



Submission to the Joint General Comment on the Human Rights of Children in the Context of International Migration

Introduction

There is still much progress that needs to be made as far as the human rights of children are concerned. A new study¹ by the United Nations Human Rights Office reveals that there have been breaches in the safeguarding of children's protection rights, specifically within the context of migration.

The current situation is that many children who experience the migration process are often at risk of discrimination, violence and abuse. The migration process has a significant impact on children's everyday experiences, particularly for children who are being left behind and those on the move. It is worrisome that the protection and access to vital services for these children are sufficiently limited by the current migration policies and procedures that are set in place. The study indicates that the lack of protection from discrimination and punishment in these situations are usually dictated by the migratory status of the children or their parents.

We understand that the overarching aim of this new general comment is to contribute to improving the protection of the human rights of children, in the context of international migration. More specifically, one of the main goals includes, 'providing the CMW and CRC Committees with a specific tool to facilitate their role to monitor the implementation of the respective treaties in state parties as mandated by the Conventions.'

1. Situational analysis

The UN Convention on the Rights of the Child (UNCRC) represents one framework through which the protection of the rights of unaccompanied migrant children has become most widely accepted. General comment 6² on the matter of unaccompanied children³ recognises specific barriers to implementation, which have in effect hindered the fulfilment of these

¹ <http://www.ohchr.org/EN/NewsEvents/Pages/RightsOfMigrantChildren.aspx>

² <http://www2.ohchr.org/english/bodies/crc/docs/GC6.pdf>

³ Among others, see http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf; http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fGC%2f31%2fCRC%2fC%2fGC%2f18&Lang=en

children's protection rights. Provisions of the Convention on the Protection of the Rights of All Migrant Workers and Their Families (CMW)⁴ also establish specific obligations relating to the rights of children affected by migration.

Despite the principles and obligations enshrined within the CRC and its general recommendations and the Convention on the Protection of All Migrant Workers and Their Families (CMW) on the rights of children affected by migration, there remain major implementation gaps. As pointed out in the Concept note to this submission, barriers to effective implementation narrow down to two issues: 1) the absence of child-sensitive migration-related legislation, policies and practices; and 2) the lack of migration-related issues in laws and policies relating to children that take into account the special needs and the vulnerable situation of migrant children and children affected by migration. These two areas illustrate the need for children's rights to be taken into account and fully implemented in all aspects of migration policies and procedures.

2. The significance of children's participation

It is important that effective steps are taken to help improve the situation around children's human rights in the context of international migration. However, a key factor often given little attention when it comes to strengthening safeguarding is the active participation of children and young people themselves, in line with Article 12 of the UNCRC⁵. Children have the right to participate in decisions that affect them. Contrary to this, there is arguably a lack of children's active participation in many of the political decisions that concern them.

Allowing children and young people to be involved in decision-making in their diverse situations is the guiding principle of the philosophy of Child to Child (CtC). Being listened to and taken seriously enables children to be active partners in all matters which affect them. CtC, as an international child-rights agency, holds firm the idea that children's engagement is a key component to tackling all issues that violate children's rights. To establish an understanding of issues that are affecting children's everyday lives such as migration in this case, it is necessary that those who are affected are able to share their experiences so that concrete understanding about rights violations and potential solutions can be achieved. Without this, it is not fully possible to understand the extent of any situation in its entirety, or develop future statutory migration-related guidelines that are child-sensitive. This supports the reasons why CtC considers children's participation and the implementation of child-rights approaches as key principles essential to ending the effects of discrimination, abuse and neglect that children are suffering.

For the Joint General Comment being developed, CtC strongly believes that children can make positive contributions to improve children's rights issues relating to migration when provided with support and opportunities for meaningful engagement. Children's participation is a key strategy for upholding children's protection rights; if children are not listened to and taken seriously it is not possible to understand how those rights are being violated nor what remedies can be put into place to address these violations. CtC proposes that greater recognition be given to empowering children to participate in the realisation of their rights.

⁴ <http://www2.ohchr.org/english/bodies/cmw/cmw.htm>

⁵ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

3. Challenges in progress

The extent of which children's participation rights under the CRC have been explored and applied is still in its early stages of development. Although children's rights organisations have put effort and resources into realising children's participation rights, in most contexts and settings such investments have not yet led to any significant changes in the status and role of children in society.

There are a number of changes required for the institutionalisation of children and young people's participation to become a reality. These include⁶:

- **Improving the quality of programmes or initiatives to promote children's participation.** This includes promoting practices that are ethical, child-sensitive, relevant, inclusive, safe, well supported, and understood in the context of children's families and communities.
- **Demonstrating a commitment to monitor and evaluate progress in realising children's right to participate.** There is an urgent need to develop and agree indicators to measure work to support children's right to participate.
- **Creating supportive systems for children to be meaningfully engaged in their experiences of migration.** The migration situation for individual children varies; whether in/voluntary or il/legally migrating, it is imperative that governments and others present opportunities for children to engage and be consulted on their own terms at some point in the migration journey. Considering the varied situations and conditions individual children face when migrating, engaging children in practice is complex and can pose a number of challenges. Some children for example might not wish or may be too frightened to engage, however governments under the CRC on protection rights are committed to ensuring children's voices are heard and taken seriously on matters about their lives. There is therefore a need for governments to allocate resources necessary to engagement and consultation in order to better understand the children's migration experiences and identify measures that can be put in place to enhance their protection rights. These supportive structures need to be carried out within a safe environment and in alignment with child protection guidelines.

⁶ <http://www.savethechildren.org.uk/resources/online-library/toolkit-monitoring-and-evaluating-childrens-participation>

Appendix One: Monitoring and Evaluation Framework for Children's Participation

One of the goals of this General Comment is to identify tools that could be used by the CMW and CRC Committees to facilitate their role to monitor the implementation of the respective treaties in state parties as mandated by the Conventions. One tool which may be of interest to these Committees is a recently developed monitoring and evaluation framework for children's participation, developed collaboratively by Save the Children, WorldVision International, Unicef, The Concerned for Working Children and Plan International.

A summary of the key parts of this tool is presented below.

1. Measuring the scope, quality and outcomes of children's participation⁷

The term participation is often perceived as a one-off activity rather than a process, and this perception has contributed to the lack of understanding of participation.

Assessing the scope of children's participation within programmes helps gear us towards a deeper examination of the position children and young people hold during the stages of a programme development and implementation. Giving attention to the scope of participation, it is hoped, will encourage adults to consider: when children get involved (the point of engagement); what level they get involved at (level of engagement); and which children get involved (inclusive engagement). These are key questions for consideration as they provide us with a means of meaningfully measuring what exactly is being done to achieve children's participation, and to what extent.

2. Developing greater scope of participation

As mentioned earlier, the lack of understanding around participation has been greatly influenced by the perception that children's participation constitutes a one-off event. The issue with this idea is that it places a limit on opportunities for children to participate fully in various aspects of programme/advocacy work. For a programme to be developed, there are a number of stages that need to be worked through before it can be successfully implemented, which children have the capacity to influence. Children have far more to offer than adults realise, and by allowing their participation to only be an occasional matter, we underestimate their ability to make insightful contributions at all stages of programme/advocacy work.

3. At what point can children get involved?

3.1 Children's involvement in identifying issues

Examining the point of children's engagement in the programme cycle is necessary to consider seeing that there are different stages children can have influence over within this process. Situational analysis, planning, implementation, monitoring and evaluation, and dissemination and feedback represent key stages of a programme cycle children should be enabled to meaningfully participate in. Perceptibly, the earlier children are involved, the greater level of influence they are likely to have. In the planning of any programme/advocacy

⁷ http://www.savethechildren.org.uk/sites/default/files/images/ME_Toolkit_Booklet_3.pdf

work children should be enabled to impact the development of the process, even in its earliest stages of drawing up an initial concept.

The CRC and CMW identify that current legislative frameworks on ensuring the children's safeguarding have been hindered by 'the lack of migration-related issues in laws and policies relating to children that take into account the special needs and the vulnerable situation of migrant children and children affected by migration'. For progress to be made in this area, development strategies need to reflect the concerns in which children voice their opinions about their individual experiences. To understand issues which are significant to children's lives, children themselves can contribute greatly to helping others gain insight into this. Therefore, decision-making about what is important for children need to be inclusive of their views and ideas, and not be based solely upon the knowledge of what adults consider to be significant for children.

3.2 Children's involvement in planning

Children hold a great deal of knowledge about their diverse situations as a result of these lived experiences. Because of this, they are able to help us understand the significant issues affecting their lives, and furthermore, play a significant part in planning what might be done in order to address these problems. If efforts have been made to include children in developing a situational analysis then in respect of this, it is important that their contributions are taken seriously when drawing up plans for implementation. Children's degree of involvement at this stage can vary greatly but ultimately, children should be enabled to plan actions that they can take.

3.3 Children's involvement in implementation

Depending on the agenda/s set, taking action can involve carrying a number of tasks, which children can play a key role in. The kinds of areas children can play a role in might range from carrying out research to developing a children's facility. With the right support from adults children can take action on what has been planned as individuals or as part of a group.

3.4 Children's involvement in monitoring and evaluation

To be able to effectively assess the effectiveness and progress of any programme children are involved in the implementation of, then it is necessary for them to participate in the regular monitoring and evaluations of these programmes. Their participation in this sense is beneficial because it accords children with a sense of ownership, provides them with an interest in outcomes and helps them work towards considering future plans to improve those outcomes. Programmes implemented and evaluated by adults only are less likely to be fully inclusive of children's perspectives and experiences, which is necessary for the establishment of a child-rights approach in migration-related legislation, policies and practices.

3.5 Children's involvement in dissemination and feedback

Acting upon findings presents the next fundamental step that needs to be taken once evaluations have been completed. For children's participation to be facilitated at this stage, it is necessary that information regarding findings are shared with children, and that they are also enabled to participate in the evaluations that are made to create better systems for future programming.

Having looking at all the stages of programming in which children are able to be active participants of, the following section seeks to draw on the three main levels of children's participation that usually occurs during the process.

4. At what level can children get involved?

There are different levels at which children may engage in programmes and these can differ at various stages of the programme cycle. However, consultative, collaborative and child-led can be considered as the three potential levels of engagement children's participation tends to take place.

4.1 Consultative participation

This type of participation typically involves an approach that is adult-initiated. Although children's views are sought to build knowledge and understanding about children's lives and experiences to support the way a programme is designed, its overall structure and organisation is highly governed by the input of adults. As a result, matters concerning issues to be considered, analysis of findings and evaluations made are essentially determined adults ideas, and thus children take on a largely passive role. However, consultative participation contributions can be valuable in the way that this process recognises the significance of incorporating children's perspectives. Through consultation, children are able to have some degree of influence over decision-making as this approach does not only draw on the perspective of adults, but also gives value to the views and concerns of children.

4.2 Collaborative participation

Similarly to consultation, collaborative participation is primarily adult-initiated; this approach does however involve a greater level of children and adults working together in collaboration. This often manifests through the way children are involved in decisions being made, what actions need to be taken and how it is going to be achieved. Although this approach is dominated by adult-initiated ideas, children are active contributors in how decisions are implemented. Collaborative participation allows children's engagement to occur on an on-going basis as their involvement might include; designing and undertaking research, policy development, or peer education and counselling, or it might include children's participation in conferences, or their representation on boards or committees.

4.3 Child-led participation

This type of participation follows a structure and organisation that is less controlled by adults and provides children with opportunities to initiate actions and establish activities of their own. Child-led participation enables children to strongly impact the process through determining the issues that are important to them, and that therefore need to be addressed. The role of adults in this process is to act as facilitators rather than leaders. The intention of the facilitators here is to provide children with the support, advice and information they need to pursue their set objectives.

Looking at these levels of participation is useful as it then allows practitioners, stakeholders, officials, and other professional bodies involved in the provision of children's services, with an instrument for measuring how children, at each stage, are participating in their programmes.

This next section provides an overview of the basic requirements for good-quality participation that should be evident during the implementation of participation activities.

5. The quality of children's participation

Participation should be:

Transparent and Informative

Transparency and keeping children fully informed about all aspects of programme agendas they are participating in must always be established from the onset. Adopting a child-friendly approach in this context requires children being informed about their right to participate in a format that is accessible and appropriate for the age/stage of those potential child-participants involved. Moreover, details about their participation should also include information about why they have been approached to participate, as well as the scope of their participation and what impact their participation could possibly have.

Respectful

The involvement of children's participation in any process should be respected, their contributions should be valued and this means that they should have opportunities to freely express their views and be able to initiate their own ideas. It is also important for adults to respect and seek to develop an understanding of the family, school and cultural context of children's lives.

Child-friendly

In order for children to be well-prepared for participation and contribute meaningfully to activities, adults need to develop a variety of child-friendly approaches that work towards supporting children's engagement. Participation activities designed and adapted should be based on the ages and stages of all those children involved. One of the key ways adults should work towards achieving this is by ensuring that the methods of involvement are developed in partnership or consultation with children.

Inclusive

Children's participation should be inclusive of all children and work towards challenging existing patterns of discrimination. Participation should aim to provide opportunities for children of all backgrounds to be included and not discriminated because of age, race, sex, religion, national, ethnic or social origin, property, disability, birth or other status.

For participation to be inclusive in practice, staff need to be sensitive to the cultures of all children involved and participation activities and must be flexible enough to respond to the needs, expectations and situations of different groups of children. The age range, gender and abilities of different children, and other diversity factors needs to also be considered.

Supported by training for adults

Staff need to be equipped with the right level of knowledge and capacity to be able to effectively facilitate children's meaningful engagement. Therefore adults could benefit from undertaking training and preparation prior to engaging children in participation activities. Such training sessions should provide adults with appropriate training and tools that would teach and support them with how to use participatory practices. In practice it should mean that adults are not only supported to delivery participatory practices but that such implementations are supervised and evaluated.

Safe and sensitive to risk

Adults have a duty to care towards children to ensure their safety and minimise the risks of abuse, exploitation and any other negative consequences of participation they could be exposed to. It is imperative that the protection of children's rights is kept paramount in the planning and organisation of children's participation. Adults have responsibility to ensure children involved in participation activities are made aware of their right to be safe from abuse and know who they can go to if in need of any help or support.

There are a variety of tools that can be used to measure the quality of children's participation. These can be found in the toolkit.