

TABLE 17b.

Domestic legislation prohibits the deprivation of liberty of a migrant minor in an irregular situation, decreed by this single circumstance

See also table 17a
(IACHR Advisory Opinion 21, 2014)

<p>Why is it good practice?</p>	<p>According to the Inter-American Court of Human Rights (Advisory Opinion 21, 2014) the deprivation of liberty of a migrant child in an irregular situation, decreed by this single circumstance, is arbitrary.</p>	
<p>Country</p>	<p>Date</p>	<p>Source</p>
<p>Brazil Declaration</p>	<p>2014</p>	<p>"Borders of Solidarity and Safety" Programme (...) c) Design operational rules and regulations on alternative measures to the administrative migratory detention of asylum seekers, in particular accompanied and unaccompanied children.</p> <p>http://www.refworld.org/cgi-bin/tehis/vtx/rwmain?page=search&docid=5487065b4&skip=0&query=Brazil%20Declaration</p>
<p>Costa Rica</p>	<p>2011</p>	<p>Regulations for Refugees (2011)</p> <p>Article 47. Under no circumstances shall the detention of minors, whether accompanied, unaccompanied or separated, proceed. If a case is identified in these circumstances, the PANI (Child Protection Institute) shall be immediately notified in order to identify alternative solutions so that they receive adequate housing and proper supervision. In the case of minors who accompany their parents, all alternatives to detention that may be appropriate should be considered. This special coordination procedure shall also be applied when older adults or people with disabilities are identified, in which case coordination shall be carried out with the corresponding government agencies.</p> <p>Available in Spanish at: http://www.acnur.org/t3/fileadmin/Documentos/BDL/2011/8171.pdf</p>
<p>Ecuador</p>	<p>2017</p>	<p>Organic Act on Human Mobility</p> <p>Article 2. Principles</p> <p>Best interests of children and adolescents.</p> <p>Under no circumstances may their arrest be ordered for administrative immigration offences. When the best interests of the child or adolescent demand keeping the family unit together, the imperative of non-deprivation of</p>

		<p>liberty shall be extended to their parents, without prejudice to the alternative measures that may be issued by immigration control.</p> <p>Available in Spanish at: http://www.acnur.org/fileadmin/Documentos/BDL/2017/10973.pdf</p>
Guatemala	2016	<p>Decree No. 44-2016. Migration Code (2016)</p> <p>Article 173. (...) As a general rule, unaccompanied children or children separated from their family shall not be deprived of their freedom.</p> <p>Available in Spanish at: http://www.acnur.org/fileadmin/Documentos/BDL/2017/10978.pdf</p>
Mexico	2015	<p>Regulations to the General Law on the Rights of Children and Adolescents</p> <p>Article 111. At no time shall migrant children or adolescents, regardless of whether or not they are travelling in the company of an adult, be deprived of their liberty at migrant holding centres or any other immigration detention centre.</p> <p>Available in Spanish at: http://www.acnur.org/t3/fileadmin/Documentos/BDL/2016/10626.pdf</p>
Nicaragua	2008	<p>Law No. 655 on Refugee Protection</p> <p>ARTICLE 10. No administrative or criminal penalty:</p> <p>(...) C) In the case of applicants for refugee status with special needs, such as victims of sexual or gender-based violence, the elderly, persons who have suffered extreme violence or torture, unaccompanied or separated minors, the disabled, or persons with a physical or mental illness, cannot be detained and shall be immediately transferred to an institution that can provide them with the necessary assistance.</p> <p>Available in Spanish at: http://www.acnur.org/t3/fileadmin/Documentos/BDL/2008/6435.pdf?view=1</p>
Dominican Republic	2004	<p>REGULATIONS FOR IMPLEMENTING THE GENERAL MIGRATION LAW No. 285-04</p> <p>ARTICLE 134.- Detention refers to the deprivation of liberty and custody of the foreigner by the immigration authority. It begins with the issuing of a detention order by the Director General of Migration, or as a measure following the verification of the illegal immigration status of a person.</p> <p>PARAGRAPH.- Detention shall be the last resort, and the immigration authority shall therefore only use it if the other resources described in these Regulations are deemed insufficient. Detention shall never be used in cases involving underage persons, pregnant or nursing mothers, the elderly and asylum-seekers.</p>

		Available in Spanish at: http://www.acnur.org/t3/fileadmin/scripts/doc.php?file=t3/fileadmin/Documents/BDL/2011/8190
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Compiled by the Regional Legal Unit of the Bureau for the Americas, UNHCR