

INTERNATIONAL LAW ASSOCIATION

Final Report: Committee on Enforcing the Rights of Children in Migration

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I. INTRODUCTION

1. Human beings, including children, have always been on the move. We move to work, create and maintain families, explore, improve, escape, survive and so much more. We are driven by wars, natural disasters, violence, opportunities, education, safety, freedom, and love.
2. Today it is estimated that approximately 50 million children (meaning all those under age 18¹) globally are on the move at any one time.² Some are with families, others alone, while others are moving with informal groups or even traffickers. Counting those children who have not moved but whose parents have, the total number of children in the context of migration is even higher.

This report examines the challenges faced by children in migration with a focus on the enforcement of their rights. Despite children's unique status and the robust legal framework the world community has committed to in order to recognize the inherent rights of children, migrant children are often dehumanized and denied their status as human beings who are full and independent rights holders.

4. Drawing on examples from multiple regions and legal systems, the report documents persistent patterns of harm—including detention, pushbacks, family separation, denial of education and healthcare, and failures of protection—alongside emerging practices that demonstrate the possibility of more humane, lawful, and child-centred approaches. While migration contexts differ, the structural dynamics that place children at risk are strikingly similar: migration control imperatives routinely override children's best interests, procedural safeguards are weak or inaccessible, and enforcement mechanisms fail to translate legal commitments into meaningful protection.
5. The report is grounded in international law but oriented towards implementation. It brings together legal analysis, empirical evidence, and enforcement strategies to assess not only what states are obligated to do, but also to provide concrete guidance on how children's rights can be more effectively realized in practice.
6. One clear need is for greater cross-border cooperation among child protection authorities. The effective implementation of measures based on the best interests of the child and that otherwise adequately and promptly guarantee the rights of children in migration will frequently require such collaboration.
7. This report identifies promising legislation, policies, and practices that could be adopted elsewhere after suitable adaptation to each local context.
8. This report also highlights gaps in protection that reflect a tendency to downplay children's rights generally and too often to treat certain rights—economic, social, and cultural rights in particular—as optional or even risible. Adjudicators often disregard child-specific bases for international protection and in many countries do not interview children at all if they are accompanied by parents or other caregivers. The rights of children with disabilities are too often ignored. Rest, leisure, play, and recreational activities, all crucial to children's health development, are readily dismissed as luxuries. Similarly, children's cultural rights may not even register with authorities.
9. Migration can be deeply unpopular, making it difficult to positive change in laws and policies. In addition to traditional litigation and the potential offered by the U.N. Committee on the Rights of the Child's individual communications procedure and other supranational forums, advocates can also employ creative means of advocacy, including the arts and humanities, to counter harmful stereotypes and xenophobic messages and mobilise support for positive change.

¹ Convention on the Rights of the Child (CRC) art. 1, Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990).

² INT'L DATA ALLIANCE FOR CHILDREN ON THE MOVE (IDAC), 10 FACTS ABOUT CHILDREN ON THE MOVE: 2025 UPDATE (2025), <https://data.unicef.org/wp-content/uploads/2025/12/Key-Facts-about-Children-on-the-Move-2025-7.pdf>.

10. At its core, the report advances a simple but urgent proposition: children do not lose their rights at borders, and states do not shed their responsibilities through migration governance. Ensuring dignity, safety, and development of children on the move is not aspirational—it is a legal and moral imperative that must be enforced.

II. BACKGROUND

A. Protection of Children's Rights at All Stages of Migration

11. With the aim of effectively fulfilling the duty and need to protect children's rights in the context of migration, it is critical, on the one hand, to consider the specific aspects and challenges at each stage of the migration process and, on the other hand, to realize that there are multiple categories of children whose lives and rights are affected by both human mobility itself and how it is addressed.
12. All phases of migration present challenges to the effective enjoyment and protection of children's rights. These difficulties increase according to the vulnerable situation of those who need or wish to migrate, or who are in transit countries or zones, or are migrants in destination countries, or have returned — voluntarily or involuntarily—to their countries. Factors such as ethnic and racial origin, skin colour, socioeconomic status, nationality, religion, age, among others linked to structural forms of discrimination are the determinants of such circumstances of vulnerability, which manifests itself in rights' constraints. Irregular migration, which is also a consequence of this inequality, further exacerbates that vulnerable situation, generating further arbitrary or discriminatory practices. In the case of children, an intersectional approach reveals the need for appropriate mechanisms for protecting their rights at all stages of migration.
13. The main drivers of migration are intrinsically linked to human rights violations in countries of origin, including those impacting children directly or indirectly. Likewise, the possibilities open to children and their families to leave their countries safely and regularly are determined in large part by the degree to which rights are or are not fulfilled.
14. The greater the vulnerability at the beginning of the migration process, the greater the challenges at border crossings and throughout the entire migration route, which can extend over days, months, or years. Children face numerous risks, including arbitrary detention and deportation, pushbacks, institutional and gender-based violence, human trafficking, and other crimes. Biased policies, those lacking a child-centred approach, or those focused on a security perspective, exacerbate, or even contribute to creating, these perils. The existence of effective policies and mechanisms for preventing these dangers and abuses, as well as for protecting rights, from a child rights perspective, is vital.
15. In destination countries, reception, accommodation, protection, and inclusion of children and their families, including those who are asylum seekers and refugees, is essential and, in many places, inadequate. Likewise, it is fundamental that return policies and practices ensure children's rights—and the procedural safeguards to make them effective.
16. In countries of origin, a key challenge lies in reintegration policies, in which their sustainability, rights-based approach, and complementarity with policies addressing the structural factors of migration are basic conditions for their success.
17. Policies should take into account the various categories of children whose lives and rights are affected by migration—and by how it is regulated at each stage. These include children who migrate with one or more family members, or who migrate unaccompanied (without parents or another responsible adult), or separated from their parents although they are with other adults. Children may also remain in their countries of origin after the migration of one or both parents. Children born along migration routes also require special attention, as do children born in destination countries to migrant mothers and/or fathers.

Depending on nationality laws, these latter children may be nationals of those countries, foreign nationals—even if they are not migrants themselves—or stateless.³

B. Domestic and Regional Examples

18. This section (along with the similar sections in Parts III and IV of this report) reviews several contexts in which children are in migration, each of which illustrates one or more significant elements of the migration route. Central to North America is an important migration route. North American and European Union countries, Australia, and Japan are important destination countries. Within Europe, Greece is notable as a country of first arrival, and Germany is significant for the large numbers of people it accepted from Syria in 2015 and from Ukraine after the full-scale Russian invasion in 2022. Finally, the African context is important because there, as elsewhere, most migration is a relatively local phenomenon and because of its progressive regional framework.

1. Children Migrating in North and Central America

19. Between 2021 and 2024 the international migration of children across countries in North and Central America increased notably. More than 300,000 people, including more than 4,500 unaccompanied children, crossed from Colombia to Panama through the Darien Gap during this period. Overall, an estimated 64,700 children accounted for 21% of all international migrants in the region.⁴
20. Mexico, like other countries such as Guatemala, El Salvador, and Honduras, is simultaneously a country of origin, transit, destination, and return for diverse socio-demographic profiles of migrant children. These features produce a contradictory, fragmented landscape of practices that shape the (in)effective protection of migrant children rights.
21. In the context of migration in transit, children, including adolescents under the age of 18, have been a particularly vulnerable group targeted by Mexico’s migration control regime, particularly after the 2014 so-called “crisis of unaccompanied minors” at the U.S. southern border. Between 2015 and 2024, children under age 18 represented 28% of the population apprehended or detained by Mexican immigration authorities, with around 19% of them unaccompanied. Furthermore, intensified migration control measures after 2019 coincided with a sharp increase in apprehended children, going from some 77,600 in 2021 to more than 138,800 in 2024. While the majority of children initially originated from Honduras, Guatemala, and El Salvador, from 2021 to 2024 increasing numbers arrived from Cuba, Haiti, Ecuador, Venezuela, Colombia, and other countries.⁵
22. Since 2021, Mexican authorities have claimed that migrant children were placed in shelters operated by the National System for Integral Family Development; however, reports showed the detention of

³ The U.N. Committee on the Rights of the Child (CRC Comm.) uses the term “children in the context of international migration” to cover all of these categories. U.N. Comm. on Migrant Workers & CRC Comm., Joint General Comment No. 3/22 on the General Principles Regarding the Human Rights of Children in the Context of Int’l Migration, ¶ 9, U.N. Doc. CMW/C/GC/3-CRC/C/GC/22 (Nov. 16, 2017) [hereinafter Joint General Comment No. 3/22].

⁴ *Mexico and Central America: Children on the Move and Other Crises*, UNICEF (Mar. 13, 2025), [https://www.unicef.org/media/168781/file/LACRO-Humanitarian-SitRep-No.2-\(Children-on-the-Move-and-other-Crises---Mexico-and-Central-America\)-Year-End-2024.pdf.pdf](https://www.unicef.org/media/168781/file/LACRO-Humanitarian-SitRep-No.2-(Children-on-the-Move-and-other-Crises---Mexico-and-Central-America)-Year-End-2024.pdf.pdf).

⁵ See Southwest Land Border Encounters, U.S. Customs and Border Protection, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters-by-component>.

children in facilities,⁶ which have been identified as tortuous environments.⁷ These challenges are exacerbated by a persistent shortage of specialised child protection personnel.⁸

23. The broad use of exceptional and other discretionary measures⁹ has also adversely affected the effective protection of migrant children's rights across the region. In 2023, of the more than 113,500 children and adolescents detained in Mexico, 93% were classified as "not subjects of expulsion," yet only 4% accessed regularization or refugee protection, 33% were offered "self-deportation," and 63% abandoned the process, rates that can be linked to long waiting times and procedural barriers.¹⁰ These numbers reflect geopolitical, structural, and institutional factors constraining the effective protection of migrant children.

2. Children on the African Continent

24. Children on the African continent migrate with ever-increasing frequency. A recent study conducted under the auspices of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC)¹¹ identified four main migratory routes: West and Central Africa to North Africa and Europe; Horn of Africa to Gulf States; Southern Africa movements; and intraregional and internal migratory routes. Amongst the many drivers of migration are the search for economic opportunity, food insecurity, the prevalence of conflict, and natural disasters such as drought and flooding. By way of example, conflict in Sudan has triggered the world's largest displacement crisis, overwhelming local resources and creating a desperate humanitarian situation.¹² Furthermore, available data shows that "climate shocks" or climate change has displaced some 38 million people. Of the 33 countries worldwide that the U.N. Children's Fund (UNICEF) ranks as "extremely high risk" for children, 25 (or 75%) are in Africa.¹³ Sub-Saharan Africa has, after East and South Asia and the Pacific, the world's largest number of people displaced annually as a result of extreme weather events.¹⁴

⁶ GUILLERMO YRIZAR BARBOSA ET AL., VIDAS EN CONTENCIÓN: PRIVACIÓN DE LA LIBERTAD Y VIOLACIONES A DERECHOS HUMANOS EN ESTACIONES MIGRATORIAS DE TLAXCALA Y PUEBLA, 2020-2021 (2022).

⁷ Julia Manek et al., *Torturing Environments and Multiple Injuries in Mexican Migration Detention*, 9 HUM. & SOC. SCI. COMM. No. 263, at 1 (2022), <https://doi.org/10.1057/s41599-022-01252-y>.

⁸ Sonia Wolf, *Los OPIS: ¿Protectores de personas en situación de vulnerabilidad o de la imagen del INM?*, Serie "La Gestión Migratoria en México," Boletín 8 (2013), at 3, https://insyde.org.mx/pdf/gestion-migratoria/GM_8_OPIS-protectores-de-la-imagen-del-INM_112013.pdf; Amalia Campos-Delgado & Karine Côté-Boucher, *Tactics of Empathy: The Intimate Geopolitics of Mexican Migrant Detention*, 29 GEOPOL. 471–94 (2024), <https://doi.org/10.1080/14650045.2022.2039633>.

⁹ Amalia Campos-Delgado, *Bordering Through Exemption: Extracontinental Migration Flows in Mexico*, 10 INT'L J. CRIME, JUST. & SOC. DEMOC. 3 (2021), <https://doi.org/10.5204/ijcjsd.2039>.

¹⁰ Secretaría de Gobernación, Unidad de Política Migratoria, Registro e Identidad de Personas, Dirección de Estadística, Boletín Estadística Anual 2023, tbl. 3.1.5, 3.2.8, 3.2.9a, <http://www.politicamigratoria.gob.mx/es/PoliticaMigratoria/CuadrosBOLETIN?Anual=2023&Secc=3>. As in many countries in the Americas, Mexico distinguishes between "children" (up to the age of 12) and "adolescents" (ages 13–17). Ley General de los Derechos de Niñas, Niños y Adolescentes [General Law on the Rights of Children and Adolescents] art. 5 (Mex.), <https://www.diputados.gob.mx/LeyesBiblio/pdf/LGDNNA.pdf>.

¹¹ See AFRICAN COMMITTEE OF EXPERTS ON THE RIGHTS AND WELFARE OF THE CHILD (ACERWC), MAPPING CHILDREN ON THE MOVE WITHIN AFRICA (2019), <https://www.acerwc.africa/en/resources/publications/mapping-children-move-within-africa>.

¹² See Vibhu Mishra, *Sudan War Leaves Millions Hungry and Displaced as Health System Nears Collapse*, U.N. NEWS, Jan. 10, 2026, <https://news.un.org/en/story/2026/01/1166738>.

¹³ See ACERWC STUDY ON CLIMATE CHANGE & CHILDREN'S RIGHTS IN AFRICA (2025), <https://www.acerwc.africa/sites/default/files/2025-04/Continental%20Study%20On%20Climate%20Change%20and%20Children%20Rights%20in%20Africa.pdf>.

¹⁴ The Kampala Convention defines internally displaced persons to include people or groups who have fled "human-made disasters." Convention for the Protection and Assistance of Internally Displaced Persons in Africa ("Kampala Convention"), Oct. 23, 2009, 3014 U.N.T.S. 3 (entered into force Dec. 6, 2012).

3. Ukrainian Refugee Children in Germany

25. Russia's full-scale invasion of Ukraine has led to a large number of refugees in Europe, the likes of which have not been seen since the end of World War II. Germany has become one of the principal destination countries for Ukrainian refugees. Among them are an estimated 357,000 children,¹⁵ who face the immediate task of adapting to a new environment, often after displacement, uncertainty, and trauma.
26. Access to and integration into the host country's education system is one of the most essential components in ensuring a certain degree of normality and appropriate development for children.¹⁶ In the second quarter of 2025, more than 227,000 Ukrainian-origin children were enrolled in German schools.¹⁷ Despite differences in curricula and language barriers, many children adapted quickly, benefiting from structured environments and peer interaction.
27. Welcome classes and language support programs are in place, yet uneven access across federal states and the process of fully integrating into regular classes remains difficult.¹⁸
28. Access to childcare and early childhood education for children from Ukraine is still below the German average: for example, in 2023, the childcare rate for Ukrainian children aged 3–6 was 76% (German average 91%), and for children under 3 years only 23% (German average 37%).¹⁹
29. Social participation in Germany is likewise crucial: children must not only be protected but also enabled to express their voices and participate in shaping their lives, in line with articles 3 and 12 of the Convention on the Rights of the Child (CRC). Sports clubs, cultural activities, and local youth initiatives offer valuable opportunities for belonging and empowerment.²⁰

4. Japan

30. The number of foreign nationals entering Japan was only about 18,000 in 1950, when the country started recording immigration control statistics. Of the foreign nationals entering Japan in 2024, the number of new entrants was just over 34 million, an increase of 10.3 million (43.2%) from the previous year, while the number of foreign nationals re-entering Japan was 2.8 million, an increase of some 685,000 (33.0%) from the previous year. From March 2022, the number of foreign nationals newly entering Japan has increased by 19.8% as compared to 2019, just before the Covid-19 pandemic.²¹
31. The number of foreign nationals under 20 years old who entered Japan in 2024 was about 484,000 (of these, the ratio of men to women is almost equal). The breakdown of this number by residence status is

¹⁵ *Children and Young People from Ukraine Now Often Speak Good German*, BiB, FED. INST. FOR POPULATION RSCH., Mar. 19, 2025, <https://www.bib.bund.de/EN/News/2025/2025-03-19-Children-and-young-people-from-Ukraine-now-often-speak-good-German.html>.

¹⁶ See Ziba Vaghri et al., *Refugee and Asylum-Seeking Children: Interrupted Child Development and Unfulfilled Child Rights*, 6 CHILD. 120 (2019), <https://doi.org/10.3390/children6110120>.

¹⁷ Maryna Bets, *New School Year in Germany: How Many Ukrainian Children Are Attending School and How Is Their Integration Progressing?*, BISTUM AACHEN, Aug. 28, 2025, <https://aachen.refugeesconnect.de/en/nachrichten/neues-schuljahr-in-deutschland-wie-viele-ukrainische-kinder-gehen-zur-schule-und-wie-verlauft-ihre-integration>.

¹⁸ Gisela Will et al., *Educational Policies Matter: How Schooling Strategies Influence Refugee Adolescents' School Participation in Lower Secondary Education in Germany*, 7 FRONT. SOCIOL. article 842543 (June 22, 2022), <https://doi.org/10.3389/fsoc.2022.842543>.

¹⁹ Fed. Office for Migration & Refugees, *Living Conditions and Participation of Ukrainian Refugees in Germany* (2025), <https://www.bamf.de/SharedDocs/Anlagen/EN/Forschung/Forschungsberichte/fb51-ukr-gefluechtete.html?nn=447174>.

²⁰ Natalia Fast et al., *Zugehörigkeitserfahrungen jugendlicher Geflüchteter in Sportvereinen* [Young refugees' experiences of belonging in sports clubs], 6 FORUM KINDER- UND JUGENDSPORT 49 (2025), <https://link.springer.com/article/10.1007/s43594-025-00152-8>.

²¹ Immigr. Servs. Agency of Japan, *2025 Immigration Control and Residency Management in Recent Years* [White Paper], at 2, <https://www.moj.go.jp/isa/content/001407638.pdf>.

not clear, but it includes children accompanying their parents, students studying in Japan, children re-entering Japan with permanent residency status, etc. According to a survey by Japan's Ministry of Education, Culture, Sports, Science and Technology, the number of foreign children of elementary and junior high school age (6 to 15 years old) was approximately 163,000 in 2024. Of these, approximately 8,400 children were not yet enrolled in school, or their enrollment status could not be determined.²²

32. The number of trafficking victims as determined by the government has been in the single digits for the past few years, totals that include adults as well as children.²³

5. Australia/Oceania

33. In 2024 U.N. authorities estimated that the number of international migrants stood at 304 million, or 3.7% of the world's population. Although Oceania hosted a relatively small number of migrants (46 million) relative to other regions, international migrants comprised 21% of residents. This makes Oceania the region hosting the most migrants per capita of local residents.²⁴ The Migration Data Portal estimated that in 2024, between 12 and 14% of the total migrant stock globally comprised children, meaning that there were between 37 and 42 million child migrants.²⁵ As a share of migrant populations in 2020, the International Organization for Migration (IOM) suggests that children in Oceania represented 9% of the total migrant population and 15% were young migrants.²⁶ Whether these statistics include children traveling as members of family groups is questionable, however. In Australia, the median age of migrant arrivals in 2024–25 was 26 years and the modal age was 23 years. Of 568,400 visas issued in that year, approximately 111,000 were for children aged between 0 and 18 years.²⁷
34. Although the number of children forcibly displaced (internally and across borders) tripled globally between 2010 and 2024, Oceania has been largely spared the surge in displacements and asylum claims experienced in other regions. With an estimated 630,000 refugee children displaced, Myanmar stands out as the most significant source country in the region.
35. In Australia, annual asylum numbers in 2025 ran at around 20,000, with just over 12% aged between 0 and 24 years. The main source countries for asylum seekers recognized as refugees were Malaysia, China, and India. Children and young persons were routinely more successful in being granted protection than their adult counterparts.²⁸

²² Japan Ministry of Educ., Culture, Sports, Sci. & Tech., 令和 6 年度 外国人の子供の就学状況等調査の結果について [Survey results on the school attendance status of foreign children in 2024], Oct. 2, 2025, https://www.mext.go.jp/content/20251002-mxt_kyokoku-000007294_1.pdf.

²³ 2025 Immigration Control and Residency Management, *supra* note 21, at 74-75.

²⁴ U.N. Dep't of Econ. & Soc. Aff., International Migrant Stock 2024: Key Facts and Figures (Jan. 2025), fig. 3, https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/undesd_pd_2025_intlmigstock_2024_key_facts_and_figures_advance-unedited.pdf.

²⁵ IDAC, 10 FACTS ABOUT CHILDREN ON THE MOVE, *supra* note 2, at 3.

²⁶ See *Children and Young Migrants*, MIGRATION DATA PORTAL (Sept. 12, 2024), <https://www.migrationdataportal.org/themes/child-and-young-migrants>.

²⁷ See Austl. Bureau of Statistics, Overseas Migration (Dec. 19, 2025), <https://www.abs.gov.au/statistics/people/population/overseas-migration/latest-release#key-statistics>.

²⁸ See, e.g., Austl. Gov't, Dep't of Home Affairs, Monthly Update: Onshore Protection Visa Processing—November 2025, <https://www.homeaffairs.gov.au/research-and-stats/files/monthly-update-onshore-protection-866-visa-processing-nov-2025.PDF>.

6. Greece

36. Owing to its geographic location at the external borders of the European Union, Greece has experienced the arrival of significant numbers of children, particularly from the Middle East, Africa, and South Asia, fleeing conflict, persecution, poverty, and environmental crises.²⁹
37. While Greek law formally recognizes children as rights holders, incorporating the best interest principle,³⁰ in practice their protection is often shaped by migration control priorities rather than child-centred considerations.³¹ Access to fundamental rights such as education, healthcare, housing, and legal identity remains uneven and heavily dependent on legal status and administrative capacity.³²
38. Unaccompanied children constitute a particularly vulnerable group facing prolonged stays in reception facilities or informal arrangements, exposing them to risks of exploitation, homelessness, and detention-like conditions.³³ Children born to migrant or stateless parents may also encounter barriers to accessing birth registration, stable legal status and nationality, leading to long-term legal insecurity.³⁴
39. Overall, Greece's approach to children in migration reflects a tension between child protection standards and restrictive migration governance. Structural deficiencies, overcrowded reception systems, and complex legal procedures continue to shape the lived realities of migrant children, often resulting in delayed protection and fragmented access to rights.

C. Areas of Concern and Opportunities for Improvement

1. General Rights Violations

a. Exclusion from Educational Opportunities

40. Asylum seeker and refugee children are excluded from educational opportunities in both law and practice. The CRC requires states parties to ensure that all children have access to all levels of education, including vocational training (art. 28(1)) without discrimination based on, *inter alia*, national origin (art. 2(1)). Education should be offered on an equal basis to that available to nationals of the host state, be gender-sensitive, and include access to additional language and intercultural support.³⁵
41. In practice, however, immigration detention, externalisation policies, and visa restrictions can all compromise refugee and asylum seeker children's access to education. Children who are subjected to

²⁹ UNICEF et al., *Migrant and Refugee Children via Mixed Migration Routes in Europe*, <https://www.unicef.org/eca/documents/migrant-and-refugee-children-2024-mixed-migration-routes-europe>; ELIAMEP, *MIGRATION TRENDS IN GREECE 5* (2025), <https://www.eliamep.gr/wp-content/uploads/2025/03/Working-paper-131-SOPEMI-1.pdf>.

³⁰ Greek Ministry of Justice, *Εθνική νομοθεσία για τους ανηλίκους* [National legislation on minors], https://ministryofjustice.gr/?page_id=7824.

³¹ SAVE THE CHILDREN, *CROSSING LINES: REALITIES OF MIGRANT CHILDREN AT E.U. EXTERNAL BORDERS 3–4* (June 2025), <https://reliefweb.int/report/greece/crossing-lines-realities-migrant-children-eu-external-borders>; CRC Comm., *Concluding Observations: Greece*, ¶¶ 19, 40, U.N. Doc. CRC/C/GRC/CO/4-6 (June 28, 2022).

³² CRC Comm., *Concluding Observations: Greece*, *supra* note 31, ¶¶ 21, 35, 40. *See also* ELIAMEP, *EQUALITY ON PAPER: REFUGEE AND MIGRANT INTEGRATION IN GREECE 11–13* (2024), <https://www.eliamep.gr/wp-content/uploads/2024/12/Policy-paper-174-EN-Pantazi-Psatha-final.pdf>;

³³ SAVE THE CHILDREN, *CROSSING LINES*, *supra* note 31, at 7; (2025), *ECtHR: Greece Condemned Anew for 39 Unaccompanied Children*, REFUGEE SUPPORT AEGEAN, July 1, 2025, <https://rsaegean.org/en/ecthr-condemns-greece-for-unaccompanied-children/>.

³⁴ CRC Comm., *Concluding Observations: Greece*, *supra* note 31, ¶ 21; Eur. Network on Statelessness, *Greece Country Briefing* (Sept. 2021), https://index.statelessness.eu/sites/default/files/Country%20Briefing%20Greece%20ENG_2021.pdf.

³⁵ Comm. on Migrant Workers & CRC Comm., *Joint General Comment No. 4/23 on State Obligations Regarding the Human Rights of Children in the Context of Int'l Migration in Countries of Origin, Transit, Destination, and Return* ¶¶ 59, 62, U.N. Doc. CMW/C/GC/4-CRC/C/GC/23 (Nov. 16, 2017) [hereinafter *Joint General Comment No. 4/23*].

externalisation practices can face additional hurdles. Depending on the specific circumstances, externalisation can engage both the host and sending states' direct and due diligence obligations.³⁶

42. Beyond detention settings, some states impose visa conditions that prevent asylum seekers and refugees from accessing education beyond secondary education. This can also impact children's mental health. Knowing that they will not be able to pursue their dreams of gaining tertiary qualifications can impact on educational performance, particularly in secondary school, having an ongoing impact on children.

b. Denial of Healthcare

43. The CRC requires states parties to ensure the highest attainable standard of health, treat illnesses and provide health rehabilitation (article 24(1)). Migration policies that involve immigration detention, including externalisation practices, can have severe, lifelong impacts on child migrants' physical and mental health, potentially infringing States' human rights obligations. These impacts arise both due to the denial of access to adequate healthcare for children detained in these ways, as well as from the physical and psychological impacts of detention itself.³⁷ Children who are separated from family members, or who arrive unaccompanied, can face heightened risks to their right to the highest attainable standard of health, due to the added stress that those children might face and the lack of health advocates.

c. Exploitation and Abuse

44. The prevalence of abuse and exploitation of children and youth during migration is well documented. The U.N. Office on Drugs and Crime reports that children comprised more than one-third of identified trafficking victims globally in 2022.³⁸ The IOM documents extortion, kidnapping, sexual violence, forced labour, and disappearances along major routes.³⁹ Migration amplifies vulnerability through family separation, legal precarity that suppresses reporting, dependence on smugglers or sponsors, and transit through minimally regulated border zones—conditions in which exploitation predictably flourishes.
45. As already established, children are rights holders, and the duty of states to respect and protect their rights does not attenuate at borders nor while children are in transit. Indeed, international law requires states to protect every child from “all forms of physical or mental violence,” abuse, neglect, and exploitation (CRC arts. 19, 32–36), to criminalize and eradicate the sale and sexual exploitation of children,⁴⁰ and to prohibit the recruitment and use of children in armed conflict.⁴¹ States must prevent, investigate, and punish trafficking and protect victims.⁴² The prohibition of refoulement bars return

³⁶ Anna Talbot et al., *The Gender- and Sexuality-Based Harms of Refugee Externalization: A Role for Human Rights Due Diligence*, 36 INT'L J. REF. L. (2024).

³⁷ See, e.g., CRC Comm., Concluding Observations: Nauru ¶¶ 26, 42(e), U.N. Doc. CRC/C/NRU/CO/1 (Oct. 28, 2016).

³⁸ U.N. OFFICE ON DRUGS & CRIME, GLOBAL REPORT ON TRAFFICKING IN PERSONS 2024, at 42 (2024), https://www.unodc.org/documents/data-and-analysis/glotip/2024/GLOTIP2024_BOOK.pdf

³⁹ INT'L ORG. FOR MIGRATION (IOM), FATAL JOURNEYS: TRACKING LIVES LOST DURING MIGRATION (2022), <https://publications.iom.int/books/fatal-journeys-tracking-lives-lost-during-migration>.

⁴⁰ Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography (OPSC) arts. 1–3, May 25, 2000, 2171 U.N.T.S. 227 (entered into force Jan. 18, 2002).

⁴¹ Optional Protocol to the CRC on the Involvement of Children in Armed Conflict (OPAC) arts. 1–4, May 25, 2000, 2173 U.N.T.S. 222 (entered into force Feb. 12, 2002).

⁴² Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the U.N. Convention against Transnational Organized Crime (Palermo Protocol) arts. 5–9, Nov. 15, 2000, 2237 U.N.T.S. 319 (entered into force Dec. 25, 2003); Convention (No. 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, June 17, 1999, 2133 U.N.T.S. 161 (entered into force Nov. 19, 2000).

where a child faces torture, trafficking, or other irreparable harm.⁴³ When abuse occurs, children are entitled to identification, child-sensitive procedures, remedies, recovery, and reintegration.⁴⁴ Regional jurisprudence confirms due diligence obligations to prevent and redress exploitation.⁴⁵ Decisions affecting migrant children must treat best interests as a primary consideration and refrain from immigration detention.⁴⁶

2. Age Assessment

46. Establishing status as a child is a threshold requirement to access the specialised care and protection to which children are entitled. In some countries, especially in Africa and South America, childhood status is declaratory—that is, a person’s stated age is accepted as valid in the absence of serious reasons for doubt, in line with international standards.⁴⁷ In practice, however, some authorities use age assessment as a migration control mechanism and reject children’s declarations regarding their age, even when validated by relatives or accompanied by identity documents or medical records.
47. Medical age assessment methods, in use in some countries, are widely criticized as inherently unreliable, particularly for the age range from 16 to 21 years. The European Asylum Support Office, an E.U. agency, has observed that “no single method currently available can determine the exact age of a person.”⁴⁸ The U.N. Committee on the Rights of the Child (the CRC Committee) advises states not to use medical methods based on bone and dental examinations.⁴⁹ The committee has found that such practices, as well as the use of summary interviews that do not afford the benefit of the doubt in favour of minority, violate children’s right to an identity and other rights (see *infra* sections III.A.4, IV.A.1.a).

3. Biometric Issues

48. Biometrics—the identification of “an individual through the measurement of distinguishing physiological or behavioural traits,”⁵⁰ such as fingerprints, face, voice, and iris—are increasingly used in migration scenarios. This presents both an opportunity to better enforce the rights of children in migration and the potential to infringe upon those rights. For example, in February 2025 the government of Chad launched a biometric enrolment program to issue identification papers to refugees, enabling them to access public services.⁵¹ Such systems may assist migrant children, and particularly unaccompanied and/or potentially stateless children, access education, housing, etc.

⁴³ Convention relating to the Status of Refugees (Refugee Convention) art. 33, July 28, 1951, 189 U.N.T.S. 137 (entered into force Apr. 22, 1954); Protocol relating to the Status of Refugees (Refugee Protocol), Jan. 31, 1967, 606 U.N.T.S. 267 (entered into force Oct. 4, 1967) (applying articles 2 to 34 of the Refugee Convention “without any geographic limitation”); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) art. 3, Dec. 10, 1984, 1465 U.N.T.S. 85 (entered into force June 26, 1987). See also *infra* note 58.

⁴⁴ CRC arts. 12, 39; OPSC arts. 8–9.

⁴⁵ *Rantsev v. Cyprus & Russia*, App. No. 25965/04 (Eur. Ct. H.R. Jan. 7, 2010); *Siliadin v. France*, App. No. 73316/01 (Eur. Ct. H.R. July 26, 2005).

⁴⁶ CRC arts. 3, 37; Rights and Guarantees of Children in the Context of Migration and/or in Need of Int’l Protection, Advisory Opinion OC-21/14, Inter-Am. Ct. H.R. (ser. A) No. 21 (Aug. 19, 2014).

⁴⁷ Joint General Comment No. 3/22, *supra* note 3, ¶ 32.

⁴⁸ EUR. ASYLUM SUPPORT OFFICE (EASO), EASO PRACTICAL GUIDE ON AGE ASSESSMENT (2d. ed. 2018), <https://www.easo.europa.eu/sites/default/files/easo-practical-guide-on-age-assesment-v3-2018.pdf>.

⁴⁹ Joint General Comment No. 4/23, *supra* note 35, ¶ 4.

⁵⁰ IOM, BIOMETRICS AND INTERNATIONAL MIGRATION 6 (2005), <https://publications.iom.int/books/international-migration-law-and-biometrics-and-international-migration>.

⁵¹ UNHCR, Enhanced Protection and Solutions for Refugees Through Inclusion in Chad’s National Digital Identity System, at 5 (November 2025), <https://www.refworld.org/reference/countryrep/unhcr/2025/en/151195>.

49. However, children are especially vulnerable to misuse of biometrics. One study estimated that at least 678 children were wrongly assessed as adults by the U.K. Home Office in 2024, resulting in them being wrongly placed in adult accommodation or charged with criminal offences as adults.⁵² There are also issues relating to data security, the child's right to privacy, and other (potentially illegitimate) use of biometric data.
50. It remains to be seen whether the potential benefits outweigh the actual harms. Opportunities exist for strengthening protections: the appropriate bodies, such as the U.N. High Commissioner for Refugees (UNHCR) or the CRC Committee, should engage with this issue in a more concerted fashion, including putting in place standards for use, clarifying pathways for complaints, and establishing a framework for greater oversight. Guidance should be made publicly available, including by updating the UNHCR Handbook to explicitly address biometrics. Basic guardrails should be adopted in the interim, such as the "over 25" threshold for determining who should be treated as an adult in cases of uncertainty.⁵³

4. Pushbacks

51. Pushbacks (sometimes called "turnbacks" or "pullbacks"), broadly meaning "proactive operations aimed at physically preventing migrants from reaching, entering or remaining"⁵⁴ in a territory, are a common practice. At E.U. external borders, for instance, pushbacks are regularly reported in the Aegean Sea, at the Spanish-Moroccan sea and land borders, and on the maritime route to the Canary Islands, and at other land borders.⁵⁵ Elsewhere, Australia, Mexico, Serbia, Türkiye, and the United States are among many other countries that have also frequently carried out pushbacks.⁵⁶
52. Pushbacks typically summary screening for protection needs or lack any screening at all, meaning that they violate the international prohibitions of collective expulsions⁵⁷ and refoulement.⁵⁸ Pushbacks of children are inconsistent with specific international standards that call on states to take particular care to

⁵² Kamena Dorling, *Serious Safeguarding Scandal: New Data Shows That Hundreds of Child Refugees Continue to Be Wrongly Treated as Adults*, HELEN BAMBER FOUND., July 9, 2025, <https://www.helenbamber.org/resources/reportsbriefings/serious-safeguarding-scandal-new-data-shows-hundreds-child-refugees>.

⁵³ *Id.*

⁵⁴ U.N. Human Rights Council, Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ¶ 49, U.N. Doc. A/HRC/37/50 (Nov. 23, 2018).

⁵⁵ Katrien Luyten, Eur. Parliamentary Research Serv., *Addressing Pushbacks at the E.U.'s External Borders*, June 2025 [Doc. PE 772.882], [https://www.europarl.europa.eu/RegData/etudes/BRIE/2025/772882/EPRS_BRI\(2025\)772882_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2025/772882/EPRS_BRI(2025)772882_EN.pdf).

⁵⁶ See, e.g., Michael Garcia Bochenek, *The Persistent, Pernicious Use of Pushbacks Against Children and Adults*, 12 LAWS (2023), <https://doi.org/10.3390/laws12030034>.

⁵⁷ U.N. Human Rights Comm., General Comment No. 15: The Position of Aliens Under the Covenant, ¶ 10 (27th sess., 1986), in *Comp. of General Comments and General Recommendations*, at 18, 21, U.N. Doc. HRI/GEN/1/Rev.1 (July 29, 1994); Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms art. 4, September 16, 1963, E.T.S. No. 46; African Charter on Human and People's Rights art. 12(5), June 27, 1981, 1520 U.N.T.S. 217; Int'l Law Comm'n, Third Rep. on the Expulsion of Aliens, ¶ 115, U.N. Doc. A/CN.4/581 (Apr. 19, 2007).

⁵⁸ The prohibition of refoulement is incorporated in international and regional treaties and is a norm of customary international law. Refugee Convention art. 33; Refugee Protocol art. 1; CAT art. 3; International Covenant on Civil and Political Rights (ICCPR) art. 7, Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976); CRC arts. 3(1), 6, 37; Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) art. 3, Nov. 4, 1950, ETS No. 005 (as amended); Charter of Fundamental Rights of the European Union, OJ C 336/391 (October 26, 2012); Elihu Lauterpacht & Daniel Bethlehem, *The Scope and Content of the Principle of Non-Refoulement: Opinion*, in *REFUGEE PROTECTION IN INTERNATIONAL LAW: UNHCR'S GLOBAL CONSULTATIONS ON INTERNATIONAL PROTECTION* 139 (Erika Feller, Volker Türk & Frances Nicholson eds. 2003). See also Human Rights Comm., General Comment No. 20: Article 7, ¶ 9 (44th sess., 1992), in *Comp. of General Comments*, *supra* note 57, at 30, 31; CRC Comm., General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, ¶ 27, U.N. Doc. CRC/GC/2005/6 (Sept. 1, 2005); *Soering v. United Kingdom*, (1989) 11 EHRR 439, ¶ 88.

ensure that returns of children are in their best interests.⁵⁹ Excessive force, other ill-treatment, family separation, and other rights violations may also accompany pushback operations.

5. Detention

53. Article 37(b) of the CRC adopts the prohibition on arbitrary detention reflected in article 9(1) of the International Covenant on Civil and Political Rights (ICCPR). It stipulates that the detention of a child “be used only as a measure of last resort and for the shortest appropriate period of time.” The CRC mandates that children should be treated with humanity and respect for their inherent dignity (art. 37(c)); that they should not be separated from responsible adults unless it is in their best interests (art. 37(c)); and that they have the right to appropriate legal assistance, including to challenge their detention (art. 37(d)).
54. In 2012, the CRC Committee stated that “the detention of a child because of their or their parent’s migration status constitutes a child rights violation and always contravenes the principle of the best interests of the child.”⁶⁰ In spite of the clarity of the legal principles involved, the practice of placing children in immigration detention has been widespread. The injustice and harms caused by placing children in immigration detention⁶¹ has generated extraordinary responses from domestic and international actors calling on countries to stop the practice.⁶² The conclusion of the non-binding Global Compact for Migration in December 2018 was a positive development, leading to regional and global initiatives to see migrant children placed in alternatives to closed detention.⁶³

6. Externalisation

55. Externalisation policies can have broad negative consequences for children. They can directly impact on children’s access to rights (as described, for example, above in section C.1.a. and b. regarding rights to education and healthcare), as well as children’s ability to enforce their rights through access to courts, as required by articles 12(2) and 37(d) of the CRC.⁶⁴ Where the sending state has effective control over children’s access to certain rights, such as healthcare, housing or education, for example, the child must be able to enforce their rights in that state’s courts if needed.⁶⁵ This is particularly important where the

⁵⁹ Joint General Comment No. 3/22, *supra* note 3, ¶ 33; CRC Comm., General Comment No. 6, *supra* note 58, ¶¶ 84–86. *See also* JASON M. POBJOY, *THE CHILD IN INTERNATIONAL REFUGEE LAW* 186–87 (2017).

⁶⁰ CRC Comm., Rep. of the 2012 Day of Gen’l Discussion, ¶ 78 (Sept. 28, 2012), <http://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2012/DGD2012ReportAndRecommendations.pdf>.

⁶¹ Isabella Priestley et al., *The Impact of Immigration Detention on Children’s Mental Health: Systemic Review*, 227 BRIT. J. PSYCHIATRY 870 (2025), <https://doi.org/10.1192/bjp.2025.29>. *See also* Caroline Hunt, *Immigration Detention: No Safe Form for Children*, UNIV. OF SYDNEY, Apr. 16, 2025, <https://www.sydney.edu.au/news-opinion/news/2025/04/16/immigration-detention--no-safe-forms-for-children--research-show.html>.

⁶² In 2020 the special rapporteur on the human rights of migrants concluded that the immigration detention of children is “effectively avoidable.” U.N. G.A., *Ending Immigration Detention of Children and Providing Adequate Care and Reception for Them*, U.N. Doc. A/75/183 (July 20, 2020). *See also* U.N. G.A., *Annual Rep. of the Special Representative of the Sec’y Gen. on Violence against Children*, U.N. Doc. A/HRC/49/57 (Dec. 21, 2021); U.N. G.A., *Rep. of the Indep. Expert Leading the U.N. Global Study on Children Deprived of Liberty*, U.N. Doc. A/74/136 (July 11, 2019).

⁶³ *See* INTERNATIONAL DETENTION COALITION, *GAINING GROUND: PROMISING PRACTICE TO REDUCE AND END IMMIGRATION DETENTION* (2022), <https://idcoalition.org/wp-content/uploads/2022/05/Gaining-Ground-Report-2022.pdf>

⁶⁴ *See also* Joint General Comment No. 4/23, *supra* note 35, ¶¶ 14, 16, 17(a), (c).

⁶⁵ The U.N. Human Rights Committee has recognised that a state has obligations under the ICCPR where that state is in control of access to rights, at least in relation to the right to life where there is a special relationship of dependency: *A.S. & Ors v. Italy*, Commc’n No. 3042/2017, ¶ 7.8, Human Rights Comm., U.N. Doc. CCPR/C/130/D/3042/2017 (Apr. 28, 2021). Refugee externalisation arguably also gives rise to a special relationship of dependency.

child cannot enforce their rights in the destination state, if that state does not play any role in provision of essential services, or if that state's legal infrastructure does not support such enforcement action.

56. Both sending states and destination states can bear responsibility under international law for the rights of children (and others) subjected to externalisation policies. Where children are removed pursuant to externalisation policies, the sending state has due diligence obligations to ensure that those children have access to all rights that the sending state owes them: states cannot evade their obligations by removing people against their will.⁶⁶ Sending states can also have ongoing direct obligations where they have an ongoing role in securing rights for children in the destination State. Destination states also have direct obligations toward the child in question.
57. Subjecting children to externalisation policies will rarely, if ever, be in a child's best interest, assessment of which is required (CRC art. 3(1)).

7. Family Separation

58. International law recognizes the family as the fundamental unit of society and affirms children's right not to be separated from their parents except where such separation is strictly necessary, proportionate, and demonstrably in the child's best interests (CRC arts. 3, 9, 10; ICCPR art. 23; European Convention on Human Rights (ECHR) art. 8). Family separation is frequently normalized and operationalized in the migration context. Children may be separated at borders, during apprehension, through age assessment practices, or as a consequence of parental detention or removal. In mixed-status families, children are often forced into untenable choices between accompanying a parent into detention or deportation, or remaining behind in insecurity.
59. Family separation is one of the most severe and consequential harms experienced by children, especially in the migration context. Whether effected deliberately as a migration control measure or produced indirectly through detention, deportation, pushbacks, and administrative dysfunction, separation from parents or primary caregivers inflicts profound and often enduring harm on children.⁶⁷ Longitudinal neurodevelopmental research demonstrates that prolonged caregiver separation constitutes toxic stress, disrupting brain architecture and increasing the risk of long-term cognitive, emotional, and physical health impairments.⁶⁸
60. State practices frequently exacerbate these harms through inadequate identification and tracking systems, delayed reunification, and the absence of effective remedies. International law imposes affirmative obligations on states to preserve family unity, prevent unnecessary separation, and ensure prompt reunification when separation occurs.⁶⁹

⁶⁶ Talbot et al., *Gender- and Sexuality-Based Harms of Refugee Externalization*, *supra* note 36, at 65–67.

⁶⁷ See, e.g., Sarah A. MacLean et al., *Characterization of the Mental Health of Immigrant Children Separated from Their Mothers at the U.S.-Mexico Border*, 286 PSYCHIATRY RES. 112555 (2020), <https://doi.org/10.1016/j.psychres.2019.112555>; Luis H. Zayas et al., *The Distress of Citizen-Children with Detained and Deported Parents*, 24 J. CHILD & FAM. STUD. 3213 (2015), <https://doi.org/10.1007/s10826-015-0124-8>; Julie M. Linton et al., *Detention of Immigrant Children*, 139 PEDIATRICS e20170483 (2017).

⁶⁸ Jack P. Shonkoff et al., *The Lifelong Effects of Early Childhood Adversity and Toxic Stress*, 129 PEDIATRICS e232 (2012), <https://doi.org/10.1542/peds.2011-2663>; Andrew Garner et al., *Preventing Childhood Toxic Stress: Partnering with Families and Communities to Promote Relational Health*, 148 PEDIATRICS e2021052582 (2021), <https://doi.org/10.1542/peds.2021-052582>. Sarah A. MacLean et al., *Characterization of the Mental Health of Immigrant Children Separated from Their Mothers at the U.S.-Mexico Border*, 286 PSYCHIATRY RES. 112555 (2020).

⁶⁹ See CRC arts. 9(1), 9(3), 10(1); CRC Comm., General Comment No. 6, *supra* note 58, ¶¶ 80–83; CRC Comm., General Comment No. 14 on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration, ¶¶ 58–70, U.N. Doc. CRC/C/GC/4 (May 29, 2013); ICCPR arts. 17, 23; *Mubilanzila Mayeka & Kaniki Mitunga v. Belgium*, App. No. 13178/03, ¶¶ 81–87 (Eur. Ct. H.R. Oct. 12, 2006). See also JACQUELINE BHABHA, CHILD MIGRATION AND HUMAN RIGHTS IN A GLOBAL AGE 150–78 (2014).

61. The CRC Committee has repeatedly emphasized that separation for migration-related reasons—including parental immigration detention—is incompatible with the best interests of the child and may itself constitute a violation of the convention.⁷⁰

8. Right to Nationality

62. Migration worldwide increasingly exposes children to serious barriers in accessing and enjoying the right to a nationality.⁷¹ Although nationality is traditionally regulated by states, global migration, displacement, and asylum systems strongly shape whether children can acquire, retain, or effectively use nationality; children often face barriers due to limited legal safeguards, practical obstacles to registration, and gaps in law implementation.⁷² Migrant children often experience overlapping forms of legal exclusion, including statelessness, irregular status, and ineffective nationality, each generating distinct but interconnected vulnerabilities. Nationality-related exclusion is not limited to newly arrived children; it is frequently reproduced across generations through restrictive nationality laws, administrative barriers, and conflict-related displacement.⁷³
63. Children born during displacement, in transit, or to parents unable to transmit nationality are at high risk of statelessness due to conflicts between nationality regimes, gender-discriminatory laws, documentation requirements, and barriers to birth registration.⁷⁴ Irregular migration status further compounds these risks, as safeguards against childhood statelessness often depend on lawful residence—excluding the very children they are meant to protect.⁷⁵
64. Statelessness is not incidental but structurally produced, and its consequences are severe.⁷⁶ Stateless children face cumulative rights deprivation, limited access to education, healthcare, and social protection, and a heightened risk of intergenerational exclusion.⁷⁷ Without targeted legal safeguards, many grow up in permanent legal limbo, lacking any durable legal attachment to a state.

9. Deportation

65. The consequences and the process of deportation may have negative impact on the rights of children. The CRC Committee provides relevant specific guidance on states' obligations.
66. Children must be protected from *refoulement*—returns to a country where there are substantial grounds for believing that the child is at real risk of irreparable harm, such as torture, female genital mutilation, violations of the right to life, survival and development, the right to preserve the child's identity, and

⁷⁰ CRC Comm., General Comment No. 6, *supra* note 58; CRC Comm., General Comment No. 14, *supra* note 69; Joint General Comment No. 4/23, *supra* note 35.

⁷¹ UNICEF & INSTITUTE ON STATELESSNESS AND INCLUSION, THE CHILD'S RIGHT TO A NATIONALITY AND CHILDHOOD STATELESSNESS 85 (2020), https://files.institutesi.org/crm_texts_materials.pdf.

⁷² Sophie Nonnenmacher & Ryszard Cholewinski, *The Nexus Between Statelessness and Migration*, in NATIONALITY AND STATELESSNESS UNDER INTERNATIONAL LAW 257–57 (Alice Edwards & Laura van Waas eds., 2014).

⁷³ THE CHILD'S RIGHT TO A NATIONALITY AND CHILDHOOD STATELESSNESS, *supra* note 71.

⁷⁴ *Id.* at 88–89.

⁷⁵ INST. ON STATELESSNESS & INCLUSION, CHILDHOOD STATELESSNESS 17 (2014), <https://files.institutesi.org/childhood-statelessness.pdf>.

⁷⁶ LAURA VAN WAAS, NATIONALITY MATTERS: STATELESSNESS UNDER INTERNATIONAL LAW 9 (2008), https://files.institutesi.org/Nationality_Matters.pdf.

⁷⁷ Hernan Vales, *Human Rights and Stateless Children*, in THE WORLD'S STATELESS CHILDREN 164–65 (2017).

serious violations of other rights guaranteed under the CRC that are caused by states' action or inaction.⁷⁸

67. Collective expulsion is prohibited.⁷⁹ Each case of deportation of a child must be examined and decided individually, ensuring that the best interests of the child are individually assessed and determined based on the circumstances of each child, and taken as a primary consideration.⁸⁰
68. Child-sensitive due process guarantees are critical procedural safeguards to protect children from unlawful deportation. Such guarantees include the right to be heard and take part in all stages of the immigration and asylum proceedings, being assisted by a trained lawyer with free legal aid and free interpretation, effective access to consular protection, child-friendly information in a language the child understands, and the right to appeal.⁸¹ Unaccompanied children should receive a guardian expeditiously.⁸²

III. LEGAL FOUNDATION

A. International

1. CRC and Refugee Convention

69. The interplay between the Refugee Convention and the CRC is of particular importance, as children today make up around 41% of all refugees.
70. The Refugee Convention grants subsidiary international protection for persons who have legally or *de facto* lost the protection of their home state because it either politically persecutes them or exposes them to political persecution by non-State actors. The Refugee Convention contains various substantial guarantees for recognized refugees which are not adequately expressed in other human rights treaties. However, it does not contain any explicit provision on refugee children. Nevertheless, article 5 expressly states that other international agreements remain unaffected by the provisions of the Refugee Convention. In this sense, the Refugee Convention constitutes no obstacle to additional rights and benefits to refugees.
71. This is precisely where the CRC comes into play, which is dedicated to the rights of the child. Article 22 CRC provides protection for children who are received as refugees or who are seeking refugee status in a host State, by stating that they are entitled to “appropriate protection and humanitarian assistance”. However, art. 22 CRC does not regulate who is a refugee. Instead, the refugee status of children, or those seeking refugee status respectively, is to be regulated by the applicable norms of domestic or international law, and thus mainly by the Refugee Convention. To a similar extent as article 5 of the Refugee Convention, art. 22 CRC is open to influences from other human rights treaties.
72. In view of these opening and favourability clauses, the two conventions can be linked, even though they are independent treaties under international law and differ in their scope and the extent of the guarantees they contain. Particularly in areas covered by only one of the two conventions, the other treaty can be invoked to fill in the gaps left by its counterpart.

⁷⁸ Joint General Comment No. 3/22, *supra* note 3, ¶ 46; CRC Comm., General Comment No. 6, *supra* note 58, ¶¶ 27, 84; *W.M.C. v. Denmark*, Commc’n No. 31/2017, CRC Comm., U.N. Doc. CRC/C/85/D/31/2017 (Sep. 28, 2020); *H.K. v. Denmark*, Commc’n No. 99/2019, CRC Comm., U.N. Doc. CRC/C/90/D/99/2019 (Jun. 1. 2022).

⁷⁹ See *infra* note 57.

⁸⁰ Joint General Comment No. 3/22, *supra* note 3, ¶¶ 28–31.

⁸¹ CRC Comm., General Comment No. 6, *supra* note 58, ¶¶ 35–37, 69; Joint General Comment 3/22, *supra* note 3, ¶¶ 34–39; Joint General Comment No. 4/23, *supra* note 35, ¶¶ 17(c)–(j).

⁸² CRC Comm., General Comment No. 6, *supra* note 58, ¶¶ 33–34.

73. Neither of the two conventions contains a comprehensive definition of what is meant by a “refugee child.” While the Refugee Convention addresses the concept of refugees in article 1A(2), the CRC defines the concept of a child in art. 1 CRC. Consequently, the refugee definition of the Refugee Convention must be interpreted in an age-sensitive manner for the purposes of the CRC, and the term “refugee” in art. 22 CRC must be interpreted in the light of the Refugee Convention.
74. Furthermore, UNHCR regularly calls on all competent state authorities to employ special sensitivity when treating children in asylum procedures. Although such a requirement cannot be found in the Refugee Convention, it follows clearly from art. 22 CRC. The stipulations of this norm can therefore close the gap in the Refugee Convention, since, with the exception of the United States, all states parties to the Refugee Convention have also ratified the CRC. Article 22 CRC is particularly valuable in this regard, as it focuses on the rights and protection needs of refugee children. Although this provision must itself be interpreted in the light of art. 1A(2) of the Refugee Convention, art. 22 CRC can strengthen the Refugee Convention’s scant commitment to children’s rights. This is particularly evident in the CRC’s requirements for the treatment of children seeking asylum, not addressed by the Refugee Convention.

2. Cultural Rights

75. Although culture is an elusive concept, international law guarantees the cultural rights of migrant children. Although “culture” has been contested, it is undeniably important for maintaining individual and group identities. The right to culture, the right to participate in cultural life, and the right to religious liberty are guaranteed under the Universal Declaration of Human Rights (art. 27), the ICCPR (arts. 18, 27), the CRC (art. 30), and the Convention on the Right of Persons with Disabilities (CPRD) (art. 30). Regional human rights treaties also afford protection for cultural rights.⁸³
76. Although everyone enjoys the right to culture, it is particularly important for children belonging to ethnic minorities and Indigenous peoples. Their traditions are more likely to be subject to oppressive policies limiting them. Moreover, as human rights apply at all times, in peacetime and wartime, in all locations in the world, and regardless of status (documented or not), children enjoy cultural rights in their countries of origin, while in transit, if in detention, and in their new homelands. In short, cultural rights must be guaranteed during all phases of migration. When children are separated from their families, they require greater protection. The safeguarding of cultural rights for unaccompanied minors and refugee children is vitally important.
77. If states refuse to recognize children as persons before the law, children find themselves in frightening legal limbo. For instance, the Inter-American Court of Human Rights ruled that the failure of the Dominican Republic to provide documents to Haitian children left them without a legal identity, rendering them unable to register for school, claim a nationality, or obtain a passport.⁸⁴
78. The denial of the right to a name as an aspect of cultural and linguistic human rights signifies the absence of legal identity. Protection of cultural rights is particularly crucial for child migrants who are often particularly dependent upon the state.⁸⁵

3. Rights of Children with Disabilities

79. Child migrants with disabilities face multiple and intersecting challenges. Health rules in host countries can impede access to legal status and social benefits. Cultural attitudes bring societal exclusion, invisibility and even denial of access to birth registration. Changes in international law (and legal

⁸³ For a compilation, see ELSA STAMATOPOULOU, CULTURAL RIGHTS IN INTERNATIONAL LAW 37–106 (2007).

⁸⁴ *Yean and Bosco Children*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 130 (Sept. 8, 2005).

⁸⁵ 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 13 (Jacqueline Bhabha ed., 2011).

thinking) relevant to child migrants with disabilities are recent but profound. The Sustainable Development Goals have normalized consideration of disability in international discourses,⁸⁶ with relevant human rights treaties⁸⁷ monitored by related U.N. committees. Although neither country reviews nor opinions on individual complaints bind state parties, treaty body observations and jurisprudence provide rich examples of state practice.⁸⁸ General comments⁸⁹ and reports by U.N. experts⁹⁰ provide important points of legal reference.

80. The CRC recognises rights of children with disabilities (art. 23). The CRC Committee's general comments acknowledge equal rights for children with disabilities,⁹¹ notably recognizing that attitudinal change reflects work by disability actors in national and international forums.⁹² The CRC adopts and embeds key protective norms from treaties such as the Refugee Convention and its Protocol which have not attracted the same level of ratifications.
81. Modelled on the CRC, the CRPD creates a framework for ensuring equal enjoyment of rights.⁹³ It abandons a "medical" or charity approach where disability is equated with impairment. It recognizes disability involves not just physical or mental challenges but also failure to accommodate to allow a person's full participation in society (art. 1; pmb., para. (r)). General principles in article 3 of the CRPD also give prominence to children and to the CRC, echoing articles 5 and 14(2) of the CRC.
82. The concept of the best interests of the child is adopted expressly in the CRPD (art. 7(2)). Article 38 of the CRC obliges states "to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child." It also prohibits recruitment of child soldiers and demands "protection and care of children who are affected by an armed conflict." In article 11, the CRPD adopts and extends article 38 of the CRC to include situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.
83. Article 18 of the CRPD does not attempt to assert a right to enter a foreign country but prohibits discrimination with respect to freedom of movement and nationality on grounds of disability.⁹⁴ Article

⁸⁶ See *The Global Health Observatory*, WORLD HEALTH ORG. (n.d.), <https://www.who.int/data/gho/data/themes/world-health-statistics>.

⁸⁷ See, most notably, the CRC and associated protocols and the Convention on the Rights of Persons with Disabilities (CRPD), Dec. 13, 2006, 2515 U.N.T.S. 3 (entered into force May 3, 2008). See also ICCPR; International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976); Refugee Convention and its 1967 Protocol; CAT; and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Dec. 18, 1979, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981).

⁸⁸ For online resources collecting relevant treaty body jurisprudence, see *IDA's Compilations of CRPD Committee's Concluding Observations*, INT'L DISABILITY ALLIANCE (n.d.), <https://www.internationaldisabilityalliance.org/content/ida%E2%80%99s-compilations-crpdc-committee%E2%80%99s-concluding-observations-adding-recommendations-issued>; *Leiden Children's Rights Observatory*, UNIVERSITEIT LEIDEN (last updated Jan. 22, 2026), <https://www.childrensrightsobservatory.org/case-notes>.

⁸⁹ The CRC and the CRPD committees adopted a Joint Statement on the Rights of Children with Disabilities in 2021, available at <https://www.ohchr.org/en/treaty-bodies/crpdc/statements-declarations-and-observations>. See also Joint General Comment No. 3/22, *supra* note 3; Joint General Comment No. 4/23, *supra* note 35.

⁹⁰ See, e.g., MANFRED NOWAK, *THE UNITED NATIONS GLOBAL STUDY ON CHILDREN DEPRIVED OF LIBERTY* (2019), https://childrendeprivedofliberty.info/wp-content/uploads/2020/09/Full-Global-Study_Revised-Version.pdf.

⁹¹ See, e.g., CRC Comm., General Comment No. 1: The Aims of Education, ¶ 10, U.N. Doc. CRC/GC/2001/1 (Apr. 17, 2001); CRC Comm., General Comment No. 4: Adolescent Health and Development in the Context of the Convention on the Rights of the Child, ¶ 2, U.N. Doc. CRC/GC/2003/4 (July 1, 2003); CRC Comm., General Comment No. 7: Implementing Child Rights in Early Childhood, ¶ 36(d), U.N. Doc. CRC/C/GC/7/Rev.1 (Sept. 20, 2005).

⁹² CRC Comm., General Comment No. 9: The Rights of Children with Disabilities, U.N. Doc. CRC/C/GC/9 (Feb. 27, 2007).

⁹³ See Mary Crock, *Disability and Refugee Protection: Towards a Formalised Approach*, in *HANDBOOK OF DISABILITY: CRITICAL THOUGHT AND SOCIAL CHANGE IN A GLOBALISING WORLD 1671–1688* (Marcia Rioux et al. eds., 2024).

⁹⁴ Article 18 reinforces articles 5(1) and (2), which embody the central principle prohibiting non-discrimination on grounds of disability. Article 4 of the CRPD creates a general obligation for ratifying countries to "modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities."

18(1)(a) provides that persons with disabilities have the right to acquire and change their nationality and cannot be deprived of these rights arbitrarily or on the grounds of disability. The right to birth certificates and passports is also protected (art. 18(1)(b)). The article also affirms that persons with disabilities are free to leave any country, including their nation of citizenship (art. 18(1)(c)), and cannot be prevented from entering their own country on grounds of disability (art. 18(1)(d)). Article 18(2) adopts the terms of article 7(1) of the CRC to provide for registration at birth.

4. OPIC Migration Case Law

84. The CRC's Optional Protocol on a Communications Procedure (the CRC Communications Protocol)⁹⁵ empowers the CRC Committee to receive complaints from or on behalf of individuals or groups claiming violations of rights under the convention and its optional protocols.⁹⁶
85. Most individual communications decided on the merits to date involve migration and asylum, with a large proportion of cases brought against Spain concerning age-assessment procedures for unaccompanied minors.⁹⁷ Where violations are found, the committee consistently concludes that the child's best interests were not treated as a primary consideration, alongside breaches of the rights to be heard, identity, refugee protection, and health.
86. The committee's jurisprudence covers a wide range of migration-related issues. In four cases it has found Denmark responsible for violating girls' rights by ordering deportation to Somalia where they risked FGM;⁹⁸ Belgium for refusing a visa to a child in *kafalah* care, disregarding her de facto family ties;⁹⁹ and Finland for failing to assess the psychological harm facing a child from an LGBT family if returned to a hostile environment.¹⁰⁰ In non-refoulement cases, the committee has been cautious. In several cases relating to children needing health care, the committee found that if they can obtain health care for their condition there is no violation in returning them with their families.¹⁰¹ However, in a case regarding a girl who had undergone a cochlear implant, it found that the order to return was a breach of the CRC.¹⁰²

5. The Universal Nature of the Rights of Children in Migration

87. Migrant children's claim to possess rights is rooted in the principle of universality. Like adults, every child has a claim to be recognised as persons with dignity and intrinsic worth. The principle of universality recognises every child's claim to possess rights and the obligation of states to respect and

⁹⁵ Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, Dec. 19, 2011, 2173 U.N.T.S. 222 [hereinafter CRC Communications Protocol]. As at 12 January 2026, ratified by 53 states.

⁹⁶ For more detail on the CRC Communications Protocol, see Ann Skelton & Ashley Collins, *Committee on the Rights of the Child*, in OXFORD HANDBOOK OF THE U.N. HUMAN RIGHTS SYSTEM (Z. Ra'ad Al Hussein and J. Genser eds., 2026).

⁹⁷ *N.B.F. v. Spain*, Commc'n 11/2017, CRC Comm., U.N. Doc. CRC/C/79/D/11/2017 (Feb. 18, 2019), is the decision in which the CRC Committee established its jurisprudence on this point.

⁹⁸ *I.A.M. v. Denmark*, Commc'n No. 3/2016, CRC Comm., U.N. Doc. CRC/C/77/D/3/2016 (Mar. 8, 2018); *Y.A.M. v. Denmark*, Commc'n No. 83/2019, CRC Comm., U.N. Doc. CRC/C/86/D/83/2019 (Mar. 19, 2021); *S.H.K. v. Denmark*, Commc'n No. 140/2021, CRC Comm., U.N. Doc. CRC/C/93/D/140/2021 (June 23, 2023); *Sa. A.A. & Su. A.A. v. Denmark*, Commc'n No. 169/2021, CRC Comm., U.N. Doc. CRC/C/96/D/169/2021 (Jan. 13, 2025).

⁹⁹ *Y.B. & N.S. v. Belgium*, Commc'n No. 12/2017, CRC Comm., U.N. Doc. CRC/C/79/D/12/2017 (Nov. 5, 2018).

¹⁰⁰ *A.B. v. Finland*, Commc'n No. 51/2018, CRC Comm., U.N. Doc. CRC/C/86/D/51/2018 (Mar. 12, 2021).

¹⁰¹ *G.R. et al. v. Switzerland*, Commc'n No. 86/2019, CRC Comm., U.N. Doc. CRC/C/87/D/86/2019 (June 16, 2021); *K.K. v. Switzerland*, Commc'n No. 110/2020, CRC Comm., U.N. Doc. CRC/C/92/D/110/2020 (Mar. 1, 2023).

¹⁰² *Z.S. & A.S. v. Switzerland*, Commc'n No. 74/2019, CRC Comm., U.N. Doc. CRC/C/89/D/74/2019 (Mar. 16, 2022).

observe their standing or status as claimants of rights. Along with the principle of effectiveness, this principle roots their claim to special measures of protection or specific rights.¹⁰³

88. Every state through ratification of the CRC and/or the ICCPR has assumed treaty obligations to respect, protect, and fulfil the provisions of these treaties. Like its international humanitarian law complement, *children's entitlement to special respect and protection*, states therefore have assumed obligations to ensure children's claim to special measures of protection through treaty law and custom.¹⁰⁴ Even if the status of selected special measures or specific rights as general practice is contested, it is arguable the universal recognition and acceptance of children's claim to special measures of protection "loosens the requirements prescribed for *usus*, while elevating *opinio juris* to a rank higher than normally admitted."¹⁰⁵ Such special measures of protection logically include the CRC's guiding principles of non-discrimination, the best interests of the child, the right to be heard, and the right to life, survival, and development, as well as the prohibition of refoulement.¹⁰⁶
89. Migrant children's status as children intersects with their status as migrants to double their vulnerability to serious rights deprivation.¹⁰⁷ The failure of states to effectively ensure children's right to procedural and remedial justice through the administration of justice and conduct of public affairs generally—and migrant children particularly—limits their capacity to claim and enforce their rights.¹⁰⁸ States have an obligation to cease, guarantee non-repetition of, and repair these wrongs.¹⁰⁹ In this situation the vindication of these children's right to possess rights is often contingent on international law's scaffold for monitoring and enforcing compliance.

B. Regional

1. African Continent

90. The African Charter on the Rights and Welfare of the Child,¹¹⁰ now ratified by 51 of the 55 member states of the African Union, contains several notable provisions relevant to migration. Article 23 dealing with refugee children provides for the rights of refugee children to receive appropriate protection and humanitarian assistance in the enjoyment of the rights set out in the charter and in other international human rights and humanitarian treaties; it requires states parties to cooperate with existing international organizations which protect and assist refugees and to undertake tracing efforts to locate parents or other close relatives and to accord the child the same protection as any other child permanently or temporarily

¹⁰³ THE CHARTER OF THE UNITED NATIONS: A COMMENTARY 1574–1575 (Bruno Simma et al. eds., 3d ed. 2012).

¹⁰⁴ Rule 135, RULES OF CUSTOMARY HUMANITARIAN LAW, vol. II, ch. 39, § B (2005), <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule135>. Cf. JENNY KUPER, INTERNATIONAL LAW CONCERNING CHILD CIVILIANS IN ARMED CONFLICT 119 (1997).

¹⁰⁵ As Antonio Cassese observed with respect to the Martens Clause: "[T]he requirement of *opinio iuris* or *opinio necessitatis* may take on special prominence. As a result, the expression of legal views by a number of states and other international subjects concerning the binding value of a principle or rule, or the social or moral need for its observance by states, may be held to be conducive to the formation of a principle or customary rule, even when those legal views are not backed up by widespread and consistent state practice, or even by no practice at all." Antonio Cassese, *The Martens Clause: Half a Loaf or Simply Pie in the Sky*, 11 EUR. J. INT'L L. 187, 214 (2000). Cf. *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, ¶¶ 70–75 (Can.) (the best interests of the child as a rule of customary international law).

¹⁰⁶ Joint General Comment No. 4/23, *supra* note 35, ¶¶ 21–41. Cf. THE U.N. CONVENTION ON THE RIGHTS OF THE CHILD: A COMMENTARY 13–16 (John Tobin ed., 2019).

¹⁰⁷ Joint General Comment No. 4/23, *supra* note 35, ¶ 3.

¹⁰⁸ Jacqueline Bhabha, *Arendt's Children: Do Today's Migrant Children Have a Right to Have Rights?* 31 HUM. RTS. Q. 410 (2009).

¹⁰⁹ Responsibility of States for Internationally Wrongful Acts, U.N. Doc. A/RES/56/83 annex (Jan. 28, 2002).

¹¹⁰ July 11, 1990, OAU Doc. CAB/LEG/24.9/49 (1990).

deprived of his family environment for any reason. Article 23(4) extends its provisions to internally displaced children, providing more comprehensive protection for displaced children in Africa.¹¹¹

2. Australia/Oceania

91. A pervasive problem with human rights protection in the Asia-Pacific region is that many countries in the region are not party to major human rights conventions, including the Refugee Convention and the ICCPR. There is no regional human rights framework. Critically, however, all are party to the CRC, and many have ratified the CRPD. This has encouraged deeper engagement with human rights and U.N. systems. In 2022 ASEAN member states adopted the ASEAN Declaration on the Rights of the Child in the Context of Migration¹¹² and its accompanying Regional Plan of Action.¹¹³ Although non-binding, the measures call on states parties to promote the best interests of the child, including through maintaining family unity and avoiding immigration detention. Regional actors such as Australia and New Zealand have played leadership roles in promoting rights regimes at regional and international levels.

3. Americas

92. The protection of migrant children in the Americas rests on a layered architecture of international, regional, and domestic law that requires states to guarantee the rights enshrined in the CRC, ratified by every nation in Americas except the United States. Furthermore, the Migrant Workers Convention,¹¹⁴ with several provisions guaranteeing various rights of migrant children (arts. 29 *et seq.*), has been ratified by the majority of Central and South American states.
93. At the regional level, the American Convention on Human Rights, in particular arts. 19 (rights of the child) and 22 (right of asylum and non-refoulement), and the Inter-American Convention on the Elimination of all Forms of Discrimination against Persons with Disabilities reinforce CRC standards within the Inter-American system,¹¹⁵ with compliance monitored by the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. The Inter-American Court has issued advisory opinions and binding jurisprudence clarifying states' obligations to adopt child-sensitive migration procedures, ensure prompt family reunification, and prohibit the detention of unaccompanied children.¹¹⁶
94. At the national level, the *Flores* settlement agreement sets minimum standards of care, education, and legal counsel for detained migrant children in the United States.¹¹⁷ Canada's Supreme Court has

¹¹¹ Precious Eriamiatoo, *Article 23: Refugee Children*, in THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD: A COMMENTARY (Julia Sloth-Nielsen et al. eds., 2024). See also Romola Adeola & Benyam D. Mezmur, *The Protection of Internally Displaced Children in Africa: A Doctrinal Analysis of Article 23(4) of the African Children's Charter*, 65 J. AFR. L. 115, 122 (2021).

¹¹² ASEAN Declaration on the Rights of Children in the Context of Migration (Nov. 2, 2019), <https://asean.org/wp-content/uploads/2019/11/4-ASEAN-Declaration-on-the-Rights-of-Children-in-the-Context-of-Migration.pdf>.

¹¹³ Regional Plan of Action on Implementing the ASEAN Declaration on the Rights of Children in the Context of Migration, n.d., <https://acwc.asean.org/resources/publications/regional-plan-of-action-on-implementing-the-asean-declaration-on-the-rights-of-children-in-the-context-of-migration>.

¹¹⁴ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Dec. 18, 1990, 2220 U.N.T.S. 3 (entered into force July 1, 2003).

¹¹⁵ American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 (entered into force July 18, 1978); Inter-American Convention on the Elimination of all Forms of Discrimination against Persons with Disabilities, June 8, 1999, AG/RES. 1608 (XXIX-O/99) (entered into force Sept. 14, 2001).

¹¹⁶ Advisory Opinion OC-21/14, *supra* note 46; *Vélez Loor v. Panama*. Preliminary Objections, Merits, Reparations, and Costs. Judgment, Inter-Am. Ct. H.R. (ser. C) No. 218 (Nov. 23, 2010).

¹¹⁷ See Kelsey Y. Santamaria, *Child Migrants at the Border: The Flores Settlement Agreement and Other Legal Developments*, Cong. Res. Serv., Dec. 3, 2024, <https://www.congress.gov/crs-product/IF11799>. See also *infra* note 189 and accompanying text.

interpreted the Charter of Rights and Freedoms to embed the best interests principle.¹¹⁸ In Latin America, most constitutions explicitly recognize children's rights and laws reflect the CRC; for instance, Brazil's Statute of the Child and the Adolescent and Mexico's General Law on the Rights of Children and Adolescents mandate specialized shelters, health care, and access to education for migrant children.¹¹⁹

95. Enforcement is monitored through a mix of judicial review, administrative inspection, and regional oversight by the Inter-American Court and the Inter-American Commission. Together, these legal instruments create a comprehensive, albeit uneven, framework that obliges states in the Americas to protect, assist, and uphold the rights of children regardless of their migratory status.

4. Europe

96. The protection of children on the move is anchored in a robust, multi-level legal architecture based on international, regional, and E.U. legal frameworks, which together impose binding obligations on states. At the core lies the CRC, ratified by all European states.
97. At the regional level, the Council of Europe framework, in particular the ECHR, provides enforceable protection from inhuman or degrading treatment, which encompasses the principle of non-refoulement (art 3) and respect for family life (art 8), which are often invoked in cases involving migrant children before the European Court of Human Rights (ECtHR). The ECtHR reinforces enforcement by interpreting the ECHR in favour of migrant children.¹²⁰
98. Within the European Union, the Charter of Fundamental Rights of the European Union explicitly recognizes the rights of children and requires consideration of their best interests in all actions implementing E.U. law (art. 24). The new E.U. Pact on Migration and Asylum (adopted in April 2024, to enter into force in June 2026), aims at strengthening external borders while including specific provisions for children, such as mandatory, prompt appointment of representatives, multidisciplinary age assessments, and prioritizing the best interests of the child.¹²¹ However, critics warn that accelerated border procedures, potential detention, and reduced safeguards for children in families may undermine the rights of children on the move.¹²²
99. Implementation is monitored by institutions such as the E.U. Agency for Fundamental Rights and the Council of Europe's Civil Society Committee on the Rights of the Child, which produce periodic reports highlighting gaps and best practices. While progress is evident, challenges persist, particularly in ensuring timely, child-appropriate asylum procedures and preventing unsafe secondary migration.

¹¹⁸ See, e.g., *Kanthasamy v. Canada (Citizenship and Immigration)*, [2015] 3 S.C.R. 909 (Can.).

¹¹⁹ Estatuto da Criança e do Adolescente, Lei n° 8,069 (July 13, 1990) (Br.), https://www.planalto.gov.br/ccivil_03/leis/18069.htm; Ley General de los Derechos de Niñas, Niños y Adolescentes, *supra* note 10.

¹²⁰ For a comprehensive overview of the ECtHR's case law, see the thematic factsheets published by the Court, e.g., ECtHR Press Unit, *Accompanied Minors in Detention* (Aug. 2023), https://www.echr.coe.int/documents/d/echr/FS_Accompanied_migrant_minors_detention_ENG; ECtHR Press Unit, *Unaccompanied Minors in Detention* (Oct. 2024), https://www.echr.coe.int/documents/d/echr/FS_Unaccompanied_migrant_minors_detention_ENG.

¹²¹ See *Pact on Migration and Asylum*, Eur. Comm'n, May 21, 2024, https://home-affairs.ec.europa.eu/policies/migration-and-asylum/pact-migration-and-asylum_en.

¹²² PICUM, *CHILDREN'S RIGHTS IN THE 2024 MIGRATION AND ASYLUM PACT* (2024), <https://picum.org/wp-content/uploads/2024/10/PICUM-Analysis-Children-Rights.pdf>.

C. Domestic Examples

1. Germany

100. Germany provides a comprehensive legal framework governing the rights and protection of refugee children and adolescents, aiming to ensure that refugee children's rights are upheld in line with E.U. and international law, especially the CRC.
101. At the constitutional level, article 1 of the Basic Law (Grundgesetz, GG) affirms the inviolability of human dignity, applying equally to all children regardless of nationality or residence status. Art. 6 GG reinforces the state's duty to protect and support children along with a specific constitutional right to formal education based on arts. 7 and 2 GG. Art. 2 GG can be interpreted in a way that the core principles of the CRC are incorporated into the Basic Law, even though these principles are not yet explicitly mentioned in the text of the constitution.¹²³ All constitutional rights are directly enforceable.
102. Access to education is guaranteed by the federal constitution in combination with state school laws.¹²⁴
103. A key federal statute is the Child and Youth Welfare Act (Social Code Book VIII/Sozialgesetzbuch VIII, SGB VIII). Its objective is to promote the development of all young people and protect them from harm. Refugee minors, including unaccompanied children, have the same entitlement to youth welfare services as German children (§ 2, § 27–35 SGB VIII).
104. Additional health care entitlements derive from the Asylum Seekers' Benefits Act (Asylbewerberleistungsgesetz, AsylbLG), which provides essential medical treatment during the stay.

2. Legal Foundation Governing Children in Migration in Greece

105. Greece is a party to key human rights instruments as well as the 1951 Refugee Convention and its 1967 Protocol, which provide the foundation for international protection of refugee children.
106. At the regional level, Greece operates within the framework of E.U. law, including asylum and migration instruments that regulate reception conditions, asylum procedures, and safeguards for unaccompanied minors. A major driver of legal change is the E.U. Migration and Asylum Pact, which has been criticised, inter alia, for providing insufficient safeguards for children in migration.¹²⁵
107. Domestically, Greek migration and asylum law incorporates international obligations including arts. 8 and 3 ECHR on respect for family life, the principle of nonrefoulement, and the prohibition of inhuman or degrading treatment through national legislation governing asylum procedures, reception conditions, guardianship for unaccompanied children, and access to public services.¹²⁶ In 2025, Greece temporarily

¹²³ Philipp B. Donath, "They're Not Little Adults": *The Struggle for Proper and Standalone Children's Rights in the German Basic Law*, CONSTITUTIONNET, Feb. 26, 2021, <https://constitutionnet.org/news/theyre-not-little-adults-struggle-proper-and-standalone-childrens-rights-german-basic-law>.

¹²⁴ See, e.g., Hessian School Act, § 1: "Every young person has a right to education. . . . Admission to a school must not be determined by gender, disability, country of origin, religious affiliation, or the economic or social status of the parents."

¹²⁵ E.U. Pact on Migration and Asylum, PICUM, Jan. 17 2025, <https://picum.org/blog/eu-pact-on-migration-and-asylum/>.

¹²⁶ See Law 4939/2022 (Code of Legislation on the Reception and International Protection of Third-Country Nationals and Stateless Persons), which codifies asylum procedures, reception conditions, temporary protection and the principle of the best interests of the child; Law 4636/2019, transposing Directive 2011/95/EU on standards for international protection; Law 4554/2018, establishing procedures for determining the best interests and guardianship of unaccompanied migrant children; Law 4825/2021, reforming return and international protection procedures and institutional competences; and Law 5038/2023 (Migration Code), regulating entry, residence, rights and residence permits of third-country nationals in Greece.

suspended asylum applications for arrivals from North Africa and introduced stricter penalties and detention rules for rejected applicants, in a policy shift toward deterrence and accelerated returns.¹²⁷

108. While the legal framework formally recognizes children as rights holders deserving of special protection, significant gaps between law and practice remain. Legal protections are frequently undermined by administrative barriers, delays in status determination, and the prioritization of migration control objectives over child welfare considerations.

3. Japan

109. Japan is a party to core U.N. human rights treaties and the 1951 Refugee Convention and its 1967 Protocol but is not a party to the Migrant Workers Convention or the 1954 and 1961 Statelessness Conventions. Japan has made declarations to CRC arts. 9 and 10, stipulating that they do not apply in deportation and family reunification cases. The CRC Committee has recommended that Japan withdraw these declarations,¹²⁸ but Japan has maintained these declarations.
110. Japan's legal framework on immigration, residence management, and refugee recognition is based on the Immigration Control and Refugee Recognition Act.¹²⁹ The latest amendment aims mainly to eliminate obligatory detention during the refugee recognition process by establishing alternative measures, defining limits of application, and establishing a new “complementary protection” category. This new category has been established with the aim of protecting refugees from conflict zones such as Ukraine.¹³⁰
111. In 2024, the number of foreign nationals who applied for refugee status was just over 12,300, a decrease of 1,450 (approximately 10.5%) from the previous year. The applicants came from a range of 92 countries, with the main nationalities being Sri Lanka, Thailand, Türkiye, India, and Pakistan. The number of foreigners who applied for complementary protection status was 1,273, an increase of 595 (approximately 87.8%) from the previous year. The nationalities of applicants for complementary protection status came from 12 countries, with Ukraine being the majority.

IV. ENFORCEMENT STRATEGIES

A. Traditional Enforcement Strategies

1. International

a. OPIC

112. Under the CRC Communications Protocol, the CRC Committee has issued detailed procedural and systemic remedies requiring free legal assistance for unaccompanied children, accessible review mechanisms, and qualified psychosocial support. It has also directed states to train officials across migration and justice sectors on relevant child rights standards and ensuring officers know that genital

¹²⁷ *Unlawful Suspension of Access to Asylum in Greece Must be Immediately Withdrawn*, HIAS GREECE, Jul. 16 2025, <https://hias.org/statements/unlawful-suspension-access-asylum-greece-must-be-immediately-withdrawn/>; Helena Smith, *Greece Passes Draconian Legislation with Prison Terms for Rejected Asylum Seekers*, GUARDIAN, Sept. 3, 2025, <https://www.theguardian.com/world/2025/sep/03/greece-passes-draconian-legislation-with-prison-terms-for-rejected-asylum-seekers>.

¹²⁸ CRC Comm., Concluding Observations: Japan, ¶ 6, U.N. Doc. CRC/C/15/Add.90 (June 24, 1998); CRC Comm., Concluding Observations: Japan, ¶¶ 8–9, U.N. Doc., CRC/C/15/Add.231 (Feb. 26, 2004).

¹²⁹ Cabinet Order No. 319 of October 4, 1951. Last amendment act adopted on 9 June 2023.

¹³⁰ About 2000 Ukrainian are residing in Japan as of the end of 2025. They are entitled to quasi-refugee status in accordance with the amended act.

examinations for age determination are severe violations of privacy.¹³¹ Remedies have included compensation, psychological counselling, and correction of identity documents.¹³²

113. Although the protocol's communications procedure has been criticized for slow processing and stringent admissibility requirements—especially exhaustion of domestic remedies—its interim measures mechanism is a notable strength. Frequently used to halt deportations, interim measures have seen high compliance, enabling swift relief in cases in Spain and Denmark, among others. For example, Spain's compliance with the committee's measures enabled a 12-year-old girl, an "irregular resident" although she was born in Spain, to attend a public school in Melilla less than six months after she and her mother submitted their complaint.¹³³
114. In addition to individual communications, the protocol provides for inquiry procedures. For instance, in 2025 the committee found France responsible for grave and systematic violations of the rights of unaccompanied migrant children, stating that many are being left homeless, deprived of basic care, and living in conditions described as "degrading" and "contrary to human dignity."¹³⁴
115. The CRC Communications Protocol is "a beacon for children's rights"¹³⁵ and its jurisprudence provides important guidance. However, the strengthening of domestic remedies for children in the context of migration remains key.

b. UNESCO

116. The specialized U.N. agency primarily responsible for protecting the cultural rights of children is UNESCO, the United Nations Educational, Scientific, and Cultural Organization. UNESCO describes its mission in 2026 as being "dedicated to strengthening our shared humanity through the promotion of education, science, culture, and communication." In some divisions that promote cultural rights, UNESCO focuses on providing technical assistance, developing curricula, and creating innovative educational opportunities for children. It is often inaccessible to members of civil society.
117. UNESCO has championed cultural rights for decades.¹³⁶ One function of UNESCO is the preservation of cultural practices and expressions of intangible cultural heritage, such as games and other traditions that can be important to migrant children, including puppets, capoeira and other martial arts, and dance.¹³⁷
118. Although UNESCO had played a leading role in the protection of cultural heritage, it is often criticized for its blatantly elitist approaches. Its decision-making is controlled by states parties, and recent efforts to democratize the process of designating world heritage sites have been largely symbolic and ineffectual.

¹³¹ *R.Y.S. v. Spain*, Commc'n No. 76/2019, CRC Comm., U.N. Doc. CRC/C/86/D/76/2019 (Feb. 4, 2021).

¹³² See Ton Liefaard, *Children's Rights Remedies Under International Human Rights Law: How to Secure Children's Rights Compliant Outcomes in Access to Justice?* 56 DE JURE L.J. 486 (2023); Gertrude Quan & Ann Skelton, *Age Determination of Unaccompanied Migrant Children: An Appraisal of the Jurisprudence of the Committee on the Rights of the Child*, 43 NORDIC J. HUM. RTS. 59 (2025).

¹³³ *UN Committee Welcomes Spain's Decision to Allow Moroccan Child to Attend Public School*, OHCHR, May 28, 2020, <https://www.ohchr.org/en/press-releases/2020/05/un-committee-welcomes-spains-decision-allow-moroccan-child-attend-public?LangID=E&NewsID=25908>.

¹³⁴ CRC Comm., Inquiry Concerning France, U.N. Doc. CRC/C/FRA/IR1 (Oct. 3, 2025).

¹³⁵ Ton Liefaard, *A Decade of the Optional Protocol to the CRC on a Communications Procedure: Progress, Challenges and the Pathways Ahead for Children's Access to Justice*, 32 INT'L J. CHILD. RTS. 1, 8 (2024).

¹³⁶ Kishore Singh, *UNESCO and Cultural Rights*, in CULTURAL RIGHTS AND WRONGS 146–160 (Halina Nieć ed., 1998).

¹³⁷ See *Cultural Practices and Expressions of Intangible Heritage*, UNESCO (n.d.), <https://www.unesco.org/en/intangible-cultural-heritage/list>.

2. Regional

a. ACERWC

119. The ACERWC, the committee established to monitor the implementation of the African Children's Charter, has over the years taken several important steps specific to refugee children and children on the move. Four examples are given. First, when conflict broke out in South Sudan and Central African Republic in 2013, causing widespread displacement of children fleeing conflict, among others, two subcommittees of the ACERWC were supported by UNHCR to undertake a study mission to those countries. Reports on these tours were very influential in drawing attention to these conflicts.
120. Second, the ACERWC commissioned a detailed mapping of children on the move within Africa in 2019.¹³⁸ Its 2024 climate change study also prominently features displacement and refugee children.¹³⁹
121. Third, in 2017, the ACERWC appointed a Special Rapporteur on Children on the Move,¹⁴⁰ whose responsibilities are aimed at safeguarding the rights of children on the move, including through field visits to assess the conditions and challenges faced by migrant, refugee, and displaced children and collaboration with governments, international organizations, and civil society.¹⁴¹
122. Fourth, the ACERWC is a member of a Consortium on Children on the Move and Child Labor in Africa, along with the African Union Commission, the International Labour Organization (ILO), IOM, and UNICEF. The committee has addressed many of its concluding observations to issues affecting refugee children, including to the Democratic Republic of Congo, Angola, Benin, and Burundi.¹⁴²

b. Americas

123. The protection of migrant children in the Americas is based on a patchwork of multilateral treaties, regional instruments, and national policies that have been implemented through a range of "traditional" enforcement mechanisms, relying on a combination of judicial oversight and litigation, administrative monitoring and inspection, and international cooperation and referral systems.
124. The Inter-American Commission frequently issues thematic reports on migrant children and monitors conditions in detention facilities and border zones, while the Inter-American Court has clarified that states are required to adopt child-sensitive migration procedures, ensure prompt family reunification, and prohibit the detention of unaccompanied children.¹⁴³
125. Domestic courts across the region, such as in Argentina, Colombia, Mexico, and the United States, have reviewed detention practices, deportation procedures, and access to asylum for children. In the United States, Canada, and many Latin American countries, courts have been the primary venue for enforcing the rights of children in migration.
126. Across the Americas, ministries of the interior, immigration, or social welfare maintain inspection regimes to assure compliance with national statutes that incorporate CRC standards. Many countries require that unaccompanied or separated children be placed under the supervision of child welfare authorities rather than immigration authorities alone. Guardianship systems, best-interest

¹³⁸ MAPPING CHILDREN ON THE MOVE WITHIN AFRICA, *supra* note 11.

¹³⁹ ACERWC STUDY ON CLIMATE CHANGE & CHILDREN'S RIGHTS IN AFRICA, *supra* note 13.

¹⁴⁰ The current holder of this position is the ACERWC chair, the Hon. Sabrina Gahar. *Special Rapporteur on Children on the Move*, ACERWC, <https://www.acerwc.africa/en/special-mechanisms/thematic-areas/special-rapporteur-children-move>.

¹⁴¹ See ACERWC, The African Charter on the Rights and Welfare of the Child and Children on the Move (2025), <https://www.acerwc.africa/en/article/activity/advocacy-factsheet-african-charter-rights-and-welfare-child-and-children-move>.

¹⁴² See Eriamiatoe, *Article 23: Refugee Children*, *supra* note 111, at 348.

¹⁴³ E.g., Advisory Opinion OC-21/14, *supra* note 46.

determinations, and specialized migration units are used to assess protection needs, coordinate social services, and ensure access to education and healthcare. National human rights institutions and ombudspersons further contribute by receiving complaints, conducting inspections, and issuing recommendations.

127. International monitoring complements these mechanisms. The CRC Committee and other treaty bodies, special rapporteurs, and working groups conduct country visits and highlight systemic concerns, reinforcing accountability through international scrutiny.
128. Traditional enforcement strategies have reduced time in detention, established minimum care standards, and created formal pathways for family reunification. Nevertheless, their limitations are evident: reactive litigation often leaves children at risk while cases progress, administrative oversight is uneven and underfunded, and international cooperation can falter when political will wanes.

c. Europe

129. In 2024, people under 18 represented around 25% of first-time asylum applicants in the European Union.¹⁴⁴ Of these, unaccompanied children¹⁴⁵ (UACs) accounted for 15.9%.¹⁴⁶ Although the percentage of positive decisions on asylum applications is higher for children than for adults, at the end of 2024, more than 250,000 children were awaiting an asylum decision in the European Union.¹⁴⁷
130. Certain regions are under specific stress, leading to more violations of children's rights: on the Polish side of the Polish-Belarusian border, for example, pushbacks involving children have been documented. In Greece and Italy, under the influence of E.U. policies such as the Dublin framework and the E.U.-Türkiye deal, children face prolonged stays in detention-like conditions, with UACs experiencing difficulties accessing guardianships.¹⁴⁸ In Germany, under a new proposed law influenced by E.U. provisions, children whose parents have been detained in reception facilities would be detained in these facilities with their parents if this is "in their best interest."¹⁴⁹ Unaccompanied children going missing from reception facilities is a significant concern across member states,¹⁵⁰ with around 50,000 UACs reported as missing in 2021 and 2023. Fragmented data collection procedures hinder tracing missing children across borders.¹⁵¹
131. Article 24 of the Charter of Fundamental Rights of the European Union (CFR), which is directly based on the CRC, is at the heart of the legal framework protecting children in the European Union. The 2021

¹⁴⁴ Asylum Applications, Annual Statistics, EUROSTAT, last updated Mar. 14, 2025, https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Asylum_applications_-_annual_statistics#Main_trends_in_the_number_of_asylum_applicants.

¹⁴⁵ Unaccompanied Children, E.U. AGENCY FOR ASYLUM, n.d. (E.U. definition), <https://euaa.europa.eu/guidance-reception-unaccompanied-children/unaccompanied-children>.

¹⁴⁶ Applications by Unaccompanied Minors, EUROSTAT, last updated Mar. 14, 2025, https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Asylum_applications_-_annual_statistics#Applications_by_unaccompanied_minors.

¹⁴⁷ Children in Migration—Demography and Migration, EUROSTAT, last updated June 20, 2025, https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Children_in_migration_-_demography_and_migration; Children in Migration—Asylum Applicants, EUROSTAT, last updated Apr. 10, 2025, https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Children_in_migration_-_asylum_applicants#SE_MAIN_TT.

¹⁴⁸ SAVE THE CHILDREN, CROSSING LINES, *supra* note 31, at 27, 59.

¹⁴⁹ *GEAS-Umsetzung in Deutschland: Mit voller Härte* [GEAS implementation in Germany: With full force], PRO ASYL, Sept. 16, 2025, <https://www.proasyl.de/news/geas-umsetzung-in-deutschland-mit-voller-haerte/>.

¹⁵⁰ *Disappearance of Migrant Children in the EU*, EUR. PARLIAMENT DIRECTORATE-GENERAL FOR PARLIAMENTARY RES. SERVS., May 22, 2025, <https://epthinktank.eu/2025/05/22/disappearance-of-migrant-children-in-the-eu-2/>.

¹⁵¹ E.U. AGENCY FOR FUNDAMENTAL RIGHTS, TOWARDS INTEGRATED CHILD PROTECTION SYSTEMS (2025), https://fra.europa.eu/sites/default/files/fra_uploads/fra-2025-integrated-child-protection-systems_2.pdf#_blank.

EU strategy on the rights of the child¹⁵² stressed the vulnerability of migrant children. The 2024 pact on migration and asylum¹⁵³ introduced several provisions regarding children: For instance, the Eurodac Regulation regulates the collection of biometric data to identify missing children.¹⁵⁴ The Reception Conditions Directive calls for the early appointment of representatives for UACs.¹⁵⁵

132. Migration-related cases form one of the largest, if not the largest, subset of European Court of Justice (ECJ) caselaw referencing art. 24. These cases most often involve non-E.U. parents claiming their right to reside in the EU with their children who are EU citizens.¹⁵⁶ Similarly, we see cases¹⁵⁷ where parents base an application for subsidiary protection on their relationship with a child with this status. Compared to these “family reunification cases,” we see few art. 24 cases where asylum claims are substantiated by violations of children’s rights in the country of origin¹⁵⁸ or cases concerning UACs.¹⁵⁹
133. Art. 24 CFR thus does play an important role in ECJ decisions on migration cases involving children. However, it mostly comes into play in family reunification situations, most likely because legal mobilization issues are more easily overcome where one party is already based in the EU. Relatively little reference is made to children’s rights on their own terms. A reflection of this is found in the recent judgment in *Kinsa*,¹⁶⁰ where the Court relied on art. 24 CFR to conclude that parents or guardians of a child must be exempt from trafficking charges relating to that child.

3. Domestic

a. Germany

134. Actual experiences and challenges in enforcing children's rights for refugee children in Germany can be illustrated by the example of the right to education, especially against the backdrop of the large number of refugee children from Ukraine.¹⁶¹ Education is an enabling right that makes other children’s rights practically accessible.¹⁶²
135. The enforcement of this right is structurally challenging in Germany because of its federal government system: reception, distribution, and many migration-related decisions are shaped by federal asylum frameworks, while schooling is primarily regulated and delivered by the 16 German states, the

¹⁵² COM(2021) 142 final (Mar. 24, 2021).

¹⁵³ *MEPs Approve the New Migration and Asylum Pact*, EUR. PARLIAMENT, Apr. 10, 2024, <https://www.europarl.europa.eu/news/en/press-room/20240408IPR20290/meps-approve-the-new-migration-and-asylum-pact>.

¹⁵⁴ PICUM, CHILDREN’S RIGHTS IN THE 2024 MIGRATION AND ASYLUM PACT, *supra* note 122.

¹⁵⁵ Directive (EU) 2024/1346 of the European Parliament and of the Council of 14 May 2024 laying down standards for the reception of applicants for international protection, OJ L, 2024/1346 (May 22, 2025).

¹⁵⁶ For a recent example of many, see *Melnichenko v. Council*, Case T-498/22 (Feb. 26, 2025), ECLI:EU:T:2025:180.

¹⁵⁷ E.g., *Bundesrepublik Deutschland v. SE*, Case C-768/19 (Sept. 9, 2021), ECLI:EU:C:2021:709; *Yoshikazu Iida v. Stadt Ulm*, Case C-40/11 (Nov. 11, 2012), ECLI:EU:C:2012:691; *K.A. & Others v. Belgische Staat*, Case C-82/16 (Oct. 26, 2017), ECLI:EU:C:2017:821; *A v. Migrationsverket*, Case C-193/19 (Mar. 4, 2021), ECLI:EU:C:2021:168.

¹⁵⁸ As a non-CJEU case which nevertheless cites art. 24 CFR see *N.S.H. & D.P. v. Asylum Service*, Case No. 2059/22 (Cyprus Int’l Protect. Admin. Ct. Sept. 9, 2024).

¹⁵⁹ E.g., *TQ v. Staatssecretaris van Justitie en Veiligheid*, Case C-441/19 (Jan. 14, 2021), ECLI:EU:C:2021:9.

¹⁶⁰ Case C-460/23 (June 3, 2025), ECLI:EU:C:2025:392.

¹⁶¹ Living Conditions and Participation of Ukrainian Refugees in Germany, *supra* note 19.

¹⁶² Comm. on Economic, Social and Cultural Rights, General Comment No. 13: The Right to Education, ¶ 1, U.N. Doc. E/C.12/1999/10 (Dec. 8, 1999).

Länder.¹⁶³ Thus, transfers, unclear responsibilities, and capacity bottlenecks can translate directly into delayed school access.¹⁶⁴

136. Yet, schooling is a key factor for children's agency, social inclusion, and well-being—especially for children exposed to trauma, displacement and uncertainty—because school structures can offer stability, trusted adults, early identification of needs, and participation opportunities.¹⁶⁵
137. In a most recent study researchers carried out a standardised full survey on educational provision and access in 203 reception facilities in Germany accommodating children aged 6–18.¹⁶⁶ The study found that 19% of facilities offered no educational provision at all; only 41% provided access to regular schooling; 37% relied merely on “school-related” measures within the facility; and 4% offered only a German course. Crucially, in more than half of the facilities without any educational offer, stays of up to six months are possible or typical—so educational exclusion is foreseeable rather than exceptional.
138. If a child enters youth welfare custody, clearing procedures and age assessments can become informal “preconditions” for school enrolment.¹⁶⁷ Legal analyses document that in some Länder access to schooling is delayed until completion of clarification steps, meaning that children may spend significant time in uncertainty.¹⁶⁸
139. Additionally, “access” is not only about being admitted to a school, but also about whether schooling is feasible, sustainable, and child-friendly. Recent research on Ukrainian adolescents points to the burden of “double schooling”—which relates to German schooling alongside continued engagement with Ukrainian online schooling, which can create time pressure, stress, and difficult identity and participation dilemmas.¹⁶⁹
140. An effective complaints and remedy infrastructure is also needed. It should be easy to find and to access, multilingual, confidential, safe from retaliation, and linked to clear responsibilities and follow-up.¹⁷⁰
141. Many children and families lack adequate access to legal advice, deadlines run quickly, responsibilities are fragmented, and by the time a case is decided a school term may already be lost.
142. Therefore, states must not only adopt laws, but also offer support structures and track implementation continuously, using data and indicators.¹⁷¹ This might include indicators such as binding cooperation standards between reception facilities and school authorities, school enrolment, and outcomes like the

¹⁶³ Annette Korntheuer & Ann-Christin Damm, *What Shapes the Integration Trajectory of Refugee Students? A Comparative Policy Analysis in Two German States*, 36 REFUGEE: CAN. J. ON REFUGEES 31–44 (2020).

¹⁶⁴ CRC Comm., Concluding Observations: Germany, ¶¶ 39(b)–(d), 40(c), (g), U.N. Doc. CRC/C/DEU/CO/5-6 (Oct. 13, 2022). See also Will et al., *Educational Policies Matter*, *supra* note 18.

¹⁶⁵ Maryam Kia-Keating & B. Heidi Ellis, *Belonging and Connection to School in Resettlement: Young Refugees, School Belonging, and Psychosocial Adjustment*, 12 CLINICAL CHILD PSYCH. & PSYCHIATRY 29–43 (2007).

¹⁶⁶ Barbara Johanna Funck & Markus Ciesielski, *Bildungsrechte und Schulbildung für geflüchtete Kinder und Jugendliche in Erstaufnahmeeinrichtungen*, Forschungsbericht [Educational rights and schooling for refugee children and young people in initial reception facilities, research report], BiSKE-Studie, Universität Bremen, AbIM Working Paper 2/2025 (Nov. 21, 2025), <https://media.suub.uni-bremen.de/entities/publication/7346d5a2-0175-451c-af60-f643d9590b79>.

¹⁶⁷ Ulrike Bialas, *Who Is a Minor? Age Assessments of Refugees in Germany and the Classificatory Multiplicity of the State*, 48 ETHNIC & RACIAL STUD. 740 (2024).

¹⁶⁸ DEUTSCHES KINDERHILFSWERK, ANALYSE ZUM BILDUNGSZUGANG GEFLÜCHTETER KINDER 12–13 (2025).

¹⁶⁹ Sophia Chabursky et al., *Ukrainian Refugee Adolescents in Germany—A Qualitative Study on Schooling Experiences and the Fulfillment of Basic Psychological Needs*, 160 CHILD. & YOUTH SERVS. REV. article 107582 (2024), <https://doi.org/10.1016/j.childyouth.2024.107582>.

¹⁷⁰ Gerison Lansdown, *Article 12: The Right to Be Heard*, in MONITORING STATE COMPLIANCE WITH THE U.N. CONVENTION ON THE RIGHTS OF THE CHILD 46 (Ziba Vaghri et al. eds., 2022).

¹⁷¹ See MONITORING STATE COMPLIANCE WITH THE U.N. CONVENTION ON THE RIGHTS OF THE CHILD, *supra* note 170.

share of children enrolled within a defined timeframe, actual weekly instruction hours, and waiting times.

b. Japan

143. The issues of detention and deportation have been debated for many years regarding Japan's immigration laws. Concerns have been raised about the risk of indefinite detention and the lack of judicial review. International human rights standards¹⁷² provide that the detention of children would be a violation of human rights and should be the last resort and short as much as possible.
144. There are no provisions prohibiting the detention of children under the Immigration Control and Refugee Recognition Act,¹⁷³ but the government of Japan has stated children will not be detained during immigration investigations and that the interest of the child and other circumstances will also be taken into account in applications for the special residence permit.¹⁷⁴
145. Education is also an important issue surrounding foreign children in Japan. Japan's education system and educational policies for foreign children are deeply intertwined with the Fundamental Law of Education and the School Education Act under the Constitution, but these laws do not explicitly address the right to education for foreign children. Today, however, the right to education is considered to extend to foreigners.
146. Although foreign children are not obligated to attend compulsory education in Japan, if they wish to attend public compulsory education schools, they will be accepted free of charge just like Japanese children and students, in accordance with the obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the CRC. There are high hurdles to providing educational curriculum in the mother tongue of foreigners due to lack of resources.

c. Australia/Oceania

147. The enforcement of migration laws in Oceania has had a significant impact on migrant children. Australia's harsh approach to migrants convicted of crimes and its commitment to border control makes it a notable example of bad practice. The exponential rise in the rate of criminal deportations over the years has seen an increasing number of migrant children either sent into exile or faced with permanent separation from their parent.¹⁷⁵ Exile for these children can mean cultural dislocation, denial of health care and educational opportunities. Australia's harsh maritime interdiction and turn-back laws make no exception for children,¹⁷⁶ although it has ceased the practice of sending children to Nauru and Papua

¹⁷² For an example, see Joint General Comment No. 3/22, *supra* note 3.

¹⁷³ CRC Comm., Concluding Observations: Japan, ¶ 42, U.N. Doc. CRC/C/JPN/CO/4-5 (Mar. 5, 2019); Letter from Felipe González Morales, Special Rapporteur on the human rights of migrants, et al., OL JPN 1/2023, Apr. 18, 2023, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27995>.

¹⁷⁴ Reply to the Joint Communication Sent by the Special Rapporteur on the Human Rights of Migrants (n.d.), <https://www.moj.go.jp/isa/content/001403732.pdf>.

¹⁷⁵ See Joseph Lelliott & Matisse Reid, *The Crimmigrant Child: Locating Rights in the Boundaries of Criminal and Immigration Law*, 33 INT'L J. CHILD. RTS. 890 (2025); Joseph Lelliott, *Children's Rights and Crimmigration Controls: Examining Australia's Treatment of Unaccompanied Minors*, in CRIMMIGRATION IN AUSTRALIA 275–301 (Peter Billings ed., 2019). See also Marinella Marmo, *Non-Citizen Women and Visa Cancellation: The Role of Gender in Australia's Current Deportation Regime Under s 501*, 34 GRIFFITH L. REV. 213 (2025), <https://doi.org/10.1080/10383441.2025.2450589>; Lorena Rivas, Henrietta McNeill & Meg Randolph, *Deter, Detain, Deport and Demonise: Should Others Follow the Australian Crimmigration Model?* 79 AUSTL. J. INT'L AFF. 1 (2025).

¹⁷⁶ See *CPCF v Minister for Immigration and Border Protection*, (2015) 89 ALJR 207 (Austl.). See also Andreas Schloenhardt & Colin Craig, "Turning Back the Boats": Australia's Interdiction of Irregular Migrants at Sea, 27 INT'L J. REF. L. 536 (2015).

New Guinea.¹⁷⁷ Pacific countries are traditionally characterized as recipient countries of deportees from Australia, New Zealand and the United States.¹⁷⁸ However Henrietta McNeill has documented modern trends of Pacific islands emulating colonial practices by engaging in deportations themselves.¹⁷⁹ Although small in number compared with other countries, deportation practices in the Pacific seem to be in the rise. The trend does not bode well for migrant children.

d. United States

148. Immediately upon the inauguration of President Donald Trump on January 20, 2025, the U.S. government began a sustained attack on all forms of migration. Among other policy changes, the administration has moved to foreclose access to asylum, attempted to redefine the constitutional guarantee of birthright citizenship, reinstituted family detention despite its known harms, removed or attempted to withdraw “temporary protected status” from people from countries facing conflict or serious unrest, and permitted immigration agents to carry out enforcement operations in and around schools, hospitals, and churches.¹⁸⁰
149. Large-scale interior enforcement operations have had perceptible negative consequences for children’s performance in school.¹⁸¹ These operations have been characterized by arbitrary detention and in many cases by indiscriminate, excessive force.¹⁸² Agents of U.S. Immigration and Customs Enforcement (ICE) and its companion agency, Customs and Border Protection (CBP), have fired tear gas at and beaten protestors exercising their right of free expression.¹⁸³ ICE and CBP agents have also used deadly force, for example firing on vehicles, killing at least four people in this way and injuring at least nine others between September 2025 and January 2026.¹⁸⁴

¹⁷⁷ See Brian Opeskin & Daniel Ghezelbash, *Australian Refugee Policy and Its Impacts on Pacific Island Countries*, 36 J. PAC. STUD. 73–89(2016); Anthea Vogl, *Sovereign Relations? Australia’s “Off-shoring” of Asylum Seekers on Nauru in Historical Perspective*, in AGAINST INTERNATIONAL RELATIONS NORMS 158–174 (Charlotte Epstein ed., 2017).

¹⁷⁸ Henrietta McNeill, *Deportation as a Neo-colonial Act: How Deporting State Influence Extends Beyond the Border*, 102 POL. GEOGRAPHY article 102845 (Apr. 2023).

¹⁷⁹ See Henrietta McNeill, *Oceania’s “Crimmigration Creep”: Are Deportation and Reintegration Norms Being Diffused?* 54 J. CRIMINOLOGY 305 (2021). See also Henrietta McNeill, *Dealing with the ‘Crimmigrant Other’ in the Face of a Global Public Health Threat: A Snapshot of Deportation During COVID-19 in Australia and New Zealand*, 10 Soc. Sci. 278 (2021).

¹⁸⁰ See, e.g., Bill Frelick, *Dirty (Baker’s) Dozen: 13 Harmful Trump 2.0 Administration Immigration, Citizenship, and Refugee Policies, as of January 20, 2026*, HUMAN RIGHTS WATCH, Jan. 20, 2026, <https://www.hrw.org/news/2026/01/20/dirty-bakers-dozen-13-harmful-trump-20-administration-immigration-citizenship-and>.

¹⁸¹ See, e.g., Brenda Álvarez, *The Trauma Immigration Raids Leave in Classrooms*, NEATODAY, Sept. 10, 2025, <https://www.nea.org/nea-today/all-news-articles/trauma-immigration-raids-leave-classrooms>; Ileana Najarro, *When ICE Arrests Rise, Student Test Scores Fall, New Study Suggests*, EDUC. WK., Nov. 13, 2025, <https://www.edweek.org/leadership/when-ice-arrests-rise-student-test-scores-fall-new-study-suggests/2025/11>.

¹⁸² E.g., Nicole Foy & McKenzie Funk, *“We’ll Smash the Fucking Window and Drag Him Out,”* PROPUBLICA, July 31, 2025, <https://projects.propublica.org/trump-ice-smashed-windows-deportation-arrests/>; Heidi Altman, *ICE Is Detaining Indiscriminately. And Releasing Almost No One*, NAT’L IMMIGR. LAW CTR., Oct. 21, 2025, <https://www.nilc.org/articles/ice-is-detaining-indiscriminately-and-releasing-almost-no-one/>.

¹⁸³ See, e.g., Anna Griffin & Aaron West, *Portland, Ore., Mayor Calls for ICE to Leave After Children Are Tear-Gassed*, N.Y. TIMES, Feb. 2, 2026, <https://www.nytimes.com/2026/02/02/us/portland-ice-tear-gas-children.html>; Taylor Galgano, *Minneapolis Family, Six Children Tear Gassed After They Were Caught in a Clash Between ICE and Protesters*, CNN, Jan. 18, 2026, <https://edition.cnn.com/2026/01/17/us/minneapolis-family-tear-gassed-ice/>; Siri Chilukuri, *Body Slamming, Teargas and Pepper Balls: Viral Videos Show ICE Using Extreme Force in Chicago*, GUARDIAN, Oct. 4, 2025, <https://www.theguardian.com/us-news/2025/oct/04/ice-chicago-extreme-force-protesters-journalists>.

¹⁸⁴ John Schuppe & Eric Ortiz, *Trump’s DHS Has Shot 13 People During Immigration Enforcement Operations Since September. Here’s What to Know*, NBC NEWS, Jan. 16, 2026, <https://www.nbcnews.com/news/us-news/ice-shootings-list-border-patrol-trump-immigration-operations-rcna254202>.

150. The usual accountability mechanisms have proven inadequate: the Trump administration has undermined the independence of internal accountability mechanisms;¹⁸⁵ ICE has frequently ignored federal court orders;¹⁸⁶ and the U.S. Congress has largely failed to exercise its oversight authority.
151. Public outrage at the January 2026 unjustified killings of two U.S. citizens, Renée Good and Alex Pretti, captured on video, and the photographed arrest of a 5-year-old boy wearing a blue bunny hat may prove to be a tipping point.¹⁸⁷ In February, the administration announced it would withdraw many immigration agents from Minnesota.¹⁸⁸ Nonetheless, large-scale immigration enforcement actions have continued elsewhere in the United States largely without restraint.
152. Moreover, the government was attempting to end the *Flores* settlement agreement, a court-supervised undertaking to minimise the time it holds children in immigration detention and, while they are held, to provide them with “safe and sanitary” conditions of detention.¹⁸⁹

e. Greece

153. Border management practices constitute the first point of contact for many migrant children in Greece. Although Greek authorities are formally required to identify vulnerable persons, including children, early screening mechanisms are frequently inadequate, resulting in delayed identification of children, particularly UACs.¹⁹⁰ This protection gap is further exacerbated by border practices, as Greece has faced condemnation following substantiated reports of pushbacks, including of UACs.¹⁹¹
154. A central enforcement mechanism is the asylum and reception system, administered primarily by the Ministry of Migration and Asylum. Through this system, children are entitled to reception conditions appropriate to their age, access to healthcare, education, and psychosocial support. However, delays in registration and limited reception capacity often result in children remaining in precarious conditions, undermining the timely realization of their rights.¹⁹²
155. Accommodation policies form a core enforcement mechanism. Overcrowding, limited capacity, and prolonged stays in temporary facilities, often with unrelated adults and under movement restrictions, have been widely documented, effectively producing containment rather than care.¹⁹³

¹⁸⁵ Cristin Dorgelo et al., *Trump Administration’s Undercutting of Oversight Hurts Taxpayers and Beneficiaries*, CTR. ON BUDGET & POL. PRIORITIES, Nov. 6, 2025, <https://www.cbpp.org/research/federal-budget/trump-administrations-undercutting-of-oversight-hurts-taxpayers-and>.

¹⁸⁶ Scott Simon, *Judge Says Immigration and Customs Enforcement Has Violated 96 Court Orders This Month in Minn.*, WEEKEND EDITION (NPR), January 31, 2026, <https://www.npr.org/2026/01/31/nx-s1-5693175/judge-says-immigration-and-customs-enforcement-has-violated-96-court-orders-this-month-in-minn>.

¹⁸⁷ See Kurt Streeter, *How Alex Pretti’s Death Became a National Tipping Point*, N.Y. TIMES, Feb. 1, 2026, <https://www.nytimes.com/2026/02/01/us/alex-pretti-minneapolis.html>.

¹⁸⁸ Ernesto Londoño et al., *Trump Administration to End Surge of Immigration Agents in Minnesota*, N.Y. TIMES, Feb. 12, 2026, <https://www.nytimes.com/2026/02/12/us/minnesota-immigration-crackdown.html>.

¹⁸⁹ See *Legal Advocacy & Impact Litigation Library*: *Flores v. Reno*, NAT’L CTR. FOR YOUTH L., last updated Jan. 28, 2026, <https://youthlaw.org/cases/flores-v-reno/>.

¹⁹⁰ SAVE THE CHILDREN, CROSSING LINES, *supra* note 31, at 7, 9.

¹⁹¹ *A.R.E. v. Greece*, App. No. 15783/21 (Eur. Ct. H.R. Jan. 7, 2025); *G.R.J. c. Grèce*, App. No. 15067/21 (Eur. Ct. H.R. Dec. 3, 2024); GREEK NAT’L COMM’N FOR HUMAN RIGHTS, RECORDING MECHANISM OF INFORMAL FORCED RETURNS INCIDENTS 60 (2025), https://rsaegian.org/wp-content/uploads/2025/12/Annual_Report_2024.pdf; COUNCIL OF EUR. COMM’R FOR HUMAN RIGHTS, PUSHED BEYOND THE LIMITS (2022), <https://rm.coe.int/pushed-beyond-the-limits-urgent-action-needed-to-end-human-rights-viol/1680a5a14d>.

¹⁹² CRC Comm., Concluding Observations: Greece, *supra* note 31, ¶¶ 39–40; SAVE THE CHILDREN, CROSSING LINES, *supra* note 31, at 7.

¹⁹³ SAVE THE CHILDREN & GREEK COUNCIL OF REFUGEES, CHILDREN ON THE MOVE IN GREECE 2 (Jan.-Apr. 2025), https://gcr.gr/wp-content/uploads/Save-GCR-Joint-Briefing_1_children-on-the-move.pdf.

156. Guardianship systems aim to uphold the rights of unaccompanied children. Greek law provides appointed guardians representing the child's best interests in administrative and judicial proceedings.¹⁹⁴ Nonetheless, chronic shortages of trained guardians and high caseloads leave many children without effective representation.¹⁹⁵
157. During asylum procedures, children's claims are typically processed through family units, reinforcing their dependent legal status and limiting recognition of their individual protection needs.¹⁹⁶ Procedural delays and frequent transfers contribute to instability and disrupt access to education and psychosocial support.¹⁹⁷ Age assessment practices, when disputed, can lead to children being treated as adults, exposing them to detention or accelerated procedures.¹⁹⁸
158. Judicial oversight constitutes a key enforcement avenue. Greek courts¹⁹⁹ and the ECtHR²⁰⁰ provide remedies where children's rights are violated, particularly in cases involving detention, reception conditions, or family life. However, access to justice remains limited by procedural complexity, lack of legal assistance, and children's dependent legal status.
159. UN treaty bodies²⁰¹ and regional human rights bodies²⁰² contribute to realising child rights in a migration context. UNHCR, UNICEF, and NGOs support the implementation of children's rights, often substituting for state enforcement, raising concerns about sustainability and accountability. At the same time, civil society in Greece operates in an increasingly constrained environment.²⁰³

B. Protecting the Cultural Rights of Children in Migration

160. Although the right to culture has long been ignored as the most understudied right, advocates have begun to pay greater attention to it. In 2023, a U.N. special rapporteur called on states to enable migrants to participate in all aspects of cultural life in host and home countries and to create more public spaces for migrants to follow their traditions. Unfortunately, her report gives short shrift to child migrants.²⁰⁴

¹⁹⁴ Law 4939/2022, arts. 62—67 (Gr.).

¹⁹⁵ *Int'l Comm'n of Jurists (ICJ) & Eur. Council for Refugees and Exiles (ECRE)*, Compl. No. 173/2018, Eur. Comm. Social Rts. (Jan. 26, 2021); SAVE THE CHILDREN, CROSSING LINES, *supra* note 31, at 11.

¹⁹⁶ SAVE THE CHILDREN, CROSSING LINES, *supra* note 31, at 9.

¹⁹⁷ GREEK OMBUDSMAN, THE CHALLENGE OF MIGRATORY FLOWS AND REFUGEE PROTECTION RECEPTION CONDITIONS 93 (2024), <https://www.theioi.org/ioi-news/current-news/the-greek-ombudsman-publishes-new-report-on-the-challenges-of-migratory-flows-and-refugee-protection>; ASYLUM INFORMATION DATABASE (AIDA) ET AL., COUNTRY REPORT: GREECE (2024 UPDATE) 206, 210 (2025), https://asylumineurope.org/wp-content/uploads/2025/09/AIDA_GR_2024-update.pdf.

¹⁹⁸ AIDA ET AL., COUNTRY REPORT: GREECE, *supra* note 197, at 24, 141.

¹⁹⁹ See Decision 539/2025 (Athens Admin. Ct. of First Instance Mar. 31, 2025); Decision No. 713/2024 (Athens Admin. Ct. of First Instance Apr. 23, 2024); Decision 7/2025 (Syros Admin. Ct. of First Instance Apr. 23, 2024).

²⁰⁰ See *A.I. & Others v. Greece*, App. No. 11588/20 (Eur. Ct. H.R. June 19, 2025); *M.Y. & Others v. Greece*, App. No. 51980/19 (Eur. Ct. H.R. June 19, 2025); *T.A. & Others v. Greece*, App. No. 15293/20 (Eur. Ct. H.R. Oct. 3, 2024); *H.A. & Others v. Greece*, App. No. 19951/16 (Eur. Ct. H.R. Feb. 28, 2018); *Rahimi v. Greece*, App. No. 8687/08 (Eur. Ct. H.R. Apr. 5, 2011); *MSS v. Belgium & Greece*, App. No. 30696/09 (Eur. Ct. H.R. Jan. 21, 2011).

²⁰¹ CRC Comm., Concluding Observations: Greece, *supra* note 31; Human Rights Comm., Concluding Observations: Greece, U.N. Doc. CCPR/C/GRC/CO/3 (Nov. 28, 2024).

²⁰² See CPT, Rep. to the Greek Government on the Visit to Greece (2024), <https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-cpt-again-calls-on-greece-to-reform-its-immigration-detention-system-and-stop-pushbacks>.

²⁰³ Ctr. for Eur. Const. Law, FRANET National Contribution to the Fundamental Rights Report 2024 (Greece), https://fra.europa.eu/sites/default/files/fra_uploads/frr2024_greece_en.pdf

²⁰⁴ Human Rights Council, Cultural Rights and Migration: Rep. of the Special Rapporteur in the Field of Cultural Rights, U.N. Doc. A/HRC/52/35 (Feb. 2, 2023).

161. The CRC explicitly guarantees the right to identity (art. 8). If the state separates a child from his or her family, it must arrange a placement consistent with their cultural and religious preferences (art. 20(3)).
162. The right to language (ICCPR art. 27) may be construed to require that the state provide an interpreter in one's native language.²⁰⁵ The need for interpreters is particularly urgent for children who are separated from their families.²⁰⁶ Interpreters are essential for the many children who have experienced extraordinary trauma from atrocities in the home country, dangerous travel at sea, and harsh conditions in detention facilities, to enable them communicate their needs for medical treatment, obtain counseling, and request contact with relatives. The need for interpreters in these contexts is reinforced by the human right to the highest attainable standard of health (ICESCR art. 12).
163. States are obligated to provide culturally appropriate food and beverages to all those under their supervision in custody. They bear a special responsibility to provide culturally appropriate meals and avoid violating food taboos. Children must be allowed to wear symbols required by their faiths, as international guarantees via cultural rights and the right to religious freedom (ICCPR art. 18; ECHR art. 9). When children are held in detention facilities or placed in foster care, they have the right to meet leaders of their faith. Another crucial aspect of cultural rights concerns the right to educational materials in accessible languages. These must be guaranteed irrespective of the phase of migration.
164. Access to healthcare consistent with their cultural upbringing also matters. For children belonging to religious minorities, it is often important to have a health care practitioner of the same sex, to avoid religious or cultural prohibitions on male doctors examining female patients. Children may request alternative medicine or folk remedies, which should be permitted unless hazardous, consistent with the right of children of ethnic minorities and Indigenous peoples against traditions "prejudicial to their health" (art. 24(3)).²⁰⁷
165. Incorrect translation can have devastating consequences, particularly in the context of healthcare, as in the case of a teenager whose emergency room doctor misunderstood the family's statement that he likely had food poisoning, treating him as if he suffered from excessive alcohol intake.²⁰⁸
166. To ensure that children have the right to education (CRC arts. 28 and 29), they must have reading materials at their disposal, whether hard copies or digital, available in languages they can understand.²⁰⁹
167. Children have the right to a name and nationality (CRC art. 7), and the right to a name is also protected as an aspect of the right to language. When states register children in formal documents, they must use preferred names in the language the child and family prefer.
168. Children require places to pray. No matter what the circumstances, states must ensure that they can follow their religious traditions (CRC art. 14), subject to narrowly tailored limitations (art. 14(3)).
169. Children have a right to play, rest, and leisure (CRC art. 31). To participate in cultural life, children need to have spaces, appropriately equipped, where they can play games and take part in other activities.²¹⁰

²⁰⁵ Julia Sherman, *The Right to an Interpreter Under Customary International Law*, 48 COLUM. HUM. RTS. L. REV. 257 (2016).

²⁰⁶ MARY CROCK ET AL., CHILDREN AND YOUNG PEOPLE IN ASYLUM AND REFUGEE PROCESSES 45–46 (2020).

²⁰⁷ Alison Dundes Renteln, *Is the Cultural Defense Detrimental to the Health of Children?* 7 L. & ANTHROPOLOGY 27 (1994); THE CHILD'S INTERESTS IN CONFLICT: THE INTERSECTIONS BETWEEN SOCIETY, FAMILY, FAITH AND CULTURE (Maarit Jänterä-Jareborg ed., 2016).

²⁰⁸ Gail Price-Wise, *Language, Culture, and Medical Tragedy: The Case of Willie Ramirez*, HEALTH AFF., Nov. 19, 2008, <https://www.healthaffairs.org/content/forefront/language-culture-and-medical-tragedy-case-willie-ramirez>.

²⁰⁹ For an example, see *Meet the Cartoon Cat Keeping Children Safe in Conflict Zones*, CARTER CTR., Jan. 23, 2026, <https://www.cartercenter.org/stories/augmented-reality-helps-kids-stay-safe-from-hidden-explosives/>.

²¹⁰ ROBERT PATERSON, JAMES NAFZIGER & ALISON DUNDES RENTELN, CULTURAL LAW (2010).

170. Music is also crucial for the development and well-being of children. Research shows that it is intrinsic to forms of play, calms the young to help them sleep, and can be a type of therapy for those suffering trauma.²¹¹ Those responsible for children must give them means to play instruments, access music digitally, and permission to sing their preferred songs, allowing them to congregate to do so.
171. Children in migration should be consulted to determine what cultural rights matter most to them. More generally, a more child-centred approach to data collection is needed.²¹² It would also be desirable to have a child migrant on the CRC Committee.

C. Best Practices Policy Advocacy

172. UNICEF identifies displaced children as entitled to “inherent rights protection . . . and participation in decisions that affect them.”²¹³ The CRC comprises a doctrine outlining universal child rights, which the CRC Committee notes are “available to *all* children, irrespective of their nationality, immigration status or statelessness.”²¹⁴ As outlined in a collaborative report produced by UNHCR, UNICEF, and other agencies, every action related to displaced children should be informed by the CRC’s guiding principles (arts. 2, 3, 6, 12).²¹⁵ Notwithstanding the concerns of scholars who have cautioned that the CRC was “largely influenced by Western culture,” and as such less effective in affording protection to children living in non-Western states, displaced children, and stateless children,²¹⁶ the CRC endures as the only set of universal standards applying to children that can, when applied complementarily at the international, state and regional levels, bring about impactful global shifts in practices and regulatory frameworks.
173. National systems are often overwhelmed, resulting in displaced children being systematically excluded or isolated within disparate systems. Adequate migration measures should reflect standardised whole-of-government solutions that embed displaced children into existing national systems in a culturally and linguistically adapted, and human rights compliant, manner.²¹⁷
174. UNICEF advocates a route-based approach, which strives towards transnational and cross-border collaboration to ensure protection and support for children on the move across their whole journey.²¹⁸ Bolstering administrative data systems and data governance to include displaced children in national surveys, assessments and censuses is also important.²¹⁹

D. The Need for Cross-Border Cooperation Among Child Protection Authorities

²¹¹ Morag Josephine Grant, *Music and Human Rights*, in 1 SAGE HANDBOOK OF HUMAN RIGHTS 508 (Anja Mihr & Mark Gibney eds., 2014).

²¹² Helen Stalford & Tilly Clough, *Promoting Migrant Children’s Rights by Developing Child-Centered Information*, in OXFORD HANDBOOK OF CHILD-CENTERED APPROACHES TO MIGRANT CHILDREN 725 (Barbara Gornik et al. eds., 2025).

²¹³ IOM et al., *Prioritizing the Rights of Children on the Move*, Dec. 18, 2024, <https://www.unicef.org/esa/press-releases/prioritizing-rights-children-move-call-action-international-migrants-day>.

²¹⁴ CRC Comm., General Comment No. 6, ¶ 7, *supra* note 58.

²¹⁵ UNHCR ET AL., *PROTECTING THE RIGHTS OF CHILDREN ON THE MOVE IN TIMES OF CRISIS* 12–14 (2023), <https://violenceagainstchildren.un.org/sites/default/files/2025-01/Thematic%20report%20-%20Children%20on%20move.pdf>.

²¹⁶ Jaap Doek, *The Human Rights of Children: An Introduction*, in *THE INTERNATIONAL HUMAN RIGHTS OF CHILDREN* 16 (Ursula Kilkelly & Ton Liefaard eds., 2019).

²¹⁷ *PROTECTING THE RIGHTS OF CHILDREN ON THE MOVE IN TIMES OF CRISIS*, *supra* note 215, at 10, 14.

²¹⁸ UNICEF, *Child Protection Advocacy Brief: Children on the Move*, at 3–4 (2018), https://www.unicef.org/media/110831/file/Children%20on%20the%20Move_FINAL.pdf.

²¹⁹ IOM & UNICEF, *Technical Note: Inclusion of Children in the Context of Migration into National Child Protection Systems*, at 7 (2024), <https://migrantprotection.iom.int/en/resources/report/technical-note-inclusion-children-context-migration-national-child-protection>. See also OHCHR & Global Migration Grp., *Principles and Guidelines, Supported by Practical Guidance, on the Human Rights Protection of Migrants in Vulnerable Situations*, at 60 (n.d.), <https://www.ohchr.org/sites/default/files/PrinciplesAndGuidelines.pdf>.

175. The CRC and other treaties promote cooperation among countries as a mechanism for the protection and guarantee of the rights of children, including those in migration.²²⁰
176. Three general comments of the CRC Committee set forth the most relevant standards on this field: No. 6 (2005), and more recently, Nos. 22 and 23 (2017), the Committee on the Rights of Migrant Workers and their Families (CMW).²²¹ A close reading of these standards leads to the inescapable conclusion that states must ensure the rights of children in the context of migration as a primary obligation, based on the CRC's obligations and its interpretative principles, especially the best interests of the child. To this end, states must ensure that child protection authorities have a decisive role and adopt all necessary normative, policy, procedural, and operational measures. And, given the characteristics of international migration, cooperation among these authorities is an essential step to achieve these objectives in every case.
177. This conclusion can be strengthened by other commitments endorsed by States at international processes, such as the Global Compact for Safe, Orderly and Regular Migration.²²² There, U.N. member states reaffirm their duties under the CRC and uphold "the principle of the best interests of the child as a primary consideration in all situations concerning children in the context of international migration" (para. 15.h). They also stress the importance of cross-border cooperation frameworks, "in order to ensure that the best interests of the child are appropriately integrated, consistently interpreted and applied in coordination and cooperation with child protection authorities" (para. 23.e). Similarly, within the section on border governance in coordinated manner, States commit to ensure that child protection authorities are promptly informed and assigned to participate in procedures for the determination of the best interests of the child once an unaccompanied or separated child crosses an international border" (para. 27.e).
178. Practices to implement international standards and the Global Compact have not yet been adequately developed—much less crystallized into formal agreements and/or standardized practices—when it comes to working together to identify and implement appropriate protection measures for children in the context of migration. Furthermore, in many countries, child protection authorities occupy a secondary role, even when they have been given increasing responsibility for the care of migrant children—particularly unaccompanied or separated from their parents—and their sphere of intervention does not include, except in exceptional cases, coordination with their counterparts in other cities and countries.
179. It is essential that states develop these kinds of coordination mechanisms among child protection authorities. The inclusion of these agencies in regional and global migration processes could help to highlight this need. For example, within the framework of the Global Monitoring Committee, or in forums of the European Union, MERCOSUR, the South American Conference on Migration, and Euro-African Summits, among others, could represent opportunities to this end. Additionally, the presence of local government authorities—including their child welfare departments—could also help highlight the importance of this cooperation and, consequently, develop the necessary agreements and practical aspects.
180. The current context is undoubtedly challenging for such initiatives, especially given the rise of xenophobia—in its many forms—and its gradual impact on policies and practices applied by states for addressing migration. The guidelines for eradicating xenophobia adopted by the Committee on the

²²⁰ *E.g.*, CRC pmb. Arts. 10, 22; OPSC art. 10; Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, Oct. 19, 1996, 2204 U.N.T.S. 95 (entered into force Jan. 1, 2002); Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, May 29, 1993, 1870 U.N.T.S. 16 (entered into force May 1, 1995); Convention on the Civil Aspects of International Child Abduction (concluded 25 October 1980, entered into force 1 December 1983) 1343 UNTS 89; Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, 1343 U.N.T.S. 89 (entered into force Dec. 1, 1983).

²²¹ See in particular Joint General Comment No. 3/22, *supra* note 3, ¶¶ 13–14, 29–31, 33, 48–49; Joint General Comment No. 4/23, ¶¶ 64–65.

²²² U.N. General Assembly, Res. 73/195, U.N. Doc. A/RES/73/195 (Jan. 11, 2019).

Elimination of Racial Discrimination and the CMW, including the relevance they underscore of international coordination mechanisms between different state authorities,²²³ are particularly pertinent in confronting these challenges.

E. Using Arts and the Humanities to Protect the Rights of Children on the Move

181. Arts and the humanities play a critical, and often underutilized, role in advancing the rights of children in migration. While law establishes normative standards and enforcement mechanisms, it often struggles to convey the lived realities of children whose experiences are reduced to statistics, initials, procedural categories, and statuses. Artistic and humanistic practices—literature, visual art, theatre, film, music, history, and narrative scholarship—can bridge this gap by shaping a shared social consciousness, influencing policy discourse and mobilizing political will in ways that doctrinal analysis alone cannot.²²⁴
182. A substantial body of interdisciplinary research demonstrates that narrative, imagery, and cultural expression influence empathy, moral judgment, and attitudes toward responsibility, particularly where children and structural violence are concerned.²²⁵ In migration contexts, where children are routinely rendered invisible or framed primarily through enforcement lenses, arts-based interventions re-humanize, restore agency, and challenge dominant, dehumanizing narratives.²²⁶ Similarly, music can function as a form of counter-narrative, influencing public sentiment and sustaining social movements in ways that affect policy agendas and legal interpretation over time.²²⁷
183. Arts-based advocacy also aligns directly with children’s rights to be heard, to express themselves, and to participate in cultural life (CRC arts. 12, 13, 17, 31). Participatory projects—when conducted ethically and with appropriate safeguards—operationalize these rights while producing knowledge that informs litigation, monitoring, and policy reform.²²⁸ When integrated with legal advocacy and enforcement strategies, arts and the humanities are not ancillary, but essential to children’s effective protection.

V. CONCLUSION

184. Children have always moved. What is new is not migration, but the scale of contemporary displacement and the degree to which migration governance has eclipsed child protection. Across regions and legal systems, this report documents a persistent pattern: children’s rights are formally recognized yet routinely subordinated to enforcement priorities. Detention, pushbacks, family separation, age disputes,

²²³ Comm. on the Elimination of Racial Discrimination (CERD) & CMW, Joint General Recommendation No. 39 (CERD) and General Comment No. 8 (CMW) on Thematic Guidelines for Eradicating Xenophobia Towards Migrants and Others Perceived as Such, U.N. Doc. CERD/C/GC/39–CMW/C/GC/8 (Feb. 3, 2026).

²²⁴ MARTHA C. NUSSBAUM, *POLITICAL EMOTIONS* (2013); AUSTIN SARAT, *LAW AND THE HUMANITIES* (2010).

²²⁵ LYNN HUNT, *INVENTING HUMAN RIGHTS* (2007); Susan Bandes, *Empathy, Narrative, and Victim Impact Statements*, 63 U. CHI. L. REV. 361 (1996).

²²⁶ Paul Slovic, “*If I Look at the Mass I Will Never Act*”: *Psychic Numbing and Genocide*, 2 JUDGMENT & DECISION MAKING 79 (2007), <https://doi.org/10.1017/S1930297500000061>; Shelley E. Taylor & Suzanne Thompson, *Stalking the Elusive “Vividness” Effect*, 89 PSYCHOL. REV. 155 (1982), <https://doi.org/10.1037/0033-295X.89.2.155>. For examples of such advocacy, see HEAR MY VOICE/ESCUCHA MI VOZ (Warren Binford ed., 2019) (bilingual children’s book based on the testimony and artwork of children impacted by immigration detention and family separation); *Testimony*, Univ. of Colo. Anschutz Med. Campus, Aurora, Colo. (Warren Binford et al. curators, 2023) (narratives of children in migration through visual art, dance, music, comics, and a public mural).

²²⁷ DAPHNE BROOKS, *LINER NOTES FOR THE REVOLUTION: THE INTELLECTUAL LIFE OF BLACK FEMINIST SOUND* (2021). See also *Songs in the Key of Los Angeles*, Los Angeles Public Library, Los Angeles, Cal. (Josh Kun curator, 2005), <https://www.lapl.org/collections-resources/visual-collections/collection-page/songs-key-la>; Alejandro Madrid, *Music and Migration*, in OXFORD HANDBOOK OF MIGRATION CRISES (Cecilia Menjivar et al. eds., 2018).

²²⁸ ANNE GRAHAM ET AL., *ETHICAL RESEARCH INVOLVING CHILDREN* (2013).

documentation barriers, and exclusion from education and healthcare are not isolated failures. They are structural impediments to the realization of children's rights.

185. The law is not ambiguous. International and regional instruments establish that children on the move are rights holders first and migrants second. Their best interests must be a primary consideration. They must not be detained for migration-related reasons. They must not be returned to harm. They are entitled to guardianship, education, healthcare, family unity, identity, participation, and protection from abuse and exploitation. Moreover, when their rights are violated, they are entitled to justice. These obligations are binding, and reinforced by treaty bodies, regional courts, and domestic constitutional guarantees.
186. The central challenge is therefore not norm creation, but implementation and enforcement. Where monitoring mechanisms are weak, complaints inaccessible, and political will absent, children become functionally rightless. Conversely, where guardianship is robust, detention replaced with community-based alternatives, education promptly ensured, and accountability mechanisms engaged, protection is possible.
187. States may regulate borders. They may not regulate children out of their rights. Ensuring that children are seen, heard, and protected throughout the migration process is not aspirational policy—it is a legal duty owed by all states to every child. Where policies and practices fail, we must ensure that children, their families, and their advocates can enforce their rights fully no matter where they are in the world.