



Children in the Migration Process – return and beyond

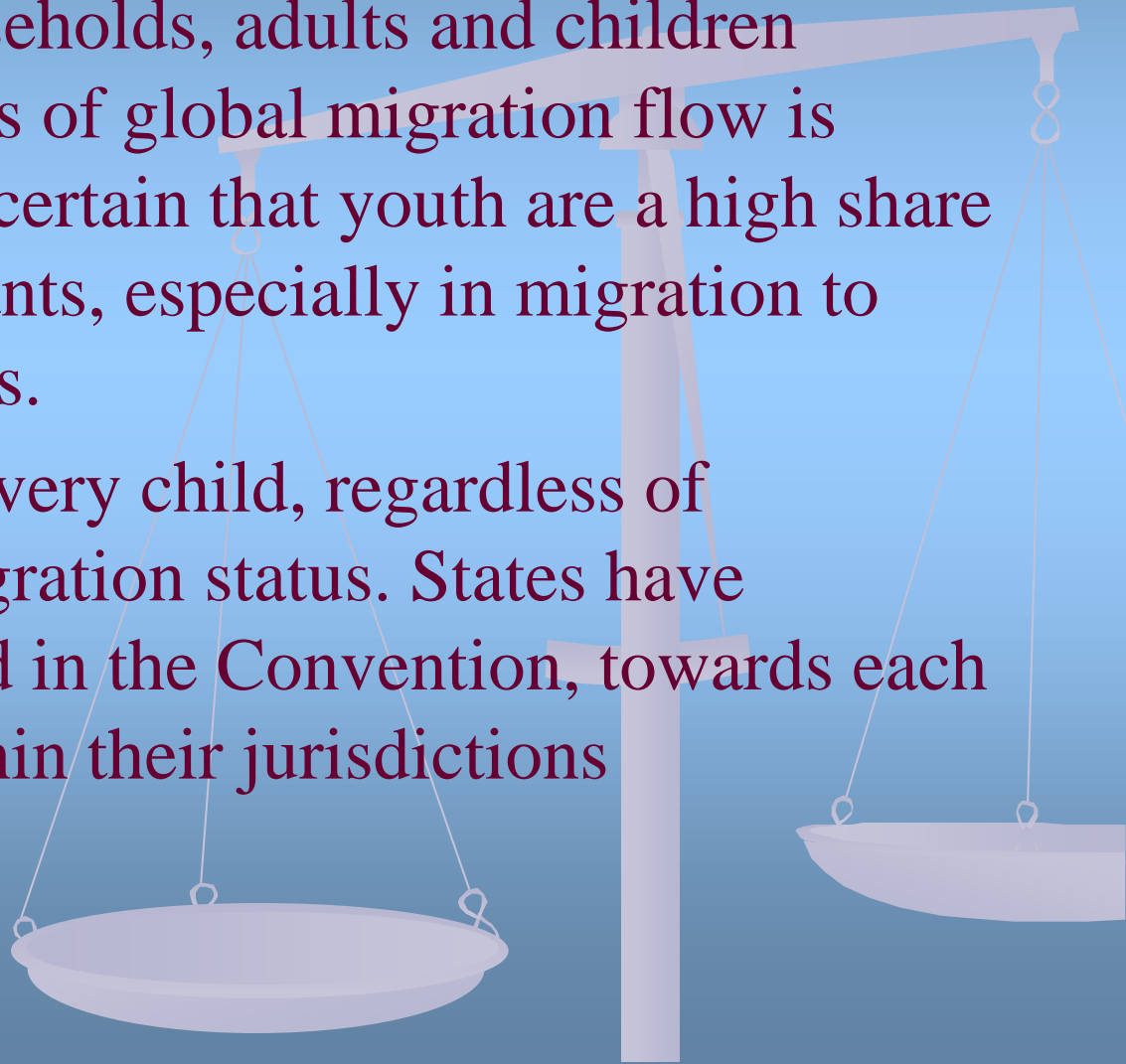
Pathways out of irregularity

Oslo

10 October 2011

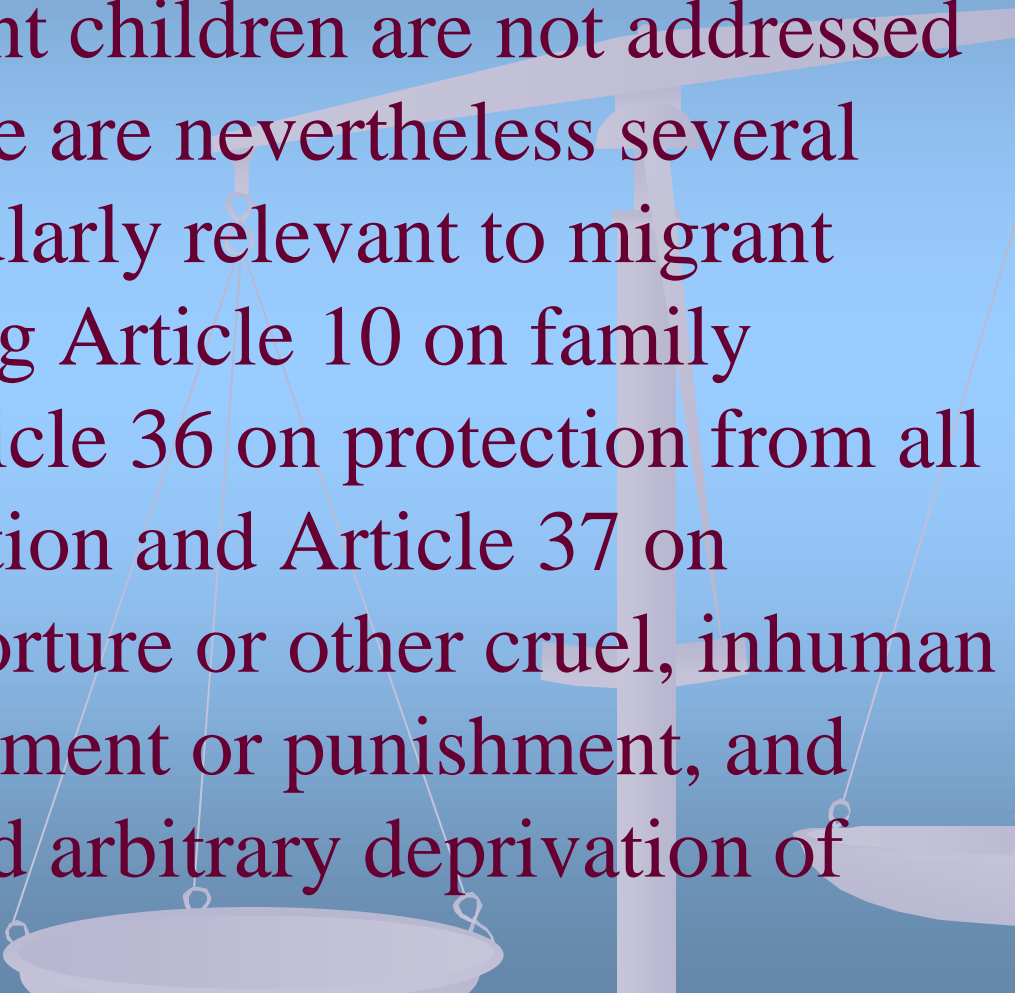
The International Legal Framework

- The number of households, adults and children involved in all forms of global migration flow is unknown. But it is certain that youth are a high share of the flow of migrants, especially in migration to developing countries.
- The CRC protects every child, regardless of nationality or immigration status. States have obligations, outlined in the Convention, towards each and every child within their jurisdictions



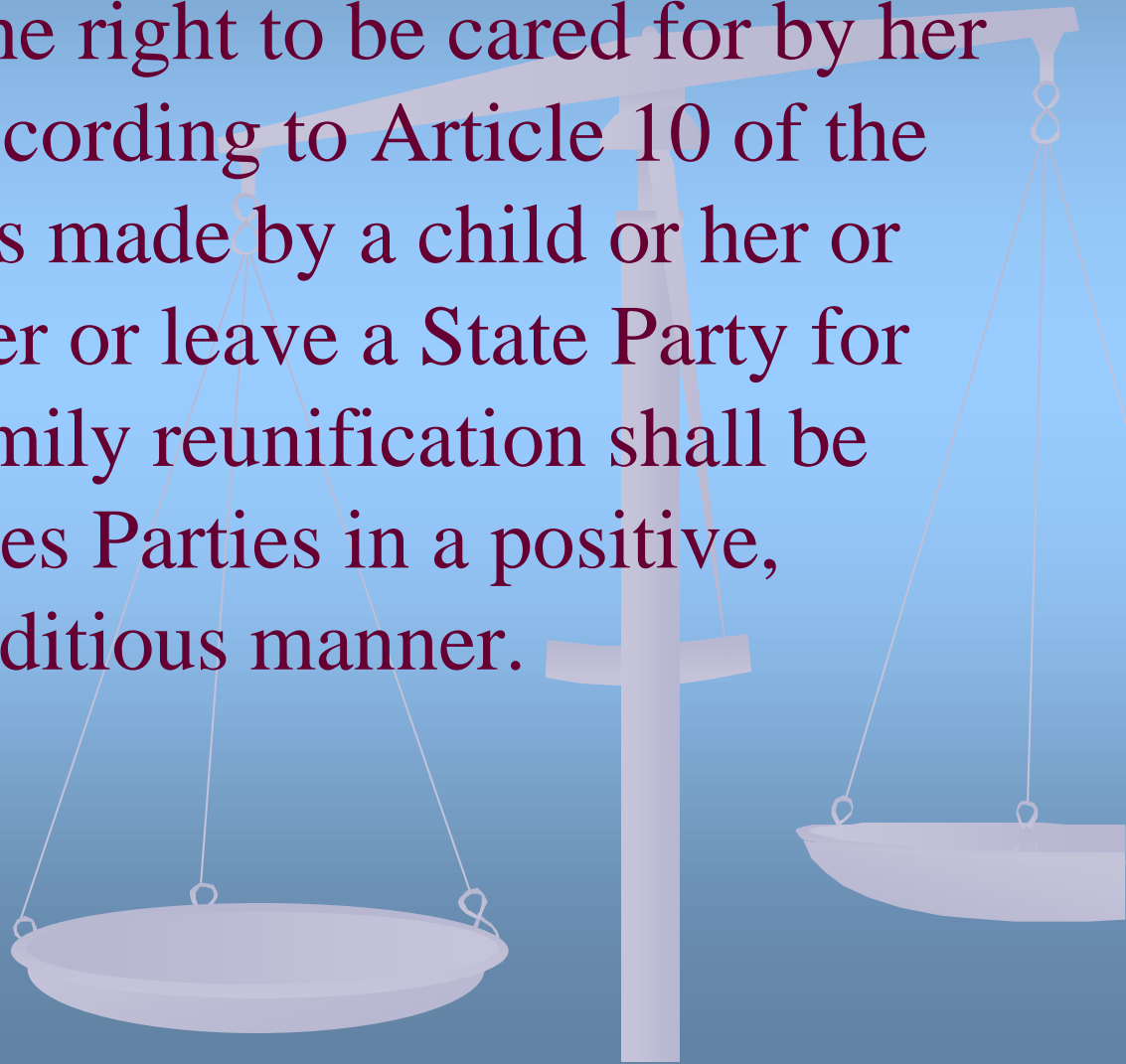
CRC - basis

The rights of migrant children are not addressed specifically. There are nevertheless several provisions particularly relevant to migrant children, including Article 10 on family reunification, Article 36 on protection from all forms of exploitation and Article 37 on protection from torture or other cruel, inhuman or degrading treatment or punishment, and from unlawful and arbitrary deprivation of liberty



Family union

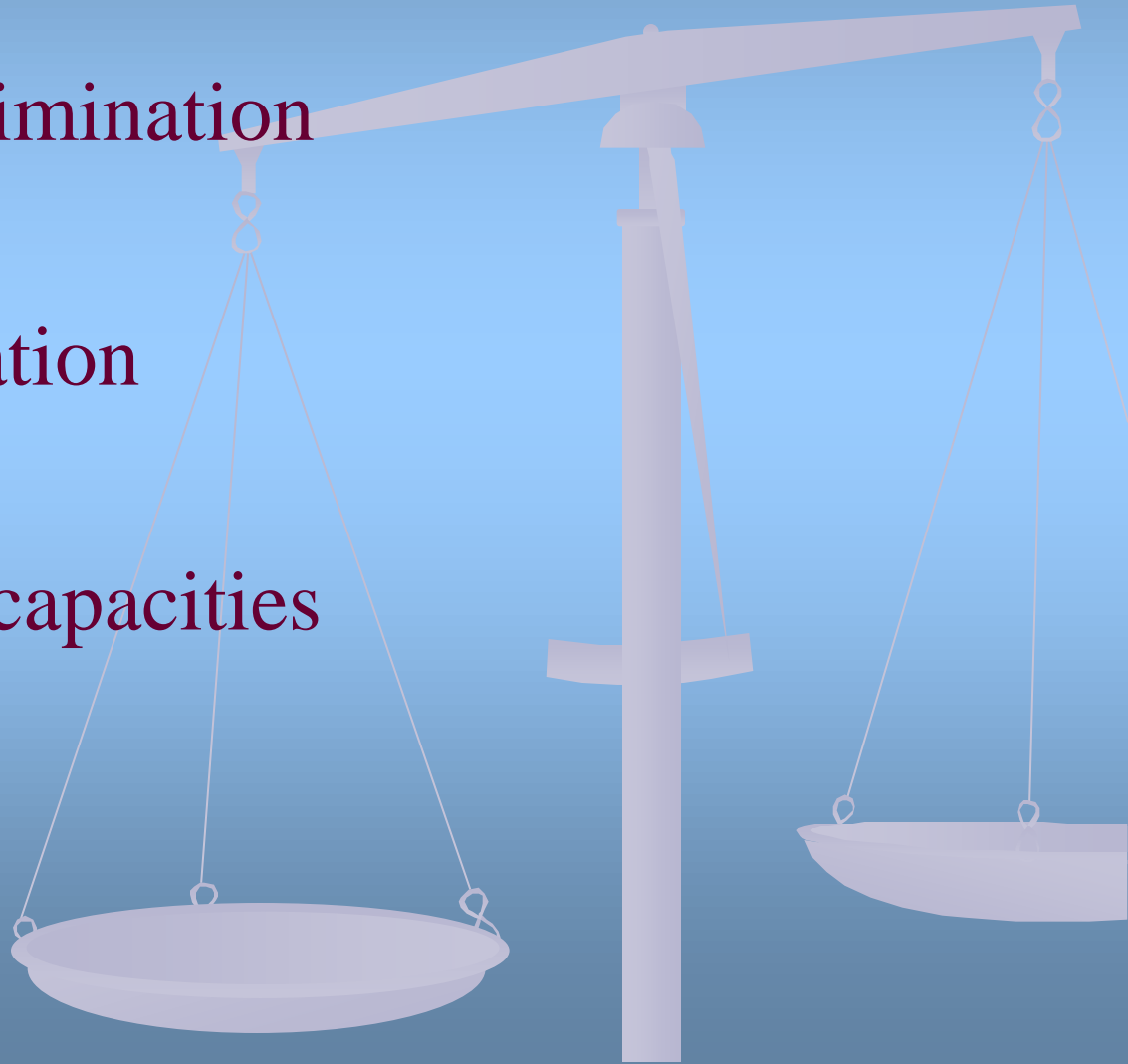
- Every child has the right to be cared for by her or his parents. According to Article 10 of the CRC, applications made by a child or her or his parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner.



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- The CRC is the first instrument gathering civil and political rights and economic, social and cultural rights in one;
 - **The right to education**
 - **The right to an adequate standard of living**
 - **The right to family life**
 - **Freedom of expression**

The Child as Active Agent

- Art 2 – non-discrimination
- Art 12 – participation
- Art 5 – evolving capacities

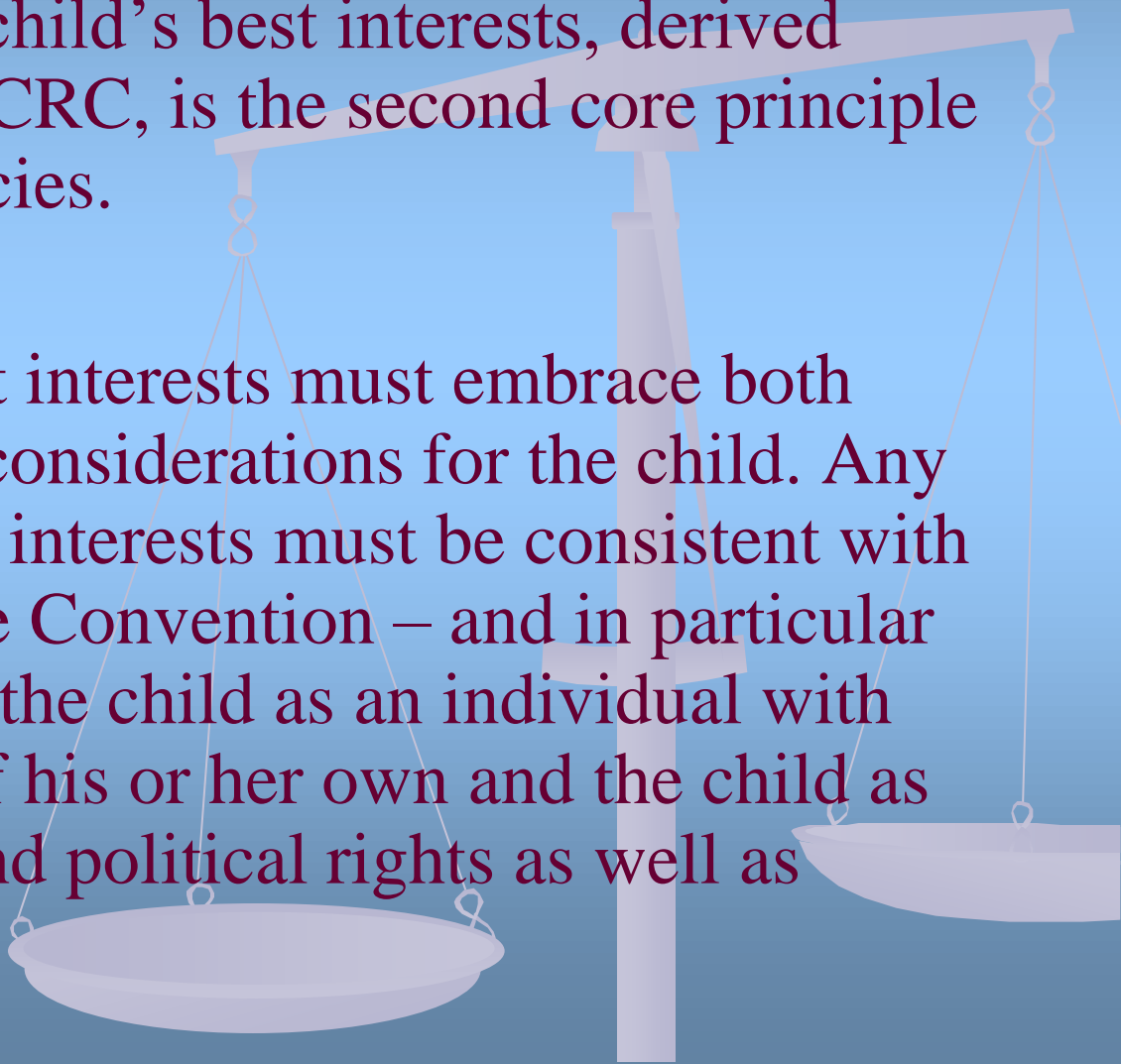


Guiding Principles

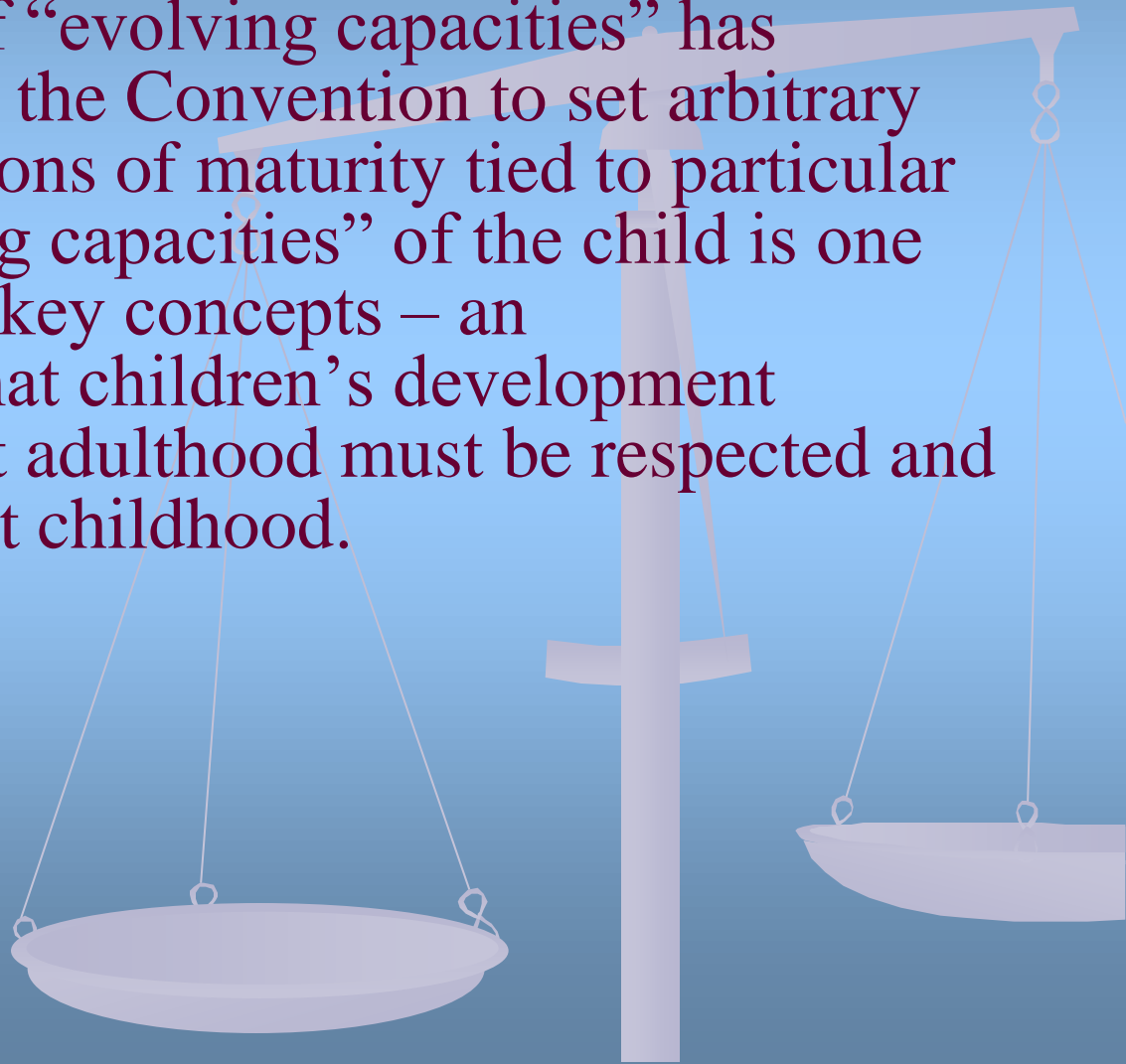


- Article 2 – **non-discrimination.**
- *“The Committee notes that all children who have had their asylum requests rejected but remain in the country have had their rights to health care and education provided de facto but not de jure. It is the view of the Committee that such services should be provided as a matter of principle according to the letter and spirit of articles 2 and 3 of the Convention.”*
- *The enjoyment of rights stipulated in the Convention are therefore not limited to children who are citizens of a State Party and must therefore, if not explicitly stated otherwise in the Convention, also be available to all children – including asylum-seeking, refugee and migrant children – irrespective of their nationality, immigration status or statelessness.*

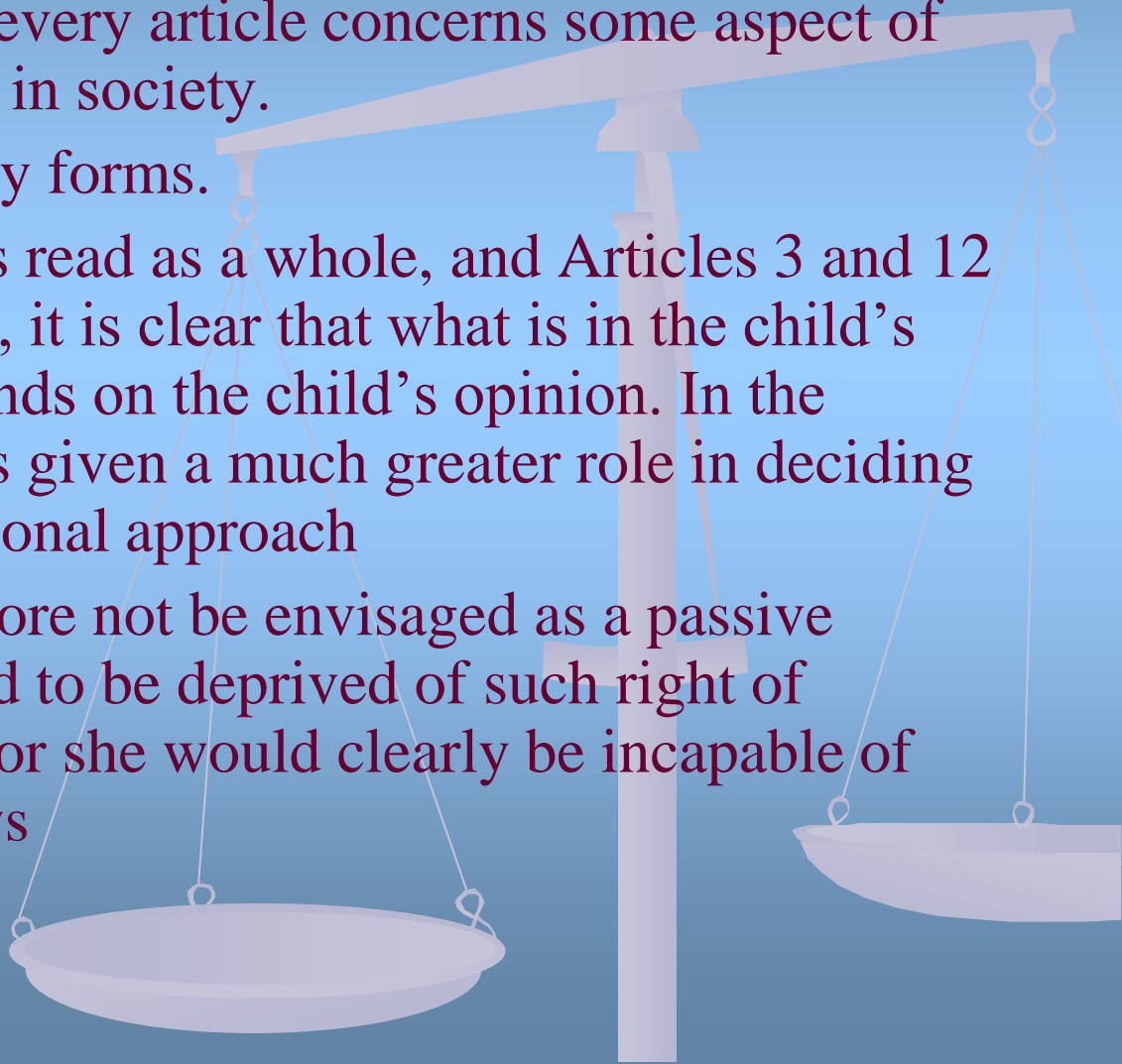
- **Child's best interests - Article 3:**
- The principle of the child's best interests, derived from article 3 of the CRC, is the second core principle applicable in all policies.
- Consideration of best interests must embrace both short and long-term considerations for the child. Any interpretation of best interests must be consistent with the spirit of the entire Convention – and in particular with its emphasis on the child as an individual with views and feelings of his or her own and the child as the subject of civil and political rights as well as special protections.



- **Evolving capacity – article 5**
- Using the concept of “evolving capacities” has avoided the need for the Convention to set arbitrary age limits or definitions of maturity tied to particular issues. The “evolving capacities” of the child is one of the Convention’s key concepts – an acknowledgement that children’s development towards independent adulthood must be respected and promoted throughout childhood.
- **Linked to article 12**



- **Participation** – article 12
- Participation is a theme that runs throughout the CRC. In one way or another, nearly every article concerns some aspect of children's participation in society.
- Participation takes many forms.
- Since the Convention is read as a whole, and Articles 3 and 12 are considered together, it is clear that what is in the child's best interests also depends on the child's opinion. In the Convention, the child is given a much greater role in deciding than with a more traditional approach
- The child should therefore not be envisaged as a passive human being or allowed to be deprived of such right of intervention, unless he or she would clearly be incapable of forming his or her views



Best Interest Determination

- **Involvement of legal guardians and state entities for the welfare of the child**
- **Compliance with international law principles**
- **Participation of the child**



Relevant and effective responses

- Tailored to:

Personal circumstances

Migratory motivations and expectations

- Based on:

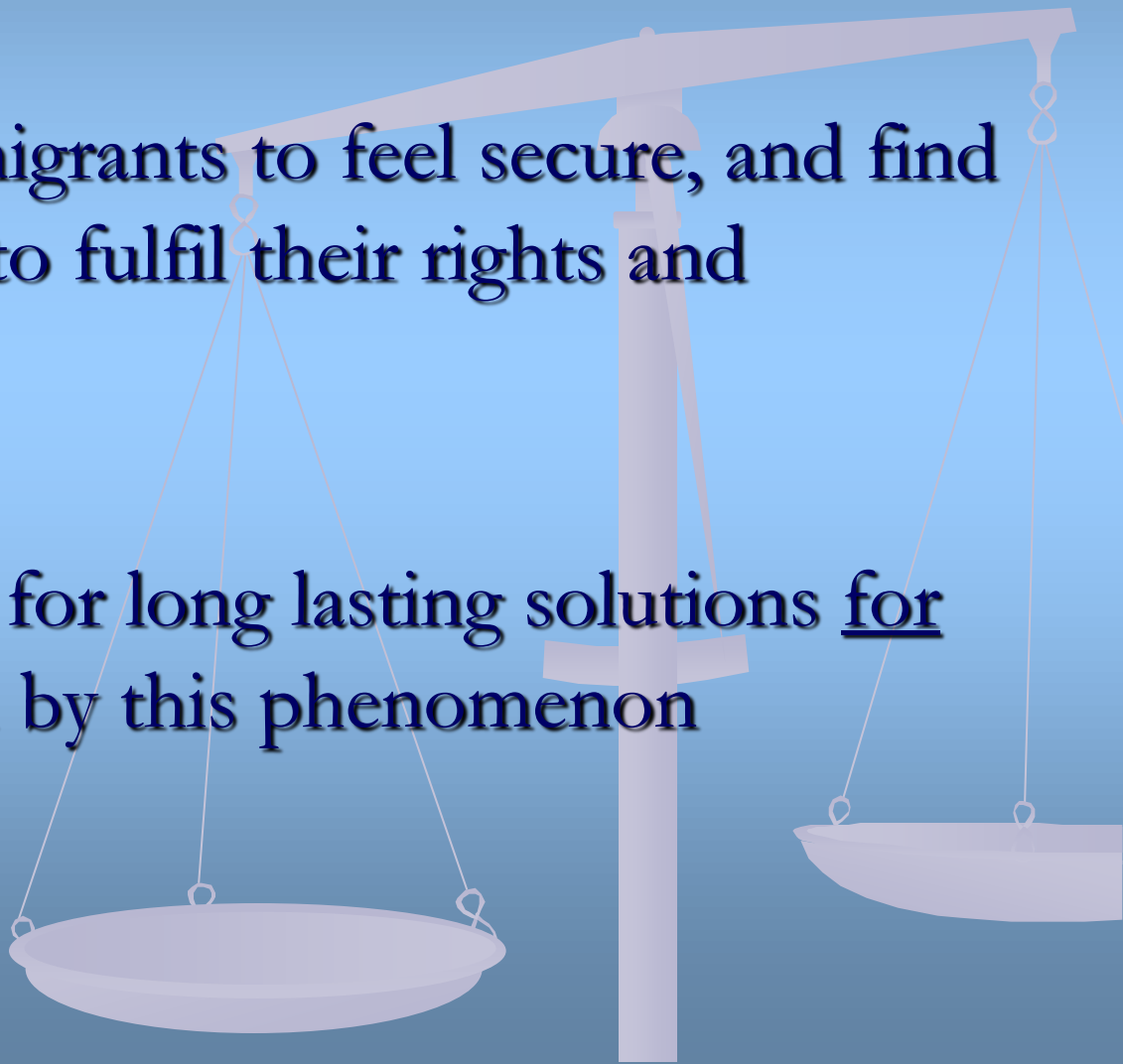
relevant research

young migrant views and recommendations



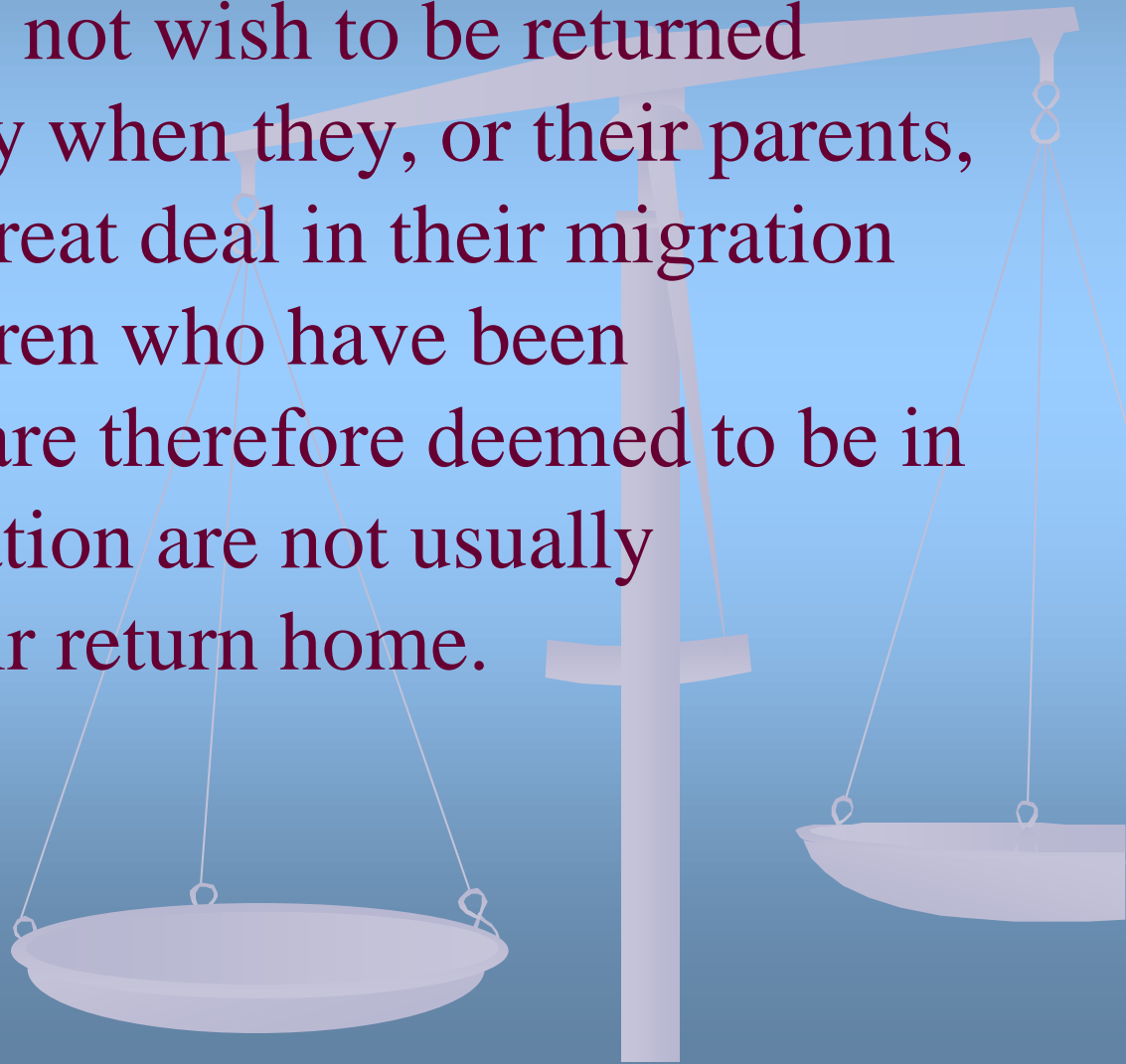
Finding durable solutions is about:

- Allowing young migrants to feel secure, and find options for them to fulfil their rights and expectations
- Working together for long lasting solutions for all parties affected by this phenomenon



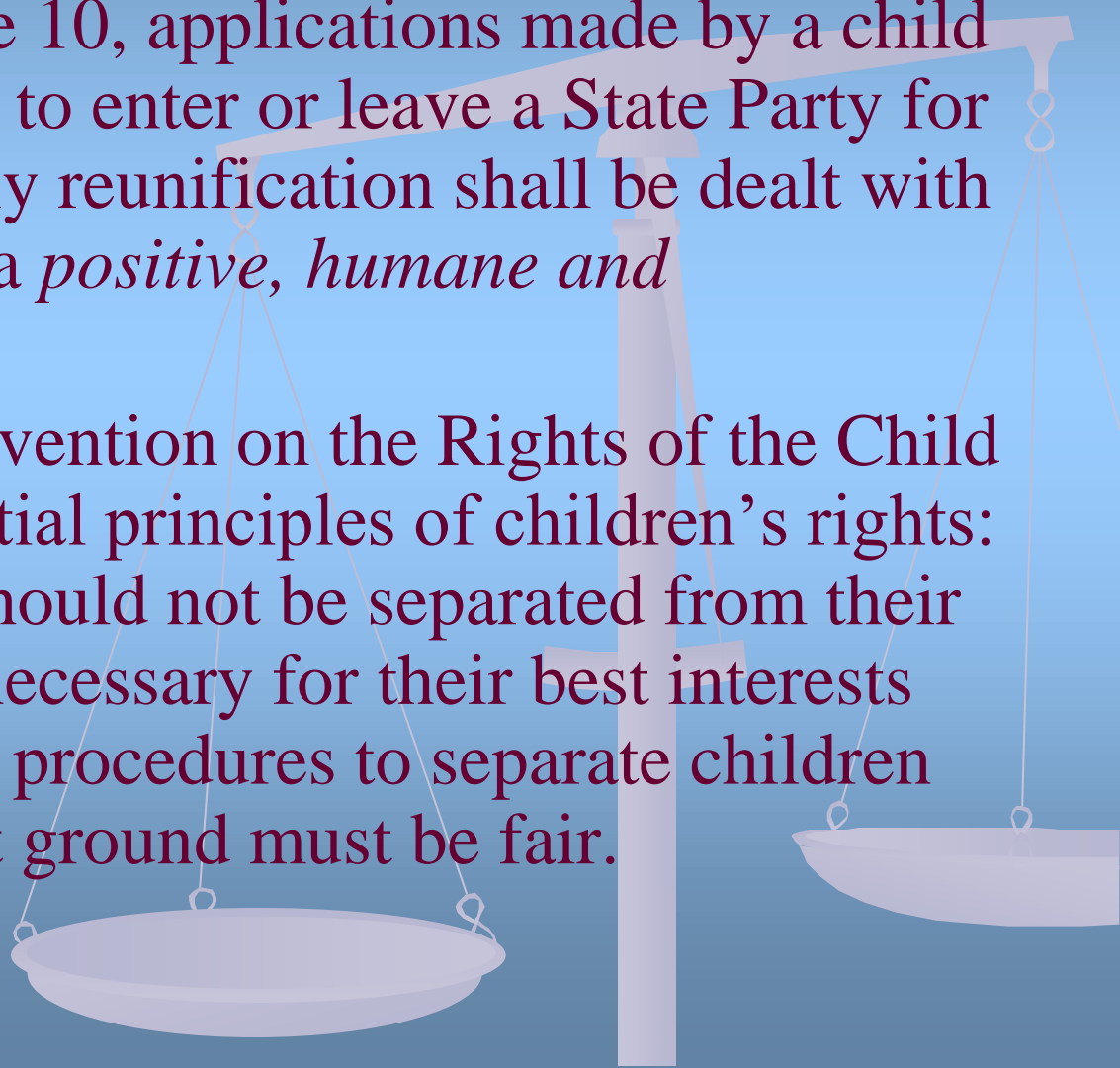
Return

- Often children do not wish to be returned home, particularly when they, or their parents, have invested a great deal in their migration plans. Even children who have been “trafficked” and are therefore deemed to be in a vulnerable situation are not usually monitored on their return home.

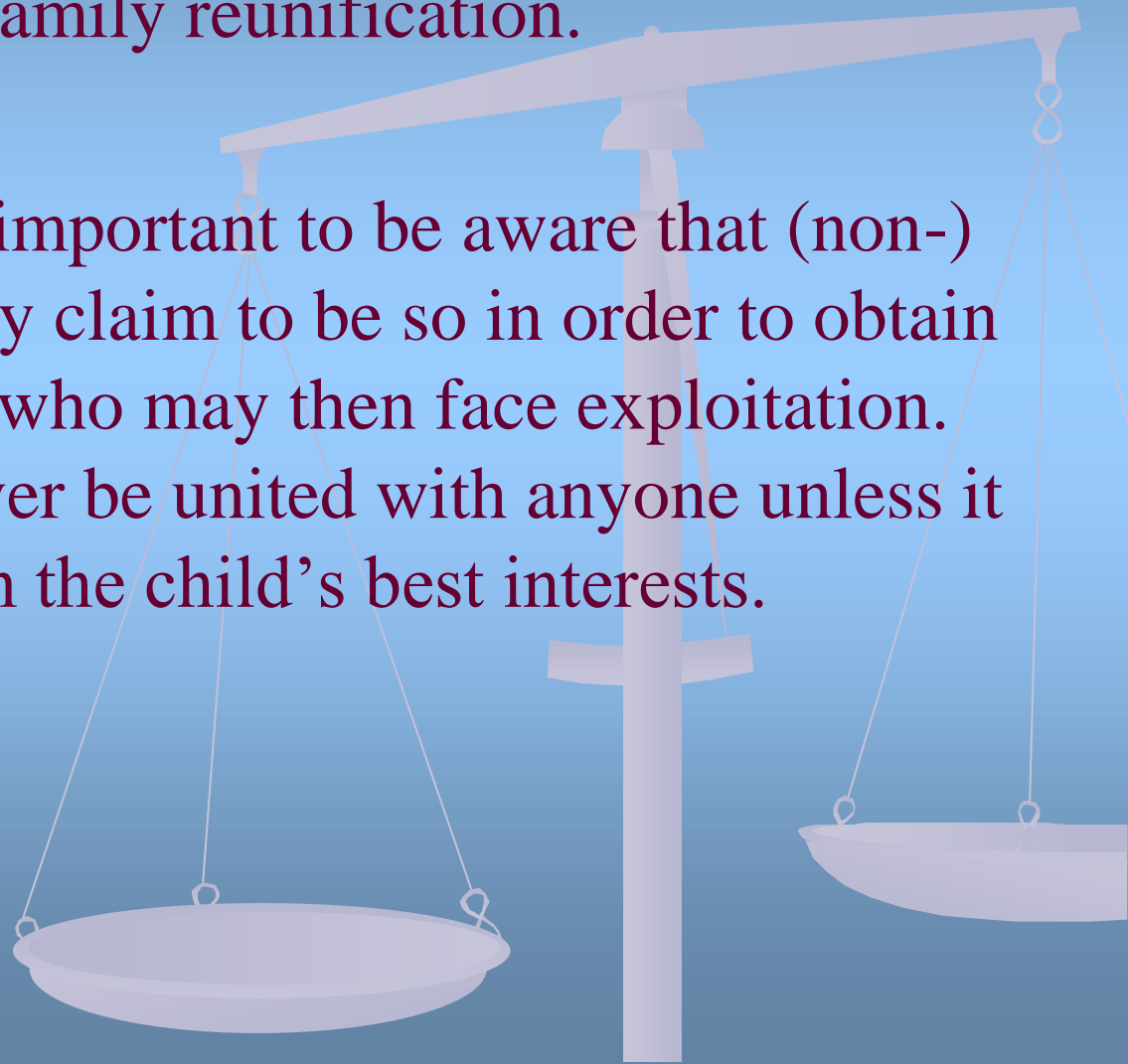


Family Reunion

- According to Article 10, applications made by a child or her or his parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a *positive, humane and expeditious manner*.
- Article 9 of the Convention on the Rights of the Child enshrines two essential principles of children's rights: first, that children should not be separated from their parents unless it is necessary for their best interests and, second, that all procedures to separate children from parents on that ground must be fair.

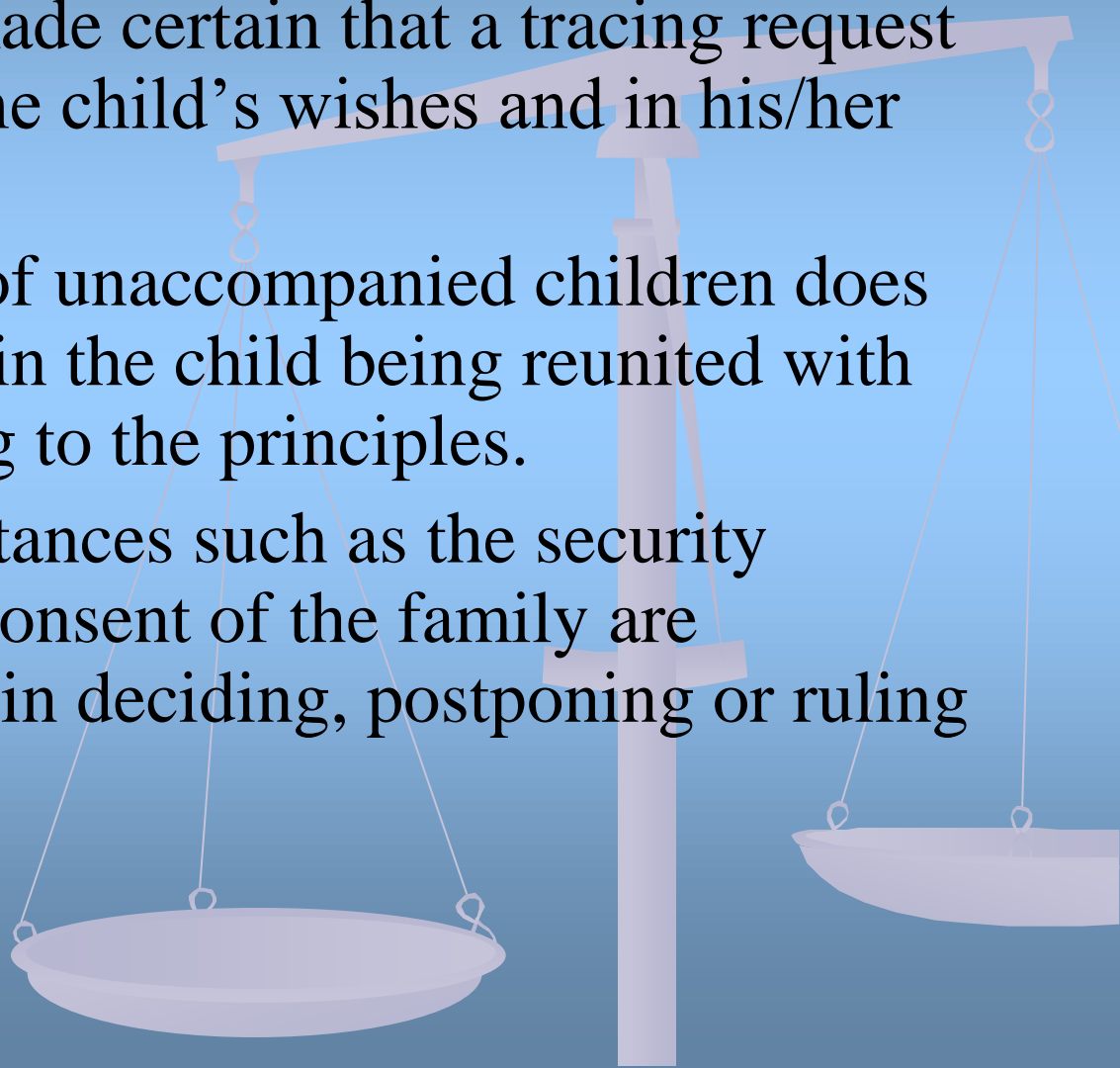


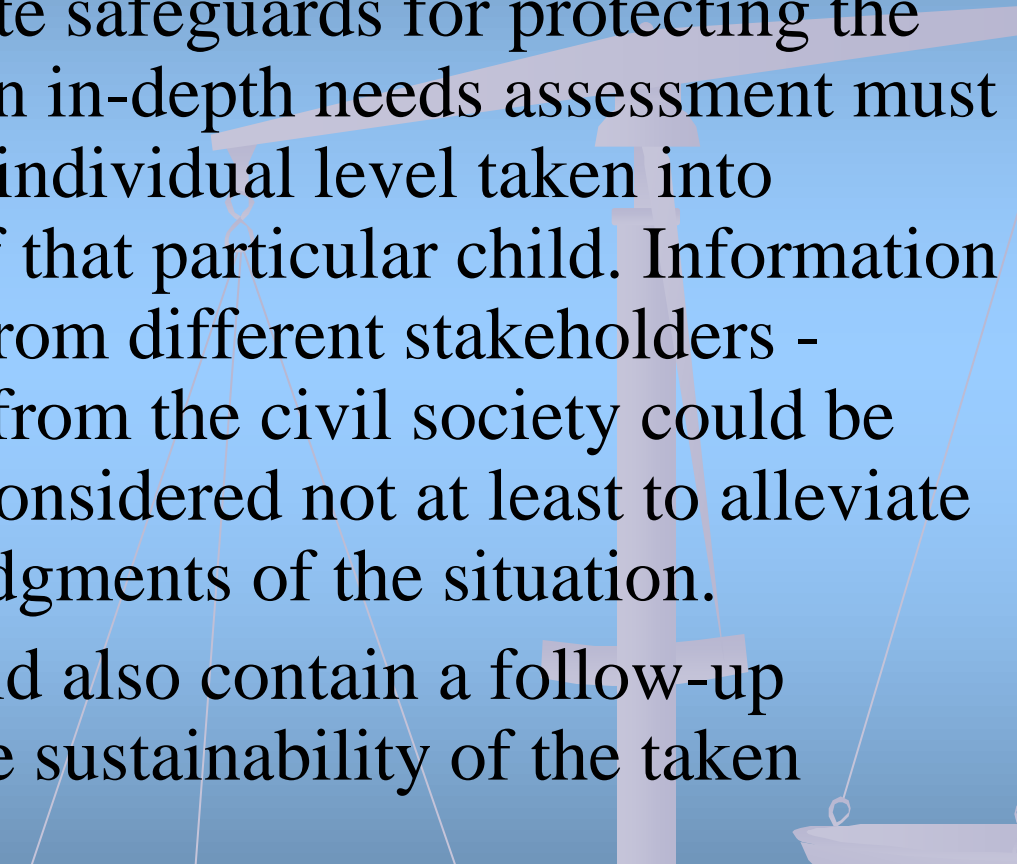
- Again the child's best interest and participation are core principles which must have a central place in any decision regarding family reunification.
- It is also extremely important to be aware that (non-) family members may claim to be so in order to obtain custody of children who may then face exploitation. Children should never be united with anyone unless it is clear that this is in the child's best interests.

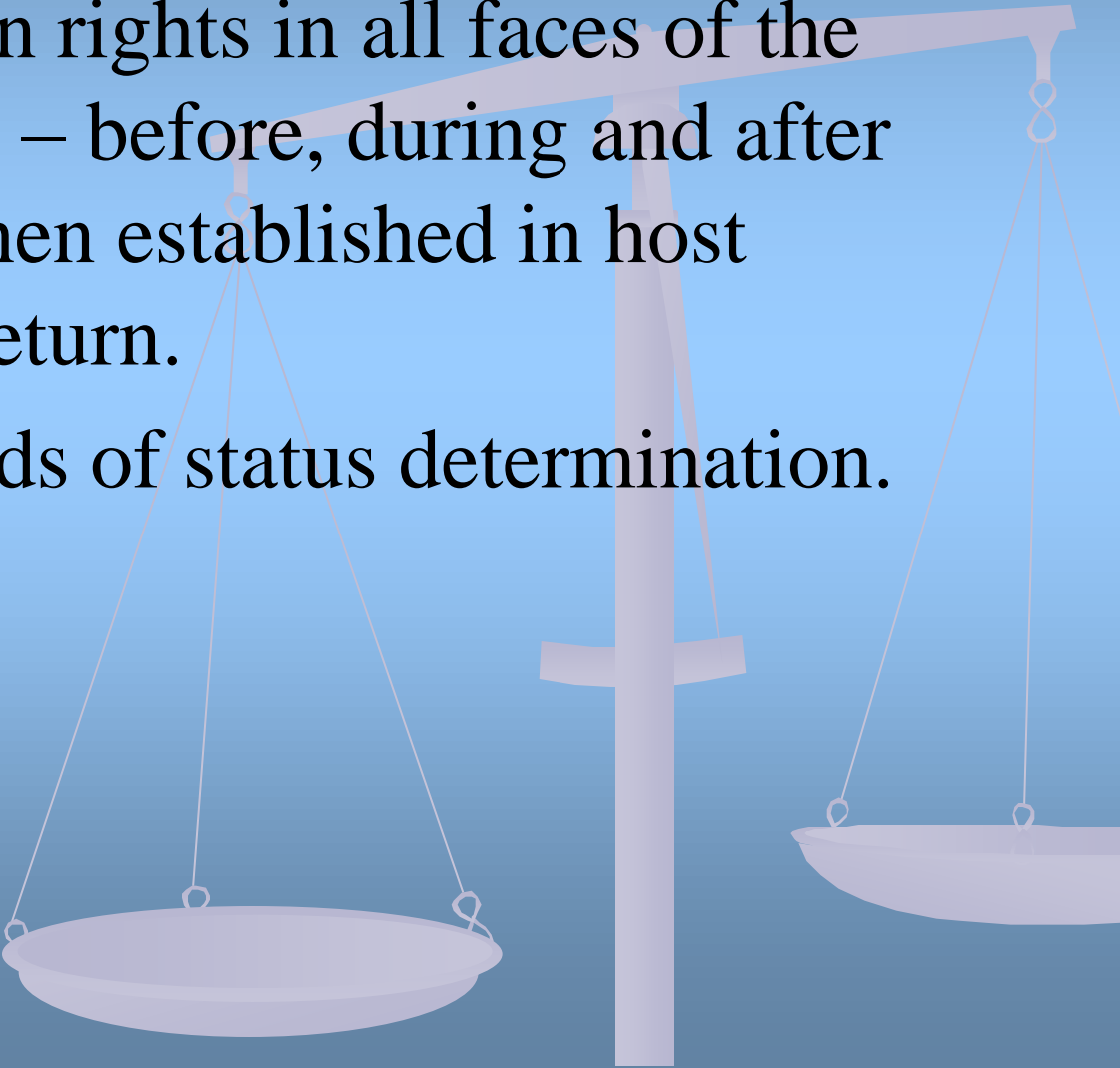


Family Tracing

- It must always be made certain that a tracing request is in keeping with the child's wishes and in his/her best interest.
- Tracing the family of unaccompanied children does not necessarily end in the child being reunited with the family according to the principles.
- Extraneous circumstances such as the security conditions and the consent of the family are determining factors in deciding, postponing or ruling out reunification.

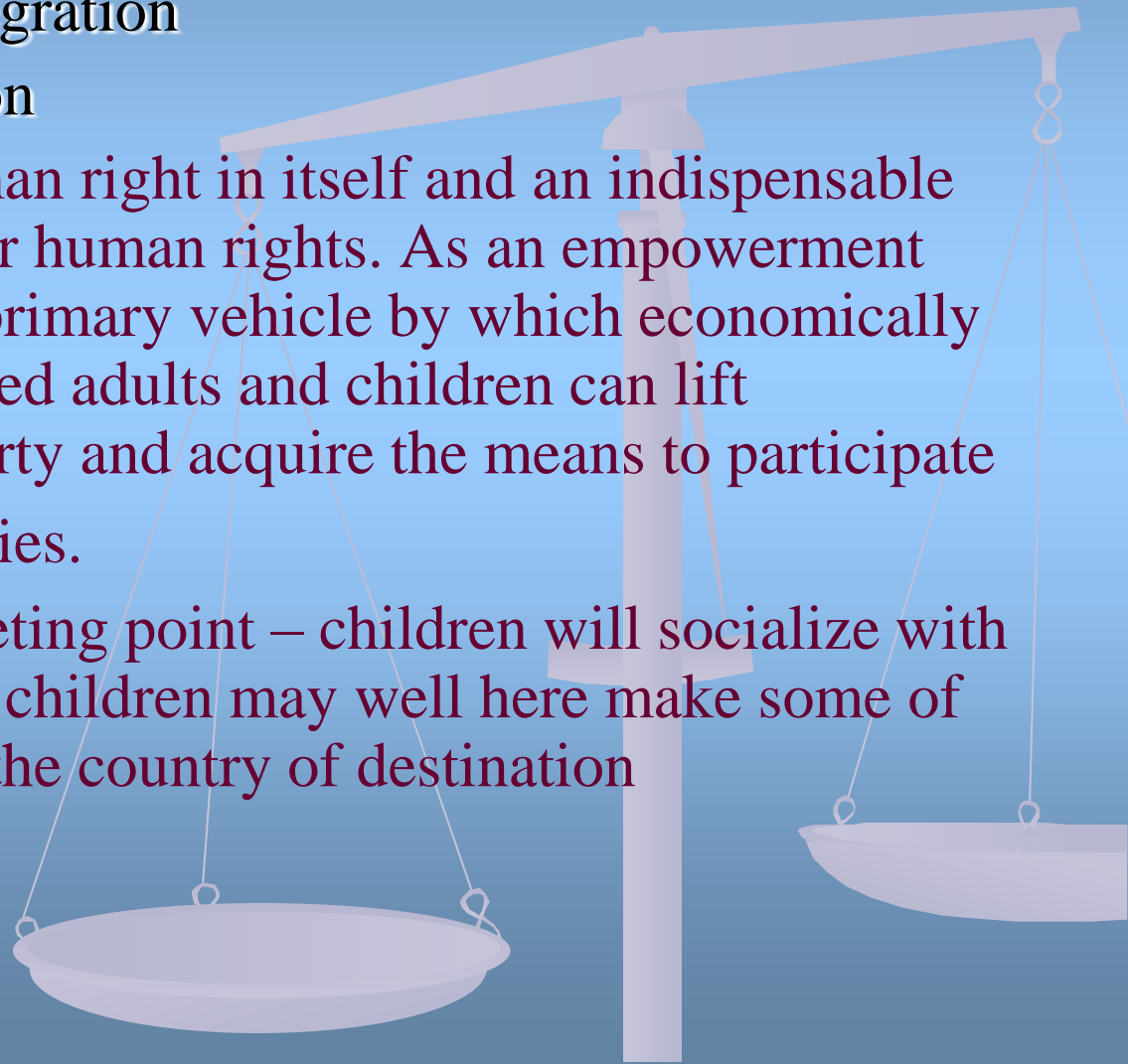


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- To enable appropriate safeguards for protecting the rights of the child, an in-depth needs assessment must be performed on an individual level taken into account the needs of that particular child. Information and point of views from different stakeholders - among those actors from the civil society could be valuable - must be considered not at least to alleviate the risk of partial judgments of the situation.
 - The procedure should also contain a follow-up scheme to ensure the sustainability of the taken measure

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- Respect for human rights in all faces of the migration process – before, during and after whether this is when established in host country or upon return.
 - Also during periods of status determination.

Other pathways

- Regularization and integration
- Schooling and education
 - Education is both a human right in itself and an indispensable means of realising other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalised adults and children can lift themselves out of poverty and acquire the means to participate fully in their communities.
 - The school is also a meeting point – children will socialize with each other and migrant children may well here make some of their first contact with the country of destination



Thank you!!

