



## IML INFORMATION NOTE ON THE PROTECTION OF UNACCOMPANIED MIGRANT CHILDREN

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*“Promote the positive affirmation of children’s rights, in particular the right to their own identity, the right to grow up in secure conditions, the right to care, the right to a family, the right to be loved and to play, and the right to health, education, social inclusion, equal opportunities, sport and a clean and protected environment and the right to obtain information on such issues, with a view to establishing a child-friendly society, in which children can feel protected and actively involved”<sup>1</sup>*

## I. Definition of Unaccompanied and Separated Children

‘Unaccompanied children’ (also called unaccompanied minors) are children, as defined in Article 1 of the Convention on the Rights of the Child of 20 November 1989 (CRC), “who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.”<sup>2</sup>

‘Separated children’ are children, as defined in Article 1 of the CRC, “who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.”<sup>3</sup>

A “child” as defined in Article 1 of the Convention” means “every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier.”<sup>4</sup>

## II. Principles

Unaccompanied children are entitled to international protection under international human rights law, international refugee law, international humanitarian law<sup>5</sup> and various regional instruments, and it is essential that they are provided with effective protection and assistance in a systematic, comprehensive and integrated way. Obligations deriving from the Convention on the Rights of the Child vis-à-vis unaccompanied and separated children include the obligation to develop national legislation, establish administrative structures, carry out research and data compilation, and

provide comprehensive training.

The following principles must be respected throughout the migration process of all children.

### 1. Principle of non-discrimination

States shall “respect and ensure” rights for children set out in the Convention to all children in their jurisdiction without discrimination (Article 2, CRC). Unless otherwise explicitly stated in the Convention, the enjoyment of rights is not limited to national children but must be available to all children, including asylum-seeking, refugee and migrant children, irrespective of their nationality, immigration status or statelessness.<sup>6</sup> “This principle, when properly understood, does not prevent, but may indeed call for, differentiation on the basis of different protection needs such as those deriving from age and/or gender.”<sup>7</sup>

### 2. Best interests of the child

Best interests of the child are a primary consideration in all actions concerning children, including the search for short and long-term solutions (Article 3, CRC). “The principle must be respected during all stages of the displacement cycle. At any of these stages, a best interests determination must be documented in preparation of any decision fundamentally impacting on the unaccompanied or separated child’s life”.<sup>8</sup> This determination “requires a clear and comprehensive assessment of the child’s identity, including her or his nationality, upbringing, ethnic, cultural and linguistic background, particular vulnerabilities and protection needs.”<sup>9</sup>

The appointment of a competent guardian as expeditiously as possible is a key procedural safeguard to ensure respect for the best interests of an unaccompanied or separated child.<sup>10</sup> In large scale emergencies, where it will be difficult to establish guardianship arrangements on an individual basis, the rights and best interests of separated children should be safeguarded and promoted by States and organizations working on behalf of these children.<sup>11</sup> In cases where children are involved in asylum procedures or administrative or judicial proceedings, they should, in addition to the appointment of a guardian, be provided with legal representation.<sup>12</sup> At all times children should be informed of arrangements with respect to guardianship and legal representation, and their opinions should be taken into consideration.<sup>13</sup>

### 3. Life and full development

Under Article 6 of the CRC, the right to life, survival and development is recognized. Many of the obligations of the Convention, particularly those related to health, adequate standard of living, education, leisure and play (Articles 24, 27, 28, 29 and 31) are relevant to ensuring the maximum

development of the child.<sup>14</sup> The Convention provisions protecting the child from violence and exploitation (in particular Articles 19 and 32-39) are as vital to maximum survival and development as those on the provision of services.<sup>15</sup>

#### 4. Family unity

No one shall be subjected to arbitrary interference with his or her family. The family, as the natural and fundamental group unit of society, is entitled to protection by the State (Article 16, CRC; Articles 14 and 44, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)<sup>16</sup>).<sup>17</sup>

All efforts should be made to return an unaccompanied or separated child to his or her parents except where further separation is necessary for the best interests of the child. These efforts should also take full account of the right of the child to express his or her views (Article 12, CRC).<sup>18</sup>

#### 5. Non-refoulement

The receiving State must respect its international obligations, in particular its *non-refoulement* obligation. It must not return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child (Article 33, Convention relating to the Status of Refugees;<sup>19</sup> Article 3, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);<sup>20</sup> Articles 6 and 37, CRC). The assessment of the risk of such serious violations should be conducted in an age and gender-sensitive manner and should, for example, take into account the particularly serious consequences for children of the insufficient provision of food or health services.<sup>21</sup>

#### 6. Evolving capacities

Article 5 of the CRC mandates that State Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the Convention. The Committee on the Rights of the Child has frequently expressed concern where countries do not appear to have fully accepted the concept of the child as an active subject of rights, relating this to Article 5 and to Article 12 of the CRC. National lawmakers and administrators should be mindful of the capacity of the child to exercise his or her rights to nationality (Article 5, CRC); that the Convention requires protection of and care for children; and that a child should be considered a bearer of rights.<sup>22</sup>

#### 7. Participation

The views of children should be given “due weight in accordance with the age and maturity of the child” (Article 12, CRC).

#### 8. Confidentiality

Confidentiality of the information received in relation to an unaccompanied or separated child should be protected, consistent with the obligation to protect the child’s rights, including the right to privacy (Article 16, CRC).<sup>23</sup>

### III. Initial Assessment and Measures

Actions required for the care and protection of unaccompanied children should include: measures to prevent separation; early identification of a child as unaccompanied; proper registration; temporary care arrangements and tracing of family members, assessment for family reunion and long term solution such as family reunion (where possible and if in the child’s best interests) or alternative long-term placement. The children should also have access to education during the status assessment/family tracing. A State should have staff specially qualified to deal with children.

The specific situation of each child (ethnic and migratory backgrounds, cultural diversity, etc.) should be taken into consideration on a case by case basis. Particular attention should be given to the vulnerable situation faced by VoTs.

#### 1. Identification

Identification of a child as separated or unaccompanied immediately upon arrival or as soon as his/her presence in the country becomes known to the authorities should be prioritized (Article 8, CRC).

#### 2. Registration

Registration and documentation must be carried out as soon as possible after a separated child is identified.<sup>24</sup> Establishing his/her identity and providing him/her with personal identity documentation are paramount. An initial interview should be conducted in an age-appropriate and gender-sensitive manner, in a language understood by the child, by professionally qualified persons in order to ascertain the identity of the child, including the identity of both parents, other siblings, as well as the nationality of the child. During the interview, particular attention shall be given to the reasons for being separated or unaccompanied (e.g. parents are still in the country of origin, were lost during travel or died) as well as to the identification of particularly vulnerable children (e.g. those with disabilities, victims of trafficking in persons, victims of trauma (former child



soldiers) etc.). Asylum-seeking children, including those who are unaccompanied or separated, shall enjoy access to asylum procedures and other complementary mechanisms providing international protection, irrespective of their age.<sup>25</sup>

### 3. Family tracing

Tracing of family members shall be commenced as early as possible after a child has been identified as separated or unaccompanied and be proactive. Even if immediate reunification is not possible, tracing should be carried out on behalf of every separated child with a view to at least restoring contact with close or extended family members, or with previous primary care-givers.<sup>26</sup>

However, the safety of the child and his/her family must be paramount. "Tracing is an essential component of any search for a durable solution and should be prioritized except where the act of tracing, or the way in which tracing is conducted, would be contrary to the best interests of the child or jeopardize fundamental rights of those being traced."<sup>27</sup>

## IV. Specific Protection Needs

### 1. Appointment of a guardian

In order to secure the proper representation of an unaccompanied or separated child's best interests, a guardian should be appointed as soon as the unaccompanied or separated child is identified. With a view to ensuring the respect of the best interests of the child, the guardianship should normally be assigned to an accompanying adult family member or non primary family caretaker unless there is an indication that it would not be in the best interests of the child to do so. In cases where a child is accompanied by a non-family adult or caretaker, suitability for guardianship must be scrutinized more closely.<sup>28</sup>

### 2. Accommodation arrangements

The Convention on the Rights of the Child imposes an obligation on States parties to also provide alternative care arrangements for unaccompanied children outside their country of origin.

When choosing among the options mentioned in article 20 para. 3 of the CRC, due regard should be given in particular to the ethnic, religious, cultural and linguistic background of the children.<sup>29</sup> In addition, priority should be given to community-based solutions that build on existing social structures, whereas institutions should be always considered as a last resort, even during emergencies.<sup>30</sup>

### 3. Access to quality education

The access to quality education should be maintained during all phases of the migration cycle. Unaccompanied children should attend local school; where educational training is not locally available, facilities provided to unaccompanied children should also be available to other children.<sup>31</sup> The education should also include vocational training for both girls and boys. Access to quality education should also be ensured for children with special needs, in particular children with disabilities.

All unaccompanied and separated children have the right to maintain their cultural identity and values, including the maintenance and development of their native language.<sup>32</sup>

### 4. Health

Unaccompanied children should have the same right to access to health care as national children.

In line with the right of the child to the enjoyment of the highest attainable standard of health, recognized by article 24 of the CRC, the health facilities should be capable of taking in due consideration the particular mental and physical vulnerability of unaccompanied children and to properly address the psychological stress or traumas suffered by many of them. The mental health care provided should also be culturally appropriate and gender-sensitive. Qualified psycho-social counselling should also be provided.<sup>33</sup>

### 5. Legal and practical measures to address the particular vulnerability to exploitation of unaccompanied children

Unaccompanied or separated children in a country outside their country of origin are particularly vulnerable to exploitation and abuse. Necessary measures include identifying unaccompanied and separated children; regularly inquiring as to their whereabouts; and conducting information campaigns that are age-appropriate, gender-sensitive and in a language and medium that is understandable to the child.<sup>34</sup> The adoption of an adequate legislation to counter the activity of the criminal organisations responsible for trafficking or other type of children exploitations should also be considered a priority.

### 6. Specific measures for child soldiers

The special protection measures for child soldiers should include: prevention of recruitment, appropriate support services to former child soldiers to enable reintegration into normal life, strict application of the *non-refoulement* principle and granting of refugee status.<sup>35</sup>

### 7. Detention

In 2010, the U.N. Human Rights Council's Working Group on

Arbitrary Detention stated that although administrative detention as such of migrants in an irregular situation is not in contravention of international human rights instruments, “immigration detention should gradually be abolished”. If there has to be administrative detention, the Working Group recalled that “the principle of proportionality requires it to be the last resort” and that “strict legal limitations must be observed and judicial safeguards be provided for”. In addition, in the Working Group’s view: “the detention of minors, particularly of unaccompanied minors, requires even further justification. Given the availability of alternatives to detention, it is difficult to conceive of a situation in which the detention of an unaccompanied minor would comply with the requirements stipulated in article 37 (b), clause 2, of the Convention on the Rights of the Child, according to which detention can be used only as a measure of last resort.”<sup>36</sup>

On the basis of Article 37 (b) of the CRC, the Committee on the Rights of the Child has affirmed that: “Unaccompanied or separated children should not, as a general rule, be detained” and, in any case, “detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof”.<sup>37</sup> In compliance with art. 37 (b), the Committee also recalled that “all efforts, including acceleration of relevant processes, should be made to allow for the immediate release of unaccompanied or separated children from detention and their placement in other forms of appropriate accommodation”.<sup>38</sup>

In 2012 the Committee on the Rights of the Child held a Day of General Discussion on “the Rights of All Children in the Context of International Migration”. In the recommendations which came out in the Report of the 2012 Day of General Discussion it is clearly stated in Art. 78 that children should not be criminalized or subject to punitive measures because of their or their parents’ migration status: “*The detention of a child because of their or their parent’s migration status constitutes a child rights violation and always contravenes the principle of the best interests of the child. In this light, States should expeditiously and completely cease the detention of children on the basis of their immigration status.*”<sup>39</sup> Furthermore it is stated in Art. 79 that States should adopt alternatives to detention that fulfil the best interests of the child, along with their rights to liberty and family life through legislation, policy and practices that allow children to remain with family members and/or guardians if they are present in the transit and/or destination countries and be accommodated as a family in non-custodial, community-based contexts while their immigration status is being resolved.

Finally, the Special Rapporteur on the human rights of migrants has recalled that detention of children, even for short periods, can have severe physical and psychological

consequences and adverse effects on their development. The Committee on the Rights of the Child – and other human rights mechanisms – have unequivocally declared that immigration detention can *never* be in the best interest of a child and that immigration detention of children, whether unaccompanied or together with their families, constitutes a violation of the rights of the child. Consequently, both unaccompanied children and families with children should always benefit from the many rights-based alternatives to detention which exist.<sup>40</sup>

Since 2012, a growing number of UN and regional human rights experts have joined the CRC Committee in finding that immigration detention is never in the best interests of the child, and therefore a clear violation of child rights. What has emerged is a growing clarity and international consensus around the non-detention of refugee, asylum seeker and migrant children when the justification for the use of detention is based on the migration or residency status of the child or of their parents or guardians. [Inter-Agency Working Group (IAWG) to End Child Immigration Detention, Summary of normative standards and recommendations on ending child immigration detention, August 2016.]

It is quite clear that interpretation of international Standards have moved towards ending child detention of migrants and it is fully expected that the joint General Comment by the CRC and CMW expected in 2017 will adopt that same language.

If, a child is deprived of his or her liberty, for reasons not related to their or their parent’s migration status, he or she must be treated with humanity and with respect for the inherent dignity of the human person, and in a manner which takes into account the particular needs of the child’s age and rights. The child should: not be separated from adults unless it is considered to be in the child’s best interests; be allowed contact with family, through correspondence and visits, save in exceptional circumstances; have prompt access to legal and other appropriate assistance; be able to challenge the legality of the deprivation of liberty before a court or other competent, independent and impartial authority; and to have a prompt decision.<sup>41</sup>

### 8. Juvenile offenders

Unfortunately it may happen that criminal proceedings need to be brought against a child non-national – either based on irregular entry or due to illegal activities in the host state.

In these cases it is important to follow the international standards laid down in the CRC and in the United Nations Standard Minimum Rules for the Administration of Juvenile



Justice (known as the Beijing Rules).<sup>42</sup>

Article 40 of the CRC covers the rights of all children charged or sentenced under the penal law. Thus, it embraces treatment from the moment an allegation is made, through the investigation, arrest, charge, any pre-trial period, trial and sentence. The Article requires States to promote a distinctive system of juvenile justice for children (i.e. up to 18 years or the age of majority), with specific positive rather than punitive aims set out in paragraph 1.<sup>42</sup> Article 40 lists minimum guarantees for the child and requires States Parties to set a minimum age of criminal responsibility, to provide measures for dealing with children who may have infringed the penal law without resorting to judicial proceedings and to provide a variety of alternative solutions to institutional care. In all cases, it is important to apply a child-focused approach, so that migrant children are not seen as delinquents but rather as individuals in need of protection, as reflected in the development of international law, which has merged juvenile justice with welfare services and protection.<sup>43</sup> In any case involving a child, States should ensure that the child is treated in a manner consistent with their sense of dignity and worth.

### 9. Employment of children

It has to be recognized that children who migrate very often do so with an economic project in mind and put this into a context of protection. National children often have jobs before they turn 18 and as long as this is carried out without harm to the child it is acceptable. There has to be a difference between “work” and “exploitation”.

Article 10 of the ICESCR states that:

*“States Parties recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development ... States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present Article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular: a) Provide for a minimum age or minimum ages for admission to employment; b) Provide for appropriate regulation of the hours and conditions of employment; c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present Article.*

*Special measures of protection and assistance*

*should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.”*

This Article is integrated into the CRC. Article 32 recognises that work which is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health, physical, mental, spiritual, moral or social development shall be prevented.

Minimum age and regulation of hours and conditions of employment are especially crucial with regard to children. The fact that the Article does not provide details for the content of these regulations is a weakness.<sup>44</sup> Detailed regulations should be enacted and enforced for all children who find themselves in the labour market. The ILO Convention No. 138 establishes that States should set a minimum age for employment or work, which should be no lower than the age of compulsory schooling and in any case not lower than 15 years.<sup>45</sup> Moreover, the ILO Convention aims to protect children from any type of employment or work, which by its nature is likely to jeopardise the health, safety or morals of children.<sup>46</sup>

### 10. Training of personnel dealing with unaccompanied children

The training of officials working with separated and unaccompanied children and dealing with their cases is of the utmost importance for an effective implementation of the rights of unaccompanied children. The training programmes should include the following elements: principles and provisions of the Convention, knowledge of the country of origin of separated and unaccompanied children, appropriate interview techniques, child development and psychology, cultural sensitivity and intercultural communication.<sup>47</sup>

## V. Long Term Options

### 1. Return to the country of origin

All returns must be consistent with respect for the rights (including the rights to dignity and privacy) of the child. Steps to ensure sustainable return include evaluating the safety, security and other conditions, including socio-

economic conditions (effective access to basic social rights such as education, training and health) awaiting the child upon return, which may require home study conducted by social network organizations. In other words, they may only be returned to country of origin if, on arrival, adequate reception and care are available (based on their needs, age and degree of independence). Care can be provided by parents or other adults responsible for the child, or by governmental or non-governmental bodies, it should be obligatory to ensure that a legal guardian is available in the country of origin.

Ideally, the return of separated children, regardless of their status, should be on a voluntary basis. Return will be more realistic if it is voluntary because the child will assist in the necessary processes. This should facilitate better preparation and planning, which in turn should serve to safeguard the child's immediate wellbeing and to ensure a long term and durable solution. Regardless of the level of support, separated children facing forced or involuntary return may opt out of official procedures and avoid statutory support.<sup>48</sup> The consequence of such action is that some separated children may find themselves in the "underground" economy, where the likelihood of harm or abuse will increase. When it is believed that there are exceptional circumstances, the decision to return a separated child against his or her will should always be made in a court rather than during immigration procedures.

### *2. Local Integration*

Local integration is the primary option if return to the country of origin is impossible on either legal or factual grounds. Local integration must be based on a secure legal status (including residence status) and be governed by the Convention on the Rights of the Child's rights that are fully applicable to all children who remain in the country. Once it has been determined that a separated or unaccompanied child will remain in the community, the relevant authorities should conduct an assessment of the child's situation and then determine the appropriate long-term arrangements within the local community and other necessary measures to facilitate such integration.<sup>49</sup>

### *3. Resettlement in a third country (emigration)*

Resettlement (emigration) in a third country may offer a durable solution for an unaccompanied or separated child who cannot return to his/her country of origin and for whom no long term solution can be envisaged in the host country.<sup>50</sup>

Resettlement is particularly appropriate if it is the only means to effectively and sustainably protect a child against *refoulement*, persecution or other serious human rights violations in the country of stay. Resettlement is also appropri-

ate if it serves family reunification in the resettlement country.

### *4. Adoption<sup>51</sup>*

Adoption should only be envisaged once it has been established that all efforts with regard to tracing and family reunification have failed, or that the parents have consented to the adoption in conformity with the standards set up in the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption.<sup>52</sup> The consent of parents and the consent of other persons, institutions and authorities that are necessary for adoption must be free and informed. This supposes notably that such consent has not been induced by payment or compensation of any kind and has not been withdrawn.

Unaccompanied or separated children must not be adopted in haste at the height of an emergency.

Priority must be given to adoption by relatives in their country of residence. Where this is not an option, preference will be given to adoption within the community from which the child came or at least within his or her own culture.<sup>53</sup>



## Principles, Protection Measures and Long Term Options

<b>Principles:</b> <ul style="list-style-type: none"><li>• Non-discrimination</li><li>• Best interests of the child</li><li>• Life and full development</li><li>• Family unity</li><li>• Evolving capacities</li><li>• Participation</li><li>• Confidentiality</li></ul>	<b>Measures to prevent separation</b>
	<u>Initial assessment and measures:</u> <ul style="list-style-type: none"><li>• <i>Non-refoulement</i> obligation</li><li>• Identification of child as separated or unaccompanied / specific vulnerable groups (e.g. victims of trafficking)</li><li>• Registration</li><li>• Family tracing</li></ul> <u>Specific protection needs:</u> <ul style="list-style-type: none"><li>• Temporary care arrangements, including appointment of a guardian, child-appropriate accommodation, access to education, access to health care</li></ul>
	<p style="text-align: center;">Best Interests determination (BID) / Long Term Options</p> <pre>graph TD; A[Best Interests determination (BID) / Long Term Options] --&gt; B[Return to the country of origin]; A --&gt; C[Local integration]; A --&gt; D[Resettlement in a third country]; A --&gt; E[Adoption];</pre>



### Selected Instruments

- Committee on the Rights of the Child, Report of the 2012 Day of General Discussion, The Rights of All Children in the Context of International Migration.
- Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949.
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977.
- ILO Convention No.182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 20 November 1989.
- Convention on the Rights of Child, 20 November 1989.
- CRC General Comment No.6: Treatment of Unaccompanied and Separated Children Outside their Country of Origin, September 2005.
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 25 May 2000.
- Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 25 May 2000.
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 18 December 1990.
- Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, 1993.
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the 2000 United Nations Convention against Transnational Organized Crime.
- Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the 2000 United Nations Convention against Transnational Organized Crime.



## Endnotes

1. § A, European Parliament resolution of 16 January 2008: Towards an EU strategy on the rights of the child (2007/2093 (INI)).
2. Committee on the Rights of the Child, General Comment n°6, Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, CRC/GC/2005/6, 1 September 2005, para. 7.
3. *Ibid.*, para. 8.
4. *Ibid.*, para. 9.
5. See Annex I.
6. General Comment n. 6, op. cit., para. 12.
7. *Ibid.*, para. 18.
8. *Ibid.*, para. 19.
9. *Ibid.*, para. 20.
10. *Ibid.*, para. 21.
11. *Ibid.*, para. 38.
12. *Ibid.*, para. 36.
13. *Ibid.*, para. 37.
14. K. Touzenis, *Human Rights of Migrant Children*, International Migration Law Series No. 15, IOM, 2008, p. 23.
15. *Implementation Handbook for the Convention on the Rights of the Child*, UNICEF, 2002, p. 104.
16. See Article 14, ICRMW, 18 December 1990, U.N.G.A. Res. 45/158.
17. See also Articles 12 and 16(3), Universal Declaration of Human Rights (UDHR); Article 10(1), International Covenant on Economic, Social and Cultural Rights (ICESCR); and Articles 17 and 23, International Covenant on Civil and Political Rights (ICCPR).
18. General Comment n°6, op. cit., para. 81. See also Articles 10(1), CRC and Article 44(2), ICRMW.
19. See Article 33, Convention relating to the Status of Refugees, 28 July 1951, 189 U.N.T.S. 150.
20. See Article 3, CAT, 10 December 1984, U.N.G. A. Res. 39/46, 1465 U.N.T.S. 85.
21. General Comment n. 6, op. cit., para. 26-27.
22. K. Touzenis, op. cit., pp. 22-23.
23. General Comment n°6, op. cit., para. 29.
24. *Inter-agency Guiding Principles on Unaccompanied and Separated Children*, ICRC, IRC, Save the Children, UNICEF, UNHCR, World Vision, 2004.
25. General Comment n°6, op. cit., para. 66. *UNHCR Guidelines on International Protection: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, UNHCR, 22 December 2009.
26. *Inter-agency Guiding Principles on Unaccompanied and Separated Children*, op. cit., p. 35.
27. General Comment n. 6, op. cit., para. 80.
28. *Ibid.*, para. 34.
29. *Ibid.*, para. 40.
30. *Inter-agency Guiding Principles on Unaccompanied and Separated Children*, ICRC, IRC, Save the Children, UNICEF, UNHCR, op. cit., p. 46.
31. *Ibid.*, p. 49.
32. General Comment n. 6, op. cit., para. 42.
33. *Ibid.*, paras 46-48.
34. *Ibid.*, para. 52.
35. *Ibid.*, paras 54-60.



36. U.N. G.A., Human Rights Council, 13th Sess., Report of the Working Group on Arbitrary Detention, Chairperson-Rapporteur: El Hadji Malick Sow, U.N. Doc. A/HRC/13/30 (Jan. 15, 2010) at pp. 24-25, paras 58-61. See also the Working Group's earlier Deliberation No. 5 on the situation regarding immigrants and asylum seekers (U.N. Doc. E/CN.4/2000/4, Annex II (Dec. 28, 1999) at pp. 29-30).
  37. General Comment n. 6, op. cit., para. 61.
  38. *Idem, in fine.*
  39. Committee on the Rights of the Child, Report of the 2012 Day of General Discussion: The Rights of All Children in the Context of International Migration, 78, November 2012, para. 78.
  40. *Implementation Handbook for the Convention on the Rights of the Child*, op. cit., p. 540.
  41. Committee on the Rights of the Child, Report of the 2012 Day of General Discussion: The Rights of All Children in the Context of International Migration, 78, November 2012, para. 78-79
- The Special Rapporteur on the human rights of migrants, Statement by the UN human rights mechanisms on the occasion of the UN High Level Summit on large movements of refugees and migrants, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20516&LangID=E> (accessed October 2016)
1. GA Resolution A/RES/40/33 from 1985.
  2. CRC, Art. 40(1): States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
  3. G. van Bueren, *The International Law on the Rights of the Child*, p. 199.
  4. The details are to be found in ILO Recommendation n. 146, para. 12, which recommends that the conditions under which persons under the age of 18 are employed should be maintained at a satisfactory standard and supervised closely. However the Recommendation does not specify the exact number of hours permissible. It does recommend that the hours be strictly limited both on a daily and a weekly basis. Such limitations are obviously valid for *all* children. Nevertheless, the provisions leave much too broad a margin of appreciation.
  5. ILO Convention 138, Article 2(4) allows for an initial minimum age of 14 years in relation to States with an insufficiently developed economy; Article 2(5) goes on to state that: Each Member which has specified a minimum age of 14 years in pursuance of the provisions of the preceding paragraph shall include in its reports on the application of this Convention submitted under Article 22 of the Constitution of the International Labour Organisation a statement: ( a ) That its reason for doing so subsists; or ( b ) That it renounces its right to avail itself of the provisions in question as from a stated date. One hundred and fifty-seven States are parties to this Convention.
  6. ILO Convention 138, Art. 3.
  7. General Comment n. 6, op. cit., para. 96.
  8. D. Sutton, *Save the Children and the Separated Children in Europe Programme Position Paper on: Returns and Separated Children*, p. 8.
  9. General Comment n. 6, op. cit., para. 89.
  10. *Ibid.*, para. 92.
  11. See Article 21, CRC.
  12. Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, 29 May 1993.
  13. General Comment n. 6, op. cit., para. 91.

### The following IML Information Notes are currently available:

- The protection of unaccompanied migrant children
- International standards on immigration detention and non-custodial measures
- The principle of *non-refoulement*

**The International Organization for Migration (IOM)** is committed to the principle that humane and orderly migration benefits migrants and society. As an intergovernmental body, IOM acts with its partners in the international community to: assist in meeting the operational challenges of migration, advance understanding of migration issues, encourage social and economic development through migration, and work towards effective respect of the human dignity and well-being of migrants.

**The International Migration Law Unit (IML)**, formerly a part of the International Migration Law and Legal Affairs Department, has been established within IOM to strengthen and promote the Organization's involvement in International Migration Law (IML). A key objective of the Unit is to encourage dissemination and understanding both within IOM and amongst IOM counterparts of IML that is a set of legal rules, constrain, regulate, and channel State authority over migration. The Unit thereby promotes migration governance within the rule of law.

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