

Submission of Migrant Forum in Asia to the Joint General Comment of the Committee on the Rights of the Child & the Committee on Migrant Workers



February 2016
Children in the Context of International Migration

Introduction

Migrant Forum in Asia (MFA)¹ welcomes the decision of the Committee on the Rights of the Child & the Committee on Migrant Workers to produce a joint general comment on the rights of all children in the context of international migration. MFA looks forward to its participation in this discussion and to providing a contribution to the Committee's dialogue in the form of recommendations to stakeholders on issues relating to the rights of children in the context of international migration.

MFA aims to draw the attention of the Committees to the human rights issues affecting migrant children, in particular vulnerability.. Migrant workers and their children are subjected to national, regional and international policies which are discriminatory, restrict their movement and employment, and deny their rights to family and marriage. Furthermore, the registration of birth of their children, their citizenship and access to education, healthcare and other social services are also restricted. Such specific policies can violate the rights of migrant workers and members of their families; such policies can also have cumulative effects and serious repercussions for members of their families, in this case their children.

The United Nations Convention on the Rights of the Child, when ratified, has legal force the equivalent to domestic law. Article 2 of the Convention, the principle of non-discrimination, and Article 3, which contains the principle that child benefits are applicable regardless of the child's social identity, have nothing to do with the absence of a visa. The Convention also includes the child's right to health and education which, based on the information acquired, are not fully provided to migrant children in countries of destination. Despite having national laws, the policies seem ambiguous in terms of the welfare and protection of the migrant children.

The following situations in Asia reveal stringent migration policy regimes that obstruct the full realization of the rights of migrant workers and their children. MFA requests the Committees to address the

- Children that are born to parents who are migrant workers in transit or destination countries
- Migrant children who return to their country of origin, either voluntarily or by force, alone or with their parents
- Children left behind by their parents (or one of them) who have migrated to another country

¹ Migrant Forum in Asia (MFA) is a network of civil society organizations, trade unions, and individuals in Asia working together to advocate for social justice for migrant workers and members of their families. The network is guided by a vision of an alternative world system based on respect for human rights and dignity, social justice, and gender equality for all. MFA is represented in 16 nations by 48 civil society and trade union groups, and 6 key partners in the MENA region. The members and partners are also coalitions and networks, bringing MFA membership in Asia close to 200, and growing each year.

- Children who migrate unaccompanied and separated from their parents (for reasons such as seeking employment, family reunification or as victims of trafficking, labour exploitation and child labour)

The completion of this submission would not have been possible without the contribution of inputs, publications, and information from the members and partners of Migrant Forum in Asia as well as other institutions. The following members and partners are the contributors to this submission:

Legal Support for Children and Women (LSCW), Cambodia
 Solidarity Network with Migrants Japan (SMJ), Japan
 Insan Association, Lebanon
 Batis Center for Women, Philippines
 Center for Migrant Advocacy (CMA), Philippines
 Kanlungan Center Foundation, Philippines
 Unlad-Kabayan Migrant Services Foundation, Philippines
 Scalabrini Migration Center (SMC), Philippines
 Women and Gender Institute (WAGI), Philippines
 Migrant Health Association in Korea We Friends (We Friends) / Joint Committee with Migrants in Korea (JCMK), South Korea
 Migrant Worker Rights Network (MWRN), Thailand
 National Catholic Commission on Migration, Thailand
 Raks Thai Foundation, Thailand

Social costs of migration

Remittances may alleviate the immediate poverty of migrant workers and members of their families, but the social costs associated with migration have significant impact to the psycho-social well-being of family members particularly to children. At the macro-level, institutions and organizations are affected by the production of human labour required in all kinds of services intended to realize the development goals of the country of origin². Social costs that affect migrant families range from (i) the break-up of the family unit due to the migration of one or both parents, (ii) shift of gender roles and family responsibilities, (iii) complacency because of dependence on the remittances sent by migrant parents or family members, (iv) added financial and psychological burdens to families left behind because of debt incurred from the migration of family members, exploitation of moneylenders, and control of relatives over remittances, (v) the exploitation and of children and their exposure to abuse due to the absence of parental or custodial supervision, and (vi) psycho-social effects on children such as feelings of sadness, stress, depression, isolation, abandonment, and aggressive behaviour, among others.

Non-governmental organizations are starting to create and implement projects to map out policies in countries of destination as well as countries of origin to see whether they have existing policies and initiatives that focus on children. Many policies focus on the migrant workers themselves, the adults, but there are few existing and operationalized policies for the migrant children who are born in transit or destination countries, have returned to their country of destination, are left behind, or migrate unaccompanied or are separated from their parent/s.

²De Dios, A. D., Dungo, N., Jampaklay, A., Raharto, A., & Reyes, M. (2013). *Valuing the Cost of Migration: An Exploratory Study*. UN Women.

Despite efforts to mainstream the issue of the social costs of migration, there is still an absence of comprehensive national policies and initiatives that address the situations of children left behind. Such situations are viewed as family and civil matters that do not fall under the purview of migration law. Civil society advocating for the welfare of children and families left behind devise ways to resolve problems arising from the social costs of migration. Family and anti-child abuse laws are used as legal remedies for cases of physical and sexual abuse of children and child labour (committed by family members or guardians), or abandonment (non-support from migrant parent/s). Advocacy for the inclusion of provisions for children left behind to national migration policies are also being pushed by civil society and migrant support groups.

Children that are born to parents who are migrant workers in transit and destination countries

Migrant children often have less accessibility to birth registration, citizenship, health, and education in countries of destination albeit most Member States of the United Nations—except the United States and Somalia—have ratified the Convention on the Rights of the Child. Migrant children are often excluded in the domestic laws, policies, programs, and services.

In Japan, Japanese fathers of legitimate children residing abroad are in Japan without any communication between their children, or are not in good terms, and the children do not receive the cooperation of the fathers in applying for Japanese nationality³. This makes it difficult for the legitimate children to acquire Japanese nationality if parents are separated, due to the Joint Exercise of Parental Authority under Article 818, Sec. 3 of the Civil Code, which states that the active cooperation of the both parents is required. With regard to children born out of wedlock and without acknowledgment by the Japanese father prior to birth, it is possible to acquire Japanese nationality if the father acknowledges the child by the child's age of maturity (20 years old) and the acknowledgement is reported to the Minister of Justice (Japanese Nationality Act, Art. 3, Sec. 1).

There are more than 100 schools for foreign children in Japan. However, schools for foreign children and ethnic schools including Korean schools are classified as "miscellaneous schools" under the School Education Act. The Act makes the schools ineligible to receive any financial support from the national Government which includes school lunches, health examinations, and the system of exemption of senior high school tuition fees and high school enrolment subsidies.

In the case of South Korea, there is an increasing number of unregistered births of migrant children which makes it difficult to gather accurate information on their numbers and understand the situation of migrant children. Migrant children also face hardship in entering the public education system. According to the "School Register Administration Manual for Multicultural Students" of Korea's Ministry of Education, children can receive compulsory education regardless of their immigration status. However, reality shows that migrant children's admissions to schools are often denied at the discretion of principals, and also due to their lack of the identification documents necessary to obtain admission for school. High school education is even more difficult for migrant children to gain, as schools often refuse their admission. Even if migrant children are admitted to public schools, they cannot

³ Network with Migrants in Japan (2014). *NGO report regarding the rights of non-Japanese nationals, minorities of foreign origins, migrants, and refugees in Japan.*

receive basic social services including registration to the National Education Information System.

Since May 2005, migrant workers can receive financial support for emergency medical care including hospitalization or surgery. There have also been health services provided, such as free vaccination programs for migrant children and infants. However, the inaccessibility of information and minimal budget allocation for migrant children contribute to the weak implementation of the policy and result in fewer opportunities for migrants.

In Lebanon, hospitals have developed a customary practice of withholding the birth certificate of the children unless the parents have settled the medical fees despite the existing laws which require the birth of a child to be registered within one year of the actual date of birth. As migrant workers tend to earn much less than the Lebanese average, it makes it difficult for them to settle the medical fees. Moreover, acquiring a birth certificate from the hospital does not guarantee that the child will be successfully registered. Undocumented children, face constant fear of arrest, detention, harassment, or deportation. They are thus forced into isolation because they do not have sufficient legal documents for them to stay in Lebanon, and deprived of their childhood. The lack of necessary legal documents also deprives migrant children of their access to education as they are unable to attend school. This pushes them to work at a young age, often in the informal sector, which makes them more vulnerable for exploitation and trafficking. According to Insan Association, more than 50% of children of migrant workers were denied of school enrolment for the school year 2014-2015.

Recently, Thailand has allowed migrants—whose children are born in Thailand—to register and acquire birth certificates for their children, although they are not registered as Thai citizens. There have been continuous efforts to push for policies which give undocumented migrant children access to education. Currently, a few organizations have learning centers for migrant children. However, such factors as financial capacity, accessibility in terms of transportation, and a child's lack of desire—in fear of arrest and/or detention, or feeling dispirited to study—to go to school hinder migrant children's ability to acquire an education.

In the case of Filipinos, there have been cases wherein children are abandoned by parents in countries of destination because the parents are not married and have other families in countries of origin. This often happens because of the rampant sexual abuse of domestic workers in Arab countries of destination. Specifically, there are stateless children abandoned by parents in Saudi Arabia mainly because parents are not married. It is also a crime in Saudi Arabia to have extramarital affairs so parents get sent to prison if they acknowledge the child. The women especially will be criminalized under Shariah law for having sex outside of marriage. In these situations, children are often abandoned with friends or in the Philippine community and remain stateless.

Migrant children that return to their country of origin, either voluntarily or by force, alone or with their parents

Migrant children who return to their country of origin often experience difficulty adjusting to the culture, the language, and the environment. Further, they are often stigmatized for stereotypically being born out of wedlock. Children also often encounter a sense of longing when separated from parents.

In Cambodia, the government does not have any specific policies or programs for migrant children. There are existing non-government organizations advocating migrants' rights but none focusing specifically on migrant children. Based on the observations of a few organizations in Cambodia, migrant children do not have many opportunities for education,

although it is not difficult to acquire Cambodian citizenship if one parent is a Cambodian national or if the child was born in another country and returns to Cambodia. One of the challenges when migrant children return is the difficulty of adjusting to a different environment. If migrant children were born in a destination country and return to their country of origin, the language and culture may not be what they are used to. Migrant children's relationships established in the country of destination may not be maintained when they go to their country of origin and could sometimes trigger rebelliousness.

There have been significant instances in the Philippines wherein Philippine domestic workers in Arab countries are impregnated and/or raped by their employer. Sometimes the employer/sponsor insists on keeping the child and may force domestic workers to return to the Philippines. Most of the time, domestic workers bring their child back to the Philippines to prevent their child becoming undocumented. Children would often feel ostracized by their family members and the community for being born out of wedlock and may isolate themselves from others. However, there have also been a few cases wherein the father is willing to support to the child who is in the Philippines in terms of education and, if the child wishes to meet the father, would make efforts to bring the child to the country of destination.

Filipino children with Japanese fathers often grow up without knowing the other face of their heritage and long to meet their father. In addition, they are at times bullied for their unconventional family structure, how different they look, and are stigmatized for they are seen as being the son or daughter of a "japayuki"⁴ which has derogatory connotation among others.

For the Burmese, parents find it cumbersome if their child were to return to Burma for the following reasons: there are not much opportunities for children to study and even work especially in the rural areas; it is difficult for them to acquire citizenship; parents would sometimes financially depend on their children by forcing them to find work in Thailand.

Children left behind by their parents (or one of them) who have migrated to another country

Similar to migrant children that return to their country of origin, children left behind by their parents also experience bullying and discrimination based on their appearance, how their family is structured, and/or how they are born out of wedlock. This may restrict the migrant children's childhood as it can have adverse psychological effects. Also, children might feel either a sense of deeper connection with parent/s due to the rarity of them being able to meet physically; or they might feel a loss of connection with their parents because of less opportunities spending time with them.

In the Philippines, there are existing programs and services provided by the government to assist the children left behind. Specifically, the Overseas Workers Welfare Association (OWWA) has a scholarship program for the children left behind to accomplish an undergraduate degree; however, the lack of information dissemination impedes the accessibility of this program. Also, there are concerns about how the migrant workers would need to pay for membership fee in OWWA to be able to acquire the scholarship program and other social benefits.

In the case of Japanese-Filipino children (JFCs) many of them are raised in the Philippines but attempt to migrate to Japan before their age of maturity (20 years old) to fulfil the requirement in the Japanese Nationality Act. There have been difficulties in the children's

⁴ *Japayuki* refers to a prostitute in Japan of foreign descent, usually a Filipina

integration into Japanese society and culture. Language barriers also play a role in children's difficulty coping up with schools, and children often feel isolated. JFCs going to Japan to work are often subjected to difficult, dirty, dangerous, and demeaning jobs.

Children that migrate unaccompanied and separated from their parents (for reasons such as seeking employment, family reunification, or as victims of trafficking, labour exploitation and child labour)

Children that migrate unaccompanied and are separated from their parents do not have much protection policies on neither their country of origin nor their country of destination. The lack of an existing database and statistics plays a vital role in creating, monitoring, and evaluating policies to protect migrants and their children. Given that there is not much or non-existent accurate data, it is quite difficult to assess if certain policies are needed or are not working in a country. In addition, it is hard to get a grasp of the realities on how many children are prone to trafficking, labour exploitation, and child labour.

Burmese migrant children in Thailand are seen as a vulnerable group mainly because they might have been trafficked and are forced to work. They often work as waiters, domestic workers, and dishwashers. Thai businesses prefer to hire migrant children for such jobs because of the cheap labour and lack of policies monitoring children's welfare and the conditions of their workplaces. Migrant children are at a higher risk of becoming victims of forced labour if there are no proper legal documents showing that they are, in fact, underage.

There have been cases wherein undocumented migrants in Thailand are detained and their children are either detained with them or are left in shelters and receive education. If the migrants are released and have the desire to go back to Burma, the shelter may not want to let the children return to Burma with their parents for fear of compromising their education and/or making them vulnerable to forced marriage. There have also been cases wherein children who are victims of child trafficking grow up in detention centers and it is difficult to ask them questions and determine how and who trafficked them.

In Japan, a Filipino mother to a Japanese-Filipino child with Japanese nationality can live and work in Japan on a resident visa of *guardian of a Japanese national*. In such cases, the mother is recruited and promised a good life for her and her children—usually in factories or health care work for the mother, and education for the JFCs—inclusive of accommodation and other social benefits. However, when they arrive in Japan, the mothers are forced to work in clubs or factories on a very low salary with unjust deductions and the children are not actually sent to school.

Children and families in detention

Detention is a growing concern among the undocumented and even regular migrant workers. Like migrants throughout the world, migrants are detained while crossing borders and are arbitrarily apprehended during crackdowns and deportation drives. Whether they are refugees, asylum seekers, visa over-stayers, smuggled or trafficked persons, or people who have unwittingly fallen into a situation of irregularity, any migrant detainees lack access to legal representation and are subject to long term detention without charges. While it is extremely difficult to collect and maintain accurate statistics, it is safe to say that tens of thousands of undocumented migrant workers are in detention across the region.

The looming threat of detention and deportation enables employers to assert inordinate control over migrants' lives. Fear and intimidation are rampant among undocumented migrant communities, pushing them further underground and perpetuating exploitation and

abuse. Those who are held in detention are often unable to connect with their families, and their families are largely powerless to assist them. When undocumented migrants are detained, either crossing borders or otherwise, family members in their country of origin often lose track of them.

Most migrants are unaware of the detention policies or practices of their countries of destination. The prospect of detention does not generally weigh into migration decisions, or decision to remain within the country of destination in an irregular status.

In the case of Burmese, Lao and Cambodian migrant workers in Thailand, there are quite a number of undocumented migrant workers, currently about four million migrant workers in Thailand. It is estimated that half of them are irregular migrant workers. Thai authorities started registering the migrant workers in Thailand since 1991 as per reference to the Aliens' Occupation Act of 2008 and the Immigration Act of 1979. Under the Thai Law, all migrants with irregular immigration status, even children, can be arrested and be detained. Once arrested, the police will send the case into the detention centers and take the case to the court. After the court decided the case he/she has no documentation and not allowed to stay in Thailand, the police will send the case to immigration detention centers for deportation. The immigration authorities and social development and human security collect information and divided the case- 'Are there any human trafficking issue or force labor etc.' after that, the immigration detention center will take responsibility for deportation. Migrants have to stay at immigration detention center until immigration authorities send them to close border. Sometimes six months or 2 days – depending on the amount of migrants

Recommendations

- It is crucial for the international community to address the root causes of international labour migration. There is a need to ensure that labour migration is the result of informed choices by individuals rather than the result of direct or indirect pressure that denies fundamental freedoms and human rights. By considering that we can fully engage in addressing the situations of children that are born to parents who are migrant workers in transit and destination countries, children that return to their country of origin, children left behind, and children that migrate unaccompanied and separated from their parents.
- Migrants and their children should be consulted as the policies drafted, modified, or implemented for the migrants and members of their families actually reflect the voices of the migrants themselves.
- Children's rights are substantially equal to the rights of others and thus more attention should be given to the promotion and protection of the rights and welfare of children. Children are also affected by the way their parents migrate as it may disturb family dynamics.
- States must acknowledge the many conditions under which migrants can find themselves in an undocumented situation, and should take into account the underlying political, social, and economic structures that lead to irregular immigration status. A number of glaring gaps exist in prevailing policies on undocumented migration and detention
- States should see detention as a *last* resort, rather than a default response. Detention should only ever be on a case-by-case basis, with due process and adequate consideration of the reasons for the migrant's undocumented status.
- States should draft, modify, and/or implement policies that do not criminalize migrant workers and their children on the grounds of their undocumented status. These policies should align with international human rights treaties that have specific provisions of the needs of migrant workers and members of their families.

Given that most member states in the United Nations—except for the United States and Somalia—have ratified the Convention on the Rights of the Child, their laws and policies should encompass the rights and welfare of the migrant children in their country.

- Proactive cooperation between countries of destination and countries of origin is critically needed in dealing with the issue of irregular migration. It is imperative that the countries of destination engage in a meaningful and deliberate dialogue with countries of origin on how the situation can be resolved. States should consider the structures as well as reconsider existing policies that lead to the deprivation of citizenship. Such policies should be free of geographic biases which are often due to conflicting political standpoints.
- Existing laws, policies, programs, and mechanisms at the international level should be implemented at the local level as those directly affected and not protected are at the grassroots
- Data collection, documentation of statistics, and monitoring mechanisms are necessary if States are to come up with a strategic and sustainable national development plan/agenda that gives substantive equality to the rights of migrants, which includes addressing the social costs of migration.
- Migrants should have access to information of the existing policies with regard to birth registration, citizenship, access to health and other social benefits, access to education, and the procedures in detention of migrants in a language they can understand
- All states should, without delay, sign the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990.