

Open-ended Consultation on “Protecting the Rights of the Child in the Context of Migration”, 25 May 2010

**Opening remarks by Ms Marcia Kran,
Director, Research and Right to Development Division, OHCHR**

Distinguished participants, colleagues, ladies and gentlemen, it is my pleasure to welcome you to this one day open-ended consultation on the theme of “Protecting the Rights of the Child in the Context of Migration”. It is my pleasure to share the podium with Ms Kirsi Madi, Deputy Director of the UNICEF Regional Office for Central and Eastern Europe and the Commonwealth of Independent States, and to thank UNICEF for their support in organising this consultation.

As you will know, in resolution 12/6 adopted by the Human Rights Council on 1 October 2009, the Office of the High Commissioner for Human Rights was requested “to prepare a study on 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, in consultation with relevant stakeholders”. In preparation for that study, which will be submitted to the Human Rights Council at its 15th Session in September, OHCHR has organized this consultation to seek the views of expert stakeholders on this important issue.

In these brief remarks, allow me first to briefly frame the issue of migration within its contemporary context. An estimated 214 million people currently live outside their country of origin. Migration affects every region of the world, and contrary to popular perception, less international migrants move from developing to developed countries than those who move from one developing country to another or between developed countries.

Migrants contribute to economic growth and human development in both home and host countries and enrich societies through cultural diversity, fostering understanding and respect among peoples, cultural and societies. Migration is also an important means for migrants and their families to improve life conditions and realize human rights. Yet, for all too many migrants, the process of migration is not a positive and empowering experience. Rather, it is characterized by abuse, discrimination and exploitation. Indeed, because they are outside the legal protection of their countries of nationality, migrants can be particularly vulnerable to abuse and exploitation. Moreover, as strangers to a society, migrants are often unfamiliar with the national language, laws and practice of countries of transit and destination. This makes them less able than others to know and assert their rights. They may also face discrimination and unequal treatment at work and in their daily lives, including in their access to public services, as well as exclusion from decision-making and legal recourse.

It is our belief that the protection of all migrants is one of the most urgent human rights challenges of today. The Office of the High Commissioner for Human Rights consistently advocates for a human rights approach to migration. By this we mean the

need to place human rights principles and standards at the centre of migration considerations and to make use of the human rights mechanisms and framework to protect migrant women, men and children from human rights violations at all stages of the migratory process. Effective human rights protection is critical to ensure that migration is a choice and an opportunity rather than a survival strategy, and ensuring protection of human rights will assist in the sustainable integration of migrants in host countries. Migration should ideally be an empowering experience for all involved.

In view of the seriousness of the human rights challenges in the context of migration, OHCHR has recently given fresh emphasis to its efforts to promote a human rights approach to migration. Thus, protecting the human rights of migrants is one of the priority areas for OHCHR in the next years, in order to address the critical protection gap between human rights standards as enshrined in international law and the high levels of violations which are occurring in practice. In particular the issue of migration has been identified as one of six thematic priorities of the High Commissioner, with a focus on

- a. The impact of xenophobia, racism and related intolerance on migrants
- b. The economic, social and cultural rights of migrants
- c. Criminalisation of irregular migration and
- d. Immigration detention

Let me provide a little more explanation as to the principal concerns of the Office of the High Commissioner in this regard:

Impact of xenophobia

The danger of framing migration within a “security agenda” is that the language of and policy on migration then tends to focus on control, restriction and, often, fear. When the military is called out to patrol the streets, or when the declaration of a public emergency or the formation of vigilante groups are the most visible response to migration, human rights protection and social inclusion will suffer. The public language in which migration is discussed is an important indicator of integration. When migration is discussed in terms that promote the rights of migrants, that acknowledges their contributions, allows a rational debate on the demand for migrant labour in the economy and society, and shuns inflammatory, racist and xenophobic rhetoric, there is a greater chance that the integration of migrants will be successful and beneficial to them as well as society at large.

Yet, around the world, the migrant is stigmatized as a dangerous, alien presence in society. He or she is targeted in hate speech, harassment and violence and blamed for societal problems, including crime and economic difficulties. Persistent anti-migrant sentiments, often bolstered by official policies of criminalisation and exclusion, create a public atmosphere that is hostile to the presence of migrants. Such sentiments are often reinforced by legislation, regulations and policies to place severe controls on migratory flows, as evidenced by the increasing tendency to criminalize irregular migration.

Economic, Social and Cultural Rights

Issues related to the enjoyment of economic, social and cultural rights are particularly crucial for migrants. Obstacles faced in access to economic, social and cultural rights are a key human rights challenge faced by migrants, and are both a cause and a consequence of social exclusion. Given the indivisibility and interdependence of all human rights, in addition, the failure to protect and ensure economic, social and cultural rights can also have severe consequences for the realization of civil and political rights and vice versa. For instance, a requirement to present a residence permit in order to register a child at birth effectively deprives children born to irregular migrant parents of the right to identity and birth registration, which can in turn deny them access to education.

Measures of immigration control may also indirectly prevent irregular migrants and their families from accessing and enjoying such basic human rights as the right to health, to education and to adequate housing. Thus, laws which impose a duty on public officials, which could include public health and education officials, or private individuals such as landlords, to report the presence of irregular migrants will deter migrants in an irregular situation from accessing healthcare services, will prevent them sending their children to school, or will force them to seek out substandard housing, out of fear of detection and deportation. It is important to note that protecting economic, social and cultural rights is closely linked to social inclusion and integration of migrants, which in turn enables them to lead economically productive and culturally and socially enriching lives.

Criminalisation

We have noted with concern the increasing tendency to criminalize migration. The Working Group on Arbitrary Detention, the Special Rapporteur on the human rights of migrants and other human rights mechanisms have stressed in addition that criminalizing irregular stay in a country exceeds the legitimate interest of States to control and regulate irregular immigration and can lead to unnecessary detention as well as encouraging stigmatization, hostility and xenophobia. Entering a State without a valid visa or overstaying a tourist visa should generally be considered administrative infractions and not criminal offences. Often irregular migrants have been in a country for several years, earned an honest living through hard work which is frequently carried out in substandard and abusive conditions. Infractions of immigration rules do not make a person a criminal, and it is important that this understanding is reflected in a State's migration policy.

Immigration detention

There is growing concern at the increased recourse by States to the administrative detention of migrants. This is often a mandatory measure, and undertaken without adequate guarantees, resulting in migrants being exposed to arbitrary and prolonged detention and to punitive regimes. It is important to stress that, under international human rights law, and because of the drastic impact of detention on the individual human being, the deprivation of liberty should in all cases be a measure of last resort and as the result of an individual determination. This is particularly important in the case of vulnerable groups of non-citizens, such as children. The General Assembly and the Human Rights Council have in recent resolutions expressed concern about the increasing and

indiscriminate use of immigration detention as a means of immigration control, calling on States to put an end to arbitrary arrest and detention of irregular migrants and to adopt alternative measures to detention. This was also the clear message which came out of the Human Rights Council's panel discussion on immigration detention in September last year, which also called on States to step up their efforts to explore alternative, less intrusive, measures to immigration detention.

Irregular migrants

The situation of migrants in an irregular situation is a growing concern. In line with international standards, stakeholders are encouraged to devise ways to reduce the necessity of migrants to migrate in an irregular situation. Being able to migrate through legal or regular channels can contribute to the protection of migrants and their families, and ensure that the process of migration is positive both for migrants as well as receiving societies. States are urged, accordingly, to ensure adequate access to regular forms of migration to meet local labour market needs.

Yet, it is equally important to recognise that a significant number of migrants in any given country are likely to be in an irregular situation. The popular representation of irregular migrants is not a positive one - they are portrayed as infiltrating the country, often regarded as a security risk, and blamed for increasing criminality and even importing disease. The vast majority of irregular migrants are, however, not criminals or deviants. Many will have fallen into a situation of irregularity having entered the country legally. Many will be already be integrated in some way into the host society and will be paying taxes and contributing economically. Fear of retribution or of deportation precludes migrants in irregular situations from seeking justice even in the face of vicious, pervasive, and sustained human rights violations.

Children in the context of migration

All of these themes are of particular relevance to the issue of protecting the rights of the child in the context of migration. Children are to be found in immigration detention, denied access to essential services because of their or their parents' status, subject to the same regimes of criminalisation as adult migrants, and are denounced as criminals and scroungers, whether moving on their own or in the company of parents and relatives. Yet, the international legal framework provides unequivocally that all children, regardless of their legal status or categorisation, should be treated and protected first and foremost as children. OHCHR accordingly continues to call for ratification and effective implementation of all relevant international human rights instruments. In the particular context of children and migration, this includes the Convention on the Rights of the Child as well as the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

However, the specific impact of migration on children has not in general received much attention, particularly in the formulation of migration policies. Rarely are children considered to have agency in this respect, to have taken an active decision to move. Yet, children migrate in various ways with a variety of motives: they can be left behind by one or both parents who migrate; they accompany their migrating parents; and they migrate

alone, independently of parents and adult guardians, in search of opportunity and protection. Some children are return migrants or have been repatriated. Unfortunately, the distinctive perspectives and vulnerabilities of children are often discounted in the formulation of migration policies. On the other hand, most national childhood policies do not take account of the needs and rights of migrant children. This leads to serious protection gaps for children in every region of the world.

While noting that much is yet to be done, we recognise the important work that is being carried out in highlighting and stopping up such gaps by States, United Nations and other inter-governmental organisations, NGOs, and other important stakeholders such as National Human Rights Institutions and academia. During the course of this consultation I look forward to hearing experiences from these various perspectives, to look critically at the international normative framework, and to learn about challenges and best practices. We hope in addition that there will be a lively discussion from the experts in the audience.

Thank you.