-related conditions; States should therefore include alternative measures to detention and express the priority of these measures in their legislation. Subsequently, States should develop public policies which ensure the effective enforcement of these alternative measures by competent authorities, both administrative and judicial.

61. Any detention order should justify the reasons for not applying alternative measures, and the place of detention should be chosen for the child's integral protection; they should not be detained in prisons or with adults. Child protection approaches should be at the core of the goals and functions of detention institutions/centres, and include the realization of such rights as education, health care, recreation, consular assistance, guardian protection and legal representation, among others. Furthermore, detention centres should be managed by childhood protection officers who have received training on children's rights.

62. Migration-related detention of children should not be justified on the basis of maintaining the family unit (for example, detention of children with their parents when all are irregular migrants). As UNICEF and other experts have stressed, detention of children will never be in their best interests.<sup>39</sup> Hence, the ideal utilization of a rights-based approach would imply adopting alternative measures for the entire family; States should therefore develop policies for placing the entire family in alternative locations to closed detention centres.

63. Some countries make distinctions among children (for instance, children above 12 years of age) with regard to detention policy. In such cases, children over 12 years of age are detained in detention centres, while those under 12 are placed in protection centres for children. Such a practice should be considered an unlawful interpretation of article 1 of the Convention on the Rights of the Child. Furthermore, adolescents should not be treated as adults.

64. A number of countries still consider the breach of migration law a criminal offence (for example, in cases of irregular entry, lack of residence permit, using an expired residence authorization or unauthorized re-entry after a deportation and re-entry prohibition decision). Furthermore, since in most countries migration laws lack a children's rights perspective, the criminalization of irregular migration applies also to children.

65. For this reason, it is important to stress that the criminalization of irregular migration leads to human rights violations and to recall the recommendations made by several human rights

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<sup>39</sup> See UNICEF Australia, Submission to the National Inquiry into Children in Immigration Detention, written submission to the Human Rights and Equal Opportunity Commission, 2003, Summary of Recommendations; STEPS consulting social study for the European Parliament, "The conditions in centres for third country national (detention camps, open centres as well as transit centres and transit zones), with a particular focus on provisions and facilities for persons with special needs in the 25 EU member states."



mechanisms,<sup>40</sup> and international declarations<sup>41</sup> on this issue. Accordingly, the Special Rapporteur suggests that States that still punish irregular migration with imprisonment should revise and reform their migration laws, de-criminalize irregular migration and provide special protection for unaccompanied and accompanied migrant children.

### **3. Protecting children in host countries**

66. The protection of children in host countries is in most circumstances context specific, and therefore depends on the particular situation of the child: whether the child's situation amounts to the protection afforded under refugee law; whether the child is a victim of transnational organized crime; whether the child is migrating with his family and one or both parents are migrant workers; or whether the child is migrating irregularly, unaccompanied or undocumented.

67. The Special Rapporteur has identified two areas where States generally should enhance efforts to provide rights-based responses to protect children in host countries. The first area relates to the general protection of children affected by transnational organized crime. The second area relates to the full enjoyment of human rights by children from a migrant background.

68. The first area covers grey areas of the general protection of the child affected by transnational organized crime. For example, the classification of a child as a trafficking victim implies in some instances additional migration obstacles for the child at the border or forced return to his or her place of origin, without taking into consideration the child's view on their return to the country of origin, in proportion to age and maturity.<sup>42</sup>

69. The Special Rapporteur regrets that the criminalization of traffickers is sometimes construed in a way that undermines or diminishes the child's rights, for example, when affording protection to a child victim is conditional on the child's agreement to testify against the traffickers in court.

70. The Special Rapporteur is concerned at the situation of children born and living in countries where their mothers have been trafficked, particularly when there is a well-founded fear of reprisals against them by traffickers and when children are left behind because their

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<sup>40</sup> See for example CMW/C/MEX/CO/1, paras. 14, 15; E/CN.4/2003/85, paras. 43, 73, and A/HRC/7/12, paras. 15, 19, 42, 43; A/HRC/7/4, paras. 41-54; and Global Migration Group, *International Migration and Human Rights*, 2008, pp. 72-73.

<sup>41</sup> See, *inter alia*, *Compromiso de Montevideo sobre Migración y Desarrollo de los Jefes de Estado y de Gobierno de la Comunidad Iberoamericana de Naciones*, XVI Iberoamerican Summit, Montevideo, November 2006, para. 17; and *Declaration of Asunción*, VI South American Conference on Migration, 4-5 May 2006, para. 3.b.

<sup>42</sup> *Convention on the Rights of the Child*, art. 12.

trafficked mothers are in police custody or detention centres as a result of police or immigration raids, as highlighted by the Special Rapporteur on the sale of children, child prostitution and child pornography (A/HRC/7/8).

71. The second area in which States need to enhance protection concerns children from a migrant background. Children in this category do not necessarily fall into the definition of migrant children, but they are affected by the immigration background of their parents or family members. Evidence suggests that States should enhance their efforts to address, from a rights-based perspective, a number of issues affecting children falling into this category; for example, the European Commission found that factors lying behind discrimination in education may apply to subsequent generations of migrants, including in some instances those already naturalized.<sup>43</sup>

72. The protection of migrant children in host countries has been addressed by the Special Rapporteur in his communications<sup>44</sup> and country visits,<sup>45</sup> in which he identified irregular migration and its criminalization as situations causing him deep concern in relation to the effective protection of migrant children. When criminalized, irregular migration has proven to be a deterrent, for example, for the child's birth registration, because irregular or undocumented migrants usually fear imprisonment and/or deportation and therefore try to avoid all contact with local authorities.<sup>46</sup> Barriers to birth registration and/or its denial have serious consequences for the enjoyment of human rights, including the right to be recognized as a person before the law.<sup>47</sup> Furthermore, the State should prevent situations of statelessness.<sup>48</sup>

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<sup>43</sup> Green paper on migration and mobility: challenges and opportunities for EU education systems, Brussels, 2008, para. 2.

<sup>44</sup> See E/CN.4/2005/85/Add.1, E/CN.4/2006/73/Add.1, A/HRC/7/12/Add.2 and A/HRC/11/7/Add.1.

<sup>45</sup> See E/CN.4/2003/85/Add.2, A/HRC/11/7/Add.2, A/HRC/11/7/Add.3, E/CN.4/2006/73/Add.2, E/CN.4/2005/85/Add.3, E/CN.4/2004/76/Add.2, E/CN.4/2002/94/Add.1, A/HRC/7/12/Add.2 and E/CN.4/2003/85/Add.3/Corr.1.

<sup>46</sup> No specific information is available on the number of children who may be unregistered for reasons associated with the migration status of their parents, extended family members, legal guardians or caregivers. UNICEF has estimated that approximately 48 million child births are unrecorded each year. See "The rights' start to life: A statistical analysis of birth registration", UNICEF, 2005.

<sup>47</sup> In the case of *The Yean and Bosico children v. Dominican Republic*, the Inter-American Court of Human Rights, in a judgement of 8 September 2005, referred, inter alia, to the State obligation to guarantee the right of the child to birth registration, which may under certain circumstances include non-national children.

<sup>48</sup> See Convention on the Reduction of Statelessness, art. 1.

73. The Special Rapporteur wishes to highlight that the general barriers to health-care services and education, particularly in the case of low-skilled and irregular migrants and their children, are often dependent on social inclusion (A/58/153/Rev.1). In most instances, access barriers may be economic, social and cultural and relate to discrimination, language obstacles and legal status.<sup>49</sup>

74. In past years, the Special Rapporteur was informed of cases of migrant children with an irregular migration background who were devoid of protection and access to education, living in shacks or abandoned buildings in extremely poor sanitary conditions (E/CN.4/2005/85/Add.3), and observed the progress made in the protection of migrant children, particularly in relation to the extension of health coverage and care services, regardless of the immigration status of those concerned. A good practice documented by the Special Rapporteur on the right to health was the case of Sweden, where undocumented children receive health-care assistance on the same basis as resident children (A/HRC/4/28/Add.2). Some States have also prohibited the denial of health-care services on the grounds of irregular migration status; such is the case in Uruguay (law 18.250, art. 9) and Argentina (law 25.871, art. 7).

75. The Special Rapporteur invites States to apply their immigration laws, in line with the protection of the family as the natural and fundamental group unit of society<sup>50</sup> and the most favourable environment for the full and harmonious development of the child personality,<sup>51</sup> unless they deem it not appropriate to do so in the child's best interests.<sup>52</sup>

76. The Special Rapporteur wishes to draw the attention of States to the need to adopt a comprehensive rights-based approach to the management of migration, since migration policies may have a direct impact on the enjoyment of human rights by children. Policies excluding legal avenues for the regularization of irregular migrants and that prohibit the access of irregular (adult) migrants to employment may also have an impact on the standard of living of children; migration policies should therefore take into consideration the impact that they may have on the enjoyment of human rights by migrants. In this connection, the Special Rapporteur wishes to highlight that regularization policies constitute a good example of practices aimed at strengthening social integration and cohesion, ensure the human rights of migrants and attain State goals such as social security, public health coverage and social inclusion. Regularization

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<sup>49</sup> See Helena Nygren-Krug, "International migration, health and human rights", *Health and Human Rights Publication Series*, issue No. 4, WHO, 2003.

<sup>50</sup> See the Universal Declaration of Human Rights, art.16; the International Covenant on Civil and Political Rights, art. 23; the International Covenant on Economic, Social and Cultural Rights, art. 10; and the International Convention on the Rights of All Migrant Workers and Members of Their Families, art. 44.

<sup>51</sup> See World Conference on Human Rights, Vienna Declaration and Programme of Action, para. 21.

<sup>52</sup> Convention on the Rights of the Child, art. 9.1.

measures should benefit unaccompanied children and children with their families and should have the necessary flexibility to improve the social integration of migrants, as well as provide access to fundamental rights, including the right to seek and obtain employment.

77. In discharging his mandate, the Special Rapporteur has come across other initiatives, activities and policies implemented by Governments that reflect the commitment of host countries to the realization of the rights of the child in the context of migration. Some examples of good practices aimed at ensuring the realization of the right to education of the migrant child are given below.

78. The Special Rapporteur welcomes the attention devoted by some States, including Organization for Economic Cooperation and Development (OECD) countries, to early childhood services aiming at developing children's capacities in general while also addressing specific issues, such as the language skills of children who have little opportunity to speak the local language in their families or neighbourhoods.<sup>53</sup> Although common services and facilities for all children should be the guiding principle, the Special Rapporteur commends the efforts made by a number of OECD countries to include migrant children and children from a migration background in support programmes aimed at fostering both their linguistic development and cultural integration in host countries<sup>54</sup> and encourages States, especially host countries, to continue their efforts to integrate migrant children and children from a migrant background and their families in these or similar programmes.

79. The Special Rapporteur also welcomes the efforts of host countries to improve equality in access to education for migrant children. This is the case of a number of OECD countries, such as in Japan, where migrant children, regardless of their immigration status, are allowed to enrol in public schools free of charge (A/HRC/11/7/Add.1). This is also the case of Uruguay (law 18.250, art. 11) and Argentina (law 25.871, art. 8).

80. The Special Rapporteur also commends host countries, especially those belonging to the European Communities, for their efforts to build intercultural and teaching skills to favour the inclusion of migrant families and their children, regardless of their migration status.<sup>55</sup> The Special Rapporteur furthermore praises the efforts made to accommodate linguistic and religious diversity and cultural perspectives in education plans and programmes<sup>55</sup> and welcomes bilateral

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<sup>53</sup> See Mahon, R., "Child care policy: comparative perspective" available at [www.child-encyclopedia.com/documents/MahonANGxp.pdf](http://www.child-encyclopedia.com/documents/MahonANGxp.pdf); and John Bennett, *Early childhood services in the OECD countries: review of the literature and current policy in the early childhood field*, Innocenti working paper, UNICEF-Innocenti Research Centre, August 2008.

<sup>54</sup> Ibid. See also C. Katharina Spieß, E.M. Berger and O. Groh-Samberg, *Overcoming disparities and expanding access to early childhood services in Germany: policy considerations and funding options*, Innocenti Working Paper, UNICEF-Innocenti Research Centre, December 2008.

<sup>55</sup> See Commission of the European Communities, Green Paper. Migration and mobility: challenges and opportunities for EU education systems, Brussels, 2008.

efforts to promote learning of the heritage language in host countries among migrant children and children from a migrant background, as in the case of European Union Member States, where this type of bilateral agreements are envisaged under Directive 77/486/CEE.

### **III. CONCLUSIONS AND RECOMMENDATIONS**

**81. The Special Rapporteur highlights the importance of an adequate legal framework for the protection of the rights of all children in the context of migration, including through ratification of relevant international human rights and other instruments and their translation into national laws and policies, and wishes to make a number of recommendations for further consideration and action.**

#### **Mainstreaming a child rights-approach to migration into national plans, programmes and policies**

**82. All policies and programmes aimed at addressing the situation of children in the context of migration should have a human rights-based approach and be based on fundamental principles, such as the best interest of the child, non-discrimination and the right of the child to be heard in all decisions that concern him or her.**

**83. States are encouraged to consider the impact of migration on children in the elaboration and implementation of national development frameworks, poverty reduction strategies, human rights plans of action,<sup>56</sup> programmes and strategies for human rights education and the advancement of the rights of the child. States are also encouraged to adopt and develop programmes and policies to address significant gaps remaining in social policies and other areas where the protection of the migrant child is yet to be mainstreamed.**

#### **Protecting the most vulnerable**

**84. Effective protection of the human rights of the child should be ensured in States of origin, transit and destination at every stage of the migration process and in all migration management procedures.**

**85. States, especially those of transit and destination, should devote special attention to the protection of undocumented, unaccompanied and separated children, as well as to the protection of children seeking asylum and children victims of transnational organized crime, including trafficking in persons, smuggling, sale of children, child pornography and child prostitution.**

**86. States should also consider the specific vulnerability of the migrant girl child and the gender impact of migration and human rights implications for girls and boys of any migration-related planned action, including legislation, policies and programmes, and address existing gaps in protection.**

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<sup>56</sup> For guidance on national human rights plans, see the Handbook on National Human Rights Plans of Action, 2002, available at the OHCHR website [www.ohchr.org](http://www.ohchr.org).

**87. Migration policies, programmes and bilateral agreements should preserve family unity, including by facilitating family reunification and interaction among family members.**

#### **Information-sharing, data and analysis**

**88. States should strengthen efforts to collect data and measure the impact of migration on children in countries of origin, transit and destination, with due regard for the opportunities and challenges for children in all stages of the migration process.**

**89. States are especially encouraged to share across boundaries and regions information about key indicators of the impact of migration on children, as well as common challenges and best practices to address migrant children protection-related gaps at all levels. It is also important that stakeholders contribute to make available statistical and substantive information on, inter alia, the root causes of migration of children and adolescents (with family members or unaccompanied), to help States to identify policy gaps.**

#### **Protecting children left behind in countries of origin**

**90. The Special Rapporteur recommends that the situation of children staying behind in countries of origin be included in the agenda of international debates and forums on migration issues and that all relevant actors undertake further studies to better understand the impact of migration processes on the well-being and enjoyment of human rights of the children left behind in countries of origin.**

**91. The Special Rapporteur recommends the compilation and sharing of best practices in addressing the situation of children left behind in countries of origin, especially in the area of education.**

**92. States should develop public policies to address the situation of children left behind in countries of origin, taking into account the best interest of the child as a guiding principle and ensuring the participation of these children in the design and implementation of those policies.**

**93. The Special Rapporteur encourages States to develop public policies to prevent the irregular migration of children and undertake public information campaigns in communities of origin to alert them to the dangers of irregular migration and to inform them of the existing protection mechanisms.**

#### **Protecting children on the move**

**94. The Special Rapporteur encourages the collection of data at the national level and the preparation of studies and research on unaccompanied or separated children.**

**95. States should recognize that general comment No. 6 of the Committee on the Rights of the Child on the treatment of unaccompanied and separated children provides useful guidance for the protection of the rights of unaccompanied migrant children.**

**96. States should recognize that migrant children, especially those unaccompanied, are most exposed to the worst forms of child labour and, in this context, recalls the relevance of**

**the ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Convention No. 182) and relevant Recommendation No. 190 and their implementation framework.**

**97. The Special Rapporteur encourages the conclusion of bilateral and multilateral agreements based on existing international human rights norms and standards and increased cooperation at the regional level to protect migrant children, especially those unaccompanied, including in matters of safe repatriation, the fight against trafficking, sexual exploitation and smuggling and assistance to victims. The Special Rapporteur also encourages consular services to continue ensuring respect for the rights of the child in the context of return of migrant children.**

**98. The Special Rapporteur encourages the establishment and implementation of institutionalized services and programmes to provide comprehensive support and protection to migrant children, especially those unaccompanied, including means to detect those who are in need of international protection. Protection services should include access to food, health, legal advice; support for return to the community of origin; professional and vocational training; and the search for durable solutions in the case of refugee children.**

**99. The Special Rapporteur recommends that protection programmes include reproductive sexual health awareness and training to address psychological trauma.**

**100. The Special Rapporteur encourages the design and implementation of programmes for the sustainable return and reintegration of children, including alternatives to return on the basis of the best interest of the child.**

**101. The Special Rapporteur recommends the development of standardized procedures to ensure access to asylum procedures for unaccompanied migrant children who cannot return to their countries of origin because their life, safety or freedom are at risk, and to ensure an assessment of the situation in the country of origin or habitual residence of the children before deciding on their repatriation.**

**102. The Special Rapporteur recommends that migration officials be trained, including on the rights of the child and cultural sensitivities. States should ensure that age-assessment processes comply with international standards and that the persons concerned are allowed access to effective remedies to challenge age-assessment decisions. States should also consider according the benefit of the doubt in age-determination procedures.**

**Protecting children deprived of liberty because of their migratory status or that of their parents**

**103. States should recognize the need to comply with and implement the provisions contained in the Convention on the Rights of the Child and all relevant human rights instruments.**

104. States should recognize that all practices and norms implying a restriction or a deprivation of liberty of children in the context of migration must respect minimum standards as defined in international human rights instruments.
105. The Special Rapporteur recalls that, as provided in article 37 of the Convention on the Rights of the Child, detention of children should be a measure of last resort and should only be taken for the shortest period of time possible. He also recalls that deprivation of liberty of children in the context of migration should never have a punitive nature.
106. The Special Rapporteur furthermore recalls that migrants should not be deprived of liberty as a sole consequence of their migratory status and that, according to general comment No. 6 of the Committee on the Rights of the Child, as a general rule, unaccompanied migrant children should not be detained.
107. The Special Rapporteur encourages States to provide alternatives to detention for the family group when parents are detained on the sole basis of migratory status, keeping in mind the necessary balance between the need to protect family unity and the best interest of the child. Exceptional migration-related detention of children should be done in places ensuring the integral protection and well-being of the child, taking due consideration for the fulfilment of the child's rights to education, health care, recreation, consular assistance and legal representation, among others.
108. States should bear in mind that children should be kept separate from adults, or when housed with families, they should have accommodation distinct from other adults.
109. The Special Rapporteur recalls that the causes and circumstances leading to the deprivation of liberty of migrant children should be previously defined by law and provide for adequate and effective remedies, including judicial review, in order to avoid arbitrary detention and guarantee access to legal services.
110. The Special Rapporteur recommends the development of alternatives to deprivation of liberty, such as sheltered housing and alternative care with national child protection services.
111. The Special Rapporteur recalls that irregular migration should not be criminalized and migrants, especially children, should not be detained in penitentiaries or facilities for criminal detention, and they should have, inter alia, the right to legal advice, an interpreter, legal review, to have contact with the external world as well as access to education and health services.
112. The Special Rapporteur encourages States to define the regime to be applied in the case of migrants with premises, to avoid arbitrariness and the application of a penitentiary regime.
113. States should recognize the need to allow independent scrutiny and control mechanisms of the conditions of detention of children (judicial authorities, international



and local non-governmental organizations, international human rights mechanisms, consular services), and recognize the role played by civil society and local communities in addressing this and other issues concerning the protection of migrant children.

114. States should recognize the important role played by consular offices in the protection of migrant children, and those offices should share good practices and strengthen cooperation.

115. States should pay special attention to the training of officials working with separated and unaccompanied children and dealing with their cases. States should ensure that all immigration officials in contact with children are aware of the principles and provisions of the Convention on the Rights of the Child.

116. States should recognize the need to allocate sufficient resources, including budgetary resources, to institutions and programmes working with migrant children deprived of their liberty.

117. State authorities should ensure that private companies in charge of managing detention facilities act in conformity with international human rights standards.

#### **Protecting children in countries of destination**

118 States should protect and respect the human rights of migrant children, irrespective of their migration status, including the rights to basic social services for all children, in particular the rights to food, health, education and an adequate standard of living, as well as access to justice. Dialogue and cooperation between Governments of States of origin and those of destination is highly encouraged, to ensure the fulfilment of these rights.

119. The Special Rapporteur recommends the development of strategies to pay special attention to migrant children in order to guarantee their access, on an equal basis and regardless of legal status, to the same rights as those of children nationals of the country concerned.

120. The Special Rapporteur encourages States to take effective measures to guarantee the birth registration of children born outside their parents' country of origin and to uphold the principle of avoiding statelessness, and highlights the importance of harmonizing migration policies with public policies concerning childhood, adolescence and the family.

121. States should recognize the importance of strengthening institutes for the protection of children and adolescents, including by increasing their budgets.

122. The Special Rapporteur recommends that Governments in countries of transit and destination encourage greater harmony, tolerance and respect among migrants, asylum-seekers, refugees and the rest of society, with a view to eliminating acts of racism, xenophobia and other forms of related intolerance directed against migrants. States that have not eliminated the general barriers to the enjoyment of human rights by migrant children and their families, especially those encountered by children who are undocumented or have an irregular status, should do so.

**123. States should base any decision to return a child or its parents to the country of origin on the best interests of the child, including the right to family unity.**

**124. The Special Rapporteur recommends that inter-institutional and intersectoral coordination in all countries be strengthened with a view to protecting children from all forms of exploitation, including commercial sexual exploitation.**

**125. States should recognize the need to protect child victims of transnational organized crime, including trafficking, as well as of violence and traumas related to migration, through the implementation of standards that guarantee their protection and access to medical, psychosocial and legal assistance.**

**126. States should also promote regularization programmes with a view to preventing human rights violations and abuses associated with irregular migration, and take into consideration the fact that regular migration status facilitates the integration of migrant children in the communities of destination.**

#### **Strengthening partnerships and international cooperation**

**127. The Special Rapporteur encourages special procedures and treaty bodies, especially the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families to continue to pay special attention to the rights of migrant children. The Special Rapporteur encourages the synergy of capacities and mandates of international organizations as a key element in supporting States to fulfil their respective obligations under international instruments. To the extent possible and when appropriate, policymaking discussions on migration should be built upon existing international policy platforms, composed by Member States, key institutions and civil society organizations with relevant mandates and competencies.**

**128. The Special Rapporteur encourages inter-institutional coordination at the national level, including through specific mechanisms and with the participation of civil society, consular services, local governments and the private sector, for the development and implementation of multidisciplinary policies to ensure the protection of the rights of children in the context of migration.**

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