

**COMMITTEE ON THE RIGHTS OF THE  
CHILD**

**REPORT OF THE  
2012 DAY OF GENERAL DISCUSSION**

**THE RIGHTS OF ALL CHILDREN IN  
THE CONTEXT OF INTERNATIONAL  
MIGRATION**

## I. BACKGROUND

1. The annual Days of General Discussion of the Committee on the Rights of the Child seek to foster a deeper understanding of the contents and implications of the Convention on the Rights of the Child as they relate to specific articles or topics by providing a forum for discussion among policy-makers, practitioners and researchers with the Committee. On 28 September 2012, the Committee devoted its Day of General Discussion (DGD) to “The Rights of All Children in the Context of International Migration”. The DGD aimed at raising awareness about and discussing children’s rights relating to this topic with a view to providing inputs for State policy and programmes as well as guidance to other relevant actors on the respect, promotion and fulfilment of the rights of children in situations of international migration.

2. Following an opening plenary featuring experts and representatives from supporting organizations and children selected for the occasion from different countries, the 2012 DGD discussions proceeded along two main lines in corresponding Working Groups. The first Working Group addressed the international framework on the rights of children in international migration situations, protection gaps and the individual and shared responsibilities of States (including bilateral and/or multilateral agreements) in countries of origin, transit and destination. The second Working Group addressed national level measures to implement the rights of children in international migration situations in countries of origin, transit and destination. Under those two categories, the discussion aimed at: (1) Identifying specific children’s 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, on-the-move or not, accompanied or unaccompanied, and others); (2) Identifying principles and examples of good policies and practices in relation to children in international migration situations; (3) Addressing international standards protecting the rights of children in the context of international migration and identifying how these take or should take into account the guiding principles of the Convention on the Rights of the Child; (4) Providing further substantive information for facilitating the Committee’s dialogue with and recommendations to States on issues relating to the rights of children in international migration situations; and, (5) Promoting exchange of information and collaboration between the actors dealing with the rights of children in the context of international migration, and raising awareness on them.

3. To facilitate the DGD, the Committee issued a Background Paper which elaborates on its main concerns and views on the rights of all children in the context of international migration, identifying some of the human rights challenges affecting children as well as a number of policy proposals for consideration. The Background Paper and its Annexes should be read in conjunction with, and as an integral part of, this report. The Committee also received over 60 written submissions from States, international organisations, civil society and academia that were received in response to the Committee’s call for submissions for this occasion. All documents are available on the Committee’s 2012 DGD website at <http://www2.ohchr.org/english/bodies/crc/discussion2012.htm>. It is also emphasised that this report summarises the main aspects of the DGD discussions and draws recommendations based on them and other DGD-related information. The report is not intended to be an exhaustive account of all comments raised at the DGD.

## II. SUMMARY OF OPENING PLENARY

4. Mr. Jean Zermatten, Chair of the Committee, opened the DGD by addressing the initial plenary. He highlighted the particular vulnerabilities of children in the context of international migration and placed emphasis on the heightened vulnerability of girl child migrants, unaccompanied children, and children with disabilities. He underscored that the rights of all children could only be ensured if children were respected as full and independent rights-holders, regardless of circumstances and status. Mr. Zermatten stated that through the discussions at the DGD, the Committee intended to issue recommendations that would be useful to States dealing with migration-related issues. Five further keynote speakers provided presentations to frame the discussions of the DGD.

5. Mr. François Crépeau, Special Rapporteur on the Human Rights of Migrants, said that the rights of migrant children were often overlooked in national laws and policies addressing migration and welfare, with migrant children in an irregular situation facing particularly severe difficulties. He went on to state that current approaches overlook the fact that migration of children has multi-dimensional root causes and highlighted that migration is often a means to escape poverty and discrimination, and that children must be seen and recognized in children's migration policies and programmes as independent agents and not as 'objects' or only 'victims of circumstances'. The Special Rapporteur called for all persons under the age of 18 years to be recognized as children first and foremost, and without exception. In this context, the Special Rapporteur condemned the criminalisation of irregular migrants, and underscored the impact this has on their access to services, as well as the need to unambiguously recognise that no person is illegal and that all children have rights regardless of their individual status. He also emphasised that immigration policies should never be enforced at the expense of a child's enjoyment of all his/her rights and best interests, and that the enforcement of migration policies must involve the oversight of agencies specializing in children's rights. Citing the hindrance that limited statistical data on children in migration situations poses to the formulation of sustainable solutions, he also called upon States to strengthen their data collection systems relating to migration policies. The Special Rapporteur went on to state that notwithstanding the almost universal ratification of the Convention on the Rights of the Child, children in migration situations, particularly those migrating irregularly, frequently face violations of their human rights such as access to education, housing and healthcare, deportation, separation from their parents, and negative stereotyping and discrimination. He also stated that in compliance with international human rights standards, children in any migration situation should not be detained on the sole basis of their migration status. The Special Rapporteur stated that detaining migrant children with their parents on the premise of maintaining family unity violated the principle of the best interests of the child. He urged for this principle to prevail and be utilised as the key evaluation tool in all decisions affecting migrant children. He concluded by stating that States should take all necessary measures to mainstream child-rights based approaches into migration policies and practices, including by extending access to services, social protection and welfare provisions, improving coordination between migration and child welfare authorities, and carrying out capacity building and awareness-raising to ensure that all migrant children have access to their rights.

6. Ms. Fatoumata Mariko, Child National Delegate of the Association of Children and Young Workers of Mali, shared insights on the situation of children migrating to seek better opportunities. In this context, she emphasized that the mobility of children was not *per se* negative provided this was in the best interests of the child. She went on to stress that the provision of adequate education, healthcare and leisure activities for children was one of the key factors necessary for ensuring children were not compelled to migrate involuntarily. Ms. Mariko also emphasised the importance of taking into full account the views of the child in all circumstances, especially in situations concerning their accompanied or unaccompanied migration.

7. Ms. Sasima Srihkwang, Child Representative from the Forum on Child Migration of Thailand, provided insights on the situation of child migrants in the border region between Thailand and Lao People's Democratic Republic. She highlighted that the main cause of migration in the region was the search for better living conditions and opportunities. She went on to describe how many child migrants often left their countries of origin with little or no information on migrating procedures and frequently ended up in immigration detention. The heightened vulnerability of children to trafficking and exploitation in migration situations was also highlighted. In this context, she underscored the importance of measures to provide adequate information on the risks and rights relevant to potential migrants. Ms. Srihkwang also stated that children who were born outside their parent's countries of origin should be given the right to acquire the nationality of the country where they were born and ensured equal rights to adequate access to basic services such as education and healthcare.

8. Ms. Lena Karlsson, Director, Child Protection Initiative, Save the Children International, underscored how the lack of opportunities and humanitarian disasters in countries of origin tends to be the main reason for children to migrate, including under dangerous circumstances. She highlighted that although children were often aware of the risks involved in migrating unaccompanied, the pressure to seek out better conditions and opportunities lead many children to decide to undertake migration under such conditions. She also cited the frequent occurrence of abuse by police and other officers at border check points and described the stigmatization and lack of access to basic services that children in irregular migration situations face. Ms. Karlsson emphasized the need for children in such situations to receive adequate help and emotional support, including through peer support, as well as the importance of having children consulted and having their views taken seriously into account. She went on to call for a holistic approach to the protection of rights of the child, with due regard for the best interests of the child, both within and between countries. In relation to this, she underscored the need for effective systems of coordination between State and non-State actors from different countries. In concluding, Ms. Karlsson emphasised that the phenomenon of child migration was a reality and systems for ensuring the full protection of their rights regardless of location and migration status were essential. On behalf of the Inter-Agency Group on Children on the Move, she called for an in-depth independent global study to be carried out on the transnational cooperation measures necessary for ensuring the protection of children on the move and to guarantee children's rights regardless of their immigration status.

9. Ms. Cecilia Landerreche, Director, National System for the Holistic Development of the Family (Mexico), provided an overview on the strategy that Mexico has developed as a country of origin, transit and destination for migrants. She stated that one of the principal elements of the strategy was the promotion of collaboration amongst all relevant actors from all sectors to prevent the exploitation of vulnerable migrant children. Ms. Landerreche

warned that the presumption that all unaccompanied migrant children migrated because of the lack of opportunities in their country of origin would risk oversimplifying a multi-faceted problem. She emphasised the need for public policies aimed at comprehensive, long-term solutions. Ms. Landerreche went on to describe Mexico's establishment of a federal mechanism for responding to migration issues across the country. In this context, the Mexican government has established standard procedures in all its states for dealing with migrants at all stages of the migration process, paying special attention to the provision of support and care to unaccompanied migrant children at the Northern and Southern borders of the country as soon as they arrive. She emphasised that an effective strategy with rights-based initiatives, which provides incentives for people to remain in their local communities, was essential for addressing the root causes of migration. Citing experiences from the exchange of information on migration among countries in Latin America, such as Nicaragua, El Salvador, Honduras and Guatemala, Ms. Landerreche concluded by emphasising that issues that transcend borders, such as migration, need to be addressed internationally.

10. At the closing of the DGD, Ms. Marta Maurás Pérez, Vice-Chairperson of the Committee, concluded by briefly highlighting issues arising from the discussions and called upon States and all stakeholders to implement the Convention for it to become a truly universal instrument applicable to all children everywhere. She stressed the need to make children a visible dimension in legislation and policies on migration whether they are on the move, migrating with their family or unaccompanied, have stayed behind or have already settled in a different country regularly or irregularly. She noted that in particular, accompanied children who migrate with their families were often not taken into account in policies and procedures, and that children between 16 and 18 years tended to be provided much lower levels of protection, and were often considered as adults or left with ambiguous migration status until they reached 18 years of age. Ms. Maurás emphasised that her reading of the meeting was that there was broad consensus among participants that no migrant child should be detained, whatever the circumstances. She urged for human mobility to be recognised as a right of children, and for States to listen to children at risk or already in situations of migration and seek alternatives, especially with regard to repatriation, to prevent children from suffering the hardship frequently connected to their return to their home country. Ms. Maurás finally called for the best interests of the child to be a leading principle for national policies as well as a carefully defined procedure for status determination of children in situations of migration. She ended by reiterating that all children in situations of international migration need to be protected without any discrimination whatsoever and fully applying the Convention on the Rights of the Child.

### **III. SUMMARY OF WORKING GROUP DISCUSSIONS**

11. In its deliberations on the discussions which took place across the two respective Working Groups of the DGD, the Committee found there were substantial areas of common concern and numerous issues which prominently featured in both. In this light, the main lines of discussions from both Working Groups have been consolidated in this section. To facilitate their consideration in conjunction with the Convention, the summary commences with general elements covered in the discussions before proceeding on to specific elements organized according to the structure of the Committee's concluding observations and recommendations on State parties reports. The summary does not cover country-specific cases and/or good practices mentioned during the DGD or in preparation for it, for which attention is drawn to the written submissions for the 2012 DGD and Annex II of the 2012

DGD Background Paper, available on the Committee's website [www2.ohchr.org/english/bodies/crc/discussion2012.htm](http://www2.ohchr.org/english/bodies/crc/discussion2012.htm)

### General issues

12. Discussions across both Working Groups emphasised the primacy of the Convention on the Rights of the Child in addressing the rights of the child in the context of international migration and therefore the need for the Convention to be integrated in migration-related frameworks and/or measures. Particular attention was placed on the Convention principles regarding the best interests of the child and non-discrimination (articles 2 and 3). The Committee's General Comment Number 6 on Unaccompanied Children was recalled in this respect.

13. In this light, a holistic and comprehensive process to identify and address the needs of children affected by migration must be based on all provisions and principles of the Convention and avoid categorisation or distinction of different types of rights. All children involved in or directly affected by international migration are entitled to the enjoyment of their rights, regardless of age, gender, ethnic or national origin and economic or documentation status, in both voluntary and involuntary migration situations, whether accompanied or unaccompanied, on the move or otherwise settled, documented or undocumented or any other. Discussions recognized that given the reality of migration as it relates to children, a single child may fall into several categories over time and therefore rigid definitions or categorization are of limited help and are used here only to illustrate the diversity of situations.

14. Citing global figures on international migration (South-North migration accounting for 40% of all migration and South-South migration for 60%), participants emphasised the need to consider intra-regional migration issues, including with regards to measures and issues in developing countries. In this context, also stated was the need for increased attention to the best interests of children within transit and/or destination countries, especially regarding the responsibilities and procedures used by national officials interacting with children, particularly migration authorities.

15. Discussions emphasised the need for States to address all violations of rights of all children affected by migration, whether actually experienced or at risk of occurring due to situations of vulnerability. The direct implication of such a view is that States would need to involve migration systems and authorities as well as child protection systems and authorities. Therefore, participants stressed that there was the need to mainstream child rights into migration laws and processes, including best interests determination and assessment procedures, applied to all international migration situations involving children, not only to those involving unaccompanied children. In this respect it was stressed that accompanied children must be considered autonomous rights-holders, in addition to benefitting from the rights of their parents.

16. Participants also stressed that national child protection systems must take into consideration the protection needs of all children affected by migration situations, including those who do not apply for asylum and those who are left behind by parents/guardians in countries of origin.

17. Sharing the Committee's concern on the need for further guidance on the rights of all children in the context of international migration, the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) stated that it will be releasing a General Comment on the rights of irregular migrant workers and their families in 2013. Inter alia, the CMW General Comment will provide further guidance on the right of children of migrant workers to education, health care, and social security systems regardless of migration status.

18. In the course of the discussions, participants also shared examples of good State policies and practices. These included: access to social rights for all children, irrespective of status (particularly access to education and health care); regularization programs; individual best interests of the child assessments and determinations; the provision of support and services that were sensitive and adapted to age, gender and culture; guardianship arrangements; mechanisms of redress; due process safeguards for children; family tracing and reunification schemes which are centred on the best interests of the child; and, the development of community-based non-custodial arrangements for children (with or without families) as alternatives to detention.

#### Coordination

19. The frequent gaps in communication between relevant actors at borders were cited as a problem during discussions. This limits the capability of public institutions to adequately define the measures that they must adopt whenever a child enters a country in an irregular manner. Participants emphasised that these situations highlighted the need for coordination and protocols between child welfare and migration officials, especially in federal states wherein such coordination tends to be more challenging as child protection, health, education and social security services are often at regional or local level in contrast to migration services which are frequently at national level. In this context, the need to look at standards and due process guarantees for migration cases involving children was reiterated. Further studies on this were suggested as being a possible means for seeking improvements in this area, in order to facilitate permanent and effective coordination between the different levels of government inside the country.

#### Data collection and research

20. Numerous participants cited the need for collecting information on accompanied children and assessing the existence of potential protection gaps in this context for the same purpose. In this respect, longitudinal as well as case specific research needed to be supported in order to better understand all determinants and factors for addressing them. The Committee also encouraged both States and NGOs to submit information on this aspect for the Committee's reviews of States implementation of the Convention and its Optional Protocols.

21. In the course of discussions, several participants also called on the Committee to consider supporting the conduct of an independent global study on transnational cooperation measures necessary for ensuring the rights of children in the context of international migration regardless of their immigration status.

### Independent monitoring

22. The role of human rights Ombudsmen and national human rights institutions (NHRI) in monitoring migration policy and practice and in channelling complaints was also considered. Participants stated that Ombudsmen or NHRI needed to pay increased attention to the best interests of children in decision-making affecting children within transit and/or destination countries, as well as in decisions regarding settlement or movement between countries (i.e. relocation, repatriation, deportation) with a view to promoting good practices and identifying gaps in protection as well as to give due course to complaints by children in migration situations on violations to their rights, as appropriate.

### Cooperation with civil society and local communities

23. The importance of effective prevention policies that are based on the principles and provisions of the Convention at origin countries was underscored during discussions. Participants stated that in addition to formal child protection systems, the involvement of local communities with the empowered participation of children as stakeholders is crucial for preventing child right violations in the context of international migration. It was stated that such policies and programmes could include vocational training, creation of local employment, and the provision of adequate and accessible local credit schemes for income generation as well as other measures aimed at the determinants of international migration.

### Definition of the child

24. The practice, in some States, of having lower standards of protection to children above the age of 16 years was also raised. It was restated that equal standards of protection should be provided to all children regardless of age.

### Non-discrimination

25. Discrimination and xenophobia merited much discussion, especially but not exclusively to ensure that migrant children are not excluded from education due to linguistic and/or other limitations. It was recommended that where necessary, appropriate provisions for appropriate additional language education, including additional staff, and or other inter-cultural support should be undertaken.

26. The specific discrimination and vulnerabilities faced by children with disabilities in the context of migration were also a matter of discussion. It was stated that the Convention on the Rights of Persons with Disabilities had to be consistently included in the international framework addressing the rights of children in the context of international migration. The denial of an immigration application on the grounds of disability and minimum residency periods being prerequisites for access to necessary health services and support were cited as two frequent problems. In this context, it was emphasised that States must ensure that their immigration laws and requirements do not discriminate against children with disabilities.

### Best interests of the child

27. The importance of having on-going and individual best interests of the child assessments, as well as formal determination procedures at all stages and decisions in any migration process was frequently stressed by numerous participants during discussions. It was also emphasised that well trained child welfare and protection authorities should be involved with a lead-role in all cases concerning migrant children.

28. Discussions repeatedly underscored the need for consistent and harmonised Convention-compliant practice for asylum-seeking child migrants to be established and the heightened need for the principle of the best interests of the child to be interpreted and applied carefully for unaccompanied migrant children including refugee or asylum seeking children. The case was made for extreme caution in cases where the premise of family reunification may mean repatriation of a child, against his/her best interests, into a conflict or crisis situation or without guarantees of appropriate protection. In this context, participants also emphasised the need to be careful about terminology used for returns, particularly with regards to making authentic distinctions between forced and voluntary migrant returns.

### Respect for views of the child

29. Numerous participants also stressed the importance of taking into full account the views of the child in all circumstances. In this context, the need for providing legal representation to all children in migration situations was highlighted. It was mentioned that numerous States only provided legal representation for unaccompanied children, but that this was also required by accompanied children and their parents. In doing so, migration authorities must consider the impact of decisions on children as individual rights holders.

30. The need for due process in all migration procedures and judicial proceedings affecting the rights of children in the context of migration and/or those of their parents was also discussed. Inter alia, it was emphasised that age assessment and determination procedures, interview practices, and legal procedures should be conducted in a prompt, child-friendly, multi-disciplinary, and culturally-sensitive manner by officials with sufficient expertise in children's rights. Additionally, the need for children to be provided information in languages they understand as well as free legal aid was also emphasised.

### Right to identity, including name and nationality

31. The importance of birth registration and its link to ensuring children's rights and access to services was underscored. Notwithstanding the growing awareness on the importance of this issue, lack of birth registration in countries of origin remained a widespread problem, also affecting children who later migrate. Unregistered children are at risk of becoming Stateless, particularly when born in an irregular migration situation, due to barriers to acquiring citizenship in the country of origin of the parents, as well as accessing birth registration and citizenship at the place of their birth. In this context, the need to address the gaps in nationality laws and policies regarding voluntary renunciation of nationality was emphasised. Participants suggested that there had to be stronger and clearer obligations on States with regard to post-birth registration. A global study on birth registration and means for improving access to it was also suggested during discussions.

### Right to liberty and alternatives to detention

32. Immigration detention and it being a clear violation of the Convention was a subject that was repeatedly discussed and underscored. It was emphasised that regardless of the situation, detention of children on the sole basis of their migration status or that of their parents is a violation of children's rights, is never in their best interests and is not justifiable. It was highlighted that international research supports this view.

33. The need for compliance with the Havana Rules on Deprivation of Liberty in addition to the Convention was also highlighted. Discussions also stated that deprivation of liberty encompasses placement of a child in any custodial setting from which he/she is not permitted to leave at will. In this light, it was suggested that the Convention must also be adhered to in de facto forms of detention.

34. In situations where the detention of children occurs in spite of the legal obligations under the Convention, discussions urged the use of, inter alia, case-by-case assessments, the provision of child-friendly environment, appropriate treatment and conditions of detention, child protection safeguards, and independent monitoring institutions to ensure the best interests of children concerned.

35. Participants discussed suitable alternatives to deprivation of liberty and underlined the need for community-based non-custodial measures, as opposed to alternative measures of detention.<sup>1</sup> Regardless of the setting, it was emphasised that the involvement of child protection systems was essential. The Child-Sensitive Community Assessment & Placement (CCAP) model<sup>2</sup> of alternative measures to detention was highlighted. In accordance with the principles and provisions of the Convention, the CCAP encompasses: preventive measures and legislation; child rights and needs based assessment and referral procedures for both unaccompanied and accompanied children; timely and rights-based case-management procedures; regular periodic reviews of the situation of children in migration accommodation; safeguards against abuse and access to complaint and remedial mechanisms in instances where such abuse occurs; and, defined case-processing timelines that ensure resolution within a reasonable duration.

36. The progression from detention to community-based options for children in irregular migration situations in the context of immigration enforcement was cited as one good practice that was increasingly practiced and that needed to be further encouraged amongst States. In this regard, participants urged States to adopt legislation, policy and practices that allowed children to reside in an open, community context while their immigration status was being resolved.

37. The lack of uniform frameworks and structures for ensuring non-refoulement of repatriated children and a clear prohibition of detention for all children in the context of

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<sup>1</sup> See also the Committee on the Rights of the Child's Background Paper for the 2012 CRC DGD, pages 23 to 25.

<sup>2</sup> International Detention Coalition (IDC) Child-Sensitive Community Assessment & Placement (CCAP) model <http://idcoalition.org/ccap/>

migration were highlighted as significant protection gaps. To this effect, a compilation of good practices with the aim of using these to formulate guidelines on this was suggested.

38. Child migrants going missing or unaccounted for from reception centres in various countries was also highlighted. In this context, participants emphasised the need for concrete guidelines in order for reception centre procedures and conditions to be in compliance with the Convention and balance the simultaneous needs for openness and protection.

#### Right to family life

39. Discussions also stressed the importance of measures allowing all children in the context of migration to have their right to family life meaningfully fulfilled and to have contact with their families, regardless of whether they are in an irregular or a regular migration situation. This includes ensuring that centres that accommodate migrants, at whatever point during the migration process, take into account the importance of maintaining family unity, including by ensuring that such centres are open facilities and by duly considering varying from policies of age and gender separation in cases where this would be in the best interests of the children concerned. Participants emphasised that family unity was not a justification for detaining children and alternative measures should be found for the whole family. In this sense, respect for family unity should be maintained without resorting to a custodial measure. For children who are separated from their parents, States must adopt measures of protection of rights and provide adequate responses which are family and community based.

40. The inadequacy of measures for children in migration processes to maintain contact with family members, including in countries of origin, was also highlighted. It was emphasised that unless it was contrary to the child's best interests, support should be provided for the maintenance of family relations and contact to the greatest extent possible, ensuring no adverse consequences for the child, and with appropriate support. In the same context, the importance of effective family tracing mechanisms that are complemented by effective assessments of the willingness and ability of the child's family to care for the child if returned was also highlighted.

#### Standard of living, economic, social and cultural rights

41. The legal obligation to respect all rights of children, including economic, social and cultural rights regardless of migration status, was recalled. This includes but is not limited to access to services for children's well-being and development, including health care, education, housing and birth registration. It was also stressed that service providers should not be obliged to report irregular migrant children or their parents to immigration enforcement offices, so that they can access services without fear of sanctions, including return or deportation.

42. The issue of children being left behind in countries of origin due to their parents migrating to seek employment in other countries was discussed. Participants stressed the negative implications this has on child upbringing. In this light, it was highlighted that States have a responsibility to facilitate social and family cohesion, including by ensuring adequate social safety nets and economic opportunities at a local level and access to essential facilities such as health and education and social security, including for children migrating in the

context of their or their parents' involvement in seasonal work. Rights-based initiatives which provided incentives for people to remain in their local communities were considered essential for addressing the root causes of migration. Participants stated that this includes children's rights with regards to access to schooling, health, and psycho-social wellbeing. In this light, the views, experiences and needs of children in such situations needed to be clearly included in the discussions and initiatives undertaken on children's rights in the context of international migration. The need for strengthened linkages between international development policies, migration policies and children's rights was also underscored.

43. The additional complexities relating to children above 15 years of age seeking work opportunities through migration was also underscored.<sup>3</sup> Having emphasised that mobility of children was not per se negative and can be an empowering experience provided it was in the best interests of the child, the Committee stressed that the provision of adequate education, healthcare and leisure activities for children was one of the key factors necessary for ensuring children were not compelled to migrate. It was noted that the pressure to seek better conditions and opportunities leads some children to decide to migrate, even when aware of the risks involved in migrating unaccompanied and/or irregularly.

#### Right to health

44. Post-trauma and mental health needs of children affected by migration are also an issue in need of sensitive migration policy approaches in origin, transit and destination countries. This includes trauma faced during the migration process; the situation of being detained and conditions of detention; the fear and stress associated with living in an irregular status; mental health of children suffering when their parents are deported but they remain in the country of destination; and, separation from parents if either children or parents remain in countries of origin. The need for provision of adequate mental health support, including as a part of conducting best interests of the child determination, was emphasised. It was stressed that avoiding trauma and/or re-traumatisation by, inter alia, conducting interviews in a non-intimidating environment and ensuring children are accompanied by a person the child trusts, was very important.

#### Asylum-seeking, refugee, and/or children in other irregular migration situations

45. The protection gaps arising from the Dublin Rules contributing to children not registering as asylum-seekers due to their fear of that preventing further movement was also highlighted. Another protection gap cited was that regarding children that have not been granted refugee status but been given subsidiary protection on humanitarian grounds - a status they can lose upon reaching 18 years of age. The need for adequate transition and/or follow-up support for persons when they turn 18 years old was also highlighted. It was also stated that in most States, support and rehabilitation for victims of trafficking was inadequate. Additionally, discussions underscored that the current financial and economic crisis has resulted in the further exacerbation of resource and support inadequacies for children in migration situations and would have significant long-term implications.

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<sup>3</sup> See also the Committee on the Rights of the Child's Background Paper for the 2012 CRC DGD, pages 4 to 6.

46. Participants also drew attention to international borders and bilateral readmission agreements as areas where children's rights and child protection are often largely absent in the context of migration. Discussions also underscored the need for specific guidelines to ensure the application of the Convention at areas of arrival such as airports and ports. This included the need to specifically address the practice, in some States, of confining children in irregular migration situations to holding rooms at airports. In this context, the need for ensuring adequate child protection services at points of arrival for migration was also emphasised.

47. The need for clear guidance and frameworks that ensured Convention-compliant treatment of a child at all stages of the asylum-seeking procedure was also emphasised. Discussions highlighted that, among other issues, these must include the timely consideration of requests for asylum, and removing the current practice of some States that only consider such requests after a child-applicant reaches 18 years of age. The transfer of asylum seekers from one country to another must also take into account the best interests of children who are involved and/or affected.

48. Discussions also stressed the need for ensuring the provision of legal guardianship for all unaccompanied children. It was stated that in some regions unaccompanied children from within the same region were subject to different and lower standards of care which resulted in legal guardianship not being provided, often resulting in there being no assurance of the child's right to, inter alia, education and health care. It was stated that the European Union had developed a set of guidelines based on a study it had conducted and that awareness and consideration of its suggestions could be useful to other States/stakeholders.

49. The unreliability of current age determination methods based on, inter alia, bone analysis was also highlighted, particularly for children between 16 and 18 years of age. Experiences and recent findings on age assessment were also shared. It was stated that current medical methods for age determination were manifestly flawed and inaccurate with very wide margins of error, even in ethnically homogenous populations. In some cases, substantial discrepancies of up to 5 years between actual age and age determined by such methods were found even in the same village. In this context, it was emphasized that best practices rely on multidisciplinary age determination procedures which draw on assessments by psychologists, social workers, and others. Where medical testing for age determination is resorted to, non-invasive methods should be considered before turning to radiological testing. It was stated that in situations of ambiguity, a presumption in favour of the child should be made.

50. The issues related to Statelessness were also highlighted. It was stated that specific guidance for States on the treatment of children in a migration situation to prevent statelessness was required. It was also emphasised that the effective addressing of these issues would require bilateral, regional and international measures between States. These measures would need to be fully informed by the Convention, including with due regard to the child's right to family.

51. Participants drew attention to the specific needs of children born to undocumented parents. Discussions suggested that, among other measures, States should consider evaluating and improving the accessibility of existing mechanisms for regularisation such as universal birth registration/certification; enabling access to permanent residence and nationality

wherever possible; ensuring unencumbered and equal access to services, including education, health care, and social services, in law and practice; and, introducing explicit legislation and safeguards for guaranteeing that personal data obtained by service providers would not be used by immigration control to the prejudice or disadvantage of undocumented migrants.

52. Participants also highlighted the dearth of programmes for the regularisation of children in an irregular migration situation and the inability of children to migrate in regular channels to be reunited with their families in countries of destination, if their parent(s) are undocumented. Discussions also noted that children born to irregular migrants, or who become undocumented at an early age, have often spent many of their formative years in countries of destination. Participants called for recognition of the fact that after a certain period of stay in another country, return is often no longer a feasible option due to the socio-emotional connection that children in such situations would have tended to develop. In this context, the need for accessible options for children in irregular migration situations to regularise their status are essential.

53. The impact of having a parent with an irregular migration status was also raised, even if the child has a regular status, as the well-being of children is intrinsically linked to that of their parents. The need to look at a broader group of children affected by migration in countries of origin, transit and destination, as well as the impact of migration policies affecting adults on the health and well-being of the children was emphasised.

#### Protection from economic exploitation

54. The situation of migrant working children was highlighted and States were urged to take into full account International Labour Organisation Convention Number 138 and 182 in their migration policies and measures, in addition to the Convention on the Rights of the Child. In this light, participants suggested that the exchange of good practices on addressing the root causes of child labour would be helpful for ensuring that measures addressing this are effective and in compliance with international human rights standards. This should, inter alia, include the establishment of monitoring systems which take into account potential children's rights violations, especially in the context of informal and/or seasonal work contexts. Furthermore, the promotion of collaboration amongst all relevant actors from all sectors, including the State and private, national and international sectors, to prevent the exploitation of vulnerable migrant children was also emphasised.

#### Conflict situations

55. The need for additional children's rights compliant safeguards and measures in migration situations that occur in or as a result of conflict was also emphasised. An example of negative State practice involving the indefinite detention of children from "hostile" States was cited. In this context, it was underscored that even in conflict situations States had legal obligations to ensure that their procedures and facilities were compliant with international children's rights and human rights standards, including the provision of, inter alia, adherence to principles of non-refoulement, and the provision of medical, mental health and education services, and birth registration.

#### IV. RECOMMENDATIONS

56. In pursuance of the DGD objective of providing a forum for raising awareness about and discussing children's rights with a view to identifying issues for States to take account of in their policies and programmes as well as guidance to other relevant actors on the respect, promotion and fulfilment of the rights of children in situations of international migration, the Committee endorses the following recommendations. In doing so, the Committee emphasizes that a child is first and foremost a child, whatever the condition he or she may find himself or herself in. The Committee reiterates the need for States and relevant actors to undertake holistic and comprehensive approaches for identifying and addressing the rights of children affected by migration based on all provisions and principles of the Convention, avoiding categorisation or distinctions of different types of children, situations or rights. All children involved in or directly affected by international migration are entitled to the enjoyment of their rights, regardless of age, sex, ethnic or national origin and economic or documentation status, in both voluntary and involuntary migration situations, whether accompanied or unaccompanied, on the move or otherwise settled, documented or undocumented or any other. To facilitate their consideration, the recommendations are sequenced according to the structure of the Committee's concluding observations and recommendations on States' periodic reports on implementation of the Convention.

##### General recommendations, including on legislation, policy and coordination

**57. States should ensure that the rights enshrined in the Convention are guaranteed for all children under a State's jurisdiction, regardless of their own or their parents' migration status and address all violations of those rights. Child care and protection agencies/bodies rather than immigration agencies take primary responsibility for all children in situation of international migration.**

**58. States should adopt comprehensive human rights-based laws and policies to ensure that all children involved in or affected by international migration enjoy the full protection of the Convention in a timely manner, regardless of age, economic status, documentation status of themselves or their parents, in both voluntary and involuntary migration situations, whether accompanied or unaccompanied, or any other.**

**59. States are encouraged to take measures, including legislation, policies and programmes and related training, to ensure the integration of the Convention in all migration-related national legislation, as well as in regional and/or international frameworks or agreements related to migration.**

**60. States are recommended to issue specific guidelines for ensuring that practices at areas of migrant arrival/transit such as airports and ports are in full compliance with the Convention and international human rights standards.**

**61. It is recommended that States effectively evaluate the impact of migration and any other policies, programmes, practices and decisions on the rights, well-being and development of all children directly or indirectly affected by international migration and ensure that the fundamental principles of the Convention are effectively prioritized and meaningfully implemented with respect to migration policy and other considerations, and that results are reflected in further developing migration policy as well as child protection policy.**

**62. States are also called upon to individually as well as collectively strengthen linkages between international development policies, migration policies and children's rights.**

#### Data collection and research

**63. States should ensure concrete measures for enhancing and expanding data collection and analysis on the conditions and impact of migration on children. Such data should be disaggregated by, inter alia, age, sex, country of origin, education and other relevant information such as migration status, issuance of entry, exit and work permits, and changes in nationality. Furthermore, the Committee recommends that States ensure safeguards for guaranteeing that such data is not used by, inter alia, migration control authorities, to the prejudice or disadvantage of undocumented migrants.**

**64. States should ensure households affected by migration are identified in local statistical and data systems as well as in nationally-representative living standards, expenditure, and labour force surveys. It is recommended that such data and information is used to ensure the inclusion of children affected by migration in the development of evidence-based social policies, local planning and budgeting processes. It is also recommended that States consult with migrant children and families, especially those in situations of vulnerability, in order to take into account their views and experiences in formulating State policies and/or programme. Such information should also be included in State party periodic reports to the Committee.**

**65. Recognising the call from various organisations, and in view of the 2013 High-Level Dialogue on International Migration and Development, stakeholders are encouraged to consider undertaking a global study on concrete measures for ensuring the rights of children in the context of international migration regardless of their migration status.**

**66. To facilitate monitoring and collection of information, States parties are called upon to incorporate systematic evaluation of Convention implementation in relation to all children affected by migration present in their territory into their periodic reporting to the Committee, and empower national institutions responsible for guaranteeing human rights (ombudsmen, equality bodies, etc.) to play a key role in monitoring compliance with the Convention, with a specific mandate to address the needs of children affected by migration.**

**67. States should ensure that the responsibility for monitoring the situation of migrant children is not limited to the country of origin and that information and data are transferred to and received by countries of transition and destination. In doing so, States should establish mechanisms for monitoring children's immediate and long-term needs in case management systems for enabling effective and child-targeted service delivery during migration and upon arrival. In doing so, States are encouraged to collaborate transnationally.**

Definition of the child and applicability of the Convention for all persons under 18 years of age

**68. Recalling that the definition of the child provides rights and protection until 18 years of age, States are urged to ensure that equal standards of protection be provided to all children, including those above the age of 16 years and regardless of their migration status.**

**69. In addition, States should provide adequate follow-up, support and transition measures for children when they reach 18 years of age, particularly those leaving a care context, including by ensuring access to long-term regular migration status and reasonable opportunities for completing education and integrating into the labour market.**

Non-discrimination

**70. States should ensure adequate measures to combat discrimination on any grounds. In doing so, efforts to combat xenophobia, racism and discrimination and promote the integration of families affected by migration into society should be strengthened. States should also undertake programmes for improving knowledge and addressing the negative perceptions regarding migrants, in particular at the local level, with the aim of protecting migrant children and their families from violence and discrimination and to promote access to rights, equity, and respect. Such efforts should also ensure that equitable access by migrants to swift and effective redress mechanisms and adequate linguistic and culturally appropriate support measures are available.**

**71. States should ensure that their migration policies do not discriminate against children with disabilities or children in families of parents with disabilities, and that States refrain from considering disability as grounds for the denial of an immigration application.**

Best interests of the child

**72. States should conduct individual assessments and evaluations of the best interests of the child at all stages of and decisions on any migration process affecting children, and with the involvement of child protection professionals, the judiciary as well as children themselves. In particular, primary consideration should be given to the best interests of the child in any proceeding resulting in the child's or their parents' detention, return or deportation.**

**73. States should make clear in their legislation, policy, and practice that the principle of the child's best interests takes priority over migration and policy or other administrative considerations. In doing so, States should ensure the availability of information on migrating procedures, risks and rights, health and mental health support, legal representation and guardianship, interviews and other processes in a child-friendly and culturally-sensitive manner.**

**74. To the greatest extent possible, States should conduct continuous and individual best interests of the child assessments as well as formal determination procedures at all stages or decisions of any migration process affecting children, with the involvement of child protection professionals and the judiciary. This includes any proceeding resulting in the child or his/her parents' deportation. States should make clear in their legislation, policy, and practice that the principle of the best interests of the child takes priority over migration and other administrative considerations. In doing so, States parties should ensure the availability of information on migrating procedures, risks and rights, health and mental health support, legal representation and guardianship, interviews and other processes in a child-friendly and culturally sensitive manner.**

Right of the child to be heard

**75. States should ensure that their legislation, policies, measures and practices guarantee due process in all migration procedures and judicial proceedings affecting the rights of children in the context of migration and/or those of their parents. All children, including children accompanied by parents or other legal guardians, must be treated as individual rights-holders, their child-specific needs considered equally and individually and their views appropriately heard. They must have access to administrative and judicial remedies against decisions on their own situation or the ones on their parents to guarantee that all decisions are taken in their best interests.**

**76. In particular, States should ensure that age assessment and determination procedures, interview practices, and legal procedures should be conducted in a prompt, child-friendly, multi-disciplinary, culturally-sensitive manner by officials with sufficient expertise in children's rights.**

Right to identity, including name and nationality

**77. States should strengthen measures for ensuring universal birth registration, including removing any legal and practical barriers to birth registration for migrant children, and, in situations where a child would otherwise be Stateless, grant citizenship to children born in their territory.**

Right to liberty and alternatives to detention

**78. Children should not be criminalized or subject to punitive measures because of their or their parents' migration status. The detention of a child because of their or their parent's migration status constitutes a child rights violation and always contravenes the principle of the best interests of the child. In this light, States should expeditiously and completely cease the detention of children on the basis of their immigration status.**

**79.** To the greatest extent possible, and always using the least restrictive means necessary, States should adopt alternatives to detention that fulfil the best interests of the child, along with their rights to liberty and family life through legislation, policy and practices that allow children to remain with family members and/or guardians if they are present in the transit and/or destination countries and be accommodated as a family in non-custodial, community-based contexts while their immigration status is being resolved. Highlighting General Comment No.10 (CRC/C/GC/10, 2007) of the Committee, it is reiterated that States have the legal obligation to comply with international standards on detention conditions, including the Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules) which apply to all forms of detention including administrative or non-criminal detention. Such placements should be carefully designed and also be developed in line with the United Nations Guidelines for the Alternative Care of Children and other human rights standards. States should ensure support measures and appropriate alternative care is available for children released from detention centres.

**80.** In any instance where a child is nevertheless deprived of liberty, States are urged to impose such measure for the shortest time and in conditions that meet, at least, the minimum standards of detention as set out in human rights law. This includes ensuring a child-friendly environment; separation from adults who are not the child's parent or guardian (even if the child is above the age of 16 years); child protection safeguards; and, independent monitoring.

**81.** In the light of concerns for the situation of child migrants going missing or unaccounted for from reception centres and/or other equivalent facilities, States should ensure concrete guidelines for reception centre procedures/facilities and conditions which are in full accordance with the Convention and the United Nations Guidelines for the Alternative Care of Children.

Freedom of the child from all forms of violence, including in the context of migration

**82.** States should adopt legally binding and gender-sensitive affirmative policies, programs and actions to ensure equal protection from violence for children of all ages affected by international migration, regardless of their own or their parent's migration status with special focus on the school and community settings. The Special Representative on Violence against Children and its supporting institutions within and beyond the UN System are encouraged to collaborate in making the particular vulnerability of children to violence in the context of international migration a priority issue for research and action while taking into full account the views and needs of children in migration situations.

Right to family life

**83. States should ensure that their migration policies, legislation and measures respect the right of the child to family life and that no child is separated from his/her parents by State action or inaction unless in accordance with his/her best interests. Such measures should, inter alia, include positive, humanitarian, and expeditious attention to family reunification applications; options for regularisation of migration status wherever possible; and, family reunification policies, at all stages of migration, for enabling children left behind to join their parents (or parents to join their children) in transit and/or destination countries.**

**84. States should refrain from detaining and/or deporting parents if their children are nationals of the destination country. Instead, their regularisation should be considered. Children should be granted the right to be heard in proceedings concerning their parents' admission, residence, or expulsion, and have access to administrative and judicial remedies against their parents' detention and/or deportation order, to ensure that decisions do not negate their best interests. Alternatives to detention and deportation in accordance with the child's best interests, including regularisation, should be established by law and through practice.**

**85. States should seek to ensure access to economic, social, and cultural rights for all migrants, regardless of their migration status. States should ensure this is included in the design of social, childhood, and family protection policies, with particular attention to children and families in migration situations and including children left behind and/or in an irregular migration situation.**

Standard of living, enjoyment of economic, social and cultural rights

**86. States should ensure that all children in the context of migration have equal access as national children to economic, social, and cultural rights and to basic services regardless of their or their parent's migration status, making their rights explicit in legislation. In doing so, States are strongly encouraged to expeditiously reform legislation, policies and practices that prevent or discriminate against children affected by migration and their families, in particular those in an irregular situation, from effectively accessing services and benefits such as health care, education, long-term social security and social assistance, among others. Attention should be paid to addressing the gender-specific impacts of reduced access to services, such as sexual and reproductive health rights and security from violence. The difficulties faced by children 'left behind' when accessing rights and services should be specifically addressed by States in collaboration with civil society and local communities. Administrative and financial barriers to accessing services should be removed, including through the acceptance of alternative means of proving identity and residence, such as testimonial evidence. Training and guidance for civil registries and public-service providers should be carried out to ensure effective access to them in practice.**

**87. States should ensure effective safeguards on information sharing between civil registries, public-service providers and immigration authorities to ensure that this is not contrary to the best interests of the child and does not expose them or their families to potential harm or sanctions. These safeguards must be implemented in law and in practice, including through issuing clear guidance for service providers and awareness-raising programmes on these safeguards amongst persons in irregular migration situations.**

**88. Policies, programmes and measures to protect children from poverty and social exclusion must include children in the context of migration, regardless of their status, in particular those left behind in countries of origin and those born to migrant parents in countries of destination. The capacity of national social protection systems to prevent and address all situations of vulnerability directly or indirectly related to migration should be strengthened and children affected by migration and their families made a specific target group of social policies and programmes in countries of origin, transit and destination, regardless of migration status and without discrimination of any kind. Social protection policies should include specific provisions to support, including through community based social services for families and caregivers in migration situations in order to facilitate their child-rearing responsibilities. These should also include special services for children in alternative care and also focus on mitigating the psycho-social impacts of migration on children.**

#### Right to health

**89. States should ensure and implement adequate and accessible measures for addressing trauma experienced by children during migration, asylum-seeking or trafficking. Special care should be taken to make mental health services available to all children, including in the context of conducting the child's best interests assessment, evaluation and determination.**

#### Protection from economic exploitation

**90. States should ensure their migration policies and measures take into account the Convention and International Labour Organisation Convention Number 138 concerning Minimum Age for Admission to Employment; Convention Number 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour; and, Convention Number 189 concerning Decent Work for Domestic Workers. It is further recommended that States consider establishing monitoring and reporting systems for identifying and remedying child rights violations taking place in work contexts, particularly in informal and/or seasonal situations.**

#### Access to regular and safe migration channels and secure residence status

**91. Wherever possible, States should make available regular and non-discriminatory migration channels, as well as provide permanent and accessible mechanisms for children and their families to access long-term regular migration status or residence permits based on grounds such as family unit, labour relations, and social integration. These regularisation programmes should aim at facilitating migrants' social integration and protecting children's rights, including their right to family life.**

Conflict situations

**92. Recalling that States have legal obligations to comply with the Convention and international human rights standards, including in migration situations arising from conflict, States should ensure that their migration policies and procedures relating to conflict situations have adequate safeguards regarding children's rights.**

**V. CONCLUSION**

**93.** The Committee appreciates the valuable inputs provided by all participants of its 2012 Day of General Discussion (DGD), whether by participating in the discussions during the meeting or providing written submissions for the DGD. Reiterating its appreciation to the participants and contributors to its 2012 Day of General Discussion, the Committee urges all stakeholders to take account of the discussions and recommendations of its 2012 Day of General Discussion on the Rights of All Children in the Context of International Migration. All children in situations of migration need to be protected through the full application of the Convention on the Rights of the Child and without discrimination of any kind.

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