

Committee on the Rights of the Child
2012 Day of General Discussion

“The Rights of All Children in the Context of International Migration”

OUTLINE FOR PARTICIPANTS

I. Introduction

The Committee on the Rights of the Child (the Committee) dedicates annually one Day of General Discussion (DGD) to a specific article of the Convention on the Rights of the Child (CRC) or to a child-rights issue, in accordance with rule 79 of its Rules of Procedure. The theme chosen for the Committee’s 2012 DGD is: “The Rights of All Children in the Context of International Migration”. This will be discussed in Geneva, Palais des Nations, on 28 September 2012, during the Committee’s 61st session. This Outline aims to provide participants with an overview of the main substantive and procedural parameters of the DGD.

II. Objectives and Scope for the 2012 DGD

Overall objective of the 2012 DGD

To promote, at the international and national levels, fulfillment of the rights of all children in the context of international migration.

This overall objective along the lines of the below specific objectives will be achieved through broad consultation and the participation of a wide range of actors, including representatives of UN human rights mechanisms, UN bodies and specialized agencies, NGOs, national human rights institutions, individual experts, as well as children. They will also be achieved through the consideration of the background documents/reports and other written submissions submitted for the DGD.

Given the limited time the DGD will have to address this complex subject, all parties interested may submit written contributions (*please see the Guidelines for Written Submissions on the 2012 CRC DGD Webpage*) to the Committee which will inform the deliberations.

Specific objectives of the 2012 DGD

1. Help identify specific child rights issues in the normative, policy and programme areas in relation to all children in international migration situations, regardless of their status (regular or irregular).
2. Identify principles and examples of good policies and practices in relation to children in international migration situations.
3. Address international standards protecting the rights of the child in the context of international migration and identify how these international standards take or

should take into account the guiding principles in the Convention on the Rights of the Child (non-discrimination, best interests of the child, the right to life, survival and development and respect for the views of the child).

4. Provide further substantive information to facilitate the Committee's dialogue with and recommendations to States parties on issues relating to the rights of children in international migration situations.
5. Promote exchange of information and collaboration between the actors dealing with the rights of children in the context of international migration, and raise awareness on them.

III. Background and Broader Context

Estimated number of international child migrants:

International migration, particularly irregular migration, has gradually become an important issue at national, regional, and global levels and it is increasingly at the forefront of political and legislative agendas in many countries. It is estimated there are:

- 33.3 million international migrants under the age of 20, which represents around 16 per cent of the total migrant population.
- Adolescents ages 15 to 19 account for some 34 per cent (11.2 million) of all migrants under the age of 20, followed by 10-14 year olds who comprise approximately 26 per cent (8.8 million).
- Age groups 5 to 9 and 0 to 4 represent 22 per cent (7.4 million) and 18 per cent (5.9 million) of the total migrant population under 20 years of age, respectively.
- Around 60 per cent (19.9 million) of international migrant children and adolescents under the age of 20 years of age live in the less developed regions of the world.¹

There are limited statistics on the global movement of children and the lack of disaggregated data is one of the many challenges in formulating and implementing child-sensitive migration policies. With regard to irregular migration, the Global Migration Group (GMG) has stated that “[a]lthough the number of migrants without proper legal status in transit or host countries is unknown, they are estimated to be in the tens of millions worldwide.”² Within this context, millions of children are likely to face severe human rights violations and deprivations due to their migration status or that of their parents. The Special Rapporteur on the Human Rights of Migrants has also pointed out the general absence of the age factor in migration policies, and the need for accurate and rights-based statistical information on the number of children involved in the international migration process.

¹ International Migrant Children and Adolescents: Facts and Figures, UNICEF- DPP, UNDESA and University of Houston, 2010.

² See: GMG, Statement of the Global Migration Group on the Human Rights of Migrants in Irregular Situation, Geneva on 30 September 2010, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10396&LangID=E>

Ways in which children are affected by migration:

Children are affected by international migration in various ways: children are left behind by one or both parents who migrate; they accompany their migrating parents; and they migrate alone, independently of parents and adult guardians. Some children return to their countries of origin, either voluntarily or as the result of force. Millions of children are increasingly affected by irregular migration in search of improved standards of living, work opportunities, security, education, and protection.

Increasingly restrictive migration policies, xenophobia, discrimination, as well as human trafficking, are only some of the risks and abuses that children in the context of international migration may face, especially if they are undocumented or in an irregular situation. The impact of international migration is best assessed by taking into account the economic, social and political situation under which it occurs, and the factors that influence an individual's decision to leave a country of origin. Human rights deprivations (economic, social, cultural, civil and political) and a lack of opportunities in countries of origin commonly constitute the main causes of migration for families, including children, adolescents and youth.

Children in an international migration context face multiple forms of discrimination in transit and destination countries. In particular, the irregular practices that lead to the discrimination and/or deprivation of the rights of undocumented children and adolescents have been raised by human rights treaty bodies, UN agencies, and civil society. These practices are rooted in a variety of factors, including: racist and xenophobic attitudes of the host population and/or public authorities; inaccurate information and prejudices about the impact of migration on the host society; lack of training of civil servants, particularly regarding human rights; and the absence of public policies meant to disseminate information on States' human rights obligations and the rights of migrants.³

Irregular migration:

Irregular migration is one of the fastest-growing forms of migration across the world. Estimating the number of irregular migrants remains a major challenge. Where data is available, this often lacks disaggregation by gender and/or age and/or origin. The lack of disaggregated data hinders efforts to protect the rights of children through the formulation and implementation of evidence-based policies.

Girls often migrate under irregular situations due to patterns of gender inequality in countries of origin. Discriminatory migration policies often limit regular migration channels for women and relegate them to the most vulnerable labour sectors or render them *de facto* dependents of male migrants. In this context girls and young women are particularly vulnerable to abuse, exploitation, trafficking and other human rights violations.

³ For the extent and variety of irregular practices on ESCR of migrant children in many countries around the globe, especially against female and undocumented migrant children, see: www.hrcam.org. This database, created by the National University of Lanús (Argentina) and UNICEF-DPP, compiles all the Concluding Observations formulated by UN Committees in the past decade, specifically on the rights of children affected by migration.

IV. The Rights of Migrant Children in International Human Rights Instruments and the Convention on the Rights of the Child

Numerous articles of the CRC recognize the rights of children who move from one country to another, particularly children who are separated or unaccompanied and those who are refugees. For example, articles 2, 3, 4, 6, 7, 8, 9, 10, 22, 27, and others are applicable and pertinent to their situation. The *Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* also contains provisions on the rights of children of migrant workers.⁴

The Committee has adopted several General Comments on the following topics that are directly related to migrant children's rights:

- The Aims of Education;
- Adolescent Health and Development in the Context of the Convention on the Rights of the Child ;
- The Treatment of Unaccompanied and Separated Children Outside their Country of Origin ;
- Children's Rights in Juvenile Justice;
- The Right of the Child to be Heard.

V. Structure of the DGD and the Focus Areas of its 2 Working Groups

To facilitate discussions during the DGD, the event will begin and conclude in full plenary. The opening plenary session will aim to provide all participants with an overview of the context of the discussions and the priority concerns for discussion. The concluding plenary will aim at an initial overview and consideration of the main findings arising out of discussions. To this end, the DGD will have two working groups with discussions on issues linked to the respective indicative questions listed below.

Working Group 1 – The International Legal Framework on the Rights of Children in International Migration Situations, Protection Gaps and Responsibility of States Parties in Countries of Origin, Transit and Destination.

Issues for consideration in Working Group One:

1. What policies and practices, including bilateral and multilateral cooperation, effectively ensure the realization of human rights of children in the context of international migration?
(*Including: institutionalized services and programmes, standardized procedures, minimum standards, training of officials, allocation of sufficient resources; access to basic services in countries of transit and destination*)

⁴ The Universal Declaration of Human Rights (article 13) and the International Covenant on Civil and Political Rights (article 12.1) guarantee the right to freedom of movement and residence within the borders of a State. The Special Rapporteur on the Human Rights of Migrants has stated that “all policies and programmes aimed at addressing the situation of children in the context of migration should have a human rights-based approach and be based on fundamental principles, such as the best interests of the child, non-discrimination and the right of the child to be heard in all decisions that concern him or her”.

2. What are some examples of successful strategies and partnerships between countries of origin, transit and destination that guarantee the human rights of children in the context of migration?
(Particularly in relation to best interest determination procedures, due process safeguards, family tracing and reunification, consular assistance, etc.)
3. What coordination mechanisms, and amongst which actors, are necessary to ensure that measures to guarantee the best interests of the child are applied at each stage of the migration process?
(From country of origin, through country of transit and during the entire stay in the country of destination)
4. How can Convention on the Rights of the Child (CRC) principles and obligations be applied as a primary consideration in any migration procedure and decision that might impact child rights?
5. What are the main gaps in States parties compliance with their legal obligations under the current international framework applicable to all children in the context of international migration?
(What are the specific gaps in the international legal framework leaving key groups of vulnerable children affected by international migration outside protection channels and measures?)
6. Which international fora/dialogue should include issues related to the human rights of children in the context of international migration?
(Particularly in relation to children left behind, ensuring improved cooperation, and information exchange between the appropriate actors and to develop concrete and innovative modes of cooperation)
7. What is the role of and jurisprudence from international and regional courts, as well as other international and regional bodies established under relevant human rights instruments, in terms of protecting the rights of children in the context of international migration?
8. Should States and other stakeholders consider the elaboration and promotion of a CRC-based Model Legal Framework, including minimum standards for migration, child and social protection legislation, as well as of related instruments?
9. What are State obligations under international law to ensure that children in the context of international migration, whether unaccompanied or with their families, access their rights and basic services?
(Including but not limited to: education, health care, housing, child protection, family-based alternative care)
10. What are the key principles, practices and policies in the international legal framework that should underline family reunification laws?
(How can family links be fostered in situations of circular migration? What are the obstacles to family reunification regimes that guarantee and effectively protect the right to family life and family unity for all children in the context of

international migration, including in the context of States' responses to irregular migration?)

11. What measures can be undertaken to establish and/or strengthen regular data collection and/or research by States parties on the human rights of children in the context of international migration?
12. What concrete steps should be taken by relevant international and regional bodies to advance enhanced international cooperation and shared responsibility between all States parties and actors involved throughout the international migration process.
(What steps could be taken by the international community to promote the collaboration and exchange of successful experiences between national institutions competent in the field of human rights promotion and protection, such as ombudspersons offices and other independent institutions?)

Working Group 2 – National level measures to implement the rights of children in international migration situations in countries of origin, transit and destination

Issues for consideration in Working Group Two:

1. What measures have been taken by States parties to prevent forced or unsafe migration of children?
(For example through public information campaigns, increased education and employment opportunities in the country of origin, enhanced access to regular migration channels, etc.) (What are the lessons learnt from the implementation of these measures? In what ways are States parties responsible for empowering children and creating and strengthening a child protection system supporting children and families at risk of embarking in unsafe and risky migration as well as children left behind?)
2. What special protection procedures and coordination mechanisms should be applied to children in the context of migration through national child protection systems, both in countries of transit and destination, to ensure that migration policies and practices abide by best interests determination procedures (in accordance with the CRC) and that children are not criminalized for illegal entry and ensured safe access to a State territory as well as first assistance?
(What actors should be involved and how can best interests (in accordance with the CRC) determination procedures be put in place in this context?)
3. How can States parties guarantee in law and in practice that migrant children, including in relation to rescue at sea, have effective access to key procedural safeguards including free legal aid, and in case they are unaccompanied, to a guardian in migration procedures, and also ensure the rights of children to due process and to be heard in all migration procedures?
(Which policies and programs should countries of origin put in place in order to ensure a child rights-based approach in consular assistance practices?)

4. What actors, which procedures and policies, and what criteria should be applied to determine whether repatriation of unaccompanied children is the most appropriate measure and in their best interests?
(How should these criteria be set? What are solutions that protect the human rights of children in the context of migration and which are in line with the child's best interest? How to ensure that States parties refrain from deporting children in the context of migration as a punitive measure?)
5. How to ensure that children in the context of international migration are not subject to administrative detention or criminalisation measures; what are child-rights-compliant alternatives to detention?
6. How and by which authorities are criminal records of children and adolescents officially handled by States parties?
(Inter alia: To what extent have criminal records had an impact on States parties policies and practices on return, repatriation and expulsion measures affecting children? To what extent are criminal records being used to justify such decisions, even in cases where the child has been integrated in the host country and has little connection with her/ his country of nationality, or in cases where it is in her/ his best interest to remain in the country?)
7. What are the duties and responsibilities stemming from the CRC for States parties towards children born to parents in irregular migration situations?
(How can States parties ensure that all children in the context of international migration have access to birth registration, a nationality, and, in the case of ius soli, legal residence for parents on the grounds of the right to family unity, and to prevent statelessness?)
8. What national laws, regulations or policies have States parties adopted to promote the integration of migrant children and children born to migrant parents in countries of transit and destination, and protect children from discrimination, xenophobia, abuse, violence and exploitation?
9. What examples exist of policies and practices aimed at ensuring the economic, social and cultural rights of those children, regardless of their or their parents' migration status?
10. To what extent have regularization programs impacted the rights of children in the context of international migration, including the right to development provided for in the convention?
11. What are good examples of tools and methods that are available or being developed to assess the situation and rights of children in the context of international migration? *(Are there good examples of child-rights impact assessments (CRIAs) used by State entities dealing with children in the context of international migration? How can it be encouraged that CRIAs are undertaken whenever there are new policies, proposed legislation, regulations or budgets being adopted, as well as when there are administrative changes at the national, regional and local level that can have an impact on migrant children.)*

12. What are good examples of inter-institutional cooperation (guided by the CRC standards and principles, and including civil society and child participation) among child protection and related bodies including; immigration authorities; the judiciary; education, health, social protection and labour sectors; organizations that promote gender equality; and, human rights institutions?

(These would, inter alia, include:

- *Coordination from ministerial to local authority and community level;*
- *Periodical elaboration of progress indicators on the rights of migrant children, and granting public access to this information; and,*
- *Independent monitoring mechanisms for policies and practices which have an impact on the rights of migrant children.)*

VI. Expected Outcomes

The CRC Committee and Member States:

At the end of its 62nd session, the Committee will issue a report of its 2012 DGD with the aim of highlighting potential recommendations for improving the implementation of the CRC in the areas discussed. The Committee's report of its 2012 DGD will be informed by discussions that took place at the DGD, including the recommendations proposed by the Working Groups, and the written contributions submitted to the Committee. In addition to documenting the DGD and its discussions, where appropriate and possible, the Committee it will also aim at highlighting recommendations with the potential of providing pragmatic guidance to States as well as to other relevant actors.

The CRC Committee and the participants in the DGD will benefit from the expert knowledge and information presented at this event, as well as from an in-depth analysis of the human rights challenges that children in the context of international migration face.
