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**PROPOSAL DOCUMENT**

**Consular Protection Standards for Unaccompanied and Separated Migrant Boys, Girls and Adolescents and/or in Need of International Protection**

**submitted to the technical secretariat**

**of the**

**regional conference on migration (rcm)**

**at the request of the ad hoc group on**

**migrant and refugee boys, girls and adolescents**

**November 2015**

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**Consular Protection Standards for Unaccompanied and Separated Migrant Boys, Girls and Adolescents and/or in Need of International Protection**

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# **1.** **Introduction**

Contemporary migration movements include persons with a variety of profiles. Some of them could belong to different groups that are in particularly vulnerable situations, such as asylum and refuge seekers; victims of migrant smuggling and trafficking; stranded migrants; migrants and refugees victims of violence that have suffered psychological trauma during the migration process; or other vulnerable individuals, such as pregnant women; boys, girls and adolescents travelling with their families or those that are unaccompanied or separated from their families; persons with different disabilities or elderly migrants[[1]](#footnote-1); migrants witnesses of crimes; and migrants that have had accidents.

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

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

Furthermore, they are at risk of becoming victims of national and transnational organized crime, such as migrant smuggling and trafficking networks, or they are abducted or forced to carry drugs and other illegal materials. In addition, they could face difficult conditions during detention and deportation, when they are in situations that are outside applicable international human rights standards.

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

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

Deprivation of liberty and expulsion without due process and without considering the best interests of the child is another practice that could directly affect the well-being of migrant boys, girls and adolescents.

In Latin America and the Caribbean, the migration of unaccompanied and separated boys, girls and adolescents is a reality that has grown exponentially over the past years. The 90% increase in the number of unaccompanied and separated boys, girls and adolescents identified by US authorities in fiscal year 2014 raised alarm about a phenomenon that was growing and that needed to be urgently addressed. However, this type of migration is not new, nor has it stopped. What has changed in the past years are the conditions under which this population group migrates, and their vulnerability has especially increased. In addition, the increasingly younger age of these migrants is a matter of great concern.

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

As has been recognized by the Regional Conference on Migration:

“The first step toward effective protection is identifying those persons or groups of persons that, due to their characteristics and/or conditions, are considered to be in a vulnerable situation. Once they have been identified, it is possible to activate procedures to provide protection and assistance. However, usually persons in especially vulnerable situations are not identified as such and therefore, do not receive differentiated treatment. On the contrary, they tend to be re-victimized as a result of the indiscriminate implementation of procedures such as detention, rejection, *refoulement,* or deportation”.[[3]](#footnote-3)

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

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

# **2. general matters**

## **Background**

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

* 1. “Regional Guidelines for Special Protection in Cases of the Repatriation of Child Victims of Trafficking” (April 2007);
  2. “Regional Guidelines for the Assistance to Unaccompanied Migrant Boys, Girls and Adolescents in Cases of Repatriation” (July 2009);
  3. “Regional Guidelines for the Preliminary Identification and Referral Mechanisms for Migrant Populations in Vulnerable Situations” (June 2013).

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

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

The Ad Hoc Group, composed of officials from ministries of foreign affairs, ministries of the interior and child protection institutions of the RCM Member Countries, has held three work sessions[[4]](#footnote-4). A specific agenda has been developed for the member institutions of the Ad Hoc Group, at a national and regional level.

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

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

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

## **B. Objective of the Proposal Document**

The objective of this proposal document, submitted to RCM Member Countries, is to provide general guidelines or standards regarding consular interventions aimed at providing protection to unaccompanied and separated migrant boys, girls and adolescents. The purpose of these standards is to serve as a reference for national and regional actions.

The above without prejudice to applying these standards in situations involving migrant and refugee boys, girls and adolescents that are accompanied by their parents or legal guardians, for specific situations of vulnerability as appropriate, with the aim of ensuring the best interests of the child.

## **C. Relevant International Instruments**

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

The contents of this document are not intended to replace international obligations taken on by RCM Member Countries concerning the topics in question. On the contrary, the following international instruments on consular protection, the rights of boys, girls and adolescents and human rights protection at a hemispheric level are taken as a reference in this document:

* Vienna Convention on Consular Relations (1963);
* Convention on the Rights of the Child (1989);
* American Convention on Human Rights (1969);
* 1951 Convention Relating to the Status of Refugees and its 1967 Protocol;
* Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol, 2000).

In addition, the following statements that are relevant to the topic in question are taken as a basis:

* Committee on the Rights of the Child. General Comment No. 6: Treatment of unaccompanied and separated children outside their country of origin;
* Inter-American Court of Human Rights. Advisory Opinion 16/99. The right to information on consular assistance in the framework of the guarantees of the due process of law.
* Inter-American Court of Human Rights. Advisory Opinion 17/02. Juridical condition and human rights of the child.
* Inter-American Court of Human Rights. Advisory Opinion 18/03. Juridical condition and rights of the undocumented migrants.
* Inter-American Court of Human Rights. Advisory Opinion 21/14. Rights and guarantees of children in the context of migration and/or in need of international protection.

## **D. General Principles of Intervention**

The following general principles of respecting and guaranteeing the rights of boys, girls and adolescents should be considered by relevant authorities in the receiving country and by consular authorities in the context of any intervention within the protection chain mentioned in this document[[5]](#footnote-5):

* State obligations under international human rights law apply to each boy, girl and adolescent within the State’s territory and to all boys, girls and adolescents subject to its jurisdiction.
* The principle of non-discrimination in all its expressions applies to all aspects of the treatment of separated and unaccompanied boys, girls and adolescents. It particularly prohibits all discrimination based on the fact that the boy, girl or adolescent is unaccompanied or separated or on their status (refugee, asylum seeker or migrant).
* The best interests of the child should be the primary consideration in seeking short- and long-term solutions.
* Respect for and unrestricted guarantee of the right to life, survival and development of the boy, girl and adolescent should be ensured in all actions implemented by relevant authorities.
* The wishes and opinions of the boy, girl or adolescent should be identified and duly taken into account, considering age and maturity.
* The obligations of non-refoulement established in international human rights instruments and the obligations concerning refugees must be fully respected; particularly, the obligations established in Article 33 of the 1951 Convention Relating to the Status of Refugees and Article 3 of the Convention Against Torture.
* The information about the unaccompanied or separated boy, girl or adolescent should be kept confidential, in accordance with the obligation to protect the rights of the child, including the right to privacy.
* The principle of non-revictimization should be respected. Victimization is understood as the act of inflicting violence or harm on the boy, girl or adolescent when providing consular services of protection and assistance; that is, the support provided should not cause further harm and frustration.
* Criminalization of migration must be avoided. Boys, girls and adolescents should not be punished or labelled for migrating or fleeing their country of origin.
* The family unity must be preserved and children should not be separated from their parents, except to protect their best interests and based on a decision by competent authorities.
* Compliance with and respect for the guarantees of the due process of law should be ensured. This applies to all the requirements that must be observed by procedural instances to ensure that the individual may defend himself adequately and be heard. The guarantees include the right to express an opinion and to have the opinion taken into account; access to the legal system of the State; the right to an interpreter (to be addressed in one’s own language); the right to legal aid; to guardianship if they are unaccompanied or separated, etc.
* Presumption of minority must be ensured. For unaccompanied and separated migrants where it is not possible to establish the age of the person, or if a reasonable doubt exists about the age or the legitimacy of the identity or travel documents, the person shall be presumed to be a minor.
* Boys, girls and adolescents must never be deprived of their liberty for purposes of migration control if other less harsh measures exist to protect their best interests.

## **E. About the Right to Information on Consular Assistance**

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

a) protecting in the receiving State the interests of the sending State and of its nationals, both individuals and bodies corporate, within the limits permitted by international law;

e) helping and assisting nationals, both individuals and bodies corporate, of the sending State;

i) subject to the practices and procedures obtaining in the receiving State, representing or arranging appropriate representation for nationals of the sending State before the tribunals and other authorities of the receiving State, for the purpose of obtaining, in accordance with the laws and regulations of the receiving State, provisional measures for the preservation of the rights and interests of these nationals, where, because of absence or any other reason, such nationals are unable at the proper time to assume the defence of their rights and interests.

Article 36.1.a of the Vienna Convention on Consular Relations explicitly states the right to communication of the foreign national with the consulate of his or her country:

Article 36

COMMUNICATION WITH NATIONALS OF THE SENDING STATE

1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:

a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State.

The Inter-American Court of Human Rights, Advisory Opinion 16/99, analysed the norms cited and concluded that “consular communication serves a dual purpose: that of recognizing a State’s right to assist its nationals through the consular officer’s actions and, correspondingly, that of recognizing the correlative right of the national of the sending State to contact the consular officer to obtain that assistance”[[6]](#footnote-6).

The right to consular communication should be identified, more than an unrestricted power of the State of nationality, as a right of each individual, Terefore, “the exercise of this right is limited only by the individual’s choice, who may ‘expressly’ oppose any intervention by the consular officer on his behalf”.

If a person requests an international protection measure[[7]](#footnote-7) the appropriate area of international law shall apply as *lex specialis*[[8]](#footnote-8); for example, international refugee law[[9]](#footnote-9). Within this regulatory framework, with the objective of protecting the rights of asylum seekers that may be at risk “the asylum procedure should at all stages respect the confidentiality of all aspects of an asylum claim, including the fact that the asylum-seeker has made such a request”[[10]](#footnote-10), and also, the principle of non-refoulement.

For migrant or refugee boys, girls and adolescents, detention for the purposes of migration control will never be an appropriate measure to protect the best interests of the child. In this regard, it has been stated that:

“[…] States may not resort to the deprivation of liberty of children who are with their parents, or those who are unaccompanied or separated from their parents, as a precautionary measure in immigration proceedings; nor may States base this measure on failure to comply with the requirements to enter and to remain in a country, on the fact that the child is alone or separated from her or his family, or on the objective of ensuring family unity, because States can and should have other less harmful alternatives and, at the same time, protect the rights of the child integrally and as a priority”[[11]](#footnote-11).

Having clarified the above, when a foreign person is detained the right of the person to be informed without delay about the possibility of consular communication subsists (Paragraph b, Article 36.1 of the Vienna Convention on Consular Relations).

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

As an individual right of the foreign national, compliance with the receiving State’s duty corresponding to the right of consular communication is not subject to the requirement that the sending State *first file a protest*[[12]](#footnote-12).

In the particular case of unaccompanied or separated migrant boys, girls and adolescents and/or in need of international protection, States should adopt actions, in the procedures that affect them, to prevent and reverse the effects of vulnerability as a priority and with strict protection safeguards, with the aim of enabling them to fully enjoy and exercise their rights with equality and without any distinction[[13]](#footnote-13).

General Comment No. 6 of the Committee on the Rights of the Child states that “States should appoint a guardian or adviser as soon as the unaccompanied or separated child is identified and maintain such guardianship arrangements until the child has either reached the age of majority or has permanently left the territory and/or jurisdiction of the State”[[14]](#footnote-14).

Thus, “the guardian or adviser should have the necessary expertise in the field of child care, so as to ensure that the interests of the child are safeguarded”[[15]](#footnote-15). Furthermore, “in cases where boys, girls and adolescents are involved in asylum procedures, they should, in addition to the appointment of a guardian, be provided with legal representation”.[[16]](#footnote-16)

Within this framework, during the initial phase of identification and assessment by competent authorities in the receiving State, it should be determined if any element exists that reveals or refutes the need for some type of international protection, ensuring the protection of personal data[[17]](#footnote-17), including before consular authorities of the country of nationality of the boy, girl or adolescent.

In addition, “the information relating to the whereabouts of the boy, girl or adolescent shall only be withheld vis-à-vis the parents where required for the safety of the child or to otherwise secure the best interests of the child”[[18]](#footnote-18).

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Consular communication may take place (i) if it is based strictly on ensuring the best interests of the child, fully guaranteeing that the security of the boy, girl or adolescent is not placed at risk, (ii) if the actor of persecution is an individual acting without the acquiescence or tolerance of the State, (iii) if consultation, active participation and the right to be heard of the boy, girl or adolescent, together with his or her guardian and legal representative, is ensured and if the opinion of the child is duly taken into account in the decision to exercise that right; all this considering the age and maturity of the boy, girl or adolescent[[19]](#footnote-19).

If there are any doubts in this regard, the strict application of the principle of protection of personal data should be privileged in relation to consular authorities.

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

# **3. Basic Consular Intervention Standards**

The essential steps in providing appropriate consular protection, once a migrant boy, girl or adolescent and/or in need of international protection has established contact with the consular office of his or her country, are described below, with the understanding that the parameters set forth in the previous sections of this document have been complied with[[20]](#footnote-20).

## **The Consular Interview**

1. ***Prior to the Interview***

a.1 The person in charge of issuing travel passes or documents or other administrative documents shall not be the same person as the one interviewing the boys, girls and adolescents. The members of the consular team that will identify vulnerable situations and therefore, conduct the interviews, should have the following characteristics:

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

a.2 The general condition of the boy, girl or adolescent should be observed. This includes the following:

* Verifying the physical condition of the boy, girl or adolescent. The consular officer should record a general description of the boy, girl or adolescent, including colour and type of clothes and any particular characteristics that help identify the boy, girl or adolescent during and immediately after the interview. The following should be recorded, as a minimum:
  + Does he or she have any visible injuries or wounds?
  + Does he or she have any bruises?
  + Does he or she have any difficulty walking?
  + Does he or she look tired?
  + Is he or she visibly sleepy?
  + Are his or her clothes inappropriate for the weather? (for extreme cold or heat)
  + Do minimum conditions exist to conduct the interview?
* Obtaining essential information, for example, about age (considering not only the physical aspect of each individual but in addition, his or her psychological maturity), gender, sexual orientation and/or gender identity, identity of parents and siblings and their nationality, the reasons stated for leaving their country, and particular aspects of the vulnerabilities, especially in regard to health as well as physical, psychosocial and material needs.
* Adjusting the interview, based on age-sensitive factors (difference between childhood and adolescence), gender and/or diversity. Determining the gender of the consular officer that will conduct the interview after consulting with the boy, girl or adolescent and his or her guardian and legal representative and considering the best interests of the child.
* Identifying, based on the information that is available before the interview, if a potential need for international protection exists (for refugees or other types of risks in case of refoulement) or if the person could be a victim of trafficking or at risk of becoming one.
* Be prepared to consider non-verbal communication forms (such as games, body and face language, drawing and painting) through which children show that they are able to understand, choose and express preferences.
* Determine under what conditions the boy, girl or adolescent has been detained and for how long.
* Consider, prior to the interview, the possibility of trauma or psychological defence mechanisms of the boy, girl or adolescent and how to best conduct the interview.
* For boys, girls and adolescents that speak a foreign language or an indigenous language, consulates should have technical consular staff from indigenous villages or, alternatively, access to translators or interpreters to be hired for the interviews. The translators/interpreters should be appropriately qualified and trained and should be familiar with the techniques and objectives of consular interviews.

a.2 An appropriate venue should be selected to conduct the interview, and the interview should have an appropriate duration. This includes the following:

* The context of the interview should enable an environment of trust, so that the boy, girl or adolescent can be sure that the interviewer is willing to listen and seriously consider what the child has decided to communicate.
* For boys, girls and adolescents that are accompanied by or have entered the country with a migrant smuggler, contact with this person must be avoided.
* The necessary time and resources should be made available to boys, girls and adolescents to allow them to prepare adequately and have confidence and have a chance to express their opinions.
* The interview should be conducted in an environment that ensures security and privacy and that is not intimidating, hostile or insensitive. In addition, the interview should be conducted by trained professionals with appropriate interviewing skills, considering the age and gender of the interviewed boy, girl or adolescent.
* It should be taken into account that the rhythm of the interview should adjust to the cognitive and emotional skills of each boy, girl or adolescent. Ample time should be provided for the interview in order to increase the possibility of obtaining complete information without revictimizing the boy, girl or adolescent. In some cases, it is necessary to build a relationship of trust and to provide information before addressing aspects that could be painful to the boy, girl or adolescent.
* In situations where, for reasons beyond the control of the consular officers, there is limited time available to conduct the interview, the following is suggested to make the intervention more efficient:
  + Ensuring that the boy, girl or adolescent knows that he or she can ask for help and that the consular officer will take the necessary actions to secure the required assistance.
  + If a particular situation is identified where protection measures are required, it is preferable to obtain the information that is necessary to guide further actions, leaving the other topics to be addressed for later, provided that the conditions are adequate.
  + The opinion of the boy, girl or adolescent regarding his or her wishes or needs should always be recorded.

1. ***Initiating the interview***

* It is advisable to begin the interview by talking in a relaxed manner about a topic that could be pleasant for the boy, girl or adolescent, in order to break the ice.
* Efforts should be made to generate a conversation instead of just asking questions or interrogating the boy, girl or adolescent.
* It is advisable to use short sentences and express only one idea in each sentence, using simple language and avoiding technical terms.
* The interviewer should explain the objective of the interview to the boy, girl or adolescent, as well as the role of consular offices, and how the interview will be conducted, anticipating any aspect that could potentially cause fear or anxiety. In addition, the interviewer should explain that in order to fulfil the function of the consular office of providing protection, the interviewer needs to ask the boy, girl or adolescent some questions and write down the answers because they are important.
* To avoid raising false expectations, the interviewer should explain that the consulate will seek to exercise its influence to ensure that the best possible decision is made, but that the authorities of the receiving country are in charge of making the decisions relating to migration control. In addition, the interviewer should mention that the consular staff will seek to assist the boy, girl or adolescent in any case, regardless of the decision about their migration status.

1. ***Conducting the interview***

c.1 First, information should be provided to the boy, girl or adolescent and then questions should be asked. The following aspects should be considered:

* It should be remembered that the primary objective of the interview is to identify protection and assistance needs to be able to take the appropriate actions.
* It is advisable to begin the conversation by first informing the boy, girl or adolescent about the role of the consular office, providing useful information.
* It is advisable to use the journey of the boy, girl or adolescent as the specific scenario for the interview, in order to avoid the perception of the boy, girl or adolescent that he or she is being interrogated.
* The consular officer should listen. Listening involves understanding what the boy, girl or adolescent is trying to express and providing a space to enable them to share their painful experiences and feel that they can be heard without being judged.
* Responsible listening: In this type of listening, we take on great responsibility in terms of what we will do with the information that we obtain, what are the appropriate legal and protection actions and what support and humanitarian aid is required.
* When speaking about the migration journey, the interviewer can provide information about other boys, girls and adolescents that he or she has met. The interviewer should seek to establish a process whereby the interviewer provides information and thus, invites the boy, girl or adolescent to provide information as well.
* It can be inferred that boys, girls and adolescents are experiencing or have experienced traumatic situations that they are unable to speak about if they seem anxious, doubtful, confused or afraid when some topics are addressed; for example, being victims of violence.
* The consular officers should provide psychological first aid when required. This can be provided by appropriately trained staff, without the need of having a professional degree in this field.
* In cases where the boy, girl or adolescent may have suffered psychological and emotional impacts, it is suggested to apply the strategy of offering concrete objects which can be handled to channel the anxiety during the conversation, and to seek to express empathy with the situation of the boy, girl or adolescent.
* It should be assessed if it is really necessary or useful to obtain detailed information about the experiences of the boys, girls and adolescents. Talking about some details may be harmful and revictimize them, considering that they will have to talk about these experiences later on, with specialized staff providing protection and assistance in the receiving country. The interviewer should explain to the boy, girl or adolescent that it will be important to talk about these experiences with specialized staff.
* Whenever possible, basic information on the whereabouts of the absent relative or relatives should be provided to the boy, girl or adolescent.
* The boy, girl or adolescent should receive all relevant information (in his or her own language) about their rights, available services and immigration and asylum procedures, if appropriate.

c.2 The interviewer must request and record the opinion of the boy, girl or adolescent regarding his or her needs and wishes. The following should be taken into account:

* The boy, girl or adolescent should be informed about the right to express an opinion, directly or through a representative, in all matters that affect him or her and, particularly, in every judicial and administrative procedure where decisions are made.

1. ***Closing the interview***

* The objective of the final phase of the interview – in addition to closing the interview – should be to promote the “emotional rescue” of the boy, girl or adolescent.
* The interviewer should thank the boy, girl or adolescent for having shared his or her story. In closing the interview, the courage of the child and the empathy with his or her expectations should be expressed, with the aim of counteracting feelings of failure, helplessness, lack of options, uncertainty and anguish that are part of the psychological reality of boys, girls and adolescents in these conditions. This should be done without promising any results that are outside the control of the consular authorities.
* The next steps known at that moment should be described in a clear and transparent manner (regarding what will happen to the boy, girl or adolescent and his or her family or other significant adults, if this information is available).

## **B. Protection Actions**

The objective of the consular interview, and in general, of the consular intervention, should be to determine in a sustained manner the risks and protection and assistance needs of the boy, girl or adolescent and to define relevant actions aimed at ensuring the respect for and exercise of their rights. The recommendations should always consider gender, age and diversity, and the proposed actions should always be adjusted to the specific needs of each boy, girl or adolescent, according to maturity, particularly if the child has been exposed to violence and/or discrimination.

Consular authorities should develop relevant recommendations and submit them to the competent authority or authorities in charge of providing protection to boys, girls and adolescents in the receiving State. In this regard, consular interventions can be key to providing continuity to the “protection chain” in order to safeguard the rights of boys, girls and adolescents throughout the entire migration cycle.

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

The recommendations should include specific proposals that can be applied in each case, based on the best interests of the child; for example, inclusion into specific child protection programmes in the receiving State, or programmes on protection of victims or potential victims of trafficking or exploitation; referral to and implementation of asylum procedures or procedures to determine international protection needs; sheltering them in welfare shelters; initiating a legal proceeding; “delivering” them to a relative in the territory of the receiving State; repatriation; etc.

Thus, the recommendations concerning protection should be based on the following elements:

* Equal and effective access to justice: the right to adequate protection and access to legal services, as well as guardianship for unaccompanied or separated boys, girls and adolescents;
* The possibility of safe and appropriate accommodation, meeting the needs of unaccompanied or separated boys, girls and adolescents;
* Access to primary health care and psychological assistance, considering the opinion of the boy, girl or adolescent in the actions to be implemented;
* Ensuring that the legal proceedings where boys, girls and adolescents participate do not adversely affect their rights, dignity and physical and psychological well-being;
* The right to receive legal aid or any other assistance in procedures where their rights may be adversely affected;
* The right to receive protection from harm, threats or intimidation by migrant smugglers and traffickers and persons associated to them or who could adversely affect the rights of the boy, girl or adolescent; to this end, the identity of boys, girls and adolescents should not be revealed in public, and their privacy should be respected and protected above all;
* Access to asylum procedures or other types of complementary protection, if international protection is required;
* For victims of trafficking in persons, it is imperative that the return be voluntary and be carried out under safe conditions. The alternative of living permanently in the country of destination should be considered, or resettling them in a third country in special conditions, preventing reprisals and preventing them from becoming victims of trafficking again;
* The right to be heard, to express themselves freely and to be consulted in seeking solutions to the problems that affect them.

Furthermore, it is crucial that consular offices submit the information about each case and the specific recommendations to relevant authorities to enable them to follow up on each case in an informed manner, so that appropriate protection measures can be taken for each boy, girl or adolescent in case of repatriation to the country of origin.

# **4. Final Recommendations**

Based on the standards described above, the following recommendations are made with the aim of following up on the effort of the RCM to address the protection and assistance needs of migrant boys, girls and adolescents and/or in need of international protection, particularly in the framework of consular interventions:

1. That the Technical Secretariat of the RCM submit this document to the RCM Member Countries, taking into account the institutions that are members of the Ad Hoc Group on Migrant and Refugee Boys, Girls and Adolescents.
2. To convene a process to discuss and validate the contents of the standards proposed in this document, taking into account the migration authorities, ministries of foreign affairs, consular authorities and child protection institutions of the RCM Member Countries.
3. That the RCM Member Countries discuss, within the framework of the Regional Consultation Group on Migration (RCGM) and the Vice-Ministerial Meeting, the relevance of adopting the proposed standards as a document of the RCM.
4. That the RCM Member Countries discuss the relevance of incorporating and implementing the consular protection standards proposed in this document in their internal legal systems.
5. To initiate a sustained process of dissemination, awareness-raising and training, at the national and regional level, on these consular intervention standards among relevant institutional actors, with the aim of putting into practice the proposed actions.

1. See IOM: Irregular Migration and Mixed Flows: IOM’s Approach. Ninety-Eight Session. MC/INF/297. October 19, 2009, page 1. [↑](#footnote-ref-1)
2. General Comment No. 6, Committee on the Rights of the Child, Treatment of unaccompanied and separated children outside their country of origin, Thirty-Ninth Session (2005), U.N. Doc. CRC/GC/2005/6 (2005), Paragraph 3. [↑](#footnote-ref-2)
3. RCM. Regional Guidelines for the Preliminary Identification and Referral Mechanisms for Migrant Populations in Vulnerable Situations. June 2013, p. 2. [↑](#footnote-ref-3)
4. The first meeting was held in Guatemala (August 28-29, 2014), the second one in Mexico City (April 15-16, 2015) and the third one in San Salvador (August 18-19, 2015). [↑](#footnote-ref-4)
5. See Committee on the Rights of the Child, General Comment No. 6: Treatment of unaccompanied and separated children outside their country of origin, pp. 7-10. [↑](#footnote-ref-5)
6. **Inter-American Court of Human Rights. The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law. Advisory Opinion OC-16/99, October 1, 1999. Series A, No. 16, Paragraph 80.** [↑](#footnote-ref-6)
7. International protection is understood as the protection that a State offers to a foreign person because, in her or his country of nationality or habitual residence, that individual’s human rights are threatened or violated and she or he is unable to obtain due protection there because it is not accessible, available and/or effective. While international protection of the host State is tied initially to the refugee status of the individual, various sources of international law – and in particular refugee law, international human rights law and international humanitarian law – reveal that this notion also encompasses other types of normative frameworks for protection. Thus, the expression international protection comprises: (a) the protection received by asylum seekers and refugees on the basis of the international conventions or domestic law; (b) the protection received by asylum seekers and refugees on the basis of the broadened definition of the Cartagena Declaration; (c) the protection received by any foreign person based on international human rights obligations, and in particular the principle of non-refoulement, as well as complementary protection or other forms of humanitarian protection, and (d) the protection received by stateless persons in accordance with the relevant international instruments. See Inter-American Court of Human Rights**. Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection. Advisory Opinion OC-21/14, August 19, 2014. Series A, No. 21, Paragraph 37.** [↑](#footnote-ref-7)
8. See Inter-American Court of Human Rights**. The Case of Vélez Loor vs. Panama.** Preliminary Objections, Merits, Reparations and Costs**. Judgment of November 23, 2010, Series C, No. 218, Paragraph** 105. [↑](#footnote-ref-8)
9. Included in United Nations instruments on this matter, such as the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. See Inter-American Court of Human Rights. The case of the Pacheco Tineo Family v. Plurinational State of Bolivia. Preliminary Objections, Merits, Reparations and Costs. Judgment of November **25, 2013. Series C, No. 272, Paragraphs 138 & 139.**  [↑](#footnote-ref-9)
10. See United Nations High Commissioner for Refugees (UNHCR), Asylum Processes (Fair and Efficient Asylum Procedures). Global Consultation on International Protection, UN. Doc. EC/GC/01/12, published on May 31, 2001, Paragraph 50(m). See also United Nations High Commissioner for Refugees (UNHCR), Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention Relating to the Status of Refugees, UN Doc. HCR/GIP/03/05, September 4, 2003, Paragraph 33. [↑](#footnote-ref-10)
11. Op. cit.Inter-American Court of Human Rights**. Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection. Advisory Opinion OC-21/14, Paragraph** 160. [↑](#footnote-ref-11)
12. Op. cit. Inter-American Court of Human Rights**. The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law. Advisory Opinion OC-16/99, Paragraph 89.** [↑](#footnote-ref-12)
13. Ibid. [↑](#footnote-ref-13)
14. Committee on the Rights of the Child, General Comment No. 6: Treatment of unaccompanied and separated children outside their country of origin, Paragraph 33. [↑](#footnote-ref-14)
15. Ibid. In addition, the General Comment states that “The guardian should have the authority to be present in all planning and decision-making processes, including immigration and appeal hearings, care arrangements and all efforts to search for a durable solution. The guardian or adviser should have the necessary expertise in the field of child care, so as to ensure that the interests of the child are safeguarded and that the child’s legal, social, health, psychological, material and educational needs are appropriately covered”. [↑](#footnote-ref-15)
16. Ibid., Paragraph 36. [↑](#footnote-ref-16)
17. Op. cit.Inter-American Court of Human Rights**. Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection. Advisory Opinion OC-21/14, Paragraph** 86. [↑](#footnote-ref-17)
18. Op. cit. Committee on the Rights of the Child, General Comment No. 6, Paragraph 30. [↑](#footnote-ref-18)
19. Op. cit.Inter-American Court of Human Rights**. Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection. Advisory Opinion OC-21/14, Paragraph** 282. [↑](#footnote-ref-19)
20. In developing this section, the “Protocol on Consular Assistance to Unaccompanied Migrant Boys, Girls and Adolescents” was used as the core reference document. Mexico: Secretariat of Foreign Affairs, General Office of Protection to Mexicans Abroad, 2015. For cases of suspected trafficking in persons, please see the Manual on Trafficking in Persons for Secretariats and Ministries of Foreign Affairs of Central America and Mexico. [↑](#footnote-ref-20)