

# International Standards and Recommendations on the Right of Leaving Care of Children, Adolescents and Young People deprived of Family Care

CÁTEDRA  
DE LOS DERECHOS  
DEL NIÑO



SOS CHILDREN'S  
VILLAGES





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# INTRODUCTORY REMARKS



The construction of a normative and institutional framework on the right to leave must respond to the minimum requirements contained in the international documents that are applicable, mainly those coming from the United Nations bodies, as well as others of the regional scope of LAAM.

The standards are conceived as a non-renounceable minimum that every state must comply with to guarantee an exit from the protection system in accordance with the requirements of human rights treaties. National legislation and public policies can go beyond this content, improving these provisions, but they cannot disregard them in whole or in part.

These standards are mainly anchored in the Convention on the Rights of the Child as a binding international treaty on the rights of children and adolescents, since the process of leaving the system begins from the moment they enter the protection system. Furthermore, adopting a rights-based approach, the institutional and normative response must focus on guaranteeing the right to live in a family, which requires strengthening public policies and actions to prevent or avoid institutionalisation. The de-institutionalisation of children, adolescents and young people therefore includes both dimensions: the preventive dimension, whose focus is on strengthening the family and community, and the care dimension, ensuring processes of leaving the protection system in accordance with human rights. The elements of each of these dimensions are articulated around the four essential principles of the Convention (although they go further), precisely to reflect the continuity that must exist in guaranteeing the rights of children, adolescents, and young people at all stages of their lives.

In order to facilitate the implementation of the standards, a second set of recommendations are formulated in order to facilitate the processes of advocacy and effective implementation of the right to leave in accordance with the previous standards, so that the approach is based on the recognition of the right to leave the protection system and is not limited, in the best of cases, to reactive and partial actions of assistance nature.

These recommendations for the design of the leaving care processes should finally be contrasted with the national policy mappings of the eighteen LAAM countries covered in this report. This analysis should lead to the elaboration of country-specific recommendations that are useful for advocacy processes and consequent policy and institutional transformations in each country.

The international standards and their elements, as well as recommendations for the design of the right to leave, are set out below. The analysis for each country will be attached in the relevant appendixes.

**INTERNATIONAL  
STANDARDS ON THE  
RIGHT TO LEAVE THE  
PROTECTION SYSTEM.  
ELEMENTS AND  
FOUNDATIONS OF THE  
STANDARDS.**









# 1. Summary Table

Principles	Standards	Elements of the Standard
<b>Best interests of the child</b>	I. Assess and determinethe best interests and needs of the child, considering the child's age, gender, maturity, and particular circumstances from the moment the child enters care and throughout the transition process.	<ul style="list-style-type: none"> <li>• Prioritise family reintegration whenever possible, working with the family of origin while the child is under protection, if this does not go against the best interests of the child.</li> <li>• Promote care measures in family and community settings (de-institutionalisation).</li> <li>• Ensure sufficient family and community care options for children, adolescents and young people who cannot stay with their families.</li> </ul>
<b>Right to be heard - participation</b>	II. Ensure the meaningful participation and empowerment of children, adolescents and young people in all decisions that affect them and especially in the planning for their exit.	<ul style="list-style-type: none"> <li>• Make information available to children, adolescents and young people in accessible formats adapted to them about their rights and the services to which they have access</li> <li>• Establish secure and confidential mechanisms for submitting complaints or communications.</li> <li>• Ensure that children, adolescents, and young people can express their opinions and be duly considered when organising and setting up care services.</li> <li>• Establish a representative council of children to participate in the formulation and implementation of the centre's policies and rules.</li> <li>• Systematically provide training to professionals on the right of children, adolescents, and young people to be heard and to have their views considered in accordance with their age and maturity.</li> </ul>



		<ul style="list-style-type: none"> <li>Develop and implement policies that guarantee the right of children, adolescents, and young people to participate meaningfully in decision-making that affects their future.</li> </ul>
<b>The right to life, development, and survival</b>	<p>III. Ensure that there is an uninterrupted line of comprehensive, planned, ongoing and individualised support for financial, emotional, and practical services to care leavers and their networks to prepare for the transition to independent living.</p>	<ul style="list-style-type: none"> <li>Periodically review the measures taken during alternative care.</li> <li>Adopt measures that respect the right of children, adolescents, and young people to the progressive autonomy of their will and encourage it with a view to their independence.</li> <li>Provide a significant trusted professional during alternative care and after the exit, preferably continue with the same one.</li> <li>Provide quality services, respectful of the rights of children, adolescents, and young people, regulated, accredited, and supervised by the State (par. 47 GC 21).</li> <li>Provide access to employment services, education, training, housing, and psychological support services.</li> <li>Encourage the public and private sectors to employ former children, adolescents, and young people from different care services.</li> <li>Promote policies that ensure holistic, planned, ongoing support for care leavers and their networks (DGD recommendation 4).</li> </ul>
<b>Non-discrimination</b>	<p>IV. Offer an appropriate system of assistance and support for the exit of children, adolescents, and young people in situations of special vulnerability</p>	<ul style="list-style-type: none"> <li>Avoid unnecessary institutionalisation of children, adolescents and young people with special needs or disabilities.</li> <li>Coordinate the implementation of immigration and foreign legislation to migrant children, adolescents and young people leaving alternative care.</li> <li>Take care of the relationship with the family and the environment of origin in the case of care leavers from Indigenous communities.</li> </ul>

## 2. The Foundation of International Human Rights Law<sup>1</sup>

The Universal Declaration of Human Rights is the first universal recognition that basic rights and fundamental freedoms are inherent to all human beings, inalienable and equally applicable to all people, and that every one of us is born free and equal in dignity and rights. Regardless of our nationality, place of residence, gender, national or ethnic origin, skin colour, religion, language, or any other status (such as age), on 10 December 1948 the international community pledged to uphold dignity and justice for all human beings.

Over the years, the commitment has been translated into law, whether in the forms of treaties, customary international law, general principles, regional agreements, and domestic law, through which human rights are expressed and guaranteed. Indeed, the UDHR has inspired more than 80 international human rights treaties and declarations, a considerable number of regional human rights conventions, domestic human rights bills, and constitutional provisions, which together constitute a comprehensive legally binding system for the promotion and protection of human rights.

Through ratification of international human rights treaties, Governments undertake to put into place domestic measures and legislation compatible with their treaty obligations and duties. The domestic legal system, therefore, provides the principal legal protection of human rights guaranteed under international law. Where domestic legal proceedings fail to address human rights abuses, mechanisms and procedures for individual and group complaints are available at the regional and international levels to help ensure that international human rights standards are indeed respected, implemented, and enforced at the local level.

- In relation to the rights of children, adolescents, and young people the normative reference of normative value is the 1989 Convention on the Rights of the Child. In this text, which is binding for the signatory States (in the case of the eighteen countries analysed in this study, all of them), we find the bases on which to build the minimum standards for the care leavers of children, adolescents, and young people. 'The general obligations are the map that allows us to locate the required behaviours both regarding particular cases and in relation to the adoption of measures and legislation. It is a matter of reading the rights in the light of each of the obligations.'<sup>2</sup>.

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<sup>1</sup> Retrieved from <https://www.un.org/es/about-us/udhr/foundation-of-international-human-rights-law>

<sup>2</sup> S. Serrano, Los estándares internacionales de derechos humanos: un sistema de derechos en acción, Mexico, 2013, p. 23 [https://appweb.cndh.org.mx/biblioteca/archivos/pdfs/fas\\_CTDH\\_EstandaresInternacionalesDH1aReimpr.pdf](https://appweb.cndh.org.mx/biblioteca/archivos/pdfs/fas_CTDH_EstandaresInternacionalesDH1aReimpr.pdf)

More specifically, in relation to children, adolescents and young people deprived of parental care, the UN Guidelines for the Alternative Care of Children (2009), the UN General Assembly Resolution on the Rights of the Child (2019) specifically dedicated to children, adolescents and young people of parental care or at risk of losing parental care, and the Day of General Discussion of the Committee on the Rights of the Child (2021) contribute decisively to this at the international level. These three texts are part of the so-called soft law, because they do not have the same level of direct enforceability as an international treaty, but they certainly build the minimum standards to which States should adjust their legal and institutional frameworks and their public policies in those matters they address.

It is also worth mentioning the General Comments of the Committee on the Rights of the Child and its Concluding Observations to each State after the individual periodic review on its implementation of the Convention at the national level. These comments have no direct or indirect legal value, but they make explicit the Committee's doctrine on a specific issue (in general or on its application to a specific State). In the case of this report, although the Committee has not issued any General Comment on the group of children, adolescents and young people, it has explicitly adopted the UN Guidelines as the required standard in relation to children, adolescents and young people deprived of parental care, explaining their scope and recommending their application in all States.

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- "The emphasis on identifying obligations and reading rights in context makes sense when the debate on human rights moves from mere conceptualisation to implementation, that is, from the question of what to who and how rights must be realised"<sup>3</sup>. This is what happens with a fundamental aspect of the life of children deprived of parental care, i.e. their exit. The Convention on the Rights of the Child establishes as its subjective scope of application all minors, i.e. up to the age of eighteen. Consequently, those who reach the age of majority are excluded from its

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3. S. Serrano, Los estándares internacionales de derechos humanos: ..., op. cit., p.25.

application, as is the case with those who leave the protection system. However, the normative, political, and institutional response that the State must give to this social group is rooted in the Convention on the Rights of the Child since the exit does not take place at the moment when the person reaches the age of majority, but begins much earlier, at the moment when the child or young person enters the protection system, and there the principles of the Convention are fully applicable, and all their rights are enforceable. The modulation of its scope will be determined by a fundamental element, a teleological or finalistic element: the family reintegration or social reintegration of the child or young person. This objective deploys backwards, as a "retrotiming", legal effects that must be contemplated in every decision that is adopted while the child or young person is in the protection system, fully subject to the four axes: the best interests of the child, the right to be heard, the right to life, development and survival, and the right to non-discrimination.

In short, we understand that it is this international normative corpus that serves as a reference to identify the minimum standards in terms of exiting the protection system that allow for adequate compliance with international texts and the guarantee of the human rights of this social group.

### **3. The Exit from the Protection System as a Process**

Children, adolescents, and young people can leave the protection system in many ways and at many different times. However, this issue, which is decisive for the lives of these persons, is usually only contemplated at the legal and political level in a tangential manner and to refer to the "destination" to which the children, adolescents and young people will go, the family of origin or society, as if this fact were disconnected from what they have lived while under the guardianship of the State, nor is there any responsibility for these persons on the part of those who were legally responsible for them.

The previous international texts mentioned support an understanding of exit as a process and not as an event that happens abruptly in the lives of children, adolescents and young people deprived of their family environment. Consequently, we must anchor its definition and scope in the principles and rights recognised in the Convention and build the subsequent obligations of states based on the international standards assumed by human rights bodies and reflected in the aforementioned texts. In accordance with the above, we have identified the standards on exit in accordance with the four fundamental principles of the Convention on the Rights of the Child. From there, and by analysing the international documents as they refer to children, adolescents and young people leaving the system, we have identified the

concrete elements of these standards that can be linked to each of these principles. This reflects the continuity that must exist between the care and protection to which children are entitled and the necessary support they must receive to move towards an independent life. What these supports are and the State's obligation to provide them are two issues that already appear in the Guidelines, the 2019 UN General Assembly Resolution on the Rights of the Child and the 2021 Day of General Discussion assuming the need to guarantee care and protection as well as support in an uninterrupted (albeit differentiated) manner.

Regarding support for leaving and its configuration as a right, it is necessary to specify that it has the same basis, although not the same scope as the care and protection to which children, adolescents and young people are entitled:

- States have the obligation to protect, respect and promote human rights. In the case of minors, the scope of this obligation is set out in the Convention, but this obligation does not disappear when they reach the age of majority. What happens there is that the legal formula (guardianship or trusteeship) lapses because the persons legally attain full capacity to act, but the need to have support so that these decisions allow them to effectively move towards independent life does not lapse, and it is an obligation of the States to provide it, an obligation that must correspond to the correlative subjective right to obtain it, duly recognised in a norm with legal rank. The fact that it is not possible to extend the legal formula under which the State's obligations of care and protection are framed to children who have been separated from their families does not mean that the obligation underpinning it loses its validity when these same persons reach the age of majority. The teleological or finalist element of any protection measure (family reintegration or, if this is not possible, social reintegration),<sup>4</sup> should guide the concrete actions adopted with respect to that person beyond the age of majority, since this fact (reaching 18 years of age) does not in itself guarantee that children, adolescents and young people can fend for themselves by the fact that they have reached the age of majority. The State is the corporate parent and during the protective measure exercises the same powers and authorities as the biological parents, there is no justification for relieving them of the responsibility.

to support children when they reach the age of majority, there is no justification for ceasing to have responsibility for such persons on reaching the age of majority, any more than there is for parental responsibility for their biological children living with them. The obligation to support children, adolescents and

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<sup>4</sup>. Paragraph 130 Guidelines: "Agencies and facilities should apply clear policy criteria and implement agreed procedures regarding the planned or unscheduled termination of their work with children in order to ensure appropriate social reintegration or follow-up. Throughout the period of placement, these agencies and facilities should systematically aim at preparing the child for independence and full integration into the community, in particular life skills and social skills, which are promoted through participation in the life of the local community".

young people beyond the age of majority is based, by analogy, on the special relationship that the state (corporate parent) has exercised up to that point, in every way equivalent to that of parents with respect to their children (in the latter by filiation; in the case of the State, as guardian). Civil law stipulates the obligation of families to continue supporting adult children until they can look after themselves (in some cases even setting a maximum age), so there is no reason this should not be the case for care leavers. In the same way as at the level of family law, the State must have legislation that regulates the obligation to continue providing the necessary support to those whom it has cared for and protected until their effective independent life is possible, as a logical correlate of the right to obtain it, which, as has been said, is contemplated in international texts. In this sense, GC 21 states: "States should commit to fulfilling human rights beyond childhood. Particularly, States should ensure follow-up mechanisms for children in alternative care settings and in street situations as they transition into adulthood at the age of 18, to avoid an abrupt termination of support and services." (paragraph 16).

- The scope and content of support will not be the same as those contemplated in the CRC for minors because the fact of having reached the age of majority makes them fully capable of governing their lives by making their own decisions without the need for legal complements, nor will their rights be those guaranteed by the CRC for minors. Children, adolescents, and young people move from the right to care and protection to the need to be guaranteed adequate support to achieve an independent life<sup>5</sup>. This change does not occur abruptly either, but is configured as a process based on the principles of the CRC, the progressive autonomy of the will and the evolving capacities of children, adolescents and young people while they are under the guardianship of the State, and the ultimate goal of achieving either family reintegration or social reintegration if this is not possible or in accordance with the best interests of the child or young person. For this second case, national legislation, at this point, should regulate the right to leave, based on the concept of comprehensive support that was developed at the Day of General Discussion of the Committee on the Rights of the Child in 2021.

Considering the above, the following are the minimum standards on exit that must be present in all state normative and institutional frameworks in accordance with what has been established at the international level by the United Nations bodies, both its General Assembly and the Committee on the Rights of the Child.

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<sup>5</sup> Guidelines: "28. Principles in the present Guidelines are also applicable, as appropriate to young people already in alternative care and who need continuing care or support for a transitional period after reaching the age of majority under applicable law."



## **4. International standards on the right to exit the protection system:**

**Principle:**

**Best interests of the child**

### **STANDAR 1:**

**Assess and determine the best interests and needs of the child, considering the child's age, gender, maturity, and particular circumstances from the moment the child enters care and throughout the transition process**



- **Prioritise family reintegration whenever possible, working with the family of origin while the child is under protection, if this does not go against the best interests of the child**
- **Promote care measures in family and community settings (de-institutionalisation).**
- **Ensure sufficient family and community care options for children, adolescents and young people who cannot stay with their families**

- Article 3 of the CRC includes the best interests of children, adolescents, and young people as a primary consideration, including children, adolescents, and young people in the protection system. This provision means that all decisions affecting a child must assess and determine his or her best interests, as stated in CRC General Comment 14: "The obligation of the States to duly consider the child's best interests is a comprehensive obligation encompassing all public and private social welfare institutions, courts of law, administrative authorities and legislative bodies involving or concerning children. Although parents are not explicitly mentioned in article 3, paragraph 1, the best interests of the child "will be their basic concern" (art. 18, para. 1)<sup>6</sup>". These best interests must also be assessed and determined by public or private social welfare institutions, which may be understood to include those that care for children, adolescents, and young people in the framework of national protection systems "<sup>7</sup>.

Best interests must be determined individually for each child or young person. The concept of the best interests of the child is complex, and its content must be determined on a case-by-case basis. The legislator, judge or administrative, social, or educational authority may clarify this concept and put it into concrete practice through the interpretation and application of article 3, paragraph 1, bearing in mind the other provisions of the Convention. The concept of the best interests of the child is therefore flexible and adaptable. It must be adjusted and defined on an individual basis, according to the specific situation of the child or children concerned and considering the context, situation, and personal needs. Regarding individual decisions, the best interests of the child must be assessed and determined based on the specific circumstances of each individual child<sup>8</sup>.

Children, adolescents, and young people separated from their parents are a group with unique characteristics, although each of them has their own characteristics, which must be assessed and weighed to adopt the decisions and measures that best meet their interests, rights, and needs. A crucial aspect in deciding them is the goal pursued, in principle family reintegration (given the temporary nature of alternative care) and, if this is not possible, their social reintegration towards independent living

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<sup>6</sup> Paragraph 25 of GC 14..

<sup>7</sup> Paragraph 26 of GC 14.

<sup>8</sup> Paragraph 32 of GC 14.

The Committee considers that, among the elements to be considered in assessing and determining the best interests of the child, as far as they are relevant to the situation concerned, is the preservation of the family environment and maintenance of relationships. According to the Committee, it is necessary to conduct an assessment and determination of the best interests of the child in the context of a possible separation of the child and their parents (arts. 9, 18 and 20 CRC)<sup>9</sup>. In this sense, preventing family separation and preserving family unity are important elements of the child protection regime, and are based on the right contained in Article 9(1), which requires “that a child shall not be separated from his or her parents against their will, except when [...] such separation is necessary for the best interests of the child”. Accordingly, given the severity of the impact on the child of separation from his or her parents, such a measure should only be applied as a last resort, for example, when the child is at risk of imminent harm or when otherwise necessary; separation should not be undertaken if the child can be protected in a way that is less intrusive to the family. Before resorting to separation, the State must provide support to parents to fulfil their parental responsibilities and restore or increase the family’s capacity to care for the child, unless separation is necessary to protect the child. Economic reasons cannot be a justification for separating children from their parents<sup>10</sup>.

The Committee notes that the purpose of the Guidelines for the Alternative Care of Children is to ensure that children are not placed in alternative care unnecessarily and that, where alternative care is indeed necessary, it is provided in appropriate conditions that are in accordance with the rights and best interests of the child. In particular, “financial and material poverty, or conditions directly and uniquely imputable to such poverty, should never be the only justification for the removal of a child from parental care [...] but should be seen as a signal for the need to provide appropriate support to the family” (para. 15). In short, the best interests of the child remain a primary consideration to be assessed and determined also when separation from his or her family could not be avoided (a decision which, in turn, can only be taken based on the same criterion)<sup>11</sup>.

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<sup>9</sup> Paragraphs 52 and 52 of GC 14.

<sup>10</sup> Paragraphs 60 y 61 of GC 14. This provision is essential for a proper understanding of the institutionalisation advocated by the UN Guidelines and of the recommendations that the Committee on the Rights of the Child has made explicit in recent country reports in relation to children deprived of parental care and the obligation to strengthen family and community support, citing the Guidelines as the basis for this. Consequently, this should be an inalienable provision in state legislation on both protection and discharge, as the latter process should follow the same logic (in a human rights approach).

<sup>11</sup> Paragraph 64 of GC 14: In case of separation, the State should ensure that the situation of the child and his or her family has been assessed, where possible, by a multidisciplinary team of fully trained professionals, with appropriate judicial collaboration, in accordance with article 9 of the Convention, in order to ensure that it is the only option that can meet the best interests of the child.

Even where separation is necessary, decision-makers will ensure that the child maintains ties and relationships with his or her parents and family (siblings, relatives, and persons with whom the child has had a close personal relationship), unless this is contrary to the best interests of the child. This is because the right of the child not to be separated from his or her parents does not disappear by the fact of separation, but rather, in a correct understanding of the rights approach, even when under alternative care, the State must ensure that it is guaranteed as far as possible. Therefore, when a child is separated from his or her family, decisions about the frequency and duration of visits and other forms of contact should consider the quality of relationships and the need to maintain them<sup>12</sup>. States should respect the established international benchmarks that institutional care should only be a last resort, as well as ensure that children are not placed in alternative care unnecessarily and that, where it is indeed necessary, alternative care is provided in appropriate conditions that respond to the rights and best interests of the child<sup>13</sup>.

In the most recent country reports (e.g. Guatemala and Paraguay) the Committee explicitly mentions the Guidelines as a basis for its recommendations in relation to children deprived of their family environment. This means that these guidelines can be seen as the Committee's understanding of how the Convention should be applied in relation to the right not to be separated from the family (the interpretation in accordance with the Convention). It also provides an explanation of the correct way to understand the processes of deinstitutionalisation, addressing both the exit from the system (how to design the exit processes with a rights-based approach) and the prevention of institutionalisation, reinforcing family and community support that avoids institutionalisation.

In this sense, the express mention of deinstitutionalisation in the Guidelines appears in reference to the convenience of eliminating large residential care centres in the context of an overall deinstitutionalization strategy, with precise goals and objectives, which will allow for their progressive elimination<sup>14</sup>. It is important to clarify the scope of the provisions of this fundamental text to avoid a misunderstanding of the full extent of its provisions.

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<sup>12</sup> It is in this sense that the statement in paragraph 134 of the Guidelines is to be understood: "Aftercare should be prepared as early as possible in the placement and, in any case, well before the child leaves the care setting".

<sup>13</sup> GC 21, paragraph 41.

<sup>14</sup> Guidelines, paragraph 23.

The elimination of large centres advocated with emphasis in the Guidelines must be understood as part of an overall strategy of deinstitutionalisation. What the Guidelines do not is to equate the two: the elimination of large centres is a key measure within a much broader (comprehensive) deinstitutionalisation strategy. Here the Guidelines intend to make it clear that a limit that cannot be reached within protection systems is the existence of large centres for residential care. These should therefore be phased out and, of course, no new ones should be created, of course, no new centres of this kind should be created. From the previous paragraph, a transcription of the Guidelines, it cannot be deduced, therefore, that de-institutionalisation and the disappearance of residential care should be equated only with the large centres.

Secondly, this mention of the deinstitutionalisation strategy must be understood in the context of the document, which is based on a focus on the rights of children, adolescents, and young people. Consistent with this approach, state action should be based on guaranteeing the rights of children, adolescents and young people deprived of parental care or at risk of losing it. One of these rights is family life (their own in the first place), from which they should not be separated except in their best interests. This is the focus of the principle of necessity (developed in the Guidelines): only when it is strictly necessary - and therefore all possible options to avoid it have been ruled out - may a child or young person be separated from his or her family. The State should rightly do everything possible to ensure that this is not the case, but only the best interests of the child should justify such a decision. To avoid such a decision, which is contrary to the right to live in a family (and therefore must be perfectly justified based on strict necessity), the State must deploy all the primary and secondary prevention actions referred to in the Guidelines, actions which, naturally, must be part of the overall strategy of deinstitutionalisation. It is worth highlighting, as the Committee does in the 2024 country reports, those referring to the strengthening of family and community support. The best way to deinstitutionalise is to avoid doing so. This is also what the correct understanding of the rights approach demands: the State must guarantee the right to live in a family and not limit its action to a reactive response to cases in which this right has been violated. Consequently, prevention is a priority in a correct understanding of the concept of deinstitutionalisation based on a rights-based approach.

Along with the absolute priority of prevention and the proper application of the principle of necessity (as a residual decision and of restrictive interpretation), the Guidelines develop the principle of appropriateness. Under this principle, once preventive measures (which the State must prioritise) have not worked adequately and it has been strictly necessary to separate the children, adolescents and young people from their family based on their best interests,

the State must have a plurality of options or modalities of quality alternative care that allow children, adolescents and young people to develop integrally, although in principle the family-type care solutions are preferred rather than residential care. Preference does not mean (i) that residential care should disappear or (ii) that it is not preferable in cases where it is in the best interests of the child (sibling groups, children with special needs, etc.). Quality in all types of foster or alternative care is key because it is the measure of the suitability of care to the rights of the care recipients.

In short, the deinstitutionalisation unequivocally advocated by the Guidelines is articulated around three fundamental principles: a rights-based approach, necessity, and appropriateness. Accordingly, any comprehensive deinstitutionalisation strategy must incorporate and develop all three.

In relation to children, adolescents and young people who leave the protection system, and in coherence with the above, the state response to children, adolescents and young people leaving the protection system should not be designed from a partial understanding of what it means to deinstitutionalise, limiting itself to contemplating it in only one of its dimensions, as an exit from the protection system. Preventive action should also be considered together with the principles of necessity and appropriateness. This is what the Committee has done in the most recent country reports, based on this holistic understanding of the Guidelines, which is how they should be read to guarantee the rights of children, adolescents and young people deprived of parental care or at risk of losing it.

The Committee recommends that countries have in place an adequate legal and public policy framework and mechanisms to ensure proper coordination between all public institutions involved in this matter. Based on this framework, which all states should build in relation to children deprived of parental care based on the UN Guidelines for the Alternative Care of Children, the Committee has recommended<sup>15</sup>, in particular:

- Phase out institutionalisation and adopt, without delay, a strategy and action plan for deinstitutionalisation, ensuring adequate human, technical and financial resources for its implementation.
- Ensure sufficient family and community-based alternative care options for children who cannot stay with their families, including by allocating sufficient financial resources for care and adoption, periodically reviewing placement measures and facilitating the reunification of children with their families where possible, building on the pilot plan

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<sup>15</sup> Son recomendaciones contenidas en los últimos informes de país publicados en 2024. Cabe destacar que son prácticamente idénticas para los países (ver, por ejemplo, Guatemala o Paraguay).



of the proposed deinstitutionalisation model with an “ecosystemic” approach.

- Ensure adequate safeguards and clear criteria, based on the needs and best interests of the child, to determine whether a child should be placed in alternative care.
- Establish quality standards for all alternative care settings and regularly monitor the quality of care in them, including by providing accessible channels for reporting, monitoring, and remedying child abuse.
- Ensure that adequate human, technical and financial resources are allocated to alternative care centres and relevant child protection services to facilitate to the maximum extent possible the rehabilitation and social reintegration of children residing in them.
- Strengthen the capacity of professionals working with families and children, in particular family judges, law enforcement personnel, social workers and service providers, to ensure appropriate alternative care responses and improve their awareness of family and community-based alternative care options and of the rights and needs of children deprived of a family environment.

All these aspects constitute the Committee’s recent doctrine on the correct way to approach deinstitutionalisation processes, as a public obligation derived from the requirements of the best interests of children, adolescents, and young people (of every one of them as a group in a situation of special vulnerability). These are, therefore, the minimum standards or references that States must incorporate to comply with the rights-based approach advocated by the Convention and the Guidelines (and other subsequent texts), which the Committee cites as the basis for these recommendations.

# **Principle:**

## **Right to be heard / participation**

### **STANDARD 2:**

**Ensure the meaningful participation and empowerment of children, adolescents and young people in all decisions that affect them and especially in planning for their exit (§ 45 GC 21)**



- **Make information available to children, adolescents and young people in accessible formats adapted to them about their rights and the services to which they have access**
- **Establish secure and confidential mechanisms for submitting complaints or communications**
- **Ensure that children, adolescents, and young people can express their opinions and be duly considered when organising and setting up care services**

- **Establish a representative council of children to participate in the formulation and implementation of the centre's policies and rules**
- **Systematically provide training to professionals on the right of children, adolescents, and young people to be heard and to have their views considered in accordance with their age and maturity**
- **Develop and implement policies that guarantee the right of children, adolescents, and young people to participate meaningfully in decision-making that affects their future**

The best interests of children, adolescents and young people cannot be accurately assessed and determined without their active and meaningful participation. The right of children, adolescents, and young people to be heard in all decisions affecting them is inseparable from the right to have their best interests be a primary consideration (GC 12 and 14). It is unequivocally stated in the Guidelines in paragraph 132: " Children leaving care should be encouraged to take part in the planning of aftercare life".

In the same vein, the Committee has stated: " States should ensure, through legislation, regulation and policy directives, that the child's views are solicited and considered in decisions regarding placements, development and review of care plans, and visits with family"<sup>16</sup>. More recently, the Day of General Discussion states categorically that "States should develop and implement policies that guarantee children transitioning out of alternative care the right to meaningfully participate in decision-making about their futures." (recommendation 4). These decisions relate to both their day-to-day care and case management, the design and delivery of care services, and monitoring, evaluation, accountability and learning about the quality of these services.

A precondition for this is that children, adolescents, and young people have access to adequate information, which should be guaranteed: "Information should be made available in child-friendly and accessible formats and children in street situations should be supported to understand and navigate child protection"<sup>17</sup> Access to information will also be crucial for care leavers, who should be able to know their situation and the services and benefits available to them in their process towards independent living.

The exercise of the right to participation must be free and safe, and comprises two dimensions, a more individual one (planning the leaving process of each child and young person) and a collective one of participation in the life in the centre. Regarding both, the Committee has urged States to ensure that all children and young people in care receive adequate protection, including access to confidential complaints mechanisms and judicial protection (General Comment No. 20).

It also urges States to establish effective mechanisms, for example, a representative council of children, adolescents, and young people in the residential care institution, with powers to participate in the formulation and implementation of policies and all rules of the institution. It also notes that legislation should guarantee the right of children, adolescents, and young people to be heard and to have their views duly considered when organising and establishing child-friendly care"<sup>18</sup>.

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<sup>16</sup> GC 21, paragraph 45.

<sup>17</sup> GC 21, paragraph 17.

<sup>18</sup> GC 12, paragraph 97.

In a relational right such as the right to be heard (by a third party), it is essential that the other party, the professionals in the protection system, know exactly what their role is, which is why the Committee's General Comment No. 12 urges that the study of this Comment be incorporated into the training of all professionals working for and with children, adolescents and young<sup>19</sup>.

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<sup>19</sup> GC 12, paragraph 7.

# **Principle: The right to life, development and survival**

## **STANDARD 3:**

**Ensure that there is an uninterrupted line of comprehensive, planned, ongoing and individualised support for financial, emotional, and practical services to care leavers and their networks to prepare for the transition to independent living**

- Periodically review the measures taken during alternative care
- Adopt measures that respect the right of children, adolescents, and young people to the progressive autonomy of their will and promote it with a view to their independence
- Provide a significant trusted professional during alternative care and after the exit, preferably the same one
- Provide quality services, respectful of the rights of children, adolescents, and young people, regulated, accredited, and supervised by the State

- **Provide access to employment services, education, training, housing, and psychological support**
- **Encourage the public and private sectors to employ former children, adolescents, and young people from different care services**
- **Promote policies that ensure holistic, planned, ongoing and individualised support for care leavers and their networks**

“The systems need to provide a continuum of care across all relevant contexts, including prevention, early intervention, street outreach, helplines, drop-in centres, day-care centres, temporary residential care, family reunification, foster care, independent living or other short- or long-term care options”<sup>20</sup>. This unequivocal statement by the Committee echoes what is affirmed by international texts on children deprived of parental care (and explained at the beginning of this paper). From a correct understanding of what is meant by the rights approach, nothing explains or justifies that the obligation of care and protection conducted by the State while the child is in its care disappears by the fact of reaching the age of majority.

What disappears is the “legal formula” under which it has done so, but not the obligation to continue to provide support, in the same way as parents do for their biological children. There must therefore be continuity from one stage to the next to reach independent living. Such continuity does not mean that services and care will remain the same as while the child was in alternative care, but rather that it aims to ensure the natural link between the different stages and moments of a person’s life, welcoming the necessary transformations without abrupt breaks that not only violate their human rights but also jeopardise all the work previously done.

From this understanding of the need to ensure such continuity - understood as constant and uninterrupted support - the idea of graduality also becomes important: care and support is changeable, varying in intensity and nature not only at the coming of age, but also before (while in alternative care) and after (as the care leaver progressively needs less support until he or she is able to live independently). This standard has chosen not to distinguish between these stages (before and after the age of majority) to set out the elements of the standard as contemplated in the international documents, but it may be appropriate to disaggregate them for explanatory purposes because each has its own logic behind it.

Thus, firstly, until the age of majority is reached, this gradualness is directly conditioned by the idea of evolving capacities of children, adolescents and young people (the idea of progressive autonomy of will): The concept of evolving capacities of children, adolescents and young people states that when children, adolescents and young people reach a sufficient level of maturity and capacity to exercise their rights independently, there will be a decreasing need for parental direction and guidance.

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<sup>20</sup> GC 21, paragraph 17.



As children, adolescents and young people acquire capacities, they are entitled to an increasing level of responsibility for the regulation of matters that affect them. Evolving capacities should be seen as a positive and enabling process, not as an excuse for authoritarian practices that restrict children, adolescents and young people's autonomy and self-expression, and which are often inaccurately justified by pointing to children, adolescents, and young people's relative immaturity. This statement connects directly with the two previous standards: the obligation to assess and determine the best interests of the child in the transition and exit processes, and to do so by giving increasing weight and prominence to children, adolescents, and young people until they reach the age of majority <sup>21</sup>. The levels of support and guidance offered to a child or young person should be continuously adjusted. These adjustments must consider the interests and wishes of the children, adolescents, and young people, as well as their capacities to make autonomous decisions and to understand their best interests. Well, the same statement made for parents applies to the equivalent figure in corporate parenting arrangements.

With regard to adolescents in alternative care, the Committee has noted that States should adopt measures that promote autonomy and enhance future opportunities, as well as measures that address the particular vulnerability and risk they face as they become old enough to leave alternative care.<sup>22</sup> In particular, "adolescents preparing to leave alternative care need help to prepare for this transition, to have access to employment, housing and psychological support, and to participate with family members in rehabilitation activities, if this is conducive to their recovery. More specifically, "Adolescents leaving alternative care require support in preparing for the transition, gaining access to employment, housing and psychological support, participating in rehabilitation with their families where that is in their best interest and gaining access to after-care services consistent with the Guidelines for the Alternative Care of Children<sup>23</sup>. To make this possible, the Committee notes, "a combination of legal, policy and service provision changes is likely to be needed"<sup>24</sup>.

From the age of majority until they can live independently, they must be guaranteed comprehensive support. Once they have reached the age of majority and therefore full (legal) capacity to govern their lives and make their own decisions, it is essential to provide them with the means to be able to do so. There is no point in having full decision-making capacity if they do not have sufficient minimum vital resources. The automatic nature of the legal age of majority does not have an equivalent translation in practice. To

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<sup>22</sup> Statement of the Committee on the Rights of the Child on article 5 of the Convention on the Rights of the Child, 11th October 2023.

<sup>23</sup> GC 20 paragraph 53.

<sup>23</sup> GC 20, paragraph 41.54

<sup>24</sup> GC 21 paragraph 16.

this end, sufficient conditions must be created so that, with the necessary support, they can effectively progress towards an independent life, reducing support as they approach this objective.

Such support must be understood in a holistic manner (certainly not only as financial support), as the Committee explains in relation to the obligation of states to provide appropriate and quality services in alternative care arrangements in line with human rights standards: care leavers must receive comprehensive support, which implies, as far as this standard is concerned, that “States should develop and implement policies to ensure comprehensive, planned, ongoing and individualized financial, emotional and practical support to care leavers and their networks.”<sup>25</sup>.

International documents do not establish an age, but comparative law examples show an assumption of the extension of the age up to twenty-one, and increasingly, up to twenty-five.<sup>26</sup> A key element to guarantee the continuity of protection and the successful management of the process is the assignment to each child and young person of a specialist who can facilitate their independence when they leave care<sup>27</sup>. This reference figure for the young person is one of the fundamental supports for the success of the leaving processes.

In terms of the type of supports to be ensured, the Guidelines state that “Ongoing educational and vocational training opportunities should be imparted as part of life skills education to young people leaving care in order to help them to become financially independent and generate their own income”<sup>28</sup>. Access to social, legal and health services, together with appropriate financial support, should also be provided to young people leaving care and during social reintegration <sup>29</sup>.

The Resolution goes further in specifying these supports and “also urges States to take action to ensure the enjoyment of human rights for all children without parental care, in accordance with the international human rights framework, including the Convention on the Rights of the Child, not least the rights to the enjoyment of the highest attainable standards of physical and mental health, education, to rest and leisure, to engage in play and recreational activities appropriate to the age and maturity of the child, and also to take action to provide a range of alternative care options and to protect all children without parental care, including by:

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<sup>25</sup> Day of General Discussion, 2021.

<sup>26</sup> It is worth noting the case of Scotland, where a distinction is made between “care” (0-18 years), “leaving care” (16-18), “continuing care” (18-21) and “aftercare” (21-26). It has been legally extended to 25 by Canada (in some of its autonomous territories), Australia (in some of its territories), the United Kingdom (Children’s Act) and Argentina.

<sup>27</sup> Guidelines paragraph 132.

<sup>28</sup> Guidelines, paragraph 135

<sup>29</sup> Guidelines, paragraph 136

(l) Ensuring that adolescents and young people leaving alternative care receive appropriate support in preparing for the transition to independent living, including support in gaining access to employment, education, training, housing and psychological support, participating in rehabilitation with their families where that is in their best interest, and gaining access to after-care services consistent with the Guidelines for the Alternative Care of Children "30.

In addition, in the Advisory Opinion OC-27/21 issued on 5 May 2021, the Inter-American Court of Human Rights recognised the right to care as a human right derived from the principle of dignity and equality, linking it to the rights of persons in situations of vulnerability (children, young people leaving school, older persons, persons with disabilities, etc.). The Court underlined the responsibility of States to implement public policies that redistribute this work equitably between the State, families, the market, and the community, promoting co-responsibility. It also urged to make care work visible and valued and to avoid discrimination. This statement promotes the recognition of care as essential for social well-being.

All services provided to children, adolescents and young people deprived of parental care before and after leaving must be of quality, understood as a parameter to measure the adjustment of such services to the legally recognised rights, so as not to transfer a welfare logic to minors that is intended to be left behind in the later phase of their lives. The state must guarantee inclusive social protection with a focus on the rights of children and adolescents<sup>31</sup>.

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<sup>30</sup> Paragraph 35.l) RoC 2019.


<sup>31</sup> Annual report of the High Commissioner for Human Rights, "Rights of the child and inclusive social protection", submitted to the Human Rights Council (A/HRC/54/36, 1 September 2023).

# **Principle:**

## **Non-discrimination**

### **STANDARD 4:**

**Offer an appropriate system of assistance and support for the exit of children, adolescents, and young people in situations of special vulnerability**

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- **Avoid unnecessary institutionalisation of children, adolescents and young people with special needs or disabilities.**
  - **Coordinate the implementation of immigration and foreign legislation to migrant children, adolescents and young people leaving alternative care**
  - **Take care for the relationship with the family and the environment of origin in the case of care leavers from Indigenous communities.**

In accordance with the right to non-discrimination and equal treatment, the processes for exiting the protection system should consider the characteristics of groups of children, adolescents and young people in a situation of special vulnerability, such as those with disabilities, those who migrate alone or indigenous children, adolescents and young people, groups which, moreover, have higher than average rates of institutionalisation. Appropriate legislation that takes these aspects into account would be desirable.

International standards do not contemplate many specific provisions on exit for groups of children, adolescents, and young people in situations of special vulnerability. We refer to the following existing ones:

Regarding children, adolescents and young people with disabilities, provisions are made on assistance for their social reintegration: "children with special needs, such as disabilities, should benefit from an appropriate support system, ensuring, inter alia, avoidance of unnecessary institutionalization. Both the public and the private sectors should be encouraged, including through incentives, to employ children from different care services, particularly children with special needs."<sup>32</sup> The rate of institutionalisation of these persons is higher than that of their peers, and the State should work to strengthen family and community supports both to prevent entry into the system and subsequent exit.

With regard to foreign children, adolescents and young people who migrate alone, the main difficulty that arises when they reach the age of majority is that, as the obligation of care assumed by States with regard to all minors, regardless of nationality, disappears, not only do they lose legal protection, but also national legislation on foreigners becomes applicable to them, which seeks rather the expulsion from the country of those who are in an irregular situation. According to the Committee, the guarantee of continuity should be articulated to prevent this situation.

The Committee mentions the Guidelines as a basis for discerning the decisions to be taken with regard to these children: "Conduct a best interests assessment in each case to decide, if necessary, and in accordance with the Guidelines for the Alternative Care of Children, the type of accommodation that would be most appropriate for an unaccompanied or separated child, or children with parents. In this process, priority should be given to community-based care solutions. Any measures that limit the liberty of children in order to protect them, for example, secure care, should be applied within the child protection system with the same standards and safeguards; be strictly necessary, legitimate and proportionate to the aim of protecting the particular child from harm; be strictly necessary, legitimate and proportionate to the aim

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<sup>32</sup> Guidelines, paragraph 131.



of protecting the particular child from harm; and be provided with the same standards and safeguards, to themselves or others; be part of a holistic care plan; and be disconnected from policies, practices and authorities related to migration law enforcement "<sup>33</sup>.

It is important to note that the Committee has pronounced itself on the guarantee of the right to education for these young people, so it could be understood that this same logic should be extended to other services or resources to the extent that they guarantee human rights: "To respect children's right to education, States are also encouraged to avoid disruption during migration-related procedures, avoiding children having to move during the school year if possible, as well as supporting them to complete any compulsory and ongoing education courses when they reach the age of majority. While access to upper-level education is not compulsory, the principle of non-discrimination obliges States to provide available services to every child without discrimination based on their migration status or other prohibited grounds."<sup>34</sup>.

With regard to indigenous children, adolescents and young people, the Committee has stated that "Furthermore, States should always ensure that the principle of the best interests of the child is the paramount consideration in any alternative care placement of indigenous children and in accordance with article 20 (3) of the Convention pay due regard to the desirability of continuity in the child's upbringing and to the child's ethnic, religious, cultural and linguistic background. In States parties where Indigenous children are overrepresented among children separated from their family environment, specially targeted policy measures should be developed in consultation with Indigenous communities to reduce the number of Indigenous children in alternative care and prevent the loss of their cultural identity. Specifically, if an indigenous child is placed in care outside their community, the State party should take special measures to ensure that the child can maintain his or her cultural identity"<sup>35</sup>. De-institutionalisation of these children and adolescents should therefore prioritise family and community support, with special emphasis on other groups. "States parties should ensure effective measures are implemented to safeguard the integrity of Indigenous families and communities by assisting them in their child-rearing responsibilities in accordance with articles 3, 5, 18, 25 and 27 (3) of the Convention <sup>36</sup>"

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<sup>33</sup> GC 22, paragraph 22(f)

<sup>34</sup> 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 the human rights obligations of States regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, CMW/C/GC/4-CRC/C/GC/23 (2017).

<sup>35</sup> GC 11, paragraph 48.

<sup>36</sup> GC 11, paragraph 46.

Exit in such cases, which is common in many LAAM countries, deserves special consideration in legislation and exit policies that incorporate a rights-based approach to this group.



**RECOMMENDATIONS  
FOR THE NORMATIVE  
AND INSTITUTIONAL  
DESIGN OF THE  
RIGHT OF CHILDREN,  
ADOLESCENTS AND  
YOUNG PEOPLE TO  
EXIT THE SYSTEM**





# 1. Summary table

## **FIRST:**

**Establish a legal framework in line with international human rights standards**

1. Have a legal framework that recognises, defines and develops exit with support as a subjective right, in line with international standards.
2. Extend the age of support to 25 years, unless the child is unwilling, or it is detrimental to his or her best interests.
3. Develop the legal framework through complementary provisions (regulatory or other sectoral laws).

## **SECOND:**

**Develop a comprehensive national leaving care strategy, within the framework of de-institutionalisation processes**

1. Develop and implement public policies on exit, within the framework of the deinstitutionalisation processes required by the Guidelines, at all administrative levels.
2. Establish a consultation process that includes the participation of children, adolescents, and young people in the elaboration of the strategy.
3. Consider and prioritise excluded and most vulnerable groups of children, adolescents, and young people.
4. Adopt a comprehensive exit strategy for the protection system at the highest level, which is linked to national development planning
5. Review the strategy periodically according to the results of the impact assessment: need to assess and evaluate the effects on children, adolescents, and young people.



### **THIRD:**

Strengthen coordination of the implementation of the rights of children, adolescents and young people to ensure that all the principles and standards set out in the CRC are respected and taken up by all, including those departments less directly responsible for the protection of children, adolescents and young people

1. Envisage and apply coordination, cooperation and collaboration mechanisms among all the subjects that are part of the protection system.
2. Create an "enforcement authority" to promote and coordinate the exit of each child, adolescent and young person.

### **FOURTH:**

Develop the principle of territorial and administrative decentralisation

### **FIFTH:**

Encourage organized collaboration between the State and all types of entities in the implementation of legislation, strategy and leaving care policies

1. Regulate, enable, and supervise the application of quality standards to the comprehensive support services for care leavers
2. Establish formulas for close state collaboration with human rights NGOs, child-led organisations, young people groups, parent and family groups, religious groups, academic institutions, and professional associations for the implementation of the legal framework and public policies on exiting.
3. Work with the private sector: fostering employment and entrepreneurship among care leavers of the system

**SIXTH:**

Collect sufficient, adequate, reliable, and disaggregated data to be able to determine whether there is discrimination in the realisation of the rights of care leavers

**SEVENTH:**

Incorporate and make visible in public budgets the investment in the exit from the protection system

**EIGHTH:**

Raise awareness and strengthen the training and capacity building of professionals

**NINTH:**

Articulate institutional and judicial mechanisms for the effective defence of the rights of children, adolescents and young people who have left the protection system

**TENTH:**

Legally define the concept of exit

### **ELEVENTH:**

**Assess and determine the best interests and needs of children and adolescents considering their age, gender, maturity, and particular circumstances from the moment of entry into the care system and throughout the entire transition process**

1. Prioritise family reintegration whenever possible, working with the family of origin while the child is under protection, if this does not go against the best interests of the child.
2. Ensure a sufficient supply of family and community care options for children, adolescents and young people who cannot stay with their families.
3. Guarantee the progressive autonomy of children, adolescents and young people and define the powers and responsibilities of corporate parents accordingly.

## **TWELFTH:**

**Ensure the meaningful participation of children, adolescents, and young people in planning for their exit, as well as full respect for their views on all matters affecting them**

1. Make information available to children, adolescents, and young people in accessible and child-friendly formats about their rights and the services they can access.
2. Establish secure and confidential mechanisms for submitting complaints or communications.
3. Ensure that children, adolescents, and young people can express their views and be given due consideration when organising and setting up care services.
4. Establish a participatory council of children and adolescents within the protection system and networks of care leavers to participate in the formulation of policies and rules of the centre.
5. Systematically provide training to professionals on the right of children, adolescents, and young people to be heard and to have their views considered in accordance with their age and maturity.
6. Work with young people to develop and implement policies that guarantee the right of children, adolescents, and young people to participate meaningfully in making all decisions that affect their future, especially in planning for their exit.
7. Encourage the creation of networks and associations of care leavers, as part of the necessary support in their transition to independent living.

### **THIRTEENTH:**

#### **Ensuring special attention to particularly vulnerable groups upon exit**

1. Design policies and plans to avoid unnecessary institutionalisation of children, adolescents, and young people with disabilities.
2. Coordinate legislation on the protection of children, adolescents, and young people and on foreigners with a view to defining the scope of rights of foreigners leaving the protection system.
3. Design specific policies and plans for the reintegration of Indigenous children, adolescents and young people based on their customs and cultural characteristics.
4. Identify from the data and reports other groups of children, adolescents, and young people in a situation of special vulnerability and consider specific measures to guarantee their right to leave (young mothers, sibling groups, etc.).



## **FOURTEENTH:**

**Ensure comprehensive, planned, ongoing and individualised support to care leavers and their networks**

1. Promote policies that guarantee comprehensive, planned, constant and individualised support for care leavers and their networks.
2. Articulate the exit from the protection system in accordance with the principles inherent to it.
3. Ensure accompanying services (dimensions):
  - Physical and psychological health
  - Education, employment, and entrepreneurship
  - Housing
  - Human rights and citizenship education
  - Family and social networks
  - Recreation and leisure
  - Life projection and independent living skills
  - Identity
  - Mentoring and intervention
  - Ensure an adequate and sufficient financial allowance until the age of 21
  - Free legal aid
4. Provide a significant trusted professional for post-exit, preferably one who has been a significant trusted professional before reaching the age of majority.
5. Provide a safeguarding professional for the communication of situations of violence, abuse or exploitation by children, adolescents and young people leaving the protection system.

## 2. General recommendations for the normative and institutional design of the right of children, adolescents, and young people to exit the child protection system

### **FIRTS:**

**Establish a legal framework in line with international human rights standards**

#### **1.1 Have a legal framework that recognises, defines, and develops exit with support as a subjective right, in line with what is required by international standards.**

The adoption of a rights-based approach to the protection of children, adolescents and young people requires assuming all the precepts of the Convention on the Rights of the Child (CRC), recognising the interdependence and indivisibility of human rights. Indeed, in the Convention it reads “child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier,” thus defining its subjective scope of application. It is understood that on reaching the age of majority, persons enjoy full capacity to act and can therefore govern their lives with full autonomy. While this is true on a strictly legal level, the same is not true on a factual level. Reaching the age of majority does not guarantee an independent life and, for this reason, the Committee has stated that “States should commit to fulfilling human rights beyond childhood. Particularly, States should ensure follow-up mechanisms for children in alternative care settings and in street situations as they transition into adulthood at the age of 18, to avoid an abrupt termination of support and services” (GC 21 para. 16).

Thus, while those who reach the age of majority under the custody of a parental guardian are legally entitled to support in the form of child nourishment until several years after they reach the age of eighteen, this is not the case for those who have had to be separated from their parents in their best interests and have grown up under the guardianship of the State, since the obligation of protection imposed on the State by the CRC seems to end when they reach the age of majority. However, it is important to specify that what ceases upon reaching the age of majority is the guardianship exercised by the State (a figure conceived for minors), but not the obligation to continue supporting these persons beyond the age of majority, in a similar way to what parental guardians are obliged to do with respect to their children beyond the age of majority. If in this case the legal obligation is based on the children's inability to live independently, it is necessary - to avoid any unjustified differential treatment - to impose it in an equivalent way on the State, which has been exercising the same guardianship or tutelage functions over children, adolescents and young people in alternative care.

From a human rights approach, the way to guarantee that all persons leaving the system have access to the necessary support to move towards independent living is to approve a legal text that recognises this. This right has its cause or basis in the care received in the protection system and requires continuity of care, but it does not derive directly from the Convention, nor is it applicable to it because it refers to persons who have reached the age of majority. As this is a different (though connected) reality, it seems appropriate to adopt a specific legal text regulating exit. To this end, either the legislation on the protection of children and adolescents in force in the State should include the provisions on preparation for exit from the four axes of the Convention beyond a figurative mention, or the new legal text should complement the protection legislation by specifically incorporating provisions on such preparation. This second option is preferable because it does not invade or violate any existing protection provisions but rather complements them without the need for a legal amendment and facilitates the understanding of exit as a complex phenomenon with its own entity that must be legally addressed in a unique way, not as a mere random consequence of leaving the protection system.

The requirement for a regulation with the status of law is due to the need for its configuration as a subjective right whose ownership corresponds to each care leaver. The State's obligation to provide support in the form and with the scope established by law will be established as a correlative. This makes it possible to overcome a welfare approach based on a needs-based approach. Approval of policies, plans or programmes on care leavers is necessary, but insufficient, as they must have the approval of policies, plans or programmes on leavers is necessary, but insufficient, since they must have as a starting point the prior legal recognition of the right to exit. This makes

their implementation legally enforceable and allows their holders to exercise the necessary legal actions to enforce it.

The legal recognition of the right to leave must also conform to international standards (section XX of this report). With absolute respect for the exercise of the sovereignty of each State, as far as it assumes the human rights treaties, it must incorporate the regulation of exit with respect for the universal standards that have been established. These standards may be complemented and improved, but in no case can they be ignored or reduced because they derive from the international corpus of human rights. Thus, the minimum scope of the right to exit the protection system must be the one set out in the international standards, not the one decided by each State outside them. Not just any formal instrument is valid (it must be a law) and not just any material content (it must be, at the very least, that of the international standards).

## **1.2. Extend the age of support to 25 years, unless the child is unwilling, or it is detrimental to his or her best interests.**

Although the absence of up-to-date and reliable exit data is a reality, the results of those who have received support after the age of majority are more satisfactory. Young people should exit care when they are truly ready to do so, after having designed and planned the transition with the active and meaningful participation of the child or young person from the moment of entry into care. Evidence shows that stable care should continue to be provided as part of formal and informal support based on an individualised assessment of the personal needs of each child and young person. The extent of the State's obligation to provide such support should be set out in law and detailed in concrete policies and procedures.

More countries are offering support to those leaving the protection system, but its scope, typology and duration are quite different and not always guaranteed by law. Practice supports the benefits of extending the guarantee of support by law for those exiting the system. Although there are different solutions as to how this extension should be specified, the recommendation would be to bring it into line with that of civil legislation on the right to nourishment <sup>37</sup>, which parental carers are obliged to continue to provide until young people are able to look after themselves or reach a certain age (25 or 26 years), without prejudice to the fact that the process of leaving and the supports to be provided are defined on the basis of a holistic assessment of their maturity, circumstances, needs and abilities.

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<sup>37</sup> From a legal point of view, the concept of nourishment refers to a benefit which generally consists of a sum of money intended to ensure the satisfaction of the vital needs of someone who can no longer provide for his or her own subsistence (RAE legal dictionary).

Perhaps the most advanced model is the one in force in Scotland, where the law establishes “by default” the continuity of care until the age of 21, unless it is not in the young person’s interest or they do not reject it (this is what they call “staying put”), together with the legally guaranteed possibility of continuing to have the appropriate support until the age of 26<sup>38</sup>. This avoids an abrupt exit without support, which is what leads people who leave the system to situations of extreme vulnerability, respects the right to equal treatment and non-discrimination, and puts a time limit on the State’s obligation to continue providing support indefinitely.

### **1.3. Develop the legal framework through complementary provisions (regulatory or other sectoral laws).**

The legal regulation of the right to leave does not prevent (on the contrary) its development by means of regulations. In this way, the stability of the recognition of the right is reinforced, as the law comes from the legislative power, leaving the executive power to define and develop secondary aspects. This allows the principle of legality to coexist with the principle of democracy, enabling laws (and the rights they recognise) to survive the political difficulties of governments.

Specific aspects that should be subject to regulatory development: approval of the national strategy on the right to exit, quality standards, regulation of the requirements to obtain authorisation to provide exit services, inspection services of the exit system, register of collaborating entities in the national exit system, statute of the authority/professional person of reference for the exited persons, among others.

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<sup>38</sup> Staying Put Scotland Guidance (2013), from the Scottish Government: “the importance of young people being ‘encouraged, enabled and empowered’ to remain in positive care settings until they have developed the practical skills, ‘emotional readiness’ (Scottish Government, 2013, p13) and networks of supportive relationships that can underpin successful adult life. The guidance explains that abrupt and accelerated transitions should be avoided with young people being supported to make gradual and phased steps to more interdependent living. Central to this approach is the importance of relationship-based practice and the concept of interdependence, which reflects the day to-day reality of an extended range of healthy inter-personal relationships, social supports and networks that are sought for young people” (Scottish Government, 2013).

## SECOND:

### **Develop a comprehensive national leaving care strategy, within the framework of de-institutionalisation processes**

The implementation of the national legislation adopted on the right to exit must be based on public policies that make it possible, although all of them should be aligned with a broad national strategy that sets out the main lines to work on, establishing the objectives corresponding to each line, as well as the concrete measures and actions to be carried out to achieve the objectives in accordance with the indicators and deadlines also specified.

#### **2.1 Develop and implement public policies on leaving care, within the framework of the deinstitutionalisation processes required by the Guidelines, at all administrative levels**

All these policies should be in line with legislation (national or federal, depending on the competent territorial level) and with the national exit strategy. This does not mean a uniform application throughout the State, but in federal or more decentralised countries, the strategy should have more room for development in the federal States or at the lower autonomous levels, according to the country's own distribution of competences.

#### **2.2 Establish a consultation process that includes the participation of children, adolescents, and young people in the elaboration of the strategy**

For the elaboration of the strategy, it is essential to count on the participation of children, adolescents and young people, principally those who have left the system or are future care leavers, not only as a concretisation of their fundamental right to participation (individually or through networks, associations or entities representing their interests) and to be heard and to have their opinions taken into account in all decisions affecting them, but also as a requirement derived from the right for their best interests to be taken into consideration, associations or entities representing their interests) and to be heard and to have their opinions taken into account in all decisions that affect them, but also as a requirement derived from the right to have their best interests as primary consideration, so that policies are relevant and suitable, that truly respond to their realities in each context, their needs and demands. This specific recommendation derives directly from the Committee on the Rights of the Child's General Comments 12 and 14, which underline the

impossibility of determining the best interests of a social group (such as care leavers) without their participation.

## **2.3 Consider and prioritise excluded and most vulnerable groups of children, adolescents and young people**

Persons leaving the protection system are not a homogeneous group, although they logically share common characteristics because of the process they all have to undergo. The right to non-discrimination, which is recognised and guaranteed by article 2 of the Convention on the Rights of the Child, requires that the circumstances and needs of the most vulnerable groups be considered (without prejudice to the assessment and determination of the best interests of each child and young person when designing their individual exit plan).

These groups include children, adolescents, and young people with disabilities, those who migrate alone without parental or family members, Indigenous children, and girls. All these groups are more likely to be institutionalised and, therefore, will be care leavers from the protection system, and, in addition, the complexity of the processes of these groups is greater due to their own characteristics, so that reinforcing the prevention of their institutionalisation should be a priority focus in all public policies and measures on care leavers. Each of them, however, has its own difficulties to enjoy a care leaver process in general terms.

## **2.4. Adopt a comprehensive exit strategy for the protection system at the highest level, which is linked to national development planning**

The national exit strategy cannot be a purely indicative document but, to ensure its enforceability and the accountability of those responsible for each measure, it must be approved by the country's highest governing body. Moreover, this approval makes it possible to reconcile the guarantee of the right (contained in a law) with the different political options that may reach the Government, which may legitimately adapt the strategy to its policies, but always within the limits of what is established in the legislation. The approval of the strategy by the country's government (through a government agreement or through a regulatory norm) better guarantees a centralised and public leadership for its implementation.



## **2.5 Review the strategy periodically according to the results of the impact assessment: need to assess and evaluate the effects on children, adolescents and young people**

The evaluation and measurement of the impact of the strategy is a requirement of the best interests of children, adolescents, and young people, in this case understood as a human group. Obtaining and analysing reliable data makes it possible to develop strategies and policies that meet real needs. Having indicators also allows for the continuous improvement of these decisions in view of the results (impact) that they have in the achievement of the objectives set.

The evaluation should refer to partial (preferably annual) and final (when the end of its term is envisaged) deadlines.

## THIRD:

**Strengthen coordination of the implementation of the rights of children, adolescents and young people to ensure that all the principles and standards set out in the CRC are respected and taken up by all, including those departments less directly responsible for the protection of children, adolescents and young people**

### **3.1. Envisage and apply coordination, cooperation, and collaboration mechanisms among all the subjects that are part of the protection system**

Adopting a rights-based approach implies having a comprehensive protection system that guarantees all the rights of all children, adolescents and young people through all types of measures (judicial, social, economic, etc.) throughout the “cycle of lack of protection” (promotion, prevention, protection), an obligation that falls on all public authorities, families and society in general. The “comprehensiveness” of protection must be understood in these broad terms. All the elements previously mentioned (rights, subjects, measures, resources) must be properly articulated to be ordered towards the same end - the guarantee of the rights of children, adolescents, and young people - forming an authentic “system”<sup>39</sup> of protection. All the elements must be related in an orderly manner and for this coordination is essential, which allows them to be directed towards the intended purpose. This coordination must be guaranteed between all territorial levels, especially in those States with a federal or decentralised territorial organisation; between all public authorities (executive, legislative and judicial); and between the previously mentioned and civil society, which must align its action with public policies in terms of the protection system.

<sup>39</sup> A system is a set of things that, in an orderly relationship, contribute to a certain object”, according to the definition of the Dictionary of the Real Academia de la Lengua Española.

### **3.2 Create an "enforcement authority" to promote and coordinate the release of each child, adolescent and young person**

Along with the need for coordination of services and resources at a general level (through the usual formulas contemplated in national legislation), it is recommended that a body be created to promote and coordinate the process of exiting the protection system for each care leaver. This would be an authority assigned to each child and young person from the moment they enter the system, and its main responsibility is to ensure the quality of the care process and guarantee that their views and needs are considered by the competent authority<sup>40</sup>. They should have a government-approved performance manual, a statute identifying the requirements for their appointment (especially their education and training) and their functions. The functioning of this authority should be based on the significant role of children, adolescents, and young people in their own exit planning process. The key task of the implementing authority would be to ensure that everything is accurately assessed and that all appropriate persons, such as the family or the institution, have been considered. This authority or professional will coordinate all that is needed for the child and young person both during their care and aftercare stages.

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<sup>40</sup> A specific regulation of this figure is found in the United Kingdom, where it is known as the Independent Reviewing Officer (IRO).

## FOURTH:

### **Develop the principle of territorial and administrative decentralisation**

The competences of the smaller territorial levels must be strengthened to implement deinstitutionalisation processes, without the State losing the necessary powers to demand full compliance with the CRC and to guarantee common minimum standards on exit throughout the national territory.

Depending on the constitutional and political model of territorial organisation chosen by each country, legislation on leaving the system should contemplate the maximum possible level of decentralisation in the development of the State's obligation to guarantee the right of children, adolescents and young people leaving the system to comprehensive support.

Decentralisation processes do not mean that the State (as a power structure) is relieved of its obligations towards its care leavers. On the contrary, it requires the cooperation of the lower territorial levels, be it a federal state or a central state with regions or provinces. Furthermore, in deinstitutionalisation processes, it is essential to have the local level involved, since the design of the support network must include community services. In the right to exit, it is essential that children, adolescents, and young people remain in their own environment, so it would be highly inadvisable for the success of the process if they had to travel to distant places to obtain certain resources or services. The capillarisation of the exit network is therefore fundamental. The strengthening of the smaller territorial levels and their adequate articulation with the bigger ones is therefore fundamental. Decentralisation is not an option that States can choose to follow - or not - but, as the Committee has explained in its General Comment No. 5, it is a mandate for action, although the extent of decentralisation will certainly depend on the administrative structure and territorial organisation of the State.

What this General Comment is saying is that it is not possible not to count on the level closest to children, adolescents, and young people to adequately fulfil the obligation internationally imposed on the State. This will necessarily imply an allocation of funds and resources to that territorial level, preferably municipal or community (depending on how it is organised and designed in each State).

## FIFTH:

**Encourage organised collaboration between the State and all types of entities in the implementation of legislation, strategy and leaving care policies**

### **5.1. Regulate, enable, and supervise the application of quality standards to the comprehensive support services for care leavers**

The obligation to provide comprehensive exit support lies with the State. This obligation, which must be set out in more concrete terms in a regulation with the status of law, must be fulfilled in full compliance with the rights of children, adolescents, and young people. The way in which this obligation is to be carried out must therefore be regulated, which means that technical quality standards must be established to ensure that the benefits, services and resources destined for those leaving the institution comply with human rights and with the rules and standards that can be demanded. Such regulation should be in place both before and during the provision of services to care leavers.

Thus, the State must verify that all public and private entities that are to provide these services meet the necessary conditions and requirements (quality of facilities, training of professionals, economic sustainability, etc.). If this is the case, the State will grant a specific authorisation to the entity to provide these services. The State has the obligation to ensure that private service providers act in accordance with its provisions, thus creating indirect obligations for these entities. All such providers must ensure the best interests of the child.

It would be desirable for all entities to be registered by the state, to know who is behind each of them. This registration may be constitutive (i.e. registration is required as a condition for launching services) or purely declaratory, as a source of information for the State from which it can make evidence-based decisions. The regulation should establish the obligation of these entities to provide all information required by the State (with due guarantee of the right to personal data protection), as well as who has the right of access to the young people's information (themselves and, with limitations, their carers, mentors, significant trusted professionals).

Once State accreditation has been obtained, the entity must conduct its activity in accordance with the quality standards set by the State. The approval of these technical standards should be carried out by means of

a legal norm (ideally of a regulatory nature), because this guarantees their enforceability (being able to claim responsibility for non-compliance) and a uniform application of the State's mandates (if the quality standards are the parameter for measuring the adjustment of the service to the fulfilment of human rights, it does not seem right that their determination is left in the hands of each entity, without supervision or guarantee of their approval). The demand for accountability and the possibility of coercive mechanisms for the State to "compel" the entity to act in a certain way is essential for collaboration to take place on the right terms.

Verification of compliance with quality standards by service providers should be conducted by the State itself, since it is internationally obliged to comply with the human rights of those who have left, either through its public services or facilities, or in collaboration with various private entities or initiatives. To this end, it should have inspection and supervision services, endowed with public authority, that periodically (every three months, for example) verify this adjustment, with the consequences of not doing so being foreseen in the regulations. In parallel, national human rights institutions can play a key role in monitoring the state and its partners to ensure that the rights of care leavers are adequately guaranteed.

These consequences will have to be eminently punitive or sanctioning, either by imposing a financial fine or by withdrawing the authorisation granted to the entity. This, moreover, would not prevent those affected by such non-compliance from bringing the corresponding civil liability action for the damages they may have suffered because of the abnormal functioning of the services to which they are entitled.

## **5.2. Establish formulas for close State collaboration with human rights NGOs, child-led organisations, young people groups, parent and family groups, religious groups, academic institutions, and professional associations for the implementation of the legal framework and public policies on exiting**

Without forgetting at any time that the state is the main party obliged to guarantee comprehensive support to those who leave the system, for its effective implementation it will have to rely on other parties, as it seems difficult for the public structure of the State to assume the entire management of the services and resources that the national exit strategy will require. Consequently, it will be important to consider an inter-institutional system or network to articulate access to support services of all kinds: economic subsidies for food and housing, educational scholarships, physical, sexual, and reproductive and mental health services, employability, and entrepreneurship, etc. Each of these subjects is called upon to play a role in the national exit system as a whole:

- Children, adolescents and young people organisations and groups of young care leavers can serve to reinforce the processes when those who are on the way to leave or have already left need emotional and social support from their peers.
- Parent and family groups can help in building family and community support, which is so important in deinstitutionalisation processes.
- Religious groups can be a support for young care leavers when they have a religious belief, and they can also collaborate with State services in the effective implementation of the exit strategy.
- Academic institutions and professional associations can play a key role in the education and training of professionals working in the protection system, providing both initial training (in university curricula) and continuous training (for professionals already working in the system), thus contributing to the proper implementation of the rights of children, adolescents and young people, in particular of those who enter (and then have to leave) the protection system. This contribution can make a decisive contribution to the necessary cultural change that is required for a correct understanding of the rights approach of this social group.

### **5.3. Colaborar con el sector privado: favorecer el empleo y emprendimiento de las personas egresadas del sistema**

Dado que el fin último de toda medida de protección y de acogimiento alternativo es lograr que el NNAJ pueda vivir de forma independiente, las acciones que se lleven a cabo para facilitar su acceso al mercado laboral resultan decisivas. Sensibilizar y procurar la colaboración del sector privado empresarial en esta tarea es fundamental, evitando posibles sesgos o discriminaciones por la imagen que se pueda tener de estos NNAJ.

Por no dejar esta colaboración a la pura voluntariedad de las empresas, el Estado puede buscar fórmulas que favorezcan esta opción sin entrar en colisión con las reglas del libre mercado. Se trata de fórmulas de regulación indirecta consistentes en aprobar normas (de rango adecuado) que favorezcan el acceso de las empresas a determinados concursos para la contratación con el Estado, dando prioridad o premiando a empresas que contratan a estos jóvenes frente a las que no lo hacen, o normas que contemplen exenciones o rebajas fiscales por la contratación de estos jóvenes, por ejemplo. Asimismo, se deberían generar programas e iniciativas público-privadas basadas en al menos tres pilares: formación, mentoría y práctica laboral, para la promoción de empleo/emprendimiento en este grupo de jóvenes, o bien priorizar a este grupo de jóvenes en programas e iniciativas existentes.



## SIXTH:

### **Collect sufficient, adequate, reliable and disaggregated data to be able to determine whether there is discrimination in the realisation of the rights of care leavers**

In general, there is a very large scarcity of reliable data on people who leave the protection systems, although it is known that they have worse results than their peers from families in terms of level of education or employment, have a higher probability of homelessness, higher suicide and crime rates<sup>41</sup>. It is not possible to know what works and what does not, and at what cost. The State should at least have data on persons leaving the system:

- Number of exits per year
- Number of young people leaving in a self-sufficient condition
- Number of young people leaving homeless or with no support networks
- National average age at exit vs. age at forced departure
- Number of care leavers in vulnerable conditions: addiction, incarcerated, victims of trafficking, sexual exploitation, disability, Indigenous people, girls, and young women, etc.
- This information must be provided by the entities, services and resources that collaborate in the exit system. It should be regulated who is obliged to provide this information and how the confidentiality of the care leavers' social history, the protection of their personal data and access to their file or social history will be guaranteed.

Up-to-date and reliable data on exits should be the basis for the elaboration and subsequent evaluation of the implementation of the national strategy, of public policies on exits and of public budgets as they affect children, adolescents and young people exiting the system. Only based on quality data and information can a rights-based model be guaranteed in which the impact of decisions is measured, accounted for and corrective measures are adopted to constantly improve the system. In terms of accountability, competent authorities should publish annual reports or reports on exit, with disaggregated data, on an open and accessible basis. Periodic reports on

<sup>41</sup> CELCIS, Continuing Care: An exploration of implementation, 2022, p. 3. International Journal of Child, Youth and Family Studies, Programs and services offered to young people transitioning out of care in Canada: a literature review (2022) 14(1): 7-29.

exits due to autonomy or independence or transfers requiring specialised care should be published.

On the other hand, in collaboration with research and higher education institutions (mainly universities), research on the exit phenomenon should be promoted to provide scientific support for measures that can be implemented. It would also be advisable to incorporate this reality in some way into university studies, especially those leading to professions involving work in or with the protection system (social workers, psychologists, social educators, lawyers, etc.).

## SEVENTH:

### **Incorporate and make visible in public budgets the investment in exits from the protection system**

It is necessary to know what measures have been taken at all levels of government to ensure that planning and decision-making, particularly budgetary, are conducted with the best interests of children, adolescents, and young people as a primary consideration.

The requirement for child-focused public budgeting (General Comment No. 19) should include the specification of the budget line items earmarked for exit.

The shift of focus towards the prevention of institutionalisation and the adoption of a legal and institutional framework such as the one proposed on the exit from the protection system require reinforcing the financial allocations towards it. Sufficient interdisciplinary and specialised human, technical and financial resources should therefore be allocated to:

- Promote education, skills and opportunities for children, adolescents and young people leaving alternative care so that they can lead independent lives.
- Strengthen family and community support through a broad and quality offer that reduces or avoids the adoption of protection measures that entail family separation.
- Strengthen measures to provide education, skills, employability, entrepreneurship and independent living opportunities for children, adolescents and young people leaving alternative care.

Information should also be available on the social return on investment regarding exit, comparing the current costs associated with poor outcomes of exit processes against the benefits to society (reduced access to public services, reduced poverty and improved employment and economic opportunities). Studies show that increased investment in services and support for children, adolescents and young people leaving the protection system is beneficial in the long term. More specifically, the extension of care and nourishment not just to the age of 21, but for four more years, means that for every \$1 invested, the state obtains a saving or benefit of \$1.36 over the working life of this person<sup>42</sup>.

A new legal framework and a comprehensive deinstitutionalisation strategy will be of no use if they are not accompanied by adequate resources to carry them out. This transfer of the focus of advocacy will take time and will not be without difficulties and reluctance, but the lack of resources cannot be a pretext for not complying with international standards.

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<sup>42</sup> Provincial Advocate for Children & Youth, "25 is the new 21. The costs and benefits of providing extended care & maintenance to Ontario youth in care until age 25", Canada, 2012. Este estudio se basa en datos de Ontario (Canadá) y menciona otros similares realizados en Estados Unidos o Australia, que llegan a la misma conclusión.

## EIGHTH:

### **Raise awareness and strengthen the training and capacity building of professionals**

The training of professionals in the protection system is fundamental to ensure the quality of care and exit processes. It is a manifestation of a system that has moved beyond a needs-based and welfare-based approach and understands that care and support is a right of children, adolescents and young people that must be guaranteed in the legally required terms and not out of charity or goodwill.

The professionals who should be required to receive such training are all those who in some way have an impact on the lives of children, adolescents and young people who have left the protection system, mainly those who work in it, but also parliamentarians, civil servants from all administrations whose competences may have an impact on the exit processes and, most especially, judges, whose institutional function is to judge (interpret and apply the law) and enforce what is judged. It would be essential to train those who work in all the bodies of the Inter-American Human Rights System, especially those of the Inter-American Court of Human Rights. It would also be particularly important to train the staff of national human rights institutions (especially if there is a specific one for children, adolescents, and young people), given their role as independent monitors of the State's compliance with human rights.

Training will depend primarily on the professional profile, but in all cases, it should be interdisciplinary (legal, psychological, sociological, educational, etc.), with a focus on the rights of children, adolescents, and young people. The training should include as a minimum: minimum standards in terms of exit services, assessment, and determination of the best interests of children, adolescents, and young people, listening and planning of the processes of preparation for exit and the national system of support for exit.

Professionals in the protection system - understood in a broad sense - should have this initial training, which should be incorporated into the curricula corresponding to professions involving work with children, adolescents, and young people. Public administrations should also provide continuous training through annual training plans to keep them up to date with the main developments and advances they need to be aware of. The state should

inspect, where appropriate, that professionals have the minimum training required. When working in private sector entities that collaborate with the state, this should be a requirement for licensing.

Without prejudice to the central role played by professionals in all areas of the protection system, in order for their action to be more effective and efficient, society should be sensitised and made aware of the phenomenon of leaving the system and of the convenience of reinforcing family and community support in the face of the institutionalisation of children, adolescents and young people in situations of serious lack of protection. Campaigns should also be carried out to avoid the stigmatisation of young people leaving the system and the reasons for guaranteeing them the necessary support, especially regarding the most vulnerable groups (mainly young mothers, migrants, people with disabilities, indigenous people or children, adolescents and young people belonging to ethnic minorities).

## NINTH:

### **Articulate institutional and judicial mechanisms for the effective defence of the rights of children, adolescents and young people who have left the protection system**

If the logical correlate of any subjective right is the obligation of a third party to guarantee it, it is the institutional establishment of effective judicial control mechanisms that ensures its fulfilment. A legal model that recognises rights and imposes obligations would be incomplete if it did not foresee how to ensure both rights and obligations, that is, if it did not have effective mechanisms to hold obligated parties accountable for non-compliance with their obligations. The legal framework that recognises the right to leave in the terms established in international standards must be complemented by judicial processes that ultimately guarantee it. Specifically, it should:

To be able to invoke the right to leave (and to each of the supports guaranteed by law) before the courts, providing for effective remedies in the event of the violation of this right<sup>43</sup>. To defend their rights, the care leavers themselves should have free legal aid as part of the support, so that they can be properly assisted and represented in the processes in defence of their right to leave. To this end, procedural legislation and legislation relating to bar associations should provide for this particularity.

- Include the right to leave as part of the Inter-American Human Rights System, through the necessary modifications so that the violation of this right can be reviewed by this international body. Consideration should also be given to the possibility of making the right to leave explicit in the framework of the Inter-American Convention on the Rights of Young People, to open cases before higher instances than national ones that could also establish doctrine and oblige States to act correctly both at the normative and institutional level and in concrete cases of violation of individual rights

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<sup>43</sup> As stated in General Comment No. 5, paragraphs 24 and 25.



# TENTH:

## Legally define the concept of exit

The right to receive comprehensive support corresponds to children, adolescents and young people who leave the protection system. However, there are many moments and circumstances in which such an exit can occur, so the legal framework should specify who qualifies as care leaver from the system, since only from there will the mechanisms to provide the necessary support be activated.

It would be advisable to differentiate between various stages in the lives of children, and young people in alternative care, delimiting their rights in each one of them. The rights that correspond to them while they are minors are fundamentally set out in the Convention, but national legislation should make explicit those that are specific to their inexorable exit: the right to have their best interests assessed and determined in all types of decisions, the right to active and meaningful participation in the planning of their individual exit process, the right to receive adequate information on the services and resources to which they are entitled, the right to obtain such services and support, and fundamentally to have a significant trusted professional to assist and guide them in their life in alternative care.

Once the age of majority is reached, it would be advisable to establish age ranges to which the respective support entitlements should refer. It is recommended to establish as a rule (by default) the right to continue care until the age of 21 in the same place where the young person has lived, unless he/she renounces this, or it is not considered to be in his/her interest. The possibility of extending support up to the age of 25 should be expressly envisaged, defining its scope in a gradual downward direction until the transition to independent living is achieved<sup>44</sup>.

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<sup>44</sup> This is done in some territories in Canada, Australia, the USA and Scotland. See Sansone, G., Fallon, B., Miller, S., Birken, C., Denburg, A., Jenkins, J., Levine, J., Mishna, F., Sokolowski, M. and Stewart, S. (2020). Children Aging Out of Care. Toronto, Ontario: Policy Bench, Fraser Mustard Institute of Human Development, University of Toronto. Comparative figures are also provided in the OECD study Assisting care leavers: time for Action, 2022, with data also on the different ages and supports that member countries apply in the exit process ([https:// www.oecd.org/en/publications/assisting-care-leavers\\_1939a9ec-en.html](https://www.oecd.org/en/publications/assisting-care-leavers_1939a9ec-en.html)).

Furthermore, the right to leave care should be expressly contemplated, since the reality of life is quite different. It should be analysed whether these supports -especially financial ones- would be received by the young person in the same terms as those who leave residential care, or whether it would be worthwhile to foresee direct support to the foster family, if they decide to continue caring for the young person. In any case, this is an important distinction in order not to fall into the possible error of understanding that only those in residential care leave the system.

## ELEVENTH:

**Assess and determine the best interests and needs of children and adolescents considering their age, gender, maturity and particular circumstances from the moment of entry into the care system and during the entire transition process**

### **11.1 Prioritise family reintegration wherever possible, working with the family of origin while the child and adolescent is under protection, if this does not go against the best interests of the child**

Legislation should make explicit the obligation of public authorities to work with the family in its training and strengthening as the first and fundamental protection factor for all children, adolescents and young people, unless, after the corresponding assessment and determination of their best interests, it is determined that this is not appropriate. If the priority exit from the system should be family reintegration, the State, in accordance with the Convention, should work with the family to guarantee in this way the right of children, adolescents and young people to live with (their) family. If this right is seriously violated and, as a consequence, the child, adolescent or young person has to be separated from his or her family, this does not mean that the right “disappears”; the right continues to correspond to the child, adolescent or young person despite the violation and while he/she is in an alternative care measure (always temporary), so that the State’s obligation should not only translate into separation and, if necessary, reparation of the damage caused, but the law should make explicit the duty to work with the family so that, from a child rights approach, the fundamental right to live with (his/her) family is guaranteed. This strengthening of the family should go beyond establishing visiting conditions with the family and include a broader individual family intervention plan, which, for example, provides those responsible for the parents with the necessary tools for a positive exercise of parenthood, economic resources or social support that they may need, mainly at the community level.

At state level, labour legislation should contemplate the right to work-life balance, not so much as a social conquest of workers as a right of children, adolescents, and young people to live in a family. Regulations should be evaluated, and plans should be drawn up so that companies assume this

obligation as their own, and public administrations should provide resources to support families to facilitate work-life balance. Universal - and free where appropriate - 'schooling' from 0-3 years of age should also be extended. Likewise, the specific reality of adolescent mothers should be considered so that they can receive the necessary support to be able to continue their studies (at least compulsory education, which is a fundamental right of children, adolescents and young people, but also higher education if they so wish). Ensure a sufficient supply of family and community care options for children, adolescents and young people who cannot stay with their families.

When children, adolescents and young people are at risk of losing parental care, legislation should establish as a first obligation of public authorities the design of a family and community support network that avoids the institutionalisation of children, adolescents, and young people. In a correct understanding of exit in the framework of global deinstitutionalisation strategies, this legal provision is fundamental in accordance with the rights approach. Preventing deinstitutionalisation (and, within it, exit) is the best way to deinstitutionalise.

To fulfil this obligation, both the national exit (or deinstitutionalisation) strategy and the public policies, plans and programmes adopted by public administrations should specify how they are going to implement it and with what economic, technical, and human resources they are going to carry it out.

### **11.2. Ensure a sufficient supply of family and community care options for children, adolescents and young people who cannot stay with their families.**

### **11.3. Guarantee the progressive autonomy of children, adolescents and young people and define the powers and responsibilities of corporate parents accordingly**

Legislation on leaving should make explicit as a fundamental principle the right to the progressive autonomy of the will of children, adolescents, and young people, who have to make more important decisions, while assuming increasing responsibilities derived from these decisions. This concept is fundamental in the family sphere, but it should also be fundamental when the protective and care functions are exercised by an entity (public or private), what other legislations have called the "corporate parent". It is essential that legislation establishes how this "parentality" or guardianship is to be exercised by the State while respecting the right of children, adolescents, and young people in the care system to progressive autonomy of will, in a similar way to what should be done with parental guardians.

In addition to the legal reflection of the progressive autonomy of the will of children, adolescents, and young people in alternative care, it is essential to train professionals in this idea, so that, on behalf of the institution, they exercise positive "parenting". A "right to good institutional treatment"<sup>45</sup>, could be included (and developed), which includes not only the right not to suffer any form of violence, but above all the right to receive care that enables the free development of the personality of children, adolescents and young people to the maximum extent possible.

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<sup>45</sup> This right has not been included as such in any legislation. Spanish legislation on violence against children and adolescents defines good treatment and requires that all spaces or places where children, adolescents and young people live be configured as safe environments, which are those that guarantee good treatment. When it comes to the modalities of alternative care, especially residential care, it would be an extraordinary opportunity to define its scope and to specify how it is to be guaranteed by the care entities.

## TWELFTH:

**Ensure the meaningful participation of children, adolescents and young people in planning for their exit, as well as full respect for their views on all matters affecting them.**

- **12.1.** Make information available to children, adolescents, and young people in accessible and child-friendly formats about their rights and the services they can access.
- **12.2.** Establish secure and confidential mechanisms for submitting complaints or communications.
- **12.3.** Ensure that children, adolescents, and young people can express their views and be given due consideration when organising and setting up care services.
- **12.4.** Establish a participatory council of children and adolescents within the protection system and networks of care leavers to participate in the formulation of policies and rules of the centre
- **12.5.** Systematically provide training to professionals on the right of children, adolescents, and young people to be heard and to have their views considered in accordance with their age and maturity.
- **12.6.** Work with young people to develop and implement policies that guarantee the right of children, adolescents, and young people to participate meaningfully in making all decisions that affect their future, especially in planning for their exit.
- **12.7.** Encourage the creation of networks and associations of care leavers, as part of the necessary support in their transition to independent living.

While the previous six recommendations are part of international standards<sup>46</sup> and should therefore be reflected in both legislation and public policy, the seventh recommendation derives from consultations with care leavers in several countries, for whom their peers are an essential element in ensuring mutual support.

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<sup>46</sup> See development of each recommendation in Output 3.

# THIRTEENTH:

## Ensuring special attention to particularly vulnerable groups upon exit

- **13.1.** Design policies and plans to avoid the unnecessary institutionalisation of children, adolescents, and young people with disabilities.
- **13.2.** Coordinate legislation on the protection of children, adolescents, and young people and on foreigners with a view to defining the scope of rights of foreigners leaving the protection system.
- **13.3.** Design specific policies and plans for the reintegration of Indigenous children, adolescents and young people based on their customs and cultural characteristics.
- **13.4.** Identify from the data and reports other groups of children, adolescents, and young people in a situation of special vulnerability and consider specific measures to guarantee their right to leave (young mothers, sibling groups, etc.).



## FOURTEENTH:

**Ensure comprehensive, planned, ongoing and individualised support to care leavers and their networks**

### **14.1. Promote policies that guarantee comprehensive, planned, constant and individualised support for care leavers and their network**

The Day of General Discussion made explicit the concept of comprehensive support for leaving the system, to go beyond the idea of support as a broad and heterogeneous set of measures and aids for leaving the system, to understand it holistically, taking into account the specific characteristics of each young person leaving the system. This concept should be included in the law that regulates leaving the system in the terms and with the scope contemplated in the DGD, but it should also be included in the public policies that serve its implementation.

### **14.2. Articulate the exit from the protection system in accordance with the principles inherent to it.**

- **Legal guarantee:** comprehensive support for exiting the protection system must be legally established, imposing a corresponding obligation on the State, which must adopt all necessary measures to guarantee it. It is not enough to elaborate public exit policies or specific programmes or plans because they do not ensure it as a right vis-à-vis the public authorities
- **Voluntariness:** participation in leaving care beyond the age of majority will depend solely on the young person's will, as he or she already has full legal capacity to govern his or her life. It can never be an obligation; therefore, he/she can decide whether to continue in the care system. As it is a right, the young person who has decided not to continue can return to care at least until the age of 21 (as recommended in this report).
- **Continuity:** the State must guarantee an uninterrupted line of care and support for children, adolescents, and young people from the time they enter until they leave the protection system. Continuity should not be understood as uniformity, but rather as an uninterrupted succession of support that will be determined according to the vital moment in which the person finds themselves,

within those that must be offered according to the legal framework. Not guaranteeing continuity is failing to comply with the obligation to provide good institutional treatment to children, adolescents and young people who have left the protection system.

- **Gradualness:** Care during childhood and support beyond the age of majority to which care leavers are entitled should be defined according to a criterion of gradualness that facilitates the empowerment of children and young people. Before reaching the age of majority, in accordance with the evolving capacities of children and young people, care or supervision should be reduced to increase support for the decisions that children, adolescents and young people can take with gradual autonomy. Once the age of majority is reached, guaranteeing comprehensive support in its broadest terms until the age of 21, this support should be reduced as they move towards an independent life. The scope of the specific support should be specified by virtue of regulations that develop the legal provision, so that its effective provision is not at the mercy of the economic or political situation. This also provides legal certainty, which is much needed when planning what support can be provided.
- **Quality:** given that the support they are entitled to receive goes far beyond economic benefits and includes educational, social, psychological, legal, housing, etc. services, it is essential to verify that they meet quality standards that guarantee their adequacy to the right of children, adolescents and young people to an accompanied and supported exit. It is essential that the State approves and publishes quality standards for each of these services, requires compliance with them as a condition for the entity in question to provide them, and that it inspects and supervises their maintenance, sanctioning or demanding that they be applied. Otherwise, it would transfer to the exit processes the welfare logic that the Guidelines demand to overcome in relation to protection systems and that they want to extend to the care leavers in accordance with the human rights approach that prevails over this innovative approach.
- **Review:** The support to be received should be constantly reviewed and adjusted to the needs and changing circumstances of the care leaver. Likewise, the care leaver must be able to count on complaint mechanisms in the event of possible violations of the right, if they consider that the support provided to them is insufficient or inadequate. Mechanisms should be established for the rapid and effective resolution of any deficiencies that may be detected in the receipt of support.
- **Holistic understanding (comprehensive and integrated):** the idea of comprehensive support not only has a quantitative dimension, as an extensive set of benefits, but also a qualitative one, in such a way that each care leaver should be offered those services and resources that he or she needs according to his or her individual characteristics. This

comprehensive and integrated vision of support can be achieved by having a significant trusted professional who, together with the care leaver, not only informs and facilitates access to existing support, but also assists them in the best way to find the most appropriate support for the specific person. This is a demand from many young care leavers, who express the difficulties they encounter in accessing support and services.

### **14.3 Ensure accompanying services (dimensions):**

The comprehensiveness of support should cover at least the main dimensions of life, as specified by both the Guidelines and the 2019 Resolution, which expressly refer to “access to employment, education, training, housing and psychological support, participating in rehabilitation with their families where that is in their best interest, and gaining access to after-care services.” These should be the minimum requirements for legislation and public policies to guarantee the right to exit in accordance with international standards.

Alongside these international documents, LAAM States should be invited to sign the 2013 regional treaty on the rights of young people and its 2016 additional protocol, to commit to guaranteeing these rights with appropriate accommodations for those leaving the protection system.

The rights that, as a minimum, should be part of the benefits and services guaranteed in the concept of comprehensive support are the following:

- **Physical and psychological health**

The right to health should be guaranteed to those leaving on the same terms as for their peers who continue to live under family care. It is particularly important to be able to access mental health services, through psychological and psychiatric support, given the life trajectory of these persons.

The sexual and reproductive health of girls and young women leaving the system should also be ensured, to avoid unwanted pregnancies as far as possible, including re-institutionalisation for care when they have children.

- **Education, employment, and entrepreneurship**

The literature demonstrates the importance of education in improving the outcomes of those leaving the system and in promoting their resilience. Also having a job, even if it is part-time, is associated with good outcomes in the transition to independent living. Hence, in practice, it is increasingly common for children, adolescents, and young people to be prepared for further education, which goes beyond going to school. Children, adolescents, and

young people should be prepared from an early age for further education and work. A lifelong learning model should be offered to those who leave the system because it allows them to better coexist between studies and work. Such a model could design specific training pathways for care leavers that are adapted to the specific characteristics of each young person.

In general, this should include vocational guidance services, access to study grants and scholarships and the development of digital skills, as well as employability and entrepreneurship skills, mentoring and work placements, which are particularly relevant for care leavers. Likewise, care leavers should have access to social insurance conceived as a national public service guaranteeing health care in cases of maternity, common illness and occupational accidents, financial benefits for temporary incapacity due to common illness and occupational accidents, financial benefits for maternity, as well as benefits for disability, retirement, death, widowhood and orphanhood.

- **Housing**

The right to decent housing should be guaranteed to those who leave the protection system. One of the main reasons for generalising the extension of the exit age to 21 years of age has to do precisely with the practical impossibility of leading an independent life due to the economic effort involved in owning a house<sup>47</sup>. Young people interviewed point to housing as one of the greatest difficulties in moving towards an independent life, which their peers who live with their relatives see as being solved by staying in the family home for many more years, which allows them to more easily achieve stability in employment, study or even have some reserves to make the leap to independent living with greater guarantees.

After the age of 21, depending on the characteristics of the care leaver, various possibilities for access to housing should be offered, from staying in the same place until the age of 25, to subsidised rents for these young people, reserving part of the social housing supply for these young people, or having housing to be shared between several young people.

- **Human rights and citizenship education**

Training on these issues should be offered as soon as the child or young person enters the protection system, since their subsequent social integration must include all the dimensions of citizenship inherent to their dignity. These are issues that are not always received from the family or school, so incorporating them in some way in their exit processes will facilitate their possibility of being full citizens also when they leave the protection system.

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<sup>47</sup> Scottish legislation calls “staying put” the regulation on the continuity of young people leaving care in the same place where they have been in care, with appropriate modifications in terms of living arrangements, e.g. with minors.

- **Family and social networks**

Work should be done with the family of origin to enable, if appropriate, the maintenance of relationships with the child or young person, even if he or she does not return to the family upon leaving the system. The concept of family should be understood in a broad sense, including extended family. The focus should also be on the relationship between siblings, favouring it when it is not contrary or detrimental to the care leaver.

Likewise, the creation and maintenance of strong social networks among care leavers is fundamental to facilitate the leaving process, not only because at the age of leaving, peers are the main reference point for any young person, but also because in the specific group of care leavers, they are people with whom they share a common life experience. The creation of these networks or associations should be supported and encouraged, providing them with meeting places that allow them to cultivate a sense of belonging, even supporting with funds some of the initiatives they propose and contribute to the success of the care leaving process<sup>48</sup>. Promoting opportunities for participation and advocacy for the exit process is of value not only for the care leavers but also for policy makers and society, because of the direct views and experiences they would bring.

- **Recreation and leisure**

From their entry into the protection system, children, adolescents and young people should be trained in the acquisition of independent living skills, not forgetting the importance for them of the "small" tasks corresponding to the multitude of decisions they have to start making (making a medical appointment, registering for a service, administrative or documentation management, filling in an application for financial aid, managing the logistics of a house, carrying out household tasks such as cleaning or cooking, planning and managing money, etc.). All of this is usually dealt with naturally in the home environment, or it is easier to compensate for not doing it because the consequences are not the same, but young people leaving the system do not have it and there are no other areas where they are trained for it (e.g. at school). The offer of workshops or training modules for independent living from the moment they enter the protection system should therefore be articulated as part of the support to which care leavers are entitled, always related to the individual plan of preparation and transition to independent living.

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<sup>48</sup> The idea of creating a digital platform for care leavers may be a good option. SOS Children's Villages tried to set up Youthlinks, but it was not successful. However, care leavers easily use this type of network, so perhaps a similar option could be considered, learning from the mistakes or shortcomings of that platform.

- **Life projection and independent living skills**

From their entry into the protection system, children, adolescents and young people should be trained in the acquisition of independent living skills, not forgetting the importance for them of the “small” tasks corresponding to the multitude of decisions they have to start making (making a medical appointment, registering for a service, administrative or documentation management, filling in an application for financial aid, managing the logistics of a house, carrying out household tasks such as cleaning or cooking, planning and managing money, etc.). All of this is usually dealt with naturally in the home environment, or it is easier to compensate for not doing it because the consequences are not the same, but young people leaving the system do not have it and there are no other areas where they are trained for it (e.g. at school). The offer of workshops or training modules for independent living from the moment they enter the protection system should therefore be articulated as part of the support to which care leavers are entitled, always related to the individual plan of preparation and transition to independent living.

- **Identity**

Care leavers have the right to identity, in broad terms, as an inherent part of their personality. It includes the right to obtain all documentation that identifies them (especially important to guarantee this for migrant children, adolescents, and young people), access to their social life history or gender identity. This right should be recognised as a concretisation of the right to the free development of the personality of the human being.

- **Mentoring and intervention (involvement)**

Many care leavers are left out of social and economic systems. They may lack the social support networks that other young people have during their transition to adulthood. Mentoring has become a form of support for these young people, as a person to turn to at any time for advice or help in building their life project, or simply to talk to. Mentoring by care leavers is also a useful possibility, although it should be conceived more as a complementary option than an alternative to professional support. In this sense, the significant trusted professionals for each care leaver should coexist alongside the network of mentors, of which any care leaver should be able to form part and receive training to do so adequately.

- **Ensure an adequate and sufficient financial allowance until the age of 21**

A minimum fixed income is crucial for the transition to independent living. Given that it is difficult for care leavers to find employment and that such jobs are often precarious and poorly paid, care leavers should be entitled to a minimum fixed income, such as the universal basic income that is being guaranteed in more countries. This income is conceived as a regular income that the state grants unconditionally to its citizens to cover the needs that a society considers to be basic. This type of measure is part of a redistributive social policy that seeks to ensure that everyone has access to a minimum level of income to cover basic needs and reduce inequality.

The progressive reduction of this income should be contemplated as the care leaver starts working, especially in the case of those who choose to continue studying or training or combine studies and work, so that they do not suddenly lose income or stop studying because they need to get ahead. The financial allowances should always cover the basic needs of these people at each stage of life in which are during the care leaving process.

- **Free legal aid**

Care leavers whose rights have been violated should be able to access free legal aid. This group should be specifically incorporated into the beneficiaries of legal aid, as they have neither the knowledge nor the means to assert their rights. While children and adolescents are in the protection system, they are protected by public institutions that look after their best interests (e.g. the public prosecutor's office), but when they reach the age of majority, this protection also disappears. To avoid abuses or violations of the rights of these young people, this right should be guaranteed at least until the age of 21. This is of particular importance in relation to persons with disabilities and migrants, to whom adult foreign legislation would apply.

#### **14.4. Provide a significant trusted professional for post-exit, preferably one who has been a significant trusted professional prior to reaching the age of majority.**

At least one significant trusted professional should be assigned to each child leaving the protection system, preferably the same one(s) who have done so during the stay in alternative care. This is a requirement in the Guidelines and advocated by young people leaving care as one of the main elements for post-exit support.



A regulation should be approved that establishes the training and qualification requirements to be met by these professionals, as well as the functions to be performed, which should be assistance, guidance and coordination of the services and resources needed by care leavers.

#### **14.5. Provide a safeguarding professional for the communication of situations of violence, abuse or exploitation by children, adolescents and young people leaving the protection system.**

There should also be a professional in charge of ensuring that the places where children, adolescents and young people live, whether during or after alternative care, are safe environments where they will be protected from all forms of violence, abuse, or exploitation. Accessible and safe complaint and reporting mechanisms should be established for possible rights violations (their own or those of third parties) and a significant person should be identified to deal with these cases, a significant person of trust for children, adolescents, and young people.

These functions are inherent to a care system and should be extended at least until the age of 21. Safeguarding tasks could be carried out by the above-mentioned professional, but given the specificity of the tasks involved, it would be advisable to create a specific figure not only in the alternative care centres, but also afterwards, who would be available to young people leaving care, given the extreme vulnerability with which they generally reach the age of majority. This professional should be trained in safeguarding and organisational protection and have a minimum of psychological, legal, and social training. A third alternative would be to assign these functions to the "enforcement authority"<sup>49</sup>.

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<sup>49</sup> See recommendation 3.2.





**SOS Children's Villages International**  
Regional Office for Latin America and the Caribbean  
2024





CÁTEDRA  
DE LOS DERECHOS  
DEL NIÑO



SOS CHILDREN'S  
VILLAGES