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**Alternative information on
Belarus' implementation of the UN Convention on the Rights of the Child
in connection with the review of the 5-6th state reports (2017)
by the UN Committee on the Rights of the Child
For the 83 Pre-sessional Working Group of the CRC
3 – 7 June 2019**

Belarus: Immigration Detention of Children

(related to the Articles 8-11 and 37 of the CRC)

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The problems of laws and practices regulating child migration in Belarus

Belarus' location on the border of the European Union has propelled the country into international migration processes because it frequently serves as a transit hub for migrants attempting to enter Europe. Beyond that, Belarus participates in a significant amount of labor and other migration between former Soviet countries, which is regulated by laxer rules than migration to the European Union and other distant countries. For example, Belarus is part of various integrated formations of former Soviet States (Commonwealth of Independent States (CIS); Union State of Russia and Belarus; Eurasian Economic Union) that do not require a visa for travel between member countries.

Children comprise a major part of migration flows, but Belarus' migration laws lag behind a changing reality and make almost no account for migrant children. Instead, treatment of these children is regulated by rules existing since the Soviet and early post-Soviet periods that must be recognized as outdated and incompatible with the modern understanding of the rights of the child.

Historical background: Special aspects of the regulation of child migration within the CIS

The Soviet Union ceased to exist in 1991. New independent states arose across its vast territory, signifying not just the setting of new, guarded state borders, but also the severing of the hierarchical and horizontal ties that had existed for decades between the diverse but similarly structured agencies of Soviet republics and the need to establish new connections with the new structures of these independent states.

Since the 1990s, people have moved throughout the former Soviet Union on a large scale. This includes both emigration and labor migration from one former Soviet country to another, which, naturally, involves the participation of children. The regulation of different aspects of migration has been handled by various unions of independent former Soviet republics that started to arise on the ruins of the Soviet Union immediately following its dissolution: first the CIS (Commonwealth of Independent States, 1991), then the USRB (the Union State of Russia and Belarus), followed by the EEC (Eurasian Economic Community, 2000), the Eurasian Customs Union (2007), and, most recently, by the EAEU (Eurasian Economic Union, 2014). The problem of child migration was pressing even in the 1990s and was regulated by a number of documents created by the CIS, which is the earliest of the existing integrated formations of post-Soviet states. These documents include the Volgograd Agreement Concerning Cooperation with the MVD on Returning Minors to their Countries of Origin (1993) and, later, the Agreement of Cooperation of States-Members of the Commonwealth of Independent States on the Return of Minors to their State of Residence (2002, henceforth, the Chisinau Agreement).

The structures that controlled the movement of people within the Soviet Union (passport offices, reception centers, etc.) were within the purview of the MVD. Thus, it is not surprising that migration, including child migration, ended up under the jurisdiction of the MVD when, after the collapse of the Soviet Union, the need to coordinate migration matters between the newly independent states arose. The annexes to both agreements list the same institutions for holding migrant children (with the addition of new institutions created at the time of the signing of the Chisinau Agreement), and the absolute majority of them are part of the MVD system.

The technical outdatedness of the Chisinau Agreement can also be seen, above all, in the fact that institutions for migrant children have been reformed in a number of former Soviet countries and moved out of the MVD system and into the education and social welfare systems. This means that in many cases the MVD centers listed in the Chisinau Agreement simply no longer exist. A literal adherence to the Chisinau Agreement (the need to deal with children's reception centers that have been shut down) means that it is sometimes impossible to return children to their home country and that they get stuck in transit institutions for extended periods. In these circumstances, returning children to their country of origin frequently depends on the personal connections developed by workers at the transit institutions of various countries over the years of their cooperation.

The Chisinau Agreement is outdated for many other reasons, but it continues to be applied, resulting in persisting violations of child rights, including prolonged stay in what amount to closed institutions and deprivation of access to education and a normal family environment.

Belarus: migration-related detention of children in the police reception center

In Belarus, unaccompanied minor children from both CIS and other countries are placed, on the basis of a court ruling, in the Juvenile Reception Center (JRC) run by the Minsk Oblast Executive Committee of the Department of Internal Affairs. This center is part of the Ministry of Internal Affairs (police) system and is located in Minsk, the capital of Belarus.¹

The Chisinau Agreement (2002), which still regulates the legal and technical issues involved with moving children between CIS countries, lists Minsk's JRC as a "transit institution" used to return foreign children to the country of origin and Belarusian children from other countries to Belarus for placement in a family or children's institution.

While many CIS countries have humanized the entire process of children's transit, reformed children's transit institutions, or rejected them altogether since the time the Chisinau Agreement was signed, Belarus continues to place unaccompanied migrant children in the JRC—a closed institution under the Ministry of Internal Affairs, or, in other words, a detention facility.

Violations of the rights of the child in the reception center

1. Criminalization of migrant children

The reception center holds together in one place children who have committed crimes, possible victims of crimes, street children leading an asocial lifestyle, and foreign children who have not committed any violations but have been left without adult care.² Thus, migrant children face de facto incarceration simply due to their migration status, which is inexcusable.

¹ JRC activities regulated by Law of the Republic of Belarus "On the Principles of the System for Preventing Child Neglect and Juvenile Delinquency" of May 31, 2003 and "Guidelines for Organizing the Activities of Juvenile Affairs Inspectorates and Juvenile Reception Centers," approved by Order No. 283 of the Ministry of Internal Affairs of the Republic of Belarus of June 28, 2013.

² The terms for children to be placed in the reception center are set forth in Article 22 of Law of the Republic of Belarus No. 200-3 "On the Principles of the System for Preventing Child Neglect and Juvenile Delinquency" of May 31, 2003 with additions and amendments and order of the Ministry of Internal Affairs of the Republic of Belarus

Along with foreign children placed in the JRC, another group prescribed by law to be placed in the JRC is the group of children “who, when committing socially dangerous acts, are not able to recognize the actual nature or public danger of their actions as a result of delays in mental development unrelated to a psychiatric disorder (illness).” At a minimum there should be other institutions offering child-friendly psychological crisis services for these children.

Adolescent foreigners over the age of 16 are particularly vulnerable because they can be prosecuted for administrative liability for violation of migration rules or illegal work activities (this violation is regulated by Article 23.55 of the Code of Administrative Offenses (CAO); punishment is a warning, a fine in an amount up to fifty basic units, or deportation). These juveniles can be placed in temporary detention facilities of local internal affairs offices or isolation centers for offenders until the matter of their administrative prosecution and deportation is resolved, but not for a period of over 72 hours (Article 8.4 of the Procedural Execution Code of the Republic of Belarus on administrative violations).³

2. Detention of migrant children solely on the basis of their migration status

In reference to migrant children, including children in transit, the guiding principle of the Convention on the Rights of the Child—the principle of the best interests of the child—is understood improperly in practice, especially in the matter of placing restrictions on a child’s liberty: the “best” (and perhaps only) decision is the forced placement of children in a closed institution, that is, imprisonment.

This contravenes contemporary human rights standards, in particular, two joint General Comments from the UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and of the Committee on the Rights of the Child, which were adopted at the same time and supplement one another: No. 3 CMW/No. 22 CRC (2017) “On the General Principles Regarding the Human Rights of Children in the Context of International Migration” and No. 4 CMW/No. 23 CRC (2017) “On State Obligations Regarding the Human Rights of Children in the Context of International Migration in Countries of Origin, Transit, Destination and Return.”⁴

In these joint general comments, the CMW and the CRC speak out unequivocally regarding **the unacceptability of the immigration detention of children**—a situation where a child “is deprived of liberty because of their or their parents’ migration status, regardless of the name and

“Guidelines for of Organizing the Activities of Juvenile Affairs Inspectorates and Juvenile Reception Centers” of June 28, 2013.

³ This report’s authors know of four cases in 2018 where juvenile foreigners were prosecuted under Part 1 of Article 23.55 of the CAO, which provides for these sanctions (two were issued warnings and two were fined); the authors do not have information about earlier periods.

⁴ Joint General Comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration, CMW/C/GC/3-CRC/C/GC/22; Joint General Comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, CMW/C/GC/4-CRC/C/GC/23.

reason given to the action of depriving a child of his or her liberty, or the name of the facility or location where the child is deprived of liberty.”⁵ This means that it is not acceptable to place migrant children in closed institutions, regardless of their name and jurisdiction, and regardless of the legal status of the children and/or their parents:

Children should never be detained for reasons related to their or their parents’ migration status and States should expeditiously and completely cease or eradicate the immigration detention of children. Any kind of child immigration detention should be forbidden by law and such prohibition should be fully implemented in practice.⁶

3. Excessively long term of confinement in the reception center

Under the law, children cannot be held in the reception center for more than 60 days; in exceptional cases, this term may be extended by another 15 days under a court ruling.⁷

According to information known to this report’s authors, this term is strictly observed. However, it is still unjustifiably long and does not include quarantine, possible illness, time spent considering an appeal, a prosecutor’s protest of a sentence, or a court decision on a child’s further placement in a specialized institution.

Meanwhile, the UN Committee on the Rights of the Child and the UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families “emphasize the harm inherent in any deprivation of liberty and the negative impact that immigration detention can have on children’s physical and mental health and on their development, even when they are detained for a short period of time or with their families.”⁸

Also, the provision stipulating that in “exceptional cases” children can be placed in the reception center on the basis of a decision by the head or deputy head of an internal affairs body and not under a court ruling (which is usually the case) seems wrong (materials on juveniles are filed with a court to resolve the matter of their further detention or release within three after they are sent to the JRC). The ambiguity of this provision of Article 22 of the law “On the Principles of the System for Preventing Child Neglect and Juvenile Delinquency.”

⁵ Paragraph 6 of CMW/C/GC/4–CRC/C/GC/23.

⁶ Paragraph 5 of CMW/C/GC/4–CRC/C/GC/23.

⁷ Article 22 of Law of the Republic of Belarus No. 200-3 “On the Principles of the System for Preventing Child Neglect and Juvenile Delinquency” of May 31, 2003 with additions and amendments and order of the Ministry of Internal Affairs of the Republic of Belarus ““Guidelines for Organizing the Activities of Juvenile Affairs Inspectorates and Juvenile Reception Centers” of June 28, 2013.

⁸ Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, CMW/C/GC/4–CRC/C/GC/23.

4. Violation of the right to education

Regular school education is not provided at the JRC. The daily schedule only mentions “classes in legal, moral, and aesthetic education; chores; vocational training; independent study; discussion groups; sports.” Media reports mention classes with a psychologist.

5. Lack of transparency for independent monitoring

The JRC cannot be visited by independent observers, human rights defenders, or experts: unlike pretrial detention centers or prisons, the JRC is not on the list of institutions that can, in theory, be visited by public monitoring commissions. This means that any reports about the violation of the rights of children in the JRC, including reports about violence, cannot be checked or properly dealt with.

In 2017, a 17-year-old Russian citizen who spent 20 days in the JRC appealed to human rights defenders for help. He reported that JRC staff treated children in the center cruelly. The JRC warden denied the information reported by this adolescent and published in the media. It is not possible to obtain independent data.⁹

In general, the profiling of children’s institutions as transit institutions (even if the question refers to the transit of children within one country) raises questions. This specialization is likely based on the ideas that children spend a very short period of time in these institutions and that staff at these institutions have the special skills required for working with “difficult” children and establishing their identities. But, even from a logistical standpoint, it is quite expensive to deliver unaccompanied children from the place they are found first to a children’s transit institution (which may be located in the capital or a remote oblast center) and then, after the children’s identities and circumstances are established, on to the next arrangement (a family or a children’s institution).¹⁰ It is much more sensible to place unaccompanied children in the geographically closest social and rehabilitation center (children’s home and so forth) and establish their identities and work on rehabilitation, further arrangements, and education at that center.

Data that this report’s authors have show that the number of foreign children held in the JRC has steadily declined in recent years: in 2014–2018, a total of 23 foreign children were held in the JRC. On top of this, reception centers in other regions of Belarus were phased out in 2006 and 2007 as a result of streamlining. As a consequence, other forms of organizing care for children, including unaccompanied foreign children, are being used in practice (for example, if a parent dies, foreign children are placed in child welfare shelters until a decision is made about their further care within Belarus or their transfer to relatives in other countries). This trend should be enshrined in the law and guidelines, and the practice of placing unaccompanied migrant/foreign children in a reception center run by the police should stop.

⁹ Adolescent Reports Cruel Treatment in Minsk Reception Center. Media report of August 30, 2017: <https://naviny.by/article/20170830/1504073696-podrostok-rasskazal-o-zhestokom-obrashchenii-v-minskom-priemnike>

¹⁰ For example, a worker at an MVD reception center in Dushanbe lamented that unaccompanied children detained, for example, in Khatlon Oblast, were taken to the capital of Tajikistan to establish their identities and for other necessary actions and then returned to Khatlon Oblast, since there are only two reception centers in the country. Media report: “Spetspriemnik bez priemki,” [Special Reception Center without Reception] October 8, 2014, <http://news.tajweek.tj/view/specpriemnik-bez-priemki/>.

Readmission/repatriation of children: gaps in migration law

Belarusian law does not do a good enough job of representing children as independent agents, and the Chisinau Agreement does not fill in these gaps. The Law of the Republic of Belarus “On the Legal Situation of Foreign Citizens” does not contain special provisions on children.

Chapter 5 of this law establishes forms of forced return of foreigners to their countries of permanent (primary) residence. These include deportation (an administrative penalty for violating migration rules handed down by a court), expulsion (in accordance with a decision made by internal affairs or state security agencies), or transfer within the framework of international readmission or cross-border movement treaties.

In law and practice, these three forms of forced removal have much in common, particularly in terms of bans and restrictions on rights (subsequent entry bans (for varying terms), the placement of persons to be removed in special institutions, etc.).

Readmission is considered to be the most humane way to remove a foreigner whose presence within the territory of a given country has been found illegal. This is not a type of punishment—it is not regulated by domestic laws, but by international treaties, and a decision on readmission is made in extrajudicial proceedings.

The institution of readmission was developing rapidly in the region until recent times as international programs in this area were implemented and analytical materials were published. A model draft of a readmission agreement was approved at a meeting of the migration agencies of CIS member states on September 9 and 10, 2008 in Cholpon-Ata, Kyrgyzstan and recommended as the foundation for negotiations between CIS countries.¹¹

As of today, Belarus has a readmission agreement with Turkey (since June 1, 2014); Russia (since September 1, 2014); Kazakhstan (since April 12, 2015); and Georgia (since October 26, 2018). A readmission agreement has been signed with Ukraine (October 26, 2018), but has not yet entered into force. It has been officially reported that a readmission agreement will soon be signed with the European Union.

Deportation and expulsion should not be applied to children, since children cannot be held independently responsible for errors in documents that allow them to legally reside in another country. The most acceptable means for returning children to their country of citizenship/permanent residence may be readmission, but existing readmission treaties signed by Belarus do not treat children as a separate group.

In essence, the Chisinau Agreement and the Dushanbe Executive Protocol regulate specifically the readmission of children and resemble the fairly standardized readmission agreements with executive protocols that some countries in the region have signed with each other and that do not specially regulate the process or readmission for children or properly describe the human-rights aspects of readmission.

¹¹ The common standards of European migration policy, including readmission, were set by Directive No. 10737/09 of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals (June 25, 2008). See: Andrichenko, L.V. “Problemy pravovogo regulirovaniia readmissii” [Problems with the Legal Regulation of Readmission], *Zhurnal rossiiskogo prava*, 2010, no. 3, <http://base.garant.ru/5858174/>.

New bilateral agreements specifically regarding the repatriation/readmission of children that take recent UN documents and initiatives to protect migrant children into account **must be signed**.

In recent years, the fight for the rights of migrant children has spread throughout the world with the support of civil society and international and state structures. In 2012, the global campaign Stop Immigration Detention of Children was launched,¹² which included the Parliamentary Campaign to End Immigration Detention of Children of the Parliamentary Assembly of the Council of Europe.¹³

In addition, important UN documents on the protection of migrants' rights have been recently adopted. These include the New York Declaration for Refugees and Migrants¹⁴ (approved by the UN General Assembly in 2016), the two abovementioned joint general comments of the UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and of the Committee on the Rights of the Child: No. 3 CMW/No. 22 CRC (2017) "On the General Principles Regarding the Human Rights of Children in the Context of International Migrations" and No. 4 CMW/No. 23 CRC (2017) "On State Obligations Regarding the Human Rights of Children in the Context of International Migration in Countries of Origin, Transit, Destination and Return." The UN Global Compact for Migration was adopted in 2018. These guidelines charge UN member states to amend laws and practices concerning child migration.

Recommendations

- Stop the practice of incarcerating unaccompanied migrant/foreign children in closed institutions within the Ministry of Internal Affairs system, which includes the juvenile reception center, temporary detention centers, and isolation centers for offenders.
- Stop applying the outdated Chisinau Agreement (Agreement on the Cooperation of Member States of the Commonwealth of Independent States on the Return of Juveniles to their State of Residence (2002)) in cases where children are repatriated to Belarus and other countries; instead, bilateral agreements on the readmission/repatriation of children should be signed with specific countries. These agreements must make account for contemporary human rights standards, particularly foundational principles of the Convention on the Rights of the Child such as the principle of the best interests of the child, the principle of taking the child's opinion into account, and the right of the child to be in a family environment.
- Ensure independent monitoring of the situation of migrant children, including the trans-border nature of this problem, with the participation of human rights defenders, members of parliament, and ombudsmen from the children's country of origin. The reception center of the Department of Internal Affairs must be added to the list of institutions subject to independent monitoring by public monitoring commissions.

¹² Website of the Stop Immigration Detention of Children: <https://endchilddetention.org/> .

¹³ The Parliamentary Campaign to End Immigration Detention of Children, <http://website-pace.net/web/apce/children-in-detention>

¹⁴ New York Declaration for Refugees and Migrants, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/1