



## Migration and the Human Rights of the Child

The following comments are supplied by the International Labour Organization in response to the request for views and comments concerning the above resolution 12/6 of the UN Commission on Human Rights.

### Introduction

Pursuant to the invitation to contribute to the study on the “challenges and best practices in the implementation of the international framework for the protection of the rights of the child in the context of migration”, this document provides an overview of these issues in the context of the ILOs’ child labour Conventions, namely the Minimum Age Convention, 1973 (No. 138) and the Worst Forms of Child Labour Convention, 1999 (No. 182). The linkage between the human rights of the child in the context of migration and child labour is explicitly recognized in the Human Rights Council resolution of 12 October 2009 entitled “Human rights of migrants: migration and the human rights of the child” (A/HRC/RES/12/6), which states in the Preamble:

*Recalling* the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Convention No. 182) and Recommendation 190 on the Worst Forms of Child Labour of the International Labour Organization, and their implementation framework, and recognizing that migrant children, especially unaccompanied children, are more vulnerable to the worst forms of child labour.

This document explores this linkage with reference to comments (both Observations and Direct Requests (DRs)) by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR).

### 1. Challenges in the implementation of the international framework for the protection of the rights of child in the context of migration

This section explores the comments of the CEACR related to the 6 sub-headings identified below, including a brief introduction to the CEACR’s general approach to these topics, and examples of relevant comments.

#### (a) The situation of separated and unaccompanied migrant children

The CEACR has discussed the situation of separated or unaccompanied migrant children where such children have been identified as being more vulnerable to child labour. Examples of such CEACR comments include:

**Albania C. 182 Observation (2007 and 2009):** In its 2007 Observation, the CEACR noted that the reported number of children being trafficked across borders for labour and sexual exploitation had steadily increased in Albania. It further noted the Government’s indication that about 4,000 children had migrated unaccompanied by their parents (3,000 to Greece and 1,000 to Italy) and that these children were often exposed to numerous risks, including maltreatment, physical and sexual abuse and other illicit activities.

In its 2009 observation, the CEACR noted that while Albania remained a source country for the trafficking of children, due to the intervention of the Albanian and Greek authorities and the

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increased awareness of the population, trends indicated a decline in children who fall victim to trafficking for labour exploitation.

**Kuwait C. 182 DR (2010):** The CEACR noted that there were credible reports of foreign women and girls having migrated to Kuwait as domestic workers who were coerced into situations of debt bondage or involuntary servitude and that Kuwait was a destination country for children trafficked primarily from Bangladesh, India, Indonesia, Pakistan, Philippines and Sri Lanka for the purposes of sexual and labour exploitation. The CEACR noted that a centre was established in 2007 to regulate the situation of domestic workers and to ensure that no domestic workers under 18 were brought into the country, yet also noted that the Committee on the Rights of the Child (CRC) expressed concern at the continued possibility of exploitation of domestic workers under 18 entering the country (CRC/C/OPSC/KWT/CO/1, paragraph 23). *The CEACR requested the Government to provide detailed information on the activities of the centre to regulate the situation of domestic workers, referred to by the CRC, particularly with regard to the protection of domestic workers under the age of 18.*

**Mali C. 182 DR (2006):** The CEACR noted the information provided to the CRC that many girls left rural areas to work as domestic servants in towns. It noted that few of these young domestic workers were covered by legislation, and that many were without work contracts, were paid low wages and worked 16 hour days. The CEACR also noted, however, that the situation of migrant girls has improved substantially since the implementation of an ILO/IPEC programme in the country, the objective of which was to enable these girls to learn to read and write. The Government added that non-governmental organizations were also active in improving the literacy of migrant girls.

**Benin C. 182 DR (2008):** The CEACR noted that there are many child beggars in Benin and that children from neighbouring countries came to Benin to beg. The CEACR noted that the ILO/IPEC programme of action was being implemented in the country with the objective of removing children from begging and providing support to improve their living conditions. *The CEACR requested the Government to provide information on the effective and time-bound measures taken in the context of the ILO/IPEC programme of action to protect child beggars against forced labour and to provide for their rehabilitation and social integration.*

- (b) Access to social services (ensuring, inter alia, protection of the right to health, housing, education, water and access to sanitation), including for migrant children in an irregular situation

In the context of the ILO's child labour Conventions, children's access to social services is most frequently discussed with regard to access to education. *Article 3 (3)* of Convention No. 138 states that the minimum age for admission to employment of work should not be less than the age of completion of compulsory schooling, and the CEACR has repeatedly emphasized the importance of linking the age of completion of education to the minimum age for admission to work. Pursuant to *Article 7 (2) (a)* of Convention No. 182 (on preventing the engagement of children in the worst forms of child labour), the CEACR has repeatedly emphasized the importance of access to free basic education. Comments relevant to the discussion of migrant children and their rights include:

**Turkey C. 182 Observation (2010):** The CEACR noted the Government's indication that the Ministry of National Education and the Government's Child Labour Unit was implementing the Project for Combating Child Labour through Education (2004-08), to increase access to basic and vocational education for children employed in agriculture, particularly children engaged in, or at risk of engaging in, seasonal work as migrant labourers. The Government indicated that this project targets 10,000 children, and had already reached a significant number of these children. *The CEACR encouraged the Government to continue its efforts to ensure that children under 18 years are protected from working in seasonal commercial agriculture, identified as a worst form of child labour. It requested the Government to provide information on the final number of children who were prevented or withdrawn from being engaged in seasonal commercial agriculture and then rehabilitated by being provided with educational, vocational or other services.*

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**Thailand C. 182 Observation (2010):** The CEACR observed that child migrant workers were particularly vulnerable to the worst forms of child labour, particularly forced labour and hazardous work. The CEACR observed the implementation of the ILO/IPEC project entitled "Support for national action to combat child labour and its worst forms in Thailand". This project, which was implemented between 2006 and 2010, primarily targeted migrant children found in the worst forms of child labour and would promote improved education and training policies. *It requested the Government to provide information on the impact of this project in protecting child migrant workers from the worst forms of child labour.*

**China C. 138 Observation (2009):** The CEACR noted that migrant workers' children, who travel with their parents to a city where they have no right to register as permanent residents (even if those that are born in that city), are not allowed access to schooling provided by the local governments. The CEACR noted that since the mid-1990s, migrants have started to organize and run their own schools, but that there is no guarantee of the quality of teaching in these schools and they are not legitimate educational institutions. However, the CEACR noted the Government's indication that it was taking several measures to address this issue: a 2005 Circular of the State Council on Further Reform of the Rural Compulsory Education Financing System was promulgated and explicitly provides that the policy in place for urban students would similarly apply to the children of migrant workers from rural areas, a 2006 issuance by the State Council aiming to ensure equal access to compulsory schooling for the children of migrant workers and to offer specific policy measures (including incorporating the issue into local education plans and equal treatment of migrant students in terms of tuition and administration), and the revision of the Compulsory Education Law to provide that "[l]ocal governments shall provide equal access to compulsory education for the school-aged children living with their parents or guardians who are working or residing in places rather than their registered permanent residences". *The CEACR requested the Government to provide information on the number of children of migrant workers who were effectively provided with compulsory education and prevented from child labour as a result of the measures implemented by the Government.*

**Argentina C. 182 DR (2009):** The CEACR noted the Government's statement that section 143 of Act No. 26.206 of 28 December 2006 on national education (Act on National Education) and section 7 of Act No. 25.871 of 21 January 2004 on migration (Act on Migration) provides that migrants without official identity documents should be guaranteed access to the school system. *Recalling that children of illegal migrant families are at an increased risk of being involved in the worst forms of child labour, it requested the Government to provide information on the time-bound measures taken to ensure the application of section 143 of the Act on National Education and section 7 of the Act on Migration in practice, to ensure that the children of illegal migrant families have access to the education system and be prevented from falling into the worst forms of child labour, and on the results achieved.*

**Mexico C. 182 Observation (2008):** The CEACR noted that, in its concluding observations of June 2006 (CRC/C/MEX/CO/3, paragraph 56), the CRC expressed concern at continuing low school enrolment rates, especially among migrants and indigenous children, and at the high drop-out rates, among, *inter alia*, migrant children. *Considering that education contributes to preventing the engagement of children in the worst forms of child labour, the CEACR strongly encouraged the Government to redouble its efforts to increase the school enrolment rate and to reduce the drop-out rate, particularly among the groups identified above.*

**France 182 DR (2009):** The CEACR encouraged the Government to take measures to ensure that Chinese children present in France have access to free basic education. The CEACR noted the Government's indication that with regard to illegal (immigrant) children, a flyer dated 13 June 2008 authorizes the prefects to "re-examine" the situation of families without papers, of which one child is sent to school, if these families refuse the re-entry assistance offers, on six conditions: (1) habitual residence in France of at least one parent; (2) real schooling of one of their children; (3) birth of a child in France or habitual residence in France of a child since the age of 13; (4) no links between the child and the country of citizenship; (5) real contribution of one parent to the care and education of the child since birth, as per section 371-2 of the Civil

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Code; and (6) real will for the family to integrate (e.g. schooling of their children, command of the French language, educational follow-up of the children, the seriousness of their studies and the absence of disturbances to the public order). *The CEACR requested the Government to provide information on the measures adopted to ensure that foreign children present in France have access to free basic education.*

**Spain C. 182 DR (2005):** The CEACR noted the Government's indication that, due to migration movement, education required special attention to prevent and resolve problems of social exclusion, discrimination, racism, failure at school and absenteeism, all of which have a greater impact on persons in a disadvantaged social, cultural, economic, personal and family situations. *Recalling that children of migrant families are at special risk of being engaged in the worst forms of child labour, the CEACR requested the Government to provide information on the measures adopted to ensure that the children of migrant families can attend school without problems of social exclusion.*

- (c) Legislative framework and practice in the context of detention and repatriation, including mechanisms to ensure protection from refoulement and to ensure family unity;

*Article 7 (2) (b) of Convention 182 requires Government's to take effective and time-bound measures to provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. In this context, the CEACR has frequently called on Governments to take measures to provide for the repatriation and family reunification of child victims of trafficking. Governments who offer inadequate assistance in this regard have been urged to adopt measures to provide adequate protection to children removed from this worst form of child labour. Examples of such CEACR comments include:*

**Oman C. 182 DR 2010:** The CEACR noted the information in the "Report of the Special Rapporteur on trafficking in persons, especially women and children; Mission to Bahrain, Qatar and Oman" of 25 April 2007 that there is no system to distinguish illegal immigrants from trafficked persons and to provide them with assistance. It also noted that there was an absence of adequate recovery and reintegration services for child victims of trafficking. The CEACR further noted that while charitable organizations and foreign embassies provide victims of trafficking with assistance, this assistance is not systematic, and there is no referral system (A/HRC/4/23/Add.2, paragraphs 34 and 35). *The CEACR requested the Government to take effective and time-bound measures to ensure the provision of legal, psychological and medical services to victims of the worst forms of child labour, to facilitate their rehabilitation and social reintegration. With regard to children who are foreign nationals, the CEACR also requested the Government to take measures that include repatriation, family reunification and support for former child victims of trafficking, in cooperation with the child's country of origin.*

**Saudi Arabia C. 182 Observation (2010):** The CEACR noted the prevalence of children engaged in begging, and noted the information in the UNICEF report entitled "Trafficking in children and child involvement in beggary in Saudi Arabia" that the majority of persons involved in begging are foreign nationals. It noted that the Ministry of Social Action established the Office for Combating Beggary, and that these offices employ social workers and inspectors, who cooperate with law enforcement agencies to undertake daily raids in areas where beggars are found, and arrest them. Once arrested, children under 15 are sent to the Shelter Centre in Jeddah and if found to be undocumented or illegal residents, these children are deported within a period of two weeks from their arrest. The UNICEF Beggary Report also indicates that there is no effort made to distinguish between trafficked and non-trafficked children. Since the establishment of the Shelter Centre in 2004, some 839 children have been deported to their country of origin. The CEACR noted that these children were not provided with psychological or legal assistance, and that there were few services for the rehabilitation and social integration of these children. *The CEACR expressed its serious concern at the lack of legal, psychological and medical services provided to these children once arrested, and requested the Government to take effective and time-bound measures to ensure the provision of appropriate services to*

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*these children, to facilitate their rehabilitation and social integration. With regard to children who are foreign nationals, the CEACR requested the Government to take measures that include repatriation, family reunification and support for former child victims of trafficking, in cooperation with the child's country of origin.*

(d) Criminalization of irregular migration

*Article 3 (a) of Convention 182 prohibits all types of forced or compulsory labour and in this regard, the CEACR regularly requests Governments to take the necessary measures with regard to the effective elimination of the trafficking of children, including making this a penal offence and ensuring that those convicted of the trafficking of children face sufficiently effective and dissuasive penalties. It has encouraged the strengthening of law enforcement and border control institutions in this regard, and the implementation of projects to prevent this practice. The CEACR has also addressed the issue of the criminalization of irregular migration with regard to migrant domestic workers under 18, who face exploitation. One such example noted by the CEACR is:*

**Saudi Arabia C. 182 Observation (2010):** The CEACR referred to comments made in its 2008 observation under the Forced Labour Convention, 1930 (No. 29), where it observed that the Labour Code excludes agricultural workers and domestic workers, an exclusion that has particular significance for migrant workers who are often employed in those sectors. The CEACR observed that this lack of such protection for migrant workers exposes them to exploitation in their working conditions, such as the retention of their passports by their employers, which in turn deprives them of their freedom of movement to leave the country or change their employment. The CEACR observed that young migrant girls employed as domestic servants are particularly vulnerable to economic and sexual exploitation and ill-treatment. *It requested the Government to take the necessary measures to adopt in national legislation a prohibition on the forced and compulsory labour of children to ensure that persons who commit such offences are prosecuted and that sufficiently effective and dissuasive penalties are imposed.*

(e) Access to the right to identity, including birth registration;

The CEACR has discussed the issue of birth registration in the context of the prevention of child labour, particularly with regard to the availability of identity documents that state the child's age (for example in Ethiopia C. 182 DR (2010) where the CEACR noted the difficulty of avoiding compulsory recruitment of persons under 18 due to the lack of an effective birth registration system). With regard to migrant children, this has also been discussed with regard to access to social services. One example noted by the CEACR is:

**Malaysia C. 182 Observation (2010):** The CEACR noted that the Indonesian National Commission for Child Protection (INCCP) found that tens of thousands of migrant workers' children also worked in the plantations without regulated employment hours. Other sectors where migrant workers' children were found included family food businesses, night markets, small-scale industries, fishing, agriculture and catering. The CEACR noted that the INCCP Secretary-General stated that the children of migrant workers born under these conditions were not provided with birth certificates or any other type of identity document, effectively denying their right to education. *The Committee reminded the Government that migrant children are particularly exposed to the worst forms of child labour and requested the Government to take effective and time-bound measures to ensure that these children are protected from the worst forms of child labour by withdrawing them from these vulnerable situations and rehabilitating them.*

(f) Protection of children left behind in countries of origin

The CEACR has discussed children left behind in countries of origin in the context of children at an increased vulnerability for the worst forms of child labour. One example of this is:

**China C. 138 Observation (2009):** While noting that a special task force was formed under the auspices of the Office of Migrant Workers of the State Council to take care of children of

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[migrant](#) workers left behind in rural areas, the CEACR expressed its deep concern at the important number of these children who are left behind by parents in the countryside. The CEACR noted the information from an in-depth study of 2007 which estimated that there are about 58 million children below 18 years of age left behind by parents in the countryside, accounting for 21 per cent of all children in China and 28 per cent of all rural children. The study also found that more than 40 million left-behind children are under 15 years of age and that more than 30 million are aged between 6 and 15 years, making them vulnerable to becoming engaged in labour. *Consequently, the CEACR urged the Government to redouble its efforts to ensure that the children of migrant workers receive access to free basic education.*

## 2. Examples of best practices in the implementation of the international framework for the protection of the rights of the child in the context of migration

With regard to the issues explored in the previous section, the CEACR has also noted positive steps taken by Governments to improve the situation of migrant children with regard to child labour. This section provides several examples noted by the CEACR, divided into 2 sub-headings.

- (a) National legislation, policies and practice, including mechanisms to assess and address challenges in the implementation of the international framework for the protection of the rights of the child in the context of migration

While the trafficking of children continues to be a problem examined by the CEACR, it has also noted many cases where Governments have implemented national action programmes and specific projects, to reduce this phenomenon, including in **Latvia, DR C. 182 (2010)**, **New Zealand C. 182 DR (2010)**, **Republic of Moldova DR C. 182 (2010)**, **Lithuania DR C. 182 (2010)**, and **Viet Nam DR C. 182 (2010)**, among many others.

Other examples of positive policy or legislative developments in this regard noted by the CEACR include:

**New Zealand C. 182 DR (2010):** The CEACR noted with interest the Government's statement that it has introduced an amendment to the Immigration Act, according to which illegal migrant children can apply for a Limited Purpose Permit (LPP) which will allow them to enrol at primary and secondary schools. *The CEACR requested the Government to provide information on the number of illegal migrant children who had applied for a LPP and were enrolled in schools.*

**Sri Lanka C. 138 DR (2008):** In the context of examining the Government's national policy designed to ensure the effective abolition of child labour, the CEACR noted that 2006 was pledged as the "National Children's Year". Measures taken in the framework of this initiative included encouraging 16,500 children of migrant workers to continue their education, by providing them with school equipment and food; providing scholarships to 2,550 children of migrant workers; and providing various counselling, medical assistance to families and children, especially to 1,500 migrant families.

- (b) Joint efforts and strategies available at the bilateral, regional and international levels to assess and address challenges in the implementation of the international framework for the protection of the rights of the child in the context of migration

*Article 8* of Convention No. 182 states that ratifying members States shall take appropriate steps to assist one another in giving effect to the provisions of the Convention, through enhanced international cooperation and/or assistance. In this context the CEACR has frequently noted examples of international cooperation between states, including regional and bilateral agreements to combat trafficking (examples include Russian Federation C.182 Observation

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(2010), Ukraine C.182 Observation (2010), Cote D'Ivoire C.182 Observation (2010), Thailand C.182 Observation (2010), and Swaziland C. 182 DR (2008). The CEACR has also noted other types of international cooperation in the context of *Article 8* of Convention No. 182, including:

**Kyrgyzstan C. 182 DR (2008):** In the context of international cooperation for the implementation of Convention No. 182, the CEACR noted the Government's indication that work was in progress on the preparation and adoption by the member States of the Commonwealth of Independent States of a Convention on the legal status of migrant workers and members of their families. The Government indicated that the draft Convention envisages a provision prohibiting slavery, other forced labour situations, compulsory labour, torture, hard and degrading work, maltreatment or punishment in relation to migrant workers and their families. *The CEACR requested a copy of the Convention, once adopted.*

### **3. Other categories of vulnerable children who may be, but are not necessarily, migrant children**

In addition, the CEACR has identified other groups of children who are at a greater risk for involvement in child labour, who may include but are not necessarily migrant children such as Roma children and Talibé children:

**(a) Roma children** have been identified in many countries as a group at increased vulnerability to the worst forms of child, particularly trafficking (for example see Hungary C. 182 DR (2009) ) and use in illicit activities (for example Albania C. 182 Observation (2009) and Belgium C. 182 DR (2009)). These children may be migrant children, travelling with their families, or permanent residents in the country under discussion.

**(b) Talibé children** are children found in certain West African countries who are enrolled in Koranic schools. In several countries, the CEACR has noted that these children face an increased vulnerability to the worst forms of child labour, as they are forced to beg on the streets for economic purposes. These children may be residents of the country in which they are exploited, though other cases, these children may be migrants. For example, the CEACR noted in the Burkina Faso C. 182 Observation (2008), that talibé children from Burkina Faso are exploited for begging in cities in the Gambia and also in rice fields in Mali. In the Senegal C. 182 Observation (2010), the CEACR noted that internal trafficking exists in Senegal from rural to urban areas, particularly in the case of child talibés, who beg in the streets of Dakar. The CEACR also noted that child talibés from Guinea, Guinea-Bissau, Gambia and Mali are exploited in the large cities of Senegal and in agricultural fields.

## **Conclusion**

Evidently, the issue of child labour as discussed by the CEACR is closely linked to issues of migration and human rights of the child. For the complete comments of the CEACR summarized above, please consult the ILO database ILOLEX, with the full text of all comments described above. In addition, for further information on the ILO/IPEC projects addressing child labour among migrant communities, ILO/IPEC should be contacted directly.

Geneva, 28 April 2010.