

# **Human Rights of Migrant Children**

**5<sup>th</sup> Expert Meeting: Reflections from the Expert Meeting series, children's participation and discussion of the way forward**

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# **Convention on the Rights of the Child**

## **Article 2**

**1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.**

# International Covenant on Civil and Political Rights

## Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

# International Covenant on Economic, Social and Cultural Rights

## Article 2

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

# International Covenant on Economic, Social and Cultural Rights

## Article 2

3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

# Belgium – Reservation to the Convention on the Rights of the Child

*With regard to article 2, paragraph 1, according to the interpretation of the Belgian Government non-discrimination on grounds of national origin does not necessarily imply the obligation for States automatically to guarantee foreigners the same rights as their nationals. This concept should be understood as designed to rule out all arbitrary conduct but not differences in treatment based on objective and reasonable considerations, in accordance with the principles prevailing in democratic societies.*

# Council of Europe Convention on Action against Trafficking in Human Beings

## Article 12 – Assistance to victims

- 1** Each Party shall adopt such legislative or other measures as may be necessary to assist victims in their physical, psychological and social recovery. Such assistance shall include at least:
- a standards of living capable of ensuring their subsistence, through such measures as: appropriate and secure accommodation, psychological and material assistance;
  - b access to emergency medical treatment;
  - c translation and interpretation services, when appropriate;
  - d counselling and information, in particular as regards their legal rights and the services available to them, in a language that they can understand;
  - e assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders;
  - f access to education for children.

# Access to Healthcare for Migrant Children

	Health Care System	Legislation	Practice	NGO Clinics, Private Initiatives
<b>Denmark</b>	Tax-financed health care system with universal access for Danish citizens and persons with permanent residency.	Right to free emergency care. Non-emergency care is restricted and the Regional Council may request payment for these services, depending on the individual case. Danish Immigration Service may provide necessary, urgent, and pain-relieving care if requested.	Free emergency care, but undocumented migrants may face informal barriers in access. Non-emergency care may be subject to payment.	Volunteer health professionals run one clinic.
<b>Sweden</b>	Tax-financed health care system with universal access for Swedish citizens.	Adults: Access to emergency care only, at own expense for the full cost. Children previously asylum-seekers: Access to all health, medical, and dental care. Children not previously asylum-seekers: Same as adults.	Many regional councils have adopted more generous policies, but knowledge is often not spread to the health workers in the field and lack of adequate administrative routines complicated the process.	Volunteer health professionals run clinics in the biggest cities and in some smaller cities.
<b>The Netherlands</b>	Insurance-based health care system with universal access to a basic health care package for Dutch residents.	Undocumented migrants excluded from insurance system but entitled to medically necessary care; health care provider must prove patient cannot afford bill.	Access to primary, secondary, and tertiary care. Practical hurdles occur due to language problems, inadequate referral systems, general practitioners refusing to provide necessary care, and a lack of recognition of specific health problems.	Private and voluntary initiatives for dental care.

# Community Assessment and Placement Framework

## Step 1.

**Presume detention is not necessary:** CAP operates on the basis of a presumption against detention, and is a safeguard against arbitrary detention and ensures that detention is applied only as a last resort. This includes a presumption against detention, detention as a last resort and a mandate to explore alternatives.

## Step 2.

**Screen and assess each case individually:** Understanding population's subject to or at risk of immigration detention through individual screening and assessment assists in the identification of needs, strengths, risks and vulnerabilities in each case. Screening includes legal obligations, identity, health and security checks, vulnerability and individual case factors, including community ties.

## Step 3.

**Assess the community context:** Assessment of the community context in order to understand the individual's placement in the community and to identify any support mechanisms needed so that the person remains engaged in immigration proceedings. This includes ability to meet basic needs, legal advice, documentation and case management.

## Step 4.

**Apply conditions to release if necessary:** Further conditions such as reporting requirements or supervision may be introduced to strengthen the community setting and mitigate identified concerns. This includes individual undertakings, monitoring, supervision, intensive case resolution and negative consequences for non-compliance.

## Step 5.

**Detain only as the last resort in exceptional cases:** If conditions are shown to be inadequate in the individual case, detention in line with international standards including judicial review and of limited duration may be the last resort.

# Explicit Guarantees in Law: Argentina

## Right to social rights, education and health care of undocumented migrants Migration Law, Argentina (No. 25.871, 2004):

- ARTICLE 6 - The State, within its entire jurisdiction, will ensure equal access for immigrants and their families to the same conditions of protection, shelter, and rights enjoyed by nationals, particularly in reference to social services, public goods, health, education, justice, labor, employment and social security.
- ARTICLE 7 - Under no circumstance shall the irregular status of an immigrant prevent his or her admission as a student to an educational institution, whether public or private, national, provincial or municipal, primary, secondary, tertiary or university. The authorities of educational institutions should provide guidance and advice on the procedures necessary to remedy the effects of irregular migration.
- ARTICLE 8 – Foreigners shall not be denied nor restricted access to the right to health, social care and medical care, regardless of their immigration status. The authorities of health facilities should provide guidance and advice on the procedures necessary to remedy the effects of irregular migration.

# KNOMAD

Global Knowledge Partnership on Migration and Development



- ❑ The Global Knowledge Partnership on Migration and Development (KNOMAD) is envisaged to be a global hub of knowledge and policy expertise on migration and development issues.
- ❑ Draws on experts from all parts of the world to synthesize existing knowledge and generate new knowledge for use by policy makers in sending and receiving countries.
- ❑ KNOMAD activities are organized around 12 Thematic Working Groups. The work to develop human rights indicators for migrants and their families, is being carried out within the frame of Group 7
- ❑ Thematic Working Group 7: Migrant rights and social aspects of migration

# Example Indicator: Access to Education

- ▶ *Structural*
  - ▶ □ Does legislation explicitly establish the right to compulsory education for all migrants, regardless of migration or residence status.?
  - ▶ □ Does legislation or policy remove / bar practices that, formally or practically, hinder or prevent enjoyment of the right to education (by requiring students to possess a residence permit, or teachers and other officials to report migrants to migration authorities, for example).?
- ▶ *Process*
  - ▶ □ What proportion of the migrant population is enrolled in educational institutions (disaggregated by migration or residence status, age, gender, sex, ethnic origin, nationality, nationality of parents, place of residence and length of residence).?
- ▶ *Outcome*
  - ▶ □ Percentage of migrants who finish compulsory education, in terms of: (a) children and adolescent migrants; and (b) children born to migrant parents (both foreigners and nationals),; and (c) relative to nationals, who finish their compulsory education, (disaggregated by migration or residence status, as well as age, gender, sex, ethnic origin, nationality, nationality of parents, place of residence and length of residence).