Submission for general comment on the rights of the child in the context of migration

Terre des Hommes Netherlands

# Background

Terre des Hommes Netherlands is an international non-governmental organisation that works against child exploitation. Since 1965, Terre des Hommes Netherlands has protected tens of millions of children from violence, labour, trafficking, sexual exploitation, malnutrition and health issues. Terre des Hommes endeavours to create a world free of child exploitation.

In 2014 Terre des Hommes Netherlands supported a total of 453,584 children in Asia, East Africa, South America and Europe. In Asia we supported 266,682 children. We provided support to 250,166 vulnerable and exploited children and legal assistance to 5,000 victims of exploitation.

Jointly with the other members of our umbrella organisation, the Terre des Hommes International Federation, we deliver the global campaign Destination Unknown to demand better protection for children on the move. The calls of the campaign are in line with the scope of the proposed new General Comment:

Children on the move are entitled to protection based on their best interests as per Convention on the Rights of the Child, independently of their migration status, gender, age, health, nationality, religious or cultural belongings or any other ground.

Children and their families should find alternatives to mobility in their country and communities of origin for their well-being and development perspectives. This includes non-discriminatory access to services such as education, health, justice, livelihood development.

Community protection practices in-line with the rights of the child must be respected while being linked to national law and protection policies.

Protection of children must start with their own empowerment in their communities, and be extended through access to protection and services throughout their journey and upon reaching a destination.

Actors need to reconcile local protection customs, national law, trans-national cooperation and international policies. Exchanging, learning and finding solutions in different locations and bridging up from local to international must be put high on the public agenda.

States must bring to an end practices that violate the rights of children on the move based on their migration status, namely detention, deportation and automatic return to community of origin.

Instead States should make a case per case decision, aiming at a finding a durable solution for the child and respecting the child’s view. A risk assessments should be conducted and documented prior to any decisions of repatriation and family reunification. Repatriation is not an automatic option, but one among others.

In conformity with the Convention on the Rights of the Child, States, NGOs and other protection actors are obligated to listen to the child concerned and take into account his/her views into any decision.

States, NGOs and other actors implementing programs for children on the move are obliged to listen to children, their experiences and expectations when designing and implementing projects for them.

Public debate on protection of children on the move should be fostered based on facts and stories of the children concerned. A child on the move must be seen as rights-holder and an actor of development. Public policies and solutions should be evidence based, avoiding instrumentalisation of children that can lead to enhance xenophobia and discrimination.

# Introduction

The 2030 Agenda for Sustainable development gives reasons for optimism for the human rights of children in the context of international migration – optimism based on the shared global political understanding of the role and contribution of migrants, expressed in the document and on the specific commitments to the protection of children from all forms of violence and exploitation. However, the road map to achieving this is yet to be written by national governments and regional and global organisations, in partnership with the private sector, civil society, faith-based organisations and academia.

In the meantime, millions of children are experiencing their childhoods in the context of migration and there is an urgency to address their needs now, in the short term, in order to uphold their human rights as children.

Terre des Hommes Netherlands welcomes the decision of the two Committees to produce a joint General Comment on the Human Rights of Children in the Context of International Migration and hopes it would be one of the many steps that will help make the 2030 Agenda a reality for children in the context of migration.

In 2012 Terre des Hommes International Federation submitted a paper with recommendations for the Committee on the Rights of the Child Day of General Discussion on “The Rights of All Children in the Context of International Migration”[[1]](#footnote-1). Terre des Hommes Netherlands can confirm the continued validity of the arguments and recommendations contained in that submission and hopes they will be considered by the two committees in drafting the new General Comment. This submission seeks to complement the earlier submission by the Terre des Hommes International Federation by highlighting a selection of issues, which present an ongoing concern in our work and infringe on the human rights of children listed in the concept note accompanying this call for submissions.

# Legal commitments of states

Although a new General Comment offering guidance to governments on their migration and childhood related policies is much needed, its use and impact will be limited in those countries that do not have legally binding commitments under international law. Without ratification of these documents any commitment to the rights of refugee and stateless children and their families or to the rights of migrant workers is volatile, reversible and dependent on the agendas of new and existing governments.

There remain key UN and ILO conventions, including the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which have not been ratified by many states. Of equal concern is the number of reservations entered by states, some of which specifically seek to limit the applicability of instruments such as the UN CRC on their territory so that they don’t fully apply to children of different nationality. Many migrant children in Southeast Asia travel to find employment as domestic workers, yet no country except the Philippines has ratified the ILO Domestic Workers Convention (No 189). While accession to international treaties and withdrawal of reservations is a prerogative of the government of each state, there is already a practice by UN Committees to recommend ratification of treaties and withdrawal of reservations.

***The new joint General Comment should list treaties of high priority for the protection of the rights of children in the context of migration and emphasise the importance of states’ accession to these treaties, as well as the withdrawal of relevant reservations. The General Comment should also propose mechanisms for bilateral or multilateral cooperation, which would incentivise and support states in the process of ratifying such treaties.***

# Child welfare and child protection systems in countries of origin and destination

## The state of Child welfare and child protection systems in Southeast Asia

An analysis of mapping and assessments of child protection systems in East Asia and the Pacific published in 2014 revealed the state of child protection systems of countries in the region. They were found to be, overall, underdeveloped, often conceptually outdated, underfunded and struggling to offer adequate protection even to citizen children**[[2]](#footnote-2).** Total child welfare and protection expenditure typically represent less than 0.2 per cent of GDP in the majority of the 14 countries examined, even in countries which have seen significant growth of their GDP in recent years.[[3]](#footnote-3)

Access to services is limited due to the lack of formal structures and services at commune and village level and an insufficient number of (insufficiently trained) social workers at the district and provincial levels.[[4]](#footnote-4) The formal system does not extend to the commune and village levels. The community-based child protection networks, where such networks and groups have been created, were comprised of community volunteers and local leaders who have little or no child protection experience or knowledge.[[5]](#footnote-5)

A growing, but under-researched, group of children in the context of migration that would need identification and, where necessary, support and services, is the group of children whose parents have migrated and left them in the care of other family members. While the parents in the majority of cases send sufficient remittances to sustain the ‘left behind’ children, there are different risks and scenarios, which may require support and social work interventions.

The availability of support for children and their caregivers during family crises may have preventative effect on children who choose to migrate or who are sent by their families to another country to generate income for the family. This can be done only by mainstream social/child welfare and child protection structures in line with states’ obligations under the UNCRC.

If the child welfare and child protection systems are underfunded and not fit meet the needs of citizen children, any expectations for adequate investment in and provision of services catering specifically to the needs of children in the context of migration may be unrealistic in such countries.

## Inclusivity versus specialisation of child welfare and child protection systems

Terre des Hommes Netherlands therefore considers that the functionality and the inclusivity of the general national child welfare and child protection systems should have priority over calls for specialisation of services in response to children in the context of migration.

The ‘specialisation’ that does need to be cultivated should comprise efforts to build the capacity of frontline staff and other professionals to identify vulnerable children in the context of migration, to have the formal mechanisms to provide them with particular victim status where necessary (such as in cases of human trafficking), but universality and inclusivity of child welfare and child protection systems should be the main focus of future reforms, particularly in developing countries.

***Terre des Hommes Netherlands therefore recommends that the General Comment offers guidance to governments to ensure that the child welfare and child protection systems in countries of origin and destination are inclusive and allow for children in the context of migration to be identified, supported and protected according to their needs.***

As a step to achieving that the General Comment should offer guidance on the review of relevant laws and policies. Currently, different legislation and policies in many countries regulate if and what type of support and services can be made available to children who are not nationals of the country in which they are based. Child welfare and child protection support and services are regulated separately and when migrant children are identified, they are not automatically treated in accordance with these. Their treatment, depending on what policies and legislation exist in a country, is regulated under specialised legislation and rules such as counter-trafficking laws and bilateral agreements between countries of origin and destination. This creates systemic bias towards differential treatment of migrant children.

Another important step in making child welfare and child protection systems inclusive and relevant for children in the context of migration is the consultation process with children themselves and with their communities and representatives:

***The General Comment should recommend that governments involve migrant, and migrating, communities and civil society organisations in the review, development and implementation of policies and programmes affecting the rights of all children as well as the rights of children affected by migration.***

## “Irregular” children

In many countries the undocumented, irregular way in which families and individual children migrate results in limited access of the migrant children to services to which they are entitled. This irregular migrant status affects, albeit to different extend, children of migrant workers that migrated with them to another country or were born there, as well as children who migrated unaccompanied. Although countries such as Thailand are making efforts to provide identification documents to children who were born there, awareness of and access to registration in order to obtain ID remain a barrier for the poorest migrant families. This often results in no access to mainstream education for the children of migrants. On the other hand, many unaccompanied children who migrated for work in Thailand as undocumented migrants report satisfaction with the employment they have been able to find in Thailand.[[6]](#footnote-6)

While the economies of states using undocumented labour benefit from it, similar to the economies of the sending states, undocumented migrants, including children, are excluded from the scope of regional agendas and instruments and the regularisation of their status is discouraged. For example, the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers emphasises that nothing in the declaration should be interpreted as implying the regularisation of the situation of undocumented migrant workers.[[7]](#footnote-7)

Terre des Hommes Netherlands recommends that the joint General Comment includes the below recommendation from the 2012 Report of the Day of General Discussion on the Rights of All Children in the Context of International Migration, which encompasses most of the issues discussed here, with added guidance on the steps that need to be taken to ensure it is implemented:

“States should ensure that all children in the context of migration have equal access as national children to economic, social, and cultural rights and to basic services regardless of their or their parent’s migration status, making their rights explicit in legislation. In doing so, States are strongly encouraged to expeditiously reform legislation, policies and practices that prevent or discriminate against children affected by migration and their families, in particular those in an irregular situation, from effectively accessing services and benefits such as health care, education, long-term social security and social assistance, among others.”[[8]](#footnote-8)

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1. 2012, Submission for the Committee on the Rights of the Child Day of General Discussion on “The Rights of All Children in the Context of International Migration”, TDIF, http://www.terredeshommes.org/wp-content/uploads/2013/06/20120918\_tdhif\_submission\_to\_uncrcday\_child\_migration.pdf [↑](#footnote-ref-1)
2. ECPAT International, Plan International, Save the Children, UNICEF and World Vision, *National Child Protection Systems in the East Asia and Pacific Region: A review and analysis of mappings and assessments,* ECPAT International, Bangkok, 2014. [↑](#footnote-ref-2)
3. ibid [↑](#footnote-ref-3)
4. Ibid [↑](#footnote-ref-4)
5. Ibid [↑](#footnote-ref-5)
6. Capaldi, Journal of Population and Social Studies, Volume 23 Number 1 January 2015 : 16 - 32

   DOI 10.14456/jpss.2015.10 [↑](#footnote-ref-6)
7. ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers [↑](#footnote-ref-7)
8. COMMITTEE ON THE RIGHTS OF THE CHILD, REPORT OF THE 2012 DAY OF GENERAL DISCUSSION ON THE RIGHTS OF ALL CHILDREN IN THE CONTEXT OF INTERNATIONAL MIGRATION (p.20) [↑](#footnote-ref-8)