

How can family unit protection and family reunification be made more effective in situations of human mobility and mixed movements, and in the context of the pandemic?



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CONTEXT

In recent years, through its various monitoring mechanisms, the Inter-American Commission on Human Rights (IACHR) has observed an increase in large-scale mixed movements, mainly originating in Central America, Mexico, and Venezuela. This increase is due to the persistence of factors that drive expulsions: persecution, armed conflicts, widespread violence, serious breakdowns in law and order, organized crime, poverty, lack of opportunities for development, and, in general, curtailed human rights. More recently, emergencies related to climate change, food crises, crop failures, and the failure to adopt care and assistance measures have also forced people to relocate in search of opportunities for development or international protection in other countries of the region.

The COVID-19 pandemic and the measures imposed to contain the spread of the virus—such as border closures and total or partial lockdowns—have had an additional impact on how persons in situations of human mobility enjoy their human rights. This is due to the fact that those measures: (i) made the departure, transit, and reception of persons in need of international protection more difficult, (ii) negatively impacted access to the asylum system, basic services, and social protection in countries of origin, transit, reception, and return alike, and (iii) hampered the effectiveness of mechanisms for social protection, access to justice, and others. Thus, not only did the COVID-19 pandemic add expulsion factors to those that already existed, it also raised the profile of pre-existing inequalities and gaps in access to rights such as health, education, work, adequate housing, and so on.

Following the total or partial closure of borders due to the pandemic, **data from the International Organization for Migration (IOM)** indicate that by July 2020, at least 2.75 million people in the world had been unable to return to their countries of origin or habitual residence; at the same time, other groups of persons in situations of human mobility suffered the direct effects of accelerated deportations, expulsions, or similar measures. In addition, given that irregular migratory and mixed movements continue and that persons continue to return to their countries of origin or habitual residence, the Commission noted with concern public statements that **criminalize the irregular entry or stay** of persons who are seeking international protection or who have been displaced for humanitarian reasons, along with the **discrimination, stigmatization, and rejection of returnees and deportees** out of fear of contracting the disease, on the grounds that they may have been in contact with the virus and could be carriers of it.

In that context, the IACHR notes the situation of families that have been separated in contexts of human mobility and who face social and institutional obstacles to reuniting with their relatives in other countries, which can result in prolonged separations that negatively affect the possibility of integrating refugees and migrants into their destination countries. The Commission also notes that some families choose to reunify in an irregular and unsafe manner, including international movements by unaccompanied children and adolescents, which exposes them to situations of extreme vulnerability, including the risk of abuse, violence, trafficking, or other violations of their human rights.

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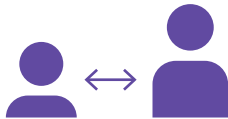
MAIN CHALLENGES IN MAINTAINING FAMILY UNITY AND ENSURING REUNIFICATION

The new migration and forced displacement dynamics that have been identified include family groups and unaccompanied or separated children and adolescents, on the move on account of international protection needs, driven by persecution, violence, human rights violations, in search of better opportunities, and seeking family reunification.

→ In keeping with **Resolution 4/19** which contains the **Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons, and Victims of Human Trafficking**, the following definitions are used:



Unaccompanied Children: Any child or adolescent who is traveling unaccompanied by any parent or other relatives and is not under the care of an adult who, by law or custom, bears such responsibility.



Separate Children: Any child or adolescent separated from one or both parents or from their legal guardian or habitual caregiver, but not necessarily from other relatives. “Separated children” may, therefore, include children accompanied by other adult family members.

In this context of human mobility and mixed movements, the IACHR has observed the challenges faced by states in adopting measures conducive to the maintenance of family unity and ensuring the rapid reunification of separated families. These include:

- » Persistence of the structural causes that force people to relocate, both internally and across borders, whether for economic reasons or forced by persecution, conflict, widespread violence, or human rights violations.
- » Failures to identify possible international protection needs in any kind of proceedings, including asylum, which may result in a penalty of deportation or expulsion, particularly when family groups are involved.
- » A failure to analyze the effects that deportation or expulsion may have on the maintenance of family units, and to assess the family, social, and/or cultural ties with the country to which deported or expelled persons are sent.
- » Weak coordination channels and linkage mechanisms for returnees, lacking the constant monitoring needed to guarantee adequate reintegration and ensure family unity or reunification.
- » Inability to comply with legal, administrative, documentary, and logistical requirements, along with costs that are difficult to cover, a lack of information, a lack of linguistic accessibility to documents, a lack of interpreting services, complex and lengthy procedures, and other barriers that hinder traveling by family members and the conclusion of formalities related to family unification.

To meet these challenges, states must observe a gender perspective, the principle of children's best interests, and differentiated approaches that consider the particular needs of children and other groups requiring special protection in the public policies and other measures they adopt. Consideration must also be given to the family ties that exist in countries of origin, transit, destination, and return.

While the IACHR notes that the region's states are making progress with the adoption of measures to promote orderly, safe, and regular migration, there are still challenges to overcome. The enforcement of migration policies based on national security, law and order, **zero tolerance** or **health security** is focused on deterring irregular migration, and not necessarily on creating or expanding regular and secure channels of protection. In addition to criminalizing irregular migration, policies of this kind can cause:

- » Restrictions on entry into states' territories and on access to migration procedures and proceedings for determining refugee status, statelessness, and other forms of international protection.
- » Obstacles to risk assessments in countries of origin in cases of involving expulsion, deportation, or direct or indirect *refoulement*.
- » Expedited collective expulsion procedures and individual deportations that do not ensure the guarantees of due process or administrative review, with an impact on persons with potential international protection needs or seeking family reunification.
- » Externalization of borders and implementation of procedures that seek to keep migrants, asylum seekers, and persons in need of protection outside a state's territory.
- » Automatic detention of persons in an irregular migratory situation.

The Commission has noted with concern that family separations have occurred as a result of the detention and expulsion of parents or persons accompanying children or adolescents when they cross borders, without considering the enforcement of less harmful measures to ensure family unity. According to a **report by the U.S. Congressional Research Service**, between March 2017 and the end of November 2020 a total of 5,349 children and adolescents were reportedly separated from their families at the southern border of the United States. Likewise, documented information from the **American Civil Liberties Union** indicates that as of January 2021, the families of at least 611 separated children and adolescents have still not been located. The ACLU also notes that this figure could be even higher since there is no useful information available to locate the separated families. In addition, the detention of people in situations of human mobility is not subject to time limits and, in some cases, the detention conditions are incompatible with their human dignity. This can have a direct impact on:

- » Personal integrity due to deplorable detention conditions, including increased exposure to COVID-19 contagion.
- » Limited information on the whereabouts of separated children and adolescents, and minimal opportunities for communication with their families.
- » Loss of family ties when children and adolescents are separated.
- » Loss of identity and cultural belonging.
- » Increased risks of violence, abuse, or other human rights violations, such as sexual violence.

→ **The IACHR has ruled that regardless of the nomenclature used for immigration detention, any measure that prevents a person in a situation of human mobility from freely exercising his or her freedom of movement constitutes detention and therefore must respect the guarantees derived from the right to personal liberty.**

According to **UNICEF**, the enforcement of migration policies such as those described above does not take into account that children and adolescents also embark on human movements because they are seeking reunification with family members in other countries. It also underscores that such displacements take place through irregular channels. This is because of the lack of regularization programs or because the reunification procedures are restrictive and do not allow for reunifications that are regularized or take place within a reasonable period of time, as in the cases of the family separations already seen in Europe.

In addition, the IACHR notes that the loss of jobs and livelihoods resulting from pandemic containment measures and the absence of family ties or community support networks in destination or host countries has forced migrants and persons seeking protection to embark on return journeys to their countries of origin or habitual residence. According to the **IOM**, however, these people had to remain in third countries awaiting their eventual return, in precarious conditions and without access to national protection systems, for as long as the borders remained closed. This was because:

- » The ban on entry or return to countries failed to consider that under the American Convention on Human Rights (“American Convention”), no person may be deprived of entry to the country of which he or she is a national. In the context of the pandemic, the Commission therefore recommended that states guarantee the rights of return and return migration, applying the sanitary protocols required to ensure the protection of life, integrity, and health, and providing durable solutions that allow for the proper reintegration of returnees.
- » Return and repatriation procedures were affected by difficulties in cooperation, information exchange, and logistical support between the states involved. The IACHR has also expressed its concern about cases of **unjustified delays in allowing the safe and speedy return of nationals.**

The Commission has recognized that states enjoy a margin of discretion in setting their migration policies and their mechanisms for controlling entry into and exit from their territory by non-nationals. However, the objectives they pursue must respect the human rights of persons in situations of human mobility. In addition to the above, protecting the right to family life and the best interests of the child requires a balance to be struck between the state’s exercise of its sovereign power to determine who may enter or remain in its territory and its obligations with respect to the protection of family life. The Commission has therefore stressed the importance of adopting measures to encourage the regularization of migration, to offer safe channels to migrants, and to allow entry into state territories for the purpose of ensuring access to asylum or protection procedures.

The IACHR has also emphasized that the intensification of mixed movements and the increase in applications for refugee status and protection in response to new forms of forced displacement require a comprehensive protection and prevention approach and

new cooperation strategies and appropriate and comprehensive inter-institutional responses. These could include the adaptation of protection systems to recognize and process new factors driving forced displacement and new scenarios for extending the principle of *non-refoulement*, such as the impact on economic, social, cultural, and environmental rights in the context of pandemics and other emergencies.

Finally, while States have an enhanced duty to protect the health of all persons under their jurisdiction, the adoption of migration policies and restrictive measures to contain the spread of the COVID-19 pandemic cannot be used: (i) to hinder movements of persons seeking asylum and international protection or wishing to return to their countries of nationality or habitual residence, (ii) as a pretext for implementing policies that weaken the protection of the principle of family unity, or (iii) to delay efforts to reunite children and adolescents separated from their families.

For those reasons, the Inter-American Commission has prepared the following guide: **How can family unit protection and family reunification be made more effective in situations of human mobility and mixed movements, and in the context of the pandemic?** It analyzes the applicable inter-American standards in light of states' international obligations and proposes recommendations to guarantee family unity and family reunification, to prevent the risks of separation, and to minimize the impact of family separation cases. Moreover, the implementation of family reunification guarantees often requires an appropriate strategy for access to document regularization mechanisms, as well as safe conditions of travel and mobility across national borders. This is especially beneficial for families who have been forcibly separated or separated for reasons relating to human mobility.

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RIGHTS THAT COULD BE AFFECTED

The rights and principles examined below apply to all persons within the jurisdiction of a state, irrespective of their migratory or documentary status. In keeping with international law, the state's obligations under the 1989 Convention on the Rights of the Child (CRC) apply to all children within its jurisdiction. In particular, according to the Committee on the Rights of the Child's General Comment No. 6 (2005), the CRC applies to all children, including those who are asylum-seekers, refugees, migrants, and stateless.

Protection of the family and prohibition of arbitrary interference in family life

- » The **right to protection of the family** is recognized in Articles V and VI of the American Declaration on the Rights and Duties of Man ("American Declaration") and in Article 17 of the American Convention. In accordance with the principle of equality and non-discrimination, the jurisprudence of human rights protection agencies has made progress in recognizing a wide range of family structures. Article 16 of the Universal Declaration of Human Rights, Articles 17 and 23 of the International Covenant on Civil and Political Rights of 1966, and Article 10 of the International Covenant on Economic, Social and Cultural Rights concur with the inter-American instruments.

- » In the context of migration, in its Advisory Opinion on **Rights and guarantees of children in the context of migration and/or in need of international protection**, the Inter-American Court on Human Rights (IACtHR) stated that **family ties** may have been established between individuals who are not necessarily family members in a legal sense, especially when, as regards children, they have not been accompanied by their parents in those processes.
- » Articles 9, 10, and 22 of the CRC and Article 11.2 of the American Convention enshrine the **protection against family separation and arbitrary interference with family life**.
- » According to the **Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons, and Victims of Human Trafficking** (“Inter-American Principles”), **family unity** and **family reunification** shall be paramount considerations in any decision about migration status. In dealing with such procedures, the competent authorities must:
 - » Analyze and determine, for each particular case, the composition of the child’s nuclear family, taking into account his or her best interests. This implies that the examination should be sufficiently flexible regarding the specific facts of each individual case so that adequate protection can be provided in accordance with the particular needs of the child or adolescent.
 - » Adopt special protection measures to adequately ensure family protection and reunification, based on the determination made.
- » **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** determined that the **protection of the right to a family environment** usually requires states:
 - » To refrain from actions that could result in family separation or other arbitrary interference in the right to family life.
 - » To take positive measures to maintain the family unit, including the reunification of separated family members.
- » **General Comment No. 6. (2005) of the Committee on the Rights of the Child** stipulates that in accordance with a rights-based approach, the search for a durable solution commences by analyzing the possibility of family reunification.

Best interests of the child

- » Article 3 of the Convention on the Rights of the Child provides that the best interests of the child shall be a primary consideration.
- » Article 24.1 of the International Covenant on Civil and Political Rights states that children have the right to such measures of protection from their families, society, and the state as are required by their status as minors.
- » Article 19 of the American Convention stipulates that children have the right to the measures of protection required by their status as minors on the part of their family, society, and the state.
- » The IACHR has stated that the **principle of the child’s best interest** means that the comprehensive development of children and adolescents and the full exercise of all their rights must be taken as guiding criteria in developing standards and policies for integration, return, and **family reunification**.

- » In its Advisory Opinion on the **Rights and guarantees of children in the context of migration and/or in need of international protection**, the Inter-American Court stated that any administrative or judicial decision concerning the entry, stay, or expulsion of a child, or the detention, expulsion, or deportation of her or his parents associated with their own migratory status, must give priority to the assessment, determination, consideration, and protection of the best interest of the child concerned.
- » Pursuant to the **Inter-American Principles**, procedures involving children must focus primarily on determination of the principle of the best interests of the child and the specific guarantees set out therein.

Personal integrity

- » The right to personal integrity is established in Article I of the American Declaration and Article 5 of the American Convention.
- » Thus, in the case of **Ramírez Escobar et al. v. Guatemala**, the Inter-American Court ruled that the suffering caused by unjustified and permanent separation from a family can have a lasting impact. Accordingly, **family separations** must be analyzed as a possible and particularly serious violation of the right to personal integrity affecting each of the family's members.

Non-discrimination

- » Their obligations under the Convention on the Rights of the Child require states not only to refrain from taking measures that infringe on children's rights, but also to take measures to ensure the enjoyment of these rights without **discrimination** (Article 2). In cases involving separated and unaccompanied children, those responsibilities are not only limited to the provision of protection and assistance, but also include measures to prevent **separation**.
- » Article 1.1 of the American Convention establishes that states must "respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition." Likewise, Article 24 of the American Convention states that since all persons are equal before the law, "they are entitled, without discrimination, to equal protection of the law."
- » The Inter-American Court of Human Rights, interpreting this regulatory framework in its Advisory Opinion 18/2003, develops the scope of the state's obligations to guarantee the protection of persons in contexts of human mobility. This is to be achieved through actions that respect the indissoluble link between non-discrimination and effective protection.
- » In keeping with the Inter-American Principles, the IACHR holds that this state duty of protection must be implemented through positive measures to reverse or modify existing discriminatory situations. To that end, states must incorporate an intersectional perspective into all measures relating to persons in contexts of human mobility, allowing the situations and needs of each population group to be addressed, including factors such as gender, age, diversity, disability, ethnicity, race, and class.

- » In its report **Towards the Effective Fulfillment of Children's Rights: National Protection Systems**, the IACHR highlighted the need for National Protection Systems to ensure that all rights of migrant children and adolescents are guaranteed without any discrimination based on their migratory status. Similarly, the Court, the IACHR, and the Committee on the Rights of the Child have stressed that migratory status cannot be used as an excuse for not addressing and upholding the rights recognized to migrant children by the Convention on the Rights of the Child.

Right to seek and receive asylum or complementary protection

1. See, in particular: Conclusion on Family Reunions, No. 9 (XXVIII), 1997, and No. 24 (XXXII), 1981; Conclusion on Refugee Children and Adolescents, No. 84 (XLVIII), 1997; Conclusion on the Protection of the Refugee's Family, No. 88 (L), 1999; and Conclusion No. 104, which highlights, in particular, the potential role of family members in promoting the smoother and more rapid integration of refugee families, given that they can strengthen refugees' social support systems.

- » The **right to seek and request asylum** is contained in Article XXVII of the American Declaration, Article 22.7 of the American Convention, and Article 14 of the Universal Declaration of Human Rights.
- » The IACHR has noted that the 1951 Convention Relating to the Status of Refugees does not explicitly include the right to seek and receive asylum. It is considered to be implicitly incorporated in its text, however, through its definition of refugees, its protection against *refoulement*, and the catalogue of rights it includes.
- » Regarding **complementary protection**, the IACHR has determined that this refers to legal mechanisms designed to protect persons who do not meet the requirements for refugee status, but whose life, liberty, or personal safety would be at risk if they returned to their countries of origin. Therefore, granting complementary protection to persons in a situation of mobility who do not meet the criteria to be considered refugees allows such persons to regularize their stay in the country, not to be returned, expelled, or sent back to where their life, liberty, or integrity would be at risk, and to enjoy access to rights and to national protection systems.
- » Whether or not they are parties to the 1951 Convention or the 1967 Protocol relating to the Status of Refugees, most of the region's states recognize the need to adopt such measures as are necessary for the protection of refugees' families and, most particularly, to ensure that family unity is maintained and that refugee children and adolescents are protected.
- » In this regard, the UNHCR Executive Committee's Conclusions on family unity and reunification *reaffirm* the principles of family unity in international and humanitarian law, urge states to facilitate the reunification of refugee families separated as a result of persecution, flight, or other reasons, and call for the facilitation of entry by family members of persons recognized as refugees on the basis of flexible criteria¹. UNHCR has furthermore emphasized that family reunification is an important element for integrating international protection beneficiaries into their host societies.
- » Family members or dependants of a person recognized as a refugee who meet the eligibility criteria for refugee status must be recognized as refugees in their own right, even if they applied for recognition as part of a family and not individually. It should be noted that family members or dependants accompanying a principal applicant will often have the same international protection needs as the person recognized as a refugee. In addition, family members or dependants, regardless of their age, may also have a well-founded fear of persecution in their own right as a result of their family relationship or association with the person granted refugee status.

**2. Office of the
United Nations High
Commissioner for
Refugees (UNHCR)
Procedural Standards
for Refugee Status
Determination Under
UNHCR’s Mandate,
August 26, 2020.**

- » Thus, there is nothing to prevent any family members—be they adults, children, or adolescents—from being recognized as refugees on their own account. In other words, the principle of family unity comes into play to the benefit of dependants and not to their detriment.
- » Refugee status determination procedures must ensure that the family members and dependants of a person claiming refugee status are fully informed of the criteria for determining that status. In particular, they must be informed that each family member may be eligible for refugee status in his or her own right. Likewise, the granting of refugee status to one family member may mean that the others are able to benefit under the principle of the protection of the family unit. Family members or dependants who, based on the information provided during registration and after counseling, do not appear to have a claim in their own right or have not declared themselves eligible for refugee status in their own right, must also be informed of the criteria and procedures for obtaining derivative refugee status.
- » If at any time before or during the derivative refugee status determination process it becomes apparent that the family member or dependant may have international protection needs in his or her own right, the merits of the claim must be fully considered so that the application can be assessed on its own merits.
- » Family members or dependants of a person recognized as a refugee who are not eligible for refugee status in their own right may obtain derivative refugee status, provided this is not incompatible with their personal legal status.
- » According to UNHCR recommendations², family members who may be covered by the principle of family unity should include close relatives with respect to whom a relationship of social, emotional, or economic dependence is presumed, and other persons who, although not close relatives, may be eligible for derivative refugee status.
- » Close relatives may include:
 - » The spouses of the refugee status applicant, including all legally married spouses in cases of polygamy, a person engaged to marry the refugee status applicant, common law spouses or couples involved in an enduring relationship whether physically living together or not, including same sex couples and spouses who have entered into a customary marriage.
 - » All unmarried children of the refugee status applicant and the unmarried children of his or her spouse, as defined above, who are aged under 18, including the refugee status applicant’s children born in the host country or country of asylum, provided that derivative refugee status is not incompatible with their personal legal status.
 - » The parents or primary legal or customary caregivers of a refugee status applicant who is under 18, as well as the dependants of the adult parent or caregiver.
 - » The minor siblings of a refugee status applicant who is under 18.

- » Persons who, while not close relatives, may still be eligible for derivative refugee status, may include:
 - » Parents or former caregivers of a refugee status applicant, or of his/her spouse, when the parents or caregivers are dependent on the refugee status applicant.
 - » The married minor children of the refugee status applicant, or of his/her spouse, who remain dependent on the refugee status applicant, and the spouses of married children who are dependent on the refugee status applicant. In the case of underage married children and their underage spouses, a best interests assessment is required to determine whether or not the granting of derivative refugee status is in their best interest.
 - » Dependent children of the person applying for refugee status over the age of 18 and their spouses, where the couple is dependent on refugee status applicant. In the case of a minor spouses, a best interests assessment will generally be required to determine whether or not the granting of derivative refugee status is in their best interest.
 - » Other dependent family members—including siblings, aunts and uncles, and cousins—who were part of the household of the refugee status applicant in the country of origin, or whose situation has subsequently changed in such a way as to make them dependent upon the refugee status applicant in the host country or country of asylum. Whether such individuals are part of the refugee status applicant's household in the host country or country of asylum is a relevant factor to consider in determining whether a relationship of dependency exists, but it is not determinative.
 - » Other family members on whom the refugee status applicant was dependent in the country of origin or on whom he/she has, subsequently, become dependent in the host country or country of asylum. Whether such individuals are part of the refugee status applicant's household in the host country or country of asylum is a relevant factor to consider in determining whether a relationship of dependency exists, but it is not determinative.
 - » Any other individuals who, though not related to the refugee status applicant, have a relationship of dependency that is similar to the categories of family members described above.
- » When the unity of a refugee's family is destroyed by divorce, separation, or death, dependants who have been granted refugee status on the basis of family unity will retain that status. The grounds for exclusion are the following: (i) if they fall within the terms of a cessation clause, (ii) if they do not have reasons other than personal convenience for wishing to retain refugee status, and (iii) if they themselves no longer wish to be considered as refugees. If the dependant of a refugee falls within the terms of one of the exclusion clauses, he/she must be denied refugee status.
- » For the purpose of assessing eligibility for derivative refugee status, the age of the derivative refugee status applicant shall be considered as at the date when the refugee status applicant was recognized as a refugee.

Non-refoulement

3. See: UNHCR, **Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol**, January 26, 2007. UNHCR, **UNHCR Submissions to the Inter-American Court of Human Rights in the framework of request for an Advisory Opinion on Migrant Children presented by MERCOSUR**, February 17, 2012, para. 2.4.

- » Both the Convention Relating to the Status of Refugees (1951) and the Cartagena Declaration on Refugees (1984) protect refugees against return (*refoulement*). This principle constitutes the cornerstone of international refugee protection and has been recognized as a provision of *ius cogens*.
- » The obligation to guarantee the principle of *non-refoulement* applies to all forms of forcible removal, including a prohibition on *refoulement* at the border and on indirect *refoulement*, deportation, expulsion, extradition, informal transfer or renditions, or non-admission to the territory³. The organs of the inter-American system have broadened the threshold of protection against *refoulement* by determining that it must also apply to any person who, while not considered a refugee or asylum seeker, cannot be returned to the territory of another country where his/her life or liberty would be in danger or where there are substantial grounds for believing that he/she would be in danger of being subjected to torture or other mistreatment. They also see the human rights obligation of *non-refoulement* as complementary to its prohibition under international refugee law, thus reinforcing the ban on *refoulement* without exception when there are reasons to believe that such risks exist.
- » In the context of the COVID-19 pandemic, in **Resolution 1/2020 on the Pandemic and Human Rights in the Americas** the IACHR recommended that states avoid the use of measures that could increase the risk of contagion and propagation of the disease caused by COVID-19: for example, through any form of return without proper coordination and verification of the corresponding health conditions. Additionally, in **Resolution 4/2020 on the Human Rights of Persons with COVID-19**, it noted the need for immediate steps to overcome the social stigma associated with COVID-19 and possible discriminatory behavior toward people perceived to have been exposed to the virus.

4

PRACTICES IN THE REGION

Despite the challenges identified in this area, the IACHR notes that some of the region's states have implemented actions to ensure family unity, guarantee reunification, and minimize the effects that separation may have had on families. This has been achieved through the adoption of the following measures:

Regarding the maintenance of family unity

- » Adoption of legislative reforms, such as in the case of **México**, which incorporate differentiated approaches to the protection of accompanied, unaccompanied, or separated children and adolescents, guaranteeing their access to procedures and comprehensive protection for their rights in accordance with the principles of respect for family unity, family development, the best interests of the child, and *non-refoulement*. Specifically:

- » Consideration of the principles of family unity, family development, and best interests in migration, asylum, and protection procedures involving children and adolescents.
 - » Express ban on returning, expelling, deporting, applying *refoulement* at the border, or not admitting children and adolescents without first assessing whether their life, liberty, or safety would be at risk.
 - » Ban on placing children and adolescents in immigration detention.
 - » Priority protection in the event of the possible detention of an adult in charge of a child or adolescent, in order to prevent children and adolescents from being left unprotected.
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- » Some countries, including Chile, extended the expiration dates of foreigners' identification documents. An identification document protects people against being returned and ensures the exercise of other rights—such as economic, social, and cultural rights—by proving their regular status.
 - » Extension of the expirations of visas, temporary residence permits, permits in process, provisional permits, non-resident visas, legal stay visas, and permits for the regularization of irregular status, as in **Argentina**, **Panama** and **Peru**.
 - » Creation of special immigration classifications for persons who do not meet all the criteria to be recognized as a refugee or person in need of protection, such as in **Costa Rica** and Colombia. Measures such as these grant regular leave to remain in the country of destination, allow access to formal employment, and avoid precarious working conditions.
 - » Implementation of simplified refugee status recognition procedures, as in **Brazil** and **Mexico**, applying the Cartagena Declaration's expanded definition, with high rates of recognition.
 - » Ensuring continuity of proceedings, and avoiding the risk of contagion. On account of the pandemic, Chile adopted measures whereby applications would not be archived for abandoning the procedure, for failing to attend eligibility interviews, or for failing to request a visa extension or stamp.
 - » Adoption of contingency plans for different stages in migration proceedings. In particular, in response to the current health emergency and in order to ensure the uninterrupted processing of procedures, Ecuador implemented protocols for conducting eligibility interviews, assigning appointments, and serving notifications.

Regarding measures to ensure family reunification and minimize the effects of separation

- » Inclusion of populations in the context of human mobility in national protection, social assistance, and emergency programs, as a mechanism for their effective prevention against the possibility of further forced displacement as a result of the pandemic and the failure to adopt measures. The following measures warrant specific mention:
 - » Access to national public health systems, as in Chile and Argentina.
 - » Special regularization permits that seek to reduce rates of informal employment and provide a mechanism to avoid the workplace exploitation of people in irregular situations, as in the case of Colombia.
 - » State financial assistance policies during the pandemic (emergency family incomes, EFIs), as in **Argentina**;

- » Humanitarian assistance programs targeting families on the move who have been affected by the COVID-19 pandemic, as in **Peru**;
- » Suspension or temporary reduction of deportation or removal proceedings, such as in **Argentina, the Dominican Republic, Peru and the United States**. While these measures could help preserve family unity, they need to be accompanied by:
 - » Alternatives to detention.
 - » Enforcement of less harmful measures that consider family ties and the impact that deportation or expulsion could have on the affected families.
 - » Lasting solutions for integration in the host country.
- » Measures that allowed the rapid voluntary return of persons to their countries of origin or habitual residence, thus ensuring family reunification:
 - » Inter-agency coordination among the region's states for implementing procedures for the repatriation of nationals, facilitating humanitarian flights or journeys by land.
- » Enforcement of health protocols required to prevent or reduce contagion and, when necessary, to provide health care among voluntary returns that allowed family reunification. This was achieved by:
 - » Setting up shelters, care centers, or other suitable venues for receiving returnees or deportees, as in Honduras.
 - » Quarantines supervised by state health systems or state-accredited institutions to ensure the isolation and medical care of persons diagnosed with COVID-19.
- » Adoption of protocols or care plans for unaccompanied migrant children and adolescents who are returned, within the COVID-19 framework, to guarantee medical attention, family tracing, and accompaniment to their communities of origin, as in Guatemala.
- » **Creation of task forces** to identify children and adolescents who have been separated as a result of zero-tolerance migration policies and reunite them with their families. The task force could make recommendations on:
 - » The provision of services and support to children and their families, including trauma and mental health services.
 - » Reunification of any additional family members, such as siblings, when there is a humanitarian reason for doing so.
- » Adoption of good practices at civil registries to ensure access to birth certificates and civil documentation, in the context of the COVID-19 pandemic⁴, to mitigate the risks of statelessness and family separation and the factors that drive them:
 - » Digitization and centralization of birth registration services. Particularly in light of the need to observe preventive isolation measures and respect social distancing measures, the implementation of systems that allow the online notification and registration of vital events is noted as a good practice. The

4. UNHCR *et al*, **Emergency response of civil registry and identification offices during the COVID-19 pandemic: Impact, good practices and innovative initiatives implemented in Latin America and the Caribbean**, December 2020.

5 and 6. UNHCR, The Impact of COVID-19 on Stateless Populations: Policy Recommendations and Good Practices, (2020)6.

pandemic offers an opportunity to improve infrastructure and deployments of technology that will enhance accessibility to civil registration services even after the crisis⁵.

- » The relaxation of rules, deadlines, and procedures for access to registration documents, as well as to civil documentation, as in Bolivia, Chile, Costa Rica, Ecuador, and Haiti. In Panama, the validity of birth notifications was extended, and the document serves as proof of legal identity to allow access to public services⁶.

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RECOMMENDATIONS TO THE STATES

In consideration of the importance of the principles of family unity and reunification in international migration processes, the IACHR offers the following recommendations:

- A. Ensure family unity and prevent risks of family separation.**
- B. Ensure family reunification.**
- C. Minimize and overcome the effects of family separation on children and adolescents.**

A. To ensure family unity and prevent the risks of separation

- 01** Ensure that proceedings of any nature that may result in expulsion or deportation assign paramount importance to the principles of respect for family unity, family reunification, and the best interests of the child.
- 02** Guarantee communications in the language of the persons involved and accessibility in all informative documents, procedures, services, and attention, as well as in all migratory, protection, or other proceedings that may affect the unity of families in the context of human mobility, further taking into consideration such factors as age, diversity, disability, and ethnicity. Similarly, the communications provided must address the applicable intersectionalities.
- 03** Guarantee children and adolescents access to information and the right to freely express their views in their own language, either directly or through a person or body with competence in the protection of children's rights, in a sensitive and appropriate manner, taking into account their age, maturity, and development.
- 04** Respect the principle of *non-refoulement*, including the prohibition of rejections at the border, indirect *refoulement*, and collective expulsions, which may constitute arbitrary interference with family unity. In such cases, states must impose less harmful measures in cases where the deportation or expulsion of non-nationals would seriously harm the family life of the person to be expelled, as well as that of his or her family members, especially if children or adolescents are involved.

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- 05** Establish the safeguards necessary to ensure that custody is determined with respect to children or adolescents under the jurisdiction of the state prior to executing a deportation or expulsion order against a non-national who has children or adolescents in his/her care. In determining that custody, states should apply the expanded definition of “family”.
 - 06** Promote strategies and the structuring of regional efforts to promote development and eradicate the structural causes that drive the forced displacement of people.
 - 07** Implement, at the regional level, strategies that guarantee regular channels for international migration. The migration policies, laws, and practices adopted must prioritize the principles of respect for family unity, family reunification, and the best interests of the child. In particular, states must prevent unaccompanied or separated children and adolescents from traveling in search of family reunification under conditions that expose them to further violations. They must also develop mechanisms and channels for cooperation and processing that allow for safe routes and procedures for the reunification of the children in their custody.
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B. To ensure family reunification

- 08** Ensure the right of return and return migration to states and territories of origin or nationality. In addition, return or repatriation procedures must be voluntary, observe health protocols that prioritize the protection of life, personal integrity, and health, and respect the principle of family unity.
- 09** Make resolving cases of prolonged family separation a priority, including the use of task forces and the cross-referencing of databases to promote family reunification. States must therefore facilitate refugees’ access to family reunification processes through simplified administrative and other procedures that address the specific practical, administrative, and legal obstacles refugees may face. Simplified procedures can facilitate access to embassies, assistance with documents, visa waivers, or the use of humanitarian visas for family reunification purposes⁷.
- 10** Promote the creation and strengthening of identification mechanisms in border areas, as well as local procedures for registering cases and requesting guidance, in coordination with the oversight agencies. To this end, states must adapt those processes to guarantee linguistic accessibility, taking into account the region’s ethnic and cultural diversity, including that of the indigenous peoples who inhabit it.
- 11** Avoid undue and lengthy delays in family reunification procedures, as well as the use of measures to force people to return to their country of origin or to relocate to third countries. This requires that the competent authorities process applications for asylum, complementary protection, or migration regularization as promptly as possible.

7. UNHCR, **Complementary Pathways for Admission of Refugees to Third Countries: Key Consideration.** April 2019.

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- 12 Implement regional mechanisms to allow for the rapid reunification of families. States should place priority emphasis on resolving cases of prolonged family separation. Preferably, such mechanisms should be linked to incentives for migratory regularization and the granting of asylum, statelessness, or complementary protection in the territory of the host state.
 - 13 Create and maintain up-to-date national and regional databases to enable the rapid identification of children separated during migration, asylum, or protection procedures. Those databases must be subject to international data protection obligations and may not, under any circumstances, be used to initiate investigations against individuals in the context of mobility or as part of border security mechanisms or outsourced migration controls.
 - 14 Strengthen coordination among states to ensure mutual recognition of visas, permits, certificates, travel documents, or other documents that serve to confirm identity and family ties issued to family members who must travel through third countries for reunification in the host country.

C. To minimize and overcome the effects of family separation on children and adolescents

- 15 Advocate for investment policies in developing countries that include strategies to address the root causes of human displacement. Those policies must take into consideration the factors that drive forced displacement and the new scenarios created by the extension of the principle of *non-refoulement*, such as generalized violence and family reunification, as well as the profound effects on economic, social, cultural, and environmental rights in the context of pandemics and other emergencies. The policies should also have adequate mechanisms to monitor and evaluate their results and to promote transparency and accountability.
- 16 Implement measures to ensure durable solutions for all persons in mobility situations in destination countries. Those measures must ensure the protection of the human rights of persons in situations of human mobility, on an equal basis, without discrimination based their migration status or any other conditions.
- 17 Implement and/or adapt protection systems that recognize and process new factors of forced displacement and new scenarios created by the extension of the principle of *non-refoulement*, such as generalized violence and family reunification, as well as the profound effects on economic, social, cultural, and environmental rights in the context of pandemics and other emergencies.

- 18** Adopt measures to comprehensively address the impact of forced displacement of persons in situations of human mobility. In the case of children and adolescents, and paying special attention to those who are unaccompanied or have been separated, measures should be considered to address their particular needs. In particular, states should adopt immediate measures to re-establish family ties in cases when children and adolescents have been separated, taking into consideration the psychological impact generated by separation.
- 19** Encourage exchanges of good practices and lessons learned among states and other key actors regarding actions implemented to guarantee family unity and ensure family reunification.
- 20** Design and implement strategies for interconnections and coordinated work with international humanitarian, cooperation, and civil society actors and organizations, with a view to supporting the legal, administrative, and logistical aspects of reunification and the integration of families into host communities.