

Submission to the Committee on Migrant Workers and the Committee on the Rights of the Child for the preparation of a joint General Comment on the human rights of children in the context of international migration.

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The first image that comes to mind when considering children in the context of migration tends to be that of the children of migrant workers. Children are rarely considered as migrants in their own right. This is inconsistent with a children's rights-based approach because it undermines children's recognition as individuals with rights independent of their family.

This gap is evident in CRIN's analysis of children's rights in the work of the Committee on Migrant Workers (the Committee).¹ This Committee and the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) provides an important platform for elaborating children's rights as they apply to migrant children in addition to child-specific standards. Indeed, its concluding observations and general comments address a range of children's rights issues, including access to education and health care, social security and birth registration. However, the ways in which children's rights are violated independently of their parents' or family's situation and status as migrant workers are scarcely addressed. Those that do tackle smuggling and trafficking of children and the need for prevention of and accountability for these crimes.

This submission draws attention to neglected areas of child migrants' rights as highlighted in the analysis, chiefly: the language used to refer to children in this situation, the right to work, detention and criminalisation on the basis of children's migration status, and access to justice.

The annex to this submission details the full findings of CRIN's analysis of the Committee's work.

Concerns regarding language

Hate speech²

The language used to describe or refer to a given community, in this case migrants, has an impact on all migrants, including children, in terms of how they are perceived and treated, namely in transit and destination countries. Language is a powerful tool that can sway public opinion on social issues; and the language used in the coverage of and commentary on so-called migrant crises in parts of the world is no exception.

¹ See annex

² Office of the UN High Commissioner for Human Rights, "UN Human Rights Chief urges UK to tackle tabloid hate speech, after migrants called 'cockroaches'", 24 April 2015. Available at: <http://www.ohchr.org/RU/NewsEvents/Pages/DisplayNews.aspx?NewsID=15885&LangID=R#sthash.4edeQ8Xa.dpuf>

In the context of the current refugee crisis in Europe, some of the language used by the media and politicians to refer to migrants has been deprecating and arguably borders on hate speech. In the United Kingdom, for example, politicians referred to the “need to protect our borders” from “swarms” of “marauding migrants”.³ Also on the UK, the UN High Commissioner for Human Rights compared language used by tabloid newspaper *The Sun*, which advocated using gunboats to stop migrants, with anti-Semitic language used by the Nazi media in the 1930s⁴ - the trigger for article 20 of the International Covenant on Civil and Political Rights (prohibition of incitement to hatred), and elements relating to hate speech in the International Convention on the Elimination of All Forms of Racial Discrimination.

Meanwhile other news reports include words like “illegal” and “irregular” in descriptions of people who cross borders, associating them and their actions with criminal behaviour and engendering stigma against them.⁵

Because of this, child migrants - regardless of the motive for their migration - have faced prejudice, open displays of discrimination, and open disregard for their special status as children with specific protection needs.⁶ Cases have included migrant families in Bulgaria being forced to leave accommodation because of protests by local people,⁷ and a bus carrying migrant families who were to be resettled in the German village of Clausnitz was confronted by angry protesters chanting “go home.”⁸

‘Bad migrant’ vs. ‘good refugee’

The word ‘migrant’ used to be a neutral word describing the diverse range of people who cross borders; but in recent years it has taken on negative connotations. Namely, a dichotomy has emerged whereby migrants are being perceived as less deserving and less

³ “Marauding’ migrants threaten standard of living, says foreign secretary,” *The Guardian*, 10 August 2015. Available at: <http://www.theguardian.com/uk-news/2015/aug/09/african-migrants-threaten-eu-standard-living-philip-hammond>

⁴ Office of the UN High Commissioner for Human Rights, ‘UN Human Rights Chief urges U.K. to tackle tabloid hate speech, after migrants called “cockroaches”’ - Available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=15885&LangID=E>

⁵ Platform for International Cooperation on Undocumented Migrants, “Undocumented, not Illegal: New Campaign advocates for accurate terminology in all EU languages”, June 2014. Available at: <http://picum.org/en/news/picum-news/44372/>

⁶ See, for example, “Moving Stories: International Review of How Media Cover Migration”, Ethical Journalism Network, December 2015. Available at: <http://ethicaljournalismnetwork.org/assets/docs/095/237/d46945f-e5abced.pdf>

⁷ See, for example, “Bulgaria: A study in media sensationalism”, Ethical Journalism Network, Dec 2015. Available at: <http://ethicaljournalismnetwork.org/en/contents/moving-stories-bulgaria-a-study-in-media-sensationalism>

⁸ See, for example, “Refugees as they are welcomed in Germany by mob shouting ‘go home’”, *The Independent*, 19 February 2016. Available at: <http://www.independent.co.uk/news/world/europe/refugees-weep-as-they-are-welcomed-in-germany-by-mob-shouting-go-home-a6884376.html>

worthy of our compassion than refugees.⁹ In light of refugee movements in different parts of the world, migrant has essentially come to mean ‘not a refugee’.

The media has again played a role in this, as some news outlets, including *Al Jazeera* and *The Washington Post*,¹⁰ have commented on how the word migrant, when used to describe people fleeing conflict, is inaccurate and “dehumanises”. While well-intentioned, this inevitably feeds into the discourse of migrant as a reductive term.

Recommendations:

- States should ensure that policy decisions are based on facts and human rights, not distortion, exaggerated claims or xenophobia.
- States should work with the media to:
 - combat negative stereotypes of individuals and communities based on their migrant or refugee status;
 - give child migrants and refugees themselves the opportunity to be heard in the media;
 - promote a regulatory framework that promotes diversity and non-discrimination;
 - encourage compliance with Principle 9 of the Camden Principles on Freedom of Expression and Equality (Camden Principles) on the moral and social responsibility of the media.
- States should adopt comprehensive anti-discrimination legislation that includes preventive and punitive action to combat incitement to hatred.
- States should guarantee freedom of expression in line with article 19 of the ICCPR, but this must be read in conjunction with article 20 prohibiting hate speech.
- States should implement the recommendations of the 2012 Rabat Plan of Action, which arose from international discussions on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.¹¹

⁹ “Al Jazeera won’t say Mediterranean ‘migrant’, but we should,” Migrants’ Rights Network, 24 August 2105. Available at:

<http://www.migrantsrights.org.uk/migration-pulse/2015/al-jazeera-will-not-say-mediterranean-migrants-w-e-should>

¹⁰ “Is it time to ditch the word ‘migrant’”, *The Washington Post*, 24 August 2015. Available at:

<https://www.washingtonpost.com/news/worldviews/wp/2015/08/24/is-it-time-to-ditch-the-word-migrant/>;

“Why Al Jazeera will not say Mediterranean ‘migrants’”, 20 August 2015. Available at:

<http://www.aljazeera.com/blogs/editors-blog/2015/08/al-jazeera-mediterranean-migrants-150820082226309.html>

¹¹ Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, ‘Conclusions and recommendations emanating from the four regional expert workshops organised by OHCHR,’ in 2011, and adopted by experts in Rabat, Morocco on 5 October 2012. Available at:

http://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat_draft_outcome.pdf

Child economic migrants

Right to work and minimum guarantees

Despite the fact that child migrants are usually only seen in relation to their families, most often as children of migrant workers, children themselves can be economic migrants or refugees who end up in employment - often in exploitative situations. This has been highlighted in the concluding observations to States by the Committee on Migrant Workers which highlight concerns about how migrant children are trafficked and forced into exploitative labour or begging.¹²

Migrant children must be protected from exploitative labour activities, that is a given. But where the economic conditions in a country are such that it is likely that children will seek employment, a blanket ban on children's right to work can further exacerbate the rights violations experienced. It can increase the risk of children performing harmful labour activities as part of the illegal economy where abuse and exploitation are most prevalent.¹³ In such situations, avenues of redress often cease to exist and the issue becomes increasingly hidden. States parties which place excessive labour restrictions on the right of migrant children to work, although well intended, can result in isolating the very children they are trying to help, especially those in harmful situations of child labour, preventing access to protection mechanisms.¹⁴

However, it should be emphasised that not all work carried out by migrant children is exploitative or undertaken in hazardous environments. The dominant view is that all forms of children's work is somehow problematic and as such, there remains limited recognition of the right to legitimate forms of economic activity for migrant children. It should be recognised that many migrant children seek legitimate employment, and in some cases, it is an essential requirement for their survival and personal development. This is especially valid in situations where adequate state support is not provided to migrant families (such as through a guaranteed minimum wage) and a child is forced to work as a form of sustenance.

States parties should therefore seek to formalise and regulate migrant children's employment activities in order to ensure they are granted the same labour and rights protections as their adult counterparts.¹⁵ This should include the requirement of a legally binding employment contract between a migrant child and an employer in order to provide guarantees of their basic employment rights. This must include the timely payment of the employee's salary, appropriate rest periods for the work that is undertaken¹⁶, sickness pay

¹² CRIN, 'The UN Committee on Migrant Workers and children's rights: an analysis,' February 2016, available as an annex to this submission.

¹³ 'On Bolivia's new child labour law,' Neil Howard, Open Democracy, 6 November 2014. Available at: <https://www.opendemocracy.net/beyondslavery/neil-howard/on-bolivia%E2%80%99s-new-child-labour-law>

¹⁴ See, for example, 'Syrian refugee children found working in Next and H&M factories,' *The Independent*, 1 February 2016. Available at: <http://www.independent.co.uk/news/world/middle-east/syrian-children-found-working-for-uk-clothing-suppliers-including-next-and-hm-a6845431.html>

¹⁵ CRIN, 'Labour rights: Child labour and protecting working children,' 11 June 2015. Available at: <https://www.crin.org/en/library/publications/labour-rights-child-labour-and-protecting-working-children>

¹⁶ Committee on the Rights of the Child, General Comment 17.

for when the employee is unable to work due to illness¹⁷, adequate rest breaks and clearly defined maximum working hours per week¹⁸.

Discrimination in labour practices

The common practice of migrant workers having their identity and/or travel documents held by their employer or employment agency, as is common practice in the Middle East, shows how a consensual employment relationship can rapidly lead to situations of forced labour and deprivation of liberty.¹⁹

Migrant children experience numerous barriers to joining trade unions or associations, many of which have membership restrictions based on age, nationality or ethnic background, denying children a vital means of challenging rights violations.

Child migrant workers, like adult migrant workers, are also subject to discrimination based on their nationality or ethnic background, resulting in unequal treatment compared to nationals, such as lower remuneration. A lack of comprehension due to language and capacity means that the terms of employment contracts are rarely fully understood, heightening the opportunity for abusive practices to occur.

Recommendations:

- States should avoid blanket prohibitions on children’s employment, and in turn recognise children’s right to work.
- States should provide sufficient support to migrant families to ensure that children are not compelled to work to sustain themselves and/or their families.
- States should take measures to protect migrant children's right to work, regulating the hours and conditions under which children can work and instituting penalties and sanctions to enforce these standards.²⁰
- All migrant workers, including children, should be entitled to retain possession of their travel and identity documents.²¹
- States should guarantee that migrant children, like migrant adults, have a right to freedom of association and peaceful assembly,²² ensuring that children in the context of international migration are able to form and join trade unions to protect their interests.²³
- States must ensure that child migrant workers, like all workers, enjoy fair terms of employment as well as decent working conditions. Terms and conditions of their employment should be informed in a verifiable and understandable manner, preferably through a written contract, including the full details of their employment, including the type of work to be performed, pay, hours of work, annual leave, weekly rest periods, terms of repatriation, provisions for food and accommodation if relevant and terms and conditions related to the ending of employment.

¹⁷ Committee on Economic, Social and Cultural Rights, General Comment 19.

¹⁸ Convention on the Rights of the Child, Art. 32(2b).

¹⁹ Anti-Slavery International, ‘About domestic work’. Available at:

http://www.antislavery.org/english/campaigns/home_alone/about_domestic_work_and_slavery.aspx

²⁰ Convention on the Rights of the Child, Art. 32(2).

²¹ International Labour Organisation Convention 189, the domestic workers convention, Article 9(c).

²² Convention on the Rights of the Child, Art. 15(1).

²³ International Covenant on Civil and Political Rights, Art. 22(1); International Covenant on Economic, Social and Cultural Rights, Art. 8.

- States must ensure child migrant workers enjoy equal treatment to nationals, including in the areas of pay and conditions.
- States should take all appropriate legislative, administrative, social and educational measures to protect children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual exploitation and abuse.²⁴

Detention and criminalisation on the basis of migration status

Migrant children and their families continue to be placed in detention centres in destination countries, not because their actions are necessarily illegal, but based solely on their status as migrants. This is despite the fact that studies have shown such deprivation of liberty has a particularly harmful effect on children’s physical and mental health, with detained migrant children being some of the most severely traumatised.²⁵

Nonetheless, there are very clear and consistent standards on the prohibition of detention on the basis of children’s or their parents’ migration status. The Committee on the Rights of the Child most clearly stated the position under the Convention on the Rights of the Child in its recommendations following its general day of discussion in 2012:

“Children should not be criminalised or subject to punitive measures because of their or their parent’s’ 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.”²⁶

The Committee on the Rights of the Child has previously expressed concern when unaccompanied children are detained and deported. Children’s best interests should always be a primary consideration when examining asylum applications of undocumented, unaccompanied and separated children.²⁷

Recommendations:

- The UN Committees should re-enforce this strong and unambiguous standard in their forthcoming joint General Comment.

²⁴ Convention on the Rights of the Child, Arts. 19(1), 34.

²⁵ Australian Human Rights Commission, ‘The Forgotten Children: National Inquiry into Children in Immigration Detention,’ 2015. Available at: <https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/forgotten-children-national-inquiry-children>

²⁶ 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,’ para. 78. Available at: <http://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2012/DGD2012ReportAndRecommendations.pdf>.

²⁷ Kazakhstan, CRC/C/15/Add.213, 10 July 2003, para. 63 (b). Available online at: <http://tb.ohchr.org/default.aspx?Symbol=CRC/C/15/Add.213>

- States should cease placing children, including unaccompanied and separated migrant children and children with their families, in detention centres as a first-instance measure, using it only if deemed to be in the best interests of a child, such as, a way of preventing a violation of a child’s rights, and even then it should be used as a measure of last resort and for the shortest appropriate time.

Access to justice

The incorporation of the rights of migrant children into national legal systems can have only limited impact if those rights are not enforceable and the mechanisms for their enforcement are not accessible to migrant children. Indeed, access to justice is a fundamental right in itself and an essential prerequisite for the protection and promotion of all other human rights²⁸ and as such should be at the core of realising children’s rights in all settings.

This standard applies to all of children’s rights but some of the barriers children face in accessing justice for violations of their rights are specific to their migration status, such as limiting access to courts or legal aid for non-residents. In the United Kingdom, for example, a “residence test” for legal aid was introduced whereby people who had not been resident in the UK for 12 months would generally be unable to apply for legal aid in civil cases.²⁹

States have an obligation to realise the rights of all children under their jurisdiction³⁰ and securing these rights requires ensuring that they are enforceable for all, regardless of migration status. All persons should be equal before the law.³¹ This means that all migrant workers have the right to equality with nationals before any courts or tribunals.³² In criminal and civil suits, they are entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.³³ For children, court procedure must take account of age.³⁴

Recommendations:

- We urge the Committees to recognise that access to courts and other forms of redress for children should never be limited based on their migration status and that this requires that children’s access to legal aid and assistance where their rights are at stake.

²⁸ ‘Report of the United Nations High Commissioner for Human Rights,’ A/HRC/25/35, 16 December 2013, para. 3.

²⁹ For discussion and court ruling on the legality of the provisions, see *Public Law project v. the Lord Chancellor* [2015] EWCA Civ 1193. Available at: <http://www.bailii.org/ew/cases/EWCA/Civ/2015/1193.html>.

³⁰ Committee on the Rights of the Child, General Comment No. 5 on general measures of implementation of the Convention on the Rights of the Child, para. 1.

³¹ International Covenant on Civil and Political Rights, Article 26.

³² International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Art. 18.

³³ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Art. 18(1).

³⁴ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Art. 18(4).