



**International Convention on the
Protection of the Rights of
All Migrant Workers and
Members of Their Families**

**Convention on the Rights of
the Child**

Distr.: General
16 November 2017

Original: English

**Committee on the Protection of the Rights of All
Migrant Workers and Members of Their Families**

Committee on the Rights of the Child

**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****

I. Introduction

1. The present joint general comment was adopted at the same time as 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 on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return. While that general comment and the present one are stand-alone documents in their own right, the two complement each other and should be read and implemented together. The drafting process included a series of global and regional consultations held between May and July 2017 with representatives of key stakeholders and experts, including children and migrant organizations, in Bangkok, Beirut, Berlin, Dakar, Geneva, Madrid and Mexico City. In addition, the Committees received more than 80 written contributions from States, United Nations agencies and entities, civil society organizations, national human rights institutions and other stakeholders from every region of the world between November 2015 and August 2017.

2. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention on the Rights of the Child contain legally binding obligations that relate both in general and specific terms to the protection of the rights of children in the context of international migration

3. In the context of international migration, children may be in a situation of double vulnerability as children and as children affected by migration who (a) are migrants themselves, either alone or with their families, (b) were born to migrant parents in countries of destination or (c) remain in their country of origin while one or both parents have migrated to another country. Additional vulnerabilities could relate to their national, ethnic

* Reissued for technical reasons on 24 November 2017.

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or social origin; gender; sexual orientation or gender identity; religion; disability; migration or residence status; citizenship status; age; economic status; political or other opinion; or other status.

4. By virtue of their complementary mandates and shared commitment to strengthening protection of all children in the context of international migration, both Committees decided to develop these joint general comments. While the present comment is based on the provisions of both Conventions, it is important to underline that the human rights norms clarified herein are built on the provisions and principles of the Convention on the Rights of the Child. Therefore, the authoritative guidance contained in the present joint general comment is equally applicable to all States parties to the Convention on the Rights of the Child and/or the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

A. Background

5. The present joint general comment builds on the increasing attention that both Committees have given to the rights of children in the context of international migration through a number of initiatives, including:

(a) Committee on the Rights of the Child general comment No. 6 (2005) on treatment of unaccompanied and separated children outside their country of origin, which includes a set of recommendations specifically for those migrant children outside their country of origin who are unaccompanied and separated;

(b) A day of general discussion held in Geneva in September 2012 by the Committee on the Rights of the Child, on the rights of all children in the context of international migration, for which the Committee drafted a background paper and adopted a report, with conclusions and recommendations;¹

(c) The endorsement in 2016 by the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families of the recommended principles to guide actions concerning children on the move and other children affected by migration.² In addition, both Committees are members of the Inter-Agency Working Group to End Child Immigration Detention;

(d) The increasing number of recommendations made by both Committees in recent years to States parties to their respective Conventions on a variety of human rights issues that affect children's rights in the context of international migration.

6. The present joint general comment also builds on other United Nations resolutions and reports, various outputs of the United Nations human rights mechanisms and United Nations, intergovernmental and civil society initiatives relating to children in the context of international migration, including:

(a) The statement by the Committee on Economic, Social and Cultural Rights on the duties of States towards refugees and migrants under the International Covenant on Economic, Social and Cultural Rights (E/C.12/2017/1), in which the Committee recalled in particular that "protection from discrimination cannot be made conditional upon an individual having a regular status in the host country", and also recalled that "all children within a State, including those with an undocumented status, had a right to receive education and access to adequate food and affordable health care";

(b) The New York Declaration for Refugees and Migrants, in which the Heads of State and Government undertook to 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, and to comply with their obligations under the Convention on the Rights of the Child.³

¹ See www.ohchr.org/EN/HRBodies/CRC/Pages/Discussion2012.aspx.

² Available from www.ohchr.org/Documents/HRBodies/CMW/Recommended-principle_EN.pdf.

³ General Assembly resolution 71/1, para. 32.

B. Objective and scope of the joint general comment

7. The objective of the present joint general comment is to provide authoritative guidance on legislative, policy and other appropriate measures that should be taken to ensure full compliance with the obligations under the Conventions to fully protect the rights of children in the context of international migration.

8. The Committees acknowledge that the phenomenon of international migration affects all regions of the world and all societies and, increasingly, millions of children. While migration can bring positive outcomes to individuals, families and broader communities in countries of origin, transit, destination and return, the drivers of migration, in particular unsafe and/or irregular migration, are often directly related to violations of human rights, including the rights of the child as recognized in several human rights treaties, in particular the Convention on the Rights of the Child.

9. The present joint general comment addresses the human rights of all children in the context of international migration, whether they have migrated with their parents or primary caregivers, are unaccompanied or separated, have returned to their country of origin, were born to migrant parents in countries of transit or destination, or remained in their country of origin while one or both parents migrated to another country, and regardless of their or their parents' migration or residence status (migration status). The non-discrimination principle of the Convention on the Rights of the Child obliges States parties to respect and ensure the rights set forth in the Convention to all children, whether they are considered, *inter alia*, migrants in regular or irregular situations, asylum seekers, refugees, stateless and/or victims of trafficking, including in situations of return or deportation to the country of origin, irrespective of the child's or the parents' or legal guardians' nationality, migration status or statelessness.⁴

10. The present joint general comment should be read in conjunction with other relevant general comments issued by the Committees; building upon those general comments and the evolving challenges children face in the context of international migration, it should also be read as authoritative guidance from the Committees as regards the rights of children in the context of international migration.

II. General measures of implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention on the Rights of the Child for the protection of children in the context of international migration

11. States should ensure that children in the context of international migration are treated first and foremost as children. States parties to the Conventions have a duty to comply with their obligations set out therein to respect, protect and fulfil the rights of children in the context of international migration, regardless of their or their parents' or legal guardians' migration status.

12. The obligations of States parties under the Conventions apply to each child within their jurisdictions, including the jurisdiction arising from a State exercising effective control outside its borders. Those obligations cannot be arbitrarily and unilaterally curtailed either by excluding zones or areas from the territory of a State or by defining particular zones or areas as not or only partly under the jurisdiction of the State, including in international waters or other transit zones where States put in place migration control mechanisms. The obligations apply within the borders of the State, including with respect to those children who come under its jurisdiction while attempting to enter its territory.

⁴ See Committee on the Rights of the Child, general comment No. 6, para. 12.

13. The Committees stress the primacy of the rights of the child in the context of international migration and therefore the need for the Conventions to be integrated by States into migration-related frameworks, policies, practices and/or other measures.

14. The Committees encourage States parties to ensure that the authorities responsible for children's rights have a leading role, with clear decision-making power, on policies, practices and decisions that affect the rights of children in the context of international migration. Comprehensive child protection systems at the national and local levels should mainstream into their programmes the situation of all children in the context of international migration, including in countries of origin, transit, destination and return. In addition to the mandates of child protection bodies, authorities responsible for migration and other related policies that affect children's rights should also systematically assess and address the impacts on and needs of children in the context of international migration at every stage of policymaking and implementation.

15. 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.

16. States parties should develop a systematic rights-based policy on the collection and public dissemination of qualitative and quantitative data on all children in the context of international migration in order to inform a comprehensive policy aimed at the protection of their rights. Such data should be disaggregated by nationality, migration status, gender, age, ethnicity, disability and all other relevant statuses to monitor intersectional discrimination. The Committees stress the importance of developing indicators to measure the implementation of the rights of all children in the context of international migration, including through a human rights-based approach to data collection and analysis on the causes of unsafe migration of children and/or families. Such information should be available for all stakeholders, including children, in full respect of privacy rights and data protection standards. Civil society organizations and other concerned actors should be able to participate in the process of collecting and evaluating data.

17. Children's personal data, in particular biometric data, should only be used for child protection purposes, with strict enforcement of appropriate rules on collection, use and retention of, and access to, data. The Committees urge due diligence regarding safeguards in the development and implementation of data systems, and in the sharing of data between authorities and/or countries. States parties should implement a "firewall" and prohibit the sharing and use for immigration enforcement of the personal data collected for other purposes, such as protection, remedy, civil registration and access to services. This is necessary to uphold data protection principles and protect the rights of the child, as stipulated in the Convention on the Rights of the Child.

18. The Committees are of the opinion that, in order to fulfil the rights of all children in the context of international migration, the following elements should be part of the policies and practices to be developed and implemented: (a) comprehensive, inter-institutional policies between child protection and welfare authorities and other key bodies, including on social protection, health, education, justice, migration and gender, and between regional, national and local governments; (b) adequate resources, including budgetary, aimed at ensuring effective implementation of policies and programmes; and (c) continuous and periodic training of child protection, migration and related officials on the rights of children, migrants and refugees and on statelessness, including intersectional discrimination.

III. Fundamental principles of the Conventions with regard to the rights of children in the context of international migration

19. States parties to the Convention on the Rights of the Child have a duty to ensure that the principles and provisions therein are fully reflected and given legal effect in relevant domestic legislation, policies and practices (art. 4). In all actions concerning children, States should be guided by the overarching principles of non-discrimination (art. 2); the

best interests of the child (art. 3); the right to life, survival and development (art. 6); and the right of the child to express his or her views in all matters affecting him or her, and to have those views taken into account (art. 12). States should adopt measures, including legislative and other policy tools, aimed at ensuring that those principles are upheld in practice and brought into the mainstream of all policies affecting children in the context of international migration, and in the interpretation and analysis of the specific obligations as clarified in 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 on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return.

20. The Committees reaffirm the application of articles 41 of the Convention on the Rights of the Child and 81 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and reiterate that the provisions in domestic and international legislation that are the most conducive to the realization of the rights of all children in the context of international migration shall apply in cases where standards differ. Furthermore, a dynamic interpretation of the Conventions based on a child-centred approach is necessary to ensure their effective implementation and the respect, protection and fulfilment of the rights of all children in the context of the increasing number of challenges that migration poses for children.

A. Non-discrimination (articles 1 and 7 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; article 2 of the Convention on the Rights of the Child)

21. The principle of non-discrimination is fundamental and, in all its facets, applies with respect to children in the context of international migration.⁵ All children involved in or affected by international migration are entitled to the enjoyment of their rights, regardless of the children's or their parents', legal guardians' or family members' age, gender, gender identity or sexual orientation, ethnic or national origin, disability, religion, economic status, migration/documentation status, statelessness, race, colour, marital or family status, health status or other social conditions, activities, expressed opinions, or beliefs. This principle is fully applicable to every child and his or her parents, regardless of the reason for moving, whether the child is accompanied or unaccompanied, on the move or otherwise settled, documented or undocumented or with any other status.

22. The principle of non-discrimination shall be at the centre of all migration policies and procedures, including border control measures, and regardless of the migration status of children or their parents. Any differential treatment of migrants shall be lawful and proportionate, in pursuit of a legitimate aim and in line with the child's best interests and international human rights norms and standards. Similarly, States parties should ensure that migrant children and their families are integrated into receiving societies through the effective realization of their human rights and access to services in an equal manner with nationals.

23. The Committees recommend that States parties adopt adequate measures to combat discrimination on any grounds and to protect children from multiple and intersecting forms of discrimination, throughout the migration process, including in and after returning to the country of origin, and/or as a result of their migration status. In order to achieve such a goal, States parties should strengthen efforts to combat xenophobia, racism and discrimination and take all appropriate measures to combat such attitudes and practices, and to collect and disseminate accurate, reliable and updated data and information in that regard. States should also promote the social inclusion and full integration of families affected by international migration into the host society and implement programmes for improving knowledge about migration and addressing any negative perceptions regarding migrants, with the aim of protecting children affected by international migration and their families from violence, discrimination, harassment and bullying, and fulfilling their access to rights

⁵ See Committee on the Rights of the Child, general comment No. 6, para. 18.

enshrined in the Conventions and other conventions ratified by each State.⁶ In doing so, special attention should be paid to gender-specific and any other challenges and vulnerabilities that may intersect.

24. States parties should conduct a robust gender analysis of the specific impacts of migration policies and programmes on children of all genders. States parties should review and amend any gender-discriminatory restrictions on migration in law or practice that limit opportunities for girls or that do not recognize their capacity and autonomy to make their own decisions.

25. The Committees recommend that the States parties put special emphasis on the policies and related regulations about the prevention of discriminatory practices towards migrant and refugee children with disabilities and the implementation of necessary policies and programmes for ensuring the full enjoyment of all human rights and fundamental freedoms of migrant and refugee children with disabilities on an equal basis with children who are nationals of the States, and taking into consideration the provisions enshrined in the Convention on the Rights of Persons with Disabilities.

26. The Committees are of the view that addressing only de jure discrimination will not necessarily ensure de facto equality. Therefore, States parties shall fulfil the rights under the Conventions for children in the context of international migration by adopting positive measures to prevent, diminish and eliminate the conditions and attitudes that cause or perpetuate de facto discrimination against them. They should systematically record incidences of discrimination against children and/or their families in the context of international migration, and investigate and sanction such conduct appropriately and effectively.

B. Best interests of the child (article 3 of the Convention on the Rights of the Child)

27. Article 3 (1) of the Convention on the Rights of the Child places an obligation on both the public and the private spheres, courts of law, administrative authorities and legislative bodies to ensure that the best interests of the child are assessed and taken as a primary consideration in all actions affecting children. As the Committee on the Rights of the Child has stated in paragraph 6 of its general comment No. 14, the right of the child to have his or her best interests taken into account as a primary consideration is a substantive right, an interpretative legal principle and a rule of procedure, and it applies to children both as individuals and as a group. In that general comment, which has since been considered as the key guidance for States parties on this issue, the Committee also elaborates on the implementation of the principle of the best interests of the child.

28. Recognizing that the best interests of the child — once assessed and determined — might conflict with other interests or rights (e.g. of other children, the public and parents) and that potential conflicts have to be resolved on a case-by-case basis, carefully balancing the interests of all parties and finding a suitable compromise, the Committee stresses in paragraph 39 of its general comment No. 14 that the right of the child to have his or her best interests taken as a primary consideration means that the child's interests have high priority and are not just one of several considerations. Therefore, a larger weight must be attached to what serves the child best. It further states in paragraph 82 that the purpose of assessing and determining the best interests of the child is to ensure the full and effective enjoyment of the rights recognized in the Convention on the Rights of the Child, and the holistic development of the child.

29. States parties shall ensure that the best interests of the child are taken fully into consideration in immigration law, planning, implementation and assessment of migration policies and decision-making on individual cases, including in granting or refusing applications on entry to or residence in a country, decisions regarding migration enforcement and restrictions on access to social rights by children and/or their parents or

⁶ Ibid., para. 70.

legal guardians, and decisions regarding family unity and child custody, where the best interests of the child shall be a primary consideration and thus have high priority.

30. In particular, the best interests of the child should be ensured explicitly through individual procedures as an integral part of any administrative or judicial decision concerning the entry, residence or return of a child, placement or care of a child, or the detention or expulsion of a parent associated with his or her own migration status.

31. In order to implement the best interests principle in migration-related procedures or decisions that could affect children, the Committees stress the need to conduct systematically best-interests assessments and determination procedures as part of, or to inform, migration-related and other decisions that affect migrant children. As the Committee on the Rights of the Child explains in its general comment No. 14, the child's best interests should be assessed and determined when a decision is to be made. 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. A "best-interests determination" is a formal process with strict procedural safeguards designed to determine the child's best interests on the basis of the best-interests assessment. In addition, assessing the child's best interests is a unique activity that should be undertaken in each individual case and in the light of the specific circumstances of each child or group of children, including age, sex, level of maturity, whether the child or children belong to a minority group and the social and cultural context in which the child or children find themselves.

32. The Committees stress that States parties should:

(a) Give high priority to the child's best interests in their legislation, policy and practice;

(b) Ensure that the principle of the best interests of the child is appropriately integrated, consistently interpreted and applied through robust, individualized procedures in all legislative, administrative and judicial proceedings and decisions, and in all migration policies and programmes that are relevant to and have an impact on children, including consular protection policies and services. Adequate resources should be put in place in order to ensure this principle is applied in practice;

(c) Ensure that all best-interests assessments and determinations developed and conducted give appropriate weight to fulfilling the rights of the child — in the short and long terms — in the decision-making processes affecting children; and ensure due process safeguards are established, including the right to free, qualified and independent legal representation. The best-interests assessment should be carried out by actors independent of the migration authorities in a multidisciplinary way, including a meaningful participation of authorities responsible for child protection and welfare and other relevant actors, such as parents, guardians and legal representatives, as well as the child;

(d) Develop procedures and define criteria to provide guidance to all relevant persons involved with migration procedures on determining the best interests of the child and on giving them due weight as a primary consideration, including in entry, residence, resettlement and return procedures, and develop mechanisms aimed at monitoring its proper implementation in practice;

(e) Assess and determine the best interests of the child at the different stages of migration and asylum procedures that could result in the detention or deportation of the parents due to their migration status.⁷ Best-interests determination procedures should be put in place in any decision that would separate children from their family, and the same standards applied in child custody, when the best interests of the child should be a primary consideration. In adoption cases, the best interests of the child shall be the paramount consideration;

⁷ See Committee on the Rights of the Child, report of the 2012 day of general discussion on the rights of all children in the context of international migration, paras. 73-74. Available from www.ohchr.org/Documents/HRBodies/CRC/Discussions/2012/DGD2012ReportAndRecommendations.pdf.

(f) Conduct a best-interests assessment on a case-by-case basis in order to decide, if needed, and in accordance with the Guidelines for the Alternative Care of Children,⁸ the type of accommodation that would be most appropriate for an unaccompanied or separated child, or children with parents. In that process, community-based care solutions should be prioritized. Any measure that constrains children's liberty in order to protect them, e.g. placement in secure accommodation, should be implemented within the child protection system with the same standards and safeguards; be strictly necessary, legitimate and proportionate to the aim of protecting the individual child from harming him or herself or others; be part of a holistic care plan; and be disconnected from migration-enforcement policies, practices and authorities;

(g) Conduct a best-interests determination in cases that could lead to the expulsion of migrant families due to their migration status, in order to evaluate the impact of deportation on children's rights and development, including their mental health;

(h) Ensure that children are identified promptly in border controls and other migration-control procedures within the State's jurisdiction, and that anyone claiming to be a child is treated as such, promptly referred to child protection authorities and other relevant services, and appointed a guardian, if unaccompanied or separated;

(i) Provide guidance to all relevant authorities on the operationalization of the principle of the best interests of the child for migrant children, including children in transit, and develop mechanisms aimed at monitoring its proper implementation in practice;

(j) Develop and put into practice, with regard to unaccompanied children and children with families, a best-interests determination procedure aimed at identifying and applying comprehensive, secure and sustainable solutions,⁹ including further integration and settlement in the country of current residence, repatriation to the country of origin or resettlement in a third country. Such solutions may include medium-term options and ensuring that there are possibilities for children and families to gain access to secure residence status in the best interests of the child. Best-interest determination procedures should be guided by child protection authorities within child protection systems. Possible solutions and plans should be discussed and developed together with the child, in a child-friendly and sensitive manner, in accordance with Committee on the Rights of the Child general comment No. 12 (2009) on the right of the child to be heard;

(k) If determined that it is in the best interests of the child to be returned, an individual plan should be prepared, together with the child where possible, for his or her sustainable reintegration. The Committees stress that countries of origin, transit, destination and return should develop comprehensive frameworks with dedicated resources for the implementation of policies and comprehensive inter-institutional coordination mechanisms. Such frameworks should ensure, in cases of children returning to their countries of origin or third countries, their effective reintegration through a rights-based approach, including immediate protection measures and long-term solutions, in particular effective access to education, health, psychosocial support, family life, social inclusion, access to justice and protection from all forms of violence. In all such situations, a quality rights-based follow-up by all involved authorities, including independent monitoring and evaluation, should be ensured. The Committees highlight that return and reintegration measures should be sustainable from the perspective of the child's right to life, survival and development.

33. States parties are obliged, in line with article 3 of the Convention on the Rights of the Child, to ensure that any decision to return a child to his or her country of origin is based on evidentiary considerations on a case-by-case basis and pursuant to a procedure with appropriate due process safeguards, including a robust individual assessment and determination of the best-interests of the child. This procedure should ensure, inter alia, that the child, upon return, will be safe and provided with proper care and enjoyment of rights.

⁸ General Assembly resolution 64/142, annex.

⁹ A comprehensive, secure and sustainable solution is one that, to the greatest extent possible, caters to the long-term best interests and welfare of the child and is sustainable and secure from that perspective. The outcome should aim to ensure that the child is able to develop into adulthood, in an environment that will meet his or her needs and fulfil his or her rights as defined by the Convention on the Rights of the Child.

Considerations such as those relating to general migration control cannot override best-interests considerations. The Committees stress that return is only one of the various sustainable solutions for unaccompanied and separated children and children with their families. Other solutions include integration in countries of residence — either temporarily or permanently — according to each child’s circumstances, resettlement in a third country, e.g. based on family reunification grounds, or other solutions that could be identified on a case-by-case basis, by referring to existing cooperation mechanisms, such as the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children.

C. Right to be heard, express his or her views and participation (article 12 of the Convention on the Rights of the Child)

34. Article 12 of the Convention on the Rights of the Child underscores the importance of children’s participation, providing for children to express their views freely and to have those views taken into account with due weight, according to age, maturity and the evolving capacity of the child.

35. The Committee on the Rights of the Child, in its general comment No. 12, underlines that adequate measures to guarantee the right to be heard should be implemented in the context of international migration, as children who come to a country could be in a particularly vulnerable and disadvantaged situation.¹⁰ For that reason, it is critical to implement fully their right to express their views on all aspects affecting their lives, including as an integral part of immigration and asylum proceedings, and for their views to be given due weight. Children may have their own migration projects and migration-driving factors, and policies and decisions cannot be effective or appropriate without their participation. The Committee also emphasizes that these children should be provided with all relevant information, inter alia, on their rights, the services available, means of communication, complaints mechanisms, the immigration and asylum processes and their outcomes. Information should be provided in the child’s own language in a timely manner, in a child-sensitive and age-appropriate manner, in order to make their voice heard and to be given due weight in the proceedings.¹¹

36. States parties should appoint a qualified legal representative for all children, including those with parental care, and a trained guardian for unaccompanied and separated children, as soon as possible on arrival, free of charge.¹² Accessible complaints mechanisms for children should be ensured. Throughout the process, children should be offered the possibility to be provided with a translator in order that they may express themselves fully in their native language and/or receive support from someone familiar with the child’s ethnic, religious and cultural background. These professionals should be trained on the specific needs of children in the context of international migration, including gender, cultural, religious and other intersecting aspects.

37. States parties should take all measures appropriate to fully promote and facilitate the participation of children, including providing them with the opportunity to be heard in any administrative or judicial proceeding related to their or their families’ cases, including any decision on care, shelter or migration status. Children should be heard independently of their parents, and their individual circumstances should be included in the consideration of the family’s cases. Specific best-interests assessments should be carried out in those procedures, and the child’s specific reasons for the migration should be taken into account. Regarding the significant relationship between the right to be heard and the best interests of the child, the Committee on the Rights of the Child has already stated that there can be no correct application of article 3 if the components of article 12 are not respected. Likewise,

¹⁰ See Committee on the Rights of the Child, general comment No. 12, para. 123.

¹¹ *Ibid.*, para. 124.

¹² *Ibid.*, paras. 123-124.

article 3 reinforces the functionality of article 12, facilitating the essential role of children in all decisions affecting their lives.¹³

38. States parties should take all appropriate measures aimed at ensuring children's right to be heard in the immigration procedures concerning their parents, in particular where the decision could affect the children's rights, such as the right to not be separated from their parents, except when such separation is in their best interests (see art. 9 of the Convention on the Rights of the Child).

39. States parties should adopt measures directed at facilitating the participation of all children in the context of international migration 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. Initiatives should be taken to prepare girls and transgender children to participate actively, effectively and equally with boys at all levels of social, economic, political and cultural leadership. In countries of origin, the participation of children is paramount in developing policies on and in processes aimed at addressing drivers of the migration of children and/or their parents and developing policies in that regard. In addition, States should adopt measures aimed at empowering children affected by international migration to participate on different levels, through consultations, collaborations and child-led initiatives, and at ensuring that civil society organizations, including children associations and child-led organizations, can participate effectively in policy dialogues and processes on children in the context of international migration, at the local, national, regional and international levels. Any limitations on children's freedom of association, including through legally establishing associations, should be removed.

D. Right to life, survival and development (article 9 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; article 6 of the Convention on the Rights of the Child)

40. Article 6 of the Convention on the Rights of the Child highlights the States parties' obligations to ensure the right of life, survival and development of the child, including the physical, mental, moral, spiritual and social dimensions of his or her development.¹⁴ At any point during the migratory process, a child's right to life and survival may be at stake owing to, inter alia, violence as a result of organized crime, violence in camps, push-back or interception operations, excessive use of force of border authorities, refusal of vessels to rescue them, or extreme conditions of travel and limited access to basic services. Unaccompanied and separated children may face further vulnerabilities and can be more exposed to risks, such as gender-based, sexual and other forms of violence and trafficking for sexual or labour exploitation. Children travelling with their families often also witness and experience violence. While migration can provide opportunities to improve living conditions and escape from abuses, migration processes can pose risks, including physical harm, psychological trauma, marginalization, discrimination, xenophobia and sexual and economic exploitation, family separation, immigration raids and detention.¹⁵ At the same time, the obstacles children may face in gaining access to education, adequate housing, sufficient safe food and water or health services can negatively affect the physical, mental, spiritual, moral and social development of migrant children and children of migrants.

41. The Committees acknowledge that the lack of regular and safe channels for children and families to migrate contribute to children taking life-threatening and extremely dangerous migration journeys. The same is true for border control and surveillance measures that focus on repression rather than facilitating, regulating and governing mobility,

¹³ Ibid., para. 74.

¹⁴ See Committee on the Rights of the Child, general comment No. 5 (2003) on general measures of implementation of the Convention, para. 12.

¹⁵ See Committee on the Rights of the Child, general comment No. 20 (2016) on the implementation of the rights of the child during adolescence, para. 76.

including detention and deportation practices, lack of timely family reunification opportunities and lack of avenues for regularization.

42. In the view of the Committees, the obligation of States parties under article 6 of the Convention on the Rights of the Child and article 9 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 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, including trafficking, sale of children, commercial sexual exploitation of children and child marriage. States should also consider the specific vulnerable circumstances that could face migrant children on the basis of their gender and other factors, such as poverty, ethnicity, disability, religion, sexual orientation, gender identity or others, that may aggravate the child's vulnerability to sexual abuse, exploitation, violence, among other human rights abuses, throughout the entire migratory process. Specific policies and measures, including access to child-friendly, gender-sensitive and safe judicial and non-judicial remedies, should be put in place in order to fully protect and assist such children, aiming to facilitate their ability to resume their lives with their rights as children fully respected, protected and fulfilled.

43. The Committees underline the interrelation between articles 2, 6 and 27 (1) of the Convention on the Rights of the Child; States parties should ensure that children in the context of international migration, regardless of their status or that of their parents, have a standard of living adequate for their physical, mental, spiritual and moral development.

44. The Committees are concerned that policies or practices that deny or restrict basic rights, including labour rights and other social rights, to adult migrants owing to their nationality, statelessness, ethnic origin or migration status may directly or indirectly affect children's right to life, survival and development. Such policies would also obstruct the design of comprehensive migration policies and the efforts made to bring migration into the mainstream of development policies. Therefore, in line with article 18 of the Convention on the Rights of the Child, States parties should ensure that children's development, and their best interests, are taken fully into account when it comes to policies and decisions aimed at regulating their parents' access to social rights, regardless of their migration status. Similarly, children's right to development, and their best interests, should be taken into consideration when States address, in general or individually, the situation of migrants residing irregularly, including through the implementation of regularization mechanisms as a means to promote integration and prevent exploitation and marginalization of migrant children and their families.

E. Non-refoulement, prohibition of collective expulsion (articles 9, 10 and 22 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; articles 6, 22 and 37 of the Convention on the Rights of the Child)

45. States parties should respect non-refoulement obligations deriving from international human rights, humanitarian, refugee and customary international law.¹⁶ The Committees highlight that the principle of non-refoulement has been interpreted by international human rights bodies, regional human rights courts and national courts to be an implicit guarantee flowing from the obligations to respect, protect and fulfil human rights. It prohibits States from removing individuals, regardless of migration, nationality, asylum or other status, from their jurisdiction when they would be at risk of irreparable harm upon return, including persecution, torture, gross violations of human rights or other irreparable harm.

¹⁶ Article 33 of the 1951 Convention relating to the Status of Refugees, article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and article 16 of the International Convention for the Protection of All Persons from Enforced Disappearance.

46. The Committees are concerned that some States parties choose to recognize a narrow definition of the non-refoulement principle. The Committees have already pointed out¹⁷ that States shall not reject a child at a border or return him or her to a country where there are substantial grounds for believing that he or she is at real risk of irreparable harm, such as, but by no means limited to, those contemplated under articles 6 (1) and 37 of the Convention on the Rights of the Child, either in the country to which removal is to be effected or in any country to which the child may subsequently be removed. Such non-refoulement obligations apply irrespective of whether serious violations of those rights guaranteed under the Convention originate from non-State actors or whether such violations are directly intended or are the indirect consequence of States parties' action or inaction.

47. The Committees recall that article 22 (1) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and other international and regional human rights instruments forbid collective expulsions and require that each case that could eventually become an expulsion be examined and decided individually, ensuring the effective fulfilment of all the due process guarantees and the right to access to justice. States parties should adopt all measures necessary in order to prevent collective expulsions of migrant children and families.

IV. International cooperation

48. The Committees stress that a comprehensive interpretation of the Conventions should lead States parties to develop bilateral, regional and global cooperation in order to ensure the rights of all children in the context of international migration, taking into consideration the guidance developed in the present joint general comment.

49. The Committees recognize the importance of coordinating efforts among countries of origin, transit, destination and return, and their roles and responsibilities in addressing the needs of children in the context of international migration and in safeguarding their rights, with the best interests of the child being a primary consideration.

50. The Committees reaffirm that, in all international, regional or bilateral cooperation agreements on border management and migration governance, the impacts of such initiatives on children's rights should be duly considered and adaptations made as necessary to uphold the rights of the child. The Committees are concerned by the increase in bilateral or multilateral cooperation agreements that focus on restricting migration, which have demonstrably negative impacts on children's rights, and instead urge cooperation that facilitates safe, orderly and regular migration with full respect for human rights.

51. States parties should also avail themselves of technical cooperation from the international community, including from the United Nations agencies and entities and regional organizations for the implementation of migration policies in respect of children in line with the present joint general comment.

V. Dissemination and use of the joint general comment and reporting

52. States parties should disseminate widely the present joint general comment to all stakeholders, in particular parliaments, governmental authorities, including child protection and migration authorities and personnel, and the judiciary, at all national, regional and local levels. It should be made known to all children and all relevant professionals and stakeholders, including those working for and with children (i.e., judges, lawyers, police and other law enforcement entities, teachers, guardians, social workers, staff of public or private welfare institutions and shelters, and health-care providers), the media and civil society at large.

¹⁷ See Committee on the Rights of the Child, general comment No. 6, para. 27, and Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, general comment No. 2 (2013) on the rights of migrant workers in an irregular situation and members of their families, para. 50.

53. The present joint general comment should be translated into relevant languages, and child-friendly/appropriate versions and formats accessible to persons with disabilities should be made available. Conferences, seminars, workshops and other events should be held to share good practices on how best to implement it. It should also be incorporated into the formal pre- and in-service training of all concerned professionals and to technical staff in particular, as well as to child protection and migration authorities and personnel, and should be made available to all national and local human rights institutions, and other human rights civil society organizations.

54. States parties should include in their periodic reports under article 73 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and article 44 of the Convention on the Rights of the Child information about the measures guided by the present joint general comment that they have implemented and their outcomes.

VI. Treaty ratification or accession and reservations

55. States that have not yet done so are encouraged to ratify or accede to:

(a) The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, including by making the binding declarations under articles 76 and 77;

(b) The Convention on the Rights of the Child;

(c) The Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography;

(d) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict;

(e) The Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

56. States parties are encouraged to review, modify and/or withdraw reservations made upon ratification or accession, with a view to ensuring that children in the context of international migration fully enjoy all of their rights under both Conventions.