

The UN Committee on Migrant Workers and children's rights: An analysis

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Introduction

All human rights apply to children, but even with the advent of the Convention on the Rights of the Child (CRC) 25 years ago, which set out specific rights for children, violations continue unabated.

It is no secret that migrants, including children are commonly discriminated against in all aspects of life - from housing or education to health, work or social security, and that this is a global issue affecting countries of origin, transit and arrival. In fact, according to the Durban Declaration, xenophobia against non-nationals, and migrants in particular, constitutes one of the main sources of contemporary racism. But the first image that comes to mind when considering children in the context of migration is that of the children of migrant workers. Children are rarely considered as migrants in their own right, including by the Committee on Migrant Workers (the Committee).

Yet, while all children's rights are recognised in the CRC, the review by the the Committee of state obligations under the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (the Convention) provides a strong platform to further elaborate the rights of child migrant workers and those of children of migrant workers. Indeed, given the mandate of the Committee to clarify and interpret the content of the Convention, this treaty body offers a complementary and essential perspective on the scope and meaning of those rights for certain categories of individuals, particularly children.

In this context, in 2011, CRIN launched the Children's Rights Wiki (the Wiki)¹, an online tool which brings together all information about children's rights country by country. The aim is to draw a clear picture of persistent violations of children's rights in a given country, as raised by UN human rights mechanisms, with the eventual goal of matching them with avenues of redress. The extracts also reveal gaps in reporting on certain violations of children's rights by civil society.

This analysis of children's rights in the concluding observations and general comments of the Committee looks at how the Convention is interpreted for children, focusing on the most frequently raised violations as well as those that are rarely - if ever - addressed.

The aim is twofold: we hope to encourage the Committee on Migrant Workers (the Committee) to address *all* children's rights, and to help advocates strengthen their reporting on children's rights issues.

The analysis is evolving, rather than comprehensive, and is meant as a starting point for others to take on. We welcome comments at info@crin.org

¹ The Wiki includes extracts of recommendations issued by UN human rights mechanisms, such as UN special procedures and treaty bodies, including the Committee on Economic, Social and Cultural Rights, the Universal Periodic Review (UPR), as well as relevant regional and international court decisions. The Wiki is available at: http://wiki.crin.org/wiki?title=Main_Page. At a later stage the information in the Wiki will only be available on CRIN's main website.

Methodology

The following analysis stems from a thorough study of all references to children's rights made by the Committee in its concluding observations. It is based on an interpretation of the rights of child migrant workers and how every right recognised in the Convention applies to children (see annex 1).

For the purpose of clarity, we grouped the most relevant articles for children under 23 themes.

The Wiki enabled us to assemble extracts of all children's rights recommendations made by the Committee to all States parties to the Convention. We also conducted research into the Committee's general comments, and how they address children's rights.

As a next step, we clustered all extracts of the concluding observations for each country under the relevant articles of the Convention (see annex 2). This allowed us to see gaps in how recommendations cover children's rights.

While analysing the results, we took into account that apparent gaps in the review of States' compliance with certain rights are not always linked to a failure to highlight violations of these rights for children. Instead they may be linked to other factors such as the lack of available data on the issue for children, or even that the issue doesn't affect children in a particular way.

An analysis of children's rights in the work of the Committee on Migrant Workers

The Committee holds two sessions a year during which it reviews State party reports, examines individual complaints with regard to alleged violations of the Convention by States parties and adopts general comments on thematic issues.

The Committee has adopted 2 general comments relating to the Convention.

Non-discrimination (article 7)

The Committee has raised issues around the need to ensure that all migrant workers and members of their families enjoy the rights provided for in the Convention without discrimination,² obstacles to the effective enjoyment of basic rights by undocumented migrant workers and their family³ and the fact that migrant workers and members of their families suffer from discriminatory attitudes and social stigmatisation.⁴

² See Sri Lanka, 2009, CMW/C/LKA/CO/1.

³ See Algeria, 2010, CMW/C/DZA/CO/1.

⁴ See Guatemala, 2011, CMW/C/GTM/CO/1 and Azerbaijan, 2013, CMW/C/AZE/CO/2.

Article 7 prohibits any discrimination against a child on the basis of her or his status as a migrant worker or as a family member of a migrant worker. This principle requires that children are seen and recognised in migration policies and programmes as independent agents and not only as victims of their parent's status.

General Comment 6 of the Committee on the Rights of the Child on the treatment of unaccompanied and separated children outside their country of origin further states that: "The principle of non-discrimination, in all its facets, applies in respect to all dealings with separated and unaccompanied children. In particular, it prohibits any discrimination on the basis of the status of a child as being unaccompanied or separated, or as being a refugee, asylum-seeker or migrant. This principle, when properly understood, does not prevent, but may indeed call for, differentiation on the basis of different protection needs such as those deriving from age and/or gender. Measures should also be taken to address possible misperceptions and stigmatization of unaccompanied or separated children within the society. Policing or other measures concerning unaccompanied or separated children relating to public order are only permissible where such measures are based on the law; entail individual rather than collective assessment; comply with the principle of proportionality; and represent the least intrusive option. In order not to violate the prohibition on non-discrimination, such measures can, therefore, never be applied on a group or collective basis." (para.18)

Nevertheless, discrimination against migrants in all its forms, including language, is intensifying and deserves more attention. This can be seen for example in the current refugee crisis in Europe, where child migrants - regardless of the motive for their migration - have faced additional prejudice, open displays of discrimination, and open disregard for their special status as children with specific protection needs. Indeed, 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. Principally, migrants are being perceived as less deserving and less worthy of our compassion than refugees. In light of refugee movements in different parts of the world, migrant has essentially come to mean 'not a refugee'.

In response to this pattern, States must take all measures to combat negative stereotyping and discrimination against migrant children. This includes reforming laws and policies that discriminate against children, in particular those in an irregular situation, and ensuring equitable access by migrants to swift and effective redress mechanisms and adequate linguistic and culturally appropriate support measures.

Freedom of movement (articles 8 and 39)

Article 8 applies to all migrant workers and members of their families, including undocumented migrants. Article 39 only applies to documented migrant workers and members of their families. Article 8 focuses on the right to leave any State and to leave and enter their State of origin while article 39 includes provisions on the liberty of movement in the territory of the State of employment.

States sometimes introduce measures to restrict migrants' freedom of movement when faced with a large influx of migrants. Often, these restrictions are harsher for children. The imposition of curfew laws that typically apply only to children is the most obvious example. Efforts to disperse groups of young people in public spaces is another. These can be defined as 'status offences'⁵ - acts that would not be criminal if committed by adults.

Interpretations of this article should question whether measures, in particular those resulting from police powers, amount to a justified interference with such a fundamental right. In particular, it should be questioned whether the right to equality and non-discrimination, for example on the grounds of age, is potentially violated when such measures are enacted.

Right to life (article 9)

Article 9 provides that the right to life of migrant workers and members of their families must be protected by law. This article must be read in conjunction with article 28 on the right to receive medical care that is urgently required to save a person's life or to avoid irreparable harm to their health.

The Human Rights Committee has commented that the right to life is 'the supreme right from which no derogation is permitted even in times of emergency'.⁶ It has also noted that all too often this right is narrowly interpreted, and that protection requires States to adopt positive measures, including all possible measures to reduce mortality and increase life expectancy.

The Committee on the Rights of the Child has emphasised children's right to survival and development consistently. In its [General Comment No. 7 on early childhood](#), for instance, the Committee reminds States that article 6 encompasses all aspects of development and that children's health and psychosocial wellbeing are interdependent and may be put at risk by adverse living conditions, neglect and abuse, etc.

On the principle of non-refoulement and the right to life, General Comment No. 2 of the Committee on Migrant Workers, which addresses the right of migrant workers in an irregular situation and members of their families, explains that "The principle of non-refoulement, as contained in international and regional human rights and refugee law, is the prohibition on forcibly removing anyone, in any manner whatsoever, to a country or territory where they would be at real risk of persecution or serious human rights violations or abuses. In the view of the Committee, this principle covers the risk of torture and cruel, inhuman or degrading treatment or punishment, including inhumane and degrading conditions of detention for migrants or lack of necessary medical treatment in the country of return, as well as the risk to the right to life (arts. 9 and 10 of the Convention). It also applies to situations where individuals would not be protected from onward refoulement. The Committee is of the view that migrants and members of their

⁵ See CRIN, *Global report on status offences*, available at: https://www.crin.org/docs/Status_Offences_final.pdf.

⁶ UN Human Rights Committee (HRC), CCPR General Comment No. 6: the Right to Life, 1982, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fGEC%2f6630&Lang=en

families should be protected in cases where expulsions would constitute arbitrary interference with the right to family and private life.” Migrants and members of their families in an irregular situation with international protection needs should also be protected against expulsion.” (para. 50)

Freedom from torture (article 10)

Article 10 of the Convention reaffirms the right of migrant workers and members of their families to be free from torture or cruel, inhuman or degrading treatment or punishment.

Article 37(a) of the Convention on the Rights of the Child (CRC) prohibits torture, cruel, inhuman or degrading treatment or punishment, and explicitly requires that deprivation of liberty is only used as a measure of last resort and for the shortest appropriate period of time. The UN Special Rapporteur on torture explicitly recognised life imprisonment as a violent form of sentencing covered by the prohibition on cruel, inhuman and degrading punishment in his March 2015 report.⁷

Interpretations of this article should look at the situation of children held in detention facilities. UNICEF says that the torture of children “occurs in different contexts, including police operations against children seen as a threat to public order or safety [and] children confined in prisons or detention facilities”.⁸ Police forces may also use torture to extract information and confessions. Non-physical punishment that “belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child” is cruel and degrading and incompatible with the CRC.⁹

This kind of treatment is not confined to detention centres. CRIN’s research on unaccompanied children in the countries of the Commonwealth of Independent States found that in most institutions, children are searched upon arrival - ostensibly for safety and sanitary reasons - and are sometimes required to change their clothes. In Tajikistan, girls’ virginity is checked on arrival (a practice not established by law). Where this is found to be lacking, a criminal investigation is initiated. This traumatic process is exacerbated by the fact that it is carried out by a male medical expert. Where a girl’s hymen is not intact, she is kept in a special centre rather than transferred to an orphanage so as not to “spoil other girls”.¹⁰

⁷ UN Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 5 March 2015, A/HRC/28/68.

⁸ Dan O’Donnell and Norberto Liwski, *Child victims of torture and cruel, inhuman or degrading punishment*, June 2010, Innocenti Research Centre, available at: http://www.unicef-irc.org/publications/pdf/iwp_2010_11.pdf.

⁹ UN Committee on the Rights on the Child, General Comment No.8 on The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, 2006, CRC/C/GC/8, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f8&Lang=en

¹⁰ CRIN, *In whose interest? How the law treats unaccompanied children in the countries of the Commonwealth of independent States*, December 2014, available at: https://www.crin.org/sites/default/files/crin_unaccompanied_children_final.pdf

Freedom from slavery, servitude and forced labour (article 11)

The Committee has raised issues around smuggling and trafficking of children¹¹ sometimes for the purpose of begging,¹² prostitution¹³ or domestic slavery.¹⁴ The need to compile disaggregated data¹⁵ and to prosecute perpetrators¹⁶ has also been highlighted.

In 2005 the International Labour Organisation (ILO) estimated that 980,000 to 1,225,000 children - both boys and girls - were in a forced labour situation as a result of trafficking.¹⁷

States should ensure that adequate procedures are in place to enable quick and accurate identification of trafficked children and that they have the right to an effective remedy and to receive compensation for the harm caused.¹⁸

In his report on the protection of children in the context of migration, the Special Rapporteur on the human rights of migrants explains that “Children who are unaccompanied or separated from their parents are particularly vulnerable to human rights violations and abuses at all stages of the migration process. Some special procedures have documented, for example, that unaccompanied children looking for asylum are often at risk of deportation without access to the protection measures to which they are entitled. They have also documented that unaccompanied children, especially the most vulnerable categories such as victims of sale of children or trafficking in persons, are often treated like adult irregular migrants.”¹⁹

Freedom of thought, conscience and religion (article 12)

Paragraph 4 guarantees “respect for the liberty of parents, at least one of whom is a migrant worker, and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.”

Article 12 enshrines parents' liberty to educate children in accordance with their own beliefs. But in line with article 14 of the CRC, the Committee can set higher standards for children and shift this focus to children's right to determine and follow their own beliefs under parental guidance. Parents clearly have a central role in guiding the development of children's beliefs, but a failure to consider children's rights separately risks undermining their recognition as individuals.

¹¹ See for example Paraguay, 2011, CMW/C/ARG/CO/1; El Salvador, 2008, CMW/C/SLV/CO/1; Egypt, 2007, CMW/C/EGY/1; Syria, 2008, CMW/C/SYR/CO/1.

¹² See Senegal, 2010, CMW/C/SEN/CO/1.

¹³ See Ecuador, 2010, CMW/C/EQU/CO/2.

¹⁴ See Burkina Faso, 2013, CMW/C/BFA/CO/1.

¹⁵ See Syria, 2008, CMW/C/SYR/CO/1 and Bolivia, 2013, CMW/C/BOL/CO/2.

¹⁶ See the Philippines, 2014, CMW/C/PHL/CO/2.

¹⁷ See <http://www.ilo.org/ipec/areas/Traffickingofchildren/lang--en/index.htm>

¹⁸ UN Special Rapporteur on trafficking in persons, Annual report to the Human Rights Council on the right to an effective remedy for trafficked persons, August 2011, A/66/283, available at: <http://www.ohchr.org/Documents/Issues/Trafficking/A-66-283.pdf>.

¹⁹ UN Special Rapporteur on the human rights of migrants, *The protection of children in the context of migration*, A/HRC/11/7, 14 May 2009.

The Committee must also recall the right of unaccompanied migrant children to freely have or adopt a religion or belief of their choice and to manifest their religion.

A clear children's rights perspective on freedom of religion is crucial for recognising children's status as individuals with rights. This is particularly important to challenge the current global climate in which open discussion and communication about children's own religion and identity is being suppressed and children, often children of migrants and minorities, are under surveillance because of fears of "radicalisation", leaving them with unanswered questions and limiting their rights to freedom of expression and access to information.²⁰

Freedom of expression (article 13)

Freedom of expression for children is rarely talked about and traditional attitudes towards children maintain that they should be 'seen but not heard'. Child protection arguments have often been used as an excuse to restrict children's freedom of expression.²¹

Migrants in general and child migrants more specifically face different sorts of discrimination and are rarely given the opportunity to express themselves, as they are all too often seen as outsiders. Child migrant workers' freedom of expression should be guaranteed in the law. They should have the right to be heard in all settings, including in any judicial or administrative proceeding affecting them and with their employer regarding their working conditions.

Right to privacy (article 14)

Children are particularly vulnerable to breaches of privacy because of the range of situations in which adults have power over them. Migrant children are often held in overcrowded detention facilities where their communications may be intercepted or where they may be subject to searches of their personal belongings.²²

Children's right to privacy applies to all settings of children's lives and to all circumstances, including their relationships and communications with others, medical advice and treatment, counselling and surveillance.

During legal proceedings, the 'public interest', and freedom of information, are often prioritised over the children's privacy, especially by the media. Children should never be named in the press when their identification could in any way worsen their situation. In addition, criminal

²⁰ See CRIN, Call for adequate recognition of children's right to freedom of religion or belief November 2015, available at https://www.crin.org/sites/default/files/attachments/call_freedom-religion_1.pdf.

²¹ See CRIN, *Censorship: Laws restricting children's access to information*, 6 March 2014, available at <https://www.crin.org/en/library/publications/censorship-laws-restricting-childrens-access-information>.

²² UN Committee on the Rights of the Child, UN Committee on the Rights of the Child: Concluding Observations: Japan, February 2004, CRC/C/15/Add.231, available at: <https://www.crin.org/en/docs/Japan%20COs.htm>

records should be expunged when a child reaches 18.²³

Liberty and security (article 16)

The Committee has raised issues relating to the imposition of unlawful charges against migrant workers and members of their families for entering or leaving the territory of a State party;²⁴ the lack of information on the types of facilities in which migrant workers and members of their families are held and the conditions in those facilities;²⁵ the need to give priority to alternatives to the placement of children of detained migrant workers in immigration centres; and asserting that custodial measures should only be taken as a measure of last resort, when non-custodial measures are unavailable to uphold the right to family life.²⁶

Children, and in particular unaccompanied or separated children, should never be detained solely for immigration purposes. In practice, they are often dealt with according to their migration status prior to being seen as minors. Liberty is a fundamental human right: children should not be detained because they, their parents and caregivers or other family members do not have legal status in the country.

When migrant children are suspected of having committed a crime, they should always be kept out of the criminal justice system and be met with systems which renounce retribution and focus exclusively on children's rehabilitation, with the necessary attention to public safety and security. Article 37(b) of the Convention on the Rights of the Child (CRC) clearly states that "the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time". The text of paragraphs 17(b)²⁷ and 19²⁸ of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("the Beijing Rules") is in line with article 37 of the CRC and implies that punitive approaches are not appropriate.

In his report on the protection of children in the context of migration, the Special Rapporteur on the human rights of migrants explains that "in cases of deportation and detention, children suffer the same consequences (and receive the same treatment) as adults, which often results in the deprivation of children's rights. For that reason, public policies and programmes should ensure the protection of children from detention and deportation, and migration laws should include concrete regulations to fulfil children's rights and needs in such circumstances. In particular,

²³ See rules 21.1. and 21.2 of the UN Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") available at: <http://www.un.org/documents/ga/res/40/a40r033.htm> and paragraph 66 of the General Comment 10 of the Committee on the Rights of the Child on Children's rights in juvenile justice, available at: <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>.

²⁴ See Guatemala, 2011, CMW/C/GTM/CO/1.

²⁵ See Colombia, 2013, CMW/C/COL/CO/2.

²⁶ See Bosnia and Herzegovina, 2012, CMW/C/BIH/CO/2.

²⁷ Paragraph 17(b) of the Beijing Rules "restriction on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum"

²⁸ Paragraph 19 of the Beijing Rules "the placement of juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period"

these laws should include such children's rights principles as detention as a last resort; priority and alternative measures to detention; and prohibition of deportation of unaccompanied children as a punishment for irregular migration status."²⁹

Paragraph 2 of article 16 guarantees the right of migrant workers to be protected against violence whether by public officials or by private individuals, groups or institutions. Violence against children is widespread and extremely damaging. Much violence is hidden within the private realm of the family, or within the confines of schools, prisons, care homes and other institutions. States have a duty to prevent such harms, to investigate cases of violence and hold those responsible to account.

The UN Study on Violence Against Children, conducted in 2006, found worrying incidents of violence in almost all countries of the world.³⁰ Migrant children are more vulnerable to violence because of social stigmatisation and other discriminatory attitudes they may face in the host community. States must take all measures to protect migrant children from violence including by combating negative stereotyping and discrimination.

Treatment in detention (article 17)

Article 17 clearly states that detained children should be separated from adults, "brought as speedily and possible for adjudication", "accorded treatment appropriate to their age and legal status" and that authorities should pay attention "to the problems that may be posed for [...] children".

Migrant children may be arbitrarily detained, held in cells with adults, and subjected to brutal treatment by police, guards and other authorities. They are often held in poor conditions that fall far short of international standards governing appropriate settings for children deprived of their liberty.³¹

Children may be subjected to investigations that could harm their health (such as bone X-rays to identify their age) or psychological well-being (such as traumatising interrogations), or be subjected to medical tests without their, or as appropriate, their parents' consent.

The UN Study on Violence against Children expressed concerns over the treatment of detained migrant children:

Concern over the treatment and care migrant children receive in the country of destination – as well as in their country of origin in those cases where they are subsequently repatriated – has been growing. The 'care' of these children too often involves unwarranted deprivation of liberty, or placement in open facilities where conditions are inappropriate. These children frequently lack the guarantees and legal representation available to other children in the country concerned.¹⁵⁸ Detained

²⁹ UN Special Rapporteur on the human rights of migrants, *The protection of children in the context of migration*, A/HRC/11/7, 14 May 2009.

³⁰ UN Secretary General, Report of the independent expert for the UN study on violence against children, August 2006, A/61/299, available at:

http://srsg.violenceagainstchildren.org/sites/default/files/documents/a_61_299_un_study_on_violence_against_children.pdf.

³¹ See See www.hrw.org/topic/childrens-rights/refugees-and-migrants.

children are frequently housed in the same facilities as nonrelated adults; they may be exposed to traumatising experiences and have inadequate access to proper nutrition, health support and education. Some children detained for breaches of immigration regulations are held together with individuals charged with criminal offences.³²

Equality before the law and right to a fair trial (article 18)

Article 18 guarantees migrant workers and their families the right to equality with nationals of the State before courts and tribunals.

The following recommendations were made during Burkina Faso's review:

- Ensure, both in law and in practice, that migrant workers and members of their families, including those in an irregular situation, have the same rights as nationals to file complaints and to obtain effective redress in the courts when their rights have been violated;
- Inform migrant workers and members of their families of the judicial and other remedies available to them for violations of the Convention, and address their complaints as effectively as possible;
-
- Ensure that migrant workers are duly informed of the procedure for obtaining legal assistance and, in its next periodic report, provide information on cases in which migrant workers have benefited from legal assistance.³³

Article 40 of the CRC proposes a special approach to justice for children: the establishment of laws, procedures, authorities and institutions specifically applicable to these children – not to some of them but to all of them - up to 18.

States must develop child friendly systems that minimise the challenges they face in each aspect of a legal proceeding, provide them with free legal representation and ensure the rights and guarantees of a fair trial are adapted to their needs.

Migrant children are often denied the right to defence and legal representation, yet this is a fundamental right, for adults and children. Children left alone without any independent legal counsel are not only deprived of their voice, but are also subject to numerous abuses as they are often intimidated and not aware of their rights. Migrant children should not lose their rights during trial.

In its General Comment 10 on Children's Rights in Juvenile Justice, the Committee on the Rights of the Child reaffirms children's right to a fair trial:

³² UN Secretary General, Report of the independent expert for the UN study on violence against children, August 2006, A/61/299, available at:

http://srsg.violenceagainstchildren.org/sites/default/files/documents/a_61_299_un_study_on_violence_against_children.pdf. Read the World Report here:

<http://www.unicef.org/violencestudy/5.%20World%20Report%20on%20Violence%20against%20Children.pdf>

³³ Burkina Faso, 2013, CMW/C/BFA/CO/1.

"A fair trial requires that the child alleged as or accused of having infringed the penal law be able to effectively participate in the trial, and therefore needs to comprehend the charges, and possible consequences and penalties, in order to direct the legal representative, to challenge witnesses, to provide an account of events, and to make appropriate decisions about evidence, testimony and the measure(s) to be imposed.... Taking into account the child's age and maturity may also require modified courtroom procedures and practices."³⁴

Protection of identification documents (article 21)

Article 21 prohibits employers - or anyone other than public officials - from confiscating identity documents of migrant workers.

During the review of Guatemala, the Committee was concerned over acts of abuse and violations of the rights of migrant workers and members of their family by officials of the Directorate-General of Migration and the National Civil Police who claim their identity documents are invalid. These abuses include the retention and destruction of identity documents.³⁵

In many countries, employers keep the identity documents of migrant workers during the employment period. Children are more vulnerable to this practice because adult employers usually have more power over them. This practice may restrict the child's freedom of movement and access to services, especially confidentiality in accessing these services. It is the responsibility of States to take the necessary measures to inform migrant children of their rights and employers of their responsibility to ensure that the identity documents, work and residence permits of migrant workers are not confiscated or destroyed.

Expulsion (articles 22 and 56) and family reunification (articles 44 and 50)

Article 22 applies to all migrant workers and prohibits measures of collective expulsion. Expulsion may only occur on the decision of a competent authority in accordance with the law and the decision should be communicated to migrant workers in a language they understand. In case of expulsion, the person concerned should have a reasonable opportunity before or after departure to settle any claim for wages.

Article 56 only applies to migrant workers in a regular situation and limits expulsion to reasons defined in national legislation.

The Committee recommended that Burkina Faso amend its legislation with a view to ensuring that migrant workers and members of their families may be expelled only if a decision is taken

³⁴ UN Committee on the Rights of the Child (CRC), General comment No. 10 (2007): Children's Rights in Juvenile Justice, 25 April 2007, CRC/C/GC/10, available at: <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>.

³⁵ Guatemala, 2011, CMW/C/GTM/CO/1.

by a competent authority and in accordance with the law, and that it guarantee their right to file an appeal that would suspend the application against such a decision.³⁶

All judicial and administrative processes concerning children need to be pursued as quickly as possible. Delay and uncertainty can be extremely prejudicial to children's healthy development. In a sense any period of time is significantly 'longer' in the life of a child than in that of an adult. In immigration cases delays can ruin children's chances – for example some children pass the age of 18 while still waiting for their application to be heard.

The Committee on the Rights of the Child, in its General Comment No. 6, mentions the right of the child to a guardian in procedures related to border control, repatriation and deportation; to a legal representative; the principle of non-refoulement, which in the case of children should be construed as including socio-economic conditions in countries of origin; and family reunification entitlements in countries of origin and destination.

In his report on the protection of children in the context of migration, the Special Rapporteur on the human rights of migrants explains that:

The lack of distinction between adult and child migrants is [...] a major challenge that a number of States still have to overcome. National migration laws do not always include a child rights perspective and usually lack specific provisions on children. [...] The treatment of migrant children as adults may lead to harmful practices, for example, when irregular migration is criminalized (A/HRC/7/12), or when deportation and detention procedures do not comply with the protection that should be given to children in those circumstances. [...]

Public policies and programmes should ensure the protection of children from detention and deportation, and migration laws should include concrete regulations to fulfil children's rights and needs in such circumstances. In particular, these laws should include such children's rights principles as detention as a last resort; priority and alternative measures to detention; and prohibition of deportation of unaccompanied children as a punishment for irregular migration status. [...]

Consideration could be given to the principle of non-deportation of unaccompanied children, whereby children should be repatriated only if it is in their best interest, namely, for the purpose of family reunification and after due process of law. The enforcement of this principle would require public policies and a legal framework in both countries.”

Recognition as a person before the law (article 24)

This article stipulates that every human being has rights before the law. This is a prerequisite for the right to respect for human dignity.³⁷

This has particular importance for children. Most violations of children's rights occur because of the refusal to recognise them as subjects before the law and they therefore rarely enjoy legal capacity. Children are often not viewed as human beings with human rights, but rather as an extension of their parents, guardians or the State. It must always be clear that children are rights holders and all human rights apply to them.

³⁶ Burkina Faso, 2013, CMW/C/BFA/CO/1.

³⁷ Article 5 of the African Charter on Human and People's Rights associates the right to recognition as a person before the law and the right to dignity.

Child migrant workers, even when they are in an irregular situation, should still be recognised as legal subjects including legal standing before the law.

Employment guarantees (articles 25, 52, 53, 54 and 55)

Article 25 requires that child migrants are remunerated on an equal basis with nationals.

Article 52 upholds the right to freely choose remunerated activities.

Article 54 provides that migrant workers should receive equal treatment with nationals in respect of protection against dismissal, unemployment benefits, access to public work schemes intended to combat unemployment and access to alternative employment.

Article 53 provides that family members who have an authorisation of residence or admission that is without limit of time or is automatically renewable shall be permitted freely to choose their remunerated activity.

Article 55 stipulates that migrant workers who have been granted permission to engage in a remunerated activity should be entitled to equality of treatment with nationals in the exercise of that activity.

Articles 52, 53, 54 and 55 apply to migrant workers and their families who are in a regular situation.

Many child migrant workers are trafficked into the labour market. Not all working children perform activities that can be defined as child labour; yet there is a dominant view that all child work is somehow problematic. But migrant children may choose to work and perform legal labour activities.

The Committee has repeatedly called on States to combat child trafficking and step up efforts to end all forms of abuse and exploitation of children in the labour market. Though migrant children must be protected from exploitative labour activities, where the economic conditions 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. It is also crucial to further highlight the need to secure children, in addition to the special protection they need, all the guarantees provided for in articles 25, 43, 54 and 55 including by ensuring regulation of working hours and conditions, and applying appropriate penalties and other sanctions in cases of non-compliance. It should also be recognised that some children want to, or have to, work, and governments should therefore formalise and regulate their labour activities in order to grant them the same labour and rights protections as their adult counterparts. Of course, this approach should exclude labour activities that are dangerous, harmful or hazardous or interfere with their development.³⁸

Trade unions (articles 26 and 40)

During the review of Albania, the Committee was concerned that undocumented migrant workers and members of their families cannot join trade unions.³⁹

³⁸ CRIN, *Child labour and protecting working children*, 8 June 2015, available at: <https://www.crin.org/en/home/what-we-do/crinmail/crinmail-1432#CL>.

³⁹ Albania, 2010, CMW/C/ALB/CO/1.

The CRC, in its article 15 sets out children's right to freedom of association and peaceful assembly. This includes the right to form and join associations.

Migrant child workers should be allowed to form trade unions to defend themselves against economic exploitation at work, participate in legal reform, represent their interests with employers and help protect them against economic exploitation.

General Comment No.12 of the Committee on the Rights of the Child on children's right to be heard explains that "working children have a right to be protected by law against exploitation and should be heard when worksites and conditions of work are examined by inspectors investigating the implementation of labour laws. Children and, if existing, representatives of working children's associations should also be heard when labour laws are drafted or when the enforcement of laws is considered and evaluated."⁴⁰

Social security rights (article 27)

During the review of Argentina, the Committee was concerned that for migrant families to be eligible for child allowance, both the parents and the child must have legally resided in the State party for at least three years.⁴¹

Social security should be available to all children within a country's territory, including migrant children.

Many countries have recently introduced austerity measures which have a big impact on children's enjoyment of their rights, and may have a bigger impact on migrant workers and their families.

Article 26 of the CRC protects children's right to benefit from social security, including social insurance, provided by the State. Article 26 does not spell out how social security should be delivered, but makes clear that children must be able to apply either through a responsible adult or on their own behalf where necessary. A general comment on non-discrimination by the Committee on Economic, Social and Cultural Rights further clarifies that 'children and young persons should not face unreasonable differential treatment on the basis of age, such as in age requirements for accessing social security'.⁴²

Access to health care (articles 28 and 45)

Article 28 guarantees the right to receive any medical care that is urgently required for the preservation of their life regardless of any irregularity in their situation. Article 45 applies to

⁴⁰ UN Committee on the Rights of the Child, *General comment No. 12: The Right of the Child to be heard*, 20 July 2009, CRC/C/GC/12, available at:

<http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC-C-GC-12.pdf>.

⁴¹ Argentina, 2011, CMW/C/ARG/CO/1.

⁴² UN Committee on Economic, Social and Cultural Rights, General Comment 20 on Non-discrimination in economic, social and cultural rights, E/C.12/GC/20, 2 July 2009, p. 10, para. 25

migrant workers in a regular situation and mandates that migrant workers and their family should enjoy health services on an equal treatment with nationals.

The Committee has raised issues relating to the denial, in practice, of access to health care even when this right is recognised by law.⁴³

Access to basic rights has become sidelined by widespread budget cuts that have a disproportionate effect on migrants. States must ensure minimum acceptable standards of health for migrant children, respect for their views including by allowing children who have the capacity to make decisions about their care, respect for their right to confidentiality in seeking medical advice, access to information about their healthcare, respect for their physical autonomy and effective and accessible complaints procedures.

In its General Comment No.15 on the right of the child to the enjoyment of the highest attainable standards of health, the Committee on the Rights of the Child explains:

“The notion of “the highest attainable standard of health” takes into account both the child’s biological, social, cultural and economic preconditions and the State’s available resources, supplemented by resources made available by other sources, including non-governmental organizations, the international community and the private sector.

Children’s right to health contains a set of freedoms and entitlements. The freedoms, which are of increasing importance in accordance with growing capacity and maturity, include the right to control one’s health and body, including sexual and reproductive freedom to make responsible choices. The entitlements include access to a range of facilities, goods, services and conditions that provide equality of opportunity for every child to enjoy the highest attainable standard of health.”

In his report on the protection of children in the context of migration, the Special Rapporteur on the human rights of migrants explains that:

“In past years, the Special Rapporteur was informed of cases of migrant children with an irregular migration background who were devoid of protection and access to education, living in shacks or abandoned buildings in extremely poor sanitary conditions (E/CN.4/2005/85/Add.3), and observed the progress made in the protection of migrant children, particularly in relation to the extension of health coverage and care services, regardless of the immigration status of those concerned. A good practice documented by the Special Rapporteur on the right to health was the case of Sweden, where undocumented children receive health-care assistance on the same basis as resident children (A/HRC/4/28/Add.2). Some States have also prohibited the denial of health-care services on the grounds of irregular migration status; such is the case in Uruguay (law 18.250, art. 9) and Argentina (law 25.871, art. 7).”

Right to education (articles 29 and 45)

Article 29 provides children the right to education on an equal basis with nationals. Article 45 applies to migrant workers in a regular situation and puts an obligation on States to facilitate the integration of children in the local school system and the teaching of their mother tongue and culture.

⁴³ See Argentina, 2011, CMW/C/ARG/CO/1, Azerbaijan, 2009, CMW/C/AZE/CO/1 and Paraguay, 2011, CMW/C/ARG/CO/1.

The Committee has raised issues relating to the discrimination faced by migrant children in schools,⁴⁴ the denial of school enrolment,⁴⁵ and the exclusion of children of migrant workers from certain mono-ethnic schools based on their ethnicity.⁴⁶

Migrant children experience discrimination not only in accessing education but also in the treatment they receive when they manage to enroll. They are more likely to be bullied by teachers or other children or experience a lack of support in a language they understand.

Detained migrant children may not have the same statutory right to education as other children.⁴⁷ Even if they do, the education they receive may not be of equal quality to that received by other children.

Children's right to a name, birth registration and nationality (article 30)

The Committee has raised concerns about children of migrant workers who find themselves in an irregular situation or are not registered at birth and therefore lack personal identity documents which in turn impedes their access to health care, social benefits and education.⁴⁸

The enjoyment of basic rights such as health care, social benefits and education should not be limited to children with identity documents. States must ensure children access these benefits without conditions.

Children of irregular or undocumented migrants face a higher risk of being unregistered when States criminalise irregular migration.

In his report on the protection of children in the context of migration, the Special Rapporteur on the human rights of migrants explains that:

“When criminalized, irregular migration has proven to be a deterrent, for example, for the child's birth registration, because irregular or undocumented migrants usually fear imprisonment and/or deportation and therefore try to avoid all contact with local authorities. Barriers to birth registration and/or its denial have serious consequences for the enjoyment of human rights, including the right to be recognized as a person before the law. Furthermore, the State should prevent situations of statelessness.”

⁴⁴ See Argentina, 2011, CMW/C/ARG/CO/1, Paraguay, 2011, CMW/C/ARG/CO/1 and Azerbaijan, 2013, CMW/C/AZE/CO/2.

⁴⁵ See Azerbaijan, 2013, CMW/C/AZE/CO/2, Egypt, 2007, CMW/C/EGY/1 and Rwanda, 2012, CMW/C/RWA/CO/1.

⁴⁶ Bosnia and Herzegovina, 2012, CMW/C/BIH/CO/2.

⁴⁷ See Azerbaijan, 2013, CMW/C/AZE/CO/2, Egypt, 2007, CMW/C/EGY/1 and Rwanda, 2012, CMW/C/RWA/CO/1.

⁴⁸ See Azerbaijan, 2013, CMW/C/AZE/CO/2, Bosnia and Herzegovina, 2012, CMW/C/BIH/CO/2, Burkina Faso, 2013, CMW/C/BFA/CO/1 and Egypt, 2007, CMW/C/EGY/1.

Cultural rights (articles 31 and 43)

The ability of children to play and participate in cultural activities is vital to their development, quality of life and sense of community spirit. This is particularly important for children of migrant workers, child migrant workers and children of ethnic minorities.

The CRC in its article 31 recognises children's right to rest, leisure, play, recreation and participation in cultural and artistic life.

The Committee on Economic, Social and Cultural Rights, in its General Comment No.21, recognises that “children play a fundamental role as the bearers and transmitters of cultural values from generation to generation. States parties should take all the steps necessary to stimulate and develop children’s full potential in the area of cultural life, with due regard for the rights and responsibilities of their parents or guardians”.

This is of particular relevance for migrant children who should be able to practice their culture and develop their personality and personal identity in an environment free from discrimination.

Child workers may not have time to play if they work long hours. States should formalise children’s working hours to allow them to engage in legal labour activities and have time to enjoy their right to play.

Information about rights (article 33)

During its review of Azerbaijan, the Committee recommended that the country ensure access by migrant workers and members of their families to information about their rights under the Convention.⁴⁹

Migrant workers and members of their families should be informed of their rights by the State of origin, the State of employment and the State of transit. This is a prerequisite for any rights holders to claim his or her rights and know those rights have been violated. Migrant children, especially unaccompanied children, are more vulnerable to violations of their rights because they are less likely to be treated as rights holders and with the dignity and respect they deserve. But when well equipped with a full understanding of their rights and if they are able to use and trust the legal system to protect these rights, children become less vulnerable to human rights abuses.

International migration (articles 64 to 70)

Articles 64 to 70 contain State party obligations relating to international migration. While some of these are worded in vague terms, such as those providing for duties to cooperate on various matters, they all complement other provisions of the Convention. Therefore, the purpose of

⁴⁹ Azerbaijan, 2013, CMW/C/AZE/CO/2.

those obligations requires considering child rights specific issues arising from international migration, such as trafficking, access to health care, treatment in detention, etc.

Key findings and recommendations

Recommendations to the Committee

All rights in the Convention apply to children, and some require greater protections for children than for adults to cater for their age and relative lack of maturity. It is on this basis that we have analysed the concluding observations of the Committee.

As a general observation, we note that child migrants are almost only ever seen as family members of migrant workers and the recommendations of the Committee scarcely address the many other ways in which children's rights are violated independently of their parents' or family's situation and status as migrant workers.

Those that do refer to access to education and health care, access to social security and birth registration, smuggling and trafficking of children and the need for prevention and accountability.

We strongly urge the Committee to recognise children's right to work, excluding labour activities that are dangerous, harmful or hazardous or interfere with their development.

Children work for different reasons, while some choose to do so for their own development or to help support their family, others are duped into abusive labour - particularly in the sex trade - by traffickers who promise them a better life in a faraway land. There is a dominant view that all child work is somehow problematic but not all working children perform activities that can be defined as child labour.

We strongly urge the Committee to recognise children's rights at work. It is crucial to look at the situation of child migrant workers and further highlight the need to secure children, in addition to the special protection they need, all the guarantees provided for adults including by establishing a minimum age of admission into employment, ensuring regulation of working hours and conditions, and applying appropriate penalties and other sanctions in cases of non-compliance. It should also be recognised that some children want to, or have to, work, and governments should therefore formalise and regulate their labour activities in order to grant them the same labour and rights protections as their adult counterparts. Of course, this approach should exclude labour activities that are dangerous, harmful or hazardous or interfere with their development.⁵⁰

We encourage the Committee to raise violations of children's right to liberty. Liberty is a fundamental human right: children, and in particular unaccompanied or separated children, should never be detained solely for immigration purposes. In practice, they are often dealt with

⁵⁰ CRIN, *Child labour and protecting working children*, 8 June 2015, available at: <https://www.crin.org/en/home/what-we-do/crinmail/crinmail-1432#CL>.

according to their migration status prior to being seen as minors. Additionally, when migrant children are suspected of having committed a crime, they should always be kept out of the criminal justice system and be met with systems which renounce retribution and focus exclusively on children's rehabilitation.

We encourage the Committee to raise violations of children's right to be free from violence, with a focus on the situation of children held in detention facilities and reception centres. States should put in place independent monitoring mechanisms including national human rights institutions and civil society. Children should have access to referral and reporting mechanisms to seek redress for violations of their rights.

We encourage the Committee to highlight the barriers children face in accessing justice for violations of their rights. All children, including unaccompanied and separated children, should have access to legal advice and counselling on their specific situation and options. They should also have access to courts and other forms of redress and these should never be limited based on their migration status.

We urge the Committee to take a strong stance against discrimination, including distortion, exaggerated claims or xenophobia. Language is a powerful tool that can sway public opinion on social issues. States should develop policies and legislation to combat incitement to hatred and work with the media to combat negative stereotypes of individuals and communities based on their migrant or refugee status. This includes giving migrants, including children, the opportunity to be heard in the media.

The role of child rights advocates

There are a number of ways NGOs can engage with the CMW:

1. Written submissions
2. Oral statements
3. Attending sessions
4. Informal meetings and lunchtime briefings
5. Contact information

1. Written submissions

NGOs can provide written submission which should be as specific, reliable and as objective as possible. NGO reports prepared by coalitions, rather than individual NGOs, are encouraged. NGOs wishing to submit reports to the Committee are required to identify the full name of the NGO, the related country and indicate whether or not the submission may be posted on the webpage of CMW. They should address as briefly and precisely as possible the main human rights issues arising under the articles of the Convention and be send submissions by email as well as hard copy (25 copies) to the CMW Secretariat. NGO submissions should be in English, French or Spanish.

Written submissions should be sent to the following e-mail address: cmw@ohchr.org. Hard copy submissions should be mailed to the contact address below:

Here is an example of a written submission recently made to the Committee:
http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCMW%2fNGO%2fUGA%2f19954&Lang=en

- **Written submissions for the follow-up to the Committee's recommendations**

NGOs may submit written information to the Committee under a follow-up procedure on the implementation of recommendations by the State party. Further information around this procedure can be found on the website on the [follow-up](#) webpage.

2. Oral statements

The Committee sets aside time at its sessions for NGOs to provide oral statements. NGOs making oral statements should note that such interventions should typically not exceed five minutes. NGOs should also bring 25 copies of their oral statements at least 15 minutes prior to the meeting for circulation to the Committee and for interpretation purposes. Prior to the briefing, NGOs are requested to send an electronic version of their statements in Word format to: cmw@ohchr.org.

3. Attending sessions

NGO representatives who wish to attend sessions of the Committee are required to submit a completed [registration form](#) to Ms. Adele Quist at aquist@ohchr.org and copy cmw@ohchr.org so that arrangements can be made with the Accreditation Office.

4. Informal briefings with the Committee

NGOs can organise one hour briefings for the Committee during lunch on country-specific information relating to States parties under consideration. NGOs wishing to organise such briefings should contact the CMW Secretariat to coordinate meetings well in advance of the session.

5. Contact information

CMW Secretariat
OHCHR - Palais Wilson
52, rue des Pâquis
CH-1201 Geneva 10
Switzerland

6. Further information

General: www.ohchr.org/EN/HRBodies/CMW/Pages/CMWIndex.aspx