



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”

Geneva 28 September 2012

Terre des Hommes International Federation (TDHIF) consists of ten non-governmental organisations, based in Canada, Denmark, France, Germany, Italy, Luxembourg, Netherlands, Spain and Switzerland (comprising two organizations: Terre des Hommes Switzerland and the Terre des Hommes Foundation). Their mission is to support children without any form of discrimination and advocate for the protection of their rights. They operate programmes all around the world and have acquired experience in assisting children on the move in a variety of circumstances, when children move for different reasons within their own countries or across borders, whether separated and unaccompanied or accompanied by their parents or close relatives.

This submission addresses points on both the topics proposed in the Guidelines for the 2012 Day of General Discussion, focusing in particular on the second set of questions raised: national level measures to implement the rights of children in international migration situations in countries of origin, transit and destination.

A particular objective of TDHIF organizations over the past ten years has been to protect children on the move against exploitation, abuse and trafficking. This has given TDHIF substantial experience about which measures taken in the name of protecting child migrants have actually been in their best interests. In turn it revealed a host of difficulties for children caused when inappropriate procedures were in place or as a result of ineffective coordination between statutory organizations in different countries. In summary, much of the work that TDHIF has done over the past decade to link up organizations in different countries, which assist or protect children who migrate, has been motivated by the need to fill a gap created by short-comings in the protection of such children by States.

Examples of the rights of child migrants that are violated

Routine responses by the authorities involve what TDHIF regards as a serious violation of children’s rights, the detention and deportation of children whose asylum application has been refused. In some countries, while detention and deportation are banned for children less than 16 years, older children are subjected to them (e.g., in Germany). In such cases TDHIF has called on the authorities to consider as a child any person under the age of 18 years old and to



ban detention and deportation of children on the basis of their migratory or residence status, or lack thereof (echoing the call made in the Committee on the Rights of the Child's General Comment No. 6 in 2005).

In many countries, the irregular character of the migration process limits the access that migrant children have to the rights and services to which they are entitled. In Morocco, Terre des Hommes is assisting migrants from Sub-Saharan Africa. Many of them are girls under 18 years old, who arrive in Morocco, pregnant or already young mothers of a child, born on the way. Most of the girls have become pregnant because of rape or as result of sporadic sexual relations with adults whom they trusted while travelling. They aim to transit through Morocco and reach a Member State of the European Union. However, most of them remain for years in an irregular migration situation in Morocco, facing various obstacles in accessing even basic services. For example, even though, in legal terms, irregular migration status does not hinder the young women concerned from receiving emergency health care at a public hospital, most of the migrant girls, especially when they do not speak French, are reluctant to give birth at a hospital. They are afraid of being arrested and deported. Instead they prefer delivering at home, counting on support from other migrant girls and ready to face the health consequences for themselves and their child, sometimes of a life threatening nature.

Access to education and justice are also often denied to migrant children. In 2009, Foundation for Women in Thailand and Terre des Hommes interviewed the children placed in an immigration detention centre in Bangkok, Thailand. Out of 167 children interviewed, 121 of them claimed to have had experienced abuse, i.e., labour exploitation (48), confinement in the workplace (33), physical violence (23) and sexual abuse (2). However, none of them could take any legal action against their employers due to fear of summary deportation, their irregular migration status and insufficient information on the offenders.

In some cases, Terre des Hommes' concern has been prompted by the lack of resources provided by government agencies. During 2011, Terre des Hommes Italy was active in Lampedusa (Italy), where unaccompanied children arriving in Italy were supposed to be transferred within a few days from the isolated island of Lampedusa to government-run reception centres in mainland Italy. In practice, the lack of resources provided by the Government resulted in children remaining in Lampedusa for many weeks. Some 2,692 children arriving in Lampedusa were registered between January and September 2011. Terre des Hommes Italy provided some with counseling and legal advice.

In other countries, authorities have acted hastily on the basis of incomplete assessments of the status of unaccompanied children from other countries.



Inappropriate procedures for assessing the age of unaccompanied children are routinely reported to cause them prejudice, usually adolescents aged under 18 who are misidentified as adults. Lack of legal guardianship, inadequate care services and, more generally, institutional responses that do not take into account the wishes of the child and his/her best interests are other reasons often obliging migrant children to refrain from contacting national authorities and placing them at further risk of exploitation and abuse.

Working to improve the quality of durable decisions made by statutory authorities

TDHIF has worked with the authorities in several countries to improve the protection of the rights of migrant children. Referring to the Committee's General Comment No. 6, TDHIF has sought to enable State authorities to address the fate of the migrant child by identifying a durable solution that covers all protection needs, takes into account the child's views and, wherever possible, helps the child to overcome the problems faced. Once sufficient information have been gathered, the competent authority in the country where the child is identified should, in consultation with the child, determine the best solution among the following possibilities: local integration, voluntary repatriation to the country or place of origin and re-integration there, or resettlement and integration in a third country.¹ In Terre des Hommes view, the collaboration with child protection agencies in the origin country is of paramount importance in this process.

When Terre des Hommes started work in Moldova on a project to safeguard unaccompanied Moldovan children in Russia, it swiftly learned that most of the States belonging to the Commonwealth of Independent States were parties to the Volgograd Agreement of 1994,² which delegated authority to the Ministries of Interior of the respective States to repatriate unaccompanied children from any of the other States, without investigating their status or carrying out a best interests determination, and housing them in juvenile detention centres along their return journeys. Terre des Hommes worked with the authorities in Moldova to improve the quality of decisions. To begin with, in Moldova, as in other countries of origin, there was an assumption that return was bound to be in a child's best interests. However, procedures changed and since 2008, the Ministry of Labour, Social Protection and Family is responsible within Moldova. The guardianship authority in Moldova subsequently recognized that, in specific

¹ See UNICEF, Guidelines on Protection of the Rights of Child Victims of Trafficking, 2006, p. 27; Committee on the Rights of the Child General Comment No. 6.

² 'Cooperation Agreement between the Ministries of Interior concerning the return of minors to their countries of origin', signed in Volgograd, 24 September 1994 by Ministers from 10 States in the Commonwealth of Independent States. A revised version of this agreement was signed in Chisinau in 2002.



circumstances, it could be in the best interests of a child to remain abroad. When the relevant guardianship authorities in both States involved agree that repatriation is the most appropriate durable solution (for an unaccompanied Moldovan child identified in Russia), Terre des Hommes agrees to facilitate the return when it too is convinced that this is in the child's best interests.³

Promoting better bilateral procedures between States

In the early part of the last decade Terre des Hommes gained considerable experience from assisting unaccompanied or separated children belonging to an Albanian minority group who were taken to Greece and deployed by adults who were not their parents to earn money by begging. Initially, the response of the authorities in both countries was inappropriate. The Greek authorities would deport the children to Albania without any prior risk assessment and without liaising with the Albanian authorities to ensure that anyone was available at the border point to look after them.⁴ The Albanian authorities also failed to react in an appropriate way, expecting a returnee child to travel alone within Albania, with the result that they were often contacted by traffickers once again and returned to Greece.⁵

As an immediate response, Terre des Hommes developed a method (known as 'Transnational Action against Child Trafficking'⁶) to enable NGOs in the two countries involved to coordinate their protection activities: Terre des Hommes in Albania, where children were recruited, and the Association for the Social Support of Youth (ARSIS) in Greece, where they were exploited. This included exchanging information about individual children who had gone missing in Albania or been spotted in Greece. To supplement this basic level of coordination, the two NGOs in Albania and Greece lobbied their respective governments to develop a bilateral agreement that would ensure adequate, coordinated protection of the children concerned. They contributed to the preparation of a draft Cooperation Agreement between the two governments "on the protection of unaccompanied children, trafficked children and children at risk of being trafficked". It took some time before a definitive text was agreed in February 2006.⁷ The bilateral agreement contained good protection provisions, even though, by the time it came into effect in 2008, the number of Albanian children arriving in Greece had diminished. However, the provisions could potentially be replicated in

³ For further, see <http://tdh-childprotection.org/projects/moldova/description>

⁴ The Trafficking of Albanian Children in Greece, Tdh, 2003.

⁵ *ibid.*

⁶ See on TACT, see <http://tdh-childprotection.org/projects/tact/description>.

⁷ 'Agreement between the Government of the Hellenic Republic and the Council of Ministers of the Republic of Albania for the protection and assistance of children victims of trafficking' at <http://www.legislationline.org/documents/id/5856>



agreements with other neighbouring States. The need for this arose in early 2011, following the identification of Bulgarian children begging in a city in northern Greece. In March 2012 authorities in the two States indicated that they were considering an informal protocol of collaboration.⁸

In principle, it should not be necessary for States which are the origin and destination of unaccompanied, separated or exploited children to develop specific bilateral agreements in order to respond when such children are identified, as the principles underpinning the agreements should be those recognized in the Convention on the Rights of the Child and other international human rights law. However, practice shows that States have tended to give priority to national security and migration management issues, rather than the rights of children. Thus both bilateral and multilateral agreements that re-endorse and contextualize commitments as per Convention of the Right of the Child are in Terre des Hommes view strongly welcomed.

Improving procedures surrounding returns

Even when the child would like to return to the country of origin and this option is in his/her best interests, Terre des Hommes has observed that in various regions, States involved had little or no capacity to ensure the safe return of the child. In South Asia, for example, considerable numbers of children from Nepal have been taken to India to earn money for others. Once released from the control of exploiters, however, no procedures have been agreed by the two States for facilitating the children's repatriation. One harmful consequence for the children concerned is that they are routinely detained in closed shelters for long periods. In the absence of bilateral arrangements between the two States, NGOs have sometimes arranged returns, but some were reported to occur in circumstances which were unsafe for the children concerned.

Terre des Hommes worked with others to develop procedures for NGOs in both India and Nepal to follow, notably a set of 'continuity of care' procedures, which ensure that an NGO in India communicates core information about a child being repatriated from India to Nepal to the receiving NGO prior to a child's arrival, including any protection concerns, medical concerns, details on prior case management, etc., so that the child can be protected and their needs met without a break. Again, these amount to a sort of 'band aid' solution in the absence of appropriate measures being taken by state-run bodies, but help

⁸ See, 'An informal protocol of collaboration considered by Bulgarian and Greek authorities', 26 March 2012, at <http://marioproject.org/news/an-informal-protocol-of-collaboration-considered-by-greek-and-bulgarian-authorities>





promote good practice among the NGOs directly involved and, potentially, others in the two countries.

Concluding Recommendation

1. TDHIF recommends that the Committee on the Rights of the Child should reiterate key points made in General Comment No. 6, notably that the best interests of child migrants must be a primary consideration when deciding on a durable solution for the child and that a child's detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof, or on account of a decision to detain one or both of the child's parents.

2. TDHIF also recommends emphasizing the authorities' obligation to carry out (and document) risk assessments prior to decisions on durable decisions, both with respect to the options of repatriation and family reunification and with respect to other options.

3. TDHIF recommends that the Committee on the Rights of the Child should remind States parties to the Convention of the importance of agreeing formal procedures to safeguard the rights of children in the context of international migration. We recommend that the modalities of coordination between relevant statutory agencies in different States should be the subject of further scrutiny by the Committee on the Rights of the Child, notably by requesting a study by relevant UN Special Rapporteurs to identify a suitable set of principles for States to guide such bilateral or multilateral cooperation. The Special Rapporteurs on the Sale of Child, Child Prostitution and Child Pornography and on the Human Rights of Migrants have suitable expertise to carry out such a study. We recommend that they be asked in particular to identify measures that would ensure the protection of the children concerned and guarantee their rights (whatever their immigration status), whether the children concerned are unaccompanied or separated or not. Such a study should be guided by the Convention on the Rights of the Child and other relevant international standards and take full account of the recommendations adopted by the Committee at its September 2012 Day of General Discussion.

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