

Working General Principles: Migration and the Human Rights of the Child

United Nations Children's Fund (UNICEF)

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Comprehensive Human Rights Based Approach:

- The fundamental challenge faced by children and adolescents in the context of migration is the **general absence of a child perspective within migration laws and policies**, as well as a **migrant perspective within childhood policies**, which result in the deprivation of their rights, discrimination, and even exploitation.
- All stakeholders should adopt a **Comprehensive Human Rights-based Approach** that addresses the entire process of migration from a child, gender and non-discrimination perspective. As stressed by the Human Rights Council in October 2009, this approach should be holistic “with due regard for the specific needs of children in vulnerable situations, such as unaccompanied children, girls, children with disabilities and those who may be in need of international refugee protection”. This approach should also address the specific needs and vulnerabilities of children left behind.
- **A Comprehensive Human Rights Based Approach must include a focus on gender equality.**
 - Women and girls represent almost fifty percent of the international migrant population, accounting for the phenomena known as the feminization of migration. Women may migrate to escape constraining gender norms, sexual violence and abuse, social stigma, and pressure to marry or to follow a spouse who has migrated. However, migration laws and policies generally lack a gender perspective. On the contrary, migration laws and policies often maintain or exacerbate gender inequality in host countries, which has a particular effect on migrant women and girls.
 - Girls and women are particularly vulnerable to rights violations throughout the entire migration process. Gender discrimination and the resultant weaker position of many women within their societies is often a root cause of their greater vulnerability. Female migrant workers are usually concentrated in low-wage, precarious occupations. Irregular migration status may exacerbate this exploitation, as they may accept adverse conditions for fear of being exposed or deported. The migration of mothers tends to bring about significant changes in family dynamics, as female children left behind are frequently required to assume the traditional role of their mother and may also be forced into child labour, particularly in the context of the current economic crisis.
- **A holistic notion of development should be adopted within a Comprehensive Human Rights-based Approach.** States have a duty to ensure the right to development (which entails the full realization of all human rights) and guarantee sustainable development (i.e. the 3 pillars of economic development, social development, and environmental protection) for everyone.
- **Policy coherence is also essential within a Comprehensive Human Rights-based Approach.** This includes not only gathering data, identifying good practices, and developing institutional reform plans, but also ensuring coherence among policies designed in different areas of each government, including those promoted at the international level.

- **A Comprehensive Human Rights-based Approach requires the participation of children, both as a right and a process.** Migration laws and policies and other policies that affect migrant children must ensure the realization of children's right to be heard, as required by the CRC. In addition, legislative and policy design or reform must be participatory, ensuring that children have the space, possibility, and due assistance to participate in the entire process. Furthermore, integration policies and programmes in host societies should ensure the active participation of migrant adolescents and those born to migrant parents.
- **A Comprehensive Human Rights-based Approach that addresses the entire process of migration requires consideration for South-South migration, internal migration, and the causes of irregular migration,** particularly the irregular migration of children and adolescents who migrate either with their parents or unaccompanied. Irregular migration is closely linked to restrictive laws in countries of destination, lack of avenues for regular migration, extreme vulnerability in countries of origin, lack of information, gender inequality, and, cross-cutting the aforementioned factors, increased human trafficking and smuggling networks.

Legislative and Policy Reform:

- A Comprehensive Human Rights-based Approach requires that stakeholders approach the entire process of migration from a child, gender and non-discrimination perspective. In that regard, **States must reform their migration laws and policies to conform to international standards.**
 - International human rights principles (i.e. non-discrimination, best interests of the child, universality, and child development) should guide the design or reform of migration and childhood policies.
 - Standards provided by international human rights bodies (e.g., CRC, CEDAW, HRC, CERD, CESCR), including the Concluding Observations and General Comments, should represent the minimum level of protection ensured by those policies.
- **The following policy areas should be targeted for reform:**
 - Development policies, including social and economic policies, in countries of origin, to ensure that migration is a choice not a necessity (e.g., poverty reduction strategies, child and adolescent education, access to employment, childhood protection programs, etc.);
 - Social and economic policies in countries of transit and destination (e.g., policies on education, health care, social security, labour, juvenile justice, family life, sexual and reproductive health, intercultural integration, etc.). The Economic, Social and Cultural Rights of migrant children and children born to migrant parents should be fulfilled. Discrimination based on nationality and migration status should be removed from legislation, policies, and practices; and xenophobia and racism against migrant children and adolescents (and those of migrant background) must be duly addressed through a set of policies, including education, prevention and prosecution, and granting victims access to justice and proper reparation;
 - International policies meant to ensure human and sustainable development to every human being (e.g., development, cooperation, trade, investment, etc.);
 - Border control measures in countries of transit and destination (e.g., avoid detention of children, involve child protection officers in control procedures, and ensure the best interests of the child in procedures of reunification, repatriation, and acquisition of a residence permit);
 - Migration policies based on human migration patterns in each region, including child mobility and irregular migration, that seek to facilitate regular avenues for migration through a Comprehensive Human Rights-based Approach; and

- The potential vulnerability of children to the worst forms of child labour in the context of migration.
- **Children left behind should receive particular attention in public policies.**
 - In many cases, states do not account for the special situation of children left behind. The realisation of their human rights, including their right to development, entails that states, as key duty-bearers, design and implement legislation and policies aimed at respecting, protecting, and fulfilling such rights.
 - Greater attention must be paid to the effects of the economic crisis on children and families left behind in order to mitigate negative impacts and design policy interventions that will improve the developmental prospects for these families and children in the medium and long term.
 - States of origin should develop comprehensive policies to support the families and caregivers of children of migrant parents in their child-rearing responsibilities. Policies should be oriented at mitigating the psychosocial impacts of migration on children by providing programs for caregivers on parenting skills, gender sensitivity, and management of peer relationships. These programs must be sensitive to migrant communities' own cultural values and mores, especially regarding gender roles, youth participation and the mitigation of risky behaviours.
- **States should not only focus on reforming laws and policies but must also ensure that laws and policies are implemented in practice.**
 - Monitoring and evaluation (including data and indicators) are necessary to ensure the effective realization of rights for children affected by migration.
 - Policies and programmes should aim to train civil servants, migration authorities, security forces, as well as judges and other state representatives on human rights issues, particularly on migrants' rights, from a child, gender and non-discrimination perspective.

International Cooperation:

- States' must strive to **regularize the status of their migrant populations and improve working conditions through international or bilateral negotiations**.
- Migrant sending countries should engage in **dialogue with receiving countries to ensure bilateral agreements that allow migrant workers to take their children abroad**, in order to **avoid children being left behind** by parents working abroad (especially mothers) and to allow the full and harmonious realisation of children's needs.
- National governments should focus on **designing and implementing co-development strategies between countries within particular migration corridors**. Policies and legal frameworks should focus primarily on reducing social, economic, educational, and health inequalities between countries. This should be the basis for incorporating migration, its causes, and consequences into countries' developmental strategies aimed at maximizing migration's developmental potentials, while reducing its negative consequences.