



**THE ROLE OF PARLIAMENTS IN PROTECTING THE RIGHTS OF CHILDREN,
IN PARTICULAR UNACCOMPANIED MIGRANT CHILDREN AND IN PREVENTING THEIR
EXPLOITATION IN SITUATIONS OF WAR AND CONFLICT**

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Introduction

1. International migration is a social problem that has been on the rise in the past years and is on the national, regional and global agendas of the countries that make up the IPU. This has been especially true since 2006, when the High-level Dialogue on International Migration and Development, organized by the UN General Assembly, took place.

2. To mark the 2012 International Migrants Day, the Secretary General of the United Nations, Ban Ki-moon, stated that migration is a global issue and that next year, the United Nations General Assembly will hold its second High-Level Dialogue on International Migration and Development, giving Member States a chance to discuss practical measures to facilitate labour mobility, foster sustainable development and protect the rights of migrants, especially women and children.

3. According to UN estimates, the number of migrants globally increased from 155 million per year in 1990 to 214 million in 2010.¹ Some 33 million migrants worldwide are under 20 years old, which represents 15 per cent of the total migrant population globally.²

4. Among the under-20 migrant population, the 15 to 19 years age-group is the largest, accounting for 33 per cent of this total, followed by the 10 to 14 years age-group, representing about 27 per cent, with the 5 to 9 and 0 to 4 years age-groups accounting for 23 and 17 per cent, respectively.³

5. Under-20 migrants make up the largest group of the total migrant population in Africa (24%), followed by the Caribbean, Central and South America (18%), Asia (16%), Europe and North America (4%) and Oceania (4%).⁴

Definitions

6. General Comment No. 6 of the Committee on the Rights of the Child on the treatment of unaccompanied and separated children outside their country of origin establishes that unaccompanied children and adolescents are those who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.

¹ UN Economic and Social Council, Press Release, 19 April 2013.

² La Travesía. Migración e Infancia, United Nations Children Fund (UNICEF) Mexico, November 2011 (available in Spanish only).

³ Children, Adolescents and Migration: Filling the Evidence Gap, UNICEF Division of Policy and Practice with the support of the United Nations Population Division/DESA, UNDP Special Unit for South-South Cooperation and the University of Houston, June 2010, p. 4.

⁴ Ibid.

7. In accordance with the Regional guidelines on assistance to unaccompanied children in cases of repatriation (adopted in Guatemala City in 2009), unaccompanied children and adolescents are understood to be all persons under the age of 18 years.

Unaccompanied children and adolescents and representative cases

8. There is a host of reasons why children and adolescents migrate: from personal and family reasons to community, national and global reasons. Some migrate in search of a better education or better job opportunities, better health care and a better life. Others migrate to be with their families and many more are obliged to migrate to flee domestic violence, social conflict, war and poverty.

9. Children and adolescents may have their rights violated not only by being detained by immigration authorities once they arrive in their country of destination, but also during their journey or even during the process of repatriation or return to their places of origin. In general, they may be victims of violence on account of their irregular situation; they are exposed to xenophobia, discrimination and police brutality. They are also exposed to situations that jeopardize their life and development, such as exploitation and sexual abuse, enlistment in armed forces, child labour and deprivation of liberty.

10. According to the Committee on the Rights of the Child, child migrants do not have access to food, shelter, housing, sanitation and education. Girls especially are exposed to gender-based violence and domestic violence.

11. Close to 6 million persons have migrated within Latin America and the Caribbean and some 25 million have migrated from this region to the United States of America and Europe. Although the exact number of migrant children is not known, it is estimated that in this region, one in five persons who migrate is a child or adolescent.⁵ According to the International Organization for Migration, although 80 per cent of children between 12 and 14 years travel with a guardian, nearly 50 per cent of children between 15 and 17 years cross borders alone.⁶

12. Regarding Europe, the Office of the UN High Commissioner for Refugees (UNHCR) indicated that over the past 10 years, unaccompanied children represented between 4 and 5 per cent of all asylum-seekers in the European Union (EU). Each year, close to 10,000 unaccompanied migrant children seek asylum in an EU country in a bid to flee the dire socioeconomic situation of their countries, conflict and war, as well as the trafficking of minors for purposes of sexual or labour exploitation.⁷

13. According to the Study comparing the situation and treatment of unaccompanied foreign minors in six countries in Europe, published by the International Juvenile Justice Observatory in 2007, the main nationalities of origin of children and adolescents are the following: Spain and Italy are destination countries for Moroccan minors; Italy and France, and to a lesser extent Spain, are poles of attraction for minors from Romania. Minors from the Democratic Republic of the Congo and Romania go to Belgium. Children who arrive in the United Kingdom come from areas affected by armed conflict or who are in search of greater freedoms and opportunities (Afghanistan and Iran). Minors from Viet Nam who go to Germany have been exploited for sexual or labour purposes.

14. As far as Africa is concerned, it is estimated that its young population will be particularly affected by migration. UN statistics indicate that for the decade 2010-2020, the number of children between the ages of 10 and 14 years will increase by 27 million, many of whom will grow up in rural areas and as teenagers would want to migrate in search of better opportunities elsewhere⁸.

⁵ Children and International Migration in Latin America and the Caribbean, ECLAC, Challenges Newsletter, 2010, p. 6.

⁶ Children and Adolescents: Risks and Issues involved in Migration, Permanent Council of the Organization of American States, Special Committee on Migration Issues, 2009, p. 3

⁷ Caught in a net. Unaccompanied migrant children in Europe, Human Rights Watch, 2012, pp. 3-4

⁸ Migration and child labour. Essentials, ILO's International Programme on the Elimination of Child Labour, International Labour Office, May 2011.

15. Sex-disaggregated global migration statistics indicate that the number of male, under-20 migrants has exceeded the number of female migrants. In 2010, for every 100 male migrants there were 94 female migrants.⁹

Protection of their rights

16. According to the United Nations Children's Fund (UNICEF), border control instruments have become more stringent over the past years. The result has been that undocumented migrants attempt to cross in more risky areas, placing themselves in the hands of human traffickers.

17. In the face of this problem, in the 2009 Report presented by the then Special Rapporteur on the human rights of migrants, Mr. Jorge Bustamante, it was recommended that States review their national and regional laws and policies with a view to bringing them in line with the international legal framework so as to effectively protect the human rights of migrants, and, in particular, of children and adolescents. In a similar vein, the Rapporteur invited States to conclude bilateral and multilateral agreements based on prevailing international standards and to scale up cooperation on the regional level in order to protect child migrants, especially unaccompanied ones.

18. It is important to remember that UNICEF considers the following legal principles to guarantee the rights of the child: the best interests of the child; the principle of non-discrimination; the right to participate; the right to life, survival and development; the principle of family unity; the right to be protected from violence; the principle of non-refoulement and due process guarantees. All of these are contained in the Convention on the Rights of the Child and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

19. The current Special Rapporteur on the human rights of migrants, Mr. François Crépeau, urged governments to take measures to guarantee respect for the human rights of migrants and ensure that through legislation unaccompanied minors are not deprived of their liberty. He underscored that such deprivation should only be allowed as a last resort and for a brief period, and must be in the best interests of the child. Furthermore, the Special Rapporteur recommended that children and adolescents held in administrative detention should be kept separately from adults unless they can be kept with family members in separate facilities and should be provided with food, clothes and medical assistance, guaranteeing them access to education and recreational open-air activities.

20. At the regional level, it is noteworthy that significant strides have been made in this area. In the Americas, member countries of the Regional Conference on Migration (CRM)¹⁰ drew up in 2009 Regional Guidelines on assistance to unaccompanied children in cases of repatriation, which identify measures for assisting this vulnerable group; their protection during the repatriation process; communication and coordination between repatriation agencies; the transfer of unaccompanied minors and other measures such as promoting technical assistance and awareness-raising campaigns to sensitize the public to the risks involved in irregular migration at the global level.

⁹ Children, Adolescents and Migration: Filling the Evidence Gap, UNICEF Division of Policy and Practice with the support of the United Nations Population Division/DESA, UNDP Special Unit for South-South Cooperation and the University of Houston, June 2010, p. 3.

¹⁰ The CRM is a multilateral regional forum for discussing migration issues. The member countries of the Conference are: Belize, Canada, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama and the USA.

21. The VIII Ibero-American Conference of Ministers and High-Level Officials responsible for Child and Adolescent Affairs held in Montevideo, Uruguay, on 6 and 7 October 2006, adopted the Montevideo Declaration, through which the officials agreed to incorporate into integral social protection and promotion systems unaccompanied children and adolescents who are in a situation of vulnerability, poverty and social exclusion. They also agreed: to combat the principal causes of migration; that Ibero-American countries would undertake to train in human rights and sensitize officials responsible for interacting with minors and their families; and draw up consensual regional guidelines, information systems and protocols for special protection in cases of the return of children and adolescents, victims of human trafficking, as well as promote reform, legislative review and amendments aimed at guaranteeing access to systems of social protection and basic services for migrant children and adolescents and their families, in equal conditions as those enjoyed by the rest of the population.

22. In Europe, Council Resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries (97/C 221/03) establishes minimum guarantees for all unaccompanied children and adolescents, including: obtaining information on the identity and situation of the minor through an interview; locating the place of residence of the minor's family members; ensuring that the minor is represented by a legal guardian or national agency in charge of caring for the minor, as well as has access to education and health services. The Resolution also provides for an asylum procedure, and stipulates that Member States must treat as a matter of urgency asylum applications, taking into account the special needs of children and adolescents.

23. In June 2009, through its Communication COM (2009) 262, the European Commission presented the future strategy of the European Union on the rights of the child and drew up an Action Plan on Unaccompanied Minors. By late December the same year, the European Council approved the Stockholm Programme, "An open and secure Europe serving and protecting citizens", which mentions the Action Plan, combining prevention, protection and assistance measures for the return of unaccompanied minors.

24. It is noteworthy that in May 2010, the European Union approved the Action Plan on Unaccompanied Minors (2010-2014), which includes measures aimed at preventing unsafe migration and human trafficking; procedural guarantees within the European Union that take into account the need to introduce amendments or a specific instrument that establishes common standards on guardianship, legal representation, housing, education services and medical care for minors, as well as the search for lasting solutions, such as return and reintegration in the country of origin; and granting an international protection status (e.g. refugee status) or other status that allows minors to reintegrate the Member State of residence and re-installation.

Children in situations of war and conflict

25. In accordance with the Cape Town Principles and Best Practices (1997), a child soldier is any person under 18 years of age who is part of any kind of regular or irregular armed force or armed group in any capacity, including but not limited to cooks, porters, messengers and anyone accompanying such groups, other than family members. The definition includes girls recruited for sexual purposes and for forced marriage.

26. UNICEF estimates that there are about 300,000 boy and girl soldiers participating in over 30 conflicts throughout the world.¹¹ Joachim Theis, UNICEF Child Protection Adviser for Western and Central Africa, stated that in zones of conflict or political instability, the probability of minors being recruited by armed groups is higher. Other factors such as the fact that children are separated from their families, displaced from their homes or have limited access to education expose them to becoming soldiers.

¹¹ Factsheet on child soldiers, UNICEF. Available at: <http://www.unicef.org/emerg/files/childsoldiers.pdf>

27. Girls and boys who are recruited by armed groups or forces are exposed to danger, suffering and physical and psychological harm.

28. The international legal framework that deals with children and armed conflict includes instruments such as Additional Protocol II to the Geneva Conventions of 1949 relating to the Protection of Victims of Non-International Armed Conflicts (1977); the Convention on the Rights of the Child (1989); ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999), and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2000).

29. As part of efforts being made by the international community to prevent more children from being recruited and exploited in armed conflicts, the Paris Conference (February 2007) stands out. The Conference, organized by the French Government and UNICEF, urged governments to spare no effort in putting an end to the recruitment and use of minors by armed forces or groups in all regions of the world. The Paris Commitments on protecting children from recruitment and for providing assistance to those already involved with armed groups or forces and the Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups were adopted at the Conference.

30. Various national and international stakeholders have established measures aimed at protecting children in armed conflict. Starting in 2001, the mandates of peacekeeping operations have included the protection of children and child protection advisers have been sent to missions for the purpose of monitoring and reporting any cases of abuse committed against children. In a similar vein, the UN Security Council, through its resolution 1612 (2005), considered the action plan presented by the Secretary-General relating to the establishment of a monitoring and reporting mechanism on children, as well as decided to establish a working group to examine the reports of that mechanism and issue recommendations with respect to the parties to the conflict and UN officials on possible measures to promote the protection of children affected by armed conflict.