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HUMAN RIGHTS COUNCIL
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Agenda item 3

PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT

Resolution adopted by the Human Rights Council*

12/6. Human rights of migrants: migration and the human rights of the child

The Human Rights Council,

Reaffirming the Universal Declaration of Human Rights, which proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, such as to race, colour or national origin, that everyone has a right to a nationality and that childhood is entitled to special care and assistance,

Recalling the Convention on the Rights of the Child, according to which in all actions concerning children, the best interests of the child should be a primary consideration,

Recalling also the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,

Recalling further the Convention relating to the Status of Refugees of 1951 and the Protocol thereto of 1967,

Recalling the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Convention No. 182) and recommendation 190 on the Worst Forms of Child Labour of the International Labour Organization, and their

* The resolutions and decisions adopted by the Human Rights Council will be contained in the report of the Council on its twelfth session (A/HRC/12/50), chap. I.

implementation framework, and recognizing that migrant children, especially unaccompanied children, are more vulnerable to the worst forms of child labour,

Recalling previous resolutions on the human rights of migrants and on the rights of the child adopted by the Commission on Human Rights, the Council and the General Assembly, the most recent being Council resolutions 7/29 of 28 March 2008, 9/5 of 24 September 2008 and 10/14 of 26 March 2009, and Assembly resolutions 63/184 of 18 December 2008 and 63/241 of 24 December 2008,

Noting with appreciation its accomplishment of the Guidelines for the Alternative Care of Children, transmitted to the General Assembly, according to which States should seek to provide appropriate care and protection for vulnerable children, including children of migrant workers, as part of efforts to prevent separation of children from their parents,

Taking note of general comment No. 6 of the Committee on the Rights of the Child on the treatment of unaccompanied and separated children,

Noting with appreciation the report of the Special Rapporteur on the human rights of migrants (A/HRC/11/7), in which he addresses the protection of children in the context of migration,

Underlining the importance of the Council in promoting respect for the protection of the human rights and fundamental freedoms of all, including migrants,

Recognizing the increasing participation of children in international migration movements and stressing the need to ensure the protection of children from all forms of abuse, neglect, exploitation and violence,

Deeply concerned about the large and growing number of migrants, especially children, attempting to cross international borders without the required travel documents, and recognizing the obligation of States to respect the human rights of all migrants,

Bearing in mind that policies and initiatives on the issue of migration, including those that refer to the orderly management of migration, should promote holistic approaches that take into account the causes and consequences and challenges and opportunities of the phenomenon and full respect for the human rights and fundamental freedoms of migrants, 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,

1. *Calls upon* States to promote and protect effectively the human rights and fundamental freedoms of all migrants, especially those of children, regardless of their status, in conformity with the Universal Declaration of Human Rights and the international instruments to which they are party, and therefore:

(a) Underlines that the international legal framework for the protection of the child applies irrespective of his/her migration status and that of his/her parents or family members, and calls upon States to respect and ensure the protection of the human rights of every child within their jurisdiction, without discrimination of any kind;

(b) Calls upon States to establish or strengthen policies and programmes aimed at addressing the situation of children in the context of migration that have a human rights-based approach and are based on general principles, such as the best interests of the child, non-discrimination, participation and survival and development;

(c) Also calls upon States that have not signed and ratified or acceded to the Convention on the Rights of the Child and the Optional Protocols thereto, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families to consider doing so as a matter of priority;

2. *Also calls upon* States of origin to take appropriate measures to promote and protect effectively the rights of children who are left behind in their country of origin by migrating family members, including by:

(a) Development of data on the situation of children left behind in countries of origin in order to better understand the impact of migration processes on their well-being and enjoyment of their human rights;

(b) Undertaking, in cooperation with relevant organizations, information campaigns with a child perspective aimed at clarifying prospects, limitations, potential risks and rights in the event of migration, in order to enable everyone, in particular children and their family members, to make informed decisions and to prevent them from becoming victims of trafficking or falling prey to transnational organized networks of smugglers or organized criminal groups;

(c) Strengthening relevant national institutions to address the particular needs of children left behind in their country of origin;

3. *Further calls upon* States to protect the human rights of children in the context of migration, and therefore:

(a) Calls upon States parties to the United Nations Convention against Transnational Organized Crime and the supplementing protocols thereto, namely, the Protocol against the Smuggling of Migrants by Land, Sea and Air and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, to implement them fully, and calls upon States that have not yet ratified or acceded to them to consider doing so as a matter of priority;

(b) Encourages States to establish institutionalized services and implement programmes to provide age- and gender-sensitive support and protection to migrant children, 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;

(c) Requests all States to take concrete measures to prevent the violation of the human rights of migrant children while in transit, and to train public officials to detect and treat them respectfully, in a sensitive and age-appropriate manner and in accordance with their international obligations;

(d) Calls upon States to ensure that migrant children, especially those who are unaccompanied and those who are victims of violence, exploitation, persecution and conflict, receive special protection and assistance, in accordance with their international obligations;

(e) Encourages all States to apply a gender perspective when developing migration policies and programmes in order to take the necessary measures to better protect girls against dangers and abuse during migration;

(f) Urges States to ensure that repatriation mechanisms allow for the identification and special protection of children, and that repatriation processes fully respect the rights of the child and take into account, in conformity with their international obligations and commitments, the principles of the best interests of the child and non-refoulement, and family reunification;

4. *Reaffirms* that the arrest, imprisonment or detention of a child should be in conformity with the law and the international obligations of the State, and recalls in this context article 37 of the Convention on the Rights of the Child, which provides that such measures should be taken only as a last resort and for the shortest appropriate period of time, and urges States to protect effectively the rights of children affected by the detention of their parents, guardians or family members because of their migratory status and, in this regard:

(a) Encourages States to consider positively alternatives to detention for children and the family group, when children or their parents are detained on the sole basis of their migratory status, recalling in this context the conclusions and recommendations of human rights mechanisms that the treatment of irregular migration of children as a criminal offence can have a negative impact on the enjoyment of their human rights, and taking into account the necessary balance between the need to protect family unity and the best interests of the child;

(b) Reaffirms emphatically the duty of States parties to ensure full respect for and observance of the Vienna Convention on Consular Relations, in particular with regard to the right of all foreign nationals, regardless of their immigration status, to communicate with a consular official of the sending State in the event of arrest, imprisonment, custody or detention, and the obligation of the receiving State to inform the foreign national without delay of his or her rights under the Convention;

5. *Calls upon* States of destination to protect effectively the human rights of children in the context of migration, without discrimination of any kind and, in this regard:

(a) To ensure for migrant children, regardless of their legal status, the enjoyment of all human rights and, in accordance with their national laws and any relevant international obligations, appropriate access to health care and social services;

(b) To prevent and eliminate discriminatory policies that deny migrant children access to education, regardless of their migratory status;

(c) To ensure that every child preserves his or her identity, including nationality, name and family relations as recognized by law, without unlawful interference, including by ensuring the registration and issuance of birth certificates for every child, irrespective of his or her immigration status and that of his or her parents or family members;

(d) To take all reasonable steps to avoid the difficulties associated with statelessness for migrant children, in line with international obligations;

(e) To deal with applications to enter or leave a State for the purpose of family reunification in a positive, humane and expeditious manner, while ensuring that the submission of such requests entail no adverse consequences for the applicants and for the members of their family;

(f) To consider the possibility of adopting immigration programmes that allow migrants to integrate fully into the host countries, facilitate family reunification and promote a harmonious and tolerant environment;

6. *Requests* the Secretary-General to continue his efforts to promote and raise awareness of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention on the Rights of the Child, and to support, as appropriate, the building of greater synergies between the Committee on the Rights of the Child and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, and to strengthen cooperation for the protection of migrant children;

7. *Requests* the Office of the United Nations High Commissioner for Human Rights to continue to elaborate and disseminate training and awareness-raising material on the rights of children in the context of migration, and to continue to contribute to national efforts in the development and implementation of policies and programmes that promote and protect their rights and, upon the request of States, to continue to provide assistance in the training of immigration officials;

8. *Also requests* the Office of the High Commissioner to prepare a study on challenges and best practices in the implementation of the international framework for the protection of the rights of the child in the context of migration, in consultation with relevant stakeholders, including States, regional organizations, civil society organizations and national human rights institutions, and requests that the study be available on the website of the Office prior to the fifteenth session of the Council, and to disseminate it to all relevant international forums.

*30th meeting
1 October 2009*

[Adopted without a vote.]