

“MIGRATIONS AND EARLY CHILDHOOD IN
LATIN AMERICA AND THE CARIBBEAN:
CROSSROADS BETWEEN A NEW REGIONAL SCENARIO,
LEGISLATION AND STATE INTERVENTION.”



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MIGRATING WITH THE EYES OF A CHILD

I used to play at running between roosters and pigs. The animals ran loose, because there were no pens in the village, no fences between houses. On one side of the village is the mountain and on the other side, the sea.

My dad planted watermelons and papaya trees. The field was big, but it was not my dad's. That didn't matter, because we took care of everything as if it were ours: planting, watering. I liked to jump from one furrow to another, to play and to avoid stepping on the plants...

I also liked to hide behind the palm trees. What a laugh it was to see my sister looking for me here and there. The trouble was that Gazul would betray me. He'd come quickly, wagging his tail and putting his nose on my bare feet.

How we laughed, my sister and I, and my mum too. But suddenly things changed! The neighbours stopped sowing. First don Augusto left.

About a year later he returned and took his sons. And the other adults did the same.

In the end, my dad also left and nobody but the women and some children were left in the village.

My mum wanted to sow the field, but the owner said no. She looked for work, but everywhere they paid very little. At the beginning, my father would send us money, but then it stopped. So, one day, my mum put her things in a bag, took us by the hand and we left our house.

We arrived by truck to the tracks of the train and waited there. When the engine appeared in front of us it was scary; it looked like a beast. The train never stopped and we had to get on it on the move. I was nearly left behind, but my sister managed to pull me on.

A short man also pushed at me to help me, but he was not able to climb on. Running was not fun this time.

Neither was it fun when I had to hide. The train stopped and everyone that was up on the roof of the cars, got off in a hurry. My mum pushed us into a hole and lay down on top of us. It was at night. I could see that some people were being chased and put on some yellow lorries. We stayed in the hole until the sun rose.

That time, I was afraid of being caught, because if they catch you, you disappear... Disappear, that's what a lady who helped my mother said. Then I was very scared when we jumped over a fence, because some policemen arrived who released their dogs... but then they called them back, who knows why...

That's how we got really close to Los Angeles. In the city there are buildings, huge highways, giant shops and... the truth is, I haven't seen anything, but that's what we were told.

There are many people living in the house where we are, some people are even from other countries... but they must come from villages like ours, because we're all alike. The good thing about having come is that they gave us work: we'll start by cleaning houses.

Well, I can't write anymore because they're turning the light out.

Tomorrow we're going out to ask about my dad. He may be close by, but in a different neighbourhood. Maybe we can even get to see the buildings or the neon signs or something... I wonder what Gazul is doing? My poor little dog, he didn't like to be left alone... and how I miss my house!

José Manuel Mateo. MEXICO.

INTRODUCTION

IMAGES OF THE SHIPWRECK

Two images could provide a metaphorical synthesis of the horror of the twentieth century. The first is the mushroom of death; the incandescent column of smoke rising into the sky over Hiroshima on 6 August 1945: the mushroom of fire. The second is not as specific; it is the sum of the profiles of different concentration camps installed by Nazism in Europe during World War II: the synthesis of the Holocaust. Science and culture at the service of power and its delusions. A representation of having become the only species capable of extinguishing itself by choice. We abhor the Bomb and the Death Camps, but we prefer to ignore their effects, as Jorge Volpi would say in the foreword to *Lluvia negra* ["Black Rain"] (Ibuse, 2007).

"Nobody wants to remember the burnings, the corpses. Even less, the survivors. Those who lived to tell about the shock and the horror. They are the last witnesses of what we humans actually are."

At the start of the 21st century, two other images can also serve as a representation of the current contempt of a powerful and increasingly rich world towards a weaker, more vulnerable and violated one. The first is the depiction of Aylan Kurdi, a three-year-old Syrian boy found drowned on the shores of the Mediterranean, while trying, with some of his family, to escape the war that is raining bombs on homes, fields, schools and hospitals in their native Syria. The other portrays Valeria Martínez Ramírez, who before her second birthday, and after travelling three thousand two hundred kilometres with her father to escape poverty and the meaningless Salvadoran violence, drowned in the waters of the Rio Grande, without ever knowing what her future could have been.

Both images bring us closer than ever before to a particular relationship, that of the youngest of children with the growing global phenomenon of international migration. This link between early childhood and migration represents a network that entails a complex approach. It is a social issue that includes a number of different actors, tensions, and representations, highly heterogeneous with regard to legal responses and in the implementation of public policies aimed at recognizing and safeguarding the rights of children and their families, mainly women, who take on the cultural mandate of providing care for the new generations.

Will we be able to accept without protest that these representations of reality must be inserted on the canvas on which this era is portrayed in history? Just as we have incorporated the mushroom cloud and concentration camps as assimilated expressions of human culture, will we allow thousands of children to lose their lives and their rights trying to achieve different family and economic contexts than those that are offered in their homelands? Or will we be able to offer an alternative that includes them, cares for them, safeguards their present and their future?

In his work, "Global Inequality" (2017), Milanovic draws attention to the existence of walls, fences and minefields, where the rich world and the poor world are in close physical proximity. No borders, but visible barriers: "...where we see neighbouring countries (either by land or water) with

large income differences, there shall we find the places with the greatest barriers to migration” (p. 169).

This work was sponsored by Horizonte Ciudadano Foundation as part of a project called “Convergence for Action: network of leaders for beginnings with a future”, implemented in partnership with the OAS’s *Inter-American Children’s Institute*. Its aim is to determine and define international migration in Latin America in the last decade, giving an account of the network of complex relationships established between migration processes and children in early childhood and their families, in terms of characterization, the migratory flows that they are involved in, numbers of migrants by country, the reasons or causes of migration, its consequences and impact on early childhood, and other matters. Managing migration and the social phenomena that it entails is without doubt one of the greatest challenges facing contemporary societies.

In this regard, we intend to describe the key ideas, definitions and pressure points that the academic world recognizes in relation to this phenomenon, arising from the States in general and from some significant voices in the international community. We shall also present a series of data on international migration in the region, and the main relationships established between the processes of human mobility and early childhood.

This first approach will make it possible to later focus on the two main instruments available to States to intervene in such a complex matter: legal norms and public policies that aim to ensure the rights of migrant children and families.

This study aims to contribute to the recognition of the vastness of this public problem, in order to confront it, and to offer new generations an accessible, friendly, inclusive and happy world.

METHODOLOGICAL APPROACH

The methodology used to address the complex and multidimensional involvement of early childhood in migration was based on the analysis of secondary sources of information, on an examination of the literature and specialized papers and on consultation with government and international organization experts in various countries in the region.

In preparation for this paper, a comprehensive form was sent to all national bodies for children in the region, which covered both legal and programmatic matters, as well as the identification of the main issues discussed in each country in relation to the subject (see appendix 1). From consultation with 19 national agencies,¹ we obtained responses from six,² whose valuable information has been included throughout the study.

The low number of responses may be interpreted in many ways, but in view of the evidence gathered throughout the study, the main reason must be the lack of involvement of protection agencies in migration issues. This is reflected in the absence of specific “focal points” and limited information management. What they handle is the caseload referred from other agencies and through pathways to which the vulnerable population as a whole has access.

¹ With the exception of Cuba and Venezuela.

² Costa Rica, Honduras, El Salvador, Guatemala, Mexico and Nicaragua.

We complemented the low number of responses from the States with interviews conducted with specialists in the region, both in international agencies and specialized NGOs. These specialists were selected according to regional criteria, making sure that all subregions were represented in the research study. In addition, we collected the contributions of members of international organizations such as IOM and UNICEF, who provided an overview of the topic.

Interviews with specialists in the region³ were conducted via video conference or telephone communications. Discussions were then processed by the research team and opinions were included in this final report.

This is an exploratory and qualitative study. Its purpose is to identify within the territorial and institutional context of Latin America and the Spanish-speaking Caribbean,⁴ the phenomena linked to human mobility that involve children in early childhood, the predominant theoretical and interpretive frameworks, and regulatory developments, the development of public policies for State intervention in these matters and gaps arising between the enactment of laws and the implementation of policies.

This process aims to identify findings and provide recommendations to the countries of the region, international agencies, specialists and members of the Leaders Network, the IIN and the Horizonte Ciudadano Foundation and its contributing partners.

The study begins with an approach to the phenomenon of migration in general, recognizing that human mobility can be traced throughout the history of humankind, and is the outcome of wide-ranging and highly complex processes currently affecting most countries in the world. The International Organization for Migration indicates that there are more than 258 million international migrants in the world at present. One in every 30 persons is a migrant.⁵

Latin America and the Caribbean do not escape that reality, including in its extensive and widespread geography countries of origin or return, transit or destination of migrants.

People who migrate undergo multiple experiences; they may be pushed out by economic, cultural, or family factors, by political violence, domestic violence, and other causes, usually in the hope of building a better life than the one they leave in their place of residence. International experience recognizes a continuum in the inequality affecting migrants in their countries of origin, or in their transit or movement, as well as in the societies in which migrants attempt to insert themselves. The social position of migrants tends to reproduce and multiply itself owing to a variety of converging inequalities: gender, age, ethnicity, religion.

To account for the different types of human mobility this paper resorts to the sociology of migration and the various academic positions in this regard. At least two dominant paradigms have been identified among the States and international agencies; the paradigm of national security and the paradigm of migrant rights.

³ Diego Llorente, UNICEF; Javier Palummo, IPPDH; Giovanna Rizzi, SICA; Águeda Marín, IOM; and specialists Otto Rivera, of Guatemala; Juan Martín Pérez García, of Mexico; Pilar Uriarte, of Uruguay; and Nicolás Reyes, of Ecuador.

⁴ Argentina, Bolivia, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay. Brazil is included at several points in the study; while it is not a Spanish-speaking country, it shares migration issues with the rest of the region.

⁵<https://www.iom.int/migrantsday2017>

The feminization of international human mobility is an increasingly visible trend. Millions of women are now undertaking the same journeys as men, either to join them in the destination country, to accompany them in their migration, or taking a leading role by making their own decision to migrate alone or with their children. This phenomenon has led to a related effect; the involvement of children under the age of five or six. Early childhood also migrates.

This paper explores the multilevel system of international instruments for the protection of human rights as applied in the region, linked to the issue of the human rights of migrant children in early childhood. We address the regulatory framework by dividing it into three supranational levels: a) the universal level (United Nations System for the Protection of Human Rights); b) the regional level (Inter-American Human Rights Protection System); c) the subregional level (Regional Conference on Migration and Mercosur).

After identifying four human rights dimensions as related to children and families in early childhood: identity, health, care and education, as well as social protection, we carry out an in- depth analysis of existing rules in each country that are linked to these rights. The dimensions selected are closely linked to the principles of comprehensive protection and the best interest of the child, as addressed in the Convention on the Rights of the Child (1989).

On the basis of our review of secondary and documentary sources and the interviews conducted by the research team with officials and reference points in international organizations and civil society who are key in the region, we have attempted to examine the legislative map by linking norms with the implementation, or lack of it, of public policies, plans, programmes and agencies designed to satisfy the rights of migrant children in early childhood. The following illustration depicts the methodology described:

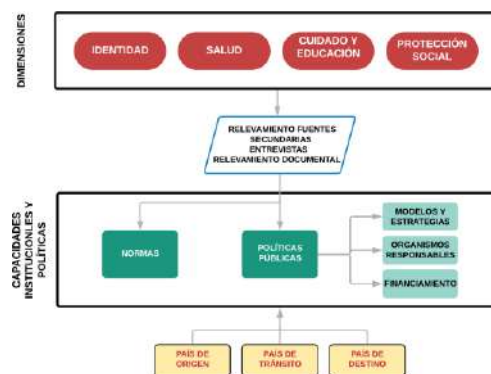


Illustration 1 Methodology matrix for the study

DIMENSIONS	IDENTITY	HEALTH	CARE AND EDUCATION	SOCIAL PROTECTION
	REVIEW OF SECONDARY SOURCES INTERVIEWS DOCUMENTARY REVIEW			
INSTITUTIONAL AND POLITICAL CAPACITY	LAWS	PUBLIC POLICIES	MODELS AND STRATEGIES BODIES RESPONSIBLE FUNDING	
	COUNTRY OF ORIGIN	COUNTRY OF TRANSIT	COUNTRY OF DESTINATION	

As adult society, over the centuries, has established institutions for the protection of the new generations, today the international community and national governments discuss how to consider and find answers to the challenge of the presence of young children in migration.

The universe of public policies aimed at early childhood generally in LAC, and most especially, at the invisible world of migrant early childhood, displays components that it is necessary to place within a framework in order to understand their characteristics, and significant achievements and obstacles. This is a heterogeneous field with its multiple universes, identities, meanings and formats; fragmented in its institutional, normative, discursive and programmatic dependence; and uneven in relation to the quality of its services, the scope of its coverage and the availability of financing. These areas of analysis make it possible to identify strengths and weaknesses, when the aim is to achieve the highest levels of child welfare, expressed in terms of rights for all of the children in the region.

GLOSSARY

• Migration

The International Organization for Migration (IOM) defines it as “The movement of a person or group of persons from one geographical unit to another across an administrative or political border, and wishing to settle permanently or temporarily in a place other than their place of origin” (IOM, 2012).

The National Population Council (CONAPO) defines migration as the movement of people who change their usual residence from one political-administrative unit to another within the same country, or who move from one country to another in a given period. It emphasizes the difference between internal migration, which takes place within national borders and international migration, which refers to the movement of a person or group of people from one country to another.

Ruiz García (2002, p. 419), who specializes in Oaxacan migration, defines migration as “the movement of persons wishing to change their residence from a place of origin to another destination, across a geographical boundary which is usually a political or administrative division”.

Kearney and Besserra (2004, p.4) consider migration as “a movement that crosses a significant boundary determined and maintained by a political regime – a formal or informal arrangement – so that crossing it affects the identity of the individual”.

• Migrant

IOM defines a ‘migrant’ as “a person who moves away from his or her place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons” (IOM, 2019). At the level of international law, there is no universally accepted definition of ‘migrant’.⁶

• Emigrant

⁶<https://www.iom.int/who-is-a-migrant>

From the perspective of the country of departure, a person who moves from his or her country of nationality or usual residence to another country, so that the country of destination effectively becomes his or her new country of usual residence (IOM, 2019).⁷

• Immigrant

From the perspective of the country of arrival, a person who moves into a country other than that of his or her nationality or usual residence, so that the country of destination effectively becomes his or her new country of usual residence (IOM, 2019).⁸

• Migrant children

The Mercosur’s Institute for Public Policy on Human Rights (IPPDH) defines migrant children as foreign persons who have not attained 18 years of age, and who are at the border with the intention to enter, or within the national territory with intent to remain or reside.

• Child refugees

On the basis of Article 1 of the Convention relating to the Status of Refugees and the Cartagena Declaration on Refugees of 1984,⁹ we can define refugee children as those children and adolescents who have fled their home countries due to a well-founded fear of being persecuted for reasons of membership of a particular ethnic or social group, gender, race, religion or political affiliation.

• Unaccompanied children and youth

Are children [...] 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

⁷https://publications.iom.int/system/files/pdf/iml_34_glossary.pdf

⁸https://publications.iom.int/system/files/pdf/iml_34_glossary.pdf

⁹<https://www.unhcr.org/3b66c2aa10>
<https://www.unhcr.org/about-us/background/45dc19084/cartagena-declaration-refugees-adopted-colloquium-international-protection.html>

responsible for doing

so (Committee on the Rights of the Child, 2005, General Comment Nº 6. Treatment of unaccompanied and separated children outside their country of origin).

- **Separated children**

Are children [...] who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. (Committee on the Rights of the Child, 2005, General Comment Nº 6. Treatment of unaccompanied and separated children outside their country of origin).

- **Early childhood**

While there are differences from one country to another with regard to what is understood by early childhood, in this paper, it is understood as the period between birth and school entry, which includes the first year of life and the preschool period through the transition to school (UNICEF, 2005).

“Definitions of early childhood vary in different countries and regions, depending on local traditions and the organization of elementary education. In some countries, the transition from preschool to the school stage takes place just after the age of four. In other countries, this transition takes place at around the age of seven” (IIN-OAS, 2012).

PRINCIPLES AND STANDARDS OF PROTECTION FOR MIGRANT CHILDREN AND YOUTH

International human rights law, a body of law consisting of instruments of different content and legal value, establishes certain principles and standards to guide the actions of public bodies and civil society organizations regarding the protection and promotion of the rights of children and adolescents in the context of human mobility.

These principles are enshrined in international treaties dealing with the protection and promotion of the rights of migrant children, such

as the Convention on the Rights of the Child, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, Advisory Opinion 21/14 of the Inter-American Court of Human Rights and Joint General Comment No. 3 and No. 22 of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and the Committee on the Rights of the Child.

- **Special protection**

This principle highlights the priority that should be afforded to the regulatory and institutional framework for child protection; that is, that the status of being a child or adolescent should be considered primarily, before his or her migratory situation.

In this respect, it is the opinion of the Inter-American Court of Human Rights that “[...] States must accord priority to a human rights-based approach, from a crosscut perspective that takes into consideration the rights of the child and, in particular, the protection and comprehensive development of the child, which should have priority over any consideration of nationality or migratory status, in order to ensure the full exercise of their rights [...]” (Inter-American Court of Human Rights, 2014, Advisory Opinion 21/14, operative para. 2).

The Committee on the Rights of the Child and the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families have also given their opinion in this regard, stating that “States should ensure that children in the context of international migration are treated first and foremost as children” (Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child, Para. 11).

- **Best interest of the child**

According to the Convention on the Rights of the Child, the best interest of the child is the principle that should guide all measures taken in relation to the protection of children’s rights. Its purpose is to ensure full and effective enjoyment of all rights,

as well as the comprehensive development of children. In human mobility situations, this principle should be borne in mind most particularly, especially in relation to children and adolescents in highly vulnerable situations, where special protection measures are required (IPPDH, 2019).

The Committee on the Rights of the Child and the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families consider it necessary to perform systematic assessments of best interest and best interest procedures, as part of the decisions related to migration or to influence them. *“A ‘best-interests assessment’ involves evaluating and balancing all the elements necessary to make a decision in the specific situation for a specific individual child or group of children”* (Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child, Para. 31).

The Global Compact for Safe, Orderly and Regular Migration recognizes that the compact is based on a set of cross-cutting and interdependent guiding principles, among which the child’s perspective is included. *“The Global Compact promotes existing international legal obligations in relation to the rights of the child, and upholds the principle of the best interests of the child at all times, as a primary consideration in all situations concerning children in the context of international migration, including unaccompanied and separated children; [...]”* (Global Compact for Safe, Orderly and Regular Migration, Para.15).

- **Non-discrimination**

In terms of migration, the Committees have noted that this principle, provided for in both the Convention on the Rights of the Child and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, should be a focus of attention for all migration policies and procedures, and calls on the States to combat discrimination, not only by eliminating it in the legal framework, but also by promoting positive actions that eliminate it in practice (Joint general comment No. 3 (2017) of

the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child, Para. 26)

- **Non-custodial measures**

Detention is a measure of last resort; that is, as far as possible, detention should not be an option. The deprivation of liberty of children and adolescents may not be justified on the grounds that they are unaccompanied, have been separated or owing to their migratory or residence status, or lack thereof (Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child).

- **Non-refoulement**

This is a fundamental principle of international humanitarian law. It states that no person (adult, child or teenager) may be returned to the country from which they have fled. In the case of children and adolescents, this principle extends to other situations involving violations of rights.

- **Right to life, survival and development**

The committees have pointed out the obligation of States to “[...] include the prevention and reduction – to the maximum extent possible – of migration-related risks faced by children, which may jeopardize a child’s right to life, survival and development. States, especially those of transit and destination, should devote special attention to the protection of undocumented children, whether unaccompanied and separated or with families, and to the protection of asylum-seeking children, stateless children and child victims of transnational organized crime, [...]” (Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child, Para. 42).

- **Family unity**

Unaccompanied or separated children must have access to flexible mechanisms that allow them to reunite with their parents or guardians. All children and adolescents have the right to have a family, and families to care for their children. This refers to the right to family reunification.

The Committees underline that States must comply with their international legal obligations in relation to maintaining family unity and preventing family separation. “Protection of the right to a family environment frequently requires that States not only refrain from actions which could result in family separation or other arbitrary interference in the right to family life, but also take positive measures to maintain the family unit, including the reunion of separated family members” (Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child).

- **Right to be heard**

According to the terms of Article 12 of the Convention on the Rights of the Child, in the context of migration, it is essential to ensure the right of children and adolescents to be heard. Many children who are displaced from their homes undergo situations of particular vulnerability. For this reason, they should be able to express their views on all aspects that affect their lives, especially when it comes to migration and asylum procedures.

The Committee on the Rights of the Child has emphasized the importance of providing children and adolescents with all necessary information, in accessible terms according to their age, and in their own language, particularly as regards their rights, available services, reporting mechanisms

and migration and asylum procedures, so that they may effectively exercise their right to participation.

In relation to this principle, the Committees have expressed the importance of active participation not only as regards their own immigration procedures, but also in those of their parents; as well as “[...] in the design, implementation, monitoring and evaluation of policies that could directly or indirectly affect them, as individuals or a group, including in the fields of social policies and social services [...]” (Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child, Para. 39).

- **Focusing on childhood in migration policies and adjusting procedures**

The Committees have noted that “States parties should develop policies aimed at fulfilling the rights of all children in the context of international migration, in particular regarding migration management objectives or other administrative or political considerations” (Joint General Comment No. 3 and No. 22, Para. 15).

The Inter-American Court of Human Rights, considers “[...] that apart from offering certain minimum guarantees, the procedural mechanisms that the States adopt must be designed, in accordance with the practice generally followed, to achieve the following basic priority objectives:

(i) treatment in keeping with the child’s condition as such, [...]” meaning that any mechanism applicable in this matter should be amended to include the necessary elements to permit such treatment (Inter-American Court of Human Rights, 2014, Advisory Opinion OC-21/14, Para. 86).



CHAPTER 1

IDENTIFICATION, FEATURES AND DEBATES ON THE PHENOMENON OF INTERNATIONAL MIGRATION IN LATIN AMERICA AND THE SPANISH-SPEAKING CARIBBEAN.

CHAPTER I. IDENTIFICATION, FEATURES AND DEBATES ON THE PHENOMENON OF INTERNATIONAL MIGRATION IN LATIN AMERICA AND THE SPANISH-SPEAKING CARIBBEAN

SECTION 1. THE PHENOMENON OF MIGRATION

1.1. INITIAL APPROACHES

Human displacements from one territory to another have always existed. Currently, addressing this phenomenon is limited in a skewed manner to three scenarios: the academic field, political urgencies, and sensationalist pseudo-journalism in certain segments of the communications market. In this respect, it is crucial to identify certain common themes that extend between concepts and the expression of migration problems at present. And particularly those affecting millions of children.

Regarding migration across the board and over time (Estrada, 2017), Castles and Miller have offered an appropriate classification, which is explained by Ligia Aurora Sierra (2006, p.140) in her work *Un acercamiento a los conceptos de migración y mercado de trabajo en un contexto urbano* ["An approach to the concepts of migration and labour market in an urban context"]: a) pre-modern migrations, carried out before 1850 in connection with invasions, conquests, colonizations and collective expulsions, whose criteria were determined by domination and force; b) modern migrations that occurred during the period 1850-1973, which feature the influence of industrialization and movements of workers motivated mainly by economic factors, and; c) contemporary migration, taking place after 1973, also due to economic factors, but carried out in the context of globalization, owing to which migration patterns have changed.

According to these authors, the migration patterns that have been modified in contemporary migration are: the acceleration of globalization, migration differentiation, the feminization of migration and the growing polarization of migration. International migration is a global phenomenon with significant effects on the people and territories involved. As Saskia Sassen (2010) has already pointed out, "the new phase of advanced capitalism is characterized by a marked increase in the number of people who have been expelled" (Sassen, 15 June 2010). The phenomenon of migration is visualized from a global perspective, with processes and actors under the spotlight.

Milanovic identifies four basic features of migration, each of which involves some kind of pressure point. First, the right of citizens to leave their own country and the lack of the right to move anywhere else. Second, the tension between encouraging the free movement of all factors of production, goods, technology and ideas (basic components of globalization), and the strict limitation on workers' right to mobility. Third, the tension between the economic principle of maximizing income, and the application of that principle only within individual States and not worldwide. And fourth, the tension between the concept of development that emphasizes the development of people within their own countries and the broader development concept that focuses on improving the position of an individual no matter where he or she lives.

International migration is a wide-ranging and highly complex phenomenon that affects most countries in the world. The International Organization for Migration (henceforth, IOM) indicates that there are 258 million international migrants in the world, one out of every 30 persons is a migrant.¹⁰ The countries in this region are not free from this reality, the vast majority of States are originating or return, transit or receiving countries.

Migrants include a numerous variety of stories, features and migration factors (economic, cultural, family or other), usually coming together in the hope of building a better life than they have in their home countries.

Human mobility is not a new phenomenon in the history of humankind, human beings have always migrated, moving away from their places of birth or residence for many reasons. In an era of increasingly pervasive globalization, migration concerns all States, as it is closely related to geopolitical factors, trade and cultural exchange. Latin America was built on the basis of a set of demographic rearrangements that helped to consolidate the diverse cultural fabric that characterizes our continent.

Migration is not an isolated phenomenon which can be analysed, discussed and regulated effectively without bearing in mind a number of important interrelations between: 'space' (for example, between the policies of different countries), the extent and degree of governance (e.g. connections between the structures of municipal, regional, national, supranational and global governance); migration types, categories and policies (e.g. links and often fuzzy boundaries between migration for work or study or for family or security reasons); 'time' (e.g. involving temporary and permanent migration flows and policies); and migration and broader public policy (such as employment policies, social welfare, education and training, and housing, among others).

Class inequalities, as an expression of dominant social relations, traversed by the material conditions of individuals and family groups, the goods and services to which they have access, and group identities or ethnicity, mark the whole migratory process. Contemporary migration patterns have become more complex owing to the acceleration of globalization, migration differentiation, the feminization of migration and the growing polarization of migration.

¹⁰<https://www.iom.int/migrantsday2017>

A synthesis of this patchwork can be found in the work of Kosinski and Prothero (cited in Herrera-Carassou, 2006, p.70) who classify the different types of migrations as follows: in terms of time, temporary or permanent; in terms of distance, short or long; in terms of borders, internal or external; in terms of area units, communities, counties, states and provinces; in terms of decisions, voluntary or forced; in terms of numbers, individual or mass; in terms of the social organization of migrants, families, clans, individuals; in terms of political situations, sponsored or free; in terms of causes that trigger them, economic or non-economic, and; in terms of aims, conservative or innovative.

International experience recognizes a continuum in the inequality affecting migrants in countries of origin, transit or displacement, and in the societies in which migrants attempt to insert themselves. The social position of migrants tends to reproduce and multiply itself owing to a variety of converging inequalities: gender, age, ethnicity, religion.

1.2. THE ACADEMIC PERSPECTIVE: ANALYSIS MODELS

Academic literature recognizes the existence of two broad trends over time. One focuses on an analysis from the perspective of the host society (impact on the labour market, cultural dichotomies and tensions, the legal perspective linked to citizenship and immigration, and the impact on the social structure, either from a functional perspective or as social fracture). The other focuses on the perspective of the originating societies, and emphasizes the causes of collective or individual migrations and the social processes that operate in sending communities before, during or after migration. **On the basis of the recognition of the multidimensionality of the problem, new directions have been opening up in the field of research, which are addressed in a multidisciplinary manner.**

The vast majority of academic approaches recognize that, beyond their individual dimensions, there are structural factors that explain the current upscale. Thus, in order to understand migration, we analyse the various forms of interaction between individual and structural elements.

According to Ribas Mateos (2004), migration as a research field integrates a series of contradictions in its perspectives or approaches: domestic versus international, voluntary versus forced, temporary versus permanent, regular versus irregular. To which is added a tendency to capture isolated moments of the migration process (mobility, integration, residential segregation, citizenship, return, etc.) and/or to segment the group of human migrants into smaller units (male migration, female migration, youth migration, family migration, etc.).

The same author has identified a number of theoretical analysis models for international migration.¹¹ The first is the **push-pull** model, which presupposes that to maximize the benefits and reduce risks, human beings must make decisions rationally

¹¹ Natalia Ribas Mateos: Marie Curie Fellow at the Laboratoire Méditerranéen de Sociologie Aix-en-Provence in France and at the Centre for Migration Studies in Sussex in the United Kingdom.

based on certain pressures to which they have been subjected. Economic and political pressures in migrants' point of origin cause them analyse the maximization of geographical mobility for social advancement and to seek job opportunities and poverty reduction. Pressures arising from housing shortages, unemployment, low wages, environmental situations, and other issues, push individuals away from their places of origin. Push factors are based on the attraction of another place arising from the possibility of modifying the issues generating expulsion.¹²

Another theory, identified as being conceptually close to the previous one, is that of **individual action**. It is the outcome of the attempt to find a balance between push and pull, and interprets migratory flows and processes on the basis of cost-benefit analysis, prioritizing an approach based on the analysis of individual behaviour.¹³ In the same lines, but beyond the individual perspective, is the idea that migration projects respond, rather than to an individual decision, to a strategy arising from the domestic unit, to minimize financial risk. This theory subsequently gave rise to studies focused on the feminization of migration, a gateway to the identification of the impact of migratory movements on early childhood.

Social capital theory¹⁴ aims to answer the question of why, in the same situations, some individuals migrate and others do not; why some families move and others do not. One of the useful elements of this theory is the valuation reached by analysing how the social networks of immigrants make use of social capital. This includes networks of containment and reception, chain migration, ethnic entrepreneurship and the adaptive capacities of second generations of migrants. The importance of networks makes an appearance again here in defining and sustaining the economic strategies of family units, where the weight of gender relations is foundational and decisive. According to studies subscribing to this theory, the social networks, which provide support for many migratory experiences, have become one of the most efficient tools for the integration of migrant family groups. They are determining factors for the swift containment of families with young children, as they offer shelter, information, food support, and greater access to the services and goods available in countries of destination for younger migrants with limited independence. Key to early childhood and its ability to sustain itself as a relevant actor in migratory processes are the observations that this theoretical perspective offers on the place of networks, as these

¹² See the classic works of Ravenstein (1852-1913) and Lee (1969). This traditional explanation has been brought into question by several authors, such as Portes and Borocz (1989) and mainly Sassen in her work *The Mobility of Labor and Capital* (1988), in which she relates the field of the migration of international work to the literature on trade and investment, recognizing a process identified with industrial relocation, which is expressed in the creation of free zones in the border areas of Mexico (*maquilas*), among other examples.

¹³ Borjas (1993) focuses on an analysis of the microeconomic advantages chosen by migrants in the context of the laws of the international market, a "global migration market" where individuals calculate the benefits of staying as opposed to the benefits of leaving. If the benefits outweigh the costs, individuals choose migration.

¹⁴ Bourdieu (1979) coined the concept of cultural capital, and Coleman (1988) subsequently applied the idea of social capital. Theories of human capital consider educational factors to be fundamental in the selection of workers and in achieving economic resilience in the destination country.

operate by prioritizing reciprocity based on vicinity and kinship networks, links and contacts.¹⁵

In this line, **social mobility** is another of the theories that seek to explain migration. The debate revolves around the attempt to understand how the perspective of the individual as social actor (agency) relates to the perspective of the social structure (structural frame), the relationship between micro and macro. It seeks to address the issue of how social mobility mainstreams both the area of the originating society (issuing) and the social area, structures and social hierarchies of the host society.¹⁶

Other sociological interpretations can be found in **historical-structural** analyses, as well as in the **core-periphery** model, which introduces the perspective of migration as part of the internal dynamics of the global capitalist system, explained by the expansion of the centre to the detriment of the periphery.¹⁷

1.3. BETWEEN TWO PARADIGMS: STATE SOVEREIGNTY VERSUS THE RIGHT TO MIGRATE

While sociological theories provide a historical-conceptual framework that outlines the different ways of interpreting human mobility, within government agencies of the States in the region two dominant and contradictory paradigms may be identified in relation to addressing the phenomenon and defining migration policy: ¹⁸ a) the paradigm involving national security, based on the principle of exercising State sovereignty, and b) the Human Rights paradigm, which recognizes migration as a human right.

Surel (1995) identifies a theoretical link between ideas and collective action, where 'new contexts' or 'paradigms' are the cumulative effect of challenging existing public policies. Hall (1986) notes that similar paradigm shifts take place in different countries at different times and through different political processes.

The way the phenomenon is perceived and the issue is defined determine the public policies that States implement, or fail to implement, in order to address migration. In this respect, we can identify some particular features that characterize human mobility in Latin America, where new challenges have emerged over the past decade, with data showing that 70% of the immigration flow is intraregional (IOM, 2018).

¹⁵Portes (1997) considered three contextual factors affecting the migration process in this analysis model: recipient government policy, labour market conditions and the characteristics of migrants' own ethnic communities.

¹⁶Alba and Nee (1997) indicate that the assimilation process can acquire different forms according to the migrant group under analysis.

¹⁷Along these lines we can include development theories, which had a strong impact in the region in the 50s and 60s, led by Cardoso and other Latin American thinkers, who conceived 'underdevelopment' as opposed to 'development', opposing aspects of the expansion of capital.

¹⁸Public policy analysis specialists (Hall, 1993; Surel, in Faure, Pollet and Warin, 1995) take an interest in the concept of paradigm because it makes it possible to specify the recurring features of public action models and, therefore, to address the changes in these models.

If States perceive migratory flows that arrive in their territory as a threat to their sovereignty, they will prioritize security; this will lead to designing policies that will put tighter border controls in place, as well as social tensions and punitive demands. These policies generate and nourish a social imaginary about the migrant as a threat to internal order and social cohesion, loss of jobs, economic crises and criminalization; triggering public opinion rejection and widespread unrest against “foreign invasion” (Mármora, 2010), which gives social support to actions and policies that violate rights in the name of an alleged defence of sovereignty. As Velázquez (2017) notes:

“... while it is true that there is an international human rights framework that establishes principles of non-discrimination and equal treatment, and guarantees the protection of most human rights to all people, in practice the States systematically shirk their responsibilities in this matter with regard to migrants. They use discrimination and the destitution of children and families as a measure of security control. National political discourse barely creates opportunities to talk about migrant children and the problems they face. The result is general public and political acceptance that the exclusion of these children and adolescents from their human rights can be justified.”

In contrast, if the idea prevails of migration as a phenomenon framed in human rights, which can be read as both an opportunity for enrichment for the host society and a solution to the stresses of the expelling society, policies will aim to promote and facilitate integration, minimizing conflicts and ensuring the best use of cultural contributions and human resources, placing them at the service of a project for social development.

Admittedly, these positions are dynamic, and in many of the countries in the region there are tensions, conceptual and political confrontations, fluctuations, advances and setbacks in both positions; owing to different situations, one wave may prevail over another at a particular time, and vice versa. This diversity with regard to how migration is observed and understood, marks a starting point for the establishment of standards and public policy.

In addition to recognition, the rights-based perspective needs to become a system of values and meanings that can lead the dismantling of conceptions rooted in security and expulsion, which marginalize actions seeking to safeguard the human rights of migrants, and especially children and adolescents. Children require extensive frameworks for protection, since their status as children/ adolescents, in a condition of human mobility, doubles their vulnerability.

1.4. THE VOICES OF THE WORLD

International migration is an issue involving, in discourse and practice, a fair number of international organizations, and some of them offer definitions on the subject:

International Organization for Migration

“International migration is a complex phenomenon that touches on a multiplicity of economic, social and security aspects affecting our daily lives in an increasingly interconnected world. Migration is a term that encompasses a wide variety of movements and situations involving people of all walks of life and backgrounds. More than ever before, migration touches all States and people in an era of deepening globalization. Migration is intertwined with geopolitics, trade and cultural exchange, and provides opportunities for States, businesses and communities to benefit enormously. Migration has helped improve people’s lives in both origin and destination countries and has offered opportunities for millions of people worldwide to forge safe and meaningful lives abroad. Not all migration occurs in positive circumstances, however. We have in recent years seen an increase in migration and displacement occurring due to conflict, persecution, environmental degradation and change, and a profound lack of human security and opportunity. While most international migration occurs legally, some of the greatest insecurities for migrants, and much of the public concern about immigration, is associated with irregular migration.”¹⁹

New York Declaration for Refugees and Migrants

“We will protect the human rights and fundamental freedoms of all refugee and migrant children, regardless of their status, and giving primary consideration at all times to the best interests of the child. This will apply particularly to unaccompanied children and those separated from their families; [...]”²⁰

Organization of American States

“The countries of the hemisphere recognize the right of all persons to leave any country, including their own, and return to their country, and are interested in optimizing procedures and practices of cooperation that facilitate safe, regular and orderly migration, including labour mobility, in order to maximize the positive impacts and mitigate the hardships posed by the migration phenomenon. [...]”²¹

Inter-American Court of Human Rights

Children migrate internationally for a wide variety of reasons: to seek opportunities, whether economic or educational; to seek family reunification to reunite with family members who had previously migrated; to move from their place of residence owing to gradual or sudden changes in the environment that

¹⁹IOM. World Migration Report 2018.

²⁰United Nations General Assembly, 2016, New York Declaration for Refugees and Migrants, para. 32. Available at https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_71_1.pdf

²¹Inter-American Program for the Promotion and Protection of the Human Rights of Migrants, Including Migrant Workers and their Families

*adversely affect their life and living conditions; to flee from the impact caused by organized crime, natural disasters, domestic abuse, or extreme poverty;*²²

Cartagena +30, Brazil Declaration²³

“A Framework for Cooperation and Regional Solidarity to Strengthen the International Protection of Refugees, and Displaced and Stateless Persons in Latin America and the Caribbean”

The States agree to [...] “Promote the assessment of the protection needs of accompanied and unaccompanied children and adolescents, including their access to refugee status determination procedures, and emphasize that all considerations in this matter should be governed by the principles recognized in the Convention on the Rights of the Child, in particular the best interests of the child and non-discrimination, seeking to preserve family unity and recognizing children as persons entitled to rights and special protection.”

1.5. GLOBAL MIGRATION

As noted by the positions and documents of international organizations, regional and global agreements and specialized studies, a large majority of people do not at first cross a border when they migrate; it is much more common that they initiate a migration cycle within the same country. According to IOM, in 2009 there were already 740 million internal migrants.²⁴ The complexities of migratory processes within the countries of the region require special treatment that is beyond the scope of this study. However, the close and dependent link between internal and international migration has been proved, since in a significant number of cases, the first precedes the second, and the escalation to cross-border mobility is usually the outcome of the failure of a first attempt, involving internal migration.

Año	Número de migrantes	Porcentaje (%) de migrantes en la población mundial
1970	84.460.125	2,3%
1975	90.368.010	2,2%
1980	101.983.149	2,3%
1985	113.206.691	2,3%
1990	152.563.212	2,9%
1995	160.801.752	2,8%
2000	172.703.309	2,8%
2005	191.269.100	2,9%
2010	221.714.243	3,2%
2015	243.700.236	3,3%

Fuente: DAES, 2008 y 2015a.

Nota: El número de entidades (por ejemplo, Estados, territorios y regiones administrativas) que facilitaron datos para la revisión de 2015 del *International Migrant Stock* del DAES fue de 213. En 1970, solo lo hicieron 135 entidades.

Year	Number of migrants	Percentage (%) of migrants in the world population
...		

Source: UN DESA, 2008 and 2015a.
 Note: 213 entities (e.g., States, territories, administrative regions) provided data for the 2015 revision of UN DESA's *International Migrant Stock*. In 1970, only 135 did so.

²⁴ https://publications.iom.int/system/files/pdf/wmr_2018_en.pdf

As we have been pointing out, international migration is a massive social phenomenon that has been shaping human history and civilization since its inception. People have been moving through regions, countries and continents for millennia in search of better opportunities and resources. Today, it is also an issue of the utmost urgency and complexity which

has gained ground on the political agenda. We face the consequences of one of the largest migration crises ever seen, where the war unleashed in Syria has generated a quantitative and qualitative leap of gigantic proportions and consequences. In 2016, the United Nations reported that there were 40.3 million displaced people²⁵ and 22.5 million refugees worldwide, the largest number of refugees since World War II. It has been estimated that there is total of 244 million migrants worldwide, which equals 3.3% of the human population.²⁶ The migration corridors that have become established over time are based not only on geographical proximity, but are also influenced by commercial and economic factors, conflict and human (in)security, community relations and ethnic ties, as well as smuggling and trafficking in persons. The case of Syria, the flow of migrants through Central America towards the United States, and the Venezuelan migration are some of the most significant examples of the time.

According to the IOM (2018), in recent years, migration and displacement across borders due to conflict, persecution, climate change, lack of security and opportunities have increased. While most migrations are regular, irregular migration puts people in highly vulnerable situations.

This increase has taken place at a higher rate to that anticipated in previous decades, and it is very complex for demographers to predict. Given that in recent years, migration has increased significantly in some regions of the world, it is likely that the next estimate of the total number of international migrants will point to an increase in the proportion of migrants regarding the world population. This implies, as we shall see below, that the need to address the problems of migrant children and their families will intensify over the years. For this reason, the countries involved should consider allocating higher budgets and better provision of social protection, health and education.

Unequal socio-economic structures have an impact on the fact that individuals and groups of migrant families face economic and political expulsion. On the one hand, rights violations force people to leave their countries of origin; on the other, the conditions of exploitation and discrimination that they must face in destination countries, if they manage to reach them. And, increasingly, the very act of moving is taking centre stage; the journey between the country of origin and the receiving country has been transformed into a complex scenario where issues emerge related to geographical obstacles to be overcome, seas to be crossed and transit countries to be traversed.

In an increasingly globalized world, it is paradoxical that the entrenchment of borders has strengthened, or that new ones have emerged (UNESCO, 2016) rather than the construction of accessible, regular, safe and affordable migration paths, which would also help to dismantle smuggling and human trafficking organizations (UN, 2016).

²⁵ Internal Displacement Monitoring Centre, 2017; UNHCR Office, 2017.

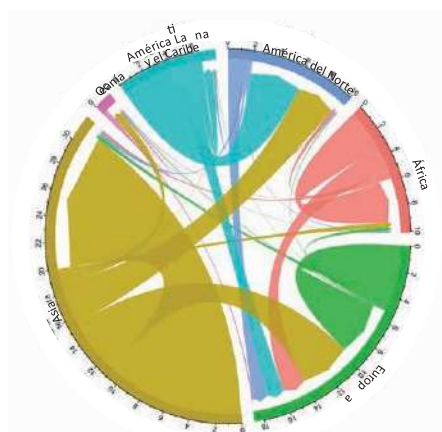
²⁶ United Nations High Commissioner for Refugees, Global Trends. Forced Displacement in 2015, UNHCR, Geneva, 2016.

1.6. MIGRATION IN LATIN AMERICA²⁷

In 2015, Europe and Asia each received about 75 million migrants, representing 62% of the world population of international migrants. These regions were followed by North America with 54 million, or 22% of the world's migrant population; Africa, with 9%; and Oceania, with 3%. In Latin America and the Caribbean, migrants reached 4%. The United States of America has been the main destination of international migrants since 1970.²⁸

When compared with the population size of each region, the percentage of migrants in 2015 was highest in Oceania, North America and Europe, where international migrants accounted for, respectively, 21%, 15% and 10% of the total population. By comparison, the percentage of international migrants was relatively low in Asia and Africa (1.7% each) and Latin America (1.5%).

While migrant intake occurs in many countries, the information available to measure



Fuente: DAES, 2015a. Los datos sobre los flujos de migración internacional incluidos en la revisión de 2015 pueden consultarse en: www.un.org/en/development/desa/population/migration/data/empirical2/migrationflows.shtml.

Nota: La flecha indica la dirección del flujo, mientras que el grosor de la flecha en su base determina el tamaño del flujo. Los números que aparecen en el contorno de la figura, que permiten medir el tamaño del flujo, se indican en millones. Por ejemplo, entre 2010 y 2015 en América del Norte el número de personas nacidas en Asia aumentó aproximadamente en 4 millones.

Source: UN DESA, 2015a. Data on international migration flows included in the 2015 revision may be consulted at: www.un.org/en/development/desa/population/migration/data/empirical2/migrationflows.shtml.

Note: The arrow indicates flow direction, while its width at the base represents flow volume. Numbers around the perimeter are in millions and enable measurement of flow. For example, between 2010 and 2015, in North America, the number of people born in Asia increased by about 4 million.

migration flows is not the same. Most national governments do not register the entrance and the exit of migrant populations on equal terms.

In order to gauge the weight and characteristics of human mobility in Latin America, in relation to the whole world, we can use the following figure created by Abel and Sander (2017), showing international migration flows and their different corridors, from origin to

destination in each case. We can see that the flow in Latin America and the Caribbean is directed mainly towards North America and to a lesser extent, towards Europe and Oceania.²⁹

The peripheral areas that feature in Latin America are poor and underdeveloped, and have existed

²⁷ It should be noted that data on migrant populations and migration flows in this part of the study originate from information provided by IOM until 2015, prior to the emergence of the Venezuelan migration phenomenon, which has had a heavy impact on our subcontinent and regarding which special mention is made in another section.

²⁸ UN DESA, 2008; UN DESA, 2015a.

²⁹ See Illustration note. It should be noted that the diagram does not clearly include Venezuelan migration, whose significant growth was observed as from 2015.

throughout the history of this subregion. This feature undoubtedly affects the experience of the people who inhabit the continent, and is a cause for migration to be a frequently used alternative in order to find better living conditions.

“Beyond the official agendas, the frequency of migration is determined by the operation of social networks in the countries of origin and destination, repeated violations of human rights, the attainment of the resources needed to undertake the journey, the drama of rootlessness and adaptation, the need to evade migration controls, obtaining employment, remittances and efforts to avoid deportation.”³⁰

In recent decades, in the American region, there have been changes in the direction, intensity and composition of migration flows; as well as in the role played by some countries in the international migration system.

It may be said that international migration involving Latin American populations adopt two basic patterns: a) intraregional, and b) extra-regional. The first are the displacements that occur from countries of the region to other countries within the same region, and the latter are those occurring between the countries of the region and countries outside the region.

At present, intraregional migration has intensified, particularly in South America. According to the IOM (2018), 70% of migration flows in the South American region are intraregional. This trend has been facilitated by the development of communication technologies, cheaper transportation costs and by certain political conditions in the region that have put regional integration mechanisms into operation. An example of this is the Mercosur Residence Agreement, which involved greater flexibility in requirements for applying for residence between member countries of the Common Market of the South. In addition, another important factor in understanding the increase of intraregional movements is the intensifying of restrictive migration policies in countries that have historically been the target of migration from South America, such as the United States and Spain; to which is added the effect of political and economic crises, such as in Venezuela, to which we shall refer below.

Extra-regional migration has a long history in the region, mainly by Latin Americans towards North America (United States and Canada) and Europe (mainly Spain and Italy). However, since the last economic crisis suffered by European countries,³¹ and the increased tightening of migration policies in the United States, emigration to these destinations has dropped. It should also be mentioned that South America, in particular, receives a large number of returnees from developed countries. In this respect, many States in the region have implemented programmes to facilitate the return of their fellow citizens, including support for return and reintegration processes. For example, the programme in Ecuador, “Return and Integration of Migrants in

³⁰Programa Estado de la Región, 2016, p. 108

³¹The crisis that began in Spain in 2008, is an example of this.

Ecuador”,³² or in Uruguay, the programme implemented by the Return and Welcome Bureau, which answers to the Ministry of Foreign Affairs.³³

1.7. PRINCIPAL TRENDS AND MIGRATION FLOWS IN LATIN AMERICA AND THE CARIBBEAN

Over the last decade there have been new trends in migration, both in Central America, Mexico and the Caribbean and in South America.³⁴

In its paper “Social Panorama of Latin America”, the United Nations Economic Commission for Latin America and the Caribbean (ECLAC), notes that in 1970, migration in Latin America and the Caribbean was composed as follows: 76% were immigrants from outside the Americas and 25% were immigrants born in Latin America and the Caribbean. In 2019, according to the ECLAC report, these percentages have nearly been reversed: 70% of immigrants were born in the Caribbean and Latin America and 30% were born outside the continent.

1.7.1. CENTRAL AMERICA, MEXICO AND THE CARIBBEAN³⁵

- The United States is the main destination of migrants from Central America: by 2015, 78% of Central American migrants were living in the US, and only 15% in other countries of the region and Mexico.
- The most significant intraregional migration corridors in Central America are Nicaragua, Panama and other countries in Central America, towards Costa Rica, with the aim of obtaining temporary or permanent jobs, and Honduras, Guatemala and El Salvador towards Belize, owing to widespread violence and lack of job opportunities in migrants’ home countries.
- In the Caribbean, the most significant intraregional corridor is from Haiti to the Dominican Republic.
- Irregular migration flows in the region are increasingly changing and diversifying. Historically, the vast majority of irregular migrants detained trying to cross the border between the US and Mexico, were Mexicans. From 2014, records show that detained migrants are Central Americans from the Northern Triangle (Honduras, El Salvador and Guatemala) and have exceeded numbers of Mexicans at the US-Mexico border.
- The diversification and emergence of new migratory flows has led several countries of transit and destination to increase border controls and protection. Nicaragua, for example, closed its southern border in November 2015, in response to the

³²<https://www.cancilleria.gob.ec/acompanamiento-en-el-retorno-al-pais/>

³³<https://www.gub.uy/tramites/retorno-uruguayos-bienvenida>

³⁴World Migration Report. IOM (2018).

³⁵The data for this paragraph were taken from the IOM’s World Migration Report, published in 2018. We should clarify that some regional developments have not been covered in it, or are not examined in sufficient depth; for example, the migration crisis in Venezuela. This is mainly due to two factors: first, the dynamic nature of migration movements, together with the fact that gathering quantitative data is conditioned by the availability of measurement tools. However, in relation to the case of Venezuela, we should note that we shall be referring below to other studies containing updated data covering this situation.

irregular entry of Cubans and Haitians. Moreover, in 2014, Mexico implemented its “Southern Border Programme”, aiming to reduce irregular migration flows from Central America.

- Migrant smuggling networks constitute another feature in the region. Many people who try to evade border controls in Central America or Mexico, fall into the hands of these groups of international crime.
- Migration, especially among women and children, is triggered by the socio-economic situation and widespread violence in some countries in Central America, especially those of the Northern Triangle. In 2015, the number of asylum applications from Guatemala, Honduras and El Salvador submitted to the USA increased more than 250% compared to 2013. The number of children and unaccompanied teenagers from Central America also increased significantly, detentions of unaccompanied children and adolescents increased by 1200% at the US-Mexico border between 2011 and 2014.

In 2015, 8% of the Central American population, about 4 million people, were living outside their home countries. This implies the loss of economically active population by less developed countries in the area. While remittances have been taken as a positive indicator in the analysis of the migration of Central Americans, it should be noted that these are a result of migrants being incorporated in vulnerable labour markets and highly precarious working conditions.

1.7.2. SOUTH AMERICA

- Intraregional migration has intensified. The number of intraregional migrants in South America increased by 11% between 2010 and 2015. Owing to the heterogeneous features of the countries of the region, in terms of economic opportunities, most people migrate for work.
- In Chile, Argentina and Brazil, migrant populations increased between 16% and 20% between 2010 and 2015, attracting migrants from the Andean countries and Paraguay.
- Some intraregional blocs such as Mercosur and the Andean Community have helped to liberalize intraregional migration. An example of this is the Mercosur Residence Agreement, which has encouraged labour migration and limited irregular migration in the region.
- Millions of South Americans continue to reside outside the region, while the number of migrants from other regions is slowly increasing. Since 2010, there has been an increase of migrants from Europe, mainly from Spain, Italy and Portugal.
- Reduced job opportunities in extra-regional markets and sustained economic growth in some countries in the region have led to many South American migrants returning to their countries of origin and, at the same time, decreasing the rate of extra-regional migration.
- The two main countries of destination for migrants from South America are the US and Spain, home to 2.8 million and 1.8 million, respectively.
- The countries with the highest number of emigrants residing outside South America in 2015 were Colombia (1.4 million emigrants), followed by Brazil (1.3 million) and Ecuador (one million).

Table 1 Data on migration in the region³⁶

Country	Total immigrants	% of migrants in relation to the total population	Total emigrants
Argentina	2.2 million	4.9%	1 million
Bolivia	159.1 thousand	1.4%	878.2 thousand
Brazil	807 thousand	0.4%	1.7 million
Chile	940 thousand	5%	650.2 thousand
Colombia	1.1 million	2.3%	2.9 million
Costa Rica	417.8 thousand	8.3%	150.4 thousand
Cuba	4.9 thousand	0%	1.7 million
Ecuador	381.5 thousand	2.2%	1.2 million
El Salvador	42.6 thousand	0.7%	1.6 million
Guatemala	80.4 thousand	0.5%	1.2 million
Honduras	38.9 thousand	0.4%	800.7 thousand
Mexico	1.1 million	0.8%	11.8 million
Nicaragua	42.2 thousand	0.6%	682.9 thousand
Paraguay	160.5 thousand	2.3%	871.6 thousand
Peru	782.2 thousand	2.4%	1.5 million
Panama	185.1 thousand	4.4%	161.1 thousand
Dominican Republic	567.6 thousand	5.3%	1.6 million
Uruguay	81.5 thousand	2.4%	633.4 thousand
Venezuela ³⁷	1.4 million	4.8%	2.5 million

1.7.3 VENEZUELAN MIGRATION

In recent years, the Bolivarian Republic of Venezuela has experienced changes in its mobility. Historically, Venezuela has been a country of destination for immigrants from South America and Europe. However, recent events in the country, especially regarding restricted access to services, health and food and the political instability, have caused an intensification of Venezuelan departures. Currently, UNHCR ³⁸ estimates that the total number of refugees and migrants from Venezuela exceeds 4 million.

The IOM (2018) states that traditional migration movements have increased, as have new destinations in the region and the world. Historically, Venezuelan migration focused on the United States and Spain. Currently, these countries have received about half a million Venezuelan migrants. Moreover, there has been a significant increase in Venezuelan nationals in the subcontinent. Within the Latin American region, it is estimated that approximately 3.2 million Venezuelans are residing mostly in Colombia (1.3 million), Peru (853,000), Ecuador (260,000), Brazil (168,000) and Chile (288,000). UNICEF estimates that approximately 1.1 million children are in need of assistance in 2019, as a result of the crisis.

³⁶Produced by the authors. Source: Migration Data Portal. Data from 2017.

³⁷<https://www.acnur.org/noticias/press/2019/6/5cfa5eb64/refugiados-y-migrantes-de-venezuela-superan-los-cuatro-millones-acnur-y.html>

³⁸<https://www.unicef.org/lac/media/6946/file/PDF%20UNICEF%20Humanitarian%20Situation%20Report%20on%20the%20Migration%20flows%20in%20LACNo.%205%20-%202015%20June%202019..pdf>

In the face of this, some of the countries in the region, such as Peru and Chile, have implemented migratory measures to restrict the entry of Venezuelans in their territories. Since June 2019, migrants who wish to enter Peru must apply for a “humanitarian visa” in Peruvian consulates in Venezuela, Colombia or Ecuador. Furthermore, in Peru, restrictions were imposed on applications for refugee status by demanding a preliminary step involving admission at the frontier, which may hinder access to this international protection procedure.

For their part, the Chilean authorities announced that they will begin to demand visas for Venezuelans visiting the country for short periods. Previously, Venezuelans could enter Chilean territory without a visa, and were allowed to remain in the country for a period of 90 days.

The imposition of restrictive migration measures causes an increase in the use of irregular routes, making it difficult to monitor the situation of migrants and deprives them of access to a regular status. All of which results in potential rights violations, as migrants are exposed to risks linked to, for example, smuggling and trafficking in persons.

SECTION 2. WOMEN, CHILDREN AND FAMILIES IN THE CONTEXT OF HUMAN MOBILITY

2.1. THE COMPLEXITY OF A MULTI-STAKEHOLDER NARRATIVE

Addressing migration in general is complicated by the diversity of narratives that emerge as social and public issues in its composition. The spectrum is further complicated when families appear on the scene, women with young children, and children on their own. The threads that intersect and tense are varied, and become knots that are difficult to untangle.

Children are mostly born and grow up in different family environments. Beyond economic, political or institutional conditions, or the geographic context that surrounds them, families (regardless of their internal organization or how they are composed) provide the vital and initial shelter for early childhood. A responsibility that they gradually begin to share with other institutions in society.

The inequality that characterizes Latin American societies exposes families to countless challenges as regards access to quality goods and services, to ensure material and symbolic resources on the basis of which to generate well-being. International migration is one of the strategies deployed by families to produce protective links, including the rights of girls and boys who depend on them (SIPI 2015).

Migration studies “have been incorporating the family dimension, emphasizing families’ role not only in determining who migrates and when, and how migration is reproduced, but also in the consequences of divided families in family dynamics and reproduction” (Cerruti and Maguid, 2010: 11).

Migration gives rise to social, cultural, political and economic impacts on the country of destination, the country of origin, and increasingly, in countries of transit. Family members who migrate and the family itself play a central role in the migration process and in the deployment of strategies to maintain transnational ties and/or efforts to achieve partial or full family reunification.

With regard to how to understand migration where children have a leading role, the first challenge is to try to reflect on how to understand actors engaged in these processes in terms of their own identities, needs, interests, life plans and expectations. Moreover, how to define them, inasmuch as they are universal holders of recognized rights, developed on the basis of political and social intervention.

2.2 THE FEMINIZATION OF MIGRATION

Until the early eighties, migrants were commonly described as young men in their twenties who left their primary area of socialization for other places, in search of better opportunities; while women were seen as passive entities who were subject to the behaviours and relationships established with men as their focus, as wives, mothers, sisters or daughters (Estrada, 2017. Page 34). Currently, there are thousands of women who are also on the move, with various aims: to seek work, to support themselves and their families, to finish their studies, etc. Although today men and women migrate in large numbers and for various reasons, women face a variety of risks and their needs of protection are different to those of men. At the same time, they go to different places and their integration into the labour market continues to build on patriarchal conceptions that relegate them to activities determined by their status as females: to domestic service, the care of their dependents, cleaning and cooking, etc.

Increased demand for migrant women in services and assistance and care sectors has thus brought about the phenomenon of the feminization of migration in intraregional movements. Thus, not only do women take on care tasks in country of destination and become responsible for the economic provision of their households, but, in addition, they must also take on a duty of care at a distance regarding their own home, where relations have been transformed by their absence (ECLAC, 2019). This is of great significance when it comes to the enjoyment and protection of the rights of children and adolescents, as González (2013) notes,

“The transnational family gives rise to new care practices: distance motherhood being one of the most studied. Emotional care – which involves listening, talking and counselling – is not interrupted by distance, but takes place through phone calls, emails, and other media based on the new technologies” (cited in ECLAC, Social Panorama of Latin America, 2019, p.178).

Female migration can be divided into women who are married or have partners and children and those who are single. In this regard, González and Setien (2005) propose a classification for adult women who are married or with a partner and with family responsibilities. Those who have been reunited with their husbands, who generally

have a passive role and have simply followed the husband who initiated the migration and where family relationships and roles of the country of origin are reproduced; or those who migrate together with their husbands, where it is the woman who initiates the migration project, accompanied by the husband, with a lower level of dependence than the previous case, perhaps because of their access to the labour market, and; female heads of household, who lead the migration project to support the family and where the priority aim is to maximize savings and send remittances to their families.

Meanwhile, when it comes to single women, they may be daughters who migrate or are reunited with their parents, who have fewer opportunities and whose possibilities are restricted to working in the same economic niches as their compatriots; or they may be the protagonists of their own migration and personal project, breaking away from the context of dependence imposed by their society of origin and often taking on the responsibility of helping their families financially.

Thadani and Todaro (1978) have constructed a theory of female migration in developing countries, focusing on the autonomous movement of single women as a special case. According to this model, the rate of female migration will be higher to the extent that the expected difference between rural-urban income is also higher as is the likelihood of marital mobility. This theory has not been widely developed, but it seems important to mention it since research on the migration of women is relatively recent.

Some of the criticisms that could be made of this model is that it fails to consider the heterogeneity of women, their class differences, the life cycle each is going through, their origins, culture and finally, that the marriage bond is reduced to just one more independent variable.

2.3. FAMILIES IN HUMAN MOBILITY

Young boys and girls are never alone. The original helplessness that accompanies birth is transformed by the shelter provided by different institutional arrangements offered by the world which is receiving what is 'new', in the words of Hannah Arendt. One of those determining institutions is the family. The classic concept of the family is based on a biological substrate linked to sexuality and procreation (Jelín, 2010). The family was the social institution that regulated, channelled and conferred social and cultural significance to these needs. Including daily living, expressed in the idea of a home and roof: a shared economy, a collective domesticity, everyday sustenance, coupled with legitimate sexuality and procreation. It was related to how cohabitation, sexuality and procreation were organized.

Currently, the three dimensions that gave meaning to the traditional concept of family have undergone enormous transformations and have evolved in different directions, adds Jelín (2010, p. 24). Monogamous heterosexual marriage has lost its monopoly of legitimate sexuality and procreation and child care do not always occur under the same roof and in everyday coexistence. What we are witnessing today is a growing multiplicity of types of families and coexistence and this diversity is linked to social, economic and cultural transformations. The family is not isolated, it is part of the

various frameworks of social institutions and practices influenced by the State and by law, religious beliefs and practices, economic behaviour, and also by the practices associated with migratory movements, among other processes.

Nardone (2003) and Giannotti (2003) describe migrant families as those who have distanced themselves physically, but who maintain certain emotional and economic ties. Falicov (2001) notes the emergence of 'transnational' families, a situation which generates advantages or disadvantages both for those who distance themselves, and those who remain in the country of origin. This generates lifestyle changes, rearrangement of groups, new loyalty systems, and a redefinition of bonding through the promotion of remittances (Díaz Barajas et al., 2017).

Young children are affected by the decisions made by adults on issues of human mobility. Multiple types of migrant families altered all of the patterns that had until then represented their organization as a human group, as a system, generating profound internal changes in families, and new forms of relationship began to emerge between family members, their contexts, and the changing realities that they begin to move through.

Talking about families in the time and space of migration means verbalizing absence, lack, and the transgression of the rules on which it is based. On the one hand, with regard to migration, which is, by definition, fracture and distance, and, on the other, to families, which represent continuity and links (Nardone and Giannotti, 2003, p.51).

All possible variants of families are affected in the face of their involvement in any of the multiple migration formats. The links between the women who remain in their homeland (while men migrate in search of opportunities) and their young children will change, since they must assume new roles in the family organization; if it is the women who migrate, mothers of young children, their children either remain under the care of grandmothers or close relatives, or will move with them on their migrant paths. In all cases, new ways of bonding will arise and, according to Minuchin (2001) feelings of identity, separation, individuation and belonging will develop at the same time. Role models and the experience of both greater well-being and greater suffering that will mark forever the future of these children.

Remittances represent a large percentage of monetary income for households of people who have migrated, but they are also perceived by the family as a show of affection, since giving them a better quality of life is interpreted as an expression of love and belonging.

2.4. MIGRANT CHILDREN WORLDWIDE

According to UNICEF (2017), nearly 50 million children and adolescents in the world are migrants or refugees, of whom 28 million have been driven from their homes by wars and armed conflicts and another 8 million seek a better and safer life.

“If children are among the most vulnerable groups in our society, the condition of being irregular immigrants multiplies the risks of poverty and social exclusion for them” (López, 2014).

We should consider the effects of migration on the rights of children and adolescents as a result of the intersection of different factors and circumstances which enhance vulnerability:

- Prior to migration, a condition usually exists in their country of origin that is driving them out. This includes insecurity, material shortages, and violence, threats that interfere with development and generate vulnerabilities.
- The migration of adult family members exposes children to greater vulnerability, even when they remain in their country of origin. The migration of parents is one of the most common causes of separation of children from their parents. Families' protection and care capabilities become weaker and they lose resources that enable them to face adverse situations.
- Families set out on their migratory paths with children and adolescents, who sometimes also undertake migration on their own. In cases of irregular migration, transit to the destination country across different borders and territories is fraught with threats for children and adolescents.
- When they arrive at the destination country, reality is not always consistent with previous expectations. In many cases, children and adolescents involved in human mobility experience a fragile integration upon entering their destination; they suffer discrimination, lack of access to services and other rights violations associated with their lack of documentation and their irregular status (IIN-OAS, 2015). One of the most traumatic aspects reported by people who underwent the experience as children of being inserted into a society where they were discriminated against is the need to hide or conceal their cultural identity. Concealing their customs and refraining from speaking in order to hide their origin are barriers to integration among peers.

Migrant children and adolescents find themselves in a 'doubly' vulnerable situation: the combination of age and migration status demands specific protection in keeping with their rights by the States (of origin, transit and destination of migrants) and other stakeholders. In this regard, the inclusion of social protection agencies in migration policies is fundamental.

2.5. MIGRANT CHILDREN AND ADOLESCENTS IN AMERICA

According to UNICEF's report, "Uprooted",³⁹

- Worldwide, 1 in 8 migrants is a child or teenager and 28 million have been victims of forced displacement.

³⁹https://www.unicef.org/publications/files/Uprooted_growing_crisis_for_refugee_and_migrant_childr_en.pdf

- In the Americas, there are 6.3 million migrant children, representing 21% of the world total.
- In the Americas, 4 out of 5 migrant children live in only 3 countries: United States, Mexico and Canada.
- Children account for 43% of all migrants living in Central America.

2.5.1. REASONS WHY CHILDREN AND ADOLESCENTS MIGRATE

Considering human mobility in terms of human rights implies focusing on the issue of the violation of rights in countries of origin. In many cases, the causes for the migration of children and adolescents match those of the rest of the population.

Among the causes for migration we can point to both structural and historical factors relating to the conditions of the countries of origin such as poverty, inequality, violence; as well as others associated with either intra-personal links, or personal and individual motivations.

The paper published by the Mercosur's Institute of Public Policies, *Protección de niños, niñas y adolescentes en contextos de migración* ["Protection of children and adolescents in migration contexts"] (2019)⁴⁰ identifies a number of different causes that lead to the international displacement of children and adolescents:

- The search for economic or educational opportunities.
- Family reunification: to reunite with family members who migrated before them.
- To escape from oppressive situations in their countries: the well-founded fear of persecution, or because their life, liberty or security have been threatened by widespread violence.
- Because of foreign aggression, internal conflicts, dictatorships, crises or instabilities that have affected the stability of Latin American governments and populations, turning many of the countries into areas that drive out migrants.
- The wholesale violation of human rights.
- The effects of natural disasters or changes in environmental conditions.
- Different situations involving violence and the violation of rights: abuse, discrimination, family abuse, sexual exploitation, trafficking in children and adolescents, extreme poverty, organized crime.
- There is a significant percentage of cases where women migrate with their children escaping from situations that are not only difficult in economic terms, but also include gender-based violence and patriarchal abuse.

Expulsion factors affect girls and boys differently. Gender violence, as well as sexual violence, create unequal conditions for girls, teenagers, young women and adult women and constitute compelling reasons that force them to migrate. If this reality is compounded by their belonging to other vulnerable categories, such as an ethnic minority, disability, etc., discrimination and violations of rights increase.

⁴⁰http://www.ippdh.mercosur.int/wp-content/uploads/2019/06/ManualProteccionNi%C3%B1ezMigrante_web.pdf

In this respect, it is essential to incorporate the gender perspective in the care of children and adolescents undergoing human mobility, as girls and female teenagers, and boys and male teenagers, are exposed in different ways to rights violations.

UNICEF⁴¹ has conducted a survey aimed at migrant children and adolescents, in order to examine the reasons why they left their homes. The data collected for America and the Caribbean, among adolescents between 14 and 17 years, show that half were forced to flee for some reason, and 23% did so without company. The most prevalent reasons for abandoning their country of origin were poverty and violence. In addition, 23% reported having lost 1 to 3 years of education; while 55% stated that since undertaking their migration, they had not consulted any doctor when they needed medical attention.

It should be pointed out that the reasons that drive children and adolescents to migrate are manifested to a greater or lesser degree, depending on the peculiarities of the country or sub-region concerned.

In this regard, the case of the Northern Triangle formed by Honduras, Guatemala and El Salvador should be mentioned. This is a purely expelling region: its alarming levels of violence have forced children and adolescents to leave their countries of origin. It is considered one of the most violent areas of the world because of international organized crime and homicide rates similar to those in war zones (Amnesty International, 2016). In addition, there are other indicators that account for the grave humanitarian situation, such as recruitment and murder of children and adolescents, problems in gaining access to health and education and sexual and gender-based violence. This has forced a growing number of people to flee their homes and seek international protection mainly in border and neighbouring countries (UNHCR, 2017). Social, economic and political conditions in the Northern Triangle that generate and perpetuate exclusion and vulnerability, cause the displacement of children and adolescents.

The case of Venezuela was discussed above; however, we should note that the humanitarian crisis has led to the profound violation of rights, especially for children and adolescents, who are driven to leave the country.

Colombia, meanwhile, has been one of the main countries of origin for refugees in Latin America and the Caribbean, owing to the lengthy internal conflict that has affected the country for decades.

In addition, in countries such as Argentina, Paraguay, Peru, Chile, Uruguay, Bolivia, Chile, and Ecuador grounds for leaving are often linked to economic or educational causes.

2.5.2. UNACCOMPANIED MIGRANT CHILDREN

⁴¹<https://data.unicef.org/resources/a-right-to-be-heard-interactive-dashboard/>

In recent years, the category of “unaccompanied” migrant children has been gaining ground, which includes minors undergoing a variety of situations. This challenge facing the systems for the protection of child rights in the various countries finds in the detention of children by the US authorities one of its most significant examples. The mobility of large contingents of children and young people beyond the political boundaries between countries has been defined by Save the Children (2003) as

“Foreign children who are not under the effective care of an adult who is legally responsible for them, regardless of whether or not they are accompanied by an adult”.

UNHCR, in its report on this population at the southern border of Mexico (UNHCR 2006-2008),⁴² distinguishes between “Unaccompanied Boy or Girl” and “Separated Girl or Boy”.

The social, political and economic issues in which this category of migrant child is immersed are complex and puts children at high risk of their lives. In addition, other problems are added, typical of their status as undocumented migrants and the resulting difficulties in exercising the protection of their rights.



CHAPTER 2

DETERMINING FACTORS OF HUMAN MOBILITY IN
EARLY CHILDHOOD. APPROACH TO A
MULTIDIMENSIONAL AND INVISIBLE ISSUE.

CHAPTER 2. DETERMINING FACTORS OF HUMAN MOBILITY IN EARLY CHILDHOOD. APPROACH TO A MULTIDIMENSIONAL AND INVISIBLE ISSUE

SECTION 1. EARLY CHILDHOOD AS SOCIAL ACTOR

Promoting a comprehensive approach to early childhood development, which includes support for parenting, early learning, quality education, health and maternal and child nutrition control, protection and support for families, as well as ensuring access to goods, services and appropriate cross-sectoral interventions, are crucial for the present and future welfare of children in the early years of life. It is a stage where the cognitive, emotional and social foundations with which they shall face the future are established. Early childhood is the most significant stage of development in the life of a

⁴² a) An unaccompanied boy or girl is a person under the age of 18 who is separated from both parents or other relatives and is not under the care of any adult who, by law or custom, is responsible for him or her; b) A separated girl or boy is a person under the age of 18 who is not under the care and protection of his or her parents or of an adult who, according to law or custom, is his or her usual caregiver, but may be accompanied by other persons.

human being, a crucial period which establishes the basis for well-being, lifelong learning and social participation (UNICEF, 2017).

When babies or young children are stimulated; when they interact with the environment and participate in family and community life; if they can experience the feeling of being expected, wanted, cared for, embraced, loved, watched, heard; if they are offered experiences, institutions and public policies for care and education designed and organized especially for this stage of life, they will no doubt, have many more opportunities to develop cognitive, language, physical, emotional and social skills with which to achieve well-being and happiness. These are core assets in the early days of life.

Understanding and addressing the factors affecting children's development are crucial in order to reduce inequities in early childhood and improve well-being, productivity and social equity.

The way adults return children's gaze, how they are treated, the type of institutions they are offered, the quality of the activities carried out with them, the warmth of the treatment they receive, the care and protection they are ensured, the public policies that are organized, the regulations issued, the human and financial resources available to them, the rights that are achieved will be the only guarantee of a happy present and a better future.

In the last decade, several scientific studies have confirmed, on the basis of a great deal of evidence, that the early years are critical in people's lives; it is the period where stimulation, loving care, adequate food, among other factors, have qualitative effects that impact the present and subsequent years of development. It is in the first three years of life when 40% of the mental abilities of the adult are shaped. It is the period when the brain undergoes unique growth: its size doubles and the number of neuronal synapses grows exponentially.⁴³

Child development in this period involves much more than growing and maturing. It is the result of the interaction between these capabilities and individual factors, the environment and experience. It is the process of change through which children learn to achieve greater complexity in their movements, thoughts, emotions and relationships with others. It is characterized by the progressive acquisition of such important functions as physical growth, postural control, autonomy of movement, communication, cognitive skills and verbal language, as well as social interaction.⁴⁴

Therefore, awareness and concern regarding the significance of the period that characterizes the first 1000 days of life is an option that countries have gradually been taking up, since virtually all decisions made in public policies and economic

⁴³See UNICEF, "The first 1,000 days of life" <https://www.unicef-irc.org/article/958-the-first-1000-days-of-life-the-brains-window-of-opportunity.html>

⁴⁴ UNICEF, *Crecer juntos para la primer infancia* ["Growing together for early childhood"], p. 15. https://www.unicef.org/ecuador/educacion_Libro_primera_infancia.pdf

practices affect the development and exercise of the rights of this age group, which is significant for the present and future of nations.⁴⁵

As from the 70s and 80s of the last century until the present, a series of processes triggered simultaneously have had such a significant impact that society, academia and politics have come to identify the issue of early childhood as a specific social field. A new social subject began to focus the attention and concern of families, States, markets, international agencies: early childhood was definitively breaking away from the privacy of the family (Rosemberg, 2009). A new era was born: early childhood and early child development began to be part of the public agenda, of political debates and international commitments. Some of the most influential processes were:

- a) The acknowledgement of the citizenship of women, increasing their participation in social, cultural, political and economic life. The gender perspective that began to permeate contemporary social debate, and is currently one of the most significant focal points of emancipatory processes. Changes in the structure and organization of families, and the emergence of new shapes and forms of human grouping. And incorporating in this new scenario the debate on care and the feminization of care.
- b) Also from the perspective of recognition, the debate on and subsequent adoption of the Convention on the Rights of the Child positioned children and adolescents in a new and breakthrough category of “rights holders”. This event had an impact not only on a set of international, regional, national and local rules and agreements, but it also changed the public policy agenda, transformed structures and cultures, recognized the existence of multiple childhoods and raised questions and produced transformations in the institutions responsible for care, education, protection and control.
- c) As a counterweight to the expansion of rights, it is during this same period that the increased inequality that particularly affects children was accelerated in most countries in the region. Neoliberal globalization and speculative economic and financial concentration, and different distribution models, which alternated cycles of low growth with others of deepening inequality, cyclically pushed millions of children and families away from access to the basic and quality goods and services necessary for their development. Millions of children have paid and continue to pay a high cost in their life expectancy, which is prominently made manifest among rural children and those living in the peripheries of large urban centres.
- d) Finally, there is recognition of the involvement of various scientific currents in issues related to pregnancy, birth, child development, parenting and early years of life. Medical and nutrition science first, pedagogy, as well as psychology and theories of development, sociology, anthropology, history, law, economics, neuroscience, have all contributed their significant viewpoints throughout the twentieth century and the current century, consolidating a body of knowledge and experience of enormous value.

⁴⁵ Annual Report of the Special Representative of the UN Secretary-General on Violence against Children, UN General Assembly, July 30, 2018.

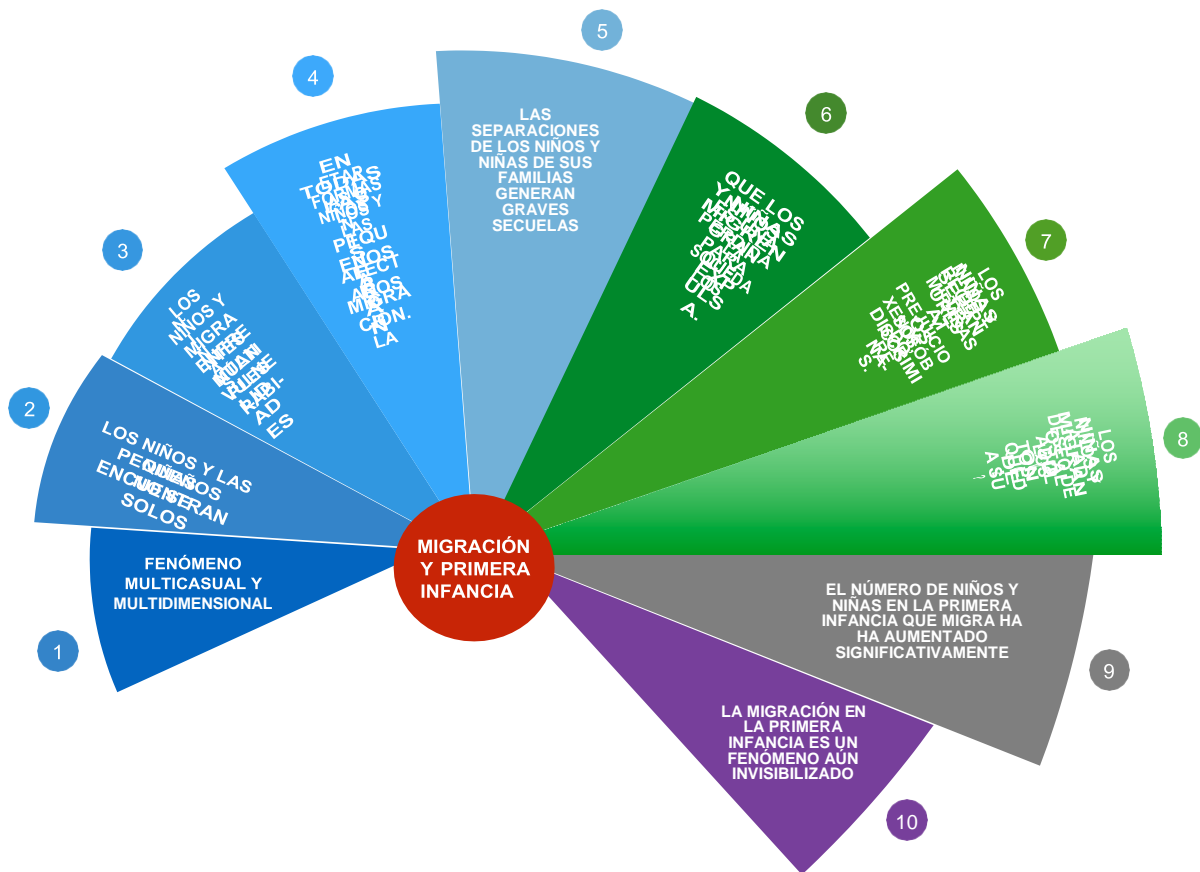
SECTION 2. DETERMINING FACTORS⁴⁶ FOR MIGRATION IN EARLY CHILDHOOD

International migration and its relationship to early childhood has become a highly complex scenario. The regional human rights system, the laws of each of the LAC countries and national and regional public policies constitute a critical issue for international agencies. Those working in this social field are facing a tangled web of actors, processes and consequences which is difficult to categorize and sort out on the basis of priorities, in order to be able to intervene appropriately, in a timely manner, effectively and efficiently.

Like a Rubik's Cube, the way to approach the resolution of the challenges displayed by this universe does not respond to written prescriptions or uniform perspectives. Rather, it implies turning around in the right sequence the many facets that make up this puzzle, to approach it from different angles, since complexity is high, and solutions must be linked to the satisfaction of the rights of children to a full and happy life.

On the basis of the theoretical, historical and political trajectory of migration in early childhood already carried out, it is possible to list a number of determining factors that shed light on this web, to enable a subsequent approach to the analysis of legislation and public policies applied in the region.

⁴⁶ The concept of determining factor is used as the set of conditions and processes that make migration in early childhood a specific and differentiated event, both within the phenomenon of migration in general, and in the field of childhood in particular.



Migration and Early Childhood

- 1 MULTICAUSAL AND MULTIDIMENSIONAL PHENOMENON
- 2 YOUNG CHILDREN ARE NOT ALONE
- 3 MIGRANT CHILDREN FACE MULTIPLE VULNERABILITIES
- 4 AT ALL STAGES AND IN ALL WAYS, YOUNG CHILDREN ARE AFFECTED BY MIGRATION
- 5 THE SEPARATION OF CHILDREN FROM THEIR FAMILIES LEADS TO SERIOUS CONSEQUENCES
- 6 THE MIGRATION OF CHILDREN IS A GREAT LOSS FOR THE SOCIETY THAT DRIVES THEM AWAY
- 7 CHILDREN ARE THE TARGET OF BIGOTED, XENOPHOBIC AND DISCRIMINATORY ATTITUDES AND TREATMENT
- 8 CHILDREN MIGRATE AT THE BEHEST OF ADULTS. WHERE ARE THEIR VOICES?
- 9 THE NUMBER OF CHILDREN IN EARLY CHILDHOOD WHO MIGRATE HAS INCREASED CONSIDERABLY
- 10 MIGRATION IN EARLY CHILDHOOD IS AS YET INVISIBLE

- i. **Migration in early childhood is a multi-causal, multidimensional phenomenon.** Children become involved in migratory movements owing to a variety of factors, causes and conditions that they must experience in the early years of life.
- ii. **In the vast majority of cases, young children are not alone.** The relationships established between early childhood and migration are the result of a complex family network of events involving young children and the persons responsible for their care and upbringing, mainly women, mothers, aunts, grandmothers or older sisters and other relevant women. The increase of migration in early childhood is closely linked to the feminization of human mobility.
- iii. **Migrant children face multiple vulnerabilities simultaneously.** The main risk factor associated with international human mobility for such young children is their age and limited access to basic goods and services needed in their first years of life.

They share this vulnerability with the adults responsible for their care and upbringing. Young children and mothers whose rights have been violated must face the networks of adult, patriarchal, and colonialist power and domination on unequal terms. With less capacity to protect themselves, they are exposed to their context's prevailing conditions; disease, climatic threats, gender violence, exploitation and trafficking in persons.

- iv. **Whatever the stage or form of human mobility in which they are involved, young children are affected by migration.** When it is only the fathers that migrate (as a strategy that has been agreed, or not, by the family) and the women stay in the country of origin, the family operating format is reshaped, with a high impact on the younger children. The same applies when it is mothers who migrate and leave their children with other family members, usually grandmothers or aunts. If the children accompany their mothers, the basic problems arise in transit. In Mexico and Central America, for example, journeys are extremely dangerous; they are exposed to risks related to physical security, breastfeeding, smuggling networks to enter the country of destination, food, and housing; in addition to the emotional impacts. Phased migrations often take place, when mothers and/or fathers migrate first, and then they send for their children. Frequently, they travel with adults other than their parents. On arrival, the main challenge is to regularize their migration status, in order to gain access to an appropriate level of social and labour integration. In addition, there are other aspects that come into play, such as sociocultural identity, discrimination, xenophobia.
- v. **The separation of children from their families leads to serious consequences.** A number of studies, such as those conducted by Harvard University (Harvard Immigration Project), UNICEF (2008), Achótegui (2002) and Adams (2000), emphasize that children of migrant families who were separated from their parents for extended periods suffer "substantial negative consequences". This agrees with the view held by Grinberg and Grinberg (1990) regarding the fact that normally, migration represents a potentially traumatic experience that always goes hand in hand with difficult experiences involving separation, loss and abandonment. Considerable individual resources are necessary, favourable social conditions in the host country and the benign acceptance of separation by the family of origin, in order to transform migration into a productive experience (Rohr, 2017).
- vi. **The migration of children is a great loss for the society that drives them out.** The displacement of young children causes incalculable harm to the society that drives them away, and the loss of the contributions of a group of citizens who could have become part of their communities and taken an active part in social, cultural, economic and political life. At the same time, it generates serious questions about the life prospects of these children in receiving societies, as the expectations of improved living conditions that drive adults to undertake the path of migration are often not fulfilled, or only fulfilled in part. Migrant children must bear throughout their lives a backpack in which they must keep, in whatever way each individual can manage to do so, the weight of their child migrant experience, their history, the original culture into which they were born, and the effort they must make to understand and adapt to new customs, forms of relationship, and in many cases, to other languages and environments.

- vii. **Children are the targets of bigoted, xenophobic and discriminatory perceptions and treatment.** The language of the mainstream media in the countries of origin, transit and destination is based on a bigoted, xenophobic and discriminatory perspective that impacts the imaginary of much of society. This results in children and the adults with whom they move being treated conditionally and distantly, if not violently.
- viii. **Child migrants are tied to the wishes of adults, without anyone to represent their own voices.** In many cases, the driver behind migration is the hope to improve the quality of life of children. Individuals and families usually migrate to improve their living conditions; comparing horizons and prospects for children in the country of origin and the country of destination plays an important role in migration decisions. Limited educational opportunities and unsafe environments for children, for example, can significantly affect decisions to migrate. This may be particularly true for households with children but can also be an indirect influence factor for anyone seeking better living conditions. In fact, respect for the rights of children and the quality of the education system are significant indicators of the social and cultural development of a country. There are academic gaps in this regard, showing the correlation between the welfare of children and migration decisions.
- ix. **The number of young children who migrate has significantly increased.** Displacements occurring in the most significant international migrations of the era, such as that of the Syrian people in Europe, the caravans of Central America towards the United States, or the mass migration of Venezuelan families, have created a new scenario involving protection, or the lack of it, for the children and families undergoing this experience.
- x. **Despite the increase of migration in early childhood, it is still an invisible phenomenon.** A discursive and practical contradiction may be noted in terms of how these events are perceived. Early childhood as a social and political category has gained ground on the public agenda, in international and local regulations, and the implementation of specific public policies. However, the place of early childhood in migrations, both large and small, remains a virtually invisible reality, hidden and absent in international debate. In recent years, child migration, together with increased female migration, is one of the latest trends in the context of human mobility within the region. Despite its increased incidence, interest in child migration remains scant and children often fail to appear in analyses of regional migration and their status as people with rights is denied (Acuña González, 2015).

For the States in the region to confront this complex scenario successfully, they should not only recognize the human rights of early childhood, but should also afford the importance of the human mobility phenomenon at the earliest stages of life its proper dimensions, undertaking to perceiving it as a public issue requiring intervention and resolution.

SECTION 3. MIGRATION IN EARLY CHILDHOOD AS A PUBLIC ISSUE

While it has been recognized that migration is an activity that spans the entire history of humanity and different demographic scenarios, it has now reached a momentum

and an exposure that had never before been observed. These new dynamics generate the deconstruction of certain dominant theoretical and political perspectives, as well as redefinitions that have an impact on how we address the magnitude of the phenomenon and the consequences it has on early childhood.

Social science determines that a social problem displays public features when there is a consideration that someone should be doing something about it (Gusfield, 1981). The public nature of an issue, therefore, refers to its general (rather than specific) features and the mobilization or challenging of collective bodies (private, public, State, international) involved as part of the cause of, or solution to the problem.

Identifying a public issue always represents a selective way of looking at reality and of organizing it; a particular segment of that reality. There is an inseparable relationship between these processes and how they are perceived and categorized by society. Public issues are mainstreamed through private and social records, which leads to a record of actions or interventions by public policy (Quéré, 1996). A public issue may be identified as a field of symbolic and discursive exchange in which different answers and definitions converge and collide. A public issue raises a crucial question: responsibility, the attribution of responsibilities.

State action is the central stage around which perceptions of and responses to public issues revolve, and this intervention is reflected both in the State's 'actions' and in its 'omissions'. The State 'produces childhood', generates responses to needs relating to children, or fails to do so; among these needs is the place of early childhood in international migration. Social policies are not a mere effect of the dominant ways of conceiving the status of children, but are also builders of images and discourse on such social groups. They are able to influence their living conditions through such symbolic universes (James and James, 2004) and they constitute a laboratory in which different social projects are debated (Carli, 2012).

The narrative described in the previous section reveals some of the possible processes or phenomena that can transform the warning signals that are detected at the institutional level, into policies that are respectful of the human rights of children in early childhood.

Louis Quéré (1996, p. 258) argues that something is public in a weak sense, simply because it receives public attention; and it is public in a strong sense when the event in question is entered into a particular and specific register: the register of public action. This register displays certain features, according to Quéré: a) it displays its own specific language and semantics; b) it recognizes collective actors; c) it recognizes certain structures based on historical experience, d) it involves some type of public space, a record of that public space where the main horizon will be drawn to public debate as a forum for conflict resolution. In fact, public action should be understood in a broad sense, not only referring to the activity of public authorities, but to all action synchronized within the public space, mobilizing some references to the common good (Laborier and Trom, 2003).

Guerrero Bernal et al. (2018) note that Gusfield (1981) introduces the idea of space when referring to public arenas: “The public arena is not a field where everyone can play on an equal footing; some have greater access than others and much more power and abilities to give shape to the definition of public affairs”.

The experts consulted on the invisibility of early childhood in public debate on human mobility are unanimous in their opinion. Children are invisible and excluded because studies addressing the topic of the feminization of migration are very recent, more recent than those addressing the issue of migrant children in general; and studies delving into the problems of early childhood are almost non-existent.

And, as we shall see in the chapters below, migrant early childhood, as part of the social field, is absent in most of the legislation and practically does not exist as regards specific policies. ‘Early childhood’ associated with ‘migration policies’ is virtually non-existent. It is also generally absent from development policies; there is a prodigious lack of specific programmes for the care of their needs and rights. They are not heard or taken into account; which is a serious problem. There is a very conservative and mistaken perception of early childhood in this space; and, therefore, they lose their voice and their particular way of demanding the realization of their rights.

What follows is an effort to render the invisible, visible: by identifying norms, laws, agreements, conventions, and protocols, at international, regional and national levels; by revealing the relationship between laws and public policies; and by recovering from the little information available, something that may encourage us along the road towards the welfare of children. “No one can see the invisible if they are not looking for it”; Sir Arthur Conan Doyle put these words into the mouth of Sherlock Holmes in one of his famous novels.



CHAPTER 3

INTERNATIONAL INSTRUMENTS LINKED TO PUBLIC POLICIES AND TO SAFEGUARDS FOR THE FULFILMENT OF THE HUMAN RIGHTS OF MIGRANT CHILDREN.

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SECTION 1. PROTECTION FRAMEWORK

The framework of human rights for children and adolescents has at least a two- pronged structure, as all of the rights and mechanisms for protection and restoration of rights provided by international instruments overall for everyone are applicable; as well as those that have been established specifically for this age group. This makes their protection framework wider, on the whole, although the general instruments often fail to consider certain specificities that may be necessary in order to adjust more closely to this age group the protection that they provide.

When referring to the legal framework of human rights as a whole, as well as, specifically, the framework for children and adolescents, we should take into account the international stage, where transformations occur at global and regional levels that affect domestic legal arrangements or systems, because they are part of these transformations, subject to the rules that each State may apply in their regard, tacitly modifying these legal systems, or because they inspire new domestic regulatory developments or changes that strengthen, improve or make conventional expectations viable. This chapter, therefore, provides a review of the most relevant treaties, with different content and legal effects, relating to the protection of children and adolescents involved in human mobility at three levels: universal, regional and subregional. The impact of these treaties and their links with the regulations of each country will be addressed in the next section.

We should note the position that the issue of human rights and their protection in and for global development have been afforded in the world order and its constant transformations; as well as the close links between regulatory frameworks and the design and development of public policy and its implementation for the effective enjoyment and protection of rights.

1. AT UNIVERSAL LEVEL: THE UNITED NATIONS SYSTEM FOR THE PROTECTION OF HUMAN RIGHTS

1.1. Convention on the Rights of the Child

The Convention on the Rights of the Child (CRC) is the international human rights treaty with the highest number of ratifications and was specifically designed for children and adolescents, based on its consideration of children as people deserving of respect, dignity and freedom. While other United Nations human rights treaties do not exclude children, neither do they specifically assert their rights nor emphasize the differences in their situation with regard to adults. In this regard, the CRC describes human rights that also apply to children and adolescents, while at the same time, explicitly focusing on their special rights, which arise from the needs and characteristics of their developmental status.

When the CRC was enacted in 1989, a new paradigm came into being, through which children and adolescents are considered to be holders of rights. The CRC breaks away from the old view of children as passive beings, objects of tutelage and intervention by the State, society and families, and promotes a concept of children as rights-holders deserving of respect, dignity, voice and citizenship; thus establishing a new order in the relations between them, institutions, families and communities.

The Committee on the Rights of the Child has raised four articles of the Convention to the category of principles, on the grounds that, because of their scope and significance, they must be borne in mind and mainstreamed in all rights proclaimed by the CRC. These are:

1. The best interest of the child.
2. Non-discrimination.
3. Survival and development.
4. Being heard in decisions that affect them.

While it may seem, in a first reading of the Convention on the Rights of the Child, that it contains no provisions regarding migrant children and adolescents, in fact, most of its articles are applicable in migration issues. It is pertinent to note that Children and Adolescents should always be seen as Children and Adolescents and not as a category in light of a situation that may be applicable to them, such as 'migrants'.

The following rights enshrined in the CRC, have a direct relationship to situations that may arise when they are involved in migration:

Right to identity, to a name and nationality

Children and adolescents have the right to have access to documentation verifying their identity and legal status in the host State, including their migratory status, their asylum or refugee status, or other documents issued to foreign persons (IPPDH, 2019).

Right to develop in a stable family

Seeking the full realization of this right is often the reason that drives children and adolescents to leave their countries of origin. Family reunification has become one of the main reasons that drive children to migrate.

Right to gain access to justice and to all relevant procedural guarantees under regulatory frameworks

The elements of access to justice specifically include the rights to information, to effective repair, to a fair trial, to be heard, and to enjoy these rights without discrimination.

For migrant children (and especially those who are unaccompanied and separated), respecting procedural guarantees is even more important, because of the aggravated vulnerability in which they find themselves.

Right to liberty and protection against all forms of violence against Children and Adolescents

The violation of the human rights of children is a key motivating factor for international movement. The CRC enshrines the right to freedom of expression, association, and religion. States must protect and promote the rights of children and adolescents, regardless of social status, religion, ethnicity, gender, sexual orientation, national origin, or other status.

Right to an adequate standard of living, health and education

Being unable to exercise this right in a timely and efficient manner, is a factor that drives children and adolescents away from their countries of origin. Irregular migration and restrictive migration policies hinder access to and the enjoyment of these rights in countries of destination.

Like other treaties in the universal system, the CRC has a special treaty body, the Committee on the Rights of the Child, whose overall aim is to review progress in fulfilling the obligations that States parties have undertaken.

1.2 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) was adopted in 1993 and entered into force in 2003. Although it is the most relevant international instrument in the field, it has not

been ratified by many countries so far. It has not been ratified by any European country or the United States. In South America, it has been ratified by all countries except Brazil.

The CMW is based on the principles enshrined in the United Nations' basic human rights treaties, including the Convention on the Rights of the Child. States parties to the Convention have recognized the difficulties and situations of extreme vulnerability that migrants must face.

The CMW is applicable to all persons performing paid work in a State of which they are not nationals and is applied at all stages of the migration process. According to Article 1 of the Convention, its provisions shall apply to all migrant workers and their families without distinction of race, language, nationality, among others expressly listed and any other factor. In addition, it will apply from beginning to end of a person's migration process.

There is also a new way to define a migrant worker, not only as a person who leaves his or her country, but as one who is preparing to do so in the future.

The Convention focuses on migrant workers and does not address comprehensively the elements that specifically involve the protection and promotion of the rights of children and adolescents. However, by using the term 'family members', it is intended that the principles of the Convention should apply to dependent children of the worker, and others recognized as family members by applicable laws.

As in the case of the CRC, this convention has a treaty body, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, whose purpose is common to bodies of this type.

1.3 General Comment No. 6 of the Committee on the Rights of the Child on the treatment of unaccompanied and separated children outside their country of origin

This Comment was drafted by the Committee on the Rights of the Child in June 2005. It emerged as a result of the increasing numbers of children and adolescents who undertook their migration unaccompanied by and/or separated from their families. Furthermore, the Committee identified some gaps with regard to the protection of children and adolescents, and underscored exposure to sexual exploitation and abuse, recruitment into armed forces, child labour, and deprivation of freedom.

Its main objective is to shed light on the particular vulnerability of unaccompanied and separated children, and the problems faced by States to ensure effective protection and safeguards for the rights of children and adolescents in this situation.

It mentions the legal obligations of States Parties to the Convention on the Rights of the Child in relation to unaccompanied or separated children who are in their territories. These obligations include:

- Initial assessment and measures;
- Appointment of a guardian, adviser or legal representative;
- Care and accommodation;
- Full access to education and health;
- Right to an adequate standard of living;
- Prevention of trafficking and of sexual exploitation;
- Prevention of military recruitment;
- Prevention of deprivation of liberty.

In addition, the applicable principles are established (rights enshrined in the Convention on Rights of the Child), also adding the principle of non-refoulement and confidentiality. In addition, it contains recommendations regarding response and general and specific protection needs. Finally, one of its chapters deals with access to the procedure for obtaining asylum, legal guarantees and rights in the matter.

1.4 Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration

This Joint Comment addresses the Rights of the Child, as applied to the context of human mobility. It establishes the fundamental principles for the protection of rights, according to the CRC and CMW and the legal obligations of States parties to protect the rights of children and adolescents in the context of migration who are within their territories.

According to this General Comment, children and adolescents in situations of international migration, are undergoing a situation of 'double vulnerability'. The combination of their age and their migration status demands adequate and comprehensive protection of their rights by the States (Origin/Return - Transit - Destination) and other stakeholders. This condition is further aggravated when they are unaccompanied migrant children.

It is determined that in order to ensure that children and adolescents in situations of international migration receive adequate protection of their rights, it is essential to understand children's status as holders of rights, which must take precedence over their status as migrants; and under that premise, respect, protect and enforce their rights.

In this regard, the Inter-American Court of Human Rights has referred to this approach in its Advisory Opinion 21, when it indicates that their human rights "[...] should prevail over any consideration of her or his nationality or migratory status".

It is therefore essential that States should ensure that in the various actions that they implement (internal norms, public policy, projects, programmes, etc.) in the field of migration, the principles and provisions contained in the Convention on the Rights of the Child are present, and that the child-rights approach prevails over any other

consideration or approach, such as the protection of sovereignty, as noted in chapter 1.

1.5 General Comment No.7 of the Committee on the Rights of the Child: “Implementing child rights in Early Childhood”

This general comment of 2005 is the result of the Committee’s experience in examining the reports of States Parties, which provided very little information about early childhood, and regarding which, comments were primarily limited to infant mortality, birth registration and health care. The Committee considered that the broader implications for young children of the Convention on the Rights of the Child needed to be analysed.

By means of this general comment, the Committee wishes to facilitate the recognition that young children are holders of all rights enshrined in the Convention and that early childhood is a critical period for the realization of these rights. The Committee’s definition of ‘early childhood’ includes all young children from birth and throughout the first year of life, in the preschool years and during the transition period culminating with their schooling.

The aims of the general comment are: a) To strengthen understanding of the human rights of all young children and draw the attention of States Parties to their obligations in relation to children in early childhood; b) To review the specific characteristics of early childhood that affect the realization of rights; c) To encourage recognition of young children as social actors from the beginning of life, with specific interests, capacities and vulnerabilities, as well as of their need for protection, guidance and support in the exercise of their rights; d) To shed light on the diversity existing in early childhood, which should be considered when the Convention is applied, in particular the diversity of circumstances, quality of experiences and influences that shape the development of young children; e) To point to variations in cultural expectations and treatment of children, including local customs and practices which must be respected, except where they contravene the rights of the child; f) To emphasize the vulnerability of young children to poverty, discrimination, family breakdown and multiple other adversities that violate their rights and undermine their well-being; g) To contribute to the realization of the rights of all young children through the design and promotion of policies, laws, programmes, practices, professional training and global research focusing specifically on the rights of early childhood.

While there are no specific references to migrant early childhood, some of its articles do mention refugee children, for example in Art. No. 24, access to services, especially for the most vulnerable, where the Committee calls on States parties to *“...ensure that all young children (and those with primary responsibility for their well-being) are guaranteed access to appropriate and effective services, including programmes of health, care and education specifically designed to promote their well-being. Particular attention should be paid to the most vulnerable groups of young children and to those who are at risk of discrimination (art. 2). This includes girls, children living in poverty, children with disabilities, children belonging to indigenous or minority groups, children*

from migrant families, children who are orphaned or lack parental care for other reasons, children living in institutions, children living with mothers in prison, refugee and asylum-seeking children, children infected with or affected by HIV/AIDS, and children of alcohol- or drug-addicted parents...”.

Art. 36, paragraph (c) refers to young children who are refugees, who “...are most likely to be disoriented, having lost much that is familiar in their everyday surroundings and relationships. They and their parents are entitled to equal access to health care, education and other services. Children who are unaccompanied or separated from their families are especially at risk. The Committee offers detailed guidance on the care and protection of these children in general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin [...]”

1.6 Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child

This general comment addresses the obligations of States regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return.

In general terms, this comment sets out the legal obligations of States parties to protect the rights of children in the context of international migration in their territory, in relation to the articles of the Convention on the Rights of the Child mentioned above.

1.7 Convention Relating to the Status of Refugees

This convention was adopted in 1951 and is one of the international treaties with the highest number of ratifications. Its principles and its scope are supplemented by the Protocol Relating to the Status of Refugees. The Convention establishes a legal framework for the international protection of persons who for some reason cannot be protected by the State of which they are nationals, and have a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion”. One of the fundamental principles it includes is that of ‘non-refoulement’, which prohibits receiving States from returning people to countries “where he or she fears threats to life or freedom”.

1.8 New York Declaration for Refugees and Migrants

The Declaration was adopted on 19 September 2016, within the framework of the United Nations Summit. In it, the representatives of the different States pledged to take a series of measures to promote and protect the human rights of migrants in host communities.

The Declaration addresses the situation of migrant children differentially, especially those who are unaccompanied, recognizing that they require special protection measures.

“We will protect the human rights and fundamental freedoms of all refugee and migrant children, regardless of their status, and giving primary consideration at all times to the best interests of the child. This will apply particularly to unaccompanied children and those separated from their families; we will refer their care to the relevant national child protection authorities and other relevant authorities. We will comply with our obligations under the Convention on the Rights of the Child.”

1.9 Other international treaties of the universal system

As noted above, international instruments related to the protection, promotion and enjoyment of the human rights of children and adolescents are numerous and extensive under the aforementioned duality. There are also treaties that apply to particular groups of children, such as the group that is the object of study of this paper. It is, therefore, difficult and unproductive to address them all; we have focused on identifying the main instruments or those directly related to the status of child and of migrant; however, we must at least list the following treaties, because of their relevance to the subject.

- a. **Palermo Protocol.** It addresses the duty to prevent and combat trafficking in persons, especially women and children, taking action from a rights-based perspective and promoting international cooperation.
- b. **International Convention for the Protection of All Persons from Enforced Disappearance.** This convention establishes the obligation of States to protect all people from being victims of enforced disappearance and the right of persons to justice and reparation.
- c. **The International Labour Organization Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries.** It addresses the responsibility of ensuring the development of different peoples, with their active participation and in coordination with other peoples, with a view to protecting and ensuring respect and integrity.
- d. **The Hague Convention on the Civil Aspects of International Child Abduction.** Its purpose is to secure the return of children who have been removed to countries other than those of their habitual residence; and to obtain the effective exercise of the right to visitation.
- e. **International Convention on the Elimination of All Forms of Racial Discrimination.** It commits its members to the obligation of taking all necessary measures within the power of the States to prevent all forms of racial discrimination.
- f. **Vienna Convention on Consular Relations.** It regulates diplomatic relations between countries and the functions of consular authorities.

- g **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**. Adopted in 1979 and with the term ‘discrimination against women’ it refers to any distinction, exclusion or restriction based on sex.

2. REGIONAL LEVEL: THE INTER-AMERICAN SYSTEM FOR THE PROTECTION OF HUMAN RIGHTS

2.1. American Convention on Human Rights

The American Convention on Human Rights, also called *Pact of San José, Costa Rica*, was signed in 1969 and entered into force on 18 July 1978. It establishes a set of rights and freedoms that the States are obliged to recognize and respect, which are applicable to children and adolescents, such as the right to identity, movement and residence, among others. In relation to children as a specific group, it establishes that every child is entitled to the protection which, as a result of that status, he or she requires from the family/society/State trilogy; and this, of course, includes children and adolescents who are in migration scenarios.

The Pact of San José has been supplemented by the Additional Protocol to the American Convention in the Area of Economic, Social and Cultural Rights, which extends the provisions of the Convention regarding the rights of children and adolescents, and by the Protocol to the American Convention on Human Rights to Abolish the Death Penalty, 1990.

This convention, together with the Convention on the Rights of the Child, are the main instruments of the body of law concerning children in the region, for member States of the Inter-American System that are States Party to them.

To achieve the protection of Human Rights, the Convention established two bodies in order to make decisions regarding compliance issues: The Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.

2.2. The Cartagena Declaration on Refugees

This declaration was adopted in 1984 and sought to address the main legal and humanitarian issues affecting refugees in Central America. It includes recommendations for humane treatment and to seek solutions for those requiring protection.

An important aspect that it contributes is expanding the definition of ‘refugee’ which was provided in the Convention Relating to the Status of Refugees of 1951. Refugees are considered to be “...persons who have fled their country because their lives, safety or freedom have been threatened by generalised violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order”.

2.3. Advisory Opinion OC-21/14 Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection⁴⁷

In the Americas, one of the most important advances is in the orbit of the Inter-American Court of Human Rights (IACHR), within the Organization of American States. Advisory opinions are binding for all States. They establish standards that are mandatory for the States that recognize the jurisdiction of the Court.

These standards:

1. Are legal tools that the States must incorporate into their regulatory frameworks and practices.
2. Do not provide for penalties for non-compliance.

Advisory Opinion OC-21/14 is the most significant in the field of protecting the human rights of migrant children and adolescents. It was drafted at the request of the Republic of Argentina, the Federative Republic of Brazil, the Republic of Paraguay, and the Oriental Republic of Uruguay, submitted on 7 July 2011.

The applicants submitted to the Court nine specific queries for interpretation, analysis of scope or determination in light of one or more of the articles of the American Convention and the American Declaration of the Rights and Duties of Man, mainly, and also of the Inter-American Convention to Prevent and Punish Torture.

“Advisory Opinion 21/14 made especial progress as regards standards for international protection, clarifying concepts, situations and cases that make up this type of protection and determining how to proceed in relation to children and adolescents who do not specifically meet requirements for refugee status, but who require additional protection” (IPPDH, 2019).⁴⁸

The aim of this application was to provide answers about the synchronization between migration laws and migration policies, and systems for the promotion and protection of children and adolescents. In addition to analysing what vulnerable conditions should be given priority, that of a child, or that of a migrant.

OC 21/14 focuses on two groups of migrant children: those requiring international protection (asylum and/or refuge) and those who are vulnerable to being victims of violence or abuse and require special protection (IPPDH, 2016).⁴⁹

The specific questions laid before the Court addressed:

⁴⁷http://www.corteidh.or.cr/docs/opiniones/seriea_21_eng.pdf

⁴⁸http://www.ippdh.mercosur.int/wp-content/uploads/2019/06/ManualProteccionNi%C3%B1ezMigrante_web.pdf

⁴⁹<http://www.ippdh.mercosur.int/wp-content/uploads/2017/02/Derechos-Humanos-de-la-Ninez-Migrante.pdf>

- Procedures to be adopted to identify the various risks threatening the rights of migrant children; determine their need for international protection; and protective measures that should be taken.
- Due process guarantees in migration processes involving
- migrant children and when such processes include the application of measures that restrict their personal freedom.
- The principle of last resort in using arrest as a precautionary measure and alternative measures that adequately protect rights.
- Basic conditions of accommodation in cases of State custody for reasons of migration.
- Scope of the principle of non-refoulement.
- Procedures to be employed when a potential asylum or recognition of refugee status application for a migrant child or adolescent is identified.
- Scope that should attach to the protection of the right of children not to be separated from their parents in cases where a deportation measure could be applied to one or both parents as a result of their migratory status.

Among the matters referred to by the Inter-American Court of Human Rights with regard to these inquiries, the following essential aspects are included:

- i. The States must prioritize the human rights-based approach and that the status of child or adolescent must, as the Committee on the Protection of the Rights of All Migrant Workers and the Committee on the Rights of the Child noted in their joint comment mentioned above, take precedence over any other conditions, such as that of being a migrant. Therefore, all special regulations applying to children and adolescents must also prevail over regulations on migration.
- ii. It underlines the obligation of the States to identify the children requiring international protection within their territories and provide it appropriately and according to their status as minors. They must determine whether the children are unaccompanied or separated, their status as nationals of any country or their statelessness, the reasons for their migration, the causes of separation if this is the case, and any other situation evidencing the need for some form of international protection, as well as the adoption of any special protection measures that may be required..
- iii. It points to the obligation of States to adopt measures not involving deprivation of liberty and to guarantee their right to family life; they therefore have the obligation to take such measures for the whole family accompanying the child. Also, regarding this right, it refers to the non-expulsion of parents for administrative immigration violations when the child or adolescent is a national of or a legal resident in the country involved.
- iv. It underscores the obligation of States to ensure that their administrative or judicial proceedings are adapted to the needs of children and that they are accessible; in particular, to ensure that decisions taken in these processes have taken into account the best interest of the child; that children have had access to them on an equal footing and with the guarantees of due process applicable under international human rights law (including: the right to be heard, to legal

representation and consular assistance, to participate in the various stages of the process, the right to have the decision assess their best interests, to a reasonable duration of the process).

- v. Regarding the principle of non-refoulement, it broadens the scope of the assessment to be made by the States, including in this assessment an analysis of whether or not the conditions understood as minimum requirements for comprehensive development are threatened.
- vi. It is the Court's view that accommodation should respect the principles of family unity and separation, except in the case of accompanied children when such separation serves their best interests.

2.4 Inter-American Program for the Promotion and Protection of the Human Rights of Migrants, Including Migrant Workers and their Families⁵⁰

Further to the commitment made at the Third Summit of the Americas in April 2001, the General Assembly of the OAS adopted in 2005 the “Inter-American Program for the Promotion and Protection of the Human Rights of Migrants, Including Migrant Workers and their Families”, which was updated in 2016.

The programme seeks, on the basis of its general and specific objectives, to mainstream activities on the subject of the human rights of migrants and their families to be developed by the bodies, agencies and entities of the OAS, its member States, multilateral organizations and other civil society stakeholders, all as actors in the programme.

It bases its overall objectives on migratory policies that promote and protect human rights, regardless of migration status, and promote development, as well as foster the analysis and understanding of the contribution made by migrants to comprehensive development at national and regional levels, considering three cross-cutting focal points:

1. Human rights
2. The gender perspective
3. The special needs of groups in vulnerable situations

Among the specific objectives of the programme is, **“Take into consideration the best interest of the child and the principle of family unity in the formulation and implementation of public policies, national legislation and procedures applicable to the situation of unaccompanied migrant children”**.

The programme suggests 42 specific activities to programme stakeholders. In relation to the rights addressed in this study, we can highlight the following:

“(…) 27. To expedite and facilitate the obtaining of identity documents for migrants by the States of origin before their respective consular representations. (…)

⁵⁰https://www.oas.org/dil/migrant_workers_inter_american_program.htm

(...) 34. Provide adequate mechanisms for the processes of filing reports and complaints by migrants and civil society organizations, on violence and alleged violations of human rights, without prejudice to the right to access the applicable protection mechanisms of the Inter-American and universal systems. (...)

(...) 39. Provide the means to preserve the health of every person through health measures relative to medical care to the extent permitted by public and community resources, in accordance with the constitutional and legal system of each State and relevant international human rights laws (...)

(...) 40. Implement the actions and programmes needed to improve effective and equitable access of all migrants and their families, especially children and adolescents, to education, in accordance with the constitutional and legal system of each State and relevant international human rights laws. (...)

2.5 Other international treaties in the regional system

- a. **Inter-American Convention on the International Return of Children.**⁵¹ The Convention aims to ensure the prompt return of children or adolescents (under 16 years of age) who have their habitual residence in one of the States Parties and have been transferred illegally from any State to a State Party, or having been legally transferred there, have been unlawfully retained. It is also the aim of the convention to enforce visitation rights and the rights of custody or guardianship by their holders.
- b. **Inter-American Convention on International Traffic in Minors.** This Convention is primarily aimed at the prevention and punishment of international trafficking in minors, as well as the regulation of its civil and criminal aspects, and it is applicable to any child residing or staying in a State Party when an act of international trafficking in minors is committed against him or her. It establishes a regulatory framework for the prevention and punishment of trafficking in children, based on the protection of their fundamental rights and ensuring the principle of the best interest of the child. It is applicable to any child residing or staying in a State Party when an act of international trafficking in minors is committed against him or her. Persons under the age of eighteen are considered children.
- c. **Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women.** Known as the Convention of Belém do Pará, it is a regional instrument to fight against the social and structural discrimination experienced by women and girls. Its articles cover all contexts in which violence (physical, sexual and psychological) occurs and recognize the enjoyment of their human rights while primarily safeguarding their right to a life free of violence.
- d. **The Inter-American Convention Against Racism, Racial Discrimination and Related Forms of Intolerance and the Inter-American Convention Against All Forms of Discrimination and Intolerance.** As tools for the defence of human

⁵¹ For the IIN-OAS, under the Resolution of its Directing Council, it is inappropriate to use the term 'minor' to refer to children and adolescents.

rights in the region, both conventions focus on ensuring that States reflect the diversity of the population through political and legal systems that ensure and promote equitable conditions for equal opportunities, progress and inclusion for people or groups subject to racism, discrimination or intolerance.

3. SUB-REGIONAL LEVEL: THE REGIONAL CONFERENCE ON MIGRATION (RCM) AND MERCOSUR

3.1. The Regional Conference on Migration (RCM)

The Regional Conference on Migration (RCM) was created in February 1996 following the Tuxtla II Presidential Summit. The following countries covered by the study are included: Costa Rica, Dominican Republic, Guatemala, Honduras, Mexico, Nicaragua, and Panama.

The RCM has worked on a number of regional guidelines on child protection. These are intended to be a guide for RCM Member Countries, for the States to follow a course of action in shaping measures to protect children and adolescents in the context of migration. We shall discuss the three most relevant.⁵²

3.1.1. Regional Guidelines for the preliminary identification and referral mechanisms for migrant populations in vulnerable situations.

These Regional Guidelines are intended to be a guide for RCM Member Countries, for the States to follow a course of action in shaping measures to protect children and adolescents in the context of migration.

The child population benefiting from the guidelines includes:

- Unaccompanied and/or separated migrant children.
- Children and adolescent victims of sexual violence, teenage pregnancy and subject to exploitation of any kind.
- Children and adolescents applying for refugee status.

The following principles shall apply:

- a) Equality and non-discrimination.
- b) Best interest.
- c) Confidentiality.
- d) Non re-victimization.
- e) Respect for diversity and multiculturalism.

To be applied, these guidelines require the support of the States and the establishment of national-regional networking.

⁵² Other instruments developed within the framework of the RCM are available from <https://www.crmsv.org/en/publicaciones>

3.1.2. Guiding Principles for the Development of Migration Policies on Integration, Return and Reintegration of the RCM

These guidelines⁵³ focus on the development of public policy around three focal points:

- Integration.
- Return.
- Reintegration.

3.1.3. Regional Guidelines for the Comprehensive Protection of Boys, Girls and Adolescents in the Context of Migration.

This group of guidelines⁵⁴ are developed around the following focal points:

- a) Migratory policy and management.
- b) Human rights.
- c) Migration and development.

The aim of these guidelines is to promote cooperation among RCM member countries in providing care and assistance, as well as to provide a platform for dialogue for the development of comprehensive protection measures for children and adolescents at all stages of migratory processes, from a human rights-based perspective.

The guidelines are structured as follows:

- a) Protective actions before departure
- b) Actions for the reception of non-national children and adolescents and immediate assistance and protection
- c) Protective actions in integration processes
- d) Protective actions in return processes
- e) Protective actions in processes involving reception and reintegration in the country of origin.

3.2. MERCOSUR

Created by the Treaty of Asunción, Mercosur is a regional integration process composed of the following countries covered in the study: Argentina, Brazil, Paraguay, Uruguay, Venezuela (currently suspended) and Bolivia in the process of accession.

*3.2.1 Residence Agreement for nationals of States Parties to the MERCOSUR, Bolivia, Chile.*⁵⁵

⁵³https://www.rcmvs.org/sites/default/files/publicaciones/principios_ingles.pdf

⁵⁴https://www.rcmvs.org/sites/default/files/publicaciones/nna_-_lineamientos_regionales_ninez_eng.pdf

⁵⁵<https://www.mercosur.int/documento/acuerdo-residencia-nacionales-estados-partes-mercosur-bolivia-chile/>

The Residence Agreement for nationals of States Parties to the MERCOSUR, Bolivia and Chile is one of the most important of the Mercosur's provisions.

It grants Mercosur citizens the right to obtain legal residency in the territory of another State Party, provided they meet the minimum requirements (documentation, health card, etc.). It is currently in force for Argentina, Brazil, Paraguay, Uruguay, Bolivia, Chile, Peru, Colombia and Ecuador.

The Residence Agreement highlights the rights and minimum guarantees that must be provided to regional migrants, representing substantial progress in easing human intraregional mobility.

3.2.2 Statute of Mercosur Citizenship.

Since 2010, Mercosur has an action plan for the gradual establishment of a Statute of Mercosur Citizenship.

This Statute shall be composed of a set of basic rights and benefits for nationals of Mercosur States Parties, in order to facilitate migration flow, and structured on the basis of the following objectives:

- Implementation of free movement of persons in the region
- Equal rights and civil, social, cultural and economic freedoms for nationals of Mercosur States Parties
- Equal conditions of access to work, health and education.

3.2.3 Mercosur Multilateral Social Security Agreement.⁵⁶

Adopted in 1997 and recognizes the social security rights of workers who provide or have provided services in any of the States Parties of the bloc, recognizing for them and their families the same rights and obligations as nationals of those States Parties.

This treaty has sought to move towards the implementation of a zone of free movement of workers.

3.2.4 Regional MERCOSUR Guide for the Identification and Care of the Special Protection Needs of the Rights of Migrant Children and Adolescents⁵⁷

In 2012, Mercosur adopted a Programme of Actions and Activities to safeguard the rights of migrant children and adolescents and their families within the framework of Guidelines 3 and 4 of Focal Point II of Mercosur's Strategic Social Action Plan (PEAS for its acronym in Spanish), drawn up by Mercosur's Institute of Public Policies on Human Rights (IPPDH, in Spanish).

⁵⁶<https://www.bps.gub.uy/12616/mercursosur---acuerdo-multilateral-de-seguridad-social-del-mercado-comun-del-sur.html>

⁵⁷<http://www.ippdh.mercosur.int/wp-content/uploads/2017/02/Derechos-Humanos-de-la-Ninez-Migrante.pdf>

These activities included the development of a Regional Guide, whose purpose was to identify and address the special protection needs for the rights of migrant children and the establishment of guidelines for common action to identify rights violations or international protection needs by State authorities.



CHAPTER 4

STATE INTERVENTION: NATIONAL LAWS AND PUBLIC POLICIES TO PROTECT MIGRANT CHILDREN IN LATIN AMERICA AND THE CARIBBEAN.

CHAPTER 4. STATE INTERVENTION: NATIONAL LAWS AND PUBLIC POLICIES TO PROTECT MIGRANT CHILDREN IN LATIN AMERICA AND THE CARIBBEAN

SECTION 1. THE COMPLEX AND CONTRADICTIONARY RELATIONSHIP BETWEEN LEGISLATION AND THE REALIZATION OF RIGHTS

1.1. ANALYSIS MATRIX

Analysis of State intervention in the question of migrant children in early childhood is based on two perspectives: the production of laws and regulations that directly or indirectly regulate access to human rights for migrant children and families; and the identification of plans, policies, programmes, actions and institutions aimed at effective compliance.

This dual perspective analysis allows us to observe not only how much progress has been made in legal terms in the countries of the region, as well as in the implementation of public policies for their realization, but also shows evidence of the gaps between the two areas of analysis and the tensions involved in the implementation of public action.

A matter that is widely discussed and acknowledged in our countries is that the mere enactment of inclusive norms for the comprehensive protection of rights (which has occurred in most States in the region) is not enough to ensure that all children gain access equally to quality goods and services. To the contrary, if there is something that has persisted beyond regulatory progress it is the enduring inequality, exclusion, poverty and destitution of millions of children who live in the multicoloured region of Latin America and the Caribbean. Many of them are migrants or belong to families whose members have migrated. In order to touch upon both of these areas, we have chosen four dimensions related to the human rights of children:

- a) identity
- b) health
- c) education and care
- d) protection

When warranted, we shall consider the laws and policies related to the position occupied by countries in the contemporary migration cycle, when they are either origin or return States, transit or destination.

All information used in this chapter has been gathered from public and accessible documentary sources; as well as from other secondary sources and interviews conducted with national authorities and international, regional and local institutional reference points.

1.2. THE DIMENSIONS OF RIGHTS

The selected dimensions relate holistically to the migrant child protection Principles and Standards mentioned above. In terms of legal norms, we shall consider the recognition of the right, as well as access to the right and barriers to its enjoyment.

The gateway to recognizing migrant children as rights holders by a State is linked to identifying them as such; in this sense, the right to personal and cultural identity, and identity of origin is crucial. Identity is the gateway to social protection services, and the possibility of gaining access to health care, adequate nutrition, and education and care services.

The analysis of laws includes, for each country, the examination of the Constitution, the general laws that address these rights and the laws specializing in the promotion, protection and enjoyment of child rights. In addition to those that regulate their governing bodies on migration and refugees.

1.2.1. RIGHT TO IDENTITY

For the States, the concept of 'identity' is not specifically defined, but open to interpretation, depending on the elements that constitute it. In a first sense, it can be defined as the recognition of cultural identity, idiosyncrasy, nationality, language of origin, religion and beliefs, personality and place of origin. And it could also include features such as *gender and sexual orientation*. On the other hand, identity is also linked to the concept of *children's parentage and family relationships*, so it could consist of their given names, family names, who their parents are and the preservation of family relations in accordance with the law.

Finally, the right to identity may be understood as the *right to identification*; that is, to obtaining documentation that proves who a person is, which must be issued by the country of residence. Although the three approaches are intrinsically linked to the comprehensive nature of migrant children, for the purposes of this analysis, we shall focus on this third approach.

1.2.2. RIGHT TO HEALTH

The right to health is guaranteed by the State, as recognized by most of the regulatory instruments analysed. Safeguarding health has become a priority issue especially for children in early childhood, because their neglect endangers their current and future development. The lack of efficient health systems covering the demand for services is recognized to be a problem in the region.

This situation is even more serious when it comes to people who experience human mobility, since they are generally exposed to risky situations that increase their chances of jeopardizing their health, both physical and psychological. In many cases, unless there is an emergency, it is difficult to gain access to specialists, medication and complex medical procedures. It becomes even more complex if costly treatment or rehabilitation are necessary.

To this are added the problems associated with the lack of sexual and reproductive health. This is still an issue that is not a public policy priority in our countries, and regarding which, awareness-raising has not occurred in the training of health officials.

1.2.3. RIGHT TO EDUCATION AND CARE

According to the bodies of law we analysed, the right to education is one of the fundamental guarantees that States must ensure to the inhabitants of the region. From a perspective involving public policy for the international protection of migrant children, the States should not only ensure the right to physical and mental integrity of *migrant children*, but also *the minimum conditions to ensure their personal development*, which includes the right to education. Even in irregular situations, and/or cases of separated or unaccompanied children, education is a basic guarantee which should be provided to them on an equal footing with nationals, and should be compulsory and free.

Migrant children constitute a social group in a situation of particular economic and social vulnerability, so that access to educational services also ensures access to other basic needs, such as security, food and health. In addition, educational institutions and communities are also areas where children and teens can socialize and acquire knowledge and skills for life. However, in practice, such safeguards are skewed by the high dropout rates caused by the need to enter the labour market to contribute financially to their families or survive on their own. Added to this is the lack of documentation required for enrolment and accreditation, and the gaps in their educational levels that children carry from their country of origin.

1.2.4. RIGHT TO SOCIAL PROTECTION

Child protection systems in the countries analysed envisage measures to guarantee the exercise of children's right to protection.

Such actions are mandatory for States, societies and families, in order to ensure the physical and emotional development of children and adolescents, as well as material aspects and protection against any form of abuse or violence. This protection is comprehensive and, in some cases, carried out pre-emptively and in others, reactively. The latter occurs in reaction to infringements affecting the exercise of children's rights, of all of their rights.

In preventive terms, there are measures that prioritize the status of being children and adolescents over others, addressing the specific needs of this age group. We refer to measures that promote family reunification, care given by parents or guardians and social rights that ensure the health, education and social security conditions conducive to their development.

On the other hand, measures act reactively when children's rights under the law are threatened or violated by action or omission of the State, parental abuse or when children or adolescents are held responsible by reason of their conduct. In several legislations, the judiciary intervenes to command the corresponding administrative body to act against these violations, through specific measures.

Migrant children and adolescents face challenges owing to their particularly vulnerable situations, as a result of moving to the country of destination. These children may include: children and adolescents who are unaccompanied by their parents or other relatives, and are not in the care of an adult responsible for them; children and adolescents who have been separated from their parents or other adults in charge, but may be accompanied by other adults; and, finally, child and adolescent refugees who have fled their home countries for security reasons or severe human rights violations.

1.3. LEGISLATION AND PUBLIC POLICIES

As we have mentioned, when a society assumes migration to be a public problem, it is because it has managed to determine symbolically, that someone should be responsible for intervention. A set of processes becomes a public issue when society begins to demand certain State 'responsibility' and in some cases, private responsibility, in order to resolve the problem. This implies that one or a set of government agencies will intervene to ensure that this responsibility becomes effective. It is also likely that what is observed is a lack of policies, weak institutions, and inconsistencies in so-called rights protection systems. All State intervention that aims to safeguard rights should be supported by one or more laws, although this joint responsibility is not always achieved.

It should be noted that in the regulatory review of each focal point, our primary consideration or trigger for our analysis, was whether the regulations contained provisions allowing children and adolescents in situations of human mobility to gain access to these rights in equal terms, or under positive or negative discrimination. This is reflected in the following sections, which contain information only from countries with references linked to the dimensions addressed. In some cases, distinctions may be made between children who are alone, accompanied or refugees.

Legislation can only be sustained, in real or symbolic terms, when bridges are built to the reality that the laws seek to influence, through the implementation of public policies and social programmes,⁵⁸ to order the participation of the State in the identified problem that needs a specific response, as well as in bodies that should be responsible for specific intervention and act accordingly. For that policy to be efficient and effective, it must receive the support of appropriate, sustainable and intangible funding.

Social programmes, as Martínez Nogueira points out (2007), are defined as *“instrumental and symbolic artefacts, unfinished crystallizations of knowledge, constructions subject to restrictions, arenas of tension, conflict and collaboration, and the locus of homogenizing forces. This is based on the assertion that implementation is not a predictable process, with certain results, but a path to be built, often far removed from the forecasts of the designs. Management must travel this path overcoming obstacles, but also identifying and exploiting opportunities, and deploying adaptive, strategic and innovative behaviours”*.

Programmes are expressive in nature, they are a way of externalizing and affirming values, they are susceptible to symbolic manipulation, and their manifest contents are not always the full expression of the intentions that inspired them; they may be vicarious representations of equity or justice.

It will be apparent, throughout the paragraphs that follow, that the information it has been possible to gather on legislation is more abundant (even having been processed and summarized) than information on the implementation of specific public policies involving migrant children in early childhood and their family context.

In this case, the imbalance is directly related to one of the main conclusions of this study: the invisibility of the issue of migration and early childhood in the public policies of most countries in the region.

⁵⁸ In this case, we refer to the set of policies, programmes, plans or strategies for the purpose of resolving a specific social demand.

SECTION 2. ANALYSIS OF NATIONAL LEGISLATIONS

2.1. RIGHT TO IDENTITY

2.1.1. THE LAW

The right to identification is a fundamental guarantee for the exercise of rights in general, especially when it comes to children or adolescents involved in human mobility, where it is essential to determine their identity as part of the assessment of their protection needs, as stated by the Inter-American Court of Human Rights in the Advisory Opinion cited above, which includes the pronouncement of the Committee on the Rights of the Child: *“determination of what is in the best interest of the child 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”*.

Such documents are unavailable especially for those who are rendered invisible by an adult-centred culture, and especially for those who are unaccompanied. An identity document must not only provide proof of the aspects mentioned above, but also of the legal status of residence or other, for example, refugee status and permission to stay in the host State.

The obstacles to which children are exposed in attempting to exercise the right to identity are part of the mechanisms and requirements for obtaining national documentation, related to the factual circumstances of their mobility situation.

On the one hand, there are migrant children and adolescents accompanied by their caregivers or guardians, and it is the latter who are in possession of identification documents from the country of origin. Difficulties in proving identity in the new country of residence, and in gaining access to documentation may arise if these papers are incomplete, falsified or not legalized. In many cases, as a result of these obstacles, caregivers or responsible adults are not able to provide proof of their relationship with the child or adolescent in their care. Even when they are, in fact, their biological fathers or mothers.

On the other hand, it may be that the required certificates do not exist, either because the country of origin did not issue them, the children’s companions were not in the same territory, or in the case of unaccompanied children and adolescents, at no time did they have access to these documents when they decided to migrate.

Another problem which restricts the right to identity and identification occurs in the case of children and adolescents who are stateless. This means that, for a variety of reasons, they are people who are not considered nationals of any State. An example of this, in the context of Venezuelan migration, was the situation of children and adolescents born in Colombia, of Venezuelan parents. In Colombia, nationality is acquired on the basis of *jus sanguinis* (‘law of blood’) and not *jus soli* (‘law of soil’). For this reason, because they did not have a Colombian father or mother, children were

stateless. This situation was remedied by the Colombian State, by awarding Colombian nationality to approximately 24 thousand children.

The following is a summary of significant aspects of the regulatory frameworks of the countries analysed, to illustrate the situation of migrant children regarding this right.

2.1.2. OVERALL RECOGNITION OF THE RIGHT TO IDENTIFICATION

There is universal legitimacy with regard to children's right to identity in various legislations. It follows from the statement "*all children and adolescents*", as stated in article 9 of Uruguay's Children's Code, article 6 of Peru's Children's Code, and article 22 of Venezuela's Organic Act for the Protection of Children and Adolescents. We have not found the necessary specific features to be able to state conclusively that this right is recognized for migrant children and adolescents, but it may be concluded in a broad interpretation.

It should be noted that Venezuela makes express mention of the right to identity of children in the sense that we are analysing. There is no direct reference to identity in the text, but an explicit right appears, which involves identification'. Article 22 of the law establishes the right *to obtain public documents proving the identity of each child*.

In the case of refugees, Bolivia recognizes this right in article 46 of its Refugee Act, when it establishes that the relevant authorities must issue an identity card to any person recognized as a refugee.

We should mention that legislation in Ecuador provides for the rights of Ecuadorian persons who go abroad, including the right to obtain an identification document. According to article 16 of the Organic Act on human mobility, citizens who migrate are entitled to receive a certificate of citizenship, passport and renewal thereof, through diplomatic missions or consular offices and the services of civil registration and identity management. Children or adolescents who enter the country must register with the National Integrated Information System on Human Mobility. Records should show who children have entered the country with, or who is to be their guardian in the country, and the place where they will remain.

2.1.3. ACCESS TO IDENTIFICATION DOCUMENTS

The legislation analysed shows the existence of a process to deliver national documentation to migrant children, but differentially, depending on the circumstances of entry of some children and adolescents. These are the categories we were able to distinguish:

2.1.3.1 Accompanied migrant children and adolescents

That children and adolescents are accompanied by someone responsible or of legal age seems to be most recurrent assumption of legislators when establishing the procedures for obtaining identification documents.

There are laws in the region according to which adult intervention is essential, as in the case of Honduras, where article 37, No. 5, of the Civil Registration Act, determines that obtaining an identity card by migrants is a process that is the exclusive responsibility of *the parents of children under the age of 18*. The participation of children in the process is therefore impossible. Also, in Nicaragua, under article 88 of the Migration Act, resident identity cards will be issued in person and procedures handled by *foreign individuals over eighteen or their legal representatives*, and minors, or persons declared to be incompetent, will be represented by their *parents, guardians or legal representatives*.

There are other regulatory frameworks which are open to interpretation on whether minors may have direct access to these procedures. In Chile, the Civil Registry and Identification Act establishes in its article 19 that the agency must have simple and swift procedures in place to allow the identification of children and their nationality, regardless of their migration status or that of their parents. It also states that in cases where *their parents' identity is unknown*, children shall be registered with a name and two conventional surnames, leaving a record of this in the relevant certificate, without prejudice to the right to claim the establishment of their identity at a later date.

The institution responsible for personal records in both Chile and Argentina are specialized agencies for identification; the Civil Registry and the Office of the National Register of Persons, respectively. However, in the face of restrictions to children's right to identification, some legislations point out that other bodies are responsible for its recovery. On the one hand, Ecuador's Civil Registration, Identification and Documentation Act indicates that it is mandatory to ensure that children and adolescents have public identity documents (Art. 211) and that public officials who impede the right of children and adolescents to their identity and identification shall be fined (Art. 253). On the other, in Costa Rica, the lead institution on children's issues is in charge of providing appropriate assistance and protection when children and adolescents have been illegally deprived of some attribute of their identity. This is the National Children's Board, under article 23 of the Children's Code.

2.1.3.2. Unaccompanied Migrant Children

Regarding children and adolescents who are unaccompanied by a family member, caregiver, responsible person or adult, regulatory regimes are weak. There is only the legislation we describe below, in Brazil and Mexico, but there are several special considerations that should be noted in some countries.

In Brazil, the Migration Act, in its article 40, states that unaccompanied children who lack express permission to travel unaccompanied, regardless of the travel document they may hold, will be only be admitted to the country in exceptional cases. Once a case has been detected, it is referred to the Guardian Council or, if necessary, to the institution indicated by the relevant authority. Article 74 of the New Mexican Migration Act states clearly that unaccompanied foreign migrant children will receive provisional documentation as *Visitors for Humanitarian Reasons*, and that the Secretariat will provide temporary or permanent legal or humanitarian alternatives to assisted return.

2.1.3.3. Unaccompanied refugee children

Legislation providing protection to refugee children in the region is quite infrequent, considering the number of countries analysed. The articles listed below show a concern for safeguarding children's right to identification.

In its article 33 I, the Refugee Act of Bolivia establishes that children and adolescents who are unaccompanied or separated from their parents or guardians may submit their application for refugee status themselves and thus obtain an identity card for foreign persons, which will be valid for five years (Art. 47). However, article II raises questions regarding this direct participation guarantee, because everything done after that application will be cancelled without the presence of an assigned guardian or advocate.

In Chile, according to article 38 of the Refugees Act, obtaining recognition of refugee status is facilitated for children and adolescents, as they can apply directly, independently of any person exercising their legal representation. However, this is not clear when it comes to an identification document.

In the case of Guatemala, article 28 of the Refugees Act states that the General Migration Directorate may interview unaccompanied minors who are applying for refugee status, and interviews must be carried out by qualified personnel. This implies that children can apply themselves, without the intervention of an adult.

Another case is Ecuador's Human Mobility Act. According to its article 99, proceedings for recognition of refugee status must give priority to processing applications submitted by children and adolescents who are unaccompanied or separated from their legal representatives, victims of torture, victims of sexual abuse or gender violence, and other members of priority groups (Nº 8). In addition, the relevant

authority will coordinate the appointment of a guardian or legal representative through the Public Defender's Office (Nº 9).

Finally, Panama's Refugee Act states in its article 59 that every child or adolescent has the right to apply for recognition of refugee status for himself/herself or represented by his or her parents, immediate relatives or legal representatives. In addition, if required, the application procedure may be performed independently of the individuals exercising their legal representation or personal care, so that consideration may be given to the particular circumstances that motivate the application.

2.1.4. BARRIERS TO EXERCISING THE RIGHT TO IDENTITY

Below are some examples of legislative obstacles to obtaining documentation faced by all people in situation of human mobility. These barriers equally affect migrant children. If it is a complex matter for adult migrants to gain access to documentation, it is especially difficult for children and adolescents, unless there are mechanisms ensuring positive discrimination in their favour.

First, in many legislations, deadlines for applying for identification document are highly limited. In Chile, the deadline is only 30 days from the date of entry into force of the relevant residence permit (Art. 35 of the Migration Act) and those applying once the deadline has expired, shall be fined a sum between half to five monthly tax units. In Nicaragua, the application for a certificate of residence must be performed within 30 days of entry into the country and any renewals must be made 30 days prior to the date of expiry (Art. 88 of the Migration Act).

Secondly, there is the problem of proving identity before the relevant authority, with documents issued by the country of origin. In Costa Rica, migrants who wish to apply for the national registration and documentation of their minor children must, on the one hand, prove their status as migrants and secondly, present an identification document (Art. 27A of the Civil Registration Act). However, there is special consideration in Panama with regard to this obligation for minors. According to article 43 of the Migration Act, foreigners applying for permanent or temporary residence must present a valid passport or alternative travel documents and criminal record certificate, unless the person is under the age of fourteen.

Thirdly, identity documents must be faithful to the original and be legalized. In Cuba, for example, verbatim certification, or extracts issued by a foreign authority must be translated into Spanish if they are in another language, and previously legalized if they are to take effect in the host country (Art. 13 of the Civil Registration Act). In Nicaragua, the identity documents of foreigners will not be valid if they show evidence of forgery, alterations or amendments of any kind, missing pages or covers, or notes or annotations that are not official (Art. 90 of the Migration Act).

It should be noted that visa requirements often represent a difficulty that delays the process of gaining access to identity documents. In many cases, people begin their migration journey without a travel permit (because of their difficulty in complying with

requirements). In these cases, people find themselves in an irregular status in countries of destination, which increases their vulnerability and difficulty in obtaining identification documents.

Finally, there is a chain effect in the impediments listed above, since when children fail to obtain an identification document, the enjoyment of their other rights, such as education, health, social security benefits and free movement, is suspended. This applies both to them and to their parents. Regarding this right, we should underscore the interpretative complexity of some of the articles which compel minor migrants to obtain and always carry the relevant identity document. In article 89 of the Registration Act in Honduras, persons over 12 and under 18 are required to show their identification card at the request of the relevant authority. Similarly, article 12, N° 3 of Nicaragua’s Migration Act indicates that it is the obligation of foreigners to preserve and present, at the request of the competent authority, the documents that show proof of their identity issued by the country of origin or provenance and showing evidence of their migration status in Nicaragua.

In both articles, the scenarios or circumstances in which this request would be appropriate are not clear. It would seem to be a risky arrangement, and in the case of migrant children, and, in particular, migrant adolescents, could lead to conflict with that authority because of difficulties they may face when it comes to presenting this documentation.

The following table lists national laws that make specific reference to the right to identity, and those that make no specific reference to it.

DIMENSION	SPECIFIC REFERENCES TO MIGRANT OR REFUGEE CHILDREN OR ADOLESCENTS	NO REFERENCE OR NO SPECIFIC REFERENCE
RIGHT TO IDENTITY	<ol style="list-style-type: none"> 1. Bolivia (Art. 33 I and II Refugee Act) 2. Brazil (Art. 40 Migration Act) 3. Chile (Art. 38 Refugee Act) 4. Colombia (Arts. 4 and 25 Children’s Code) 5. Ecuador (Art. 99 N°8 and N°9 Human Mobility Act) 6. Guatemala (Art. 28 Refugee Act) 7. Honduras (Art 37 N° 5 Civil Registration Act) 8. Mexico (Art. 74 New Migration Act) 9. Nicaragua (Art. 88 Migration Act) 10. Panama (Art. 59 Refugee Act) 	<ol style="list-style-type: none"> 1. Argentina 2. Cuba 3. El Salvador 4. Paraguay 5. Peru 6. Dominican Republic 7. Uruguay 8. Venezuela

Illustration 3 Inclusion in national legislation of the right to identity

2.2. THE RIGHT TO HEALTH

2.2.1. THE LAW

Health is a fundamental social right that must be promoted and protected by the State in accordance with the provisions of most of the 19 Constitutions examined. It is considered to be a right for ‘everyone’ according to Art. 83 of Venezuela’s

Constitution; Art. 7, Peru; Art. 68, Paraguay; Art.9 Nº5, Bolivia; Art. 19 Nº 9, Chile; Art. 50, Cuba; Art. 4, par. 3, Mexico.

Regarding refugees, there is a safeguard of the right to health of 'all refugees' in some regulatory bodies specializing in their protection. Most notably, in Argentina, Chile and Peru.

Article 51 of Argentina's Refugee Protection Act and article 13 of Chile's Refugee Act state that the provisional document issued to applicants and their family members will allow them access to health care.

Like the other social rights analysed, safeguards for the right to health of children and adolescents are included in general terms. In this regard, the following stand out: Art. 227 of the Brazilian Constitution, 41 of the Organic Protection Act of Venezuela, Art. 9 of Uruguay's Children's Code, Art. 21 of Uruguay's Children's Code, Art. 13 of Paraguay's Children's Code, Art. 33 Nicaragua's Children's Code, Art. 113 Cuba's Children's Code, and Art. 29 of the Draft Guarantee System, Art. 11 of Brazil's Children's Statute, and Art. 14 of Argentina's Comprehensive Protection Act. The Constitutions of Guatemala and El Salvador use the concept of 'minors' in articles 51 and 35. They mention that the State shall protect their physical, mental and moral health.

In Costa Rica, the Health Act is specific in protecting children and adolescents. Article 12 refers to their right to have their parents and the State ensure their health and their social, physical and psychological development.

The Inter-Cultural, Care for Migrants and Human Mobility Act of the federal district of Mexico City indicates in its article 12 that migrants and their families are entitled to receive support from public institutions, in the exercise of and respect for their rights (12 I), and to receive health services (12 II).

Finally, the recognition of the right to health is broken down into several elements. Some of these are: access to physical and mental health, medical care, medicine, early diagnosis, timely treatment and rehabilitation of diseases. Article 14 of Paraguay's Children's Code should be noted for incorporating the right of every child or adolescent to sexual and reproductive health. These services and programmes for adolescents must take into account professional secrecy and consent.

Regarding the migrant population, in 5 of the 19 countries analysed there is a general regulatory framework that ensures their right to health; some of these refer to migrants as 'foreigners'. These countries are Bolivia, Colombia, Cuba, Uruguay, Dominican Republic and Ecuador.

In Bolivia, article 12, Nº 2 of the Migration Act provides that the State shall guarantee to foreign migrants, the exercise and enjoyment of the right to health, and sexual and reproductive rights. In Colombia, article 15 of the Migration Bill establishes that the State is responsible for respecting, protecting and guaranteeing the rights of migrants

in Colombian territory, including health, prevention and care for foreigners in the country. In Cuba, article 14 of the Health Act states that foreign citizens permanently residing in the country, must receive the same preventive and curative care as Cuban citizens. Those who are residing there temporarily or are in transit or visiting the country, shall receive medical care in accordance with established provisions in each case. In Uruguay, article 8 of the Migration Act recognizes the right to health of migrants and their families. Further, article 9 refers to the same right in relation to foreigners. In the Dominican Republic, article 3 of the Health Act states that all Dominicans and foreign citizens who have established their residence in the country have the right to health promotion. Although this requirement could mean an obstacle to holding this right, according to one of article 3's paragraphs, foreigners who are not residents are guaranteed their right in accordance with the provisions of international law, international conventions, bilateral agreements and other legal provisions. Finally, article 52 of Ecuador's Organic Human Mobility Act states that foreigners residing in Ecuador have the right to access health systems in accordance with the law and international instruments ratified by Ecuador. Public or private institutions providing health services may in no circumstances refuse to provide emergency care on the basis of a person's nationality or migration status.

In another approach, the same law refers to the situation of Ecuadorians abroad. Article 11 establishes the obligation of the Ecuadorian State to promote actions to foster the exercise of the right to health, as in the case of illness, accident or death, whose viability must be ensured through public social security according to its rules and regulations, private security systems or through international instruments.

In the case of refugees, we found that there is minimal recognition of their right to health. We can only cite Panama's Refugee Status Act, which, in its article 82, states that applicants for refugee status and their basic family group shall be entitled to access health care.

2.2.2. ACCESS TO HEALTH

Some of the instruments we examined contain general references to significant elements to be considered in order to ensure access to health for migrant children.

Firstly, double coverage is afforded to this right, owing to either their migrant status or any other condition that places them in a situation of vulnerability. On the one hand, article 485 of Panama's Family Code stipulates that the State shall safeguard the mental, physical and moral health of minors, whether nationals or foreigners who are in the country, and nationals who are abroad. Also, Chile's Migration Act stipulates in its article 11 that the State shall guarantee health care to foreign children, including those in an irregular migration status.

In addition, protection is conceived with a view to protecting the rights of certain groups that have historically been most vulnerable so they are prioritized when they need medical care. Article 9 of Peru's General Health Act stipulates that the State shall give preferential attention to children and adolescents. In the same vein, article 11 of Colombia's Health Act indicates that the State shall provide special protection to children, victims of violence and armed conflict, the elderly, people suffering from rare diseases, disabled people, and others.

In some cases, the law has made exceptional group classifications as a way to ensure access to health or other benefits. For example, article 191 of Guatemala's Health Code characterizes "*minors in special situations*" as those who, lacking adequate protection, suffer or are at risk of suffering physical or mental developmental deviations or disorders, and also those who are undergoing or at risk of abandonment, in accordance with special laws.

Another example of this are the priority groups defined by article 30 of the Dominican Republic's General Health Act. These groups are composed of people below the poverty line, so that the interests that should prevail are those of women (with greater emphasis on women who are pregnant), children up to the age of 14, the elderly and the disabled.

Secondly, a clear form of ensuring access to the right to health services is that they should be provided completely free of charge to children and adolescents. Laws that recognize this are article 11 of Brazil's Children's Statute, article 15 of Paraguay's Children's Code, article 21 of Venezuela's Organic Child Protection Act, article 18 of Bolivia's Children's Code. However, other countries grant gratuity only under certain circumstances, which we shall examine below.

Thirdly, another measure is that migration status should not be considered a hindrance to gaining access to health benefits. In this regard, article 9 of Uruguay's Migration Act mandates that migration irregularity shall in no case prevent foreign persons from gaining free access to health facilities. In this country, we should highlight a positive discrimination measure benefiting migrants, to ensure access to health despite irregular migration. In article 35 of the Migration Act Regulations, unless permanent or

temporary residence is withdrawn, irregular migration shall not prevent access to comprehensive health benefits through the entities comprising the National Integrated Health System. It continues to state that, in these cases, migrants must prove their identity to the health service provider involved with a document issued by the country of origin or by a third country. Should they not possess such a document, they may prove their identity by way of affidavit. However, the law is not entirely beneficial to unaccompanied children, since in its final paragraph, it indicates that in the case of minors, the affidavit shall be provided by the persons *responsible for them*.

Fourthly, it is a positive aspect that the items to be included in a health policy for children be determined. In this, Mexico clearly identifies the specific measures that will ensure free, quality, and comprehensive health care. Article 27 of the Child Rights Act contains the following:

- i. Reduce morbidity and mortality;
- ii. Guarantee the provision of the necessary medical and health care for children and adolescents, with an emphasis on primary care;
- iii. Promote in all groups of society and, in particular, those exercising parental authority, guardianship or custody of children and adolescents, the basic principles of health and nutrition, hygiene and environmental sanitation, and accident prevention measures;
- iv. Adopt measures tending towards the eradication of cultural practices and customs that are detrimental to the health of children and adolescents;
- v. Develop preventive health care and create mechanisms to guide those exercising parental authority, guardianship or custody of children and adolescents;
- vi. Ensure the provision of respectful, effective and comprehensive health care services during pregnancy, childbirth and postpartum, as well as for children, and promote exclusive breastfeeding in the first six months and complementary breastfeeding for up to two years;
- vii. Implement information strategies and reproductive and sexual education for children and adolescents by ensuring access to sexual and reproductive health services, as well as to contraceptive methods;
- viii. Combat chronic and acute malnutrition, excess weight and obesity, and other eating disorders, by promoting a balanced diet and the consumption of clean drinking water, encouraging exercise, promoting prevention programmes, and providing information on these issues;
- ix. Foster and implement vaccination programmes and check-ups for healthy children, to monitor their growth and development on a regular basis;
- x. Respond effectively to respiratory, kidney, and gastrointestinal diseases, epidemics, cancer, HIV/AIDS and other sexually transmitted diseases and promote prevention programmes and information on them;
- xi. Arrange for children and adolescents with disabilities to receive appropriate care for their condition, to improve their quality of life, facilitate their interactions and social inclusion and enable equal exercise of their rights;
- xii. Prohibit, punish and eradicate the sterilization of children and adolescents, forced assignment of generic sexual identity and any form of obstetric violence;

- xiii. Establish measures to ensure that health services detect and provide special care for victims of crimes or violations of their rights, or of sexual and domestic violence, in accordance with the relevant provisions in this area;
- xiv. Establish measures with a view to prevention, care and rehabilitation in situations caused by drug abuse, in accordance with the policies of national and local Drugs Courts;
- xv. Establish measures tending to ensure that health services detect and provide special care for children and adolescents with mental health issues;
- xvi. Establish measures for early detection of disabilities in order to prevent and reduce as far as possible the appearance of new ones and ensure the highest levels of care and rehabilitation;
- xvii. Assist in gaining access to the goods, services, technical support and rehabilitation that children and adolescents with disabilities require.

2.2.2.1. Accompanied migrant children and adolescents

In many countries, the law includes special consideration of children and adolescents in order to protect their right to health without discrimination. A broad interpretation of this idea would involve including nationality and migration status as stated in article 4 of Brazil's Migration Act and article 19 of Bolivia's Children's Code.

Colombia's Children's Code reinforces non-discrimination in access to health through coercive measures. In its article 27 it states that authorities or persons who fail to provide medical care to children and minors will be punished with a fine of up to 50 minimum monthly salaries. In Mexico, the Ministry of Health is the institution responsible for promoting the provision of health services granted to foreigners, which will be provided regardless of migration status and in accordance with the relevant legal provisions (article 27 of the Migration Act).

The health system and the means used to gain access to it include the exercise of other rights, for both migrant children and children and adolescents in general. One of these is the right to be heard in the processes to which they are subjected, as indicated in article 1 of Argentina's Patients' Bill of Rights. The provision indicates that they are entitled to intervene under the terms of Law 26,061 for the purpose of making decisions on therapies or medical or biological procedures involving their life or health. Others are the right to water, food, education, physical culture, work, social security, healthy environments and others that support a good standard of living; all according to article 32 of the Constitution of Ecuador.

2.2.2.2. Unaccompanied migrant children and adolescents

In relation to children and adolescents who are unaccompanied by a family member, caregiver, or responsible adult, the legislation is mostly sparse, but there are several special considerations that help them to gain access to health services, at least on paper. Of special note are the laws of El Salvador, Nicaragua, Costa Rica and Bolivia.

In El Salvador, the Protection Act, in the final part of article 22 indicates that in no case may medical care be denied to children or teenagers, under the pretext of the absence of a legal representative, the lack of space or resources and technical considerations of care. In Nicaragua, article 41 of its Children's Code states that hospitals and public health centres must immediately provide to any child or adolescent registered with them the medical services required in emergency care, without resorting to any reason whatsoever to deny them, not even the absence of legal representatives, lack of financial resources or any other cause. In the latter scenario we could include unaccompanied migrant children, or children who are not registered in those establishments.

In Costa Rica, article 41 of the Children's Code provides that minors shall enjoy medical care directly and freely from the State; that these services shall be provided without regard to race, gender, social class or nationality and the absence of their legal representatives, lack of identity documents, lack of space or any other circumstances may not be put forward as a reason to deny them. In Bolivia, article 21 of the Children's Code prohibits officials in private health centres and services from denying care to any child or adolescent, citing the absence of their parents, in the case of an emergency or life-threatening situation or serious damage to their health.

2.2.2.3. Child refugees

Recognition and protection of the right to health of refugee children is scant, but the articles listed below show evidence of significant consideration on the part of States that include them.

The law protecting refugees in Bolivia, in its article 33 I, establishes access to the right to health for persons applying for refugee status. As article 33 of the same law states, minors can make this application for themselves, but again there is mention of an appointed 'guardian or advocate', a condition that may do away with all the steps that have not been authorized. In article 23 of Nicaragua's Refugee Protection Act, applicants for refugee status who obtain a document accrediting them as such, may have access to health services.

2.2.3. BARRIERS TO EXERCISING THE RIGHT TO HEALTH

The barriers begin with a regulatory framework that only recognizes the right to health of the country's citizens. Article 59 of the Constitution states that Nicaraguans have the right to health, thus ignoring migrants. In addition, in Uruguay, article 1 of the National Health System Act only recognizes the right to health protection of all the population residing in the country, excluding non-resident foreigners, persons with residence permits pending, and those in irregular status.

One of the most recurring issues in the legislation analysed is that, although the right to free health for all children and adolescents is guaranteed in many articles, in special laws, such guarantees are subject to their age.

One example is article 5 of Bolivia's Comprehensive Health Services Act. The article states that foreigners who are not protected by the Short-Term Social Security Sub-Sector, or foreigners in another situation shall benefit from comprehensive free care, unless they are children under the age of five. This would appear to be an attempt by the legislature to make a positive discrimination in favour of children, but only limited to early childhood. In Mexico, article 36 of the Health Act indicates that health services are free only in two cases: first, in emergencies, and second, in the case of a child up to the age of 5. Article 1 of Panama's Decree 546/2005 also requires that children be less than 5 years old. In Colombia, according to article 50 of the Constitution, services shall only be free in the case of a child under the age of one, who is not covered by any protection or social security.

Another issue we have noted is linked to a previous step; that is, the entry of migrants to the country of destination. Several articles demand the presentation of medical certificates obtained in the country of origin.

Moreover, in relation to sexual and reproductive health, in Uruguay, Law 18,987 on the Voluntary Interruption of Pregnancy states in its article 13 that "only natural or legal Uruguayan citizens, or foreigners who can prove they have been residing in the territory for a period of not less than one year may invoke the provisions of this law". The provision clearly excludes migrant girls and adolescents who are not legal residents or who have only been legal residents for less than one year.

The following table lists national laws that make specific reference to the right to health, and those that make no specific reference to this right.

DIMENSION	SPECIFIC REFERENCES TO MIGRANT OR REFUGEE CHILDREN OR ADOLESCENTS	NO REFERENCE OR NO SPECIFIC REFERENCE
RIGHT TO HEALTH	<ol style="list-style-type: none"> 1. Bolivia (Art. 12 N°2 Migration Act and Art. 33 I and II Refugee Act) 2. Chile (Art. 11 Migration Act) 3. Colombia (Art. 15 of Draft Migratory Act) 4. Costa Rica (Art. 41 Children’s Code) 5. Cuba (Art. 14 Public Health Act) 6. Ecuador (Arts. 11 and 52 Organic Human Mobility Act) 7. Mexico (Art. 12 Inter-Cultural, Care for Migrants and Human Mobility Act) 8. Panama (Art. 485 Family Code and Art. 82 Refugee Status Act) 9. Dominican Republic (Art. 3 Health Act) 10. Uruguay (Arts. 8 and 9 Migration Act and Art. 35 Migration Act Regulations) 	<ol style="list-style-type: none"> 1. Argentina 2. Brazil 3. El Salvador 4. Guatemala 5. Honduras 6. Nicaragua 7. Paraguay 8. Peru 9. Venezuela

Illustration 4 Incorporating the right to health in national legislation

2.3. RIGHT TO EDUCATION AND CARE

2.3.1. THE LAW

In most of the Constitutions we examined, education is a fundamental guarantee for ‘all people’. This agrees with the sense of Art. 103 in Venezuela, Art. 51 in Cuba, Art. 73 in Paraguay, Art. 17 in Bolivia, Art. 19 in Chile, and Art. 13 in the Dominican Republic. Accordingly, it is an obligation of the State to ensure universal access without discrimination, as stated in Art. 28 paragraph 4 in Ecuador, Art. 208 in Brazil, and Art. 53 in El Salvador. Only Nicaragua is in the minority in this sense, since in its article 121, it states that access to education is free and equal for all *Nicaraguans*.

According to other bodies of law, education is also a fundamental right for children and adolescents. The State and its protection systems must ensure the education of ‘all children and adolescents’ according to Art. 59 of Costa Rica’s Children’s Code, Art. 44 of the Constitution of Colombia, and Art. 28 of Colombia’s Children’s Code, Art. 123 of the Constitution of Honduras, Art. 31 item 3 of Chile’s Draft Guarantees System for Child Rights, and Art. 14 of Peru’s Children’s Code.

In relation to migrants, we noted in some countries the establishment of a general regulatory framework that ensures for all foreigners the same individual and social rights as nationals, including the right to education.

Firstly, we should mention that Costa Rica is a case in point. If we analyse Art. 19 of the Constitution, relating to Art. 1 of the Fundamental Education Act, we can conclude that education is enshrined as a right for both Costa Ricans and foreigners. Secondly, Art. 485 of the Constitution of Panama indicates that the right to education shall be guaranteed for national children and adolescents, or foreigners who are in the country, or nationals who are abroad. Thirdly, Art. 34 of the Constitution of Cuba states that foreigners residing in the territory of the Republic are equated to Cubans; therefore, the State is obliged to protect them and their rights. Finally, Colombia’s Constitution

states in its Art. 100 that foreigners in Colombia shall enjoy the same civil rights granted to Colombians, unless their enjoyment is denied for reasons of law and order.

In addition, there are more specific regulations in the Migration Acts of some countries, which expressly refer to the right to education of people in the context of human mobility, which would also include children and adolescents. In Brazil, Art. 3 XI of the Migration Act ensures equal and free access of migrants to services, social benefits and education. This is then supported by Art. 4 X, which states that the right to public education is a right guaranteed in the country regardless of nationality and migration status. In Peru, in accordance with articles 9.1 and 8 of the Migration Act and Regulations, the State recognizes for foreigners the enjoyment and exercise of fundamental rights, including access to education. In the federal district of Mexico City, the Inter-Cultural, Care for Migrants and Human Mobility Act indicates in its article 12 that migrants and their families are entitled to an adequate quality of life that ensures public education in its various forms, in accordance with applicable law. Finally, Uruguay stands out in this group, in view of the provisions of its Migration Act with respect to children and adolescents. According to article 8, the children of migrants shall enjoy the fundamental right of access to education under equal conditions as nationals. Article 48 of the Migration Act Regulations indicates that if they lack the documentation necessary for enrolment, they may enrol on an interim basis for a period of one year, in order to comply with these provisions. This documentation will only be required in order to grant certification where appropriate.

In another approach, the legislations of Ecuador and Bolivia refer to the situation of national citizens who migrate abroad, or who return to their country of origin. According to article 17 of Ecuador's Organic Human Mobility Act, Ecuadorians abroad will have access to secondary and higher education in accordance with the policies implemented by the respective education authority. On the other hand, article 28 states that Ecuadorian returnees are entitled to the accreditation, validation and recognition of their studies abroad at all levels, in accordance with current legislation and international instruments ratified by Ecuador.

In Bolivia's Migration Act, article 63 mandates the Ministry of Education, in coordination with the Departmental Directorates of Education, to develop a protocol to prevent dropout or repetition of the school year for children and adolescents who return to the country and whose parents or guardians lack part or all of the documentation required for access to education.

Regarding the recognition of the right to education of refugees, of special note is Chile's Refugee Protection Act, which in its article 13 indicates that applicants for refugee status and refugees shall enjoy the rights and freedoms recognized to all persons by the Political Constitution of the Republic, and that refugees and their families shall have the right to gain access to education either as dependent workers or as self-employed workers, under equal conditions as other foreigners.

2.3.2. ACCESS TO EDUCATION

An important point to consider in access to education for migrant children and adolescents is that such access should be free. At least on paper, most States ensure free and compulsory preschool, elementary and secondary education. These States are, Venezuela (Art. 53 first paragraph, Organic Protection Act), Costa Rica (Art. 78 of the Constitution), Peru (Art. 17 of the Constitution), El Salvador (Art. 82 Comprehensive Protection Act), Cuba (Art. 1 General and Free Nationalization of Education Act), Guatemala (Art. 74 of the Constitution), Mexico (Art. 6 General Education Act), Panama (Art. 56 of the Constitution), Dominican Republic (Art. 63 Nº4 of the Constitution), and Uruguay (Art. 71 of the Constitution) .

2.3.2.1. Accompanied migrant children and adolescents

As mentioned above, the lack of identification documents is one of the most important barriers to joining the education system. However, there are national laws in the region that are emphatic in removing that obstacle.

In the Dominican Republic, article 45 of the Children's Code of Rights indicates that in no case may education be denied to children, invoking the lack of identity documents in justification. According to article 5 of Argentina's Comprehensive Protection Act, children and adolescents are entitled to free public education and in the case of a lack of documentation proving their identity, they must be enrolled provisionally, and State agencies must mediate for the urgent delivery of such documents.

There is also an exemplary consideration of migrant children and their right to education in article 143 of the General Education Act of the City of Buenos Aires. This norm establishes that the State, the Provinces and the CABA should ensure for migrants who lack a National Identity Document, access and conditions for permanence at and graduation from all levels of the educational system, by submitting documents issued by their country of origin.

In Chile, the Migration and Aliens Bill, in its article 13, establishes that the State shall guarantee access to preschool, primary and secondary education to foreign minors established in Chile, under the same conditions as nationals. Finally, article 58 of Mexico's Child Rights Act mandates authorities and administrative political bodies to establish affirmative action to guarantee the right to education of children and adolescents from groups and regions with greater educational lag, who are dispersed, or who face vulnerable situations owing to specific migratory circumstances.

Regarding other articles analysed, the States do not clearly include a regulatory framework for the right to education of migrant children. However, under the protection that the States offer so that the most vulnerable groups can access this right, we could assume that such groups include migrant children.

An example of this is article 37 of Peru's General Education Act. In its section on "Alternative Basic Education", the State undertakes to provide specialist education

that meets the needs of young people and adults who did not have access to regular education or were not able to finish it; children and adolescents who did not commence their education at the right time and are prevented by their age from continuing their regular studies, and students who need to combine study and work. The three scenarios are included within the situation of migrant children and adolescents, so that these alternative routes could be considered a form of access. Another example is regulated by Bolivia's Education Act. Article 15 refers to comprehensive school education targeting children and adolescents, and young unprotected and socially disadvantaged workers, with a view to protecting them from their surroundings by means of special open home programmes with comprehensive health services, food, education, school and socio-labour reintegration, and including policies for children lagging behind at school as an educational priority.

In addition, there are even more specific legislations that refer to access to education for other vulnerable groups such as indigenous community migrants. Thus, article 2 B VIII of Mexico's Constitution notes that to abate deficiencies and backwardness affecting indigenous peoples and communities, the Federation, federal bodies and municipalities have an obligation to establish social policies to support special education and nutrition programmes for children and young people from migrant families.

2.3.2.2. Unaccompanied children or adolescents

The only country with specific regulations concerning unaccompanied migrant children and adolescents, or separated from their families, is El Salvador. Article 306 N°7 of its Special Migration and Aliens Act establishes that when migrant children and adolescents are referred to any competent institution, it must ensure respect for their human rights, including ensuring access to education while they remain in the country.

2.3.2.3. Child refugees

We should note in particular the specialized legislation on refugees of Mexico, Nicaragua, Paraguay, and Venezuela as they recognize this right in respect of refugee children and adolescents.

According to article 44 III of Mexico's Refugee Act, refugees should receive the fullest possible facilities to gain access to the rights and guarantees enshrined in the Political Constitution of the States, including education and, where appropriate, accreditation of their studies. In Nicaragua, article 23 of the Refugee Protection Act indicates that the document proving refugee status, also provides access to health services, education and others services provided by the State. In Paraguay, the General Refugee Act states in its article 25 that refugees and their families, who have been recognized by the National Commission for Refugees, are entitled to receive an identity card that will allow them to exercise their right to education. To this is added what is stated in article 31, which addresses the provision of more favourable treatment for women and unaccompanied children in the exercise of this right. There is special consideration with regard to refugee children in Venezuela, as provided in article 19 of the Refugees

Act, which states that the identity document issued to children and adolescents who are in the country under refugee status enables them to study at educational institutes.

2.3.3. BARRIERS TO EXERCISING THE RIGHT TO EDUCATION

One point contemplated is accreditation and levelling for children and adolescents who enter the national education system. How studies in the country of origin are accredited in the country of destination is a matter that the law regulates poorly. There is only mention of a number of requirements that, in fact, prevent access to education at the level that children should be pursuing.

According to El Salvador's Education Act, persons who have attended and graduated from basic and middle school courses abroad may apply for accreditation before the Ministry of Education (Art. 62). It is unclear whether legitimate documents should be submitted at this time, but in view of the solemnity of the body, this is likely. In addition, the National Education Act of Guatemala notes that studies conducted abroad, corresponding to primary and secondary levels of education, shall be considered valid on condition that they are authenticated according to certain specific regulations (Art. 76). In the case of Honduras, the Organic Education Act states that students who have studied in educational institutions of foreign countries, will be accorded the relevant equivalence, provided that they can prove, by duly authenticated certifications, that such studies are equivalent to those of Honduras (Art. 136).

When the equivalence of these studies is not clear, a new hindrance emerges, since passing these courses is a prerequisite to enter other educational levels. In this regard, Chile's Constitutional Education Act indicates in its article 16 that in order to enter secondary school, it is necessary to have graduated from basic education or equivalent courses. Which means that teenagers who have not reached these levels are left out.

There are also obstacles when teenagers fail to regularize their school situation at the time of entering the country, and they reach adulthood without the chance of returning to school. In Brazil, the Education Guidelines and Bases Act mandates the State to guarantee the right to education at all levels and up to the age of 17. There is a final comment regarding this figure; although the law also ensures access to those who have not completed primary and secondary education at the appropriate age, if the lag exceeds the age of 17, access is no longer possible.

The following table lists national laws that make specific reference to the right to education and care, and those that make no specific reference to this right.

DIMENSION	SPECIFIC REFERENCES TO MIGRANT OR REFUGEE CHILDREN OR ADOLESCENTS	NO REFERENCE OR NO SPECIFIC REFERENCE
RIGHT TO EDUCATION	<ol style="list-style-type: none"> 1. Argentina (Art. 5 Comprehensive Protection Act, Art. 143 Education Act, CABA) 2. Chile (Art. 13 Migration and Aliens Bill, Art. 13 Refugee Protection Act) 3. Ecuador (Arts. 17 and 28 Organic Human Mobility Act) 4. El Salvador (Art. 306 N° 7 Special Law on Migration and Aliens) 5. Mexico (Art. 58 Child Rights Act and Art. 12 Inter-Cultural, Care for Migrants and Human Mobility Act) 6. Panama (Art. 485 Constitution) 7. Paraguay (Arts. 25 and 31 General Refugee Act) 8. Dominican Republic (Art. 45 Children’s Code of Rights) 9. Uruguay (Art. 8 and 48 Migration Act) 10. Venezuela (Art. 19 Refugee Act) 	<ol style="list-style-type: none"> 1. Bolivia 2. Brazil 3. Colombia 4. Costa Rica 5. Cuba 6. Guatemala 7. Honduras 8. Nicaragua 9. Peru

Illustration 5 Specific references to the right to education and care in national laws

2.4. RIGHT TO SOCIAL PROTECTION

2.4.1. THE LAW

Some of the 19 legislations we examined explicitly stipulate the obligation of the State to guarantee the full exercise of the rights of all children and adolescents.

Constitutions recognize ‘child protection’, where children are viewed as a group that takes precedence over others in the face of rights violations, especially if they are destitute. Examples are article 54 in Panama, article 75 N° 123 in Argentina, and article 78 in Venezuela. The latter should be noted for its use of language that includes children and adolescents. Very much the opposite occurs in the Constitutions of Nicaragua and the Dominican Republic, which continue to use the concept of ‘minors’ in their articles 6 and 56 respectively.

In the Federal District of Mexico, the protection of children and young people is as important as for other vulnerable groups, such as pregnant women, the elderly, disabled persons, people with different sexual orientations, and others who undergo greater social exposure. All according to article 13 of the Inter-Cultural, Care for Migrants and Human Mobility Act of the Federal District.

In Panama, the law creating the National Secretariat for Children, Adolescents and Families recognizes the chain of responsibilities for the comprehensive protection of children and adolescents. Article 4 notes that the State, as society’s representative, has the mandatory obligation to take appropriate legislative, administrative, judicial and other measures as may be necessary and appropriate to ensure that children and adolescents effectively enjoy their human rights.

More specifically, some instruments have determined the circumstances in which it will be necessary to apply the protective measures listed in the law. In some cases, legislations set out the grounds on which protective measures should be put in place. In Argentina, the Comprehensive Protection Act states, in its article 4, that they shall apply where the rights of children and adolescents have been violated. In Bolivia, the Constitution, in its article 15, indicates that measures shall be taken to prevent, eliminate and punish generational violence. In Uruguay, the Children's Code states, in its article 117, that the measures will always be applied when the rights recognized for children and adolescents in this Code are threatened or violated.

This terminology is too vague to determine what those *threats* may be, but some regulatory bodies are more specific regarding who might carry out such a violation.

In Brazil's Children's Statute, article 98 indicates that the State and society are responsible for the effect of any action or omission; parents are responsible for any lack, omission or abuse, and finally, children and adolescents themselves are responsible for their own behaviour. Similarly, article 125 paragraph 2 of Venezuela's Organic Protection Act states that infringements may result from the action or inaction of the State, society, individuals, parents, representatives, persons responsible, or the behaviour of children or adolescents themselves.

In other cases, the circumstances in which violations to the rights of children and adolescents occur are specified. In this regard, Chile's Draft Guarantees System for Child Rights indicates that special protective measures ensure the physical and psychological recovery and social reintegration of all children whose rights have been violated as a result of being the victims of any form of neglect, exploitation or abuse; disability; homelessness; torture or other forms of cruel, inhumane or degrading treatment, or armed conflicts.

In relation to people who are in situations of human mobility, there are some articles that refer generally to their right to protection. In Cuba, Art. 34 of the Constitution states that foreigners residing in the territory of the Republic are equated to Cubans; therefore, the State is obliged to protect them and their goods. In Brazil, article 4 IV of the Migration Act indicates that migrants in the national territory shall be guaranteed measures to protect them if they are victims and witnesses of crimes and human rights violations, in the same way as nationals.

2.4.2. PROTECTION OF OTHER RELATED RIGHTS

Protective measures are not homogeneously synchronized. In many cases, they are directly related to the rights discussed in previous reports (identity, education and health) or other rights involving the protection of children and adolescents together with their families or persons responsible for them. In a broad interpretation of this age group, migrant children or adolescents would be included.

The *right to identity* shall be protected by measures ordering persons responsible to regulate their status in the civil registry, in accordance with the provisions of Brazilian

(Art. 102 1 and 2 of the Children's Statute), Honduran (Art. 92 of the Children's Code) and Nicaraguan (Art, 84 of the Children's Code) legislations. However, there is another approach that involves protecting the cultural identity of children and adolescents, as proposed by Bolivia (Art. 173 N° 3 of the Children's Code).

As for the *right to education*, most legislations refer to the parental obligation, on their own account or under court order, to enrol their children in official educational establishments and monitor their attendance and academic achievement. In this sense, we have found the following articles: Art.120 b) of El Salvador's Comprehensive Protection Act; Art. 101 III of Bolivia's Children's Code; Art. 53 I of Colombia's Children's Code; Art.153 b) of Costa Rica's Children's Code; Art. 112 b) of Guatemala's Comprehensive Protection Act; Art. 84 b) of Nicaragua's Children's Code; Art. 92 of Honduras's Children's Code, Art. 34 d) of Paraguay's Children's Code; Art. 126 b) of Venezuela's Organic Child Protection Act; and finally, Art. 37 b) of Argentina's Comprehensive Protection Act, which also refers to the obligation of the State to promote scholarships for students.

The *right to health* shall be administered by measures that mandate the State to ensure medical, psychological, psychiatric, outpatient or inpatient treatment in a health centre, for children or adolescents who may require it. To this is added the obligation of parents or guardians to visit these establishments in order to protect the health of those in their charge. The laws that provide for these measures are Art. 37 f) of Argentina's Comprehensive Protection Act; Art. 101 of Bolivia's Children's Code; Art. 135 d) and e) of Costa Rica's Children's Code; Art. 112 e) of Guatemala's Comprehensive Protection Act; Art. 92 of Honduras's Children's Code; Art. 84 e) of Nicaragua's Children's Code; Art. 463 f) of the Dominican Republic's Protection System Code; and Art. 126 e) of Venezuela's Organic Child Protection Act.

The *right to a family and family care* is related to forms of protection with two directions. First, the obligation of the State to promote permanence and links between children and adolescents and their parents, siblings and extended family, along with encouraging such actors to attend programmes to support and strengthen parents and families. Examples of this are Art. 37 a) d) and e) of Argentina's Comprehensive Protection Act, Art. 173 1. and 2 of Bolivia's Children's Code, Art. 34 c) of Paraguay's Children's Code, and Art. 126 c) of Venezuela's Organic Child Protection Act. Second, measures mandating parents and responsible adults to fulfil their duties and obligations in relation to the exercise of the fundamental rights of children and adolescents. This approach is to be found in article 463 a) of the Dominican Republic's Protection System Code.

There are protective measures aimed at children's *right to assistance* as a priority group, in certain circumstances. For example, when they are the victims of natural disasters or other emergencies, the authorities shall take steps to ensure the care and protection of their rights. The measures to which this right refers can be found in Art. 53 paragraph 2 of Colombia's Children's Code; Art. 135 c) of Costa Rica's Children's Code; and Art. 120 e) of El Salvador's Comprehensive Protection Act. Regarding El Salvador, we should add the provisions of article 76 of the Special Migration and Aliens

Act, which states that any migration employee or officer, regardless of the tasks they carry out on land, air or sea borders, during operations or in administrative offices, must provide immediate and priority care and protection to children or adolescents, and ensure their safety, separating them from risk and keeping them under their protection, as well as catering to their basic needs.

The ***right to social security*** implies the obligation of countries to meet the needs of children and adolescents with a focus on socio-economic aspects. According to article 173 N°6 of Bolivia's Children's Code, protective measures are those that provide social support to families, meeting physical needs such as food, clothing and housing. For its part, article 112 c) of Guatemala's Comprehensive Protection Act refers to measures that include referral of families to official or community relief programmes, counselling support and monitoring over time. Finally, article 43 of Uruguay's Migration Act Regulation indicates that migrants shall receive the same treatment as nationals as regards social security, in relation to both admission requirements and the right to benefits in all contingencies protected by current law.

When children and adolescents have been deprived of their family environment, it is imperative that the State should ensure conditions that respect their right to a foster family. In this context, protection systems must be activated to ensure that all children are assigned a surrogate family, or exceptionally, temporary placement in a public or private residential entity. These measures are reflected in Art. 101 VIII of Brazil's Children's Statute; Art. 135 f) of Costa Rica's Children's Code; Art. 112 g) and h) of Guatemala's Comprehensive Protection Act; Art. 34 of Paraguay's Children's Code. Other laws include, as well as the two measures mentioned above, references to the adoption of the child and adolescent. The three are included in Nicaragua's Children's Code (Art. 82 d, e and h); Peru's Children's Code (Art. 243 c and e); and Venezuela's Organic Child Protection Act. (Art. 126 i and j).

2.4.3. ACCESS TO EXERCISING THE RIGHT TO PROTECTION

Some of the laws analysed recognize the overall protection of the rights of migrant children and adolescents and among them, as a guiding principle, their best interests. In this sense, the laws of Costa Rica and Mexico stand out. In Costa Rica, article 6 of the Migration Act indicates that the formulation of this law should be aimed at ensuring compliance with the rights of migrant children, taking into account their best interest. In Mexico, articles 99 and 115 of the Rights Act states that the authorities and their administrative and political bodies must take measures for the special protection of the rights of children and adolescents who are vulnerable owing to specific circumstances, including their migration status.

2.4.3.1. Accompanied migrant children and adolescents

We have been able to identify protective and preventive actions targeting migrant children and adolescents. In this regard, Peru's Migration Act is the only law that establishes specific protective measures for foreign persons in vulnerable situations, including victims of trafficking and smuggling of migrants (Art. 226 b); people in

irregular migration (Art. 226 b); children and adolescents in general (Art. 226 g) and unaccompanied children and adolescents (Art. 226 n). Below are listed, by way of example, the measures provided for in Art. 229 N° 2 of Peru's Migration Act and Regulation:

- a) Access to public services, with an emphasis on health, education and work.
- b) Referral of cases for the protection of their fundamental rights.
- c) Inter-agency collaboration to obtain information and documentation regarding the vulnerability of each particular case.
- d) Implementation of public policies for the benefit of foreign migrants in vulnerable situations.
- e) Training public officials in interviewing techniques to detect possible cases of violations of the fundamental rights of foreigners.
- f) Data generation and development of research studies as a basis for the design of specific public policies and development of special programmes to prevent violations of fundamental rights of foreigners.
- g) Development of inter-agency operating protocols in the face of cases of foreign persons in vulnerable situations at border controls.
- h) Mechanisms for coordination and cooperation with public and private entities in other countries to prevent and respond to cases of foreign persons in vulnerable situations.
- i) Communication and dissemination of current migration regulations.
- j) Raising awareness of public officials on the specific needs and features of foreign and immigrant populations in the country, as well as the scope of national and international standards on the human rights of migrants.
- k) Partnerships with international and civil society organizations in order to contribute to prevention and response, in cases of foreign persons in vulnerable situations.
- l) Any others that may be required to protect persons in a position of needing special protection.

We must also consider all of the legal and administrative protection measures that are directly related to crimes regularly committed against people in situations of human mobility, including unlawful smuggling and sexual exploitation. Some of these offences are punishable under the law for the protection of migrant children and adolescents if we interpret the concept of 'children and adolescents' broadly.

Chile's law criminalizing the smuggling of migrants or trafficking in persons (Law 20,507) amends the Criminal Procedure Code with respect to this offence when committed against minors under the age of eighteen. Article 78a of the Code points out that public services in charge of the protection of children and adolescents shall facilitate their access to the specialized services they may require, especially those aimed at their full recovery and family reunification.

In Ecuador, the Organic Human Mobility Act focuses on providing cross-protection measures to the victims of trafficking in persons and smuggling of migrants. According to article 122, the competent authority shall provide care, protection, assistance and

reparation to these victims, as provided for in this Act in accordance with the protocols that are to be developed for that purpose, taking into account the gender, cross-generational and inter-cultural approaches and the principle of specialised attention. In addition, victims shall receive the emergency protection provided for in international human rights instruments.

The crime of sexual exploitation is often committed against migrant children and adolescents, especially in irregular smuggling situations. In this situation, the regulations in Nicaragua's Children's Code deserve a special mention. Its article 76 stipulates that the State, public or private institutions, with the participation of family, community and school, shall provide special care and protection to children and adolescents who are sexually abused and exploited.

2.4.3.2. Unaccompanied migrant children and adolescents

There are specialized protection measures regarding children and adolescents who have been deprived of their family environment. In Panama, measures have been regulated to resolve the situation of children or adolescents who have been deprived of a family environment. Article 535 of the Family Code states that the following measures may be taken: 1) deliver children to their parents, guardians or persons in charge of their custody and under conditions determined by the court; 2) incorporate them into the probation programme; 3) place them in a foster home, under the supervision of the court, depending on the severity or recurrence of the act; 4) include them in official or private assistance, counselling, treatment and resocialization programmes; 5) admit them to a custodial, protective and educational facility; 6) admit them to an Observation or Resocialization Centre; and 7) apply any other measure that tends to resolve their situation.

2.4.3.3. Child refugees

Regarding child and adolescent refugees who are unaccompanied or separated from their families, once the State has determined their situation, the relevant administrative institutions shall be mobilized in order to apply protection, care and assistance measures as needed. This is in accordance with Art. 39 of Chile's Refugee Act and Art. 10 of Nicaragua Refugee Protection Act.

2.4.4. BARRIERS TO ACCESS TO PROTECTIVE MEASURES

The main barriers we identified to migrant children exercising their right to protective measures are linked to the particular situation faced by children and adolescents who are separated from their family environment or arrive in the host country without company.

On the one hand, El Salvador establishes a mechanism for emergency foster care that involves separating children or adolescents from their family environment in situations of extreme urgency or necessity. This is in accordance with article 123 of its Children's Code. The situation is not provided for by law and the grounds for this separation are

thus left to the discretion of the authorities. Such action is basically ineffective for migrant children and adolescents who have no other family ties in the Salvadoran territory. According to the law, once separation has been applied, their care shall be entrusted to qualified people with family ties to the children, which in the case of migrants is hardly feasible.

Another problem is associated with the way the needs of children and adolescents are evaluated. Only when their needs have been visualized and registered by the appropriate authority, are they able to gain access to benefits. For example, article 154 of the Children's Code of Honduras, states that children lack sufficient care to satisfy their basic needs when, without submitting the grounds for being considered abandoned or at social risk, they lack the means to provide for their subsistence needs, or when their caregivers refuse to provide them, or do so insufficiently. If there are migrants who are unregistered and therefore invisible, proving that they are in a precarious situation is impossible. To this is added that according to article 156 of the same law, protective measures shall be adopted at the request of children's parents or legal representatives.

Regarding this dimension, we have been able to find a number of protocols that relate specifically to the promotion and protection of children and adolescents in the context of human mobility.

It is pertinent to ask whether, in the face of the recent intensification of migration flows, legislation has been developed to accompany these processes. In this regard, we have identified a number of protocols that have, in general terms, attempted to address the emerging protection needs of the rights of migrant children.

The protocols mostly focus on the protection and promotion of the rights of migrant children who require special protection measures, such as unaccompanied or separated children and adolescents. Other States, such as Colombia and El Salvador, have adopted more general documents on children and adolescents in the context of human mobility, which have informed their public policy on the subject.

Thus, the protocols we examined internalize some of the principles enshrined in the major international treaties, and, being part of the programmatic dimension, that is, public policy, they serve as guidelines for the different institutions involved in migration processes that involve children and adolescents.

Argentina has a Protocol to protect, assist and seek durable solutions for unaccompanied or separated children requiring asylum.⁵⁹

A Care Protocol (CP) is a mechanism to meet the needs of protection and care of orphaned foreign children, those who are unaccompanied or separated from their family, who may need international protection as refugees or to obtain a complementary form of protection in the country. This protocol clearly defines the

⁵⁹<http://www.corteidh.or.cr/sitios/Observaciones/12/Anexol.pdf>

roles and responsibilities of the different actors involved in their care, from the moment of detection, to coming up with a durable solution to their situation.

It is guided by the principles of non-discrimination, best interest of the child, children's right to express their opinion freely, family unity and respect for the fundamental principles of refugee protection.

The guidelines proposed by the protocol include:

1. The immediate identification of persons in need of protection as refugees should be a key element in the design of the entry and border control system. Persons should be interviewed separately and confidentially, in a language they can understand (availability of interpreters and/or translators), and migration authorities should be trained.
2. The status of unaccompanied children or children separated from their family must be established. The competent judicial authority should view them as such, provided their family ties with the accompanying adults have been sufficiently established.
3. The border migration authority shall record this information by filling in an initial identification form (Annexe). This form must gather all initial information that is available, which will make it possible to determine the consequent existence of protection needs
4. No children in need of protection as refugees, children with other protection needs, victims or potential victims of the crime of human trafficking shall be rejected at the border. In the aforementioned cases, the migration authorities will focus in particular on the situation of children who lack documentation or are poorly documented.

Furthermore, a method of differential asylum shall be determined for unaccompanied or separated children.

1. Once a child has been identified as being unaccompanied or separated, the next step is to determine whether the child requires protection as a refugee. Unaccompanied or separated children regarding whom there is no indication of a need of international protection should not be referred to the asylum procedure. However, depending on their needs, such children should be protected in compliance with the mechanisms provided under international and domestic law.
2. A guardian must intervene in order to:
 - i) help children to submit their case and legally present it before the CONARE, as well as before subsequent administrative or judicial bodies;
 - ii) provide evidence leading to the establishment of the alleged facts;
 - iii) accompany children during their interviews;
 - iv) present the necessary arguments or administrative appeals or legal actions.
3. The Executive Secretariat shall schedule an interview with the child, to be carried out by an officer of the sex chosen by the child.

Another protocol we identified is Ecuador's Procedure to care for children and adolescents and their families in the context of human mobility.⁶⁰

The aim of this Procedure is to ensure the proper management of migration flows with a focus on the human rights of foreign citizens and children and adolescents who enter Ecuador, with particular reference to citizens from South American countries.

The principles informing this agreement are:

- a. Best interest of the child
- b. No non-admission at the border
- c. Absolute priority for applications submitted by children or adolescents who are unaccompanied or separated from their families
- d. They shall not be separated from their parents, except when such separation is decided by the court
- e. Right to judicial reunification
- f. No institutionalization or detention, except as a last resort
- g. No judicialization of cases
- h. Transactional capability in guaranteeing rights to children and adolescents regardless of country of origin
- i. Child participation
- j. Duty to report for all public officials who are aware of cases that violate rights
- k. When a need for international protection is invoked, children and adolescents who are separated and unaccompanied may not be returned or expelled from Ecuadorian territory without proper analysis
- l. No punishment for irregular entry
- m. Procedures will develop or be interpreted in the most favourable terms for people in human mobility, so that requirements or procedures do not prevent or hinder the exercise of their rights and compliance of their obligations towards the Ecuadorian state.

In Colombia, there is a *Strategy for Migrant Children*,⁶¹ which seeks to improve the integration of the response to migrant children and adolescents and their host communities through services with a migratory approach, which facilitate their transition from emergency care to family and community stabilization in priority municipalities. Its guidelines are:

1. Detection and referral by
 - Implementing a protocol – a pathway for UNaccompanied children, family tracing and reunification and monitoring the registration of cases by Family Advocates, supported by administrative authorities.
 - Intelligent use of Mobile Units and EMPI in the case of unaccompanied and separated children, pregnant women, nursing babies; prevention of teen pregnancy, malnutrition, CSEC, sexual and gender violence.

⁶⁰<https://www.cancilleria.gob.ec/wp-content/uploads/2018/11/procedimiento.pdf>

⁶¹https://www.icbf.gov.co/sites/default/files/presentacion_estrategia_ninez_migrante_0.pdf

- Partnership between Family Advocate and municipal authorities (Government, Police, Family Police Units, Health, etc.).
2. Being aware of and facilitating the integration of routes and services with a focus on migration:
 - Service and care teams for citizens and ICBF technicians trained in receiving, and providing information and referrals to services on the route of migrant children.
 - Coordination with care provision bodies – emergency shelter with CDI, prevention and protection, case management by ICBF, cooperation agencies (UNICEF, IOM, UNHCR) and civil society (Plan, Save the Children, World Vision and churches).
 - Management of the quota allocation process and extension requests with the support of the coordination of migrant children and early childhood directorate.
 - Develop improvements to ICBF services, the municipality or governorship (adequacy of infrastructure, human resources and training) for migrant children.
 3. Developing regional partnerships with cooperation, civil society and authorities for the care of migrant children:
 - Call upon the GIFFM as partners to learn about what they do and how they help implement the strategy and needs for the care of migrant children.
 - Identify programmes and actions set up by municipal and departmental authorities complementary to those conducted by the ICBF (Health, Education, Technical Training, Cultural and Recreational) available to children and their families. Output: Number of unaccompanied children reported to the Division of Administrative Authorities and negotiations with the International Committee of the Red Cross, international agencies or NGOs for family tracing and reunification of these children.
 4. Facilitating sharing opportunities between key players in local SNBFs, the Special Group on Migration (GEM) and territorial authorities working with migrant children and their families.

The guidelines of the strategy focus on:

1. Identification and referrals
2. Integration of routes and services with a focus on migration
3. Strengthening territorial capabilities
4. Managing partnerships with cooperation and Civil Society
5. Developing an institutional framework and sharing

Since 2012, Costa Rica has a protocol for the care of underage foreign nationals whose parents and relatives are under deportation proceedings.⁶² The Protocol covers foreign children and adolescents in cases in which mothers, fathers, relatives or persons responsible for them are undergoing deportation proceedings before the

⁶²https://www.unicef.org/costarica/docs/cr_pub_Protocolo_atencion_menores_extranjeros_responsables_proceso_deportacion.pdf

General Directorate of Migration and Alien Affairs (DGME, in Spanish). The Protocol aims to ensure full protection of these children, and the application of the principle of best interest.

The protocol will lapse in the following scenarios:

- *“In the event that the foreign national who is involved in deportation proceedings proves to have underage children of Costa Rican nationality and/or residents of Costa Rica, they will be issued with a summons, so that within the period of no more than fifteen working days, they initiate the process of regularization, in accordance with the provisions of article 128 of the General Migration and Aliens Act (Law # 8764).”*
- Similarly, if foreign persons who are subject to deportation proceedings show proof that they have a son or daughter under the age of 18, and state that they will return to the country of origin or to a third country, proceedings shall be initiated for the DGME’s Migration Directorate to issue an exit permit for their children.

Costa Rica also has a Protocol for the regularization of the stay of underage foreign persons, under the National Child Welfare Board (PANI).⁶³ The Protocol was produced within the orbit of the PANI-Migration Bipartisan Commission, applies within the State of Costa Rica, and is applicable to all children and adolescents who are placed in public, private, institutional or family protection alternatives, under the supervision of the PANI.

It is aimed at Commission officials, with the purpose of guaranteeing to foreign children in irregular migration status, their right to identity and nationality, by means of a migration category that enables their integration into Costa Rican society.

The protocol establishes two types of procedures to be followed by the Commission:

- Procedure to be followed in situations where children or adolescents carry or have some kind of identification.
- Procedure to be followed in situations where children or teenagers have no identification documents.

In both cases, the legal representative of the Local Office must justify the request for the regulation of stay, and there will be a period of time for the authorities to assess the application.

Another specific protocol that is included in the protection provided by Costa Rica is the protocol for the care and protection of foreign minors who are unaccompanied or separated, outside their country of origin (2012).⁶⁴ This protocol lays down the process

⁶³https://www.unicef.org/costarica/docs/cr_pub_Protocolo_permanencia_menores_extranjeros_proteccion_PANI.pdf

⁶⁴<https://pani.go.cr/descargas/conatt/614-protocolo-para-la-atencion-y-proteccion-de-las-personas-menores-de-edad-extranjeras-no-acompanadas-o-separadas-fuera-de-su-pais-de-origen/file>

to be followed by the General Directorate of Migration and Alien Affairs and the National Children's Board for unaccompanied or separated children and adolescents who are outside their country of origin, with the aim of identifying their needs and providing protection through inter-agency intervention.

Regarding El Salvador, we should mention its Itinerary Handbook for the Care and Protection of Migrant Children and Adolescents,⁶⁵ which identifies the various agencies of the State involved in the reception, care and protection of the rights of migrant children and adolescents and establishes the principles which must guide all persons involved in the processes of reception and care of migrant children and adolescents.

The handbook establishes the three phases on the itinerary to provide care and protection to unaccompanied migrant children: detection of unaccompanied children or adolescents; consulate notification to the Human Rights and Humanitarian Intervention of the Chancellery, on the part of the Network of Consulates in order to contact the family; reception of and immediate care provided to returning migrant children and adolescents; and administrative procedure for protection by the Protection Boards.

In Honduras, its Immediate Protection Protocol, for repatriation, reception and monitoring of migrant children⁶⁶ is based on extensive regulations applicable at international, inter-American and national levels. Its main objective is to provide a procedural guide for public and private institutions involved in the care, monitoring and repatriation by air, by land and by sea of migrant children, both Honduran and foreign.

The Protocol has cross-cutting guiding principles and approaches where institutional intervention will seek the protection of the rights of children and teenagers, whether Honduran or foreign, and a classification of various procedures to be applied.

Mexico has issued a reference manual for the application of its model for the protection of the rights of unaccompanied migrant children,⁶⁷ which provides procedures for the institutions involved in the care of unaccompanied migrant children. The model seeks to guarantee rights, at any stage of the migratory circuit and in keeping with the needs of children and adolescents. Its main purpose is to act as a guide for the implementation of the care model for unaccompanied migrant children in Social Welfare Centres. At the same time, it seeks to underscore the importance of applying the principles set out in the international treaties ratified by Mexico, as well as in the national legal framework, in relation to the promotion and protection of the human rights of unaccompanied children and adolescents.

⁶⁵file:///C:/Users/julia/Downloads/CARTILLA_DE_RUTA_DE_ATENCI%C3%93N_Y_PROTECCI%C3%93N_A_NI%C3%91EZ_Y_ADOLESCENCIA_MIGRANTE.pdf

⁶⁶https://tbinternet.ohchr.org/Treaties/CMW/Shared%20Documents/HND/INT_CMW_ADR_HND_23865_S.pdf

⁶⁷https://www.gob.mx/cms/uploads/attachment/file/222619/MANUAL_DE_OPERACION_DEL_MODELO_DE_ATENCION_DE_NIAS_Y_NIOS_MIGRANTES_NO_ACOMPAADOS.pdf

Similarly, Mexico has a care protocol for unaccompanied or separated children and adolescents who are in residential care (2014).⁶⁸ This is a care protocol targeting unaccompanied or separated migrant children and adolescents who are being housed at border modules or temporary shelters. The aim is to implement mechanisms to ensure compliance with their best interest, and at the same time, make it possible to make informed decisions on the basis of this right, and share them with agencies or institutions mandated by law to address specific needs, access to rights and participation of children and adolescents, until their migration status is resolved.

The Protocol analyses the process of assessing the best interest of the child and examines the procedures to be implemented at different stages of the migration cycle.

Finally, the protocol for the consular care of Mexican unaccompanied migrant children⁶⁹ is a tool to strengthen the actions of protection officers and consular representatives of Mexico abroad, in order to ensure compliance with the comprehensive protection of unaccompanied migrant children in accordance with human rights protection standards. Thus, “the Protocol aims to identify particular vulnerabilities, in the face of the need to obtain adequate information concerning the protection needs of unaccompanied migrant children and adolescents, guaranteeing the principle of the best interest of the child” (IIN, 2016).⁷⁰

The Protocol emphasizes the interview that consular officials conduct with unaccompanied children and adolescents. In this regard, practical guidelines are provided that seek to address their special needs, promoting and protecting their rights.

The following table lists national laws that make specific reference to the right to social protection, and those that make no specific reference to this right.

⁶⁸http://migracion.iniciativa2025alc.org/download/09MX19_Protocolo_Albergues.pdf

⁶⁹https://www.gob.mx/cms/uploads/attachment/file/109334/Protocolo_ESP_.pdf

⁷⁰http://www.iin.oea.org/pdf-iin/2016/publicaciones/Relevamiento_Protocolos_Migrantes.pdf

DIMENSION	SPECIFIC REFERENCES TO MIGRANT OR REFUGEE CHILDREN OR ADOLESCENTS	NO REFERENCE OR NO SPECIFIC REFERENCE
RIGHT TO PROTECTION	<ol style="list-style-type: none"> 1. Brazil (Art. 4 IV Migration Act) 2. Chile (Art. 78a Criminal Code and Art. 39 of the Refugee Act) 3. Costa Rica (Art. 6 Migration Act) 4. Cuba (Art. 34 Constitution) 5. Ecuador (Art. 122 Organic Human Mobility Act) 6. Mexico (Arts. 99 and 115 Child Rights Act) 7. Nicaragua (Art. 76 Children’s Code and Art.10 Refugee Protection Act) 8. Peru (Art. 226 b, c, g and n Migration Act) 	<ol style="list-style-type: none"> 1. Argentina 2. Bolivia 3. Colombia 4. El Salvador 5. Guatemala 6. Honduras 7. Panama 8. Paraguay 9. Dominican Republic 10. Uruguay 11. Venezuela

Illustration 6 Specific references to national legislation related to the right to social protection.

2.5. AND WHAT ABOUT EARLY CHILDHOOD?

For the purposes of this study, one might wonder if regulatory frameworks contain any references to early childhood.

Generally speaking, we can say that both international and domestic laws contain very few references to the unique features and special needs that caring for early childhood entails. There is, predominantly, a generic approach to children, without considering the specifics of this stage of development.

One of the key problems that can be seen in legislation, with regard to early childhood, is the conditionality imposed by the presence or absence of documentation for young children, both at border crossings, in transit countries, and in the host countries. Children’s lack of identity or health documentation is a significant impediment, not only to continue the migration process, but also in order to gain access to any other rights in transit. As noted above, some countries require original documents, in good condition, which are often difficult requirements to comply with. At this point, the difference between young children born in the country and migrants is overwhelming. Legislation is needed to address the case of unaccompanied children, and the rules that must be met in the case of refugee children or refugee families are complex. The existence of international smuggling of children is a difficulty when it comes to proposing fast document generation mechanisms.

As we have observed in national regulatory frameworks, legislations guarantee access to the right to health for national children and adolescents; five of them refer to migrant children, and three to refugees. In some countries, positive discrimination is observed in relation to migrant early childhood, as some domestic laws provide for free care to migrant children under five years of age, or in Colombia, until the age of one. There are also some countries that place no barriers to care for migrant children in their public health systems, such as Uruguay and Argentina. In the case of countries that have enacted laws legalizing the voluntary interruption of pregnancy, migrant women or non-resident foreigners are specifically excluded.

As for care and education in early childhood, some countries stand out for the establishment of a comprehensive regulatory framework that ensures all foreigners the same individual and social rights as nationals, including the right to education, which offers some possibility (depending on supply coverage), of gaining access to the different education systems in the early years of life. In addition, there are more specific regulations in the Migration Acts of some countries, which expressly refer to the right to education of people in the context of human mobility, which would also include children in early childhood. This is guaranteed in some countries, even when children lack documents; there are national legislations in the region that are emphatic in their intention of removing this obstacle. These inclusive trends also apply to unaccompanied children and refugee children.

One of the aspects contemplated is accreditation and levelling for children and adolescents who enter the national education system. How studies in the country of origin are accredited in the country of destination is a matter that the laws regulate poorly. There is only mention of a number of requirements that, in fact, prevent access to education at the level that children should be pursuing.

As for the right to social protection, most of the laws expressly refer to the obligation of the States to ensure the full exercise of the rights of all children and adolescents, which includes early childhood, especially children whose rights have been violated, and particularly if they are undergoing a situation of social distress. In the Federal District of Mexico, the protection of migrant children is as important as for other vulnerable groups, such as pregnant women, the elderly, disabled persons, people with different sexual orientations, and others who undergo greater social exposure. All of which is according to article 13 of the Inter-Cultural, Care for Migrants and Human Mobility Act of the Federal District.

Both in legislative discourse and the texts of international organizations, a tendency is observed to consider migrants as a segment of the population whose 'rights have been violated', which makes it easy to install stigmatizing and xenophobic attitudes in society and the media. The right of the youngest children to a family and to care is mentioned, in general, in terms of ways to protect relationships and bonds between children and their parents, siblings and extended family, as well as in terms of ordering parents and responsible adults to comply with their duties and obligations.

Although the concept of a 'vulnerable' population stigmatizes and can generate segregations of different types, it can also be one of the windows through which migrant children and their families may begin to gain access to certain types of social benefits that the laws do not provide specifically for 'migrants'. It is a formal shortcut, which facilitates access to certain policies that only target the countries' 'vulnerable' populations. For example, in relation to the right to assistance as a priority group, when they are the victims of natural disasters or other emergencies, the authorities must take steps to ensure the care and protection of their rights. According to the same criteria, their vulnerability allows young children to gain access to other social security benefits, with a focus on financial aspects, such as subsidies, scholarships, food support, etc. When migrant children in early childhood must be separated from

their family group, the laws establish that it is imperative for the State to ensure conditions that respect the right to alternative care. In this context, protection systems must be activated to ensure that all children are assigned a surrogate family, or exceptionally, temporary placement in a public or private residential entity.

Some of the domestic legislations we examined also took into account young children who are victims of crimes, including unlawful smuggling and sexual exploitation. One of the main barriers we identified to migrant children exercising their right to protective measures is linked to the particular situation faced by children and adolescents who are separated from their family environment or arrive in the host country without company.

2.6. CONNECTIONS BETWEEN INTERNATIONAL AND NATIONAL REGULATIONS

While most of the experts consulted for this study recognize the existence of a wide variety of laws related to the phenomenon of migration, Diego Llorente (UNICEF) warns about the mismatch between existing laws and the special features of the migration status of children and adolescents, and maintains that there is a normative contradiction between what migration laws and childhood laws say, stressing the importance of adopting a rights-based approach rather than focusing on security and criminalization.

According to Javier Palumno (IIPDH), most migration laws incorporate some aspect related to child rights, while noting the importance of being able to examine migration and children's laws and analyse whether they take special features into account. It is important to assess, in this context, the major developments that have taken place in recent years in terms of international legislation: The IACHR's advisory opinion 21-14, the Joint General Comments of the United Nations Committees (CRC, CMW), the Mercosur guide, the Central American guidelines, protocols, work on the Quito process.

Otto Rivera distinguishes between regional and international laws and their adjustments in each country; he states that in regulatory terms, countries have recently started to regulate their national laws on migration. He mentions that the IOM and UNHCR have made efforts to increase understanding that migration is a right, not a crime. He also notes that in the countries of the region, laws are still being considered country by country, and points out that the northern triangle countries have national protocols.

UNICEF notes that some countries have no migration laws, a matter that should be remedied. Specialist García Pérez states that in Latin America, there are different approaches to migration. He mentions the case of Mexico, which has a hybridized legislation: with a somewhat guarantee-based approach, but also showing some discriminatory facets in relation to migrant children and adolescent, and that discrimination has increased, particularly as a result of the crisis in Venezuela. El Salvador and countries of the northern triangle are characterized for having rather symbolic legislations, as they are countries that are driving people out. In Mexico, it

has not been possible to apply enhanced international protection for children and adolescents in the context of mobility. He mentions the conflict between Haiti and the Dominican Republic, where the situation of stateless persons is a major concern. Haitian migration lacks any kind of protection framework, national or international.

Pilar Uriarte mentions Uruguay's Migration Act 18,250, enacted in 2008, which she considers a model law, inasmuch as it guarantees equal rights for migrants and nationals. However, she adds that a good law does not ensure the existence of a good migration policy. She highlights the fact that it is not generally understood that migration policy should be specific and target the migrant population. It is necessary to 'keep an eye on' the specifics of the migration issue. Our interviewee understands that actions are almost exclusively aimed towards documentation, which contradicts the fact that public policy in Uruguay tends to be universalist, homogenizing, unfocused.

SECTION 3. STATE INTERVENTION AND PUBLIC POLICIES

3.1. MAKING MIGRANT EARLY CHILDHOOD VISIBLE

There is abundant literature on the subject of migration and human mobility, both in the academic field and in the papers produced by international and regional agencies working on the issue from the perspective of human rights, economics, demographics or security, and politics, for example. Significantly lower, although it has grown in recent years, is the volume of work on the features that the presence of children and adolescents imbue to human mobility. Syrian migratory movements towards Europe, those of the Central American northern triangle to the USA, and the recent explosion of Venezuelan migration have shown that millions of children and adolescents participate in or witness the current transnational human mobility.

Much lower still is the volume of papers and studies on the relationship between migration and early childhood. Somehow, the works dealing with the feminization of migration or the transit of women and young children through third country territories (the best known case in the region is that of Mexico) touch upon certain fringes of the experience where children of the earliest ages have a role.⁷¹ In this sense, this study attempts to move forward in addressing some of the gaps regarding this particular age group.

⁷¹ Rodríguez Chávez, E; Fernández Calleros, C.; Luna González, R. and Rodríguez García, E. (2016); Álvarez Velasco, S. (2011); Díaz Prieto and Gretchen Kuhner (2007); Anguiano (2008); Anguiano and Alma Trejo (2007); Arriola Vega (2012); Bustamante (2008); Caballeros (2011); Casillas (2011); Casillas (1997); Castro (2015); Fray Matías de Córdova Human Rights Centre (2005); Human Rights Centre Miguel Agustín Pro Juárez, A. C., et al. (2011); Mexico's National Population Council (2013); Cortés Castellanos (2005); Dahl-Bredine, and DeLorey (eds.) (2009); Kuhner (2012); Leyva, et al. (2015) and (2011); Guatemala's National Migration Board (2010); Mexico, National Comprehensive Family Development System (2013), (2012), (2011), (2009); UNICEF (2009); París and Zenteno (2015); Pérez and Roldán (2011). Among other authors and institutions.

3.1.1. CONCEPTS IN THE BALANCE

Two concepts come into balance when we delve into the relationship between laws and public policies aimed at migrant children in early childhood: on the one hand, the concept of 'child' adopted by the corpus of conventions, agreements, constitutions, laws and any national legislation adapted to the principles of the CRC, which universally represents all individuals (with some exceptions) who have not yet reached 18 years of age; on the other, the approach linked to the concept of 'vulnerability'.

It is very noteworthy that thirty years after the adoption of the Convention, the international community and the countries of the region have embraced the concept of 'child' to refer to a sector of the population that attains the category of rights holder, which results from the special protection that is owed to a citizen and from being at a specific and unique stage of human development. However, in absolutely all of the laws we examined, the definition of a 'child' in general terms can overshadow the possibility of identifying the special features that each of the stages being experienced in childhood by children and adolescents involves and offers. Thus, the needs of migrant adolescents are absolutely different from the needs of boys or girls aged 0 to five years, for example. These differences are overshadowed and rendered invisible in the current regulations.

The other concept in the balance is used by most of the general and specific laws on rights laws to justify State intervention in relation to all migrant children: it incorporates them into the 'vulnerable population'. This heterogeneous group is composed of the poor, the homeless, those without decent housing, those living on the street, children with disabilities, persons displaced by war or natural disasters, and also migrant children. This grouping that identifies all of the inhabitants of the kingdom of inequality, as noted, gives rise to two contradictory effects for very young migrants: on the one hand, it stigmatizes them, positioning them in a place from which it will be very difficult for them to emerge, real and symbolically; but at the same time, it is also a window through which they can justify access to public policies that generally include a significant number of initiatives aimed at 'vulnerable' populations. A dilemma to be resolved: Is the stigma and segregation accepted in exchange for access to minimum rights? Or should we stop considering migrant children as one more vulnerable category? Or, even further, are they a vulnerable population, or are they citizens whose rights are being violated?

Age, as a category of social differentiation, is not enough to be able to account homogeneously for the impact of inequality. Within the universe of childhood, heterogeneities and differentiations occur that lead to horizontal inequalities. In this pattern, age is a differentiating factor with similar status and functions, similar to gender or ethnicity. But children are social actors belonging to a minority group, in the

sense of lacking power to have a specific influence on their own lives (Mayal: 2002, cited by Llobet, p. 9).

Amador (2012) argues that the status of contemporary childhood should be understood as a set of social, subjective, epistemic and political circumstances traversed by 'childhood' in the singular, as a prototypical notion of the modernity project, towards 'childhoods' as an analytical category that accounts for the plurality of worlds in the lives of children at present. This transition occurs around a set of pressure points that underlie two major historical and cultural processes: on the one hand, a societal configuration (Elías, 1997), understood as the civilizing efforts of the West to protect and regulate children through families and schools; and on the other, the creation of modern-colonial societies in the region, whose sedimentation is expressed by sustaining perceptions, discourses and practices associated with dependence, racism, sexism, patriarchy and classism. Children are a constituent part of this matrix of power, both in its extension and its possible ruptures.

Carli (1999) has also mentioned the evolution of 'one' childhood to 'several' childhoods, a process that includes situations such as the impact of the differentiation of family structures and rationales; the neoliberal policies that reoriented the political and social meaning of the States in relation to children; the growing impact of the market and the media on family life, and the social, cultural and structural changes linked to schooling.

Childhood is the present, it is a time that passes, a time that differs from that of adults. This way of being in the present time, supports the idea that time is plural and that children who live in it, do so in different spaces, forms and conditions. So, by enunciating time and childhood in the plural, we can recognize and accept that the meaning of experiences, the construction of children's identity and subjectivity, are expressed in old and new ways of relating to the social, political and cultural fields, which often escape the canons sponsored for centuries by traditional social institutions such as schools and the family (Corrales Mejía, 2015).

3.2. THE GAPS BETWEEN LAWS AND POLICIES

Nicolas Reyes, one of the experts consulted, argues, on the basis of the evidence of his institutional experience, that a significant gap persists in the region between policy and implementation of the rule. Giovanna Rizzi provides an example of this; she acknowledges that the eight Central American countries that make up SICA have been equipped with special legislation on migration issues, have implemented new regulations, quite progressive legislation, and in some cases very advanced legislation. However, the question is how they have managed to apply these laws. Coordination is quite difficult, there is no capacity to provide care at border posts, for example; there is an absence of institutionality in each country, and there is no decentralization of services. She also notes that levels of actual enforcement of the laws are worrying, and that training at all levels is needed, together with policy development for appropriate implementation. There are evident difficulties in providing services, care and protection to migrant children. Legislative efforts are in vain if there is no public policy

budget with a rights-based approach to develop and make sure that regulatory developments are grounded, adds Llorente (UNICEF), who identifies the gap existing between norms and practices as a fundamental issue. In this field there are some interesting public policies, but with inefficient implementation; such as occurs, specifically, in Central America, where the letter of the law is advanced, including rights enshrined in Constitutions, but in practice, systematic violations of human rights persist. In Mexico, a great deal of inconsistency has been observed between law and practice.

According to Rivera, many countries are undergoing governmental changes, and we are inheriting problems, crises, and confrontations. In addition, the anti-rights movement has grown significantly. Progress has been made in discourse related to the human rights of childhood and adolescence, but not in practice. Countries have made progress in their national regulations. Guatemala, for example, has a robust body of law, but in practice the conditions of migrant children and adolescents are increasingly worse. The regulatory framework provides an action structure, it shows evidence of political will. Public policy should provide a roadmap. There is a “black hole”, rather than a gap, he concludes.

Pérez García maintains that there is a large gap with regard to guarantees and the restoration of rights, and that a dismantling of institutionality has occurred in the region, as well as regulatory framework setbacks. The Cartagena Agreement of 1989 stipulated that when mass displacements take place, humanitarian action should be taken. The case of the Venezuelan crisis is evidence, however, of how borders are increasingly frequently being closed. Meanwhile, in Mexico, persecution and arbitrary detention of children and adolescents occur, and children are held in unsuitable locations. This is plainly contrary to Mexican law.

Marín assumes that we are failing in the application of the legislation. It is not necessary to draft more laws. Most governments have public policy, but not all have national agencies for migrant children, such as those in El Salvador and Costa Rica, where the Executive has decided to set up technical panels for inter-agency collaboration. He considers that despite the existence of laws and policy instruments, the dimension of the phenomenon has been such that it has surpassed the States’ capacity to respond. Accordingly, 80% of migrants claim that they have received no support from the State or from international cooperation. This shows the lack of information provided to migrants. Reyes states that about 60% of migrant children and adolescents are outside the education system.

3.2. PUBLIC POLICY IN THE REGION

When identifying public policies aimed at the migrant children in early childhood, we must walk the path that leads to recognizing the plurality of childhoods, the special features of migrant children, and, when specified, to put the focus on the very youngest.

3.2.1. INFORMATION

Statistical information on migrant children is a scarce commodity in the region. It is clear that children affected in one way or another by international migration represent a significantly higher number than that usually recognized officially, as official figures do not include, for example, many children of migrants born after the migration of their parents, who acquire the nationality of the country of destination because of the *jus soli* principle governing practically the whole region. Nor does it include many children who remain in the country of origin when their parents decide to migrate (UNICEF/UNLA, 2008).

Another fact which is uncertain is the number of migrant children in an irregular situation in the region. Hence, it is possible to assert that the figures cited at the beginning are lower than the actual numbers of migrant children.

Most countries in the region have official statistics agencies that are usually the same bodies that conduct national population censuses and specific socio-economic, demographic, productive, and other studies. National censuses provide a powerful statistical picture for each country. However, not all censuses include in any of their questions, information about the migrant population, which in many cases is not incorporated into the national statistics. On the other hand, some of these agencies conduct specific studies on migrant populations, as in the case of Argentina, Uruguay, Chile, Colombia, Peru and some Central American countries.

There is very little information about migrant population in early childhood. Overall, country reports indicate that they have data on the ages of migrants, but do not share them. Costa Rica specifies that there are no data regarding young children who enter their territory, but that it is implementing a protocol with the Ministry of Public Education in order to gain access to this information.

Both in Nicaragua and in El Salvador, most registered migrant children are connected with Salvadorans who have returned, and have become the highest flow being received by the migration control authorities. In this regard, in 2018, according to data from the Directorate General of Migration and Alien Affairs (DGME), 2466 children and adolescents were received, having returned due to irregular migration, and in the first six months of 2019, 4150 children and adolescents were received, almost double the number for the previous year, only in the first six months of the year. There is no differentiated information for children under the age of six. In relation to Honduran children abroad, the Directorate for Children, Adolescents and Family handles data on air, sea and land receptions, for children returning to Honduras. By September 2019, there were over 21,000 returned children, of whom 17,520 were accompanied and 3669 were travelling alone. This information includes no specific data regarding the youngest children. At the time of writing, nearly 3000 migrant children and adolescents in transit had been identified by the National Institute of Migration of Honduras.

For Mexico, managing data on migrant children has become a serious problem, given the high levels of irregular migration traffic that crosses from south to north of its territory. According to figures provided by the National Institute of Migration (INM),

the Mexican migration authority, it is only possible to identify between 12 and 15% of the volume of undocumented migrants entering the country. As a result, there is a gap between official statistics and the number of undocumented migrants who enter each year; official data only manage to reach the same percentage for children.

3.2.2. NATIONAL STRATEGIES

Because of their vulnerability, migrants are exposed to countless restrictions or violations of their economic, social and cultural rights, as has been recognized by the Special Rapporteur on Migrant Workers and Members of Their Families of the Inter-American Commission on Human Rights. According to the Rapporteur, the paradox here is that frequently the decision to migrate is driven by violations or lack of access to those same rights in the country of origin.⁷² Vulnerability is the basis on which the vast majority of public policies for migrants in general, and most especially for children in early childhood are identified, designed and implemented. As children in early childhood's dependence on the adult world is so obvious, the identification of 'vulnerability' mandates State intervention in all its forms.

*Vulnerability and the impact of restrictions on fundamental rights are appreciably increased when people do not have a residence permit in the country in which they live. The situation becomes more serious when migrants are minors. Therefore, "The Committee calls on States parties to ensure that all young children (and those with primary responsibility for their well-being) are guaranteed access to appropriate and effective services, including programmes of health, care and education specifically designed to promote their well-being. Particular attention should be paid to the most vulnerable groups of young children and to those who are at risk of discrimination (art. 2). This includes girls, [...] children from migrant families."*⁷³

When it comes to children who migrate with their families, it is reasonable to understand that, without prejudice to the specific causes that prompted the move, the decision to migrate was made by the parents, so the State of destination can hardly impose a penalty on boys or girls as a result of what their parents decided. Even less if the expulsion entails, as usually happens, an additional penalty usually embodied in a re-entry ban to that country for a certain number of years. Therefore, when parents are expelled due to irregular entry or lack of a residence permit, the repatriation or return of their children to the country of origin should not be determined as a punishment but as a measure for their protection, in keeping with the principle of family unity, and provided that this is in their best interest (which implies, among other things, ensuring their right to be heard, depending on their age and maturity).

⁷²Inter-American Commission on Human Rights, Special Rapporteur on Migrant Workers and Members of Their Families, Seventh Progress Report, IACHR, Annual Report, 2005, para. 175.

⁷³Committee on Rights of the Child, *General Comment No. 7, Implementing child rights in early childhood*, 2005, par. 24.

According to information provided by national agencies that were able to answer the questionnaire prepared by the research team, it is the national bodies for the promotion and protection of rights that are responsible for intervening in the situation of migrant children in early childhood, although always in coordination with other State agencies, and even civil society organizations.

This is the case of **Costa Rica**, with its National Children's Board (PANI), which includes, without distinction, the migrant population. The National Comprehensive Protection System consists of the Council for Children and Adolescents (chaired by PANI), government institutions and civil society organizations represented on the Council for Children and Adolescents, Children's Protection Boards, Tutelary Committees for Child Rights, and Local Child Protection Subsystems. Support for migrant children is provided through the protocols mentioned above and through all of the programmes and projects for minors. There are programmes put in place by the National Training Institute (INA), the Ministry of Public Education (MEP), the Ministry of Public Security (MSP), the Institute of Municipal Development and Consultancy (IFAM), etc. They coordinate through the Migration and Alien Affairs Act, and through the Tripartite Commission for Children and Adolescents (PANI- DGME- MRREEC).

Like most States, Costa Rica adheres to the non-return of migrant children who have applied for refugee status.

"PANI applies the Protocol for detection, comprehensive care and protection of minors who require international protection, be they applicants for refugee status or stateless persons. Repatriation decisions are grounded in the best interest of the minor, family reunification, the right to identity, the right to nationality and the right to comprehensive development. To ensure their safe return, the Guide for the Return of Migrant Children and Adolescents is used, to and from Costa Rica."

In Costa Rica, migration is not a crime, it is a right. There is no deprivation of liberty; there is protection and safe mechanisms are implemented for family reunification; repatriation is carried out with a safe return. No documentation is required to access the rights to health, education and social protection, the protection rationale, rather than punishment, is applied in all State interventions.

In **El Salvador**, the National Council for Childhood and Adolescence (CONNA) is the highest authority of the Comprehensive Child Protection System, and among its primary functions is the issue of migrant children and adolescents. The CONNA leads the national coordination committee for the care and protection of migrant children and adolescents, with the participation of various State institutions. The CONNA is the institutional mechanism set up for the coordination of the National Comprehensive Protection and the governorship of PNPNA, with a key role in coordinating, facilitating and monitoring the implementation of the PNPNA's National Action Plan, including special protection for the migrant population. At the executive level, it synchronizes and coordinates the system through the Technical Coordinating Committee, which at the operational level has inter-agency coordination boards, including the coordinating

board for the care and protection of migrant children and adolescents.⁷⁴ This is composed of all the institutions that are directly related to the care and protection of migrants, both Salvadorans (on their return) and foreigners in El Salvador. Based on this, the protection system coordinates with institutions that exercise security and migration control in order to provide a comprehensive response according to the Doctrine of Comprehensive Protection for migrant children and adolescent. It coordinates its actions with the Ministry of Education, CONMIGRANTES, Ministry of Labour, with care entities of the shared care network,⁷⁵ municipalities, and other local bodies.

In **El Salvador** there are specific State programmes involving civil society organizations. It is clear that El Salvador's most serious concern is the number of repatriated boys and girls, since it is a country of origin or transit in the migration chain, and of return for thousands of cases per year. In this respect, most programmes and services are designed to benefit the Salvadoran population that has returned because of irregular migration. This includes the involvement of various public organizations and international cooperative organizations.

In the case of returnee migrant children, the path to be followed is established by the Protocol on Protection and Care of Migrant Salvadoran Children and Adolescents, which provides for a series of actions coordinated by the various institutions that make up the Comprehensive Child Protection System, with the participation of the Prosecutor General's Office, the National Council for Children and Adolescents, the Salvadoran Institute for the Comprehensive Development of Children and Adolescents, the General Directorate of Migration and Alien Affairs, the Ministry of Health, the Ministry of Justice and Public Security. Upon arriving in El Salvador by air or by land, they are received by Ministry of Public Health staff, who provide mandatory care to boys or girls under the age of five. There are no requirements other than those demanded of any other non-migrant Salvadoran children for the enjoyment of access to education, health, or social protection.

In **Honduras**, the Children, Youth and Family Directorate and the National Migration Institute participate in the newly created "migrant children task force". From a perspective of 'emergency', this coordination body addresses the manifestations of the humanitarian crisis resulting from movements of children who travel alone or with their families to the United States and who are detained in shelters. It is composed of the ministries of Foreign Affairs and International Cooperation, Health and Human Rights, Justice, Interior and Decentralization; the Permanent Commission for Contingencies, the Children, Youth and Family Directorate, the Special Prosecutor for

⁷⁴ The board is composed of the following institutions: Ministry of Foreign Affairs (MRREE), Ministry of Health (MINSAL), General Directorate of Migration and Alien Affairs (DGME), the National Civil Police (PNC), the Prosecutor General's Office (PGR), Salvadoran Institute for the Integral Development of Children and adolescents (ISNA), the Salvadoran Institute for the Advancement of Women, National Council for Childhood and Adolescence (CONNA) Local Offices for the Care of Victims and irregular Migration (OLAVMI).

⁷⁵ In accordance with Art. 169 of LEPINA, the Network is a "set of coordinated care entities; the main functions of its members are protection, care, defence, study.

Children and other institutions with a key role in migratory response, under the leadership of the First Lady of the Nation. Its focus is on the humanitarian emergency, and it works to ensure the return of children and family units to Honduras. The care provided is based on the principles of humanity, impartiality and neutrality, in line with the Guiding Principles for the Coordination of Humanitarian Emergency Assistance issued by the United Nations General Assembly in 1991. An Under-Secretariat for Consular and Migration Affairs has also been created. Special funds have been allocated to migration; reception centres have been redesigned; care protocols for migrant children have been implemented; a strategy has been developed for the reintegration of returned migrant children and families; and municipal care units for returnees have been established.

As in El Salvador, it is the return of migrant children that is the main focus of most public policies related to human mobility in childhood in **Honduras**. The Children, Youth and Family Directorate (DINAF) administers the Migration and International Return of Children and Adolescents Programme, which is responsible for ensuring the implementation of the Protocol for Immediate Protection, Repatriation, Receiving and Tracking Migrant Girls and Boys under the minimum standards of comprehensive care, focusing primarily on prevention and progressive reduction of irregular child migration. The DINAF has protection centres providing care for children, where they receive food, medical care and protection. For the Republic of Honduras, as well as for DINAF, it is essential to preserve the best interest of every child, whether Honduran or foreign, and above all, family unity according to the principle of non-separation. When Honduran children are abroad, the Ministry of Foreign Affairs requests the Children, Youth and Family Directorate (DINAF) to engage its multidisciplinary team in searching for their families, and in verifying that family resources are suitable for family reunification through socio-economic and psychological studies. As regards access to education, health, and social protection rights, applicants must submit the usual documentation.

In **Mexico**, according to the LGDNNA (Art. 125), the National System for the Comprehensive Protection of Children and Adolescents (SIPINNA) is the body responsible for setting up tools, policies, procedures, services and actions to protect the rights of children and adolescents in Mexico. Regarding migrant children, a permanent Commission has been installed within the SIPINNA, linked to the issue of migrant children and applicants for refugee status. It aims to facilitate coordination on the issue between federal government bodies involved in the protection of migrant children. At the same time, a Route for the Comprehensive Protection of the Rights of Migrant Children was designed. It determines how the federal government should be coordinated in terms of protection and assistance. Involved are the Ministry of Health, the Ministry of Public Education, the Mexican Commission for Aid to Refugees, the Migration Policy Unit of the Ministry of Interior, the Ministry of Welfare, the Ministry of Foreign Affairs, and the Ministry of Security and Civil Protection. Also a part of this are the National System for Comprehensive Family Development, the Federal Prosecutor's Office for the Protection of Children and Adolescents, the National Governors' Conference, the National Council to Prevent Discrimination, the Executive Commission for Victims and the Human Rights Commission, the Senate and Chamber

of Deputies, through Commissions specializing in childhood, including the UN agencies involved in the issue (UNHCR, UNICEF, IOM, COACNDH, UNDP), as well as Civil Society Organizations specializing in issues of child protection and migration.

The programmes are dependent on the plans and statutes of government agencies involved. Extraordinary efforts have been deployed to strengthen the focus on the northern border, with budget allocations not originally scheduled for that purpose. A model has been designed for the provision of alternative care for unaccompanied children in cooperation with UNICEF, which is being fully implemented.

The Mexican Commission for Aid to Refugees (COMAR) gives continuity to the initial assessment protocol for identifying signs of international protection needs in unaccompanied or separated children. It recognizes and regulates the right of children to have access to temporary alternative care arrangements, including residential and foster care. There are shelters administered by the State, but not specializing in this population. In the broader context of protection, work is being done to design an alternative care policy to ensure the reception of migrant children and their protection.

According to the LGDNNA, all Mexican and foreign children have the right to health. Migrant children with irregular status must prove their legal stay in order to gain access to health services, in accordance with the procedures accredited by the INM. The case of education is similar, but in fact, administrative procedures and certain jurisdictional differences make it difficult to guarantee this right.

In **Nicaragua**, as determined in Law No. 290, the Organization, Competence and Procedures Act of the Executive Branch, the Ministry of Family, Youth and Children is the Citizen Power Institution, responsible for promoting actions to promote values, ensure actions to prevent social risk and ensure the Special Protection of Children and Adolescents. It also has the function of approving and implementing public policies, plans, programmes or strategies that contribute to the comprehensive development of the family, the promotion of gender equity and family care through its Comprehensive, Family and Community Care Model.

The Ministry acts in coordination with other institutions associated with migration control, and to ensure the protection of migrant children entering the country irregularly, who are unaccompanied or travelling in the company of third parties. The Ministry of Family, Youth and Children, together with institutions linked to migration control, determine complementary prevention, outreach, and direct and immediate care actions, as well as special protection for migrant children and adolescents who need it, as established in the country's regulatory framework.

When a child in an irregular situation has been detected by the General Directorate of Migration and Alien Affairs, it coordinates with the Ministry of Family, Youth and Children, where special protection measures are implemented, as provided for. The Ministry coordinates with the Ministry of the Interior, the Consular Directorate General, the Migration and Alien Affairs Directorate, the Ministry of Health, the

Ministry of Education, the National Police, and the Centres for special protection of children and adolescents in the country. The Ministry provides assistance and support in repatriations. In addition, when children and adolescents enter the country with their parents, they are guaranteed mobilization, and economic or financial aid for travelling to their country of origin.

Where necessary, the Ministry of Family, Youth and Children guarantees admission to protection centres, where children receive comprehensive care, while procedures to determine their migration status run their course. Special protection is provided to migrant children and adolescents; they are received at Nicaragua's border control, with special protection guaranteed through admission to a protection centre.

The State of **Nicaragua** guarantees protection to vulnerable children and adolescents. Depending on how far children are affected, or their special protection needs, the institution implements specific complementary measures, such as psychological counselling; supplies; admission to protection centres; referral to health services; food provision; support and advice; as well as accommodation and respite care. Nicaragua has a mechanism established by Law 655, the "Refugee Protection Act". The State of Nicaragua guarantees everyone the right to health and free education, without distinction.

For the authorities of **Costa Rica**, the main obstacles in the synchronization of protection systems and other migration policy actors are the lack of flexibility and of coordination. Those responsible for these issues in **Honduras** are in agreement. Rather than an obstacle, **Salvadorans** identify the challenge of continuing to strengthen coordination and synchronization in the Coordinating Board for the protection and care of migrant children and adolescents, in order to ensure the effective protection of migrant children and adolescents in the face of new forms of migration that involve rethinking protocols, routes and plans.

Mexico's response is linked to the need for effective coordination between the protection system and other State actors involved in handling migration policy involving children. Creative and innovative solutions are needed, which consider the mobility of the migrant population, the variety and multiplicity of overlapping jurisdictions (federal, state and municipal), and the public and private actors involved in dealing with migrant children throughout their journey within the country. Other obstacles involve budgetary issues, and developing technical, operational and coordination capabilities to record the specifics associated with organizing and guiding the movements of migrant children, and identifying areas where coordination is necessary.

For **Costa Rica**, the areas that should be included in the protection system in the context of migration policy are connected with increased training for intervening officials on care protocols for migrant children, improving Respite Care Centres for Migrants and strengthening border security. **Honduras** is in the development phase of its migration policy, a process driven by the Ministry of Foreign Affairs and International Cooperation, with the support of other State organizations, primarily the

National Migration Institute and the Department of Children, Youth and Family. All of which is linked to the National Policy on Child Rights in Honduras. The policy paper will also include the First Action Plan 2020-2022 and its budget. This policy gives priority to issues relating to children in five major components: the rights to development, survival, participation, protection and strengthening of the SIGADENAH.

El Salvador notes that there is an opportunity to strengthen, at all levels, the staff of the different institutions that have an effect on the reception, care and protection of migrant children and adolescents in Salvadoran territory, mainstreaming the human rights approach and, particularly, comprehensive protection to children and adolescents among the system's actors, harmonizing with new legislation on migration.

To increase the effectiveness of the Protection System in **Mexico** in relation to the population of migrant children, there are some areas of opportunity that must be seized, such as: harmonize federal and state laws with the procedures established in the LGDNNA and its regulations; implement more effective coordination mechanisms; strengthen the technical and operational capacities of the staff of institutions working to ensure the rights of children; consolidate a system of registration and case management that will enable taking on board the information generated by the institutions involved in guaranteeing rights; strengthen children's protection procurators so that they can determine the best interest of migrant children and adolescents; implement an ad hoc placement system catering to the needs of the migrant child population; and establish appropriate and effective prevention mechanisms to prevent crimes against migrant children and to investigate, prosecute and punish those responsible.

A Comprehensive Migratory Policy (PIM) was adopted in **Colombia** in 2009. It was the first programmatic document that systematically defines the intervention guidelines, strategies and actions for Colombians abroad and foreigners in the country; however, this white paper did not become law. In 2011, the National Migration System (SNM) was created for the development of a Migration Policy; the National Intersectoral Migration Commission, a member of the SNM, and for the returnee population, the Intersectoral Return Commission, with the Chancellery providing the chair and technical secretariat. "Return in Solidarity" was established in 2012. The Migrant Care Offices is an initiative of the Ministry of Foreign Affairs and various governorships and municipal ombudsmen, to meet, guide and refer the applications of returnee migrants and their families.

Subsequently, the "We are United" programme was created by the Ministry of Foreign Affairs. The Department of Migration and Consular Affairs and Citizen Service was established to address and connect Colombians abroad and make them the object of public policy. In addition, it seeks to establish partnerships to help the population of Colombians living abroad and their families; in August 2019 the "Children First" measure was implemented, to be applied in two stages. The first stage as from August 2019, when children born in Colombia who lack civil registration and whose parents are Venezuelans, may approach the headquarters of the Registrar or nearest notary

public and complete the relevant registration procedures. The second stage is aimed at children who were born in Colombia after 19 August 2015 of Venezuelan parents, and have a Colombian birth certificate which includes an annotation at the bottom which says: “Invalid as proof of nationality”. For them, the responsible body will make the necessary corrections to the document and as from 20 December 2019 they may collect a free copy of the same from the Registry where the child was registered, which will have a notation saying “valid as proof of nationality”. The requirements for a child of Venezuelan citizens to acquire nationality are as follows: 1) to be born in Colombia; 2) to be born there as from 19 August 2015; 3) to have Venezuelan parents. This measure also applies to single parents, who must also prove to be Venezuelans. This measure is temporary and will remain in place until conditions exist for these children to gain access to Venezuelan nationality, as is their right.⁷⁶

International experts consulted identified some examples of good practices in different countries in the region:

In **Uruguay** there have been some efforts on the part of the National Public Education Administration, where a committee was created to coordinate remedial courses for migrants, as well as the possibility of reporting xenophobic acts. In addition, the Ministry of Education and Culture established an education and migration commission, which, for example, promoted a project on “words that find worlds”. Or the agreement between INAU and the School of Anthropology, which aims to provide workshops for educators working in CAIF centres (Child Care Centres) and CAPI (early childhood).

In 2008, a new constitution was adopted in **Ecuador** on the basis of a strongly participatory constituent process, which resulted in an interesting text for the protection of rights. It enshrines specific rights for children and adolescents, reflecting a guarantor of rights-based State; with joint responsibility with civil society and families. Moreover, the respondent claims that a new development-oriented regime has been established with the new constitution, based on the indigenous vision of the ‘good life’, which puts forward a balance between human beings, nature and the guarantee of rights. Thus, Ecuador has been consolidated as a pluri-national and intercultural State, a guarantor of rights. As regards the programme field, Ecuador has a National Development Plan that applies throughout one period of government. This plan has goals related to human mobility. Nicolás highlights the National Plan for Human Mobility, answering to the Ministry of Foreign Affairs. The aim of this plan is to develop scholarship programmes, and education methods to strengthen the integration of migrant children and adolescents into the education system. In this respect, it seeks to facilitate administrative procedures for access to education. The human mobility council is developing an equality agenda for human mobility. These programme elements establish a policy of ensuring peace and sovereignty and the importance of protecting and promoting the rights of people in situations of human mobility.

⁷⁶<https://www.cancilleria.gov.co/en/newsroom/news/estado-colombiano-concede-nacionalidad-ninos-nacidos-colombia-hijos-migrantes>

In some countries, **Colombia**, for example, the National Board of Migration and the Children's Board, get together to come up with a joint plan. One of the focal points of this panel is access to education. Thinking from the perspective of early childhood, the centres catering to it tend to be insufficient.

The experience of the Quito Process has shown the lack of inter-agency coordination between the authorities of the Ministry of Foreign Affairs and the child protection system. This coordination must include not only the lead agency for children, but also other key institutions, such as public health, education, etc. There are good experiences in this regard, such as Costa Rica's Coordination Protocol.



CHAPTER V

KEY FINDINGS AND RECOMMENDATIONS.

*In the Heaven of Indra,
there is said to be a network of pearls,
so arranged that if you look at one you see
all the others reflected in it.*
(Sir Charles Eliot)

CHAPTER V. KEY FINDINGS AND RECOMMENDATIONS

I. KEY FINDINGS

1. The importance of investigating, analysing, examining, debating and questioning the relationship between early childhood and migratory movements. In this respect, the decision of the Citizen Horizon Foundation and its partners and funders to conduct this research is a significant contribution to the field of study; to the States, experts and governmental and non- governmental technical specialists, international and regional organizations defending the rights of children in early childhood, and, especially, to children and families undergoing human mobility in our times, and who are its main protagonists.
2. For the Inter-American Children's Institute/OAS, it has become a substantive input to deconstruct assumptions, shed light on practices being implemented in the countries of the region, and bolster opportunities for dialogue, consensus and sharing, in order to transform and improve regulatory and methodological frameworks that need to be implemented.
3. The diversity of theoretical approaches, factors and processes involving individuals, families, communities, and that are social, political, economic, demographic, religious, regulatory, etc., that relate to migration in early childhood has transformed this survey into a genuine area of discovery. The multicausality and multidimensionality of the phenomenon enable us to glimpse the complex universe in which the lives of millions of children worldwide, many of them on our continent, have become enmeshed. Establishing the determining factors of the phenomenon of human mobility in early childhood, as proposed in Chapter 2, allows a more detailed approach to this consideration.
4. The contemporaneity of the phenomenon and its immediate consequences on the quality of life of children and their families, as well as its impact on people's life trajectories, force national and international actors to act immediately to confront the whole set of violations of the human rights of children who migrate in the first years of their lives.
5. Human mobility combines structural features and individual agency. Structural causes are observed that involve inequalities, limitations or barriers in societies of origin and destination, which condition the lives of migrants and those of their young children; while each individual has agency to make the decision to

face such limitations. Migrants are positioned within structural processes (political, cultural, economic, etc.) and national policies, determining and influencing migration flows. Migration cannot be separated from processes of social and economic change that alter the spatial distribution of the opportunity structure and mobility patterns. It is a mistake to reduce migrants to passive actors who are facing the macro forces that interact on a global scale.

6. In the region, there is a clear difference arising from the exercise of the rights of children and adolescents, between countries with Comprehensive Child Protection Systems (SNPI in Spanish) and those who lack them. For example, the statelessness that children and young people of Haitian descent are undergoing in the Dominican Republic, or the violence and insecurity that permeates Honduras are very worrying. The countries of the region that have undertaken the commitments of the Convention on the Rights of the Child are mandated to adopt the legislative measures and policies necessary for the comprehensive protection of children. Most of these countries have had to make changes in their legislations, including the creation of protection systems. States such as Ecuador, El Salvador, Jamaica and Uruguay have done so.
7. An analysis of these legislations shows the recognition of a broad consensus regarding the consideration of the rights of migrants as part of the totality of social, political and cultural rights. The international and regional legal corpus recognizes the problem and provides answers to the problem overall. However, this recognition becomes more complex, focusing on specific countries and fading when it comes to addressing the issues of child participation in general in migratory processes, primarily with regard to the situation of unaccompanied adolescents, and conflicts with local laws established in the countries of transit or destination. Specific references to the rights of children in early childhood are almost non-existent, as is the place of their caregiving mothers and the considerations to be taken into account when attempting the satisfaction of their rights.
8. An examination of national public policies lays bare a number of problems. Firstly, the lack of substantive information on the real dimensions of the phenomenon of children in early childhood involved in international human mobility. Secondly, we received few responses from the national agencies consulted, which somewhat limits our design of a complete map of public policies aimed at migrant children in early childhood. At any rate, it is possible to say that these policies are few, recent for the most part (implying that they are still undergoing a trial period, as well as the necessary and appropriate testing and validation), but they are too late to face the migrant explosion in the region.
9. The framework that the countries we surveyed have found is to identify migrant children as part of the whole 'vulnerable' population, thus ensuring them some form of access to the services and goods allocated to this population, which includes a wide variety of victims of inequality and distributive neglect. This characterization facilitates State responses on the basis of existing programmes, but also leads to the development of discriminatory, xenophobic and/or charitable perspectives, which consolidate

the painful process of abandoning their own culture, housing, and families that migrants suffer.

10. While most of the domestic legislations of the countries consulted, and as identified in the in-depth survey we carried out, formally guarantees the access of migrant children to education, health, social protection and identification services, the opinions of specialists and most of the diagnoses consulted indicate otherwise; that there are evident barriers and obstacles that children and their mothers must overcome to solve health issues, obtain appointments, be included in care and education, and formalize their documentation. Once again, the gap between State norms/discourse and reality has a direct impact on the quality of life of children, who are, of course, those who are most seriously harmed.
11. Regulatory discourse and the institutional and political capacity to implement public policy strategies in the same vein are separated by a wide gap. This gap is conceptual, because beyond the regulation being framed in the perspective of children's rights, in some cases the policy implemented does not entirely break away from the tutelary practices that remain anchored in certain government structures.
12. In line with this, it is important to note that the responses that display the highest consistency between the laws based on comprehensive protection and inclusive programmes can be seen in the countries that have succeeded in developing a rights protection system that assumes the universality of rights, and that, while recognizing the many ways in which children's experience is expressed, all girls and boys enjoy the same rights and deserve the same opportunities. In many cases, the overly nationalistic approach to these child protection systems is not sufficiently 'prepared' to welcome foreign children, who come from another culture.
13. Concern in the world of early childhood specialists about issues related to the quality of care and education services, curriculum discussions, the type of infrastructure of the institutions, the mandatory vaccination schedule, the window of opportunity and the rate of return on investment in the early years may appear to be a contradiction, when faced with the marginal place in this field of social policies that is assigned to the permanent and significant violations of the minimum subsistence rights suffered by migrant children. Perhaps there is a belief that recognizing children as rights holders, as established in the Convention and other international and regional treaties, which occupies a good part of the discourse of international agencies and local governments, has been able to shelter all children. The daily confirmation of the issues we are witnessing forces us to recognize that there are millions of children who continue to represent a differentiated category, those who have no voice, who have been left out of national and regional rights protection systems, 'the nobodys', as Galeano would say. Migrant children, in their early years of life, challenge adult society, governments and international organizations.
14. International female migration needs to be understood in its complexity by integrating the family world involved, since the separation of children leaves lasting psychological effects. For those left behind, there is a loss of emotional

bonds that cannot be covered by surrogate families. Understanding the emotional scope and psychological development of the experience of separation in children from their familiar adults requires delving into their conflicts. Among the problems that families face is the breakdown of the processes of parenting and care. This may be associated with the concept of “Conditions to exercise motherhood or parenting” and its consequences on the immediate environment of the couple and family networks; meso-community environments, bonds of solidarity, existing services in the territory.

15. Most of the specialists consulted point out that early childhood migration is still an invisible phenomenon. It becomes visible when strong evidence appears in the media and in the discourse of any of the protagonists. Early childhood as a social and political category has gained ground on the public agenda, in international and local regulations, and the implementation of specific public policies. However, the place of early childhood in migration, both large and small, remains a virtually invisible reality, hidden and absent in international debate. In recent years, child migration, together with increased female migration, is one of the latest trends in the context of human mobility within the region. Despite its increased incidence, interest in child migration remains scant and children often fail to appear in analyses of regional migration and their status as people with rights is denied.
16. Any rights-based migration policy requires material and human resources for it to be implemented; a budget, in other words. It is then necessary to generate transparent mechanisms that make available to people the information necessary for their benefit, ranging from knowing in detail the services to which they are entitled to informed participation in public policies. Only thus can a public policy be sustained when it is not being applied appropriately.
17. The lack of budget for the implementation of policies aimed at migrant early childhood is one of the greatest obstacles that can be seen in the region. Social public spending for early childhood, including migrants, whether those who are left alone, those travel thousands of kilometres with their mothers or other adults, upon arrival at their destination, or when returning to their country of origin, is the extent to which the efforts of States for the new generations can be qualified.
18. Many of our child care systems function as if they were a health system that only has a large intensive care unit: it only intervenes when the damage is serious, irreparable and life-threatening. The challenge is to intervene earlier, prevent, detect; starting with a collective awareness of the human rights of children regarding which a network of resources, services, possibilities and connections to other agencies is materialised in order to channel emerging risk factors.

II. RECOMMENDATIONS

On the basis of this research study and the analysis of the different sources of information, we can identify, firstly, the recommendation that all actors involved in early childhood life must decide to make the invisible, visible. That is, recognize that

thousands of children up to the age of 6 are directly involved in international migration, which determines that this fundamental stage of life will be affected by an experience that is at least significant and mobilizing, if not traumatic.

The visibility of this phenomenon, which is growing hand in hand with the increase in female migration, should challenge the current set of national and international leaders responsible for the development and control of compliance, policy planning, management of funds and budgets, knowledge production, programme and policy management, as well as community and social leaders, mothers and fathers. This challenge, if it is courageous and sincere, will expose a broad list of inconsistencies and gaps; non-compliance with the most basic human rights of the new generations; but it will also facilitate the recognition of practices already implemented, valuable experiences, deep commitments, and possible actions to be taken to promote and guarantee the rights of children under conditions of human mobility.

In order to help this document to become a tool for advocacy, we offer below the result of our efforts in synthesis and thematic grouping of the main recommendations derived from the study.

i. MIGRATION POLICY AND STATE POLICIES

The study confirms the existence of a dispute of meanings involving different visions of human mobility. On the one hand, the vision of the protection of human rights, and on the other, that of public security (security-based vision). Not only did we find that one or the other predominates at different times and in certain situations (the weight of the media), but that this varies from State to State. Further, this contradiction is also apparent among the different institutions within the same country, permeating actions to varying degrees, according to institutional weight and prominence. On the whole, pressure points are concentrated between agencies linked to child rights protection systems, and those implementing and designing policy on border control, migration or security.

This shows the need to define State policies that not only provide sustainability over time (we should remember that the inclusion of migrant groups is a process), but also enable coherent action by each State as a whole, including principles of comprehensiveness and best interest, the foundation stones of the new social contract of the adult world with generations that begin to be included in the shared life of our societies.

ii. INTER-AGENCY COORDINATION IN THE PROMOTION AND PROTECTION OF RIGHTS

This shows the importance of having permanent inter-agency and cross-sectoral areas, with policy coordination capacity. In order to strengthen rights-based policies, the presence in these areas of child protection agencies and their coordination with national protection systems in those countries where they exist is central. The presence of civil society strengthens the safeguard-based outlook. Children and migrant families should be contemplated by child policies as vulnerable populations,

but without blurring their specificity. In this respect, it is a priority to address the training of decision makers and operators, to make them aware of the unique features of the migration phenomenon, its consequences on child development, its specific risks, as well as the management of the various aspects of cultural diversity (parenting habits; gender relations; relationship with other cultures).

iii. STRATEGIES AND PATHS TO THE PROMOTION AND PROTECTION OF RIGHTS

Child protection systems, where they exist as such, must be “sufficiently prepared to welcome foreign children, who have incorporated a diverse culture”. While considering migrant children as part of the ‘vulnerable’ population as a whole facilitates State responses, based on existing programmes, it also promotes the development of a discriminatory, xenophobic and/or charitable outlook that consolidates inequality.

As with the set of actions aimed at children, there is a tendency to intervene once situations of violation of rights are evident, “the challenge is to intervene before; to prevent, detect, build collective awareness of the human rights of children, regarding which a network of resources, services, possibilities and connections to other agencies is materialised in order to channel emerging risk factors”.

Coordination areas must design “integration routes”, starting with reception at the borders with “the first humanitarian responses (...) vital issues such as hydration, food, health, foster homes”.

At a second stage, once children have entered the national territory, access to the education system must be ensured and their situation regularized as regards documentation. This is key in order to enable access to different services, a necessary aspect, although not enough to initiate a process of inclusion in the receiving society, to endow them with the features of ‘persons entitled to have rights’.

These services should consider the specific characteristics of this population, with a special focus on the absence or weakness of social networks. In this respect, and especially during early childhood, access to education and care services is important. The feminization of care in our cultures, as well as the strong presence of women in these migration flows makes the need for childcare essential, in order to enable entry into the labour market, while facilitating interaction with national children and families. The existence of migrant children in early childhood adds a new component to the regional debate that is currently taking place with regard to ‘care’; ‘care public policies’; and the bid to ‘defeminize the social responsibility of care’.

Any policy, law, protocol, strategy for migrant early childhood should be designed and implemented taking into consideration the contexts and conditions in which the systems for the promotion and protection of children’s rights involved are developed, at national, supranational and regional levels. When it has not been possible to

protect children born in a country, even less will it be possible to do so in the case of migrant children, the experts consulted point out. The agenda for children is not a priority in any country in the region. We are still immersed in the concept that children and adolescents depend solely on their families. The weakness or absence of national protection systems is an unavoidable aspect, both in the configuration of expulsion from countries of origin and in the possibilities of protection and safeguards in places of arrival or transit. This relates both to ways of perceiving children's experience, and, therefore, to what kind of outlook each State promotes regarding its youngest citizens, and also to investment. The first is political and ideological; the second is ideology and policy in action: there are no policies without resources.

iv. EDUCATION

Not only must the right of migrant children to be incorporated into education be recognized, but also, how important it is to introduce migration as a subject in educational processes. It is similar to a system of mirrors: including migrant children in the school and care systems of recipient or transit countries will lead to integration, learning, recognition of the other as a peer, of difference as a meeting point; and incorporating all of these contents in the curriculum and in the play and pedagogical tools of the adults responsible for these activities with children, will lead to the development of better links, of fraternities, of educational methods based on difference, which will improve coexistence, moving away from and preventing discriminatory and xenophobic behaviours.

In the opinion of our key informants: School is a "great window of opportunity", the pivotal point at which to intervene. It is not enough to ensure formal access to the education system; strategies should be drawn up to promote authentic inclusion in learning processes, as well as in the social links and interactions that use education as a stage. This includes children and families, transcending the formal right to education, constituting a further gateway to other goods and services: health, social protection, family strengthening programmes, play, recreation and sport, care and everything that each State offers to its population. This includes handling the documentation situation, if it has not been resolved previously.

It is essential that teaching staff should be trained to work on cultural differences, the conflicts they may generate, and the possible xenophobic behaviours that can be expressed in educational areas. These situations should be structured in themes and worked upon from an educational perspective, transforming them into learning opportunities for all.

v. HEALTH AND CARE SERVICES

In all of the States included in the study, there are laws guaranteeing access of migrant children to these services under conditions similar to those of nationals. However, most respondents point out that, "beyond the law, the barriers and obstacles that migrant children and their mothers must overcome in order to resolve these issues are

evident". Migration policy should provide for mechanisms to identify and remove these obstacles.

It should be borne in mind that, as regards early childhood, States in the region do not have free education and care services that meet the demand of the entire population. This creates competition for quotas that leaves migrant children at a particular disadvantage. "In a context where mothers must face extensive working hours, care services should be considered. For this purpose, schools or care centres must be open to making arrival and leaving times more flexible, according to the particular situations of migrant children and their mothers or families".

It is necessary to take advantage of the capacity installed in the country through the education system, using the infrastructure of schools to expand its operations and include care services. These efforts must be put in place in order to provide development-promoting stimulation and ensure the autonomy of mothers, which will have a direct effect on the well-being of children.

vi. DECONSTRUCTING XENOPHOBIA AND OTHER DISCRIMINATORY MECHANISMS

It is necessary to install educational and communication actions in order to move away from the perception of migrants as "invaders who threaten our way of life and occupy spaces that should be reserved for nationals" (the criminalizing attitude) to a recognition of human mobility as a legitimate behaviour engaged in by people and families looking for a place to live with dignity and attain personal and social realization, who are able to contribute to the country's development and enrich its culture by providing diversity. Criminalizing attitudes lead to the daily infringement of rights and operate as a barrier to effective compliance with laws that safeguard rights. The reappraisal of migration as a contribution to the development of societies that respect human diversity is a fundamental step for the political and financial sustainability of migratory policies from the perspective of rights. This includes raising awareness of the problems caused by 'failed inclusion', which leaves migrant groups in the margins of social life and swelling the ranks of excluded groups, which are themselves particularly numerous in our region. We emphasize the importance of gaining access to education and to decent and socially sound job placements. As well as of promoting social cohesion in diversity.

vii. LEGISLATION, PLANS AND PROGRAMMES

Our informants agree that legislation is well developed and that "the gaps exist in implementation". While there are gaps and inconsistencies in countries' legislations, and between those and international law, the priority is not legislative output, but the actual implementation of policies, plans and programmes, "... a good law does not ensure good migration policy".

viii. OVERCOMING NATIONAL APPROACHES IN ORDER TO MOVE TOWARDS SUPRANATIONAL MECHANISMS

It is imperative to create opportunities for coordination and establish common criteria between States. The migration phenomenon is essentially transnational, although we should also recognize the importance of domestic displacement. Migratory movements always include two or more States. A policy to protect children's rights with an emphasis on early childhood must include coordination between protection systems so as to achieve minimum standards at all stages. This compels us to think in terms of regions and subregions, and even to generate coordination between national and regional governments, taking into account the geographic features that outline the migratory routes themselves. In this regard, it is essential to promote the involvement of inter-State subregional organizations such as Mercosur, SICA, CARICOM and the OAS itself.

These organizations include permanent structures or committees that deal with migration issues, taking into account the situation of families, but affording scant visibility to early childhood. They tend to engage in generic approaches that are not always based on rights. We need to place the issue of early childhood on the agendas of these bodies. This may be facilitated on the basis of the work of organizations specializing in childhood, such as the IIN or civil society coalitions such as the Global Movement for Children for Latin America and the Caribbean (MMI-LAC).

Conducting regional sharing events including migratory and protection authorities can facilitate the consolidation of these ties. Discussions held on virtual platforms are an alternative that helps generate a culture of dialogue and permanent coordination.

In the same line, we consider it important to sensitize international cooperation agencies so that they support and facilitate the implementation of specific projects focusing on the situation of the migrant children in early childhood, leading to the possibility of 'good practices' to be replicated in similar conditions.

ix. INFORMATION SYNTHESIS AND KNOWLEDGE PRODUCTION

The information gathered shows the absence of reliable data, consolidated and systematized to allow, among other things, the visibility of early childhood. This is a necessary input in designing policies consistent with the dimensions and specificity of the problem. It requires inter-agency work where different actors gather information using compatible criteria; organizing and systematizing it so to make it an input for the design and implementation of policies

Georeferencing this information would be useful, in order to locate services in the territory and, at the same time, involve local governments in these policies. Quantitative data, which usually refer to persons under the age of 18, should distinguish between life cycles and stages of development, making it possible to design policies that are more suited to the needs of children and families.

There is a great deal of literature on the interpretation and analysis of migration processes; however, it does not delve into the special features of this situation in relation to children, and, especially, for early childhood. The experience driven by the

Citizen Horizon Foundation with the purpose of promoting partnerships between organizations with expertise in the field of children, bolstering resources and capacities for producing valuable knowledge to support advocacy efforts, can be considered a good practice to be strengthened and eventually replicated by other actors.

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APPENDIX 1. MODEL INTERVIEW WITH NATIONAL BODIES

1. Regulatory Framework

1.1 Has your State ratified the Convention on Migrant Workers and Their Families?

1.2 Does your State have a law on migration? Does it contemplate rights and protection mechanisms?

1.3 Are there other laws, decrees, administrative decisions, protocols or other regulations that provide for the protection and promotion of the rights of migrant children and adolescents (henceforth, children)? Which are they?

1.4 Does the children's law/code in your country contemplate the situation of migrant children?

2. Data collection and quantitative and qualitative information⁴

2.1 What are the main nationalities of migrant children arriving in your country?

2.2 Does your State have data on the number of migrant children entering per year, or who entered in the past year and the countries they came from?

2.3 Are there data on the ages of migrant children residing in your country?

2.4 Are there data on the total number of migrant children entering with their families and children entering who are unaccompanied or separated?

2.5 Are there data on the number of migrant children housed in establishments (with their families)?

2.6 Are there data on the number of migrant children housed in reception centres for unaccompanied or separated children?

2.7 Which are the major causes of displacement you have identified?

3. Protection system

3.1 What are the mandates and functions of the governing body for childhood regarding migrant children? On what law are they based?

3.2 How does coordination operate between the protection system and institutions exercising migration control?

3.3 What other actors take part in coordination for protecting migrant children?

3.4 Are there specific programmes in support of migrant children, or is response provided through existing programmes?

3.5 In cases where programmes exist: Which institution do they answer to? Are they regulated by any legislation (resolutions, decrees, etc.)? Do they have a specific budget allocation?

4. Migrant children and adolescents with special protection needs: unaccompanied, separated, refugees, asylum seekers, stateless, victims of other forms of abuse or violence

4.1 Is the care provided for children who need priority measures implemented by the child protection system or by institutions exercising migration control?

4.2 Does your State have special protection programmes for migrant children in vulnerable situations?

4.3 Are there special procedures when children are unaccompanied or separated?

4.4 Which body is responsible for detecting unaccompanied or separated children and how is the procedure carried out?

4.5 In the case of unaccompanied or separated migrant children, is contact established with the family or other adult reference points, or with the competent authorities? (E.g. Consular offices or childhood agencies in the country of origin)

4.6 Is housing and respite care provided until the best interest of the child is determined?

4.7 Are lasting solutions implemented according to the best interest of the child and the principle of family unity?

4.8 Are there internal mechanisms in place to provide care to child asylum seekers?

4.9 Which authority is responsible for implementing procedures to identify international protection needs when it comes to children? What are the characteristics of these procedures? (Interviews, training of operators)

4.10 Would you say that your State safeguards the principle of non-refoulement?

4.11 How does coordination occur between border authorities, the body responsible for refugee issues and the protection system?

4.12 In cases where children are repatriated, what reasons are given to justify these decisions?

4.13 Are the measures contained in the protocols to prevent statelessness implemented?

4.14 Are due process guarantees applied in migration processes that involve children, at both administrative and judicial level? YES/NO Which?

5. Reception centres

5.1 Are there reception centres for children and their families in irregular migration status?

5.2 Are there reception centres for unaccompanied and/or separated migrant children? What are their characteristics, in terms of buildings and specialized personnel?

5.3 How many reception centres are there in your country? Are there different centres for children and their families and for unaccompanied or separated children?

5.4 What are their characteristics, in terms of buildings and specialized personnel?

5.5 What institution do they answer to?

6. Deprivation of liberty

6.1 Does your domestic legislation include the causes that lead to prohibition of freedom for migrant children?

6.2 Has detention been applied in cases of separated or unaccompanied children? In the event that it has been applied, how has it been justified and under what conditions is it carried out?

6.3 Has detention been applied in cases of migrant children and their families? In the event that it has been applied, how has it been justified and under what conditions is it carried out?

7. Access to rights: family, education, health, identity

7.1 If your country provides for the expulsion of migrants. Which authority is responsible for assessing specific cases for expulsion?

7.2 To what extent is the opinion of children taken into account in order to determine their permanence or separation from their family unit?

7.3 Are secure mechanisms developed for family reunification? Which can you identify?

7.4 Are there the necessary tools to ensure that the persons with whom children are reunited are indeed members of their families?

7.5 What requirements/documentation must migrant children comply with/submit in order to gain access to health care? What kind of services do public institutions offer?

7.6 What requirements/documentation must migrant children comply with/submit in order to gain access to education?

7.7 Are there records of documented and undocumented migrant children, and of those whose identification document is pending?

8. Child participation in migration proceedings

8.1 Does the State guarantee the right of migrant children to express their views and participate in matters that concern them?

8.2 In migration proceedings, does your State promote the participation of children? Are they given the opportunity to be heard in any judicial or administrative proceedings connected with them and/or their parents?

9. In conclusion

9.1 What obstacles can you identify regarding coordination between the protection system and other State actors involved in handling migration policy relating to children?

9.2 What areas of opportunity do you consider should be included in the protection system as part of your State's migration policy?

