

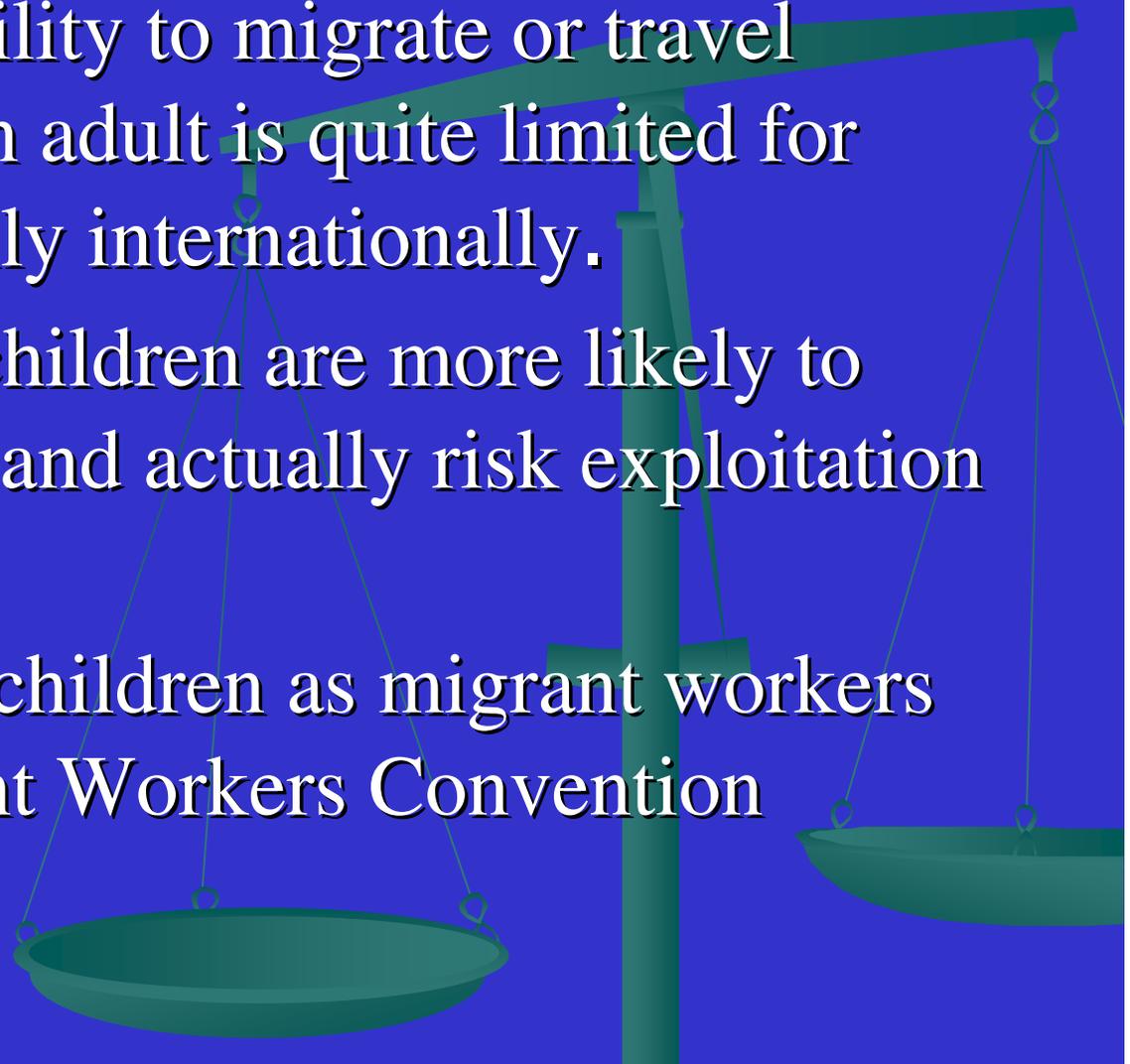


Child migrants – legal protection and criminalisation

Workshop on Independent Child Migrants
Policy Debates and Dilemmas
UNICEF IRC and University of Sussex
London 12 September 2007

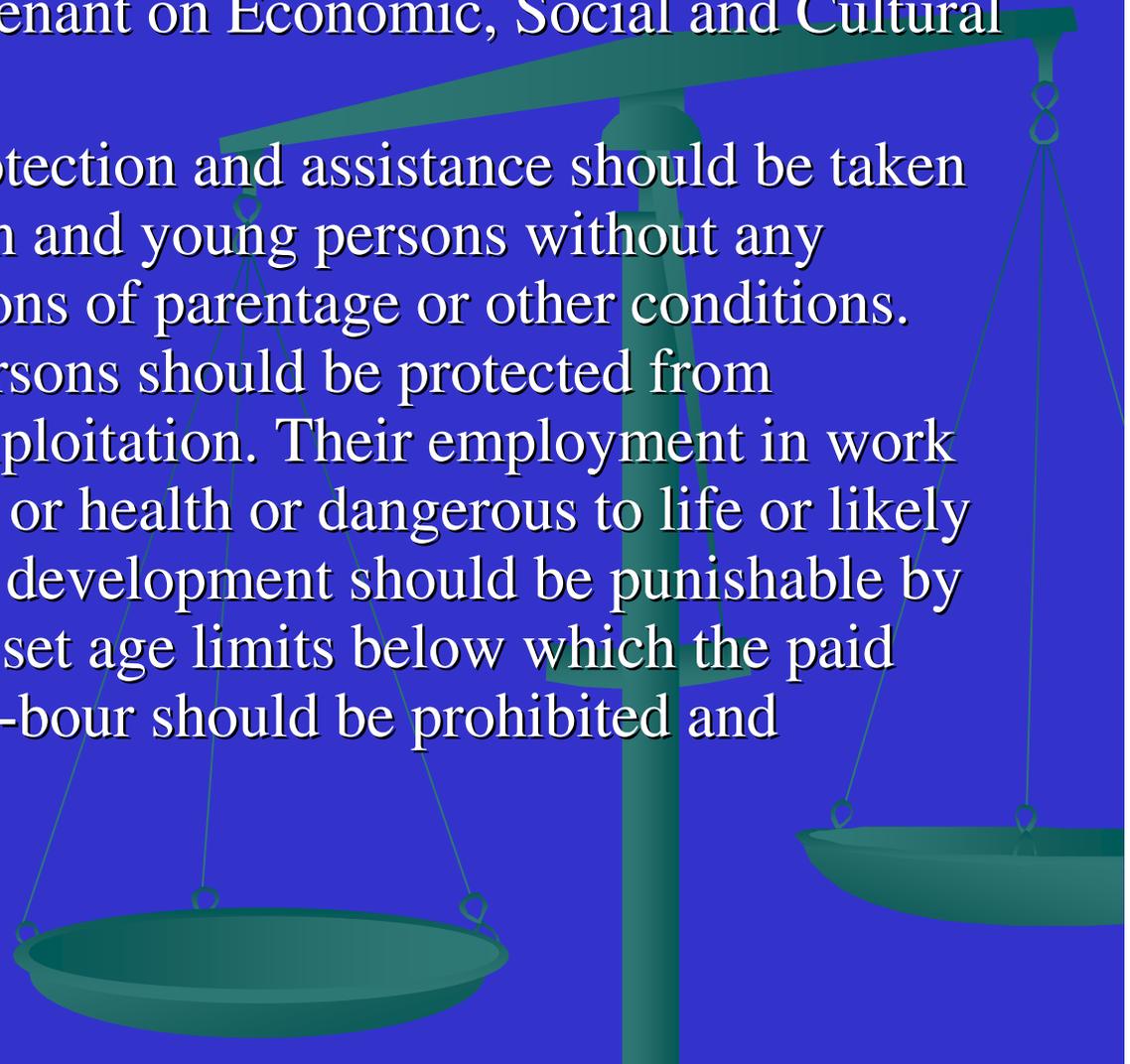
Migrant Workers - Children?

- Generally, the ability to migrate or travel legally without an adult is quite limited for children, especially internationally.
- This means that children are more likely to travel irregularly and actually risk exploitation or abuse.
- No protection of children as migrant workers in the UN Migrant Workers Convention



A right to work?

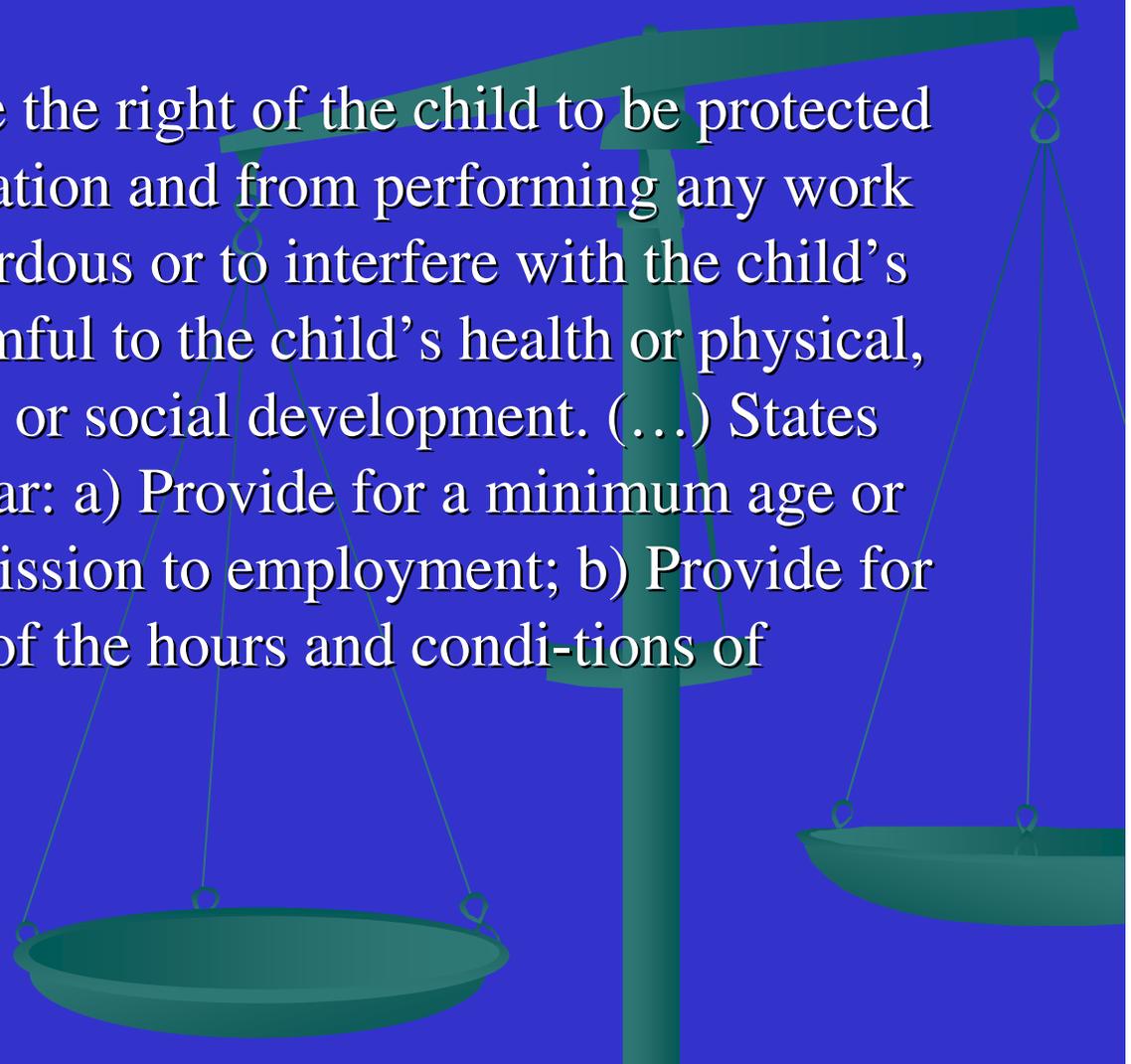
- Article 10.3 of the Covenant on Economic, Social and Cultural Rights states that
- special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.



CRC

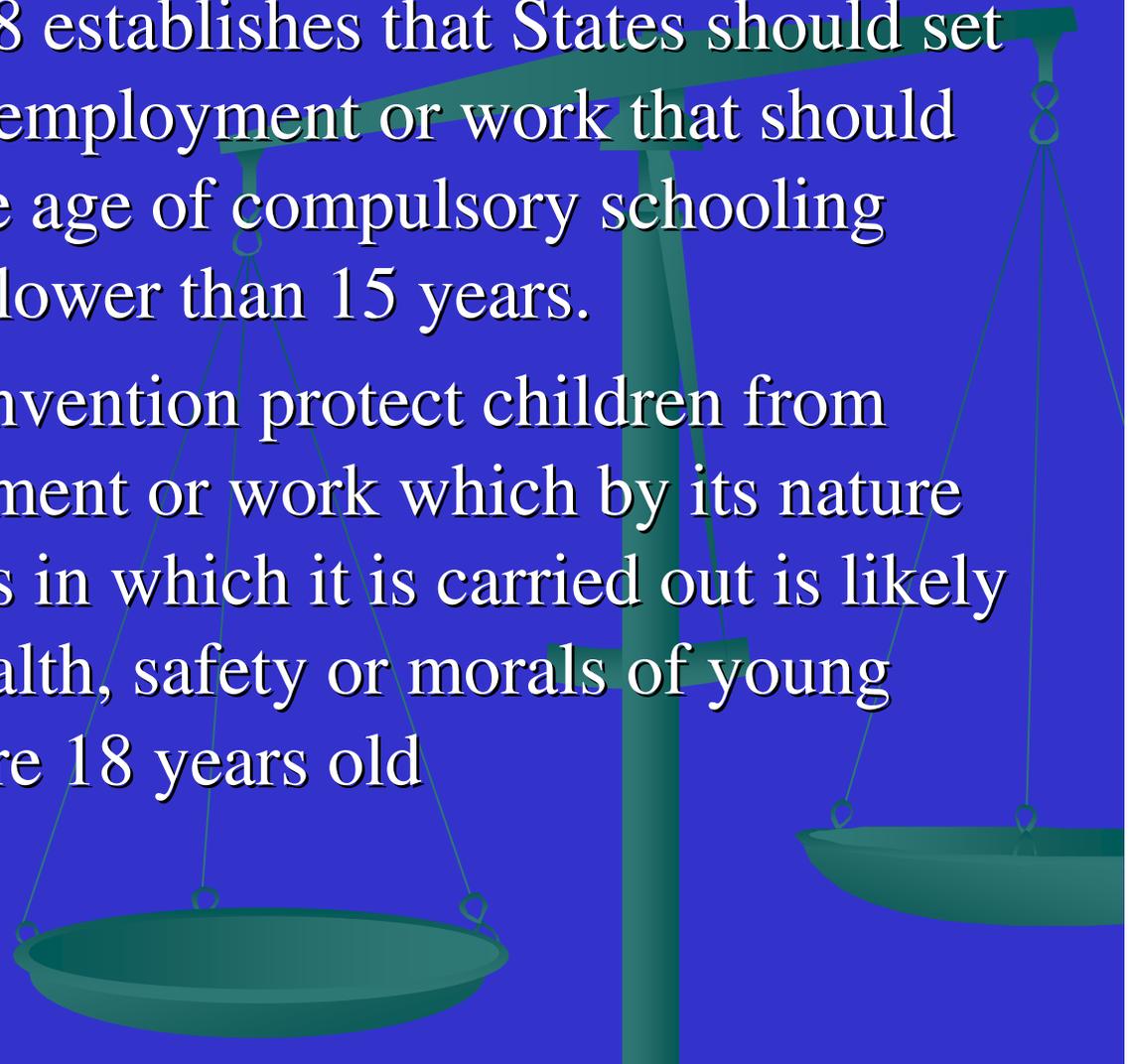
Art 32:

- States Parties recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development. (...) States Parties shall in particular: a) Provide for a minimum age or minimum ages for admission to employment; b) Provide for appropriate regulation of the hours and conditions of employment (...)



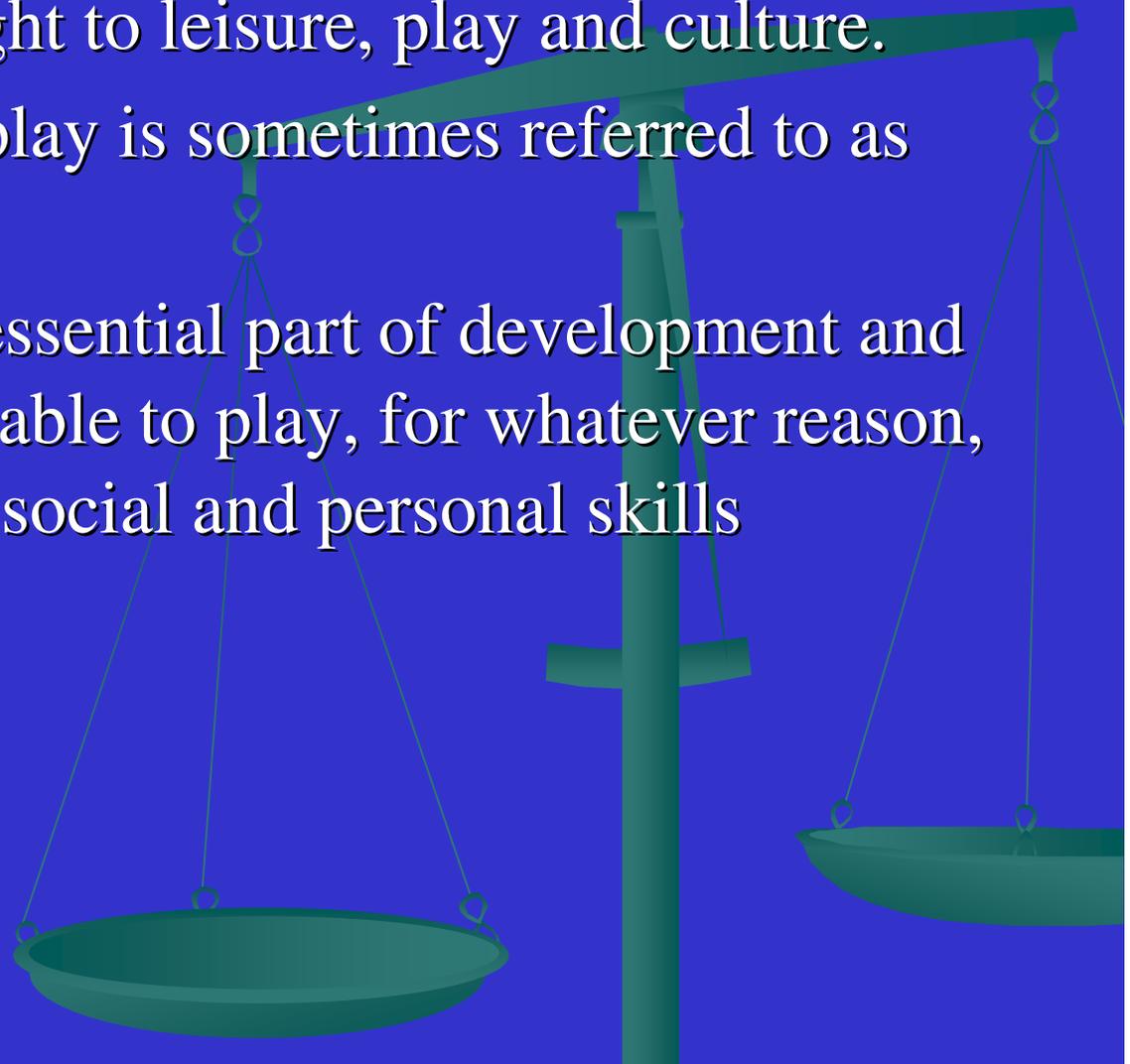
ILO Convention 138

- ILO Convention 138 establishes that States should set a minimum age for employment or work that should be no lower than the age of compulsory schooling and in any case not lower than 15 years.
- Further the ILO Convention protect children from any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons until they are 18 years old

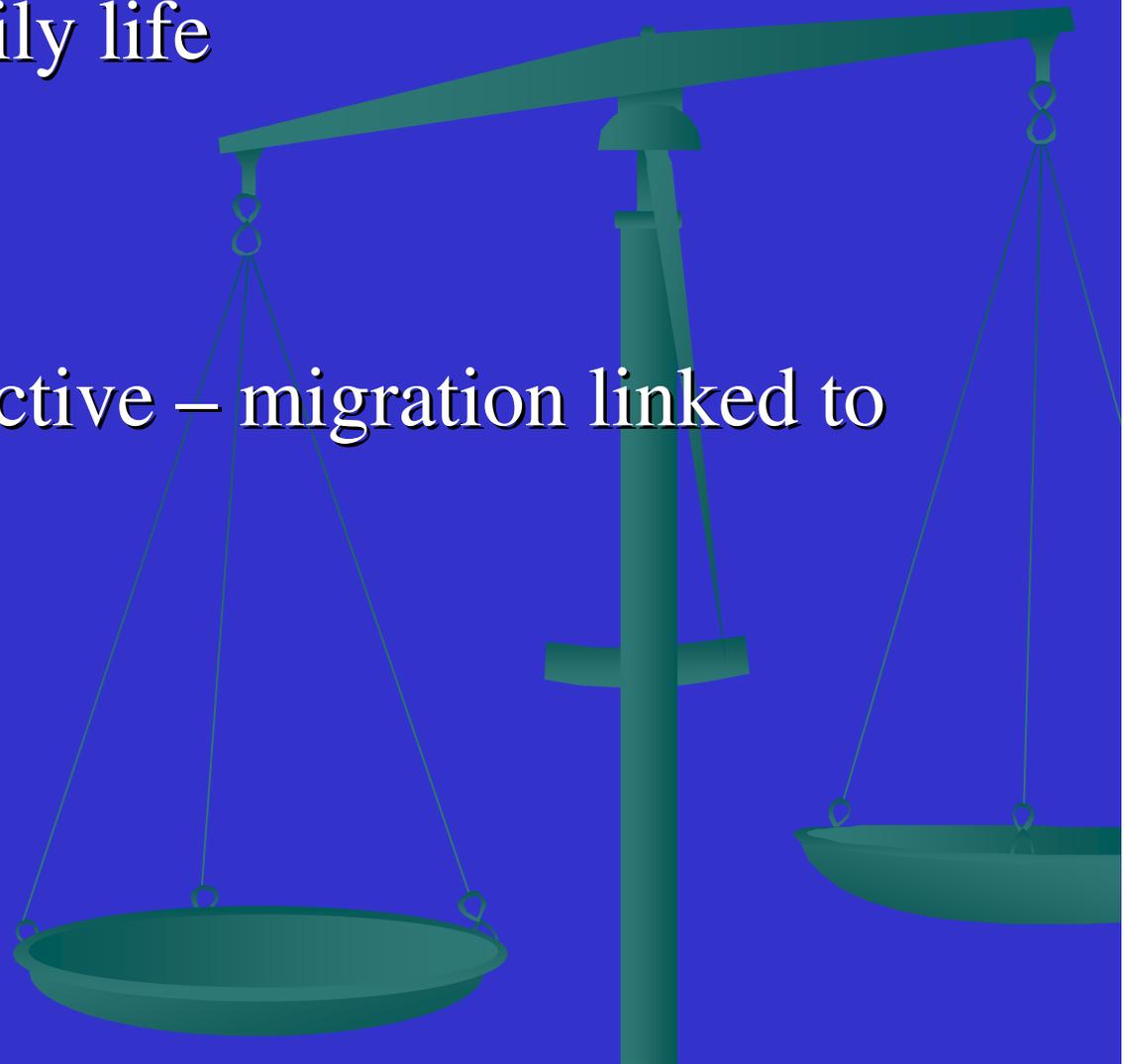


CRC cont.

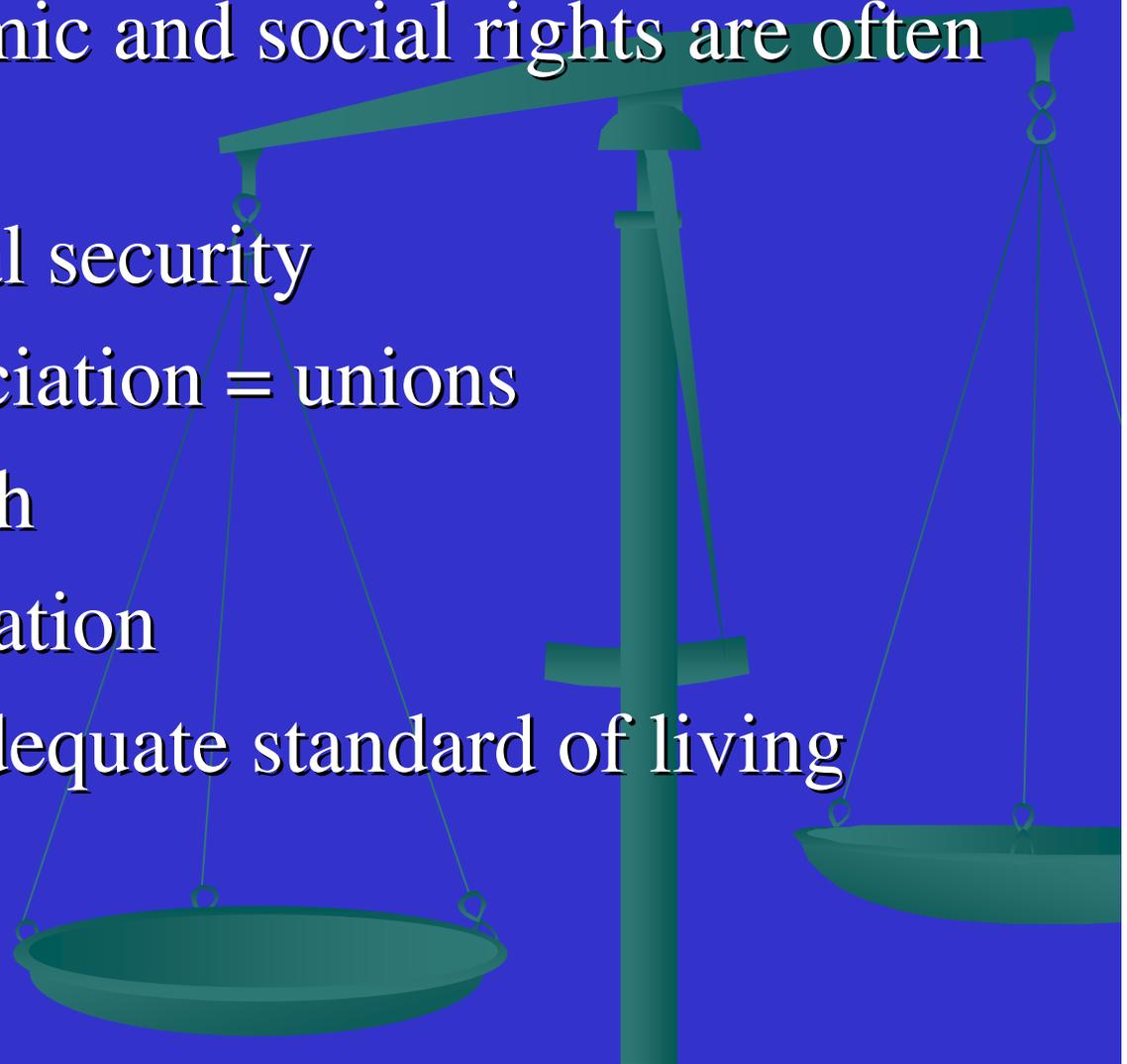
- Article 31 on the right to leisure, play and culture.
- Children's right to play is sometimes referred to as the "forgotten right."
- But play is also an essential part of development and children who are unable to play, for whatever reason, may lack important social and personal skills



- The Right to family life
- Return?
- Reunification
- A broader perspective – migration linked to development.

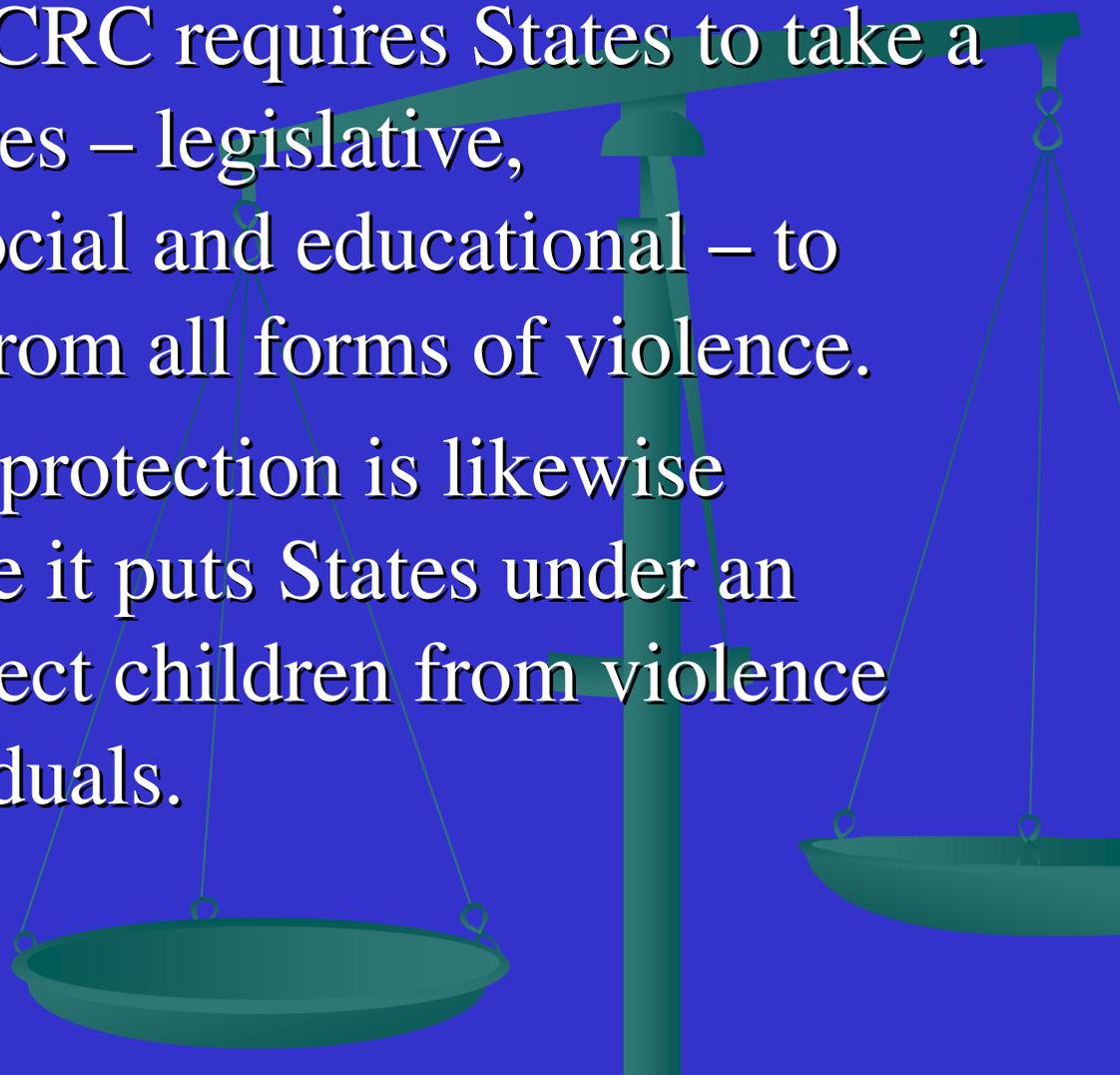


- Migrants' economic and social rights are often jeopardised
- The right to social security
- The right to association = unions
- The right to health
- The right to education
- The right to an adequate standard of living



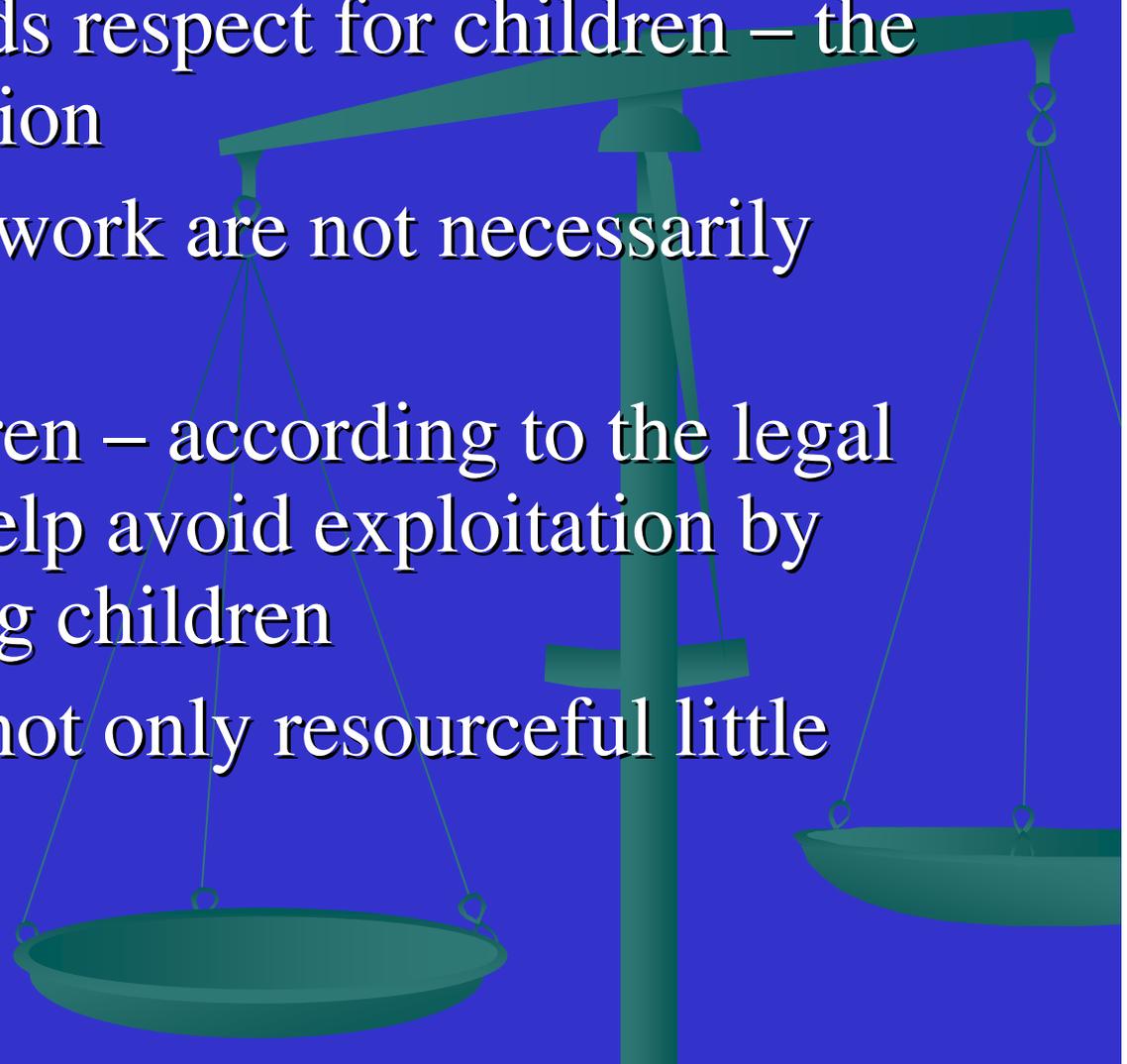
Protection against abuse

- Article 19 of the CRC requires States to take a variety of measures – legislative, administrative, social and educational – to protect children from all forms of violence.
- The “horizontal” protection is likewise fundamental since it puts States under an obligation to protect children from violence form other individuals.



Respecting Children

- The CRC demands respect for children – the right to participation
- Exploitation and work are not necessarily synonymous
- Respecting children – according to the legal framework can help avoid exploitation by accepting working children
- But children are not only resourceful little workers....



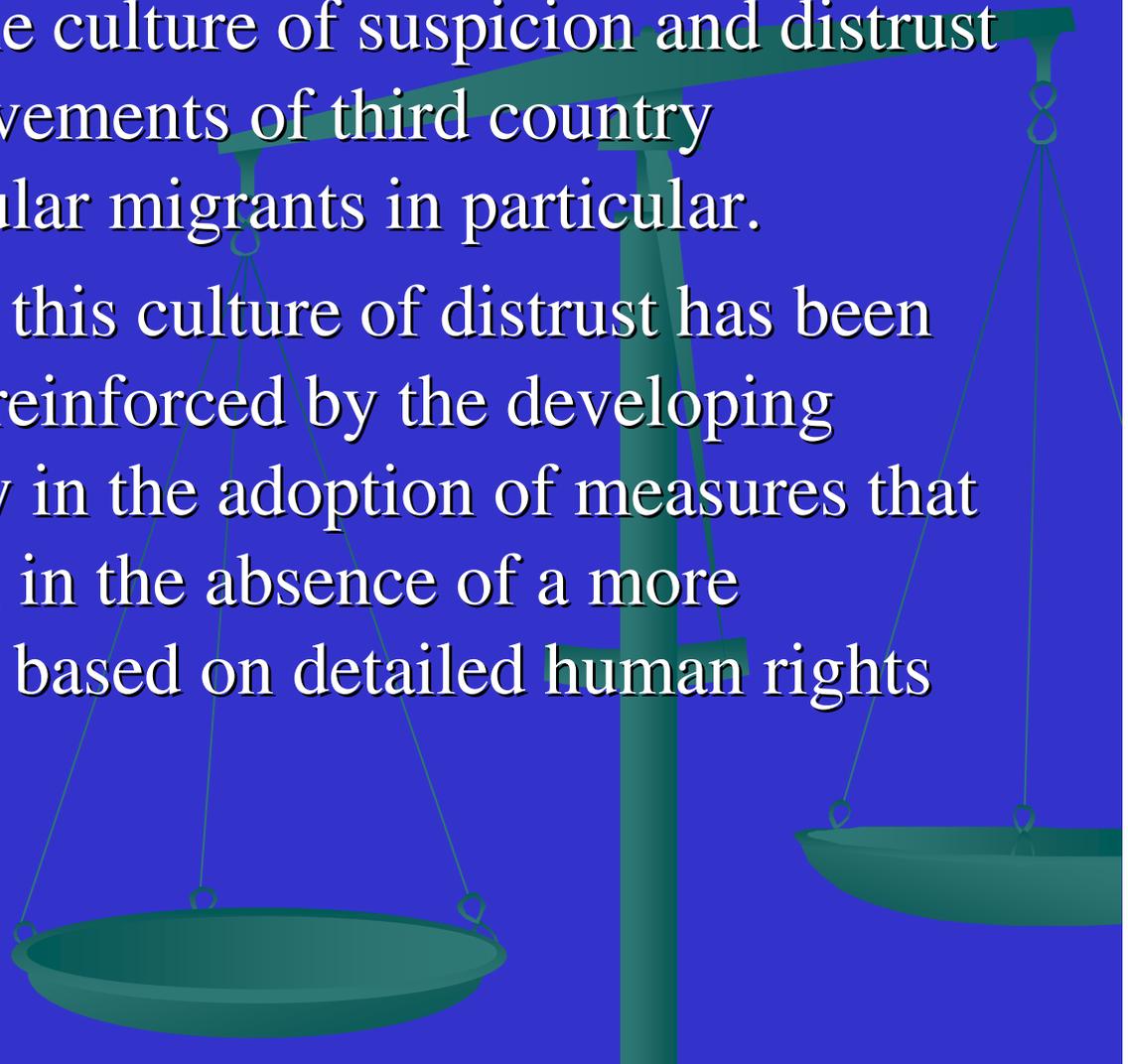
Legal status...

... is unimportant!!!!
- Legally speaking...



Criminalisation of migrants

- Criminalisation = the culture of suspicion and distrust surrounding the movements of third country nationals, and irregular migrants in particular.
- To a certain degree, this culture of distrust has been generated and then reinforced by the developing policies, particularly in the adoption of measures that stigmatise migrants, in the absence of a more principled approach based on detailed human rights guarantees.

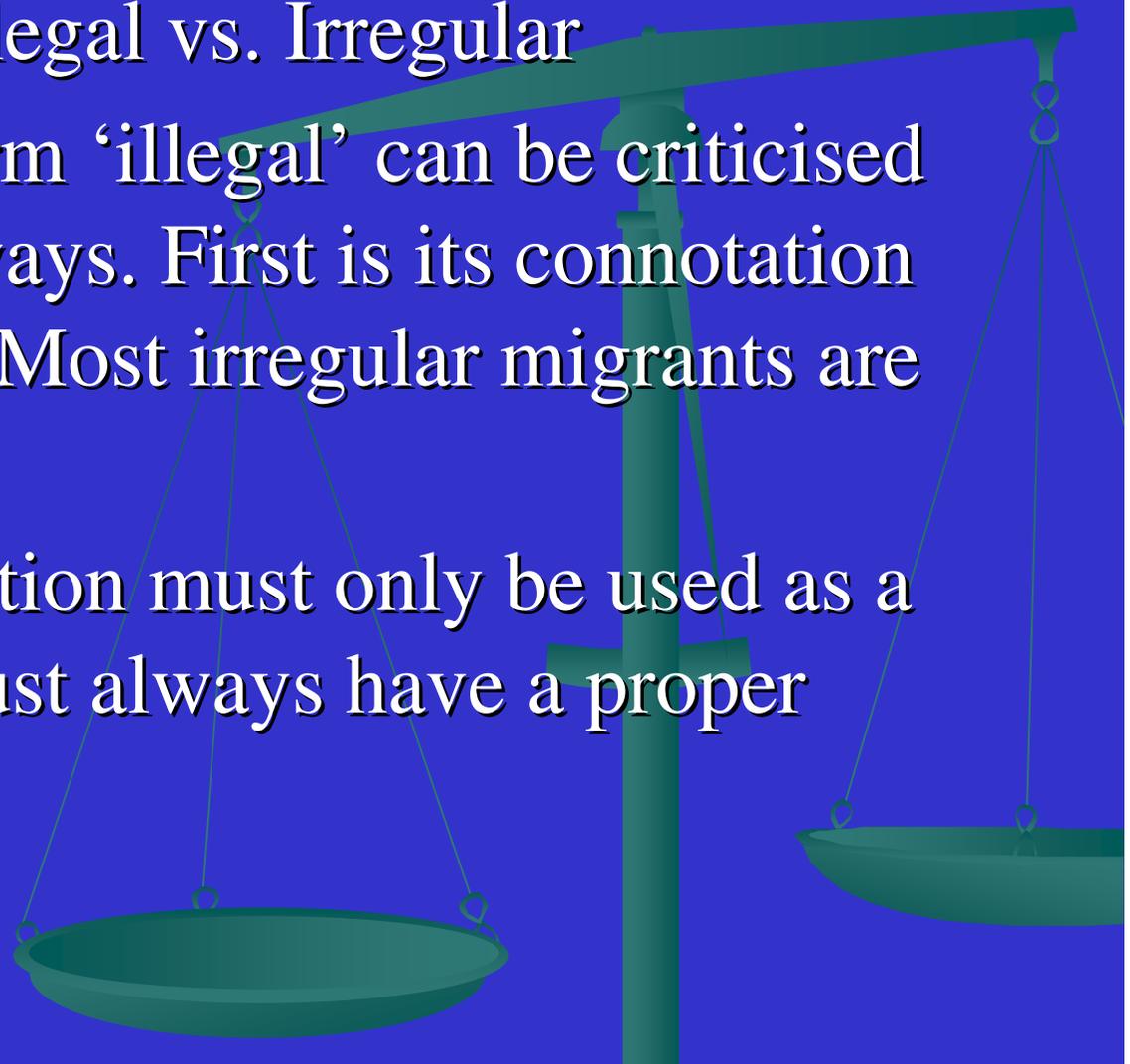


Examples

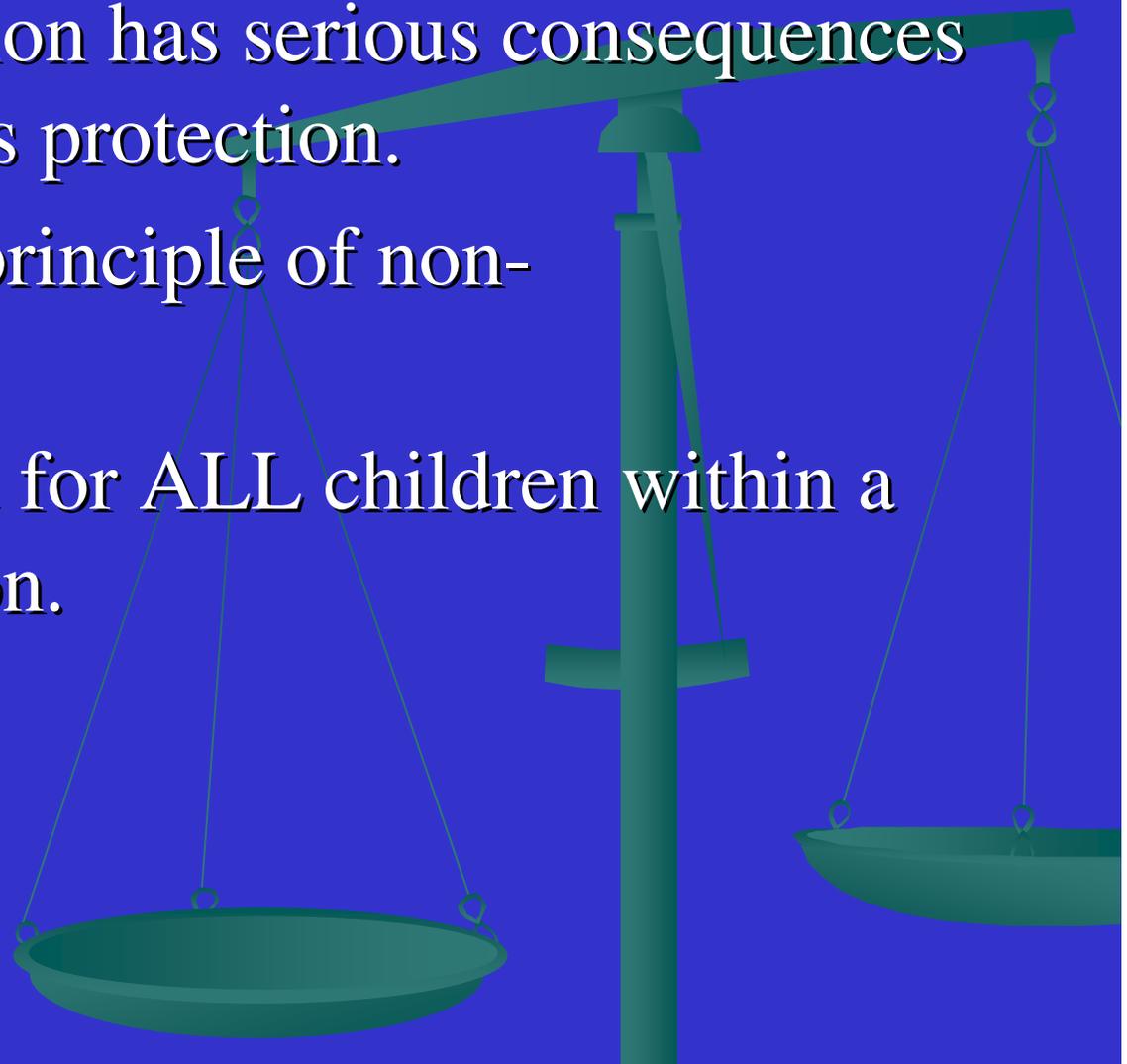
- Terminology – illegal vs. Irregular

The use of the term ‘illegal’ can be criticised in at least three ways. First is its connotation with criminality. Most irregular migrants are not criminals.

- Detention - detention must only be used as a last resort and must always have a proper justification.



- This criminalisation has serious consequences for Human Rights protection.
- Violation of the principle of non-discrimination
- The CRC is valid for ALL children within a State's jurisdiction.



THANK
YOU!

