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# CHILDREN ON THE MOVE FRAMING REVIEW

## A Map of Existing Protection Frameworks, Overarching Issues, and Areas for Improvement



### CHAPTER

## INTRODUCTION

Children have migrated for centuries to escape conflict and persecution at home; to leave behind destitution and unemployment; for purposes of exploitation, for family reunion, and for a better life. Today, children are an important part of large-scale population movements involving millions of people. They will likely be increasingly affected in coming decades as a result of globalization, socioeconomic transformation, and climate change. Despite increasing attention to the vulnerabilities of these “children on the move,”<sup>1</sup> existing legal and policy instruments to protect their fundamental rights have not been thoroughly examined. This review provides a map of the relevant frameworks to protect children on the move and outlines the shortcomings of these frameworks. It makes recommendations for a more comprehensive approach that protects children’s fundamental rights and prioritizes their needs, irrespective of their immigration, nationality, or documentation status.

Although there is an authoritative international definition of a child — “every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier”<sup>2</sup> — there is no comparable definition of a migrant child. The Inter-Agency Working Group on Children on the Move has described this population as: “Children moving for a variety of reasons, voluntarily

or involuntarily, within or between countries, with or without their parents or other primary caregivers, and whose movement, while it may open up opportunities, might also place them at risk (or at an increased risk) of economic or sexual exploitation, abuse, neglect and violence.”<sup>3</sup>

As the former Special Rapporteur on the Human Rights of Migrants Jorge Bustamante has noted, migration laws, policies, and programs lack specific provisions on children on the move: children are often invisible, seen as appendages to the family unit. Additionally, “public policies aimed at protecting child rights in general . . . have not yet taken into account the specific condition and needs of migrant children.”<sup>4</sup> Where the law does address this population, it considers only discrete subpopulations of exploited and abused children on the move (trafficked, refugee, smuggled). As a result, children whose lived experiences fit within multiple categories are often denied protection and basic services, and the very real needs of other child migrants are overlooked. Analysis of children on the move has in large part focused on the issue of trafficking.<sup>5</sup> Yet this is not synonymous with all children’s movement, and the focus on criminality has had unintended, sometimes negative impacts, for other children on the move.<sup>6</sup>

More recent discourse has examined the needs and vulnerabilities of “unaccompanied alien children” or “independent child migrants” with the rationale that they are “least catered to by specific child migration measures, [so], a fortiori, legislative provisions that apply to them apply to the other groups of child migrants too.”<sup>7</sup> However, there has been no equivalent surge in con-

cern for preventing avoidable separation of families: indeed, approaches focused on deterring family separation are broadly lacking in child migration legislation and policy. Families are also conceived narrowly by much international and domestic migration law, within a restrictive and traditional idea of a nuclear family.<sup>8</sup> This approach fails to reflect children’s culturally diverse realities and excludes the global prevalence of “functional families”: configurations “in which . . . relatives and non-relatives, live in the household, either in addition to or instead of the expected nuclear family members.”<sup>9</sup> The attached Serbia case cites research showing that these individuals often provide support to children during migration planning and journeys. As a result of this failure of law to reflect reality, millions of children are separated from support networks whose potential protective role remains untapped.

These siloed legislative frameworks fail to cover the lived circumstances of most child migrants and are therefore radically incomplete. They are also ineffective because their implementation is erratic, supported by underfunded and ill-equipped legal services and by fragmented bureaucracies that have been structured to cope with a much smaller demand for protective care than exists. Finally, there is no international body or senior official; no United Nations department, institute, or treaty body charged with responsibility for migrant children per se.

This framing review outlines the body of applicable legislation and its limitations. It then identifies several overarching issues with current approaches, and, finally, makes concrete recommendations for a more effective “horizontal” approach to children on the move.

## CONCEPTUAL MAP: LEGAL FRAMEWORKS AND DEFINITIONS

There is no single piece of legislation that systematically and comprehensively addresses the issue of children on the move. As a result, the extensive relevant international, regional, and domestic law has an inconsistent and incomplete impact on child migrants. For clarity, the following analysis of the body of applicable legislation is divided according to the three principal approaches to child migration: regulatory, criminalizing, and protective.<sup>10</sup> These are not discrete categories. For example, much regulatory migration law criminalizes children’s movement across borders, trafficking law serves to protect children

as well as punish traffickers, and refugee law can be both protective and punitive.

### Regulatory Approach

Regulation is the primary goal of most domestic and regional migration-related law. This legislation largely assumes that children are dependents of the family unit, without autonomous agency: “It does not deal with the needs and circumstances of most children who travel independently of their families.”<sup>11</sup> Independent child migrants have very limited ability to move legally. They can use established education and training schemes

**Table 1.1 Legal Frameworks for Children on the Move**

Regulatory Approach	Most domestic and regional immigration law	
	Assumes traditional family unit	
Criminalizing Approach	Smuggled children [UN Smuggling Protocol, 2000]	
	Trafficked children [UN Palermo Trafficking Protocol]	
Protective Approach	International and regional human rights bills	UN Universal Declaration of HR, 1948
		UN Intl Cov’t on Econ., Soc., & Cult. Rights, 1966
		UN Intl Cov’t on Civil & Political Rights, 1966
	Convention on the Rights of the Child	
	Children in specific situations	Working children (ILO; Migrant Workers Rights)
		Refugee children (UN Refugee, 1951, 1967)
		Internally displaced children (Guiding Principles)
Stateless children (UN Reduct. of Stateless, 1961)		

(generally not available to the most needy), inter-country adoption procedures, or family reunion procedures.

Although the right to family life is recognized as a “crucial bedrock of a just migration policy,”<sup>12</sup> a child’s legal right to migration for family reunification is incomplete and inconsistently applied. It is traditionally a unidirectional principle that assumes the movement of child to parent, not parent to child.<sup>13</sup> It is often contingent on proof of the parent-child relationship, thus excluding the reunification of nontraditional functional families, and on proof of the child’s dependency. For example, the European Union (EU) Council Directive on the Right to Family Reunification only requires member states to admit children for family reunion without additional qualifications if they are below the age of 12,<sup>14</sup> and in the United States, children granted permanent legal residence through the “Special Immigrant Juvenile Status” on account of abuse or neglect can never exercise family reunion rights.<sup>15</sup>

More generally, increasing the barriers to international migration limits opportunities for legal movement. These include “legislation that criminalizes irregular emigration, age and sector-specific bans on the movement of potential migrants and the externalization of migration control, which can be manifested in obstacles such as carrier sanctions and onerous visa requirements.”<sup>16</sup> The attached US/Australia case describes how the United States is funding increased immigration controls in Mexico to create a “buffer state” against migration from Central America: Mexico now returns more Central Americans, including children, to their countries than the United States does.<sup>17</sup> Another increasingly common strategy for “extraterritorialisation” is interdiction at sea. The practice enables

destination states to avoid legal guarantees and protections otherwise potentially available to newcomers, such as rights of appeal or *non-refoulement* (the right of a persecuted person not to be sent back to a place where his or her life or freedom would be threatened).<sup>18</sup> The official Australian policy of intercepting and turning back boats carrying asylum-seekers is described in detail in the attached case. Deportation and detention policies have also become harsher in recent times.<sup>19</sup> These practices constitute a common theme across many of the cases presented here — in Southeast Asia, the United States, Australia, and Europe — and starkly illustrate the precedence of security interests over concern for children’s rights.

Stringent migration controls, coupled with a lack of regular migration channels for work, family reunification, education, and humanitarian reasons, often compel children to move through irregular routes.<sup>20</sup> These controls also increase the likelihood that children will remain in countries of origin after their parents have migrated, with reduced access to rights and opportunities: thus, migration policy impacts a much broader cohort of children than those who are “on the move.”

## Criminalizing Approach

This approach focuses on penalizing and preventing exploitative child migration. It is, by definition, punitive instead of facilitatory. This strain of legislation dates back to prohibition of the so-called “white slave trade” in the nineteenth century. In its contemporary form, it includes conventions criminalizing trafficking and smuggling in persons.

### **Smuggled children**

Child smuggling is defined as facilitated migration arranged to secure a non-exploitative objective, typically an immigration advantage such as family reunification. The UN Protocol against the Smuggling of Migrants by Land, Sea and Air, which entered into force in 2004, aims to prevent and combat the smuggling of migrants while protecting the rights of smuggled migrants and preventing the worst forms of their exploitation. It does not specifically reference children, but requires that States Parties take account of “the special needs of women and children,” to protect smuggled persons from violence, and to assist those whose lives or safety are in danger.<sup>21</sup> The Protocol’s definition of smuggling relies on a clear distinction between non-exploitative and exploitative objectives for migration: without an exploitative objective, a child is not entitled to special protections. Yet this binary view does not reflect the complex realities of children on the move, and means that many children in need of protection are criminalized, detained, and deported. It is well documented that smuggled children can later become victims of trafficking-related exploitation such as extortion, forced labor, and sexual abuse.<sup>22</sup> For example, the Rohingya case describes the situation of Rohingya children initially smuggled out of Myanmar, then detained by criminal traffickers in Thailand in an attempt to extort money from their relatives as a condition precedent to delivering them to Malaysia. The Smuggling Protocol also fails to articulate the important concept that, in cases of age uncertainty, a victim of smuggling should be presumed to be a child, and treated as such, until that presumption is rebutted.<sup>23</sup>

### **Trafficked children**

The term “trafficking” refers to a complex set of interrelated activities that encompass

migration and exploitation. It is based on a dichotomy between criminals (traffickers) and victims (trafficked persons). The primary purpose of international legislation on this subject is to criminalize those facilitating trafficking. A secondary goal is to “provide protections for those who are trafficked and to establish that they are not prosecuted or penalized for their irregular entry.”<sup>24</sup>

The definition of this phenomenon was agreed upon in 2000 with the UN Convention against Transnational Organized Crime (Palermo Convention) and its supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Trafficking Protocol). The Trafficking Protocol defines child trafficking as “the act of recruitment, transportation, transfer, harboring or receipt” of a child “for the purpose of exploitation,” either within or outside a country.<sup>25</sup> Although a third element (coercion) is required to establish trafficking in adults, this requirement is irrelevant in the case of children, who can never consent to exploitative migration facilitated by intermediaries.<sup>26</sup> This recognizes “that force exercised through abuse of a position of vulnerability may be an act of coercion as decisive as a physical kidnapping.”<sup>27</sup> Although exploitation is not defined, it covers forced movement for both sexual and labor purposes.<sup>28</sup>

In general, the Palermo Convention applies when the offences are transnational in nature and involve an organized criminal group.<sup>29</sup> However, the Trafficking Protocol applies to the protection of victims regardless of whether they have crossed a border and whether or not an organized criminal group was involved. Any offence or offences established by a state in order to criminalize trafficking in persons as required by the Protocol are automatically included within the scope of the

basic provisions of the Palermo Convention governing forms of international cooperation such as extradition and mutual legal assistance.<sup>30</sup>

The Trafficking Protocol's references to children "are vague and non-substantive,"<sup>31</sup> requiring states to take into account the "special needs of children."<sup>32</sup> The Protocol does not require states to provide permanent residence or long-term protection to trafficking victims, or treat them the same as refugees. It weakly encourages states "to endeavour to provide for the physical safety of victims" while they are within its territory, and to "consider implementing measures to provide for [their] physical, psychological, and social recovery."<sup>33</sup> This includes appropriate housing, counseling, and information in a known language; medical, psychological and material assistance; and employment, educational, and training opportunities. Guidelines for the Trafficking Protocol's implementation underline a general agreement on states' special obligations with regards to child trafficking victims.<sup>34</sup> For example, a smuggled child who may be a trafficking victim should be presumed to be so.<sup>35</sup> Similarly, in cases where a trafficking victim's age is in dispute, the presumption should be that he/she is a child until verified otherwise.<sup>36</sup> This is important given that someone who consents to migration for exploitation is not considered to have been trafficked unless they are under 18. The European good practices case outlines the significant barriers to accurate, holistic age verification: inexact medical assessments of age are widely used throughout the region, in many cases resulting in the treatment of minors as adults.

The child-trafficking lens dominates current policy responses to the exploitation of children on the move; it mobilizes some pro-

tections and human rights entitlements for certain vulnerable minors.<sup>37</sup> Yet the focus on child trafficking as a criminal act has also had unintended effects. For example, in the India case of internal trafficking of boys for forced labor, anti-trafficking policies result in a focus on removal or "rescue" from exploitation and then reinsertion in home communities, without substantive engagement with the root causes of vulnerability that led to exploitation in the first place or with the risk factors for potential future harm. The trafficking approach can also result in penalizing children because of their irregular entry and cause additional obstacles at borders.<sup>38</sup> In some countries, access to protection is conditional on a child's agreement to testify against the trafficker in court, which can be detrimental for the child and their relatives.<sup>39</sup> Prosecution can also lead to false criminalization of children's family and support systems that are key resources for sustainable change.<sup>40</sup>

There are rarely bright lines between consensual and coercive child migration; accompanied and unaccompanied children; or exploited workers and youthful economic migrants.<sup>41</sup> Yet the trafficking framework relies on these classifications, causing ambiguity at the legal and practical levels. This approach can therefore lead to interventions that do not reflect the child's best interests, such as return to his or her place of origin.<sup>42</sup> This may run counter to children's expressed wishes and inhibit their opportunities for decent work, education, and development.

Relevant law confirms the existence of certain obligations placed on states to prevent trafficking. First, states are required to address the vulnerability to trafficking: the Trafficking Protocol requires states "to alleviate the factors that make persons, especially women or children, vulnerable to trafficking, such as

poverty, underdevelopment and lack of equal opportunity.<sup>43</sup> The Protocol also requires countries to address the adverse social and economic conditions thought to contribute to the desire to migrate and thus leading to the vulnerability to trafficking. It underscores the need for education, awareness raising, and mobilizing of community support for anti-trafficking initiatives.<sup>44</sup> Second, states are required to reduce the demand for trafficking: though it does not specify exact actions required,<sup>45</sup> the Protocol requires States Parties to address the discriminatory attitudes shaping demand; to increase labor protections; to investigate, prosecute, and punish traffickers.<sup>46</sup> Third, states are required to identify and eradicate public sector involvement in, and corruption related to, trafficking.<sup>47</sup>

While they target important factors precipitating child vulnerability to exploitation by traffickers, the Protocol's provisions, like international law more generally, ignore the powerful factors driving children's own demand for mobility – a “search for exit” from poverty and violence.<sup>48</sup> The provisions also fail to engage with the critical need for long-term investment to prevent child exploitation. The India case, which describes the “rescue and reintegration” model of anti-trafficking policy targeted at the removal of children from exploitative workplaces, is an example. The Indian government's initiatives focus on short-term, high profile raids which attract public attention and temporarily removed children from exploitative contexts. But they do little to generate effective deterrent mechanisms for the exploiters or sustainable alternatives for the families whose destitution precipitates trafficking of children in the first place. Other “preventative” measures may also have an adverse impact on individual rights, for example where they result in the detention of trafficked children, or in the de-

nial of entry or exit visas to facilitate child mobility. These measures violate established rights, affirmed by the non-discrimination clause in the Trafficking Protocol, by international and regional instruments, by pronouncements of human rights treaty bodies, and by human rights mechanisms.<sup>49</sup> In short, despite the broad legal obligations on states to prevent trafficking, there is little effective policy that addresses the root causes of the problem. Assistance for trafficked children “is typically short-term, victim oriented, and remedial in nature. It aims to make good the damage done by the trafficking experience . . . rather than engage with long-term survival and empowerment options.”<sup>50</sup>

### Protective Approach

A third legal approach to children on the move is protective. It includes the core set of universally applicable human rights treaties, as well as laws directed at the protection of specific groups of children on the move, including migrant workers and their families, victims of the worst forms of child labor, refugees, and internally displaced persons. These international standards are complemented by regional human rights bodies and instruments, more directly addressed in the attached cases describing the treatment of children on the move. These include, for example, the Inter-American Court and Commission on Human Rights and the American Convention on Human Rights;<sup>51</sup> the African Charter on Human and Peoples' Rights, the African Charter on the Rights and Welfare of the Child, and the African Commission on Human and Peoples' Rights;<sup>52</sup> the European Convention on Human Rights, the European Court of Human Rights, and European Union regulations and directives.<sup>53</sup> Regional groupings of nongovernmental organizations

(NGOs), such as End Child Prostitution, Pornography and Trafficking (ECPAT) in Asia and the European Network of Ombudspersons for Children (ENOC), have also developed recommendations for protection of migrant children, making up a growing body of “soft law.”<sup>54</sup>

### **The International Bill of Human Rights**

The rights of children on the move are broadly enshrined in three UN agreements: the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR).<sup>55</sup> These set out a range of basic human rights that apply to all, irrespective of nationality, legal status, or age. The most fundamental principle is the non-discrimination principle, which prohibits all distinctions between people that are arbitrary, disproportionate, or unjustifiable in nature.<sup>56</sup>

Under these instruments non-citizens are guaranteed freedom from arbitrary killing, inhuman treatment, slavery, arbitrary arrest, unfair trial, invasions of privacy, refoulement (return to a place of persecution), forced labor, child labor, and violations of humanitarian law.<sup>57</sup> They also have the right to education; an adequate standard of living (including housing, food, water, and sanitation); the protection of health, safety, and other labor regulations; and consular protection.<sup>58</sup>

States may however draw distinctions between citizens and non-citizens with respect to freedom of movement and political rights explicitly guaranteed to citizens. The ICCPR grants “the right to liberty of movement and freedom to choose [one’s] residence” only to persons who are “lawfully within the territory of a State.”<sup>59</sup> The UDHR likewise does not include a “right to migrate.” It does, however,

enshrine the right to “freedom of movement and residence within the borders of each state” as well as “the right [for a person] to leave any country, including his own, and to return to his country.”<sup>60</sup> The ICCPR permits exceptions to this only if required as a matter of “national security, public order (*ordre public*), public health or morals or the rights and freedoms of others.”<sup>61</sup> The contested implications of this “right to exit” are highlighted by the recent EU/Turkey policy, enacted in March 2016, which requires the removal of all refugees and migrants entering Greece back to Turkey, regardless of whether they have legitimate asylum claims.<sup>62</sup> The Lesbos case describes the unsatisfactory and dangerous living conditions of those approximately 10,000 migrants (4,000 of which were children) who until the late spring of 2016 were camped at the makeshift Idomeni camp along the sealed Greece-Macedonia border, prior to their forcible removal further inland by the Greek authorities.

### **The Convention on the Rights of the Child**

The Convention on the Rights of the Child (CRC) is the most comprehensive compilation of existing international legal standards for the protection of the human rights of children. It deepens the protective impact of human rights for children through an implementation structure that includes reporting obligations to and scrutiny by its overseeing treaty body, the Committee on the Rights of the Child. In 2002, the CRC was strengthened with Optional Protocols on the involvement of children in armed conflict and on the sale of children, child prostitution, and child pornography (Protocol on Sale of Children).<sup>63</sup> In 2005, the Committee issued General Comment no. 6, which specifically and holistically addressed states’ obligations towards unaccompanied and separated children outside their country of origin.<sup>64</sup>

Underlying the CRC are four main principles: non-discrimination (article 2), the best interests of the child (article 3), the right to participation (article 12), and the right to life, survival, and development (article 6). The principle of non-discrimination ensures ratifying states are bound to respect and ensure the rights of all children within their jurisdiction, “including asylum-seeking, refugee and migrant children – irrespective of their nationality, immigration status or statelessness.”<sup>65</sup> It notes that this does not preclude “differentiation on the basis of different protection needs such as those deriving from age and/or gender.”<sup>66</sup>

The CRC also requires states to prioritize or give primary consideration to the best interests of the child in relation to all actions and decisions affecting that child.<sup>67</sup> General Comment no. 6 states that, in the context of migration, this principle must be “respected during all stages of the displacement cycle,” and based on a “comprehensive assessment of the child’s identity . . . particular vulnerabilities and protection needs.”<sup>68</sup> The best interests principle “is not a mere resonance box of the more substantive provisions of the CRC.”<sup>69</sup> Many considerations are relevant to a child’s best interests, including the expressed wishes of the child; the child’s identity (including factors such as sexual orientation and cultural identity); the child’s right to an education; the interests of the parents;<sup>70</sup> and a prioritization of the child’s interests over other considerations of the state, including those related to immigration control or public order.<sup>71</sup> However, as noted by the UN High Commissioner for Refugees (UNHCR) in its 2008 Guidelines, “international law provides limited guidance on how to operationalize the best interests principle.”<sup>72</sup>

As a result, the best interests principle is implemented with varying efficacy in regional

and domestic legislation. For example, it is nearly absent from US immigration and refugee law.<sup>73</sup> European directives and other provisions addressing unaccompanied children are explicitly guided by the best interests principle.<sup>74</sup> The Serbia case illustrates how the best interests of migrant children can sometimes be at odds with domestic child protection legislation: “the common situation in which it is in the best interests of unaccompanied children to allow them to continue their journey, even though national regulations prohibit children from traveling without a legal guardian.”

The CRC enshrines the right of a child “capable of forming his or her own views to express those views freely in all matters affecting the child,” given due weight according to the child’s age and maturity.<sup>75</sup> General Comment no. 14 also underscores the “essential role of children in all decisions affecting their lives.”<sup>76</sup> This principle encourages treatment of children on the move as agents and social actors in their own right. From this perspective, “vulnerability and the need for protection are only one element of the social policy agenda; the other is facilitation, nondiscrimination, inclusion, the promotion of opportunity and the acknowledgement of capacity for autonomous responsible action, and for child participation in policy formation.”<sup>77</sup>

The CRC reaffirms children’s basic human rights to life, survival, and development. It also guarantees children the right to a name and the right to acquire a nationality, particularly in cases where a child would otherwise be stateless.<sup>78</sup> It enshrines children’s right to health, shelter, and education, and it requires states to protect children from violence, abuse, neglect, exploitation, and sexual abuse.<sup>79</sup> It states that no child is to be deprived of his or her liberty unlawfully or

arbitrarily.<sup>80</sup> This statement does not prohibit detention, but requires that this measure be used only as a last resort and for the briefest period possible.<sup>81</sup> The CRC and the Protocol on Sale of Children also impose conditions on the conduct of detention, including separation of children and adult detainees, unless such separation is not in the child's best interests;<sup>82</sup> the right to prompt access to legal and other appropriate assistance;<sup>83</sup> the right to challenge the legality of a child's detention before a competent court and to a prompt decision;<sup>84</sup> and the right to support for physical and psychological recovery and social reintegration.<sup>85</sup> The Committee has explicitly rejected the use of detention for children in need of protection.<sup>86</sup>

The CRC places special emphasis on safeguarding family unity and the reunification of families.<sup>87</sup> It requires states to deal with family reunion applications "in a positive, humane and expeditious manner." Because the Convention does not specify which parties in a family provide the location where reunification takes place, it can be interpreted as allowing for reunion of parents to join a child who migrated first.<sup>88</sup> General Comment no. 6 addresses the contexts in which unaccompanied migrant children can be returned to their home states: the critical rule is that return must not be carried out if there is a "reasonable risk" that this would result in the violation of fundamental human rights of the child,<sup>89</sup> or a real risk of irreparable harm.<sup>90</sup>

### **Working children**

A large proportion of children on the move are involved in work. The UN Convention for the Protection of the Rights of Migrant Workers and their Families, less comprehensively ratified and so less significant as a practical policy instrument than the CRC, provides a robust protective framework for migrant

workers. It covers undocumented and irregular workers as much as legal workers in most of its provisions, and calls for cooperation and consultation between states to promote sound, equitable, and humane conditions in connection with international migration.<sup>91</sup> The Convention adopts an age-neutral definition of migrant worker, yet its definition of family members reflects the view of migrants as adults.<sup>92</sup> The Convention's only explicit mention of child migrants' rights covers the situation where criminal charges are brought against juveniles: states parties are required to separate juvenile from adult offenders,<sup>93</sup> to treat them appropriately considering their age, and to promote rehabilitation where possible.<sup>94</sup>

The International Labour Organization (ILO), a UN agency, has been at the forefront of labor rights legislation and standard setting since the early twentieth century. Its conventions and recommendations protect the rights of all workers, including children, irrespective of citizenship. Of particular relevance to the situation of children on the move are the conventions on forced labor and on child labor. The Convention on Forced Labor<sup>95</sup> and the Abolition of Forced Labor Convention<sup>96</sup> call on all states to eliminate "all work or service which is exacted from any person under the menace of any penalty, and for which the said person has not offered himself voluntarily." The Minimum Age Convention establishes 15 as the minimum age for employment, except for potentially hazardous work where the minimum age is 18, or for "light" work not likely to be harmful to health or prejudicial to school attendance.<sup>97</sup> The Convention on the Worst Forms of Child Labor emphasizes the subset of worst forms of child work requiring priority action: slavery or slavery-like practices, including trafficking; prostitution or pornography; illicit activities, in particular drug

production or trafficking; and work that, “by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.”<sup>98</sup>

These conventions describe the situation of many children on the move. The conditions under which children decide to migrate make them especially susceptible to child labor;<sup>99</sup> the risks of labor exploitation during migration journeys are considerable;<sup>100</sup> and many work long hours within the family or in the informal economy due to lack of access to government services and protection at their destination.<sup>101</sup> Evidence also suggests that the conditions in which migrant children work are worse than those of local child laborers.<sup>102</sup> However, implementation of these conventions is weak and children’s alternatives are often non-existent. As a result, the impact of labor law regulation on the working lives of child migrants is generally minimal.<sup>103</sup> Existing protections are particularly ineffective for girls involved in hidden and underreported forms of child labor, such as domestic work.<sup>104</sup> Current international standards do not address the unique circumstances of these youth, the conditions in which child domestic work is performed, and the specific vulnerabilities to serious abuse these situations can create.<sup>105</sup>

### **Refugee children**

The refugee protection regime derives its legal force and international legitimacy from the 1951 United Nations Convention Relating to the Status of Refugees (as amended by the 1967 Protocol). The Convention defines a refugee as someone displaced from their country because they have been “persecuted” on the grounds of their “race, religion, nationality, membership of a particular social group or political opinion,” and because they are “unable or unwilling” to gain protection from their home state.<sup>106</sup> Despite the

common sense expectation that separated asylum-seeking children, some of the most vulnerable children on the move, would be treated generously, there are significant challenges to their inclusion within the protective scope of refugee law.<sup>107</sup>

Children constitute over half of the world’s refugees, but make up less than a third of asylum claims in developed states.<sup>108</sup> Many of those left “in transit” live in overcrowded and impoverished refugee camps and settlements that exist largely outside of the law.<sup>109</sup> Even though many of these camps are provided for by the UNHCR, they are sites where epidemics, depression, and violence are endemic, education opportunities limited, and employment unavailable.<sup>110</sup> The Lesbos case illustrates the serious deficiencies experienced by minors stranded for months at frontline reception centers in Greece, lacking safe housing, basic food, water, sanitation and hygiene, health care, and education. Those that leave these liminal spaces to actively seek out protection face considerable risks during the migration journey: the increasingly militarized exclusion systems already described generate a smuggling industry that exacerbates child migrants’ vulnerability.

The obligations of states towards asylum-seeking children after they have reached their destination are clearer, though no more consistently delivered. The CRC provides that states must guarantee child asylum-seekers special protection and care; avoidance of detention; and access to legal and psychological assistance.<sup>111</sup> In particular, General Comment no. 6 notes the importance of “the appointment of legal guardian as expeditiously as possible ... as a key procedural safeguard.”<sup>112</sup> Such children should not be placed in institutions that are not equipped to

provide the specialized care they require.<sup>113</sup> They should not be the subject of discrimination in the enjoyment of economic, social, and cultural rights such as access to education, health care, and social services.<sup>114</sup> Unlike adults, children may not be returned to transit countries to have their cases processed.<sup>115</sup>

Nevertheless, as clearly demonstrated in the cases, child asylum seekers rarely benefit from all or even most of these measures. Procedures vary significantly between different states. As the case study of Rohingya children on the move notes, for example, “since none of the destination countries in the [Southeast Asia] region have ratified the 1951 Refugee Convention, there is little if any legal protection for Rohingya child migrants.”<sup>116</sup> As another example, only 179 unaccompanied children out of 1,637 arriving in the United States from Central America during the three-month period from July through October 2014 were allowed to stay.<sup>117</sup>

Children fleeing without their families face significant legal challenges in proving that the human rights violations they face amount to “persecution.” Child-specific forms of persecution have traditionally been excluded from the ambit of the five grounds of the basis of possible persecution (race, religion, nationality, social group membership, or political opinion). Bhabha distinguishes three different forms of persecution of children.<sup>118</sup> The first has no particular relationship to its subject’s age — a child may, for example, be persecuted for his or her political opinion just like an adult. The second is persecution specific to children — such as infanticide, bonded/hazardous child labor, or child soldiering — or to girls in particular — such as child marriage or female circumcision. The last type of persecution of children is con-

duct that might not be sufficient to constitute persecution for an adult but gives rise to a well-founded fear of persecution for children: for example, family separation following war, forced displacement, or homelessness. In practice, however, children face pervasive disbelief regarding their vulnerability to harm.

Although it is now commonplace to realize that children who may need to flee persecution do so through the manipulations of traffickers, trafficked children face difficulty gaining refugee protections. This is because the central element in the trafficking definition — exploitation by an external actor — is not easily mapped onto the central element of the refugee definition — persecution experienced by the child.<sup>119</sup> It is also significantly harder for children fleeing criminal violence to gain protection than those fleeing political violence: youth who are fleeing gang-related activity are not considered to constitute a “particular social group.”<sup>120</sup> Thus, as described in the US/Australia case, despite the overwhelming evidence of extreme violence and persecution within gangs in Central America, especially against any who attempt to leave or reject membership, these children are generally not eligible for asylum elsewhere.<sup>121</sup> This is in large part the result of a hostile political climate towards immigrants in the United States, and the large scale of the population of children affected: the boundaries of the particular social group category are carefully policed for fear of “opening the floodgates.”<sup>122</sup>

In recognition of the inadequacy of the 1951 Convention and its Protocol to fully protect those displaced by a broad range of rights violations, regional legal instruments such as the 1969 Organization of African Unity Refugee Convention and 1984 Cartagena Dec-

laration for Refugees in Latin America have adopted definitions of “refugee” that encompass persons fleeing violent conditions or disturbances in public order, such as civil conflicts and natural disaster.<sup>123</sup> However, both documents are non-binding, include no burden-sharing mechanisms, and states have been slow to incorporate them into their domestic law.

States have used several other measures to expand legal migration of persons with humanitarian needs. Some have adopted temporary protection procedures in response to humanitarian emergencies, though these are applied haphazardly and arguably have been used by some countries to avoid obligations under the 1951 Convention.<sup>124</sup> As shown in the European good practices case, several EU countries have amended their law to allow for “subsidiary protection” for minors who do not otherwise qualify for refugee status, if they face a real risk of suffering serious harm upon return. Sixteen EU States also currently have or have previously had schemes for issuing humanitarian visas.<sup>125</sup> The example of the Serbia case indicates that the implementation of a “highly organized, state-run migration route [and] organized safe traveling methods, with free transportation and information sharing mechanisms” for refugee children can significantly reduce “traditional trafficking and smuggling schemes.”

### **Internally displaced children**

The 1951 Refugee Convention requires refugees to leave their countries of origin in order to be eligible for the protections accorded by the Convention. This leaves people displaced internally without access to international protection. To address this gap, between 1992 and 1998 the Representative of the UN Secretary for Internally Displaced

Persons (IDPs), Francis Deng, backed by a small number of states, identified existing lacunae in protection and drew on international human rights and humanitarian law norms to draft a set of Guiding Principles on Internal Displacement. These Principles apply to all regardless of age. They highlight the specific needs and additional protective measures relevant to displaced children during all stages of their displacement.<sup>126</sup> The Principles pay particular attention to issues of sexual exploitation, forced labor, and recruitment and participation in armed hostilities, as well as to the rights of internally displaced children to family unity, education, and training opportunities.<sup>127</sup>

The Guiding Principles are a nonbinding, unenforceable framework, designed to assist states in interpreting their obligations toward internally displaced people and adopting policies and case law that enhance the protections available to this population.<sup>128</sup> Because the Guiding Principles are nonbinding, their impact is of necessity limited; robust protections, such as those enumerated, remain a distant aspiration for very large populations of IDPs globally. Nevertheless, the development of this framework provides a model to address specific gaps in international protection for children on the move.<sup>129</sup> Over time, this soft law has begun to evolve into hard law: national IDP laws and policies have been developed in over 30 countries, as well as the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention).<sup>130</sup> The Guiding Principles also “apply to, and have increasingly been recognized by, not just states but also non-state actors in conflict, law-makers and jurists, civil society activists, and peace mediators.”<sup>131</sup>

## Stateless children

Despite the optimistic rhetoric of human rights law, the enjoyment of human citizenship and its associated benefits is largely contingent on legal identity, nationality, or a regular immigration status. The CRC states that every child has the right to acquire a nationality, to be registered immediately after birth, and to preserve his or her identity, including nationality.<sup>132</sup> Yet there are an estimated six million stateless children around the world and many of these are migrants or the children of migrants.<sup>133</sup>

A stateless person is defined by the 1954 Convention relating to the Status of Stateless Persons as “a person who is not considered as a national by any State.”<sup>134</sup> The 1961 Convention on the Reduction of Statelessness establishes rules on acquisition, renunciation, loss, and deprivation of nationality.<sup>135</sup> A key provision requires states to confer nationality to children born on their soil who would otherwise be stateless.<sup>136</sup> More recent analysis has identified two categories of stateless children. The first is children without a legal identity: this encompasses both *de jure* statelessness (those without the nationality of any state) and also *de facto* statelessness (those who have a nationality but do not have legal status where they reside because they are illegal, irregular, or undocumented migrants in their current location). The second category is effective statelessness, which applies to children who are legal citizens but lack the documents necessary to assert their legitimate claim to state services, such as birth registration and birth certificates.<sup>137</sup> This applies in the case of many indigenous populations, and also in cases where citizen children are displaced or migrate internally and lack the means to claim rights they are entitled to.

The unenforceability of fundamental rights related to nationality impinges on a diverse group of children on the move, including undocumented immigrants, trafficking victims, children born to irregular migrants, and children whose birth has never been registered.<sup>138</sup> Access to birthright citizenship is increasingly qualified by conditions relating to length and status of parents’ residence. The risk of detection and deportation also deters irregular migrants from registering their newborns. As clearly demonstrated by the example of the Rohingya, statelessness in children is a key indicator of vulnerability, and a significant barrier to essential resources, services, and protections.

## Summary

The discrete legislative categories discussed in this conceptual map do not adequately address the complex realities of child migration, or cater to the protection needs of significant groups of children on the move. Many children on the move occupy multiple legal statuses, either simultaneously or in succession. Child migrants may be smuggled initially but then end up trapped in situations of trafficking; stateless children may seek asylum as a means of securing state protections; an irregular child migrant may also be a bonded laborer. Frameworks generally treat children as a homogeneous group: yet girls and boys ought in some cases to receive disaggregated treatment according to their different vulnerabilities; similarly, older children have different needs, expectations, and vulnerabilities from younger children. None of the above frameworks address the isolation and invisibility of children in transit, although this is often the stage of migration where conventional child protection systems are weakest.

Although international human rights law requires states to provide each child with a basic level of care and protection, this is too often contingent upon a determination of legality or status. The protection of these individual rights is also impacted when the numbers of children on the move are particularly great. For example, the Lesbos case documents widespread violations of children's rights during the recent migration crisis, in part due to overwhelmed and poorly prepared child protection systems. Similarly, the Serbia case study highlights how several individual country and EU measures taken during this time "have in effect temporarily suspended States' obligation to fulfill international and European human rights and refugee protection standards." None

of the legislative frameworks discussed above specifically addresses how the size and rate of arrival of populations of children on the move impacts the delivery of these rights and obligations, or how practical preventative measures can be instituted to better ensure individual child rights enforcement in times of mass migration.

In short, for children on the move, current law fails to operationalize the rights and entitlements envisioned by international human rights law. The wide gap between the aspirational rhetoric of this protective legislation and the realities experienced by children on the move illustrated in the attached cases underscores huge challenges in enforceability.

## OVERARCHING ISSUES WITH EXISTING FRAMEWORKS

- **Fragmentation of law into different legislative instruments for different groups of children.** Existing siloed legislation does not reflect the complex lived experiences of children on the move. The plethora of relevant laws leads to gaps in responsibilities (such as access to lawyers) and in service provision (for example, different provisions on access to accommodation, material support, education, and training) for some groups of children.
- **Insufficient legal routes for migration.** Children compelled to take illegal migration routes are highly vulnerable to abuse and exploitation, and increasing barriers to entry leave many children stranded in transit. Those with legitimate claims to protection are often seen with suspicion and ambivalence because of their irregular, even criminalized, journeys.
- **Lack of protection for children in transit.** Migration provisions are primarily targeted at borders. Children in transit within state borders risk a range of human rights violations and abuses: they can become destitute or stranded in the transit country; many travel alone; many lack legal protection; and many are unable or unwilling to seek the protection of the authorities in the country of transit.
- **Inadequate first-instance decisions and funding.** Limited funding for front-line reception systems, poorly trained personnel, and a pervasive climate of disbelief (reflected in the proliferation of age-disputed cases and rejection of children's testimony) all result in high levels of inaccurate first-instance decisions for children on the move. This outcome generates violations of children's rights, as well as significant costs to the state through appeals and ju-

dicial reviews. Hasty refusals of protection on the basis of inadequate information are difficult to correct.

- **Arbitrary detention in inadequate conditions and arbitrary deportation.** Despite clear limitations on the use and nature of detention under international law, immigration concerns continually take precedence over the rights of children on the move.
- **Failure to provide guardians and legal representation.** Unaccompanied and separated children are often unable to claim their rights in complex legal and administrative systems because they lack effective adult support. Particularly true in times of mass distress migration, this failure exemplifies the absence of an integrating set of policies oriented to the migrant child as a child first and foremost. Free and low-cost legal representation is in scarce supply: formal advice or even basic information on the child's rights and the applicable processes is non-existent for most children.
- **Lack of prioritization of “best interests” principle.** The best interests of the child are not incorporated as a matter of binding obligation into most regional and national legislation. Routinized responses such as repatriation are often carried out without regard to the child's best interests, and these responses regularly ignore child specificities, including the particular circumstances of older adolescents, for example, where the benefits of migration should be factored into decision making.
- **Inadequate collaboration among domestic child protection actors.** A wide range of stakeholders is typically implicated in the care of children on the move. Yet policy makers and implementers tend to be limited by discrete departmental mandates. They have specific tasks to execute and are accountable along vertical lines of reporting – limiting flexibility, collaboration, and creative exercise of discretion. Thus, basic service provision and tracking of children in care suffer, with the result that many children disappear from state protection.
- **Lack of cross-border collaboration.** There is a clear need for increased international cooperation for the purposes of family reunification, reintegration, age determinations, and background information for asylum claims: instead existing communication channels are informal and largely ineffective. This deficient situation translates into uneven and incomplete responsibility sharing at both regional and national levels. This problem is particularly acute when migration flows are high: some countries by virtue of their geographic position along migration routes are particularly affected by the high demand for services to meet the needs of children on the move.
- **Lack of focus on root causes.** Although many legal frameworks outline states' obligations to invest in measures to prevent exploitative migration, in practice these measures are routinely reduced to the creation of deterrents to movement. Responses to children on the move focus on those already exploited, and rarely engage with the demand for exit that drives so many young people into abusive migration. This minimizes

the importance of targeted income generation, secondary and tertiary education access, and other development and infrastructure enhancement projects.

- **Absence of preventative measures that reduce harm caused by migration controls themselves.** Existing legislative frameworks largely set out criteria for the individual determination of migration status for children on the move, and they specify the content and provision of subsequent protective services. Yet there is no guidance on how migration systems should themselves be structured to fulfill these diverse obligations, particularly in times of mass migration. As a result, child protection systems quickly become overburdened, provide ineffective protection to vulnerable children, and inflict additional harm through practices such as detention and separation of families.
- **Lack of research, data, and monitoring.** The absence of reliable, disaggregated or coordinated statistics is emblematic of the failure to prioritize the development of adequate tools for addressing the needs of children on the move. This lack of reliable data impedes both service provision and funding efforts and should be addressed, despite the methodological barriers.

## RECOMMENDATIONS

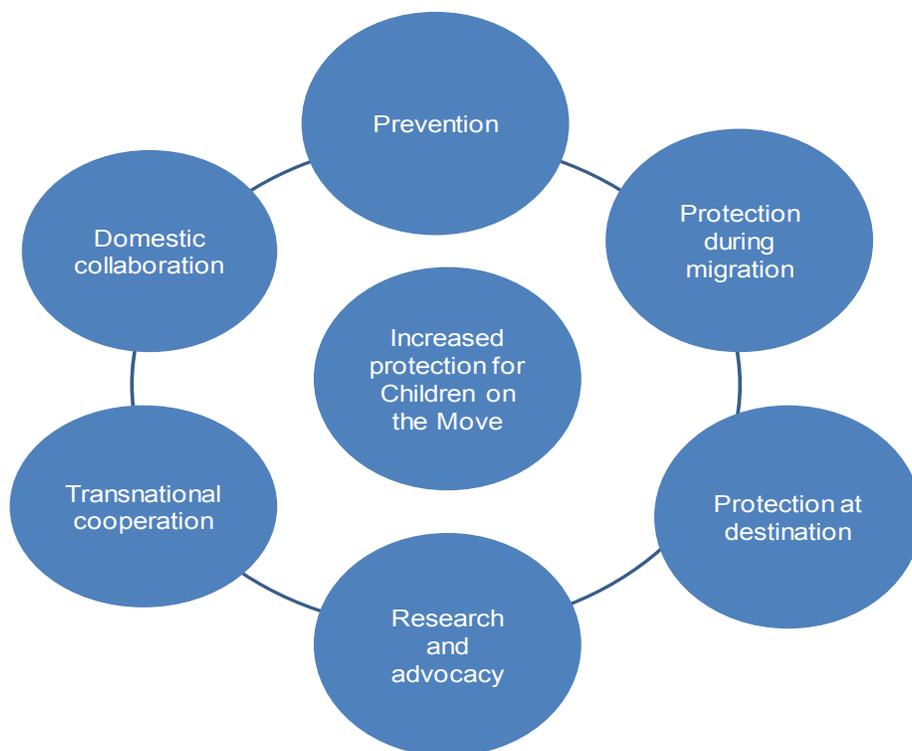
These recommendations are intended to provide clear, practicable ideas for improvement of the current protection system for children on the move. At their core, they involve a return to prioritizing the basic human rights principles outlined in the CRC – non-dis-

crimination, the best interests of the child, the right to participation, and the right to life, survival, and development – over concerns relating primarily to immigration and national security.

### Prevention

#### 1. Addressing the factors that increase vulnerability to exploitative or forced movement.

- Child protection imperatives for children on the move should be integrated into the advocacy surrounding the UN Sustainable Development Goals (SDGs), the ambitious set of goals the United Nations adopted in 2015 and is working worldwide to implement.<sup>139</sup>
- Targeted anti-poverty strategies, employment support, and access to quality education should be provided in areas of high out-migration. SDG 4b, which calls for increases in funding support for adolescent secondary and tertiary education, should be leveraged to support this set of initiatives.
- Community-based child protection mechanisms must be supported, and not imposed by external actors. Information campaigns and pre-departure orientation would dissuade some children from making dangerous journeys and protect those who still choose to migrate.
- Protection responses for children on the move should be integrated into National Plans of Action on child labor, trafficking, orphans, and vulnerable children, as well as into policies on poverty reduction and development. This should be achieved



**Figure 1.1 Recommendations for increased protection for children on the move**

through consultation with diverse stakeholders including child rights experts, nonprofits, and children’s organizations. For example, in 2009 a working group of child protection specialists and experts from related areas from nine Caribbean Community (CARICOM) states, as well as the International Organization for Migration (IOM) and UNICEF, convened to exchange practical experiences, identify national strengths and weaknesses, and develop recommendations to improve policies for children affected by migration in the Caribbean region.<sup>140</sup>

**2. Addressing the demand for exploitation of children on the move.**

- Safe, legal methods for children to migrate will minimize the market for exploitative smugglers. This includes work schemes linked to accessible, fast, and affordable job and education opportunities; more flexible Humanitarian Visas, Temporary Protection Visas; family reunification; and increases in resettlement quotas.

### 3. Addressing the facets of border control and migration systems that cause harm to children on the move.

- States and regions should formulate preparedness plans to effectively cope with periods of large-scale distress migration while upholding rights obligations towards children. At the national and regional level, this involves the prior identification of resources and personnel that can be called upon, following the model of pandemic preparedness.
- Develop family-based alternatives to detention and institutional care, such as foster care for unaccompanied children, both during and after status determination (as described in the Europe good practices case). Children on the move, whether accompanied or unaccompanied, should not be detained pending initial registration and processing of their claims for protection.

#### Protection during migration

- Increase opportunities for safe and legal access to countries of destination, either on a short- or long-term basis (see above). These initiatives should be related to the measures covered by SDG 8.7 that calls for immediate action to eradicate human trafficking and the worst forms of child labor, including the recruitment of child soldiers.
- Fund initiatives to protect children while they move, in particular information and support services along migration routes, and hotline services with trained staff and referral services.

#### Protection at Destination

- Frontload holistic advice and legal support. This is crucial to establishing trust and quality first-instance decisions, thereby reducing appeals and judicial reviews. Research into the economic case for this investment is an essential step to get policymakers on board.
- All unaccompanied and separated children on the move should be appointed a legal guardian. Guardianship systems should be centralized through a searchable database (to facilitate, for example, matching of guardians with appropriate language skills) and supported by training. The European good practice case provides a positive example in the guardianship system in Sweden.
- Develop a Child Protection Plan for the education sector, with special attention to children affected by migration, and include modules on migration in teacher training curricula.
- Develop public awareness and education programs on available resources for protection of child migrants, and relevant immigration policies and procedures. Publicize national policies on child migrants' rights to access and use basic services free from discrimination and threat of deportation.

#### Domestic collaboration

- Identify and/or strengthen a focal point/Child Development/Protection agency or unit that is responsible for and can coordinate matters pertaining to children affected by migration and encourage/enhance

multi-sectoral agency collaboration with clearly defined roles and responsibilities.

- The responsibility for children on the move should rest on social protection actors and not migration agencies, in particular when it comes to the cases of separated or unaccompanied children.
- The above agency or unit should develop clear guidelines and training programs to guide actors in child protection, immigration control and law enforcement for assisting children on the move.

### Transnational cooperation

- Transnational cooperation must go beyond the cooperation of judicial or police authorities. When necessary for the child's best interests, this cooperation should extend across national child protection authorities, including guardianship authorities. Such cooperation should not be limited to only certain categories of children.
- One international body or senior official at the UN level should be appointed to monitor the protection of children on the move, raise awareness about rights violations, and establish international guidelines for their reception, processing, and protection.
- Develop regional training programs and materials on child rights and working with migrant children. These programs could build, for example, on the experience of the European Asylum Curriculum.<sup>141</sup>
- Bi-national or regional joint processing arrangements could help improve asy-

lum systems. These arrangements could range from the provision of support teams to other reception countries, to unified regional processing systems. The European Asylum Support Office (EASO) has developed pilot projects relating to different steps of the asylum process that provide an important basis for assessing the potential for future expanded joint activities.

- Paths for mutual recognition of positive asylum claims should be developed both regionally and globally. This is particularly important in times of mass migration from one particular source state.
- Support and develop regional groups of child rights experts and activists such as the European Network of Ombudspersons for Children (ENOC). These have an essential role in policy advocacy, research, and public awareness-raising.

### Data collection, research, and advocacy

- Develop a national protocol on the regular collection, analysis, and dissemination of data regarding children affected by migration.
- Provide yearly reports on migration trends and on the impact and effects of migration on children at the national and regional levels.
- Integrate broader data sources regarding children on the move into current data collection regarding vulnerable children, and into national and regional efforts to collect data on migration. Such data should be disaggregated across relevant

categories, particularly gender, age, and country of origin.

- Invest in research and data collection on children “in transit,” which involves the collaboration of national governments, UN agencies, nonprofits, and local community structures, and the creative use of mobile technologies.
- Develop mechanisms, involving all relevant actors, for the exchange of information and good practices on the identification, reception, and assistance of children on the move. These should also map existing protection resources such as guardians, shelters, and vocational training programs. Examples such as ENOC provide a model.

## ENDNOTES

- 1 Inter-Agency Group on Children on the Move, “Why Children Matter: Background Paper for the UN High Level Dialogue on Migration and Development 2013,” April 2013.
- 2 United Nations (UN) General Assembly, Convention on the Rights of the Child (henceforth CRC), 1577 UNTS 3, November 20, 1989, Article 1.
- 3 Inter-Agency Group on Children on the Move, “Why Children Matter,” 2.
- 4 Jorge Bustamante, Report of the UN Special Rapporteur on the Human Rights of Migrants, A/64/213 (August 3, 2009), para. 28.
- 5 See, for example, Shahin Yaqub, “Independent Child Migrants in Developing Countries: Unexplored Links in Migration and Development,” Innocenti Working Paper No. 2009-01 (Florence: UNICEF Innocenti Research Centre, January 2009); Hans Van de Glind and Anne Kou, “Migrant Children in Child Labour: A Vulnerable Group in Need of Attention,” in *Children on the Move* (Geneva: International Organization for Migration [IOM], 2013), 27–44.
- 6 Daniela Reale, *Away from Home Protecting and Supporting Children on the Move* (London: Save the Children UK, 2008), vi.
- 7 Jacqueline Bhabha, “Independent Children, Inconsistent Adults: International Child Migration and the Legal Framework,” Innocenti Discussion Paper No. 2008-02 (Florence: UNICEF Innocenti Research Centre, May 2008), 2.
- 8 Two UN Human Rights Council (HRC) resolutions adopted in 2014 and 2015 on the protection of the family take this traditional approach, describing the family as “the natural and fundamental group unit of society.” UN Human Rights Council, Protection of the Family, A/HRC/26/L.20/Rev.1, June 25, 2014; UN Human Rights Council, Protection of the Family: Contribution of the Family to the Realization of the Right to an Adequate Standard of Living for Its Members, Particularly through Its Role in Poverty Eradication and Achieving Sustainable Development, A/HRC/29/L.25, January 7, 2015. See also Shani King, “US Immigration Law and the Traditional Nuclear Conception of Family,” *Columbia Human Rights Law Review* 41 (2010).
- 9 The concept of functional family has been widely discussed in legal scholarship, including a seminal and widely cited note in the *Harvard Law Review*: Harvard Law Review Note, “Looking for a Family Resemblance: The Limits of the Functional Approach to the Legal Definition of Family,” *Harv. L. Rev.* 104 (1991): 1640. See, e.g., Joseph Goldstein, Anna Freund, and Albert J. Solnit, *Beyond the Best Interests of the Child*, vol. 1 (New York: Simon and Schuster, 1984), 12–15; Monique Lee Hawthorne, “Family Unity in Immigration Law: Broadening the Scope of Family,” *Lewis & Clark L. Rev.* 11 (2007): 844. Quotation from Nora V. Demleitner, “How Much Do Western Democracies Value Family and Marriage: Immigration Law’s Conflicted Answers,” *Hofstra Law Review* 32 (2003): 290.
- 10 Bhabha, “Independent Children, Inconsistent Adults,” 1.
- 11 *Ibid.*, i.
- 12 Jacqueline Bhabha, *Child Migration and Human Rights in a Global Age* (Princeton, NJ: Princeton University Press, 2014), 20.
- 13 *Ibid.*, 21.
- 14 European Union (EU), Council Directive 2003/86/EC of 22 September 2003 on the Right to Family Reunification, *Official Journal of the EU* L251 (October 3, 2003), Article 1(d) [EU Family

Reunification Directive].

15 Bhabha, “Independent Children, Inconsistent Adults,” 5.

16 Office of the High Commissioner for Human Rights (OHCHR), “Situation of Migrants in Transit” (Geneva: OHCHR, 2016), para. 12, [http://www.ohchr.org/Documents/Issues/Migration/StudyMigrants/OHCHR\\_2016\\_Report-migrants-transit\\_EN.pdf](http://www.ohchr.org/Documents/Issues/Migration/StudyMigrants/OHCHR_2016_Report-migrants-transit_EN.pdf).

17 Roberto Dominguez and Martín Iñiguez Ramos, “The South/North Axis of Border Management,” in *Externalizing Migration Management: Europe, North America and the Spread of “Remote Control” Practices*, ed. Ruben Zaiotti (London: Routledge, 2016), 228; Roberto Dominguez Villegas and Victoria Rietig, *Migrants Deported from the United States and Mexico to the Northern Triangle: A Statistical and Socioeconomic Profile* (Washington, DC: Migration Policy Institute, September 2015).

18 Bernard Ryan, “Extraterritorial Immigration Control: What Role for Legal Guarantees?,” in *Extraterritorial Immigration Control: Legal Challenges*, ed. Bernard Ryan and Valsamis Mitsilegas (Leiden, Netherlands: Brill, 2010), 4.

19 UN Committee on the Rights of the Child (CRC Committee), “The Rights of All Children in the Context of International Migration,” Background Paper for 2012 Day of Discussion, August 2012, 18; Seth Freed Wessler et al., *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System* (New York: Applied Research Center, 2011).

20 OHCHR, “Situation of Migrants in Transit,” para. 12.

21 UN General Assembly, Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the UN Convention against Transnational Organized Crime, GA Res. 55/25, Annex III, November 15, 2000 [Smuggling Protocol] Article 16.

22 Anne T. Gallagher, *The International Law of Migrant Smuggling* (New York: Cambridge University Press, 2014), 574.

23 Ibid., 570; Anne T. Gallagher, *The International Law of Human Trafficking* (New York: Cambridge University Press, 2010), 323–326.

24 Bhabha, “Independent Children, Inconsistent Adults,” 7.

25 UN General Assembly, Convention against Transnational Organized Crime [Palermo Convention] and Protocol to Prevent, Suppress and Punish Trafficking in Persons, Supplementing the UN Convention against Transnational Organized Crime [Trafficking Protocol], GA Res. 55/25, November 15, 2000; Trafficking Protocol at Annex II, quotation from Article 3 of the Protocol.

26 International Labour Organization (ILO), *Meeting the Challenge: Proven Practices for Human Trafficking Prevention in the Greater Mekong Sub-Region*, Mekong Sub-Regional Project to Combat Trafficking in Women and Children (Bangkok: ILO, 2008), 6.

27 Bhabha, *Child Migration and Human Rights in a Global Age*, 154.

28 Ibid., 151.

29 See UN, Convention against Transnational Organized Crime, 34, para. 2; ILO, “Human Trafficking and Forced Labour Exploitation: Guidance for Legislation and Law Enforcement” (Geneva: ILO, 2005), 8.

30 ILO, “Human Trafficking and Forced Labour Exploitation,” 8.

31 Gallagher, *International Law of Migrant Smuggling*, 585–586.

32 UN, Trafficking Protocol, Article 6(4).

- 33 Ibid., Article 6(3).
- 34 Gallagher, *International Law of Human Trafficking*, 286.
- 35 Council of Europe, Convention on Action Against Trafficking in Human Beings, CETS 197, May 16, 2005, Article 10(4)(a), <http://www.refworld.org/docid/43fded544.html>; Nikos Passas et al., “Legislative Guides for the Implementation of the United Nations Convention Against Transnational Organized Crime and the Protocols Thereto,” 2004, 289, <https://www.ncjrs.gov/app/abstractdb/AbstractDBDetails.aspx?id=209019>.
- 36 Gallagher, *International Law of Migrant Smuggling*, 586; Passas et al., “Legislative Guides for Implementation Against Transnational Organized Crime,” 289.
- 37 Yaqub, “Independent Child Migrants in Developing Countries.”
- 38 In many countries, including the United States and EU member states such as Spain and Italy, trafficked children do face the prospect of removal or deportation, often after period of harsh detention and stressful legal proceedings. See Bhabha, *Child Migration and Human Rights in a Global Age*, 151.
- 39 Bhabha, “Independent Children, Inconsistent Adults,” 1.
- 40 Jacqueline Bhabha, “‘Too Much Disappointing’: The Quest for Protection by Unaccompanied Migrant Children Outside Europe,” in *Migrating Alone: Unaccompanied and Separated Children’s Migration to Europe*, ed. J. Kanics et al. (Paris: UNESCO, 2010), 94.
- 41 Ibid., 93.
- 42 Bhabha, “Independent Children, Inconsistent Adults,” 1.
- 43 UN, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Article 9(1), 9(4).
- 44 Ibid., Article 9(2); UN General Assembly, Convention against Transnational Organized Crime, Article 31(5); Gallagher, *International Law of Human Trafficking*, 416.
- 45 UN, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Article 9(5); Passas et al., “Legislative Guides for Implementation Against Transnational Organized Crime,” 297.
- 46 Demand in the context of trafficking is still poorly understood: it includes employer demand for cheap and exploitable labor, consumer demand for the goods and services provided, exploiters or agents involved in the trafficking process, and the general environment that enables or benefits from trafficking. See Gallagher, *International Law of Human Trafficking*, 440–441.
- 47 Ibid., 414.
- 48 Albert O. Hirschman, *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States* (Cambridge, MA: Harvard University Press, 1970).
- 49 For international and regional instruments, see OHCHR, “Recommended Principles and Guidelines on Human Rights and Human Trafficking,” May 20, 2002, 1, Principle 3 (“[a]nti trafficking measures should not adversely affect the human rights and dignity of persons, in particular the rights of those who have been trafficked, and of migrants, internally displaced persons, refugees and asylum seekers.”); European Union, “Brussels Declaration on Preventing and Combating Trafficking in Human Beings,” November 29, 2002, 9; African Union, “The Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children,” November 23, 2006, 2 (the general principle that measures to prevent and combat trafficking should not adversely affect the rights of victims); Organization of American States (OAS), “Conclusions and Recommendations of the Meeting of National Authorities on Trafficking in Persons,” March 17, 2006, 5 (the provision of assistance to victims should “bear in mind the age and gender to avoid further exploitation and damage”); Gallagher, *International Law of Human Trafficking*, 453–456.

50 Bhabha, *Child Migration and Human Rights in a Global Age*, 149–150.

51 The Inter-American Court provides legal analyses on specific issues with regard to children's rights in the context of migration through Advisory Opinions, including one in 2014 on the rights and guarantees of children in the context of migration and/or in need of international protection. See for example Inter-American Court of Human Rights (IACrHR), *Advisory Opinion, Rights and Guarantees of Children in the Context of Migration And/or in Need of International Protection*, (OC-21/2014); *Advisory Opinion on the Juridical Condition and Human Rights of the Child* (OC-17/2002); *Advisory Opinion on the Juridical Condition and Rights of Undocumented Migrants* (OC-18/2003).

52 CRC Committee, "Rights of All Children in International Migration," 13.

53 The Court helps states identify gaps and necessary measures at the national level to protect child migrants. Specific provisions for children on the move are also set through EU regulations and directives such as the EU Anti-Trafficking Directive, the EU asylum acquis, and the EU Victims' Directive, as well as policy documents such as the "Action Plan on Unaccompanied Minors 2010–2014" and the "European Council Conclusions on unaccompanied minors." See also CRC Committee, "Rights of All Children in International Migration," 12.

54 Karin Fagerholm and Rhea Verheul, "Safety and Fundamental Rights at Stake for Children on the Move" (Amsterdam/Stockholm: European Network of Ombudspersons for Children [ENOC], 2016).

55 See UN General Assembly, Universal Declaration of Human Rights (UDHR), December 10, 1948; UN General Assembly, International Covenant on Economic, Social and Cultural Rights (ICESCR), December 16, 1966; UN General Assembly, International Covenant on Civil and Political Rights (ICCPR), December 16, 1966. Other relevant legislation includes the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), UN Convention on the Elimination of All Forms of Racial Discrimination (CERD), and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

56 UN, ICCPR, Article 13.

57 OHCHR, "The Rights of Non-Citizens" (New York and Geneva: UN, 2006), 5.

58 Global Migration Group, "Human Rights of Adolescents and Youth Migrants Particularly Those in Irregular Situations," in *Migration and Youth: Challenges and Opportunities* (UNICEF, 2014), 5.

59 UN, ICCPR, Article 12(1).

60 UN, UDHR, Article 13.

61 UN, ICCPR, Article 12(3).

62 Elspeth Guild, "The Right to Leave a Country" (Strasbourg, France: Council of Europe Commissioner for Human Rights, October 2013); Jacqueline Bhabha and Vasileia Digidiki, "The Mean Bargain: The EU/Turkey Refugee and Migrant Deal," FXB Center for Health and Human Rights at Harvard University website, April 18, 2016, <http://fxb.harvard.edu/the-mean-bargain-the-euturkey-refugee-and-migrant-deal/>.

63 CRC; UN General Assembly, Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, A/RES/54/263, March 16, 2001 [Protocol on Sale of Children]; UN General Assembly, Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, A/RES/54/263, May 25, 2000 [Child Soldiers Protocol].

64 CRC Committee, *General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside Their Country of Origin*, CRC/GC/2005/6, September 1, 2005.

- 65 CRC Committee, *General Comment No.6 (Unaccompanied Children)*, para. 12.
- 66 *Ibid.*, para. 18.
- 67 CRC, Article 3(1).
- 68 CRC Committee, *General Comment No.6 (Unaccompanied Children)*, para. 20.
- 69 Patrícia Jerónimo and Nadine Finch, *Judicial Implementation of Article 3 of the Convention on the Rights of the Child in Europe: The Case of Migrant Children Including Unaccompanied Children*, UNICEF and OHCHR, Regional Office for Europe, 2012, 12.
- 70 Parents (or, as the case may be, members of the extended family or community or legal guardians), have primary decision-making responsibility on behalf of their children (Articles 5 and 18(1)), but, if they fail to make the child's best interests a basic concern the state may intervene to protect those interests (see Article 9(1), for example). See Gallagher, *International Law of Migrant Smuggling*, 571.
- 71 CRC Committee, *General Comment No.6 (Unaccompanied Children)*, para. 19–22. This principle has been incorporated into many other international and regional human rights instruments. See, for example, UN, Protocol on Sale of Children, Article 8(3); Organization of African Unity (OAU), African Charter on the Rights and Welfare of the Child CAB/LEG/24.9/49, July 11, 1990, Article 4 [the African Children's Charter]; UN General Assembly, CEDAW, December 18, 1979, Article 5(b).
- 72 UN High Commissioner for Refugees (UNHCR), "Guidelines on Determining the Best Interests of the Child" (Geneva: UNHCR, May 2008), 5; Becky Wolozin, "Doing What's Best: Determining Best Interests for Children Impacted by Immigration Proceedings," *Drake L. Rev.* 64 (2016): 141.
- 73 The United States (alone out of 197 member states of the UN) has not ratified the Convention on the Rights of the Child, but has ratified both the Child Soldiers Protocol and the Protocol on Sale of Children. Information about ratification from the website of the OHCHR, Status of Ratification Interactive Dashboard, updated June 20, 2016, <http://indicators.ohchr.org/>.
- 74 Amanda Levinson, "Unaccompanied Immigrant Children: A Growing Phenomenon with Few Easy Solutions," Migrationpolicy.org, January 24, 2011, <http://www.migrationpolicy.org/article/unaccompanied-immigrant-children-growing-phenomenon-few-easy-solutions>.
- 75 CRC, Article 12.
- 76 CRC Committee, *General Comment No. 14 on the right of the child to have his or her best interest taken as a primary consideration (art. 3, para. 1)*, CRC/C/GC/14, May 29, 2013.
- 77 Bhabha, "Independent Children, Inconsistent Adults," 2.
- 78 CRC, Article 7.
- 79 *Ibid.*, Article 19.
- 80 *Ibid.*, Article 37(b).
- 81 *Ibid.*; CRC Committee, *General Comment No.6 (Unaccompanied Children)*, para. 61; Gallagher, *International Law of Migrant Smuggling*, 200; UN General Assembly, "Rules for the Protection of Juveniles Deprived of Their Liberty," A/RES/45/113, December 14, 1990, para. 2.
- 82 CRC, Article 37(c); UN, "Rules for Juveniles Deprived of Their Liberty," para. 29; CRC Committee, *General Comment No.6 (Unaccompanied Children)*, para. 63.
- 83 UN, Protocol on Sale of Children, Article 8; UNICEF (United Nations Children's Fund), "Guidelines for the Protection of Child Victims of Trafficking," September 2006, Guidelines 4.2, 7.1, 9.2.1, 10.1, 10.2.

- 84 CRC, Article 37(d).
- 85 Ibid., Article 39; UN, Protocol on Sale of Children, Article 8; UNICEF, “Guidelines for Protection of Child Victims,” Guidelines 7.1, 7.2.
- 86 CRC Committee, *General Comment No. 10: Children’s Rights in Juvenile Justice*, CRC/C/GC/10, April 25, 2007.
- 87 CRC, Articles 8, 9, 10, 20.
- 88 Bhabha, “Independent Children, Inconsistent Adults,” 5.
- 89 CRC Committee, *General Comment No.6 (Unaccompanied Children)*, para. 84.
- 90 Ibid., para. 27; see also Gallagher, *International Law of Migrant Smuggling*, 730–731.
- 91 UN General Assembly, Convention for the Protection of the Rights of Migrant Workers and Their Families, A/RES/45/158, December 18, 1990, Article 64.
- 92 Bhabha, “Independent Children, Inconsistent Adults,” 6.
- 93 UN, Rights of Migrant Workers Convention, Article 17.
- 94 Ibid., Article 18.
- 95 ILO, Convention on Forced Labor, Convention No. 29, 1930.
- 96 ILO, Abolition of Forced Labor Convention, Convention No. 105, 1957.
- 97 ILO, Minimum Age Convention, Convention No. 138, 1973.
- 98 ILO, Convention on the Worst Forms of Child Labor, Convention No. 182, 1999, Article 3.
- 99 Hans Van de Glind, “Migration and Child Labour: Exploring Child Migrant Vulnerabilities and Those of Children Left-Behind” (Geneva: ILO-IPEC, 2010), 12.
- 100 Save the Children UK, “Report of Regional Seminar on Children Who Cross Borders in Southern Africa” (Johannesburg: Save the Children, 2009).
- 101 Van de Glind, “Migration and Child Labour.”
- 102 Van de Glind and Kou, “Migrant Children in Child Labour,” 37.
- 103 Bhabha, “Independent Children, Inconsistent Adults,” 6.
- 104 International studies have estimated that girls make up roughly 90 percent of children involved in domestic work. See ILO, *Good Practices and Lessons Learned on Child and Adolescent Domestic Labour in Central America and the Dominican Republic: A gender perspective* (San Jose, Costa Rica: ILO, 2005), 10.
- 105 Nelien Haspels and Busakorn Suriyasarn, *Promotion of Gender Equality In Action against Child Labour and Trafficking: A Practical Guide for Organizations* (Bangkok: ILO, 2003), 15; Human Rights Watch, *Swept Under the Rug: Abuses against Domestic Workers Around the World* (New York: HRW, 2006), <https://www.hrw.org/report/2006/07/27/swept-under-rug/abuses-against-domestic-workers-around-world>.
- 106 UN General Assembly, Convention Relating to the Status of Refugees, Resolution 429(V), July 28, 1951, <http://www.unhcr.org/refworld/docid/3b00f08a27.html>, later amended by the 1967 Protocol.
- 107 Bhabha, *Child Migration and Human Rights in a Global Age*, 206.
- 108 In 2014, children under the age of 18 represented an average of 51 percent of the total refugee population, according to the UNHCR, *UNHCR Statistical Yearbook 2014* (Geneva: UNHCR, 2015), 11; see

also Bhabha, *Child Migration and Human Rights in a Global Age*, 209.

109 Elizabeth Holzer, “What Happens to Law in a Refugee Camp?,” *Law & Society Review* 47, no. 4 (2013): 837–72; Maja Janmyr, *Protecting Civilians in Refugee Camps: Unable and Unwilling States, UNHCR and International Responsibility*, International Refugee Law Series, v. 1 (Leiden and Boston: Martinus Nijhoff Publishers, 2014).

110 Living conditions vary by situation, however camp-based refugees often face high risks to their health and well-being, inadequate security, and a lack of education and employment opportunities. See Bart De Bruijn, “Human Development Research Paper 2009/25: The Living Conditions and Wellbeing of Refugees” (UNDP, 2009), 21–22, 25, 38; Bhabha, *Child Migration and Human Rights in a Global Age*, 329.

111 CRC Committee, “Concluding Observations on the Second Periodic Report of the Czech Republic,” CRC/C/15/Add.201, March 18, 2003, para. 57; CRC Committee, “Concluding Observations on the Second Periodic Report of the Netherlands,” CRC/C/15/Add.227, February 26, 2004, para. 30–31 and 53–54; OHCHR, “The Rights of Non-Citizens,” 34.

112 CRC Committee, *General Comment No.6 (Unaccompanied Children)*, para. 21.

113 CRC Committee, “On the Second Periodic Report of the Czech Republic,” 2003, para. 56.

114 CRC Committee, “Concluding Observations on the Initial Report of Israel,” CRC/C/15/Add.195, October 4, 2002, para. 26.

115 Jacqueline Bhabha and Susan Schmidt, “From Kafka to Wilberforce: Is the U.S. Government’s Approach to Child Migrants Improving?,” in *Les Mineurs Isoles en Europe et en Amerique du Nord Trajectoires Migratoires et Accompagnement Social.*, ed. C. Bolzman, E. Jovelin, and C. Montgomery (Paris: L’Harmattan, 2010), 7.

116 Bhabha, *Child Migration and Human Rights in a Global Age*, 221–222.

117 Inter-American Commission on Human Rights (IACHR), Human Rights Situation of Refugee and Migrant Families and Unaccompanied Children, OAS/Ser.L/V/II. 155 (IACHR, July 2015), 96–97.

118 Bhabha, *Child Migration and Human Rights in a Global Age*, 229–233.

119 *Ibid.*, 152.

120 See Lindsay M. Harris and Morgan M. Weibel, “Matter of S-E-G-: The Final Nail in the Coffin for Gang-Related Asylum Claims,” *Berkeley La Raza LJ* 20 (2010): 5.

121 Jeffrey D. Corsetti, “Marked for Death: The Maras of Central America and Those Who Flee Their Wrath,” *Georgetown Immigration Law Journal* 20, no. 3 (2006): 407–35.

122 *Ibid.*, 435.

123 Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, Cartagena, Colombia., November 22, 1984; Organization of African Unity (OAU), Convention Governing the Specific Aspects of Refugee Problems in Africa, 1001 U.N.T.S. 45, September 10, 1969 [OAU Convention].

124 European Council of Refugees and Exiles, “Position on Temporary Protection in the Context of the Need for a Supplementary Refugee Definition,” March 1997, <http://www.ecre.org/topics/areas-of-work/protection-in-europe/141.html>; Joan Fitzpatrick, “Temporary Protection of Refugees: Elements of a Formalized Regime,” *American Journal of International Law*, 94 (2000): 298.

125 Christopher Hein and Maria de Donato, “Exploring Avenues for Protected Entry in Europe” (Abbiategrosso, Italy: European Commission, March 2012).

- 126 UN High Commissioner for Refugees (UNHCR), “Guiding Principles on Internal Displacement” ADM 1.1, PRL 12.1, PR00/98/109, July 22, 1998, Article 4(1).
- 127 Ibid., Articles 11(b), 13(1), 17(3), 23(2) and 23(4).
- 128 Alexander Betts, *Survival Migration: Failed Governance and the Crisis of Displacement* (Ithaca, NY: Cornell University Press, 2013), 182–183.
- 129 Alexander Betts, “Towards a ‘Soft Law’ Framework for the Protection of Vulnerable Migrants,” *New Issues in Refugee Research*, Research Paper 162 (Geneva: UNHCR, August 2008), <http://www.unhcr.org/48b7f9642.pdf>.
- 130 African Union, Convention for the Protection and Assistance of Internally Displaced Persons in Africa [the Kampala Convention], October 22, 2009.
- 131 Khalid Koser, “Internally Displaced Persons 1998–2013,” *Forced Migration Review* (December 2013), <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/25th-anniversary/koser.pdf>.
- 132 CRC, Articles 7 and 8.
- 133 UNHCR and Plan, *Under the Radar and Under Protected: The urgent need to address stateless children’s rights* (Geneva: UNHCR, June 2012), [www.unhcr.org/509a6bb79.pdf](http://www.unhcr.org/509a6bb79.pdf).
- 134 Jacqueline Bhabha, “From Citizen to Migrant: The Scope of Child Statelessness in the Twenty-First Century,” in *Children without a State: A Global Human Rights Challenge*, ed. Jacqueline Bhabha (Cambridge, MA: MIT Press, 2011), 2.
- 135 UN General Assembly, Convention on the Reduction of Statelessness, August 30, 1961.
- 136 Despite its 50-year history, the convention has only been ratified by 65 states and is arguably outdated given that it does not address birth registration or migration. See Laura van Waas, *Nationality Matters: Statelessness under International Law* (Antwerp, Belgium: Intersentia, 2008), 152.
- 137 Bhabha, “From Citizen to Migrant,” 1–2.
- 138 Jacqueline Bhabha, “Arendt’s Children: Do Today’s Migrant Children Have a Right to Have Rights?” *Human Rights Quarterly* 31(2009), 412.
- 139 UN General Assembly, “Transforming our world: the 2030 Agenda for Sustainable Development,” Resolution Adopted September 25, 2015, A/70/L1, [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/70/1&Lang=E](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E); the actual goals start at page 14.
- 140 CARICOM Member States include Antigua and Barbuda, Belize, the Commonwealth of The Bahamas, the Commonwealth of Dominica, Guyana, Jamaica, St. Kitts and Nevis, St. Lucia and Trinidad and Tobago. See IOM, CARICOM, and UNICEF, “A Framework and Recommendations for Action on Children Affected by Migration in the Caribbean” (Geneva: IOM, 2010).
- 141 See European Asylum Support Office, “EASO Training Curriculum” (Luxembourg: EASO, March 2014).

## BIBLIOGRAPHY

- African Union. Convention for the Protection and Assistance of Internally Displaced Persons in Africa, October 22, 2009 [the Kampala Convention].
- . “The Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children,” November 23, 2006.
- Betts, Alexander. *Survival Migration: Failed Governance and the Crisis of Displacement*. Ithaca, NY: Cornell University Press, 2013.
- . “Towards a ‘Soft Law’ Framework for the Protection of Vulnerable Migrants.” *New Issues in Refugee Research*. Research Paper 162. Geneva: UNHCR, August 2008. <http://www.unhcr.org/48b7f9642.pdf>.
- Bhabha, Jacqueline. “Arendt’s Children: Do today’s migrant children have a right to have rights?” *Human Rights Quarterly* 31 (2009): 410-451.
- . *Child Migration and Human Rights in a Global Age*. Princeton, NJ: Princeton University Press, 2014.
- . “From Citizen to Migrant: The Scope of Child Statelessness in the Twenty-First Century.” In *Children without a State: A Global Human Rights Challenge*, ed. Jacqueline Bhabha. Cambridge, MA: MIT Press, 2011.
- . “Independent Children, Inconsistent Adults: International Child Migration and the Legal Framework.” *Innocenti Discussion Papers*, No. 2008-02. Florence: UNICEF Innocenti Research Centre, May 2008.
- . “‘Too Much Disappointing’: The Quest for Protection by Unaccompanied Migrant Children Outside Europe.” In *Migrating Alone: Unaccompanied and Separated Children’s Migration to Europe*, ed. J. Kanics et al. Paris: UNESCO, 2010.
- Bhabha, Jacqueline, and Vasileia Digidiki. “The Mean Bargain: The EU/Turkey Refugee and Migrant Deal.” FXB Center for Health and Human Rights at Harvard University website, April 18, 2016. <http://fxb.harvard.edu/the-mean-bargain-the-euturkey-refugee-and-migrant-deal/>.
- Bhabha, Jacqueline, and Susan Schmidt. “From Kafka to Wilberforce: Is the U.S. Government’s Approach to Child Migrants Improving?” In *Les Mineurs Isoles en Europe et en Amerique du Nord Trajectoires Migratoires et Accompagnement Social*, ed. C. Bolzman, E. Jovelin, and C. Montgomery. Paris: L’Harmattan, 2010.
- Bustamante, Jorge. Report of the UN Special Rapporteur on the Human Rights of Migrants, A/64/213, August 3, 2009.
- Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama. Cartagena, Colombia: November 22, 1984.
- Committee on the Rights of the Child (CRC Committee). “The Rights of All Children in the Context of International Migration.” Background Paper for 2012 Day of Discussion, August 2012.
- . “Concluding Observations on the Initial Report of Israel, CRC/C/15/Add.195,” October 4, 2002.
- . “Concluding Observations on the Second Periodic Report of the Czech Republic, CRC/C/15/Add.201,” March 18, 2003.
- . “Concluding Observations on the Second Periodic Report of the Netherlands, CRC/C/15/Add.227,” February 26, 2004.
- . *General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside Their Country of Origin*, CRC/GC/2005/6, September 1, 2005.
- . *General Comment No. 10: Children’s Rights in Juvenile Justice*, CRC/C/GC/10, April 25, 2007.
- . *General Comment No. 14 on the right of the child to have his or her best interest taken as a primary consideration* (art. 3, para. 1), CRC/C/GC/14, May 29, 2013.
- Corsetti, Jeffrey D. “Marked for Death: The Maras of Central America and Those Who Flee Their Wrath.” *Georgetown Immigration Law Journal* 20, no. 3 (2006): 407–35.

- CRC, see United Nations (UN) General Assembly, Convention on the Rights of the Child.
- CRC Committee, see Committee on the Rights of the Child.
- Council of Europe. Convention on Action Against Trafficking in Human Beings, CETS 197, May 16, 2005. <http://www.refworld.org/docid/43fded544.html>.
- De Bruijn, Bart. "Human Development Research Paper 2009/25: The Living Conditions and Wellbeing of Refugees." UNDP, 2009.
- Demleitner, Nora V. "How Much Do Western Democracies Value Family and Marriage: Immigration Law's Conflicted Answers." *Hofstra Law Review* 32 (2003): 273–311.
- Dominguez, Roberto, and Martín Iñiguez Ramos. "The South/North Axis of Border Management." In *Externalizing Migration Management: Europe, North America and the Spread of "Remote Control" Practices*, ed. Ruben Zaiotti. London: Routledge, 2016.
- Dominguez Villegas, Roberto, and Victoria Rietig. *Migrants Deported from the United States and Mexico to the Northern Triangle: A Statistical and Socioeconomic Profile*. Washington, DC: Migration Policy Institute, September 2015.
- European Asylum Support Office. "EASO Training Curriculum." Luxembourg: EASO, March 2014.
- European Council of Refugees and Exiles. "Position on Temporary Protection in the Context of the Need for a Supplementary Refugee Definition," March 1997. <http://www.ecre.org/topics/areas-of-work/protection-in-europe/141.html>.
- European Union (EU). "Brussels Declaration on Preventing and Combating Trafficking in Human Beings," November 29, 2002.
- . Council Directive 2003/86/EC of 22 September 2003 on the Right to Family Reunification. *Official Journal of the EU* L251, October 3, 2003. <http://www.refworld.org/docid/3f8bb4a10.html>.
- Fagerholm, Karin, and Rhea Verheul. "Safety and Fundamental Rights at Stake for Children on the Move." Amsterdam/Stockholm: European Network of Ombudspersons for Children (ENOC), 2016. <http://enoc.eu/wp-content/uploads/2016/01/ENOC-Task-Force-Children-on-the-Move-1st-report-25Jan2016.pdf>.
- Fitzpatrick, Joan. "Temporary Protection of Refugees: Elements of a Formalized Regime." *American Journal of International Law*, 2000, 279–306.
- Gallagher, Anne T. *The International Law of Human Trafficking*. New York: Cambridge University Press, 2010.
- . *The International Law of Migrant Smuggling*. New York: Cambridge University Press, 2014.
- Global Migration Group. "Human Rights of Adolescents and Youth Migrants Particularly Those in Irregular Situations." In *Migration and Youth: Challenges and Opportunities*. UNICEF, 2014. <http://www.globalmigrationgroup.org/migrationandyouth>.
- Goldstein, Joseph, Anna Freund, and Albert J. Solnit. *Beyond the Best Interests of the Child*, Vol. 1. New York: Simon and Schuster, 1984.
- Guild, Elspeth. "The Right to Leave a Country." Strasbourg, France: Council of Europe Commissioner for Human Rights, October 2013.
- Harris, Lindsay M., and Morgan M. Weibel. "Matter of S-E-G-: The Final Nail in the Coffin for Gang-Related Asylum Claims." *Berkeley La Raza LJ* 20 (2010): 5.
- Harvard Law Review Note, "Looking for a Family Resemblance: The Limits of the Functional Approach to the Legal Definition of Family." *Harv. L. Rev.* 104 (1991): 1640–1659.
- Haspels, Neliën, and Busakorn Suriyasarn. *Promotion of Gender Equality In Action against Child Labour and Trafficking: A Practical Guide for Organizations*. Bangkok: ILO, 2003.
- Hawthorne, Monique Lee. "Family Unity in Immigration Law: Broadening the Scope of Family." *Lewis & Clark L. Rev.* 11 (2007): 809.
- Hein, Christopher, and Maria de Donato. "Exploring Avenues for Protected Entry in Europe." Abbiategrosso, Italy: European Commission, March 2012.
- Hirschman, Albert O. *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States*. Cambridge, MA: Harvard University Press, 1970.
- Holzer, Elizabeth. "What Happens to Law in a Refugee Camp?" *Law & Society Review* 47, no. 4 (2013):

837–72.

- Human Rights Watch. *Swept Under the Rug: Abuses against Domestic Workers Around the World*. New York: HRW, 2006. <https://www.hrw.org/report/2006/07/27/swept-under-rug/abuses-against-domestic-workers-around-world>.
- ILO, see International Labour Organization.
- Inter-Agency Group on Children on the Move. “Why Children Matter: Background Paper for the UN High Level Dialogue on Migration and Development 2013,” April 2013.
- Inter-American Commission on Human Rights (IACHR). *Human Rights Situation of Refugee and Migrant Families and Unaccompanied Children in the United States of America*, OAS/Ser.L/V/II. 155. IACHR, July 2015.
- Inter-American Court of Human Rights (IACrHR). *Advisory Opinion on the Juridical Condition and Human Rights of the Child* (OC-17/2002)
- . *Advisory Opinion on the Juridical Condition and Rights of Undocumented Migrants* (OC-18/2003).
- . *Advisory Opinion, Rights and Guarantees of Children in the Context of Migration And/or in Need of International Protection*, OC-21/2014, August 19, 2014.
- International Labour Organization (ILO). Abolition of Forced Labor Convention, Convention No. 105, 1957.
- . Convention on Forced Labor, Convention No. 29, 1930.
- . Convention on the Worst Forms of Child Labor, Convention No. 182, 1999.
- . Minimum Age Convention, Convention No. 138, 1973.
- . *Good Practices and Lessons Learned on Child and Adolescent Domestic Labour in Central America and the Dominican Republic: A gender perspective*. San Jose, Costa Rica: ILO, 2005.
- . “Human Trafficking and Forced Labour Exploitation: Guidance for Legislation and Law Enforcement.” Geneva: ILO, 2005.
- . *Meeting the Challenge: Proven Practices for Human Trafficking Prevention in the Greater Mekong Sub-Region*. Mekong Sub-Regional Project to Combat Trafficking in Women and Children. Bangkok: ILO, 2008.
- International Organization for Migration (IOM), CARICOM, and UNICEF. “A Framework and Recommendations for Action on Children Affected by Migration in the Caribbean.” Geneva: IOM, 2010.
- Janmyr, Maja. *Protecting Civilians in Refugee Camps: Unable and Unwilling States, UNHCR and International Responsibility*. International Refugee Law Series ; v. 1. Leiden, Netherlands : Martinus Nijhoff Publishers, 2014.
- Jerónimo, Patricia, and Nadine Finch. *Judicial Implementation of Article 3 of the Convention on the Rights of the Child in Europe: The Case of Migrant Children Including Unaccompanied Children*. UNICEF and OHCHR, Regional Office for Europe, 2012. <http://repositorium.sdum.uminho.pt/handle/1822/21528>.
- King, Shani. “US Immigration Law and the Traditional Nuclear Conception of Family.” *Columbia Human Rights Law Review* 41 (2010).
- Koser, Khalid. “Internally Displaced Persons 1998-2013.” *Forced Migration Review* (December 2013). <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/25th-anniversary/koser.pdf>.
- Levinson, Amanda. “Unaccompanied Immigrant Children: A Growing Phenomenon with Few Easy Solutions.” *Migrationpolicy.org*, January 24, 2011. <http://www.migrationpolicy.org/article/unaccompanied-immigrant-children-growing-phenomenon-few-easy-solutions>.
- Office of the High Commissioner for Human Rights (OHCHR). “The Rights of Non-Citizens.” New York and Geneva: United Nations, 2006. <http://www.ohchr.org/documents/publications/noncitizensen.pdf>.
- . “Situation of Migrants in Transit.” Geneva: OHCHR, 2016. [http://www.ohchr.org/Documents/Issues/Migration/StudyMigrants/OHCHR\\_2016\\_Report-migrants-transit\\_EN.pdf](http://www.ohchr.org/Documents/Issues/Migration/StudyMigrants/OHCHR_2016_Report-migrants-transit_EN.pdf).
- . Status of Ratification Interactive Dashboard. Updated June 20, 2016. <http://indicators.ohchr.org/>.
- Organization of African Unity (OAU). *Convention Governing the Specific Aspects of Refugee Problems*

- in Africa, 1001 U.N.T.S. 45, September 10, 1969 [OAU Convention]. <http://www.refworld.org/docid/3ae6b36018.html>.
- Passas, Nikos, Freddy Gazan, Christopher Ram, and Karen Kastner. "Legislative Guides for the Implementation of the United Nations Convention Against Transnational Organized Crime and the Protocols Thereto," 2004. <https://www.ncjrs.gov/app/abstractdb/AbstractDBDetails.aspx?id=209019>.
- Reale, Daniela. *Away from Home Protecting and Supporting Children on the Move*. London: Save the Children UK, 2008.
- Ryan, Bernard. "Extraterritorial Immigration Control: What Role for Legal Guarantees?" In *Extraterritorial Immigration Control: Legal Challenges*, ed. Bernard Ryan and Valsamis Mitsilegas, 4. Leiden, Netherlands: Brill, 2010.
- Save the Children UK. "Report of Regional Seminar on Children Who Cross Borders in Southern Africa." Johannesburg: Save the Children, 2009.
- UNICEF (United Nations Children's Fund). "Guidelines for the Protection of Child Victims of Trafficking," September 2006.
- United Nations (UN) General Assembly. Convention for the Protection of the Rights of Migrant Workers and Their Families, A/RES/45/158, December 18, 1990.
- . Convention on the Reduction of Statelessness, August 30, 1961.
- . Convention on the Rights of the Child, 1577 UNTS 3, November 20, 1989.
- . Convention Relating to the Status of Refugees. Resolution 429(V), July 28, 1951. <http://www.unhcr.org/refworld/docid/3b00f08a27.html>.
- . Convention Relating to the Status of Stateless Persons, September 28, 1954.
- . Convention against Transnational Organized Crime. GA Res. 55/25, November 15, 2000 [Palermo Convention].
- . International Covenant on Civil and Political Rights, December 16, 1966.
- . International Covenant on Economic, Social and Cultural Rights, December 16, 1966.
- . Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, A/RES/54/263, May 25, 2000 [Child Soldiers Protocol].
- . Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, A/RES/54/263, March 16, 2001 [Protocol on Sale of Children].
- . Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime. GA Res. 55/25, Annex III, November 15, 2000 [Smuggling Protocol].
- . Protocol to Prevent, Suppress and Punish Trafficking in Persons, Supplementing the United Nations Convention against Transnational Organized Crime. GA Res. 55/25, Annex II, November 15, 2000 [Trafficking Protocol].
- . Rules for the Protection of Juveniles Deprived of Their Liberty. A/RES/45/113, December 14, 1990.
- . "Transforming our world: the 2030 Agenda for Sustainable Development." A/70/L1, Adopted September 25, 2015. [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/70/1&Lang=E](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E).
- . Universal Declaration of Human Rights, December 10, 1948.
- UN Committee on the Rights of the Child, see Committee on the Rights of the Child.
- UN High Commissioner for Refugees (UNHCR). "UNHCR Guidelines on Determining the Best Interests of the Child." Geneva: UNHCR, May 2008.
- . "Guiding Principles on Internal Displacement." ADM 1.1, PRL 12.1, PR00/98/109, July 22, 1998.
- . *UNHCR Statistical Yearbook 2014*. Geneva: UNHCR, 2015.
- UNHCR and Plan. *Under The Radar And Under Protected: The urgent need to address stateless children's rights*. Geneva: UNHCR, June 2012. [www.unhcr.org/509a6bb79.pdf](http://www.unhcr.org/509a6bb79.pdf).
- UN Human Rights Council. "Protection of the Family, A/HRC/26/L.20/Rev.1," June 25, 2014.
- . "Protection of the Family: Contribution of the Family to the Realization of the Right to an Adequate

- Standard of Living for Its Members, Particularly through Its Role in Poverty Eradication and Achieving Sustainable Development, A/HRC/29/L.25,” January 7, 2015.
- Van de Glind, Hans. “Migration and Child Labour: Exploring Child Migrant Vulnerabilities and Those of Children Left-Behind.” Geneva: ILO-IPEC, 2010.
- Van de Glind, Hans, and Anne Kou. “Migrant Children in Child Labour: A Vulnerable Group in Need of Attention.” In *Children on the Move*. Geneva: International Organization for Migration (IOM), 2013.
- van Waas, Laura. *Nationality Matters: Statelessness under International Law*. Antwerp, Belgium: Intersentia, 2008.
- Wessler, Seth Freed, et al. *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System*. New York: Applied Research Center, 2011.
- Wolozin, Becky. “Doing What’s Best: Determining Best Interests for Children Impacted by Immigration Proceedings.” *Drake L. Rev.* 64 (2016): 141.
- Yaqub, Shahin. “Independent Child Migrants in Developing Countries: Unexplored Links in Migration and Development.” Innocenti Working Paper No. 2009-01. Florence: UNICEF Innocenti Research Centre, January 2009.

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