

INTER-AMERICAN COURT OF HUMAN RIGHTS*

ADVISORY OPINION OC-21/14

**RIGHTS AND GUARANTEES OF CHILDREN IN THE CONTEXT OF MIGRATION
AND/OR IN NEED OF INTERNATIONAL PROTECTION**

OFFICIAL SUMMARY ISSUED BY THE INTER-AMERICAN COURT
OF THE ADVISORY OPINION OF AUGUST 19, 2014
REQUESTED BY THE ARGENTINE REPUBLIC, THE FEDERATIVE
REPUBLIC OF BRAZIL, THE REPUBLIC OF PARAGUAY
AND THE ORIENTAL REPUBLIC OF URUGUAY**

On July 7, 2011, the Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay and the Oriental Republic of Uruguay, which will hereinafter be referred to jointly as "the applicant States," based on Article 64(1) of the American Convention and in accordance with the provisions of Article 70(1) and 70(2) of the Rules of Procedure, submitted a request for an Advisory Opinion on migrant children for the Court to "determine the precise obligations of the States in relation to the possible measures to be adopted regarding children, their immigration status or the status of their parents in light of the interpretation of Articles 1(1), 2, 4(1), 5, 7, 8, 11, 17, 19, 22(7), 22(8), 25 and 29 of the American Convention on Human Rights; Articles 1, 6, 8, 25 and 27 of the American Declaration of the Rights and Duties of Man; and Article 13 of the Inter-American Convention to Prevent and Punish Torture."

The applicant States submitted the following specific questions to the Inter-American Court of Human Rights (hereinafter "the Inter-American Court", "the Court" or "the Tribunal"):

[1.] Which are, in light of Articles 1, 2, 5, 7, 8, 19, 22(7) and 25 of the American Convention and Articles 1, 25 and 27 of the American Declaration of the Rights and Duties of Man, the procedures that should be adopted in order to identify the different risks for the rights of migrant children; to determine the needs for international protection and to adopt, if applicable, the special protective measures required?

[2.] Which are, in light of Articles 1, 2, 7, 8, 19 and 25 of the American Convention and Article 25 of the American Declaration on the Rights and Duties of Man, the due process

* Composed of the following Judges: Humberto Antonio Sierra Porto, President; Roberto F. Caldas, Vice President; Manuel E. Ventura Robles, Judge; Diego García-Sayán, Judge; Eduardo Vio Grossi, Judge; and Eduardo Ferrer Mac-Gregor Poisot, Judge. Also present, Pablo Saavedra Alessandri, Secretary, and Emilia Segares Rodríguez, Deputy Secretary. Judge Alberto Pérez Pérez did not participate for reasons of *force majeure*, in the deliberation and signature of this Advisory Opinion.

** This summary is the sole responsibility of the Secretariat of the Inter-American Court of Human Rights.

guarantees that should govern immigration proceedings in which migrant children are involved?

[3.] In light of Articles 1, 7, 8, 19 and 29 of the American Convention and Article 25 of the American Declaration of Rights and Duties of Man, in what way should the principle of detention as a last resort precautionary measure be interpreted in the framework of immigration proceedings when children in the company of their parents are involved, and when there are children who are unaccompanied or separated from their parents?

[4.] What characteristics, in light of Articles 2, 7, 19, 25 and 29 of the American Convention and Article 25 of the American Declaration on the Rights and Duties of Man, should adequate alternative measures for the protection of the rights of the child have in order to be the priority response of the State to avoid any kind of restriction on freedom? Which due process guarantees should be offered in the decision-making process regarding alternative measures to detention?

[5.] What are the basic conditions that accommodation facilities for migrant children must satisfy and what are the State's main obligations regarding children (unaccompanied or accompanied) who are under the custody of the State based on immigration reasons, in light of Articles 1, 2, 4(1), 5, 7, 17 and 19 of the American Convention and Articles 1 and 25 of the American Declaration of the Rights and Duties of Man?

[6.] If custodial measures are applied to children in immigration proceedings, which are, in light of Articles 1, 2, 7, 8, 19 and 25 of the American Convention and Article 25 of the American Declaration on the Rights and Duties of Man, the due process guarantees that should govern immigration proceedings in which migrant children are involved?

[7.] What is the scope and content of the principle of *non-refoulement* in light of Articles 1, 2, 4.1, 5, 7, 8, 19, 22(7), 22(8) and 25 of the American Convention, Article 13(4) of the Inter-American Convention to Prevent and Punish Torture and Articles 1, 25 and 27 of the American Declaration on the Rights and Duties of Man when a measure that may entail the return of a child to certain country is applied?

[8.] In light of Article 22(7) of the American Convention and Article 27 of the American Declaration on the Rights and Duties of Man, what are the characteristics that the procedures to be used when identifying a potential request for asylum or for recognition of the refugee status of a migrant child should have?

[9.] What is the scope that must be given to the protection of the right of the child not to be separated from his/her parents in the case that a deportation measure could be imposed on one or both parents, as a consequence of their migratory status, in light of Articles 8, 17, 19 and 25 of the American Convention and Articles 6 and 25 of the American Declaration on the Rights and Duties of Man?

In accordance with the request of the applicant States, on August 19, 2014 the Inter-American Court issued the Advisory Opinion entitled "Rights and guarantees of children in the context of migration and/or in need of international protection," which determines, as precisely as possible and pursuant to the provisions cited above, the State obligations with regard to children associated with their migratory status, or that of their parents, which, in consequence, States must consider when designing, adopting, implementing and applying their immigration policies, including in them, as appropriate, both the adoption or application of the corresponding norms of domestic law, and also the signature or implementation of the pertinent treaties and/or other international instruments.

The Court understood that its answer to the request submitted will be of specific usefulness in the context of a regional reality in which aspects relating to State obligations concerning migrant children have not been clearly and systematically established, based on the interpretation of the relevant norms. This usefulness is revealed by the significant interest indicated by all the participants in this advisory procedure.

General considerations

Children migrate internationally for a wide variety of reasons: to seek opportunities, whether economic or educational; to seek family reunification to reunite with family members who had previously migrated; to move from their place of residence owing to gradual or sudden changes in the environment that adversely affect their life and living conditions; to flee from the impact caused by organized crime, natural disasters, domestic abuse, or extreme poverty; to be transported in the context of a situation of exploitation, including child trafficking; to flee their country, whether it be for a well founded fear of persecution for specified reasons or because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violations of human rights, or other circumstances which have seriously disturbed public order. Although children usually travel with their parents, members of their extended family, or other adults, currently, a growing and significant number are migrating autonomously and unaccompanied.

International migration is a complex phenomenon that may involve two or more States, including countries of origin, transit and destination, for both migrants and those seeking asylum or refugee status. In this context and, in particular, that of mixed migration flows that entail population movements of a diverse nature, the characteristics of and the reasons for the journey that children undertake by land, sea or air, to countries other than those of which they are nationals or where they habitually reside, may bespeak both persons who require international protection and others who are moving in search of better opportunities for diverse reasons, which may change during the course of the migratory process. This means that the needs and requirements for protection may vary widely.

International protection is understood as the protection that a State offers to a foreign person because, in her or his country of nationality or habitual residence, that individual's human rights are threatened or violated and she or he is unable to obtain due protection there because it is not accessible, available and/or effective. While international protection of the host State is tied initially to the refugee status of the individual, various sources of international law – and in particular refugee law, international human rights law and international humanitarian law – reveal that this notion also encompasses other types of normative frameworks for protection. Thus, the expression international protection comprises: (a) the protection received by asylum seekers and refugees on the basis of the international conventions or domestic law; (b) the protection received by asylum seekers and refugees on the basis of the broadened definition of the Cartagena Declaration; (c) the protection received by any foreign person based on international human rights obligations, and in particular the principle of *non-refoulement*, as well as complementary protection or other forms of humanitarian protection, and (d) the protection received by stateless persons in accordance with the relevant international instruments.

It is only possible to ensure the international protection, in accordance with international commitments arising from international human rights law, international humanitarian law, and refugee law, by admitting a potential asylum applicant into a safe country, by guaranteeing the right to seek and receive asylum, and by respecting the principle of *non-refoulement*, among other rights, until achieving a durable solution.

Given this panorama, in its advisory and contentious jurisprudence, the Court has insisted on the fact that, in the exercise of their authority to establish immigration

policies, States may establish mechanisms to control the entry into and departure from their territory of persons who are not their nationals, provided that these policies are compatible with the norms for the protection of human rights established in the American Convention. Indeed, even though States have a margin of discretion when determining their immigration policies, the objectives sought by such policies must respect the human rights of migrants. This does not mean that States cannot take any action against migrants who fail to comply with their laws but rather that, when adopting the corresponding measures, States must respect human rights and ensure the exercise and enjoyment of these rights to all persons subject to their jurisdiction, without any discrimination. In addition, States must respect the relevant international obligations resulting from international instruments on international humanitarian law and on refugee law.

General obligations and guiding principles

As an introduction, to refer explicitly to three provisions of the American Convention that inspire the whole formulation of this Advisory Opinion. The first provision refers to Article 1(1) of the Convention that establishes the State's obligation to respect and ensure the human rights of "all persons subject to [the] jurisdiction" of the State in question, that is, of every person in the territory or who is in any way subjected to its authority, responsibility or control – in this case upon trying to enter the territory – and without any discrimination for the reasons stipulated in the norm. This means, then, that the motive, cause or reason why the person is in the State's territory has no relevance as regards the State's obligation to respect and to ensure that her or his human rights are respected. In particular, it has no significance whatsoever in this regard whether or not the entry of that person into the State's territory was in keeping with the provisions of its laws.

Even though the Court has considered it more adequate not to delve on the obligations of the child migrant's State of origin, it is pertinent to remember that these States must observe the general obligations in the matter and in particular their duty of prevention, which requires the State to generate and secure conditions for their nationals so that they are not forced to migrate, and to address the root causes of migration flows.

The second provision that should be cited as an introductory element is Article 2 of the Convention, which stipulates that the States Parties must adapt their domestic law to the provisions of the Convention in order to ensure the rights recognized therein, which means that the measures of domestic law must be effective (principle of the practical effects or *effet utile*).

The third provision that, in general terms, imbues this Advisory Opinion is Article 19 of the Convention, that equally to Article VII of the Declaration, concerns the obligation to adopt measures of protection in favor of all children, based on their condition as such, and this has an impact on the interpretation of all the other rights established when the case relates to children.

Bearing in mind, to this end, that a child is any person under 18 years of age, the Court stated that when designing, adopting, implementing and applying their immigration policies related to persons under 18 years of age, States must accord priority to a human rights-based approach, from a crosscut perspective that takes into consideration the rights of the child and, in particular, the protection and comprehensive development of the child, which should have priority over any

consideration of nationality or migratory status, in order to ensure the full exercise of their rights.

When the protection of the rights of the child and the adoption of measures to achieve this protection is involved, the following four guiding principles of the Convention on the Rights of the Child should transversely inspire and be implemented throughout every system of comprehensive protection: the principle of non-discrimination, the principle of the best interest of the child, the principle of respect for the right to life, survival and development, and the principle of respect for the opinion of the child in any procedure that affects her or him in order to ensure the child's participation.

Procedures to identify international protection needs of migrant children and, as appropriate, to adopt measures of special protection

The Court has previously recognized that both, Article 22(7) of the American Convention on Human Rights and Article XXVII of the American Declaration of the Rights and Duties of Man, have enshrined the subjective right of all persons, including children, to seek and receive asylum. By a harmonious interpretation of the internal and international laws that permeate, in a converging and complementary manner, the content of the right established in Articles 22(7) of the Convention and XXVII of the Declaration, and taking into account the specific standards of interpretation contained in Article 29 of the American Convention the Court was of the opinion that the right to seek and receive asylum in the context of the inter-American system is enshrined as an individual human right to seek and receive international protection on foreign territory, including with this expression refugee status in accordance with pertinent instruments of the United Nations or corresponding domestic legislation, as well as asylum in accordance with the different inter-American conventions on this matter.

Additionally, the Court noted that the developments produced in refugee law in recent decades have led to state practices, which have consisted in granting international protection as refugees to persons fleeing their country of origin due to generalized violence, foreign aggression, internal conflicts, massive violations of human rights, or other circumstances which have seriously disturbed public order. Bearing in mind the progressive development of international law, the Court considered that the obligations under the right to seek and receive asylum are operative with respect to those persons who meet the components of the expanded definition of the Cartagena Declaration, which responds not only to the dynamics of forced displacement that originated it, but also meets the challenges of protection derived from other displacement patterns that currently take place. This criterion reflects a tendency to strengthen in the region a more inclusive definition that must be taken into account by the States to grant refugee protection to persons whose need for international protection is evident.

Consequently, owing to the range of situations that may lead a child to emigrate from her or his country of origin, it is relevant to distinguish between those who emigrate in search of opportunities to improve their standard of living from those who require a form of international protection including, but not limited to protection for refugees and asylum seekers. Therefore, in order to comply with international undertakings, States are obliged to identify foreign children who require international protection within their jurisdictions, either as refugees or of another type, through an initial evaluation with guarantees of safety and confidentiality, in order to provide them with the adequate and individualized treatment required by means of special measures of protection. The Court considers that the establishment of procedures to identify the needs for

protection is a positive obligation of the States and failing to institute them represents a lack of due diligence.

The Court considered that the initial evaluation process should include effective mechanisms for obtaining information following the child's arrival at the entry place, post or port, or as soon as the authorities are aware of her or his presence in the country, in order to determine her or his identity and, if possible, that of the parents and siblings, in order to transmit this to the State agencies responsible for making the evaluation and providing the measures of protection, based on the principle of the child's best interest.

Since this is an initial stage of identification and assessment, the Court considers that apart from offering certain minimum guarantees, the procedural mechanisms that the States adopt must be designed, in accordance with the practice generally followed, to achieve the following basic priority objectives: (i) treatment in keeping with the child's condition as such and, in case of doubt about the age, assessment and determination of this. If uncertainty remains about the age, it should be considered that the individual is a child, and she or he should be treated as such; (ii) determination of whether the child is unaccompanied or separated; (iii) determination of the nationality of the child or, where appropriate, of her or his statelessness; (iv) obtaining information on the reasons for the child's departure from the country of origin, on her or his separation from the family if this is the case, on the child's vulnerabilities and any other element that reveals or refutes the need for some type of international protection, and (v) adoption of special measures of protection, if necessary and pertinent in view of the best interest of the child. The data should be collected during the initial interview and recorded adequately so as to ensure the confidentiality of the information.

Lastly, the Court considers that it is crucial that States define clearly and within their institutional structure, the corresponding assignment of responsibilities, respecting the competences of the relevant State organs and, if necessary, adopt pertinent measures to achieve effective inter-institutional coordination in the determination and adoption of the special measures of protection required, grant the competent authorities the adequate budgetary resources, and provide specialized training for its personnel.

Guarantees of due process applicable in immigration proceedings involving children

In order to ensure access to justice under equal conditions, to guarantee effective due process, and to ensure that the best interest of the child is a paramount consideration in all the decisions adopted, States must guarantee that the administrative or judicial proceedings in which a decision is taken on the rights of migrant children are adapted to their needs and are accessible to them.

On this grounds, the Court referred to the following aspects: (i) the right to be notified of the existence of proceedings and of the decision adopted during the immigration proceedings; (ii) the right that immigration proceedings are conducted by a specialized official or judge; (iii) the right of the child to be heard and to participate in the different stages of the proceedings; (iv) the right to be assisted without charge by a translator or interpreter; (v) effective access to communication with consular authorities and to consular assistance; (vi) the right to be assisted by a legal representative and to communicate freely with the representative; (vii) the obligation to appoint a guardian in the case of unaccompanied or separated children; (viii) the right that the decision adopted has assessed the child's best interest and is duly

reasoned; (ix) the right to appeal the decision before a higher court with suspensive effect, and (x) reasonable time for the duration of the proceedings.

Principle of non-deprivation of liberty of children owing to their irregular migratory situation

From the wording of the request, the question submitted is based on two premises founded on international human rights law and admitted by the jurisprudence of this Court. These are: (i) the principle of *ultima ratio* (last resort) of the deprivation of liberty of children, and (ii) the requirement to provide the grounds for the need to use measures of deprivation of liberty of a precautionary nature owing to infringements of immigration laws as an exceptional measure.

On the grounds that the offenses concerning the entry or stay in one country may not, under any circumstances, have the same or similar consequences to those derived from the commission of a crime, and in recalling the different procedural purposes between migration and criminal proceedings, the Court considers that the principle of *ultima ratio* of the imprisonment of children is not within the scope of the consultation that was put forward, namely in the arena of immigration proceedings.

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

Characteristics of the priority measures for the comprehensive protection of the rights of child migrants and guarantees for their application

Having previously established the scope of the right to personal liberty with regard to child migrants based merely on non-compliance with immigration laws, when interpreting that this involves a general principle of non-deprivation of liberty, the Court reaffirmed that liberty is the rule while the immigration situation is decided or safe voluntary repatriation is implemented, and the measures to be decided should not be conceived as alternatives to detention, but rather as measures for priority implementation, whose main objective must be the comprehensive protection of rights, based on an individualized assessment and the best interest of the child.

Specifically, the Court considered that said set of measures that should be implemented for children based on their irregular migratory status must be established in the domestic law of each State. Likewise, the procedure for implementing the measures must be regulated, ensuring respect for the following basic guarantees: a competent administrative or judicial authority; the views of the children concerning their preference must be taken into account; the best interest of the child must be a primary consideration in decision-making; and the guarantee of the right to a review of the decision in case it is considered that it is not the appropriate or the least harmful measure, or that it is being used in a punitive manner.

In sum, the Court considered that child migrants and, in particular, those in an irregular migratory situation, who are in more vulnerable circumstances, require host

States to take actions specifically designed to provide priority protection for their rights, which must be defined in accordance with the particular circumstances of each specific case; in other words, whether the children are with their family, separated or unaccompanied, and based on their best interests. To this end, States, in compliance with their international obligations in this matter, must design and incorporate into their internal law a set of non-custodial measures to be ordered and implemented while the immigration proceedings are held that promote, above all, the comprehensive protection of the rights of the child, in keeping with the characteristics described above, with strict respect for their human rights and the principle of legality.

Basic conditions for places to accommodate child migrants and state obligations corresponding to custody for migratory reasons

If States resort to such measures as placing children in a shelter or accommodation, either for a short period or for as long as necessary to resolve the immigration status, the Court recalled the need to separate migrants in custody from persons who have been accused or convicted of criminal offenses, requiring that centers to accommodate migrants must be specifically intended for this purpose.

The places for accommodating children should respect the principle of separation and the right to family unity, so that, in the case of unaccompanied or separated children, they should be lodged in places other than those that correspond to adults and, in the case of accompanied children, they should be lodged with their family members, unless separating them is more appropriate in application of the principle of the best interest of the child; in addition, secure material conditions and an adequate regime that ensure the comprehensive protection of rights in a non-custodial environment.

Guarantees of due process in measures that entail restriction or deprivation of personal liberty of children for migratory reasons

The Court will specified and detailed a number of important safeguards that should become operational in situations relating to the restriction of personal that may eventually constitute or lead, depending on the circumstances of the particular case, to a measure that results in deprivation of liberty under the understanding that such situations may occur in practice.

Children, especially when they are foreigners detained in a different social and legal environment from their own and frequently in a country with a language they do not know, experience a situation of extreme vulnerability. This presence of conditions of real inequality makes it compulsory to adopt compensatory measures that help reduce or eliminate the obstacles and deficiencies that impede or reduce the effective defense of their interests. This is how the State should ensure the principle of equality before the law and the courts, and the corresponding prohibition of discrimination.

Consequently, the Court referred to the following aspects: (i) lawfulness of the deprivation of liberty; (ii) prohibition of arbitrary detention or imprisonment; (iii) right to be informed of the reasons for the arrest or detention in a language that the person understands; (iv) right to be taken promptly before a judge or other competent official; (v) right to notify a family member, guardian or legal representative and to communicate with the exterior and, in particular, with the specialized international agencies; (vi) right to information and effective access to consular assistance; (vii) right to legal assistance by a legal representative, and in the case of unaccompanied or separated children, the right to the appointment of a guardian; and (viii) right to have

recourse to a competent judge or court for a decision to be taken, without delay, on the lawfulness of the arrest or detention.

Principle of non-refoulement

The prohibition to return, expel, deport, repatriate, reject at the border, or not to admit or in any way transfer or remove a child to a State when the child's life, security and/or liberty is at risk of being jeopardized because of persecution or threat, generalized violence or massive violations of human rights, among others, nor where the child is in danger of being subjected to torture or other cruel, inhuman or degrading treatment, or to a third State from which she or he may be sent to one in which these risks may be encountered, receives additional protection in other human rights norms, a protection that extends to another type of gross human rights violations, understood and analyzed from a perspective of age and gender, as well as under the rationale established by the Convention on the Rights of the Child itself, which makes the determination of the best interest surrounded by the due guarantees a central aspect when adopting any decision that concerns the child and, especially, if the principle of *non-refoulement* is involved.

The foregoing leads to the conclusion that the competence of national authorities to decide who may remain on its territory and, consequently, the power to return a person to his country of origin or to a third country is conditioned by the obligations derived from international law and, in particular, refugee law, international human rights law, the prohibition of torture and Article 22(8) of the American Convention. Indeed, the principle of *non-refoulement* is an integral part of these different branches of international law in which it has been developed and codified. However, in each of these contexts, the content of the principle of *non-refoulement* has a particular sphere of application *ratione personae and materiae*, and specific correlative obligations, which must be understood to have a complementary nature in the terms of Article 29 of the American Convention and the *pro persona* principle. Overall, this entails making the most favorable interpretation for the effective enjoyment and exercise of the fundamental rights and freedoms by applying the norm that accords the greatest protection to the human being.

The Court considers that complementary protection constitutes a normative development that is consistent with the principle of *non-refoulement*, by means of which States safeguard the rights of those who do not qualify as refugee or under any other migratory status but who cannot be returned. This complementary protection should recognize the basic rights of the persons protected.

As established in the Convention on the Rights of the Child and other provisions for the protection of human rights, any decision on the return of a child to the country of origin or to a safe third country shall only be based on the requirements of her or his best interest, taking into account that the risk of violation of the child's rights may be manifested in particular and specific ways owing to age.

Proceedings to ensure the right of children to seek and receive asylum

In order to ensure the practical effects of the right to seek and receive asylum established in Articles 22(7) of the Convention and XXVII of the American Declaration and to guarantee its exercise in conditions of equality and without discrimination, the Court has emphasized the overriding requirement that States must design and implement fair and efficient proceedings to determine whether the applicant meets the

criteria to exercise this right and to request refugee status, taking into account that the definitions contain subjective and objective elements, which can only be ascertained by means of individualized proceedings that permit a proper examination of the asylum request and that prevent returns that are contrary to international law.

The State obligation to establish and follow fair and efficient procedures in order to identify potential asylum applicants and to make a refugee status determination through an suitable and individualized analysis of the petitions and their corresponding guarantees, must include the specific components developed in light of the comprehensive protection due to all children, applying fully the guiding principles and, especially those referring to the child's best interest and participation.

The Court finds that this obligation entails: not impeding entry to the country; if risk and needs are identified, the person should be given access to the State entity responsible for granting asylum or recognition of refugee status or other procedures that are suitable for the protection and specific attention to the circumstances of each case; priority processing of requests for asylum made by children as the main applicant; the availability of reception personnel in the entity, who can examine the child to determine her or his state of health; conducting an examination and interview endeavoring not to cause further trauma or revictimization; having available a place to accommodate the applicant, if they do not have one; issuing an identity document to avoid return; studying the case, with sufficient flexibility as regards the evidence; assigning an independent and trained guardian in the case of unaccompanied or separated children; if refugee status is granted, proceed to carry out family reunification procedures, if necessary in view of the best interest of the child; and lastly, seeking a durable solution, such as voluntary repatriation, resettlement or social integration, in accordance with the determination of the best interest of the child.

Right to family life of children in the context of procedures for the expulsion or deportation of their parents for migratory reasons

Any administrative or judicial body that is to make a decision on the separation of family members, due to expulsion based on the immigration status of one or both parents, must employ a weighting analysis that considers the particular circumstances of the case and guarantees an individualized decision, prioritizing in each case the best interest of the child. In situations in which the child has a right to the nationality of the country from which one or both of her or his parents may be expelled, or the child complies with the legal conditions to reside there on a permanent basis, States may not expel one or both parents for administrative immigration offenses, as the child's right to family life is sacrificed in an unreasonable or excessive manner.

In view of the fact that the preceding obligations refer to a peculiar, complex and evolving issue of our time, they shall be understood as a contribution to the progressive development of International Human Rights Law, process in which, consequently, this Advisory Opinion is inserted.

The full text of the Advisory Opinion is available at the following link: <http://www.corteidh.or.cr/index.php/en/advisory-opinions>