



Convention on the Rights of the Child

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Committee on the Rights of the Child Sixty-first session

Summary record of the 1745th meeting

Held at the Palais des Nations, Geneva, on Friday, 28 September 2012, at 3 p.m.

Chairperson: Mr. Zermatten
later: Ms. Wijemanne
later: Mr. Zermatten

Contents

Days of general discussion

The rights of all children in the context of international migration

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The meeting was called to order at 3.10 p.m.

Days of general discussion *(continued)*

The rights of all children in the context of international migration

1. **The Chairperson** asked the members of the Committee to split into two working groups.
2. *Ms. Wijemanne took the Chair.*
3. **The Chairperson** invited the participants to resume the discussions of working group No. 1* on the international framework for children's rights in the context of international migration, the gaps in protection and the individual and joint responsibilities of States parties (including bilateral and multilateral agreements) in countries of origin, transit and destination. The main questions submitted to the Committee by civil society organizations concerned the determination of the age of migrant children, criminalization and detention of such children, their access to health and adequate housing, the legal assistance provided to them, birth registration, the unsuitability of assessments of those children's best interests and needs for protection, and the appointment of guardians. She invited the participants to make recommendations to be presented together with the working group's conclusions.
4. **Mr. Abruzzi** (L'Albero Della Vita foundation) said that one fifth of the population of Romania had emigrated to other European countries. Often, migrant parents left their children in Romania to be cared for by family members. Those children were often victims of exploitation and suffered from psychological disorders. European policies had not adequately evaluated the social consequences of migration in the countries of origin of migrant workers. With that in mind, cooperation between migrants' countries of origin and countries of destination was necessary. There was a need to collect data on the constantly evolving phenomenon, promote better understanding of the problem within the European and national institutions, raise awareness among migrant parents by encouraging them to maintain better relations with their children and ensure the development of migrants' home communities.
5. **Ms. Soova** (Platform for International Cooperation on Undocumented Migrants) said that she preferred to use the expression "children living in their country of origin" rather than "children left in the country", which had negative connotations. The situation of those children was closely linked to legal migration channels. If the parents did not emigrate legally, it was more difficult for them to maintain relations with their children. Much more inclusive family reunification policies should therefore be introduced. Although all children should have equal access to services, their access to them depended on their country of origin. Often, the exchange of information between social services and immigration services prevented illegal migrants from obtaining basic services for fear of being reported.
6. She recalled that, in the Zambrano case, the European Court of Justice had ruled that parents of children with Belgian nationality should not be expelled, and that Belgium should guarantee them a standard of living sufficient to bring up their children. Data on irregular migrant children should be collected, although it was difficult to do so without jeopardizing their situation.
7. **Ms. Shuteriqi** (Terre des Hommes International Federation) said that the Committee must send out a clear message against xenophobia, including xenophobia towards migrant

* The discussions of working group No. 2 were not covered in a summary record.

children. Those children should be included in political debates that affected them. It was necessary for States to collaborate with non-governmental organizations (NGOs) to enable them to better evaluate the situation of children in the context of migration. All children should be taken into account during discussions on migration, as often, child protection systems did not meet the needs of children living in their country of origin. Her organization regretted that the situation of children was not considered a priority in international discussions on migration.

8. **Ms. Saab** (United Nations Children's Fund) recalled that the rights enshrined in the Convention on the Rights of the Child must be guaranteed to all children. Legal and political reform was necessary to ensure children's access to civil, political and cultural rights and to basic services, regardless of their parents' migration status.

9. She stressed the importance of collecting precise data disaggregated by sex, age, country of origin, level of education and migration status. More data on illegal unaccompanied migrant children should be collected.

10. **Ms. Noguchi** (International Programme on the Elimination of Child Labour, International Labour Organization (ILO)) said that the underlying causes of child labour needed to be addressed. The right to education and the right to social protection should be guaranteed in all countries to children and adults alike.

11. **Ms. Silan** (Save the Children Thailand) said that, under the Thai law on child protection, all children in the territory of Thailand, regardless of their nationality, had the right to protection. Regional cooperation was very important, as the full protection of migrant children could not solely be guaranteed by the countries of destination.

12. **The Chairperson** said that poverty and unemployment were among the underlying causes of migration. Migration should be considered in the broader context of eradicating poverty, taking particular account of the situation of families with young children.

13. **Ms. Murillo** (Defence for Children International) said that because of the lack of up-to-date data on children in the context of migration, it was difficult to obtain a clear picture of the relationship between migration and child labour. Given the complexity of the problem, those issues should be addressed in an interdisciplinary manner, with the objective of establishing the profile of the children concerned. Consideration should also be given to whether migrants had legal or illegal status, and how that affected their integration into the labour market. Her organization recommended setting up a long-term process to monitor migrants at borders, in reception centres and in migrants' workplaces, to study the movements of the migrant population, particularly unaccompanied migrant children, and to analyse the migration process.

14. **Mr. Sambo** (African Movement of Working Children and Youth) stressed that children often circumvented the provisions and laws that affected them because they were ill-informed. States should be encouraged to engage in dialogue with migrant children, to inform them, and take account of their concerns. Greater emphasis should be placed on prevention. The Committee should prepare a recommendation with a view to encouraging States and institutions to involve communities in the drafting of policies on migrant children.

15. **Mr. Geissler** (Fondation Suisse du Service Social International) said that, in order to provide better protection to migrant children, international cooperation should make use of existing mechanisms, such as the bilateral and multilateral agreements to combat trafficking concluded between the countries of West Africa. It would then be sufficient to consider ways of reproducing those agreements in other countries and regions, and of expanding the target group so that no vulnerable children were excluded from the protection system.

16. **Ms. Landerreche** (Mexico) stressed the need to prevent migratory phenomena, particularly by creating better living conditions. In Mexico, public policies to combat migration were intended first and foremost to protect the family, which was considered the primary system of integrated protection for children's rights, and to avoid parents emigrating and leaving their children in the care of the extended family, as those children would in turn end up emigrating in search of their parents or a job. The issue should therefore be addressed globally, taking into account all the socioeconomic and family factors involved. It was not feasible to return children to their country of origin without having any follow-up in place, as in such cases they always ended up leaving again.

17. **Ms. Farmer** (Human Rights Watch), noting that the outcome of the procedure used by the child protection services to determine the age of migrant children could be the extension of their detention, said that States should be recommended to ensure that child protection measures were not contrary to the best interests of the child.

18. **Ms. Levoy** (Platform for International Cooperation on Undocumented Migrants) said that it was vital to closely examine the issue of the impact on migrant children's mental health of placing them in detention, since it was not rare, in a migration context, for such children to be exploited or subjected to violence, and to suffer post-traumatic stress when they were sent back to their country of origin, with which they had no links for a number of years. It was also important to emphasize in the recommendations the right of those children to development and health.

19. **Mr. Killoran** (Immigrant Council of Ireland) said that States should create a body to better coordinate their actions for migrant children, and that undocumented children should receive the same treatment as citizens and those residing legally in the territory of the State. An NGO should also serve as a mediator between children and the State, and responsibility for identifying children who were victims of trafficking and providing them with immediate assistance should lie not with the police but with a specialized NGO or the ministry of health.

20. **Mr. Mitchell** (International Detention Coalition), noting the psychological and physical repercussions suffered by undocumented children placed in detention, proposed that a recommendation be made to States to take such measures only as a last resort.

21. **Mr. Oke** (TRACK) said that, in the case of major population displacements as a result of a natural disaster or conflict, the countries of origin of children put up for international adoption and the countries of adoption should closely monitor the situation, as in such circumstances, the child protection and family assistance services were generally disorganized.

22. **Mr. Hitchen** (Edmund Rice International) said that, as was the case in many States, each region should set up a children's rights commission or children's ombudsman with responsibility for monitoring the situation of all children in the countries of the region, including countries of origin, transit and destination.

23. **Ms. Brane** (Women's Refugee Commission) expressed concern that migrant children placed in detention with their parents did not have access to the health and education services of their country of origin once they were returned, as they did not have the necessary documents. That problem should be addressed at the national, international and regional levels.

24. **Mr. Vankeirsbilck** (Defence for Children International) said that it was unacceptable that migrant children should still be detained, and that a stronger stance should be taken on the matter. He recalled that the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provided

for the creation of mechanisms to visit all places of detention, and he therefore considered that all States parties should be urged to ratify those instruments.

25. **Ms. Maolla M’Jid** (Special Rapporteur on the sale of children, child prostitution and child pornography) said that it was difficult to protect the rights of all children in the context of migration, as many private and public stakeholders were involved in the country of origin as well as in the countries of transit and destination. Asking States to coordinate and cooperate was not sufficient: they must be offered effective tools to do so, taking into account the specificities of each country and the lessons learned from existing models.

26. **Ms. O’Donnell** (Save the Children) called on States parties to disassociate measures taken to find the families of unaccompanied children from the steps taken by the immigration services with a view to returning them to their country of origin, as otherwise the parents might not make themselves known. The emphasis should therefore be placed on restoring family links through transnational cooperation.

27. **Mr. Moussa** (Synergy 14) called on States parties to cease making a distinction between “European” minors and minors from countries outside the European Union, referred to as “foreigners”. Europe and the international community should look into the situation of those minors in their country of origin or in transit countries, where they experienced the worst kinds of suffering, as was the case of black children who were victims of racism in the Maghreb or children forced to prostitute themselves in order to pursue their journey. Waiting to take care of them in Europe was already too late: it was necessary to intervene earlier and to support the actions of civil society, which was doing its utmost to defend their fundamental rights in those countries.

28. **Ms. Velásquez** (Migration and Child Welfare National Network/ECLT Foundation) said that, in order to provide migrant children with the help they needed, it was necessary to take into account the trauma they had experienced and not to focus solely on their safety, finding their parents or family members, or regularizing their situation.

29. **Ms. Farmer** (Human Rights Watch) said that alternative solutions to returning migrants to their countries of origin should be considered, in particular resettlement in countries of transit, together with family reunification.

30. **Mr. Crépeau** (Special Rapporteur on the human rights of migrants) recalled that children remained children regardless of their immigration status. He regretted that, currently, the only bodies that cooperated at the international level in respect of children were the police and immigration services, and not child protection services. However, solutions were often found on a case-by-case basis through cooperation at the local level. It would also be wise to evaluate local actions in order to create specific tools enabling them to be reproduced at national level. The Committee could be the ideal authority to debate those issues.

The meeting was suspended at 5.05 p.m. and resumed at 5.25 p.m.

31. *Mr. Zermatten resumed the Chair.*

32. **The Chairperson** invited the two rapporteurs to present the preliminary recommendations from the deliberations of the working groups.

33. **Ms. Sandberg** (Rapporteur for working group No. 1) said that the debate had highlighted the need for cooperation between the regions and to take account, in regional agreements, of disparities between countries and regions, and of the rights and protection of children. In view of the need for consular assistance of countries of origin and countries of repatriation to be organized at the regional and international levels, and better coordinated between the European Union member States and the European Union, it had been proposed to create the institution of regional commissioner for children’s rights.

34. A definition of the best interests of the child should be drafted, including the related procedures and criteria in the migration context. Children should be involved in the elaboration of national and regional policies, and migration and children's rights should always be closely linked.

35. Although the Convention on the Rights of the Child was a major instrument, the rights of the child were also prescribed in other instruments. A study of the gaps in the international legal framework and of best practices could be carried out. Given that the main obstacle to collecting data internationally was the poor quality of national data, the collection of data at international level through an inter-institutional migration group should be considered.

36. The participants in the debate had called for the reservations in relation to the rights of the child made upon ratification of international instruments to be withdrawn.

37. There should be a discussion on how to deal with the right to family life in the case of illegal adoption. The participants had considered that the trauma suffered by children should be taken into account, a sustainable solution be found to displacement, and the expulsion of children as soon as they reached the age of 18 should be examined. All countries should set up coordination mechanisms and put an end to the detention of minors. Lastly, the prevention of the forced migration of children, particularly because of poor living conditions, should be strengthened through regional and international cooperation.

38. **Ms. Al-Asmar** (Rapporteur for working group No. 2) reported on the recommendations made concerning national measures to implement the rights of the child in the context of international migration in countries of origin, transit and destination. It was the responsibility of the States to guarantee the safety of all children within their jurisdiction by providing appropriate human and financial resources. Children should be considered individually, not simply as facets of their family, and must be provided with health services, education, appropriate housing and psychosocial support. In addition, in assessing the child's age, a multidisciplinary approach should be adopted.

39. All interviews should be conducted by trained officials in an appropriate manner and adapted to the child's age, gender and situation. Procedures should be as short as possible and should be explained to children, who should be provided with legal assistance and a guardian, as well as being able to appeal any decisions that affected them, in a system overseen by ombudsmen and national human rights committees.

40. Detention of minors should be avoided in all circumstances. A broad definition of deprivation of liberty that strengthened the rights and protection of children should be established, and alternatives, under the responsibility of the child protection system, should be introduced.

41. Given that undocumented children were particularly vulnerable, they should receive particular attention, in particular to ensure that their births were registered and that they could request the nationality of the host country, have access to basic services, and receive special protection against xenophobia and discrimination.

42. Children left behind in their parents' country of origin should not be forgotten, and they needed psychosocial support in particular.

43. **Ms. Maurás Pérez**, speaking in her capacity as rapporteur for the days of general discussion, said that the discussions, which had been full of ideas, had served to recall that children should be a visible element in legislation, policies and programmes on migration, and that all States and stakeholders should apply the Convention on the Rights of the Child. The participants in the two working groups had made a number of calls: migrant children should no longer be deprived of their liberty; States and all stakeholders should promote legal immigration channels, as mobility was a right; States should assume their

responsibilities in terms of protecting all children in the context of migration, and find alternative solutions to refoulement; a joint governance system should be established with a view to guaranteeing that the rights of migrant children were taken into consideration in measures taken at the national, regional and international levels; and an inter-institutional group on migration should be set up.

44. After an exchange of courtesies, **the Chairperson** announced that the next day of general discussion would be held in September 2013, and would focus on the media, social networks and children.

The meeting rose at 6 p.m.