Mandates of the Special Rapporteur on trafficking in persons, especially women and children; the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the human rights of migrants

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(Please use this reference in your reply)

12 December 2025

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on trafficking in persons, especially women and children; Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on the human rights of migrants, pursuant to Human Rights Council resolutions 53/9, 53/12 and 52/20.

In this connection, we would like to express our concern in relation to the **termination of funding for legal services for unaccompanied children in immigration proceedings**, in violation of the statutory and regulatory obligations under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008.[1]

Special Procedures mandate-holders have expressed their concern in May 2025 over what appears to be an organized, deliberate effort to harass and punish legal professionals, law firms, and associations of lawyers in retaliation for their judicial and legal work (AL USA 15/2025). Recalling that international law and standards protect judicial independence and the independent functioning of the legal profession, we regret that we have not received any reply to this letter yet.

According to the information received:

Statutory protection of unaccompanied children

In the fiscal year of 2024, nearly 100,000 minors, including toddlers and infants, were identified as unaccompanied children by federal authorities. Under U.S. law, an unaccompanied minor is defined as a child who "(A) has no lawful immigration status in the United States; (B) has not attained eighteen years of age; and (C) with respect to whom – (i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States who is able to provide care and physical custody."[2] The designation of a child as an unaccompanied minor remains in effect for the duration of their engagement with U.S. immigration processes, even following release to a sponsor. Unaccompanied children's rights are supported by a set of legislations and institutional guidelines, notably through the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), which imposed the responsibility for the care and legal custody of unaccompanied children on the the Office of Refugee Resettlement (ORR) situated within the Department of Health and Human Services (HHS) Administration for Children and Families Division. The TVPRA also requires the Department of Homeland Security

[1] 8 U.S.C. § 1232. Full text available at: https://www.congress.gov/110/plaws/publ457/PLAW-110publ457.pdf
[2] U.S.C. § 279(g)(2).

(DHS) to protect children from mistreatment, exploitation and trafficking, including through screening for fear of return, and to place them in less restrictive setting consistent with the best interest of the child, typically through release to a vetted parent, relative or another caretaker.[3]

Specifically, section 235 of the TVPRA provides that the Secretary of Health and Human Services should ensure, to the greatest extent practicable, that all unaccompanied children who are or have been in their custody, have access to counsel to represent them in their affrimative immigration proceedings or related legal matters, and to go through full removal proceedings before an immigration judge, instead of being subject to expedited removal.[4] If an unaccompanied child applies for asylum, the application is abjudicated through a non-adversarial process by the DHS Asylum Office, instead of in immigration court, where proceedings are adversarial and involve a DHS attorney opposing the applicant. Unaccompanied children also have the right to pursue immigration relief, such as Special Immigrant Juvenile Status, withholding of removal, as well as relief under the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, which the U.S. ratified on 21 October 1994. All children, unaccompanied or otherwise, are protected by regulations that prevent immigration judges from accepting an admission of removability from any child under eighteen, unless the child is represented by an attorney or other designated individual.[5]

In addition to the TVPRA, Congress has codified the right to counsel for noncitizens in the Immigration and Nationality Act, which provides that in any removal proceeding before an immigration judge and in any appeal before the Attorney General, the person concerned has the right to be represented by the counsel of their choice, duly authorized to practice in such proceedings. The Immigraton Nationality Act also ensures that individuals have a reasonable opportunity to present evidence, receive a hearing on their application and cross-examine Government witnessses. Furthermore, the Administrative Procedure Act guarantees judicial review for individuals suffering legal harm or adversely affected by agency action under a relevant statute. It requires courts to set aside federal agency actions that are arbitrary, capricious or otherwise not in accordance with law.[6] These statutory rights, together with Constitutional protections, require meaningful access to legal representation as a fundamental safeguard in immigration proceedings.

Furthermore, the ORR's internal guidelines complement federal law and also governs the rights of unaccompanied children in the U.S. The ORR Unaccompanied Children Program Foundational Rule,[7] which came into effect on 1 July 2024, codifies regulations consistent with the ORR's statutory duties and mandates that unaccompanied children in its custody receive a legal orientation from an independent legal service provider, a confidential consultation with a qualified attorney, and ongoing access to counsel. It further

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3 8. U.S.C. § 1232(c)(5).
4 *See* 8 U.S.C. § 1232(a)(5)(D).
5 *See* 8 C.F.R. 1240.10(c).
6 5 U.S.C. § 702.
7 89 Fed. Reg. 34384, 4 C.F.R. pt. 410.

provides that to the extent appropriations are available and insofar as pro bono counsel cannot be secured, the ORR shall fund legal service providers to offer direct legal representation for certain unaccompanied children, subject to the ORR's discretion and available resources.[8] Moreover, the ORR Unaccompanied Alien Children Bureau Policy Guide expressly states in section 3.7.2 that the ORR funds legal service providers to offer legal representation, subject to funding availability and when securing pro bono counsel is not practicable. Failure to comply with the Foundational Rule and Policy Guide violates the Administrative Procedure Act, as such actions are arbitrary, capricious, an abuse of discretion or otherwise unlawful.

Stop-work order

Since the passage of the TVPRA, Congress has consistently appropriated dedicated funds for the HHS to effectuate the legal representation requirement, in recognition of the benefits of legal counsel in promoting due process and improving the efficiency of immigration adjudication.[9] In 2019, the House Appropriations Committee recommended expanding funded legal representations,[10] and further proposed in 2022 that such representation should be "made available to children up to funded capacity."[11] The Senate Appropriations Committee specified there should be $5,506,258,000 for the Unaccompanied Children Program,[12] and as recently as 23 March 2024, Congress appropriated funds to TVPRA[13] through 30 September 2027.[14]

On 18 February 2025, the United States Department of the Interior sent a notice to nonprofit legal service providers, directing them to immediately stop work and terminated the contract line items through which it had provided funding for counsel for unaccompanied children, including children in removal proceedings and children applying for immigration relief. The Administration voluntarily rescinded the stop-work order without explanation, then sent another notice on partial termination on 21 March 2025, in contravention of congressional and regulatory mandates, and despite the availability of appropriated funds. The Administration has not specified any plans to reinstate the cancelled contract or to find alternative ways to fund lawyers to represent unaccompanied children. The orders did also not provide reasoned justification for the cancellation of mandated and appropriated funding. The Administration's post hoc justifications have not been supported by an administrative record.

The stop-work order has resulted in an indefinite suspension and near-total termination of the Unaccompanied Children Program, and subverts congressional appropriations as well as violates the TVPRA's mandate to provide counsel for unaccompanied children to the greatest extent practicable. Due to abrupt fuding cuts, legal service providers have had to reduce programs,

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8 45 C.F.R. § 410.1309(a)(4)(2024).

9 For example, see statements by the House Appropriations Committee in 2009 (H. Rep. 111-220, at 165) and the Senate Appropriations Committee in 2018 (S. Rep. 115-289, at 150).

10 H. Rep. 116-62 at 145.

11 H. Rep. 117-403, at 200.

12 S. Rep. 118-84, at 167.

13 H.R. 2882 (Pub. L. 118-47 138 Stat. 460, 664).

14 Pub. L. 119-4, div. A tit. I sec. 1103.

terminate staff and withdraw from their ongoing representation duties. As a result, many of the 26,000 unaccompanied children represented by attorneys through Government funding have lost legal representation and faced imminent removal from the U.S., despite being prima facie eligible for immigration relief.

On 3 March 2025, thirty-two Senators wrote to the Secretaries of the Department of Health and Human Services and the Department of the Interior to oppose the stop-work order, citing TVPRA violations. Nonprofit organizations that previously received funding have filed emergency complaints across jurisdictions, warning that fuding withdrawals could lead to mass due process violations and wrongful denials of protection. On 1 April 2025, the Court issued an emergency temporary restraining order blocking the funding termination, ordering that Government agencies are enjoined from withdrawing the services or funds provided by the ORR as of 20 March 2025. The Court stated that the injunction precludes cutting off access to congressionally appropriated funding. Litigation remains ongoing and it is uncertain whether legal representation will be restrored in part or in full. Other legislative measures, such as the One Big Beautiful Bill Act (H.R.1) and the recent budget bill, sought to formalize components undermining the TVPRA, including the imposition of fees on individuals seeking protection in the United States.

Reprisals against lawyers and judges

In addition to funding cuts, there are allegations of additional pressure being imposed on immigration lawyers and judges. In March 2025, the President issued a memorandum titled 'Preventing Abuses of the Legal System and the Federal Court', asserting, without basis, that immigration attorneys and pro bono law firms "frequently coach clients" to conceal material facts or misrepresent circumstances in asylum claims, and that those "litigating against the federal Government pursue baseless partisan attacks." The memorandum directed the Attorney General and the DHS to impose sanctions and other disciplinary measures against attorneys and firms for alleged misconduct, including "filing frivolus litigation or engaging in fraudulent practices" and violating the rule of professional conduct.

The Adminstration has also reportedly targeted the adjudicatory process in immigration proceedings. In June 2025, the Acting Director of the Executive Office for Immigration Review, which oversees immigration courts, issued a policy memorandum stating that immigration judges who issue adverse decisions against the DHS (i.e., the opposing party in such proceedings) may face corrective or disciplinary action. Another memorandum in August 2025 asserted that "abjudicatory outliers or statistically improbable outcome metrics… may be indicative of a systemic bias or failure to adhere to applicable law that warrants potential action." These directives substantially hamper the independent judgement and discretion granted to immigration judges under U.S. regulations.

Several lawfirms have also been allegedly compelled into entring settlement agreements through coercive measures, including the suspension of security clearances and cancellation of federal contracts. The settlements require

lawfirms to curtail significant portions of their public interest and pro bono portfolios, including cases involving refugees and asylum seekers. As a response, the Amarican Bar Association filed suit in June 2025 in the U.S. District Court for the District of Columbia agaisnt the Office of the President, challenging both the March memorandum and the Administration's ongoing policy of intimidating lawyers.

Protection for children in immigration detention

The Administration has allegedly sought to weaken, dismantle and violate protection measures for children in immigration detention, including those provided through the TVPRA, the Flores v. Reno Settlement Agreement of 1997 as well as internal agency policy. In particular, the Flores Settlement establishes binding minimum standards for the placement, release and treatment of children in custody. It sets a policy in favor of release and requires the Government to place unaccompanied children in the least restrictive setting in non-secure and state-licensed facilites. At present, the Settlement governs the detention of children in DHS custody, and also entitles non-cizens due process of law in deportation proceedings under the Fifth Amendment. In February 2025, a U.S. federal district court rejected the Administration's move to terminate the Settlement in its entirety.

For decades, the Flores Settlement has also served as a primary oversight and accountability mechanism in ensuring safe conditions for children in detention. Declarations obtained during Flores Settlement monitoring contain accounts from children and families held in DHS custody, including at Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) facilities. Children are reportedly detained for weeks or months without adequate explanation, beyond cursory and bureaucratic notations. The federal court overseeing the Flores Settlement found that while the conditions likely violate the Flores Settlement, they cannot be remedied due to the inherent physical limitations of CBP facilities, such as the lack of windows and restrictive outdoor access. The court reaffirmed that CBP facilites are not suitable for prolonged detention of children, as they are designed for short-term processing of individuals apprehended at or near the border or at official ports of entry.

While agencies detaining chlidren have internal guidelines on protection requirements, such as access to food, water, medical care, education, recreation and privacy, these standards are non-binding, lack judicial enforcement mechanisms, and may be unilaterally altered or disregarded by the agency concerned. At CBP facilities, children are allegedly confined in windowless cells and medically neglected, while being separated from one or both parents for extended periods. At ICE facilities, such as the South Texas Family Residential Center in Dilley, Texas, families report systematic deficiencies and severe trauma arising from the lack of access to basic necessities like clean water and edible food, as well as extreme temperatures, constant bright lighting, inadequate bedding, limited access to bathrooms and showers. Children allegedly have no access to meaningful education and some have reportedly been verbally abused and subject to discriminatory treatment by staff. Family

visits are not permitted for children to maintain contact with non-detained relatives.

These brutal conditions are even more concerning as unaccompanied children are spending longer periods in custody. For instance, between January and August 2025, the average length of time that unaccompanied children spent in ORR custody increased nearly sixfold from the previous Administration, from about one month to roughly six months, while the agency's daily release rate droppepd by nearly 80 per cent. As of 31 August 2025, approximately 2,000 children are kept in ORR facilities and have been there for an average of 179 days. At the same time, the percentage of children released to vetted family caregivers plummeted from about 95 per cent in prior years to 45 per cent between April and August 2025. During the same period, more than half of the children discharged from ORR custody did not transition to the care of a family member or caregiver, but were released because they reached the age of eighteen, were deported, or otherwise removed from custody. Children in ORR custody are also allegedly targeted for illegal deportation.

Arbitrary and stringent requirements for release

The decline in release rates coincides with the introduction of multiple new ORR policies since early 2025 that significantly impede family reunification and prolong detention. On 14 February 2025, the ORR began to mandate fingerprint-based background checks of all potential sponsors, adult household members of the household and backup caregivers. On 7 March 2025, the ORR restricted the list of acceptable identity documents, effectively eliminating the use of foreign identification unless the individual has work authorization. These changes make it nearly impossible for families without stable lawful status to sponsor a child and prevent otherwise eligible relatives from applying.

In addition to DNA testing, the ORR now requires all potential sponsors to provide evidence of their relationship to the child, such as birth certificates, court records or marriage certificates, which usually need to be verified by consulates and may cause further procedural delays. While parents lacking qualifying identification can request an exception, approvals often involve weeks-long delays. On 17 March 2025, the ORR began mandating DNA testing for all children and sponsors claiming biological relation. On 25 March 2025, the ORR issued an Interim Final Rule removing safeguards that previously barred it from sharing immigration status of potential sponsors with immigration enforecement agencies, likely deterring eligible sponsors from coming forward.

The ORR also eliminated restrictions that had previously prevented the agency from denying potential sponsors solely on the basis of immigration status. On 15 April 2025, the ORR narrowed the range of acceptable income documentation from potential sponsors, which may disqualify low-income families, create wealth- and status-based barriers, and delay the release of children. A preliminary injunction blocked the new proof of identification and income requirement for children who entered the ORR custody on or before

22 April 2025.[15]

On 28 May 2025, the ORR discontinued public access to the sponsor application packet, reversing its prior practice. In early July 2025, the ORR began requiring potential sponsors to attend in-person appointments with its personnel to verify identification documents, sometimes in the presence of an ICE representative, who may conduct interviews to fulfill their own objectives. Some sponsors have been reportedly detained during these identification checks. On 14 July 2025, the ORR expanded the home study requirement in sponsor applications to cover a broader range of cases. These changes have significant consequences for undocumented sponsors or those living with undocumented family members, who constitute the majority sponsors for unaccompanied children. Additionally, in August 2025, the ORR began requiring an Affidavit of Financial Support and shifted application review from community-based nonprofit staff familiar with children and families to centralized federal personnel.

Expedited removal and unlawful deportations

Between January and August 2025, at least 1,700 deportation flights were sent to 77 countries, representing a 79 per cent increase over the same period in 2024. Children of all ages have been deported, including those who are U.S. citizens, and alongside one or both parents. Individuals are allegedly restrained for entire journeys, which sometimes exceeds 40 hours. Parents who refuse to withdraw their claims then consent to removal have been reportedly punished, including by forcibly separating children without providing any means to arrange for their care prior to deportation, in violation of the ICE Directive on Detention and Removal of Alien Parents and Legal Guardians of Minor Children issued on 2 July 2025 (11064.4). A new ICE guidance has enabled transfers within extremely short timeframes, often within 24 hours, and in some cases, as little as six hours. Individuals have been allegedly removed to countries where they face a substantial risk of incommunicado detention and other grave human rights violations, often without those countries being identified as potential removal destinations during immigration proceedings. Accelerated transfers and the lack of due process safeguards heighten the risk of erroneous removal, leaving individuals with little or no opportunity to intervene, and depriving them of the ability to assert a credible fear claim.

In June 2025, the Supreme Court authorized the resumption of expedited removal of migrants to third countries with minimal notice, overturning an April ruling by a federal judge that found due process violations and blocked transfers to third countries without meaningful opportunity to contest removal. The ruling aligns with the Adminsitration's reported attempts to secure undisclosed agreements with nearly sixty countries to accept deportees, which would enable the expulsion of asylun seekers and migrants to third countries where they have no connection or legal status, and without formalized procedures or protocols to safeguard their rights.

[15] *Angelica S. v. HHS*, No. 25-CV-1405 (DLF), 2025 WL 1635369 (D.D.C. 9 June 2025).

The Administration has further expanded the use of expedited removal through executive actions, policy memoranda and other instructions to immigration officers, which resulted in detention and subsequent processing for summary removal. Families with children have reportedly been detained during immigration hearings and placed into expedited summary removal with little to no access to legal counsel. Asylum seekers have allegedly been targeted, arbitrarily detained and removed as a result of complying with the Government's requirements or pursuing their asylum case, such as attending immigration court hearings and check-ins. While some of these practices have been struck by federal courts, litigation remains ongoing.

There have been consistent accounts of unlawful deportation of unaccompanied children, in contradiction of Government documentation identifying children as potential victims of child abuse, trafficking and gang violence. Children have been reportedly pressured to either accept a cash payment of $2,500 to self-deport, relinquishing protections under the TVPRA, or face indefinite detention and transfer to ICE custody upon turning eighteen. ICE also allegedly threatened to arrest family members if children refused self-deport, and used physical coercion to force individuals into signing deportation documents. On 4 October 2025, organizations filed an emergency motion to halt automatic transfers of unaccompanied children to ICE custody at age eighteen, citing violation of a permanent injunction. Representatives for unaccompanied children also sought to prevent and challenge removal of children without final orders, contending that only immigration judges have authority to determine whether an unaccompanied minor can voluntarily depart the U.S. A federal court granted the motion.

Lack of or dissolution of oversight mechanisms

Amid multiple violations occurring in detention facilities, oversight mechanisms have been allgedly dissolved or rendered ineffective. There are three oversight bodies within the DHS established by Congress to investigate complaints and ensure accountability, including in detention facilities, that are also mandated to report to Congress and authorized to investigate and issue recommendations to relevant Government entities. The agencies also function as liaisons between federal agencies, legal service providers and detained individuals. In March 2025, the Administration reduced funding and terminated staff at overisght agencies, characterizing them as "internal adversaries" obstructing operations. A federal district court denied a motion for preliminary injunction in the litigation challenging the dismantling of these agencies, and the case remains pending as of November 2025. Additionally, in recent months, ICE has reportedly denied access to facilities operated by the DHS, which are subejct to congressional oversight, and Members of Congress have explicit statutory autohrity to conduct unacocunced inspections. In response, twelve members of the U.S. House of Representatives filed suit in the District of Columbia in July 2025, contesting a new DHS policy requiring seven days' advance notice and designating certain ICE faciliites as off-limits.

While we do not wish to prejudge the accuracy of the information above, we express serious concern at persistent violations of statutory, regulatory and other

protections for children. Denying children of the rights to legal representation and forcing them to navigate complex immigration proceedings without counsel is a serious violation of the rights of children, leading to imminent and forseeable grave harms, including potential denial of asylum, expedited removal and inability to pursue special immigrant juvenile status, in contravention of children's legal entitlements. These rights cannot be realized unless children understand them and have means to exercise them, which requires access to legal representation.

We express concern over the increasing securitization of immigration, and emphasize that curtailing the statutory mandate of the TVPRA and invoking the Alien Enemies Act in peacetime to circumvent established immigration law is unlawful. Furthermore, the Administration's policies and actions concerning family separation, mass arbitrary arrests involving violence and racial profiling, detention of citizens and persons with protected status, denial of bond hearings, obstruction of the right to seek asylum, refoulement and transfers to third countries without safeguards, suspension of refugee admissions, and attempts to deport unaccompanied children without hearings or legal representation, individually and collectively undermine human rights guarantees enshrined in U.S. and international law. We also underscore that unaccompanied children should be exempt from onerous fees, including the application fee for special immigration juvenile status. Furthermore, the provision on funding summary returns of "specified" unaccompanied children, which was used to jutsify attempted mass forced returns of Guatemalan children, is in violation of international law obligations prohibiting refoulement, and ensuring the rights of children, without discrimination. As such, this legal provision shoud be repealed in relevant legislation.

We wish to emphasize that effective access to justice is a fundamental right in itself and a sine qua non enabling right for the protection and promotion of other relevant rights, especially in the context of migration. Child-sensitive due process should be guaranteed in all immigration and asylum proceedings affecting children or their parents. Children should also have access to administrative and judicial remedies against decisions affecting their own situation or that of their parents, and measures should be taken to avoid undue procedural delays that could negatively affect children's rights. Expedited proceedings should only be pursued when they are consistent with the child's best interests and without restricting any due process guarantees. States should adopt standardized policies to ensure free, quality legal advice and representation for migrant, asylum-seeking and refugee children, including unaccompanied and separated children.

In connection with the above alleged facts and concerns, please refer to the **Annex on references to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned issues.

2. Please provide information on the measures taken to ensure due process rights of unaccompanied and separated children under international and domestic law.

3. Please provide information on the measures taken to ensure that immigration detention will not be prolonged and the detention conditions meet international standards.

4. Please provide information on the measures taken to ensure the right to family life and the best interests of the child, including with respect to the prevention of separation and application of the non-refoulement principle to prevent removal to third countries with risks of persecution, trafficking and other serious human rights violations.

This communication and any response received from your Excellency's Government will be made public via the communications reporting website within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please accept, Excellency, the assurances of our highest consideration.

Siobhán Mullally
Special Rapporteur on trafficking in persons, especially women and children

Margaret Satterthwaite
Special Rapporteur on the independence of judges and lawyers

Gehad Madi
Special Rapporteur on the human rights of migrants

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

In this context, we wish to remind your Excellency's Government of its obligations under international human rights law, including the International Covenant on Civil and Political Rights (ICCPR), which was ratified on 8 June 1992. Article 17(1) provides that no one shall be subjected to arbitrary or unlawful interference with their privacy, family, home, or correspondence, while article 23(1) affirms that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State. Article 24(1) further provides that every child, without discrimination, shall have the right to measures of protection appropriate to their status as a minor, to be ensured by the family, society, and the State. The Human Rights Committee, in its general comment No. 19 (1990) concerning article 23 on family further stressed the need for States to adopt legislative, administrative or other measures to protect the family. The Committee, in its concluding observations on the fifth periodic report of the United States of America stressed that the Government should redouble its efforts to combat trafficking in persons, by, inter alia, improving victim identification and strengthening its preventive measures (CCPR/C/USA/CO/5, para. 51).

We also wish to recall the Convention on the Rights of the Child, signed by the Government on 16 February 1955. Children's rights to access justice and to an effective remedy are implicit in the Convention. Article 37(b) of the Convention establishes the general principle that the arrest, detention or imprisonment of the child shall be in conformity with the law and only used as a measure of last resort and for the shortest appropriate period of time. Article 37(d) affirms that children deprived of liberty have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of liberty before a court or other competent, independent and impartial authority. Article 40(2) stresses that every child alleged as or accused of having infringed the penal law has a guarantee to be informed promptly and directly of the charges and to have legal or other appropriate assistance in the preparation and presentation of their defense. Article 40(2) also provides a guarantee for the child to have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance.

The Committee on the Rights of the Child, in its general comment No. 5 (2003) on the general measures of implementation of the Convention (arts. 4, 42 and 44, para. 6), held that an effective remedy requires child-sensitive procedures, which should guarantee the adoption of specific measures to ensure that administrative and judicial proceedings are adapted to the needs and development of children. In its general comment No. 6 (2005) on treatment of unaccompanied and separated children outside their country of origin, the Committee stated that children should not be deprived of their liberty and that detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status or lack thereof (CRC/C/GC/6, para. 61).

The Committee on the Rights of the Child has repeatedly affirmed children's access to justice, notably in its general comment No. 24 (2019) on children's rights in the justice system and most recently in the draft general comment No. 27 on children's right to access justice and to an effective remedy. In the draft general comment, the Committee recognized the role of civil society in supporting children's access justice and strategic litigation, including through bringing a case to the courtroom and ensuring the non-repetition of violations.[16]

In addition, we recall the joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return. The Committees state that children must never be detained for migration-related reasons and that States should expeditiously and completely cease or eradicate the immigration detention of children (CMW/C/GC/4-CRC/C/GC/23, para. 5). Where children remain in custody, States should develop detailed standards for reception facilities, ensuring adequate space, privacy, and living conditions (para. 50). Moreover, the Committees affirmed that irregular entry and stay do not constitute crimes against persons, property, or national security, and that criminalizing them exceeds States' legitimate interest in controlling and regulating migration and results in arbitrary detention (para. 7). Detention as a measure of last resort does not apply in immigration proceedings, as it conflicts with the child's best interests and right to development (para. 10), and States should ensure that children remain with family or guardians in non-custodial, community-based settings while their status is being resolved, and provide adequate material, social, and emotional support (paras. 11–12). Importantly, the Committees underscored that unaccompanied and separated children should be placed preferably in family-type care when possible, or otherwise in community care. Such decisions must follow a child-sensitive due process framework, ensuring the child's right to be heard, access to justice, and the ability to challenge any deprivation of liberty before a judge. Decisions must also consider the child's individual needs, including those related to gender, disability, age, mental health, pregnancy, and other conditions (para. 13).

In the same joint general comment, the Committees emphasized that children should be able to bring complaints before courts, administrative tribunals or other accessible forums, and receive child-friendly advice and representation by professionals with expertise in children and migration (para. 16). In best interests assessments and determination procedures, children must be guaranteed free legal aid, such as assistance by and communication with an attorney trained in child representation at all stages (para. 17(f)). A competent guardian should be appointed for unaccompanied and separated children as expeditiously as possible to serve as a procedural safeguard (para. 17(i)).

The Committees also stressed that family separation by deportation or removal may amount to arbitrary or unlawful interference with family life, and that expelling one or both parents for breaches of immigration law related to entry or stay is disproportionate (paras. 28–29). For unaccompanied or separated children, including

[16] Draft general comment available at: https://www.ohchr.org/sites/default/files/documents/hrbodies/crc/cfi-gc27/crc-gc27-public-consultation.docx

those separated due to immigration enforcement, such as parental detention, States must promptly identify sustainable, rights-based solutions (para. 34). Decisions on family reunification in the country of origin, transit, or destination must be based on a rigorous best-interests assessment and include a reintegration plan with the child's participation (para. 34).

The Committees called on States to adopt robust measures for children presenting indicators of trafficking, including early identification and referral mechanisms, and mandatory training for social workers, border officials, lawyers, medical professionals, and other relevant personnel. Where multiple migration statuses are available, the most protective status must be applied in the child's best interests and must not be conditional on the initiation of criminal proceedings or children's cooperation with law enforcement (para. 43). States should also establish firewalls and prohibit the exchange of patients' data between health institutions and immigration authorities as well as immigration enforcement in or near public health facilities (para. 56).

We wish to recall the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, ratified by the United States of America on 3 November 2005. Article 6 requires State Parties to adopt gender- and child-sensitive measures to ensure that victims of trafficking receive information on relevant judicial and administrative proceedings, and are provided with assistance for their physical, psychological and social recovery, including counselling and information on legal rights, delivered in cooperation with non-Governmental organizations. Article 7 obliges States to give due consideration to humanitarian and compassionate factors when determining the status of the victims of trafficking. Article 8(2) stipulates that the return of victims to their country of origin or residence should preferably be voluntary and must take into account the victim's safety and the status of any ongoing legal proceedings. Article 8(5) further affirms that repatriation measures shall be without prejudice to rights conferred on victims under domestic law or applicable bilateral or multilateral agreements governing their return. Finally, article 14 provides that all measures under the Protocol shall be interpreted and applied in accordance with the principle of non-discrimination.

We also recall the thematic study of the Working Group on Arbitrary Detention on the United Nations Basic Principles and Guidelines on Remedies and Procedures on the right of anyone deprived of liberty to bring proceedings before a court, which stressed the right to challenge the lawfulness or arbitrariness of detention and to obtain prompt, accessible remedies (A/HRC/30/37). The study also underscores the right of persons deprived of liberty to be informed of the grounds for detention and available judicial remedies in an appropriate language, mode, or format, with specific measures for certain groups, including children, migrants, asylum seekers, refugees, stateless persons, victims of trafficking or those at risk of being trafficked. Persons deprived of liberty must have guaranteed access to legal assistance by counsel of their choice, whose functions must be carried out effectively and independently, free from fear of reprisal, interference, intimidation, hindrance or harassment. Access to counsel must not be unlawfully or unreasonably restricted, and where counsel is unavailable, States must make every effort to ensure access to suitably qualified legal assistance providers.

Lastly, we recall the joint statement of the Inter-American Commission on Human Rights and experts from the Platform of Independent Experts on the Rights of Refugees issued on 18 September 2025, which expressed concern about bilateral agreements between countries aimed at deporting, expelling, and/or transferring persons to third countries, contrary to non-derogable international human rights obligations.[17]

[17] Full statement available at: https://www.pierr.org/post/states-must-protect-the-rights-of-persons-in-human-mobility-iachr-and-united-nations-experts