**APPENDIX**

**Toward a Regional Mechanism for the Comprehensive Protection of Migrant and Refugee Boys, Girls and Adolescents**

This Appendix has been designed as a guide for discussion and dialogue within the framework of the Ad-hoc Working Group, to guide actions related to protection and assistance to migrant and refugee boys, girls and adolescents in the region. The Guide draws on discussions, recommendations and commitments generated within the framework of the Regional Conference on Migration (RCM).

The Guide suggests mechanisms for providing effective protection and comprehensive assistance to boys, girls and adolescents at all stages of the migration process, from the moment when they are identified and received in countries of destination to their return, integration and reintegration into countries of origin, always safeguarding their rights and considering their best interests. This includes actions prior to departure.

In addition, it is recommended that the actions to provide assistance to migrant boys, girls an adolescents be implemented in coordination with competent institutions specializing in boys, girls and adolescents. Furthermore, it is recommended that direct interventions that are implemented within the framework of this Guide be carried out by staff that has been trained on providing assistance to these populations.

Moreover, it is recommended that relevant efforts be aligned with civil society organizations (SCOs) and international organizations with the aim of effectively implementing the Guide. In addition, intersectoral, intra-institutional, inter-institutional, bilateral and regional coordination is required.

**Actions to be Promoted by States within the Framework of the Mechanism**

* 1. **Protection Actions Before Departure**

*a.1 Actions to identify vulnerable situations*

*Several categories of boys, girls and adolescents exist that could be considered to be particularly prone to migrating due to certain special situations that they face. States are called upon to provide appropriate conditions to ensure that these boys, girls and adolescents exercise their right to decide not to migrate or, if they decide to migrate, to do this in a humane and orderly manner.*

* 1. Boys, girls and adolescents living on the streets

*Public policies need to be in place in each State to prevent situations of boys, girls and adolescents living on the streets through affirmative actions at home, family integration programmes, foster homes, specialized shelters, school reintegration with appropriate education programmes and psychosocial support, and access to health care and food. In addition, States should especially prioritize the assistance to boys, girls and adolescents living on the streets in border regions.*

* 1. Boys, girls and adolescents victims of trafficking

*It is essential for each State to have specific tools in place to identify boys, girls and adolescents victims of trafficking at an internal level, primarily those that are transferred from rural to urban or border areas. The Regional Conference on Migration has established clearly defined mechanisms for the identification of victims of trafficking, including indicators applicable to boys, girls and adolescents victims of trafficking that have not yet been taken across borders. As a starting point, these tools should be used in health facilities, labour inspection actions, customs screenings, border patrols, and rescue actions in maquila factories or brothels, among many others. The tools that exist at a national and local level should be implemented appropriately, not only to identify cases but above all, with the objective of providing assistance and protection in a timely manner. Any timely and appropriate intervention in national territory helps to significantly reduce the risk of revictimization.*

* 1. Boys, girls and adolescents in situations of child labour and victims of the worst forms of child labour

*Migration flows are primarily composed of working age populations, including a significant number of boys, girls and adolescents that join migration processes as part of their first incursions into the labour market. Therefore, the migration of boys, girls and adolescents is closely linked to child labour and its worst forms. Due to their conditions, these populations are in much more vulnerable situations and are more prone to becoming victims of abuse, maltreatment, discrimination and violations of their rights. States need to collect and analyse sufficient data on boys, girls and adolescents that migrate for economic reasons. Furthermore, public policy and different programmes aimed at eradicating child labour and protecting working adolescents should consider the distinctive characteristics of migrant populations.*

*Indigenous working migrant boys, girls and adolescents are in especially vulnerable situations. Therefore, this issue should be addressed with a rights-based and intercultural approach. Any strategy aimed at addressing the situation of boys, girls and adolescents migrating for economic reasons, especially transborder migration, should be multidimensional and consider the situation in a comprehensive manner, implementing coordinated efforts in countries of origin and destination. In addition, awareness-raising efforts should be implemented to inform families about the risks of child labour and to offer viable alternatives. In the countries where poverty is closely linked to child labour and migration, obstacles should be eliminated that prevent migrant populations – including irregular migrants – from joining social protection programmes, such as conditional or non-conditional cash transfers, since this has proven to have an impact on the reduction of child labour.*

* 1. Boys, girls and adolescents with family members who have migrated (father, mother or primary caretaker) that stay behind in the country of origin

*Public policy on migration with a human face is comprehensive to the extent that it considers not only the migrant but also the members of the migrant’s family that stay behind – especially children. The social cost of the migration of parents often leads to an imbalance in the structure or functionality of the family. For example, older children are forced to take on the inappropriate burden of caring for and ensuring the well-being of their younger siblings. Therefore, countries of origin should place special emphasis on establishing programmes aimed at building affective bonds and distributing responsibilities in a fair manner within the family. In addition, counselling programmes for boys, girls and adolescents, programmes to prevent students from dropping out of school and extra-curricular activities should be implemented, among others.*

* 1. Boys, girls and adolescents whose lives, physical integrity, liberty or other basic rights are at risk.

*Boys, girls and adolescents that have suffered domestic abuse and adolescents that have been threatened by gangs or other organized crime groups are highly prone to migrating in an unplanned and independent manner and thus, without any access to emotional support or protection resources. In implementing efforts to combat the impact of widespread violence, States should pay special attention to the impact of such measures on the migration of boys, girls and adolescents, through programmes aimed at strengthening their resilience and willingness to stay in their country of origin while protecting their physical integrity.*

* 1. Boys, girls and adolescents with deceased parents

*a.2 Referral to competent State institutions in charge of providing protection to boys, girls and adolescents in vulnerable situations*

*a.3 Implementation of internal protection mechanisms for boys, girls and adolescents in vulnerable situations*

* 1. **Reception of Alien Boys, Girls and Adolescents and Immediate Protection and Assistance**

From the moment of reception, it is essential to implement the “Regional Guidelines for the Preliminary Identification and Referral of Migrants in Vulnerable Situations” adopted by the Regional Conference on Migration (RCM) in June 2013, in order to provide the required protection to boys, girls and adolescents.

For unaccompanied and/or separated boys, girls and adolescents, the reception guidelines included in General Comment No. 6 (2005) of the Committee on the Rights of the Child, “*Treatment of unaccompanied and separated children outside their country of origin*”[[1]](#footnote-1) should be implemented. For victims of trafficking, the Recommended Principles and Guidelines on Human Rights and Human Trafficking – presented to the Economic and Social Council as an addendum to the report of the United Nations High Commissioner for Human Rights Report (2002) – and the IOM Handbook on Direct Assistance to Victims of Trafficking should be considered. For refuge seekers or refugee status applicants, the guidelines included in the document entitled “*Refugee Protection and Mixed Migration: The 10-Point Plan in Action*” by the United Nations High Commissioner for Refugees[[2]](#footnote-2) should be taken into account.

*b.1 Initial Identification and Appropriate Protection*

Upon detecting the presence of a migrant boy, girl or adolescent in the country, relevant government authorities should prioritize identifying if the child is accompanied, unaccompanied or separated, a potential victim of trafficking or refuge seeker or in any other risk situation that requires humanitarian assistance. Urgent actions to be implemented upon detection include the following:

1. Meet immediate assistance needs, including actions oriented toward reducing physical and psychological injuries.
2. Identify migrants in vulnerable or risk situations, including but not limited to unaccompanied boys, girls and adolescents; child victims of trafficking; refugees or refuge seekers; victims of labour or sexual exploitation, forced labour and the worst forms of child labour; victims of maltreatment and physical and sexual abuse, including abuse and violence as a result of discriminatory and xenophobic attitudes and practices.
3. Verify the identity and nationality of the boy, girl or adolescent.
4. Non-refoulement of boys, girls and adolescents whose lives, liberty or integrity are at risk in case of return, expulsion or rejection.
5. Boys, girls and adolescents accompanied by relatives: verify family ties and assess risks considering the best interest of the child.
6. Registration: Data should be recorded and documents should be issued as soon as possible. An interview should be conducted by an expert considering the age and gender of the boy, girl or adolescent, in a language that the child can understand, appropriate according to age and culturally sensitive, to confirm his or her nationality and identity as well as the identity of both parents. For unaccompanied boys, girls and adolescents, the interviewer should explore the reasons why the child has been separated or is unaccompanied and identify vulnerable situations.
7. Review systems to search for missing boys, girls and adolescents, including the required coordination actions with relevant States.

*b.2 Designating a Legal Guardian*

In order to ensure the protection of unaccompanied boys, girls and adolescents a guardian should be designated as soon as they have been identified as such, to ensure that a protection approach is implemented that is based on the boy, girl or adolescent as a full subject of rights.

 *b.3 Family Tracing*

For unaccompanied boys, girls and adolescents, actions should be initiated as soon as possible to trace the family through the consulate, except for boys, girls and adolescents that express a well-founded fear of persecution which requires initiating the procedures for determining the status of refugee and maintaining strict confidentiality. In such cases, other suitable means should be sought to trace family members of the boy, girl or adolescent. In every case, it should be established if family tracing is the most appropriate action or not in order to ensure the protection of the best interest of the child.

*b.4 Determining the Best Interest of the Child*

Determining the best interest of the child through existing relevant procedures is essential in making decisions that may affect the lives and rights of migrant boys, girls and adolescents or children of migrants, in cases of unaccompanied or separated boys, girls and adolescents. This involves adopting appropriate protection actions in accordance with each specific situation and respecting the rights of the boy, girl or adolescent[[3]](#footnote-3). The decisions relating to family reunification, voluntary repatriation, resettlement or local integration will probably have a crucial long-term impact on the life of the boy, girl or adolescent. Before making such decisions the best interest of the child should be established to ensure that appropriate attention is paid to the rights of the boy, girl or adolescent. The following aspects should be considered:

• The most appropriate lasting solution, and

• The right time to implement the solution.

The objective of every process to determine the best interest of a boy, girl or adolescent is to meet all his or her protection needs, to take the opinion of the child into account and to lead to a lasting solution to the situation of each boy, girl and adolescent. Actions to find lasting solutions, with a special focus on unaccompanied or separated boys, girls and adolescents, should be initiated without delay and, if possible, immediately after determining for each case if the boy, girl or adolescent is unaccompanied or has been separated from his or her family. According to criteria based on the rights of the boy, girl or adolescent, the process to find a lasting solution begins with an assessment of the possibility of family reunification (which should be considered, in general, in accordance with the best interest of the child, unless this exposes or could expose the boy, girl or adolescent to situations of abuse or neglect)[[4]](#footnote-4).

If it is not possible to find a lasting solution in accordance with the best interest of the child and if the boy, girl or adolescent has been integrated into his or her community, temporary assistance actions should be maintained and the case should be reviewed as soon as possible[[5]](#footnote-5).

1. **Protection Actions in Integration Processes**

As established by the Committee on the Rights of the Child, integration into the host country is the primary option if the return to the country of origin is found to be impossible for legal or de facto reasons. The integration into the host country should be based on a stable legal system (including a residence permit) and should be governed by the rights stipulated in the Convention on the Rights of the Child[[6]](#footnote-6).

Once a decision has been made that the boy, girl or adolescent (especially unaccompanied or separated boys, girls or adolescents) shall stay in the community, relevant authorities shall assess the situation of each boy, girl or adolescent and shall subsequently determine – in consultation with the boy, girl or adolescent or his or her legal guardian – determine the appropriate long-term arrangements in the new community and other actions necessary to facilitate integration, considering the following aspects[[7]](#footnote-7):

1. The stay of the boy, girl or adolescent in a specialized temporary care and protection centre should be ensured – or in a permanent centre, if the boy, girl or adolescent does not have any relatives in the country that could receive him or her (observing the principle of non-detention, as a rule).
2. For unaccompanied or separated boys, girls and adolescents, appropriate provisions should be made to ensure that a legal guardian accompanies the child at all times.
3. The boy, girl or adolescent should have access to basic services in accordance with his or her rights (care, education, technical education, health, health care). The validation of the level of education is an essential step in the education process of every boy, girl or adolescent. In addition, special attention should be paid to other considerations in view of the vulnerable situation of the boy, girl or adolescent; for example, additional training should be provided in the language spoken in the host country.
4. It should ensured that the boy, girl or adolescent obtains the adequate documents, with the objective of enabling him or her to access basic services and rights, in accordance with the best interest of the child.
5. Access to relevant administrative and legal procedures for the protection of boys, girls and adolescents should be ensured at all times.
6. Access to livelihoods and comprehensive development should be ensured according to the specific situation of each boy, girl or adolescent, considering age, gender and other personal considerations.
7. Protection should be ensured and discrimination and xenophobia against boys, girls and adolescents should be prevented.
8. The option of finding an extended, foster or adoptive family should be considered for boys, girls and adolescents in the host country, if this is considered to be the most appropriate solution to ensure the best interest of the child and his or her integration in the host country. To this end, relevant national procedures should be followed.
9. **Protection Actions in Return Processes**

In regard to actions to implement in return processes of boys, girls and adolescents, the “Regional Guidelines for Special Protection in Cases of the Repatriation of Child Victims of Trafficking” (April 2007) and the “Regional Guidelines for the Assistance to Unaccompanied Migrant Boys, Girls and Adolescents in Cases of Repatriation” (July 2009) should be considered. Both have been adopted within the framework of the Vice-Ministerial Meeting of the Regional Conference on Migration (RCM).

1. **Protection Actions in Processes of Reception and Reintegration in the Country of Origin**

Given that the return to the country of origin cannot be considered if a reasonable risk exists of violations of the human rights of the boy, girl or adolescent (in compliance with the principle of non-refoulement), return could only be considered, in principle, if it is in the best interest of the boy, girl or adolescent. As highlighted by the Committee on the Rights of the Child, in order to determine this the following aspects need to be taken into account, among others[[8]](#footnote-8):

1. Considering personal and public security and other aspects in the process (gender, age and culture), especially socioeconomic conditions that the boy, girl or adolescent will encounter upon his or her return. To this end, an assessment of the existing conditions in the country should be conducted.
2. The importance of keeping records of boys, girls and adolescents that have returned to the country, to be used in generating relevant data analyses.
3. Identifying immediate assistance needs and vulnerable or risk situations, including but not limited to unaccompanied boys, girls and adolescents; child victims of trafficking; refugees or refuge seekers; victims of labour or sexual exploitation, forced labour and the worst forms of child labour; victims of maltreatment and physical and sexual abuse, including abuse and violence as a result of discriminatory and xenophobic attitudes and practices.
4. The interventions should be conducted considering age and gender of the boy, girl or adolescent, in a language that he or she can understand and in a culturally appropriate manner.
5. The existence of mechanisms to provide individualized assistance to boys, girls and adolescents.
6. The opinions of the boy, girl or adolescent and their caretakers should be taken into account.
7. The degree and characteristics of the integration of boys, girls and adolescents in the country of destination from which they return and the length of absence of their country of origin, in order to determine their real needs in the reintegration process.
8. The right to maintain their identity, including nationality, name and family ties.
9. The desirability of continuity in the upbringing of the boy, girl or adolescent and considering the ethnic, religious, cultural and linguistic background of the boy, girl or adolescent.
10. If the parents or members of the extended family are unable to care for the boy, girl or adolescent, the return to the country of origin should not be implemented, in principle, without prior safe and specific arrangements to ensure assistance and guardianship of the boy, girl or adolescent upon his or her return to the country of origin.
11. Tracing the family, always considering the best interest of the child.
12. The importance of designating a legal guardian if family members are unable to take on this role.
13. In the same manner as in integration processes in countries of destination, access to livelihoods and comprehensive development should be ensured in the reintegration process into the country of origin, in accordance with the specific situation of each boy, girl or adolescent and considering age, culture, gender and other personal conditions. In addition, protection should be ensured and discrimination and xenophobia against returned boys, girls and adolescents should be prevented.
14. The reintegration of boys, girls and adolescents should be regularly monitored during a determined period of time, in accordance with relevant programmes established by competent national institutions.
1. CRC, General Comment No. 6, **Treatment of unaccompanied and separated children outside their country of origin.** Op. cit. [↑](#footnote-ref-1)
2. See UNHCR. Refugee Protection and Mixed Migration: The 10-Point Plan in Action. Introduction. Geneva, 2010. Available at:

http://www.unhcr.org/cgi-bin/texis/vtx/home/opendocPDFViewer.html?docid=4a855cd52e&query=10-Point%20Plan%20in%20action. [↑](#footnote-ref-2)
3. UNICEF – Regional Office for Latin America and the Caribbean (TACRO). Written comment by UNICEF on Migrant Children in Latin America and the Caribbean. Request for an Advisory Opinion on migrant boys, girls and adolescents submitted by Argentina, Brazil, Paraguay and Uruguay to the Inter-American Court of Human Rights. Buenos Aires, December 2013. [↑](#footnote-ref-3)
4. See CRC, General Comment No. 6, **Treatment of unaccompanied and separated children outside their country of origin.** Op. cit., paragraph 79. [↑](#footnote-ref-4)
5. UNHCR Guidelines on Determining the Best Interest of the Child. May 2008. Available at: <http://www.refworld.org/docid/48480c342.html> [↑](#footnote-ref-5)
6. See CRC, General Comment No. 6, **Treatment of unaccompanied and separated children outside their country of origin.** Op. cit., paragraphs 89 & 90. [↑](#footnote-ref-6)
7. Ibid. [↑](#footnote-ref-7)
8. Ibid, paragraphs 84-88. [↑](#footnote-ref-8)