

Children's rights extracts taken from the following report:

Report of the Special Rapporteur on the human rights of migrants,  
Jorge Bustamante

5. From 26 to 27 January 2010, he participated in an expert meeting on the right to education of migrants, refugees and asylum-seekers, convened by the Special Rapporteur on the right to education. The event took place in London and was hosted by the Open Society Institute/Foundation.

7. On 6 and 7 October 2010, he participated at the Festival Viva América, organized by Casa América, in Madrid. From 4 to 8 October 2010, together with the Special Rapporteur on the sale of children, child prostitution and child pornography and the Special Rapporteur on contemporary forms of slavery, he participated in a conference entitled "Children on the move", organized by the Global Movement for Children, Save the Children and the Fundació Privada Moviment Mundial a Favor de la Infància, held in Barcelona, Spain, from 4 to 8 October 2010.

26. The Special Rapporteur also focused on the protection of children in the context of migration, recalling the obligation of the State to ensure the protection of all children in all stages of the migration process.<sup>3</sup> He presented an overview of the international legal framework applicable, proposed a conceptual framework and referred briefly to three categories of children affected by the migration process: those left behind by migrating family members; migrant children moving across borders; and migrant children in host countries.

27. Children have always been part of migration and affected by it in different ways. Children left behind by migrant family members are affected by migration in countries of origin. Children on the move are affected at the pre-departure stage in countries of origin and in countries of transit and destination at the passage and arrival stages. Children in host countries are affected at the post-arrival and long-term stay and integration stages of the migration process. Children move across borders with their parents or are accompanied by extended family members or other adults and within mixed migratory flows. Children are also increasingly seeking migration opportunities to move across borders unaccompanied, falling prey to organized crime and exploitation including smuggling, trafficking and contemporary forms of slavery.

28. The term "children left behind" refers to children raised in their home countries or in their countries of habitual residence who have been left behind by adult migrants responsible for them. The impact of migration on children left behind was difficult to measure. Many factors played a role in assessing how migration may affect the rights of children left behind. The inclusion of measures to promote family unity and facilitate the reunion of children with their parents in host countries was also necessary to address adequately the special needs and protection of children left behind. Many parents and other family members initially migrated without children, but subsequently planned to bring them to a host country.

29. Children on the move are migrant children taking an active part in the migration process, particularly at the passage and arrival stages in countries of transit and destination. They may be found migrating with their family members or independently, to seek opportunities for both education and employment. Children may also be forcibly on the move, such as when falling prey to transnational organized crime and exploitation networks. Unaccompanied and separated children on the move faced greater vulnerabilities and risks, including discrimination, sexual and other forms of violence. Frequent human rights issues affecting children on the move also included deportation and repatriation. 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. Another major concern related to the particular vulnerability of children who were unaccompanied, undocumented and/or entering countries irregularly, including within mixed migratory flows, to unlawful or arbitrary deprivation of liberty.

30. The protection of children in host countries was in most circumstances context-specific, and therefore depended on the particular situation of the child: whether the child's situation amounted to the protection afforded under refugee law; whether the child was a victim of transnational organized crime; whether the child migrated

with his family and one or both parents were migrant workers; or whether the child migrated irregularly, unaccompanied or undocumented. The Special Rapporteur had identified two areas where States generally should enhance efforts to provide rights-based responses to protect children in host countries. The first area related to the general protection of children affected by transnational organized crime. The second area related to the full enjoyment of human rights by children from a migrant background.

31. The Special Rapporteur highlighted that there is no accurate statistical information on the number of children involved in the international migration process. Like adult migration, child migration is influenced by the political, social, economic and environmental situation. This included new global phenomena such as climate change, the food crisis and the financial and economic crisis. Children who are unaccompanied or separated from their parents were particularly vulnerable to human rights violations and abuses at all stages of the migration process. The lack of distinction between adult and child migrants was therefore a major challenge that a number of States still had to overcome. National migration laws did not always include a child rights perspective and usually lack specific provisions on children.

32. The protection of the child during migration demanded the consideration of issues related to irregular migration, since they affected the child's enjoyment of human rights. The protection of children during migration necessarily implied a gender dimension, since women and girls accounted for almost half of international migrants, and girls migrating either on their own or accompanied are vulnerable to sexual violence and gender-based human rights violations.

33. Finally, the Special Rapporteur highlighted the importance of an adequate legal framework for the protection of the rights of all children in the context of migration, including through ratification of relevant international human rights and other instruments and their translation into national laws and policies. He made a number of recommendations for further consideration and action.

34. The Special Rapporteur focused on the enjoyment of rights to health and to adequate housing for migrants.<sup>4</sup> He recalled the applicable international legal framework and discussed the main challenges encountered by migrants in the enjoyment of these rights, with particular attention to the situations of migrant women and girls and children.

39. Female migrant workers engaged in domestic services were one of the most vulnerable groups of migrant workers. There appeared to be a widespread pattern of physical, sexual and psychological abuse of migrant domestic workers, and they were also often exposed to health and safety threats without being provided with adequate information about risks and precautions. Migrant women and girls also often experienced different and more problematic pregnancy and gynaecological health issues, compared to the host population.

40. Regrettably, there were vast discrepancies between international human rights norms and their actual implementation in the field of health care for migrant children, whether these children are in regular or irregular situations, accompanied or unaccompanied. Inadequate care had long-lasting consequences on a child's development; for this reason, and in the light of the State duty to protect the most vulnerable, access to health care for migrant children should be an urgent priority. In general, the constraints on the rights of adult migrants immediately had an adverse impact on the rights of their children, and in the long term, inhibited the children's development.

45. Women faced significant barriers in accessing adequate housing due to discrimination and migrant women were subject to multiple forms of discrimination, given their marginalized status in societies. Migrant children were also more likely than other children to live in overcrowded housing, which had a negative impact on their development. The concern was heightened with respect to irregular migrant children, whose right to adequate housing was dictated by the conditions of social exclusion that their families to which were subjected. The lack of access to adequate housing for irregular migrant parents meant that their children were deprived of housing as well.