

CMW-CRC Joint General Comment on the Human Rights of Children in the Context of International Migration

Concept Note

Event: Regional consultation on the CMW-CRC Joint General Comment on the Human Rights of Children in the Context of International Migration sponsored by OHCHR, in cooperation with UNICEF and the Iberoamerican University, which is being held immediately following the International Expert Consultation on violence against children on the move organized by the Special Representative of the UN Secretary-General on Violence against Children and the Human Rights Program of the Universidad Iberoamericana of Mexico City, and in close collaboration with UNHCR, OHCHR and UNICEF.

Dates: 28 (pm) to 29 (am) June 2017

Venue: Universidad Iberoamericana, Auditorio Ignacio Ellacuría, Edificio S, Prolongación Paseo de la Reforma 880, Lomas de Santa Fe, Ciudad de México, C.P. 01219.

1. Introduction and background

The phenomenon of international migration affects all regions of the world and all people, and increasingly, millions of children. The root causes of migration are often directly related to severe and massive violations of human rights, including children's rights, recognized in several human rights treaties, especially the Convention on the Rights of the Child (CRC). In the context of international migration, children are in a situation of double vulnerability - as children and as children affected by migration in some way, either as migrants themselves, regardless of whether they are alone or with their families, or whether they are born to migrant parents in countries of destination or left behind in the country of origin and of transit.

Indeed, the extent and diversity of human rights abuses that increasingly impact children in the context of migration is very worrisome. This scenario has in many cases reached such alarming levels that it is possible to talk about a human rights crisis that particularly affects children. Among these abuses it is important to highlight the following: trafficking in persons; worst forms of labour; millions of families separated; thousands of children arbitrarily detained and deported; constraints in access to economic, social and cultural rights, including health and education; different forms of violence; discrimination based on the children's or their parents' nationality, ethnic origin or migration status; and obstacles to the right to birth registration, a name and a nationality.

This situation can be explained by the existence of a double deficit largely present in legislation and public policies of many States: 1) an absence of child-sensitive migration policies and practices, and 2) the lack of migration-related issues in childhood policies that take into account the special needs and the vulnerable situation of migrant children and children affected by migration. In this complex scenario it is extremely important to develop a number of strategies that contribute to improving the situation of these children in order to ensure a proper, universal protection of the rights of children in the context of international migration.

Both the CRC and the Convention on the Protection of the Rights of All Migrant Workers and Their Families (CMW) contain several provisions that establish specific obligations related to the rights of children affected by migration (applicable to migrant

workers and their families in the case of CMW and to all children in the case of CRC). Therefore, the UN Committees that monitor the implementation of these two Conventions can play a central role through the elaboration of recommendations aimed at guiding States parties' responses in this field in compliance with international human rights norms and standards.

The decision by both Committees to elaborate a joint general comment aims at extending, deepening, complementing and/or updating a number of initiatives already developed on children and migration. The concept note regarding the joint general comment and other relevant information can be found at:

<http://www.ohchr.org/EN/HRBodies/CRC/Pages/CMWCRCContextofInternationalMigration.aspx>

In particular, the work that both Committees have been doing provides a starting point and a framework, including the CRC's General Comment No. 6 on unaccompanied and separated migrant children outside their country of origin and the CRC's September 2012 General Discussion Day, entitled "The Human Rights of All Children in the Context of International Migration", leading to the elaboration of a background paper and a final document with conclusions and recommendations. General Comment No. 6 and the background paper and final document stemming from the September 2012 General Discussion day can be found at:

<http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx>

2. Goals

The joint general comment aims to contribute to improving the protection of the human rights of children which are, in the context of international migration, in a particular situation of vulnerability. Specific goals of this general comment include:

- Elaborating for State Parties and other key stakeholders guidelines for developing migration, childhood and related policies aimed at protecting and realizing the rights of children in the context of international migration;
- Providing the CMW and CRC Committees with a specific tool to facilitate their role to monitor the implementation of the respective treaties in States parties as mandated by the Conventions;
- Promoting a clearly articulated interpretation of relevant provisions of the CMW and CRC to assist in the further implementation of the Conventions at the domestic level in both law and in practice; and
- Highlighting the relevance of a rights-based approach in relation to the phenomenon of children in the context of international migration.

3. Scope of the General Comment

The joint general comment will include the situation of human rights of the following categories of children in the context of international migration:

- Children that migrate with their parents who are migrant workers;
- Children that are born to parents who are migrant workers in transit and destination countries;
- Migrant children that return to their country of origin, either voluntarily or by force, alone or with their parents;

- Children left behind by their parents (or one of them) who have migrated to another country; and
- Children that migrate unaccompanied and separated from their parents (for reasons such as seeking employment, family reunification or as victims of trafficking, labour exploitation and child labour).

The Committees will address the following non-exhaustive list of themes in the joint general comment subject to the word limits for these types of documents established by the United Nations Office at Geneva. Additional themes may be included according to the submissions that may be received and in relation to the consultations that are envisaged as part of the elaboration process:

- Personal Freedom –Non-detention (arts. 16, 17 CMW; art. 37 CRC);
- Equality and non-discrimination (arts. 1, 7 CMW; art. 2 CRC);
- Right to health (arts. 28, 45 CMW; art. 24 CRC);
- Right to education and professional training (arts. 30, 43, 45 CMW; arts. 28, 29 CRC);
- Right to social security (art. 27 CMW; art. 26 CRC);
- Freedom of thought, conscience and religion (art. 12, CMW; art. 14 CRC)
- Due process guarantees and access to justice (arts. 16, 17, 18 CMW; art. 12, 40 CRC);
- Right to life and development (art. 9, CMW; arts. 6 CRC);
- Right to physical integrity (art. 10 CMW; arts. 19, 37, 39 CRC);
- Right to family life (arts. 14, 17, 44, CMW; arts. 9, 10, 11, 20, 21, 22, CRC);
- Right to a name, identity, and to a nationality (art. 29 CMW; arts. 7, 8 CRC); and
- Right to work and protection from forced labour, all forms of exploitation, child labour, and child abduction, sale or traffic (art. 11 CMW; art. 32, 34, 35, 36 CRC) and
- Right to an adequate standard of living (art. 45 CMW, art. 27 CRC)

4. Call for Submissions

The CMW/CRC Committees issued a call for submissions on the human rights of children in the context of international migration from all interested stakeholders in all regions in order to obtain a wide range of perspectives to inform the drafting process. In response, over 60 submissions were received. The submissions are available at: <http://www.ohchr.org/EN/HRBodies/CMW/Pages/JointGeneralCommentonChildren.aspx>

5. Purpose of the regional consultations

The main goal of this consultation is to assist the CMW and CRC Committees with developing the joint general comment ensuring that the regional perspective with respect to children in the context of international migration is reflected.

Specifically, the regional consultation aims:

- To provide a venue for members of the CMW and CRC Working Groups, charged with coordinating the process and overseeing the drafting of the general comment, to engage in a dialogue with stakeholders in the Americas with the purpose of collecting information and inputs for the joint general comment on children in the context of international migration;
- To share information on the background and scope of the proposed joint general comment;

- To explain the authoritative mandate of both Conventions and specific articles of the Conventions on relevant themes;
- To discuss the broad thematic areas linked to the applicable substantive provisions of the Conventions such as the themes listed above under “Scope of the General Comment”;
- For the members of the Working Groups to be provided with an overview of the regional perspective and priority concerns with respect to children in the context of international migration.

6. Expected results

Expected results of the regional workshop include:

- Greater appreciation by all participants of the situation of children in the context of international migration in the region;
- Greater understanding by participants of the normative and legal framework in relation to children in the context of international migration;
- Raising regional priority concerns and incorporating the regional perspective on children in the context of international migration into the general comment with the approval of the members of the Working Groups.

7. Agenda and format

The agenda will be determined by the need to discuss the substantive elements of the joint general comment and the specific articles of both Conventions. The suggested agenda includes the following:

- Presentation on the joint general comment and the relevant provisions of the Conventions;
- Discussion of priority issues from the regional perspective;
- Inputs and discussion on the zero draft on the joint general comment;
- Information sharing on the process of elaborating the general comments, consultations and deadlines.

The suggested format could include presentation by members of the Working Groups and resource persons, facilitated group discussions and plenary discussions. Each session shall be moderated by a member of the CRC and/or CMW Working Groups and allow for interactive discussions based upon the zero draft with summaries provided by OHCHR. Moderators will be asked to work from a list of questions rather than having lengthy presentations to ensure maximum participant participation. The working languages shall be English and Spanish.

8. Participation and resource persons

Participants will include civil society organizations (including children) and national institutions from the region; relevant officials from regional offices of OHCHR, UNICEF, ILO, IOM, UNHCR, and UN Women; members of the CMW and CRC Working Groups, and other experts on the issue of children in the context of internal migration from the region, as well as representatives of States.