

CONSULAR PROTECTION RECOMMENDATIONS FOR UNACCOMPANIED AND SEPARATED MIGRANT BOYS, GIRLS AND ADOLESCENTS INCLUDING THOSE IN NEED OF INTERNATIONAL PROTECTION

This document is a compilation of non-binding, suggested good practices submitted for the consideration of the RCM member States in light of their applicable legal obligations and relevant consular practices.

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FINAL VERSION APPROVED BY THE VICE-MINISTERS

1. INTRODUCTION

Contemporary migration movements include persons with a variety of profiles. Some of them could belong to different groups that are in particularly vulnerable situations, such as refugees and asylum seekers, victims of trafficking; stranded migrants; migrant and refugee victims of violence that have suffered psychological trauma during the migration process; or other vulnerable individuals, such as pregnant women; boys, girls and adolescents travelling with their families or those that are unaccompanied or separated from their families; persons with disabilities or elderly migrants¹; migrant witnesses of crimes; and migrants that have had accidents.

The persons that make these migratory processes – which often are irregular migration movements – are at risk of suffering violations or abuses of their rights. Those at highest risk include boys, girls and adolescents in migration processes, whether they are unaccompanied, have been separated from their families or are refugees or asylum seekers, victims of trafficking, have a physical or mental disability or are in any other vulnerable situation.

Migrant and refugee boys, girls and adolescents are highly prone to being subjected to sexual exploitation, forced labour, and physical and sexual abuse as well as abuse and violence as a result of discriminatory and xenophobic attitudes and practices. In addition, they face obstacles in accessing essential services such as health and education, and an adequate standard of living.

Furthermore, they are at risk of becoming victims of national and transnational organized crime, such as trafficking networks, or they are abducted or forced to carry drugs and other illegal materials. In addition, they could face difficult conditions during detention and deportation.

Moreover, the Committee on the Rights of the Child states in its General Comment No. 6 that:

“Unaccompanied and separated girls are at particular risk of gender based violence, including domestic violence. In some situations, such children have no access to proper and appropriate identification, registration, age assessment, documentation, family tracing, guardianship systems or legal advice”².

Member States’ practices should include a focus on discouraging children from embarking on this dangerous journey, including efforts to prevent smuggling and trafficking of children. Likewise, where possible and where such actions do not raise protection concerns, the quick and efficient repatriation of such children to their countries of origin for the purpose of family reunification should be a priority. In cases where the repatriation of unaccompanied migrant children is not possible or immediately practicable, efforts should be made to ensure that such children receive the care they need to ensure their wellbeing until they are able to be released from the care of the host government.

In Latin America and the Caribbean, the migration of unaccompanied and separated boys, girls and adolescents is a reality that has grown exponentially over the past years. The 90% increase in the number of unaccompanied and separated boys, girls and adolescents identified by US authorities

¹ See IOM: Irregular Migration and Mixed Flows: IOM’s Approach. Ninety-Eighth Session. MC/INF/297. October 19, 2009, page 1.

² General Comment No. 6, Committee on the Rights of the Child, Treatment of unaccompanied and separated children outside their country of origin, Thirty-Ninth Session (2005), U.N. Doc. CRC/GC/2005/6 (2005), Paragraph 3.

in fiscal year 2014 raised alarm about a phenomenon that was growing and that needed to be urgently addressed. However, this type of migration is not new, nor has it stopped. In addition, the increasingly younger age of these migrants is a matter of great concern.

The number of boys, girls and adolescents who migrate without being accompanied by their parents or a legal guardian continues to pose a significant challenge to the region of the Member Countries of the Regional Conference on Migration (hereafter the RCM).

As has been recognized by the Regional Conference on Migration, the first step toward effective protection is identifying those persons or groups of persons that, due to their characteristics and/or conditions, are considered to be in a vulnerable situation. Once they have been identified, it is possible to activate procedures to provide protection and assistance. This is especially important in the case of persons in vulnerable situations as they are not normally identified as vulnerable persons and therefore, do not receive the differentiated treatment they require.

In this context, actions to mitigate the vulnerability and suffering of migrant and refugee boys, girls and adolescents should be based on a regional commitment, and the authorities that play a role in the process of providing protection to this population group should get involved in a clear, determined and coordinated manner and with the necessary resources to address this situation.

Within this framework, the definition of the role of the consular authorities from the countries of origin of migrant and refugee boys, girls and adolescents – in countries of transit and destination – is essential, in what should be perceived as a “comprehensive protection chain,” to ensure respect for the rights and best interests of the child, particularly those that travel unaccompanied or have been separated from their parents or legal guardians.

This should needs to be analysed without prejudice to the responsibility of the host authorities, based on national legislation and the different international instruments adopted, of guaranteeing adequate protection of children by States, and without distinction of nationality of migratory status. In this sense, consular protection is complementary to the work of national institutions.

2. GENERAL MATTERS

A. BACKGROUND

Within the context of the RCM, States have adopted guidelines that are of paramount importance in addressing the issue of protection of migrant and refugee boys, girls and adolescents at a hemispheric level. These guidelines should inform, as background to this subject, any intervention by consular authorities when addressing cases of unaccompanied or separated migrant boys, girls and adolescents. The contents of these documents have informed the development of the consular protection standards presented in this document. Prior guidelines include the following:

- a. “Regional Guidelines for Special Protection in Cases of the Repatriation of Child Victims of Trafficking” (April 2007);
- b. “Regional Guidelines for the Assistance to Unaccompanied Migrant Boys, Girls and Adolescents in Cases of Repatriation” (July 2009);

c. “Regional Guidelines for the Preliminary Identification and Referral Mechanisms for Migrant Populations in Vulnerable Situations” (June 2013).

Based on the three regional events to address the challenges concerning the protection of migrant and refugee boys, girls and adolescents, a document entitled “Toward a Mechanism for the Comprehensive Protection of Migrant and Refugee Boys, Girls and Adolescents” was approved during the XIX Vice-Ministerial Meeting held in Managua, Nicaragua on June 26-27, 2014. The objective of the document is to foster collaboration between RCM Member Countries in providing protection and assistance through spaces for establishing links, information exchange and ongoing dialogue, in order to promote the development of effective measures to provide comprehensive protection to boys, girls and adolescents in migration processes, whether they are separated or unaccompanied by their parents or not, from the moment when they are identified and received in countries of destination to the integration, return and reintegration in their countries of origin, always respecting their rights and best interests as determined by relevant professionals, including consular officers, host government officials, social workers, and psychologists.

Furthermore, the Extraordinary Declaration of Managua was approved during the same Vice-Ministerial Meeting. It was resolved to establish an Ad Hoc Group on Migrant and Refugee Boys, Girls and Adolescents, with the objective of promoting immediate actions to provide effective protection to unaccompanied or separated boys, girls and adolescents during every phase of the migration process.

The Ad Hoc Group, composed of officials from ministries of foreign affairs, ministries of the interior and child protection institutions of the RCM Member Countries, has held four work sessions³. A specific agenda has been developed for the member institutions of the Ad Hoc Group, at a national and regional level.

During the third meeting of the Ad Hoc Group, held on August 18-19, 2015 in San Salvador, the Member Countries resolved the following:

To request that UNHCR, IOM and UNICEF develop a proposal on homologation of consular protection standards for migrant boys, girls and adolescents, incorporating the recommendations from all the members of the Ad Hoc Group.

Thus, this document is submitted to the RCM Member Countries by UNHCR, IOM and UNICEF, in response to the request made during the above-mentioned meeting of the Ad Hoc Group. All three international organizations appreciate this effort toward helping to improve protection for migrant and refugee boys, girls and adolescents in the region and reiterate their willingness to continue supporting the development of initiatives and instruments to this end.

B. OBJECTIVE OF THE DOCUMENT

The objective of this proposal document, submitted to RCM Member Countries, is to provide a general menu of good practice guidelines regarding consular interventions aimed at providing protection to migrant and refugee children, with special attention to unaccompanied and separated

³ The first meeting was held in Guatemala (August 28-29, 2014), the second one in Mexico City (April 15-16, 2015) the third one in San Salvador (August 18-19, 2015), and the fourth one in San Salvador (March 8-9, 2016).

migrant boys, girls and adolescents. This document is a compilation of non-binding, suggested good practices submitted for the consideration of the RCM member States in light of their applicable legal obligations and relevant consular practices. The purpose of these standards is to serve as a reference for national and regional actions. The above without prejudice to applying these standards in situations involving migrant and refugee boys, girls and adolescents that are accompanied by their parents or legal guardians, for specific situations of vulnerability as appropriate, with the aim of respecting the best interests of the child as determined by competent authorities.

The approach described here attempts to result in comprehensive recommendations concerning the well-being of a range of children, some of whom may have undergone traumatic experiences. As such, interviews should be conducted, wherever possible, in conjunction with trained professionals who can assist consular officers to make such recommendations. As consular officers may require host nation social services in providing follow-up care, consular officers should coordinate their work with host nation officials.

C. RELEVANT INTERNATIONAL INSTRUMENTS

The recommendations presented in this document propose consideration of the protection needs and human rights of the migrant child as the main line of approach for every intervention, particularly considering age, progressive autonomy, gender and diversity.

The contents of this document are not intended to replace international obligations taken on by RCM Member Countries concerning the topics in question. On the contrary, it is suggested that the following international instruments could be taken as a reference:

- Universal Declaration of Human Rights (1948)
- Convention Relating to the Status of Refugees (1951) and its 1967 Protocol
- Vienna Convention on Consular Relations (1963)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- American Convention on Human Rights (1969)
- ILO Convention No. 138 on the minimum age for admission to employment and work (1973)
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- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979)
- Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights "Protocol of San Salvador" (1988)
- Convention on the Rights of the Child (1989) and its optional protocols:

- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict
- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- Inter-American convention on international traffic in minors (1994)
- Inter-American convention on the prevention, punishment and eradication of violence against women "Convention of Belem do Para" (1994)
- ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999)
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol, 2000)

In addition, the following statements that are relevant to the topic in question are taken into consideration, as appropriate:

- Committee on the Rights of the Child. General Comment No. 6: Treatment of unaccompanied and separated children outside their country of origin.
- Committee on the Rights of the Child. General Comment No.12: Children's right to be heard.
- Committee on the Rights of the Child. General Comment No.13: Freedom from all forms of violence.
- Committee on the Rights of the Child. General Comment No.14: Best interests of the child.
- Inter-American Court of Human Rights. Advisory Opinion 16/99. The right to information on consular assistance in the framework of the guarantees of the due process of law.
- Inter-American Court of Human Rights. Advisory Opinion 17/02. Juridical condition and human rights of the child.
- Inter-American Court of Human Rights. Advisory Opinion 18/03. Juridical condition and rights of the undocumented migrants.
- Inter-American Court of Human Rights. Advisory Opinion 21/14. Rights and guarantees of children in the context of migration and/or in need of international protection.

D. GENERAL PRINCIPLES OF INTERVENTION

The general principles below are the guidelines, ways of thinking, feeling and acting that every person involved in providing assistance and protection to migrant boys, girls and adolescents should follow; that is, officials from governments, civil society organizations and international organizations. These principles are drawn from the above-mentioned international law instruments, particularly the Convention on the Rights of the Child (CRC), and statements, including General Comments No. 6, 12 & 14 of the Committee on the Rights of the Child and Advisory Opinions OC-16/99, OC-17/02, OC-18/03 and OC-21/14 of the Inter-American Court of Human Rights.

Member states are encouraged to analyse and apply the following guiding principles in any situation where assistance and protection needs to be provided to a migrant boy, girl or adolescent, including those in need of international protection.

a. The best interests of the child

The concept of best interests of the child are addressed in Article 3.1 of the CRC, which establishes the following for States Parties: “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”. At the international level, it has been understood within the framework of the Inter-American Court of Human rights that “the highest interest of the child [is] based on the very dignity of the human being, on the characteristics of children [that is, boys, girls and adolescents] themselves, and on the need to foster their development, making full use of their potential.”⁴

The best interests of the child should be a primary consideration in all decisions and/or actions concerning boys, girls and adolescents and should be respected throughout every phase of the migration process. In these phases, **the Best Interest Determination (BID)** should be documented in preparation of any decision.⁵

The procedure to determine the best interests of the child involves two phases. The first one is the *Assessment*, where the specific circumstances are assessed that make the boy, girl or adolescent unique. Preliminary enquiries are made and the elements are assessed which are necessary to make a decision regarding a boy, girl or adolescent or a group of boys, girls and/or adolescents. The aspects that are considered during an assessment are: the opinion and identity of the boy, girl or adolescent; preserving the family environment and maintaining family ties; care, protection and security; situations of vulnerability; health and the right to education⁶. The assessment can be jointly carried out by one or more persons and one or more institutions.

⁴ Inter-American Court of Human Rights. The case of Bulacio vs. Argentina. Merits, Reparations and Costs. Judgment of September 18, 2003. Series C, No. 100. Paragraph 134.

⁵ Committee on the Rights of the Child, Articles 18, 19 & 20.

⁶ Committee on the Rights of the Child, Comment No.14, f) The child’s right to health (par. 77) and g) The child’s right to education (par.79).

The second phase is the *Best Interest Determination (BID)*, which is a structured process with safeguards to determine the best interests of the boy, girl or adolescent based on the previous assessment. The aspects to consider are: the ability of the boy, girl or adolescent to express an opinion of their own⁷; identifying the facts; and the perception of time. This process should be carried out by trained professionals, with legal representation, where available⁸, legal reasoning⁹, mechanisms to review or revise decisions¹⁰ and an assessment of the impact on the rights of the boy, girl or adolescent¹¹. All institutions involved in protecting the rights of migrant boys, girls and adolescents should be allowed participate, as appropriate, in the BID process, including civil society organizations to the extent possible. Moreover, it is essential to complete the process before suggesting long-term solutions for the boy, girl or adolescent. Any suggestion should be based on the results of the BID process.

b. Recognizing the boy, girl or adolescent as a holder of rights

This principle involves applying a protection approach based on the recognition of the boy, girl or adolescent having equal human rights. Boys, girls and adolescents have the same human rights as adults and in addition, they have other special needs because they are still growing. Furthermore, this principle also involves recognizing the capacity to act, independence and initiative that each migrant boy, girl or adolescent has in regard to his or her plans or objectives relating to migration.

c. Family unification

Article 9 of the CRC establishes that it should be ensured that the boy, girl or adolescent “shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child”.

In the context of migration, the Inter-American Court of Human Rights has held that “the rule must be that they remain with their parents or those acting in their stead, avoiding the separation of the family unit [...] unless the best interest of the child advises otherwise.”¹²

d. Equality before the law and the right to non-discrimination^[SEP]

The CRC establishes in Article 2 that the States Parties shall take all appropriate measures to ensure that the boy, girl or adolescent “is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members”. In addition, it establishes the rights contained in the Convention should be respected and ensured to each child within a state's jurisdiction, without discrimination of any kind. In this regard, the Inter-American Court has opined that States Parties “have the obligation to combat discriminatory practices and not to introduce discriminatory regulations into their laws”.¹³

⁷ Committee on the Rights of the Child, Comment No. 14: Right of the child to express his or her own views (Paragraph 89).

⁸ Committee on the Rights of the Child, Comment No. 14: Legal representation (Paragraph 96).

⁹ Committee on the Rights of the Child, Comment No. 14: Legal reasoning (Paragraph 97).

¹⁰ Committee on the Rights of the Child, Comment No. 14: Mechanisms to review or revise decisions (Paragraph 98).

¹¹ Committee on the Rights of the Child, Comment No. 14: Child-rights impact assessment (CRIA) (Paragraph 99).

¹² Inter-American Court of Human Rights. Advisory Opinion 21/14, Paragraph 177.

¹³ Inter-American Court of Human Rights. OC-18/03, Paragraph 88.

These rights also apply to foreign boys, girls and adolescents¹⁴, regardless of their migration status. In this regard, the principle establishes that the protection needs be differentiated according to age, gender or other conditions of diversity, considering that migrant boys, girls and adolescents are in an especially vulnerable situation (that is, as under-age persons and as migrants), and this could affect their rights and guarantees if they are subjected to discrimination.

e. The right to life, survival and development

Article 6 of the CRC recognizes the inherent right to life of every boy, girl and adolescent and establishes the obligation of States Parties to ensure to the maximum extent possible their survival and development. This takes on even more relevance for migrant boys, girls and adolescents, given that they are at greater risk of becoming victims of violence or any type of exploitation.

This principle is fundamental for determining the best interests¹⁵ of migrant boys, girls and adolescents, since protection measures are applied in situations where their lives and integrity are at risk and in addition, the potential consequences of different long-term solutions can be assessed.

f. Effective access to protection procedures and procedural guarantees

This principle addresses the establishment, by States, of protection measures and rules to ensure guarantees of due process for migrant boys, girls and adolescents, regardless of their migration status.¹⁶

Effective access to procedures to provide protection to migrant boys, girls and adolescents is essential for safeguarding their rights. To achieve this, effective inter-institutional coordination is needed.

g. Participation and the right to an opinion

Article 12 of the CRC considers the right of every boy, girl and adolescent “who is capable of forming his or her own views [...] to express those views freely” and to have “the opportunity to be heard in any judicial and administrative proceedings” affecting them, taking into account the views of the boy, girl or adolescent in accordance with their age and maturity. For the purposes of these recommendations, to be heard involves taking into account the independence and initiative of every boy, girl or adolescent concerning their migration plans or objectives.

In regard to migrant boys, girls and adolescents, they should be allowed to express their views and be heard in all decisions concerning their proceedings and/or migration status, even when a legal guardian has been appointed for them. In this regard, relevant and accurate information should be available to them, in accordance with their age and maturity, about their rights, the available services (health, education, housing, means of communication, etc.), the availability of

¹⁴ Inter-American Court of Human Rights, Advisory Opinion 21/14, Note 74, Paragraph 61.

¹⁵ Committee on the Rights of the Child, General Comment No. 14, Paragraph 42.

¹⁶ Inter-American Court of Human Rights, Advisory Opinion 21/14, Paragraph 113.

consular assistance and notification, the procedure to apply for refugee status or obtain complementary protection, locating relatives, etc. To ensure this principle, an interpreter should be available, if necessary, during all phases of the administrative migration procedure and/or the refugee status determination procedure.

h. Confidentiality

States should protect the information about migrant and refugee boys, girls and adolescents, ensuring that reasonable measures are taken to ensure that it is kept confidential and used appropriately. Information will only be exchanged with the objective of protecting the rights of the boy, girl or adolescent.

The principle of confidentiality should be respected at all times throughout the migration process, including refugee status applications¹⁷. Furthermore, the migrant or refugee boy, girl or adolescent should be informed, in a language that he or she can understand, that their entire procedure – beginning with the interview – generally will be kept confidential¹⁸.

i. Non-deprivation of liberty

This principle means that detention of migrant and/or refugee status applicant, refugee or stateless boy, girl or adolescent should be considered as a measure of last resort which only is applied when it has been determined that it is necessary, without prejudice that in some States detention of children for migratory purposes is prohibited in every case¹⁹.

The above is consistent with Advisory Opinion OC-21/14 of the Inter-American Court of Human Rights, which has held that “States may not resort to the deprivation of liberty of children who are with their parents, or those who are unaccompanied or separated from their parents, as a precautionary measure in immigration proceedings; nor may States base this measure on failure to comply with the requirements to enter and to remain in a country, on the fact that the child is alone or separated from her or his family, or on the objective of ensuring family unity, because States can and should have other less harmful alternatives and, at the same time, protect the rights of the child integrally and as a priority.”²⁰

j. Non-refoulement

The principle of *non-refoulement* is the cornerstone of the international protection of refugees and asylum seekers. Article 33 of the 1951 Convention relating to the Status of Refugees prohibits the expulsion or return of a refugee to a country “where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group

¹⁷ Inter-American Court of Human Rights, OC-21/14, Paragraph 254.

¹⁸ UNHCR. Improving asylum procedures: comparative analysis and recommendations for law and practice. Detailed research on Key Asylum Procedures Directive Provisions (2010).

¹⁹ In the case of those States that have accepted the jurisdiction of the Inter-American Court of Human Rights, the obligation under this principle is broader. This Tribunal has indicated that “deprivation of liberty is inappropriate when children are unaccompanied or separated from their family, because in this situation, the State is obliged to give priority to facilitating the measures of special protection based on the principle of the best interest of the child, assuming its position as guarantor with the greatest care and responsibility”. Even when the child is with his or her parents, “the child’s best interest requires keeping the family together, the imperative requirement not to deprive the child of liberty extends to her or his parents and obliges the authorities to choose alternative measures to detention for the family, which are appropriate to the needs of the children”. Inter-American Court of Human Rights, OC-21/14, Paragraphs 157-158.

²⁰ Inter-American Court of Human Rights, OC-21/14, Paragraph 160.

or political opinion”, barring certain exceptions which should be interpreted in a limited and restrictive manner.²¹

Article 22.8 of the American Convention on Human Rights prohibits the deportation or return of any foreign national to another country where “his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions”. Moreover, Article 3 of the Convention against Torture prohibits the expulsion, return or extradition of a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

According to an advisory opinion of the Inter-American Court of Human Rights, the protection of the principle of non-refoulement “covers any alien and not only [...] asylum seekers and refugees”²² and necessarily involves an “adequate and individualized analysis of their requests”, considering their best interests.²³ According to the court, this should be applied prior to any procedure of expulsion or deportation, extradition or rejection at the border of any migrant boy, girl or adolescent who is eligible for international protection consistent with international and domestic legal obligations and whose devolution to the country of origin would put his or her life or freedom at risk (for example, torture or other cruel, inhuman or degrading treatment or other forms of serious harm).

In addition, boys, girls and adolescents applying for refugee status should enjoy specific and appropriate procedural guarantees to ensure that fair decisions are made and that an environment of trust is established throughout the entire process.

k. Presumption of Minority

This principle encourages States to presume that a person is under eighteen years of age in cases where there is doubt whether he or she is a minor or not, unless the contrary is proven. The above with the objective of providing the protection and assistance required by the boy, girl or adolescent during his or her migration process.

l. Principle of Non-Revictimization²⁴

The revictimization of a boy, girl or adolescent is an institutional issue. While it does not occur intentionally, it is in fact harmful to the under-age person. Migrant and refugee boys, girls and adolescents may have been victims of human rights abuses, deprivations or violations or deprivation of one or more of their rights; and they may have been victims of some type of crime or sexual abuse during their migration process or have witnessed crimes such as migrant smuggling or trafficking.

²¹ The Convention on the Status of Refugees establishes as an exception, in Article 33.2, those persons whom there are reasonable grounds for regarding as a danger to the security of the country in which they are. However, these exceptions should be interpreted in a limited and restrictive manner and in relation to the obligations derived from non-revocable rights such as the prohibition of torture.

²² Inter-American Court of Human Rights, OC-21/14, Paragraph 215.

²³ Inter-American Court of Human Rights, OC-21/14, Paragraph 210.

²⁴ The term “secondary victimization” is also used in literature addressing this topic, in reference to the relationship between the victim and social institutions (social services, health services, the media, legal services, etc.). These institutions could sometimes be providing deficient or inadequate assistance to the victim.

In this regard, the revictimization of migrant or refugee boys, girls or adolescents could take place when, inter alia, an authority in charge of providing assistance and protection repeatedly asks the boy, girl or adolescent to state why he or she decided to migrate and what happened during the migration process (departure, transit, stay, return, etc.), thus increasing the psychological stress suffered by the boy, girl or adolescent.

Therefore, the principle of non-revictimization means that States should develop and apply institutional, inter-institutional and bilateral tools to avoid unnecessary requests for testimonies that affect boys, girls and adolescents, revictimizing them during return and reintegration.

m. Principle of progressive autonomy

This is directly related to the principle of participation and the right to an opinion and means that, as boys, girls and adolescents grow older, their ability to express themselves and exercise their rights becomes consolidated progressively and they gain greater autonomy.

n. Principle of protection and consular assistance

Given the special vulnerability of migrant boys, girls and adolescents, and especially those that are unaccompanied or separated, access to consular communication and assistance becomes particularly important and should be ensured and addressed as a priority by every State.

In some States consular notification is mandatory. In situations where consular notification is not mandatory, the parent or guardian will be notified of the option for consular notification. In situations where the parents or guardian cannot be located, or if there is basis to believe the girl, boy, or adolescent might be a victim of abuse or trafficking and that notifying the parent or guardian could endanger the boy, girl, or adolescent, the consulate will be notified, unless there is reason to believe that contacting the consulate could endanger the girl, boy, or adolescent (e.g., if the minor is seeking asylum), in which case the competent authorities of the country should be asked whether notification is in the best interest of the minor.

If a potential international protection need is determined during the initial phase of identification and assessment by competent authorities in the receiving country, the personal information and the confidentiality of the application of the boy, girl or adolescent must be considered

o. Principle of non-restrictive interpretation

This principle states that the rights of and principles relevant to migrant boys, girls and adolescents that are described in these Recommendations generally should not be interpreted or applied in a restrictive way.

p. Principle of priority assistance

The Inter-American Court of Human Rights has held that child migrants and, in particular, those in an irregular migratory situation, who are in more vulnerable circumstances, require host States to take actions specifically designed to provide priority protection for their rights, which must be defined in accordance with the particular circumstances of each specific case; in other words, whether the children are with their family, separated or unaccompanied, and based on their best interests²⁵.

E. ABOUT THE OBLIGATION TO PROVIDE INFORMATION ON CONSULAR ASSISTANCE

The Vienna Convention on Consular Relations, Article 5, establishes among others that part of the consular functions should consist in:

- a) protecting in the receiving State the interests of the sending State and of its nationals, both individuals and bodies corporate, within the limits permitted by international law;
- e) helping and assisting nationals, both individuals and bodies corporate, of the sending State;
- i) subject to the practices and procedures obtaining in the receiving State, representing or arranging appropriate representation for nationals of the sending State before the tribunals and other authorities of the receiving State, for the purpose of obtaining, in accordance with the laws and regulations of the receiving State, provisional measures for the preservation of the rights and interests of these nationals, where, because of absence or any other reason, such nationals are unable at the proper time to assume the defense of their rights and interests.

Article 36.1.a of the Vienna Convention on Consular Relations explicitly states that consular officers shall be free to communicate with their nationals:

Article 36

COMMUNICATION WITH NATIONALS OF THE SENDING STATE

1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:
 - a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State.

The Inter-American Court of Human Rights, Advisory Opinion 16/99, analysed the norms cited and concluded that “consular communication serves a dual purpose: that of recognizing a State’s right to assist its nationals through the consular officer’s actions and, correspondingly, that of

²⁵ Inter-American Court of Human Rights, OC-21/14, Paragraph 210.

recognizing the correlative right of the national of the sending State to contact the consular officer to obtain that assistance”²⁶.

If a person requests an international protection measure²⁷ the appropriate area of international law shall apply²⁸; for example, international refugee law²⁹. Within this regulatory framework, with the objective of protecting the rights of asylum seekers that may be at risk “the asylum procedure should at all stages respect the confidentiality of all aspects of an asylum claim, including the fact that the asylum-seeker has made such a request”³⁰, and also, the principle of non-refoulement.

For migrant or refugee boys, girls and adolescents, detention for the purposes of migration control should be avoided where possible.

Having clarified the above, when a foreign person is detained the detaining authorities are obligated to comply with the VCCR’s consular notification requirements (Paragraph b, Article 36.1 of the Vienna Convention on Consular Relations) and any applicable bilateral agreements.

Furthermore, Paragraph c) of Article 36.1 complements the above, establishing that consular officers shall have the right to visit any national of their country who is in detention, with the consent of the person.

In the particular case of unaccompanied or separated migrant boys, girls and adolescents and/or in need of international protection, States should adopt actions, in the procedures that affect them, to prevent and reverse the effects of vulnerability as a priority and with strict protection safeguards, with the aim of enabling them to fully enjoy and exercise their rights with equality and without any distinction³¹.

²⁶ Inter-American Court of Human Rights. The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law. Advisory Opinion OC-16/99, October 1, 1999. Series A, No. 16, Paragraph 80.

²⁷ International protection is understood as the protection that a State offers to a foreign person because, in her or his country of nationality or habitual residence, that individual’s human rights are threatened or violated and she or he is unable to obtain due protection there because it is not accessible, available and/or effective. While international protection of the host State is tied initially to the refugee status of the individual, various sources of international law – and in particular refugee law, international human rights law and international humanitarian law – reveal that this notion also encompasses other types of normative frameworks for protection. Thus, the expression international protection comprises: (a) the protection received by asylum seekers and refugees on the basis of the international conventions or domestic law; (b) the protection received by asylum seekers and refugees on the basis of the broadened definition of the Cartagena Declaration; (c) the protection received by any foreign person based on international human rights obligations, and in particular the principle of non-refoulement, as well as complementary protection or other forms of humanitarian protection, and (d) the protection received by stateless persons in accordance with the relevant international instruments. See Inter-American Court of Human Rights. Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection. Advisory Opinion OC-21/14, August 19, 2014. Series A, No. 21, Paragraph 37.

²⁸ See Inter-American Court of Human Rights. The Case of Vélez Loo vs. Panama. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010, Series C, No. 218, Paragraph 105.

²⁹ Included in United Nations instruments on this matter, such as the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. See Inter-American Court of Human Rights. The case of the Pacheco Tineo Family v. Plurinational State of Bolivia. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 25, 2013. Series C, No. 272, Paragraphs 138 & 139.

³⁰ See United Nations High Commissioner for Refugees (UNHCR), Asylum Processes (Fair and Efficient Asylum Procedures). Global Consultation on International Protection, UN. Doc. EC/GC/01/12, published on May 31, 2001, Paragraph 50(m). See also United Nations High Commissioner for Refugees (UNHCR), Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention Relating to the Status of Refugees, UN Doc. HCR/GIP/03/05, September 4, 2003, Paragraph 33.

³¹ Ibid.

General Comment No. 6 of the Committee on the Rights of the Child states that “States parties “should appoint a guardian or adviser as soon as the unaccompanied or separated child is identified and maintain such guardianship arrangements until the child has either reached the age of majority or has permanently left the territory and/or jurisdiction of the State”³².

The General Comment further states, “the guardian or adviser should have the necessary expertise in the field of child care, so as to ensure that the interests of the child are safeguarded”³³. When the child is part of an asylum case, along with a tutor, a legal representative should be appointed³⁴.

Given the special vulnerability of migrant boys, girls and adolescents, and especially those that are unaccompanied or separated, access to consular communication and assistance becomes particularly relevant, which should be addressed as a priority by every State.

If a potential international protection need is determined during the initial phase of identification and assessment by competent authorities in the receiving country, as for example the status of refugee, his or her personal information and the confidentiality of the application should be considered³⁵.

Article 37.b of the Vienna Convention on Consular Relations establishes that the receiving State should “inform the competent consular post without delay of any case where the appointment of a guardian or trustee appears to be in the interests of a minor or other person lacking full capacity who is a national of the sending State. The giving of this information shall, however, be without prejudice to the operation of the laws and regulations of the receiving State concerning such appointments”.

3. BASIC CONSULAR INTERVIEW GUIDELINES

The recommendations for best practices for providing appropriate consular protection, once a migrant boy, girl or adolescent and/or in need of international protection has established contact with the consular office of his or her country, subject to the laws and regulations of the receiving State, are described below.

A. THE CONSULAR INTERVIEW

The objectives of the consular interview should include relevant actions aimed at ensuring the respect for and exercise of their rights. The interview should always consider gender, age and diversity, and any subsequent proposed actions should always be adjusted to the specific needs of each child, according to maturity, particularly if the child has been exposed to violence and/or discrimination.

³² Committee on the Rights of the Child, General Comment No. 6: Treatment of unaccompanied and separated children outside their country of origin, Paragraph 33.

³³ Ibid. In addition, the General Comment states that “The guardian should have the authority to be present in all planning and decision-making processes, including immigration and appeal hearings, care arrangements and all efforts to search for a durable solution. The guardian or adviser should have the necessary expertise in the field of child care, so as to ensure that the interests of the child are safeguarded and that the child’s legal, social, health, psychological, material and educational needs are appropriately covered”.

³⁴ Ibid., Paragraph.36.

³⁵ Op. cit. Inter-American Court of Human Rights. Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection. Advisory Opinion OC-21/14, Paragraph 86.

1. Prior to the Interview

1.1 Consular personnel should have a level of training and sensitivity in migrant and refugee children's needs.

1.2 Observe the emotional condition of the children, and determine, if possible, if he or she has any disability, and if he or she is unaccompanied or traveling alone.

1.3 The consulates must have access to adequate human resources to interview the children.

1.4 In addition to consular officer, it would be beneficial to have a team conducting interviews with a view toward identifying a range of children's needs and should therefore be composed of professionals trained in child psychology and social work. Other team members should have the following characteristics:

- Flexibility;
- Creativity;
- The ability to put themselves in the position of a boy, girl or adolescent;
- Commitment;
- Patience;
- Not acting in an authoritative manner;
- Understanding the context from which the boys, girls and adolescents come;
- Adjusting to the rhythm of boys and girls, responding to the language of the boys or girls and responding to their verbal and non-verbal language.
- Cultural sensitivity
- Empathy

1.5 Team members should observe general condition of the boy, girl or adolescent including:

- Observing the physical and psychological condition of the boy, girl or adolescent. The team should record a general description of the boy, girl or adolescent, including colour and type of clothes and any particular characteristics that help identify the boy, girl or adolescent during and immediately after the interview. The following should be recorded, as a minimum:
 - Does he or she have any visible injuries or wounds?
 - Does he or she have any bruises?
 - Does he or she have any difficulty walking?
 - Does he or she look tired or sleepy?
 - Observe the children's particular behaviours/mood in order to be treated by a specialist.
 - Are his or her clothes inappropriate for the weather? (for extreme cold or heat)
 - Is the health condition adequate?
 - Are female hygiene products required?
 - Do minimum conditions exist to conduct the interview?

If any of these needs are identified, they must be resolved before beginning the interview.

- Receiving information and the record of the child with the objective of obtaining important data and avoid secondary victimization. Obtaining and considering essential information, as for example about age, gender identity and expression, sexual orientation, identity of parents and siblings and their nationality, the reasons stated for leaving their country, inter alia, natural disasters, generalized violence and others. Moreover, particular aspects of the vulnerabilities, especially in regard to health as well as physical, psychosocial and material needs. In cases where the identity or nationality of the child is in doubt, interviewers should try to obtain information that will assist in this determination.
- Adjusting the interview, based on age-sensitive factors (difference between childhood and adolescence), gender and/or diversity. Determining the gender of the consular officer that will conduct the interview after consulting with the boy, girl or adolescent and his or her guardian and legal representative and considering the best interests of the child.
- Consider the information that is available before the interview, and determine if a need for international protection exists (for refugees or other types of risks in case of refoulement) or if the person could be a victim of trafficking or at risk of becoming one.
- Consider non-verbal communication forms (such as games, body and face language, drawing and painting) through which children show that they are able to understand, choose and express preferences.
- Determine under what conditions and for how long the boy, girl or adolescent has suffered in detention.
- Anticipate the possibility of trauma or psychological defence mechanisms of the boy, girl or adolescent and how to best conduct the interview.
- For boys, girls and adolescents that speak a foreign, indigenous, afro descendent or sign language, or any disability, the consulates should have, based in their capacities, technical consular staff or other resources to ensure adequate translation or interpretation services.
- The context of the interview should enable an environment of trust, so that the boy, girl or adolescent can be sure that the interviewer is willing to listen and seriously consider what the child has decided to communicate.
- It should be taken into account that the rhythm of the interview should adjust to the cognitive and emotional skills of each boy, girl or adolescent, and time should be provided for the interview in order to increase the possibility of obtaining complete information without re-victimizing the boy, girl or adolescent. In some cases, it is necessary to build a relationship of trust and to provide information before addressing aspects that could be painful to the boy, girl or adolescent.
- For boys, girls and adolescents who are accompanied by or have entered the country with a migrant smuggler, contact with this person must be avoided.

- The necessary time and resources should be made available to boys, girls and adolescents to allow them to prepare adequately and have confidence and have a chance to express their opinions.
- The interview should be conducted in an environment that ensures security and privacy and that is not intimidating, hostile or insensitive.
- In situations where, for reasons beyond the control of the interviewing team, there is limited time available to conduct the interview, the following is suggested to make the intervention more efficient:
 - Ensuring that the boy, girl or adolescent knows that he or she can ask for help and that the consular officer will make appropriate efforts to secure the required assistance.
 - If a particular situation is identified where protection measures are required, it is preferable to obtain the information that is necessary to guide further actions, leaving the other topics to be addressed for later, provided that the conditions are adequate.
 - Always register the opinion of the child regarding his/her needs and desires.

1.6 Where possible, an appropriate venue should be selected to conduct the interview, and the interview should have an appropriate duration. This includes the following:

- The child should be separated from his/her accompanying family members in order to do the interview, and in case these persons could represent a risk or threat to the child, contact should be avoided.
- Adequate time and necessary resources should be allocated to ensure that the child can get prepared in an appropriate manner, develop trust, and has the opportunity to say his/her opinions.
- The interview should be done with appropriate security and privacy: the environment should not be intimidating, hostile or insensitive. The interview should be performed by competent professionals with knowledge in interviewing techniques with age and gender considerations.
- There should be adequate temperature conditions, access to water, tissues, and sanitary services. If the child has been captive, the interview should not be done in a closed space, but should still allow for privacy.

2. Initiating the interview

The authorities should ask the child about what he/she needs and desires. The following should be taken into account:

- The boy, girl or adolescent should be informed about the ability/opportunity to express an opinion, directly or through a representative, in all matters that affect him or her and, particularly, in every judicial and administrative procedure where decisions are taken.
- It is recommended to begin the conversation by introducing the interviewing team and explaining the child the role of the consular office. Indicate to name of the host country to the child to avoid any confusion, differentiate it with the last country in which the child was and develop trust.
- It is advisable to begin the interview by informally talking in a relaxed manner about a topic that could be pleasant for the boy, girl or adolescent, in order to develop a relationship of trust and empathy.

Efforts should be made to generate a conversation instead of just asking questions or interrogating the boy, girl or adolescent. The interviewer should explain the objective of the interview to the boy, girl or adolescent, as well as the role of the interviewing team, and how the interview will be conducted, anticipating any aspect that could potentially cause fear or anxiety. In the conversation, interviewers should explain that in order to best help the child, the interviewers might ask the boy, girl or adolescent some questions and write down the answers because they are important.

- It is advisable to use short sentences and express only one idea in each sentence, using simple language and avoiding technical terms.
- To avoid raising false expectations, the interviewer should explain what the consulate can do and cannot do. It should be explained that the consulate will seek to ensure the safety and security of the minor, and that the authorities of the receiving country are in charge of making the decisions relating to migration control. In addition, the interviewer should mention that the consular staff will seek to assist the boy, girl or adolescent in any circumstance, regardless of the decision about their migration status.

3. Conducting the interview

- It should be remembered that a primary objective of the interview is to identify protection and assistance needs of the minor.
- It is advisable to use the migratory journey of the boy, girl or adolescent as the specific scenario for the interview, in order to avoid the perception of the boy, girl or adolescent that he or she is being interrogated.
- The interviewing team should listen. Listening involves understanding what the boy, girl or adolescent is trying to express and providing a space to enable them to share their painful experiences and feel that they can be heard without being judged.
- Responsible listening: In this type of listening, we take on great responsibility in terms of what we will do with the information that we obtain, what are the appropriate legal and protection actions and what support and humanitarian aid is required.

- When speaking about the migration journey, the interviewer can provide information about other boys, girls and adolescents that he or she has met, safeguarding their identities and other personally identifiable information. The interviewer should seek to establish a process whereby the interviewer provides information and thus, invites the boy, girl or adolescent to provide information as well.
- It can be inferred that boys, girls and adolescents are experiencing or have experienced traumatic situations that they are unable to speak about if they seem anxious, doubtful, confused or afraid when some topics are addressed; for example, being victims of violence.
- Interviewing officials should request that host nation authorities provide access to psychological help if required.
- In cases where the boy, girl or adolescent may have suffered psychological and emotional impacts, it is suggested that interviewers apply the strategy of offering concrete objects which can be handled to channel the anxiety during the conversation, and to seek to express empathy with the situation of the boy, girl or adolescent.
- Interviewers should assess if it is really necessary or useful to obtain detailed information about the experiences of the boys, girls and adolescents. Talking about some details may be harmful and revictimize them, considering that they will have to talk about these experiences later on, with specialized staff providing protection and assistance in the receiving country. The interviewer should explain to the boy, girl or adolescent that he/she will have the opportunity to talk about these experiences with specialized staff, if available. Further referral for interviews by specialized staff may be particularly indicated in cases of severe trauma, including instances of human trafficking.
- Whenever possible and adequate, basic information on the whereabouts of the absent relative or relatives should be provided to the boy, girl or adolescent.
- The boy, girl or adolescent should receive all relevant information (in his or her own language) about their legal options, available services and immigration and asylum procedures, if appropriate.
- Always try to avoid that the child feels any kind of guilt for leaving his/her country.

4. Closing the interview

- The interviewers should thank the boy, girl or adolescent for having shared his or her story. In closing the interview, praise the courage of the child and express empathy with his or her expectations, with the aim of counteracting feelings of failure, helplessness, uncertainty and anguish that may be part of the psychological reality of boys, girls and adolescents in these conditions. This should be done without promising any results that are outside the control of the consular authorities. Provide the minors with contact names and numbers, if case they want to add to their statements or have any questions.

- The next steps known at that moment, if any, should be described in a clear and transparent manner (regarding what will happen to the boy, girl or adolescent and his or her family or other significant adults, if this information is available).
- Offer the child the possibility to make questions and answer them. Ask him/her if he/she understood everything and the information given is clear, or if there is any doubt about the interview and the next steps.
- When the interview ends, consular authorities should accompany the child until is under the protection of the competent national authority.
- Register the actions taken to avoid secondary re-victimization, also with the objective of creating unique information systems between consulates and institutions in the receiving State or in any case in the country of origin of the returned children.
- The contact information of the consular office should be facilitated to the child or to its guardian, and coordinate with national authorities the necessary facilities to ensure access to the consulate without any cost and when it is asked by the child or its guardian.

B. PROTECTION ACTIONS

The interviewing team should develop relevant recommendations and submit them to the competent authority or authorities in charge of providing protection to boys, girls and adolescents in the receiving State, which should evaluate the considerations. In this regard, consular assistance can be key to providing continuity to the “protection chain” in order to safeguard the safety and security of boys, girls and adolescents throughout the entire migration process and monitoring whether those recommendations are followed.

It is very important to take into account the information about the country of origin of the child, the reason for migrating, the situations experienced during migration as well as their opinions and wishes in order to develop specific recommendations.

The recommendations should include specific proposals that can be applied in each case; for example, repatriation to the country of origin; inclusion into specific child protection programmes in the receiving State, including those related to victims or possible victims of crimes, trafficking or sexual and gender base violence and other kinds of exploitation; referral to and implementation of refugee determination procedures or procedures to determine other complementary protection needs; sheltering them in welfare shelters or substitute homes; initiating a legal proceeding; delivering them to a relative in the territory of the receiving State; etc.

Thus, the goals concerning protection should be based on the following elements (without these being an exhaustive list):

- Recognition that speedy and efficient repatriation toward family reunification should be the first objective, wherever possible, and if it is in the best interest of the child;

- Equal and effective access to justice: adequate protection and access to legal services, as well as guardianship for unaccompanied or separated boys, girls and adolescents;
- The possibility of safe and appropriate accommodation, meeting the needs of unaccompanied or separated boys, girls and adolescents;
- Access to primary health care and psychological assistance, considering the opinion and the best interest of the boy, girl or adolescent in the actions to be implemented;
- Take measures to ensure that the legal proceedings where boys, girls and adolescents participate take their rights, dignity and physical and psychological well-being, as a priority;
- Access to legal representation or any other assistance available in procedures where their rights may be adversely affected;
- In the administrative and judicial proceedings in which children are involved, access to effective legal representation should be promoted; in case of non-accompanied or separated children, a guardian should be designated to help protect his or her best interest.
- Protection from harm, threats or intimidation by migrant smugglers and traffickers and persons associated with them or who could adversely affect the rights of the boy, girl or adolescent; to this end, the identity of boys, girls and adolescents should not be revealed in public, and their privacy should be respected and protected above all;
- Access to refugee status determination procedures or other types of complementary protection, if international protection is required;
- Access potential victims of trafficking for medical and psychological assistance, as well as protection.
- For victims of trafficking in persons, the return may be voluntary and be carried out under safe conditions. The alternative of living permanently in the country of destination should be considered, or resettling them in a third country in special conditions, preventing reprisals and preventing them from becoming victims of trafficking or smuggling again. In case of return, the authorities of the State of origin must be notified about that action and include the information of the child y and the protection needs detected so that the reception protocols can be activated.
- The opportunity to be heard and to express themselves freely in seeking solutions to the problems that affect them.
- Family reunification when this solution is based on the best interest of the child.

Furthermore, it is crucial that consular offices register the information of the case and work with relevant authorities to follow up on each case, so that appropriate protection measures can be taken for each boy, girl or adolescent in case of repatriation to the country of origin. The consular personnel should follow up on the situation of the children they have assisted and promote adequate protection measures to be implemented by the authorities of the receiving State. The consulate should give a formal identification and travel document to children who need it in order to ensure an appropriate attention of the situation on a protection level.

4. FINAL RECOMMENDATIONS

Based on the recommended actions described above, the following recommendations are made with the aim of following up on the effort of the RCM to address the protection and assistance needs

of migrant boys, girls and adolescents and/or in need of international protection, particularly in the framework of consular interventions:

1. That the Technical Secretariat of the RCM submit this document to the RCM Member Countries, taking into account the institutions that are members of the Ad Hoc Group on Migrant and Refugee Boys, Girls and Adolescents.
2. To convene a process to discuss and validate the contents of the recommendations proposed in this document, taking into account the migration authorities, ministries of foreign affairs, consular authorities and child protection institutions of the RCM Member Countries.
3. That the RCM Member Countries discuss, within the framework of the Regional Consultation Group on Migration (RCGM) and the Vice-Ministerial Meeting, the relevance of adopting the proposed recommendations as a document of the RCM.
4. That the RCM Member Countries discuss the relevance of incorporating and implementing the consular protection actions proposed in this document in their internal legal systems.
5. To initiate a sustained process of dissemination, awareness-raising and training, at the national and regional level, on these consular intervention recommendations among relevant institutional actors, with the aim of putting into practice the proposed actions.
6. That the document adopted by the Mexican State “Basic Information and Techniques to Interview children: Practical Guide” could be annexed to the present guidelines.
7. That inter-institutional and inter-sectorial coordination at the national and regional levels could be promoted for the effective implementation of these recommendations.