

October 2015 – BRIDGING PAPER 6

Draft version for inputs at the Civil Society Days of the GFMD

Child rights Bridging Paper – the 5 year action plan for collaboration from a child rights perspective

Labour rights for migrant workers :

A child rights perspective

This paper is part of a series of bridging papers looking at different points of the 5-year Action Plan for Collaboration from a child rights perspective. The aim is to examine the specificities affecting children in the context of migration and inform more coherent approaches from a child rights standpoint. It has been prepared to provide input for the Civil Society Days of the Global Forum on Migration and Development (Istanbul, Turkey, 12 to 13 October 2015).



Thailand Burmese Youth working on construction sites/ Terre des Hommes France

Key recommendations:

- 1 Development efforts should become more child focussed and increased attention should be given to quality of education, livelihood and personal development opportunities for migrant children and young people. A specific gender approach is essential when considering the push factors of young people migrating.
- 2 More efforts are needed by all actors, including migrants and labour units to reach out to migrant working children, in particular those working in the informal labour market. Regardless of their labour and residence status, these children should be assisted to access their basic rights including health care, education and justice, as well as be free from abuse and violence in the work place.
- 3 The children's choice to migrate should be taken into account in policy and programme interventions. Awareness raising campaigns need to evolve to more systemic interventions, combining information on risks but also assistance and guidance on how to deal with such risks throughout the migratory route.
- 4 There is a need for better disaggregated data on migrants' situations, which should feed into policy debate. More place should be given to migrants, including child migrants in research and policy debates on issues concerning them.
- 5 States and other stakeholders, including employers, should support migrant workers and their families by putting in place fair working conditions as well as providing and encouraging special programmes and services. Coordinated efforts between countries of origin and host countries and a further exploration of the use of ICTs would lead to better results for migrant workers and their families.
- 6 States are called upon to sign and ratify the Convention on the Rights of All Migrant Workers and Members of their Families.

Context

When discussing labour rights of migrants, little attention is paid to children. Yet, children are directly affected, as many of them migrate in search of labour opportunities. In international law, two main Conventions by the International Labour Organization (ILO) determine the age and the conditions under which children can work. They are namely the ILO Convention on the Minimum Age for Admission to Employment^[1] and the Worst Forms of Child Labour.^[2] Today, however, with 168 million children in labour situations, many States find it difficult to implement these Conventions and many migrant children work from an early age and in conditions that are not adequate either for their age or development.

Children are also indirectly affected by labour laws when their parents migrate for work. The International Convention on the Rights of All Migrant Workers and Members of their Families,^[3] which guarantees the protection of migrant workers in the labour market, recognises the impact such protection has on the members of their family, including children. This impact is significant both when children move with their parents to a country of destination and when they are left behind in the country of origin. Unfortunately, the Convention is poorly ratified, and as such, cannot be of service to children of migrant workers in many contexts. On the other hand, the Convention on the Rights of the Child, with its almost universal ratification, remains poorly applied when it comes to migrant children, especially when they are undocumented.

^[1] C138, Convention concerning the Minimum Age for Admission to Employment, 1973, available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312283:NO2 ^[2] C 182, Worst Forms of Child Labour Convention, 1999, available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312327:NO3 ^[3] <http://www2.ohchr.org/english/bodies/cmw/cmw.htm>

Key issues and challenges

Child migrants in child labour

Can children migrate for labour purposes?

In international law, definitions of child labour include the worst forms as well as labour conducted by children under the minimum age (14-15 years old). Thus, under international labour law, adolescents aged 15-18 years old are entitled to migrate and work, provided that they do not end up in worst forms of child labour. Younger children however are de jure not entitled to work. This is also why their migration in search of an employment opportunity is often questioned.

When describing the extended phenomenon of early labour migration of children in West Africa, the African Movement of Working Children and Youth presents the argument the children often give: « Here I am mistreated, in my village as well, but at least I will earn something. »^[4] This quotation clearly highlights the link between migration and development. Lacking (adequate) schooling opportunities, in absence of other personal development possibilities and experiencing strong economic pressure from the family, children start working from an early age in their communities of origin. Later on, some of these children may choose to migrate hoping for better labour conditions. Their recruitment into the labour market may be informally processed and once in a transit or destination country, the migrant child would find a job usually through relatives or other migrants. S/he will end up working in the informal labour market, including in services (i.e. domestic work), agriculture or industry (e.g. mining and textiles).

The majority of child migrants in the informal labour sector is in the South. In the South-North context, the majority of children migrating for work are above the minimum age. However, the risk for the child to end up working in the informal market also remains high in the North, especially when the child is undocumented.

Exploitation of migrant children and related protection regimes

Consequently, as the children work in the informal sector, they do not benefit from protection by labour inspectorates and labour laws. Neither do they benefit from specific labour units support. The advantages they perceive as labour migrants are different: they have their own income, live independently and have more opportunities to socialise with peers. Some of them succeed in supporting their families back home through their work, while some young girls use it as an opportunity to make their dowry.

This does not, however, mean that the working conditions of these migrant children are not harmful. In a recent study, reported cases of child labour of migrant children in three countries (Kenya, Nepal and Peru) were compared to reported cases of child labour by local children. Despite the limited number of cases considered (a total of 430 cases), there was a trend indicating that with regards to working hours, pay, exposure to hazardous work, exposure to violence, denial of food, exposure to bondage, living conditions and access to education, migrant children in child labour were worse off than local children in child labour.^[5]

Because of their age, they lack labour rights and the combination of age and nationality often exclude them from access to justice if their employers or others commit serious crimes against them, including rape and other forms of sexual abuse and exploitation.

In 2009, Foundation for Women in Thailand and Terre des Hommes interviewed children in an immigration detention centre in Bangkok, Thailand. Out of 167 children interviewed, 121 of them claimed to have had experienced abuse, i.e., labour exploitation (48), confinement in the workplace (33), physical violence (23) and sexual abuse (2). However, none of them could take any legal action against their employers due to fear of summary deportation, their irregular migration status and insufficient information on the offenders.

^[4]Early migration and child trafficking in West Africa, African Movement of Working Children and Youth, Enda Tiers- Monde Jeunesse Action 2008 | ^[5]Child migrants in child labour: an invisible group in need of attention, 2012, International Labour Organization and Child Helpline International, available at: www.ilo.org/ipecinfo/product/download.do?type=document&id=20535

Girls' migration and commercial sexual exploitation

Last but not least, many children, in particular young girls, move across international borders under false promises and end up in commercial sexual exploitation once they reach their destination. To address the phenomenon, many civil society organisations have invested in awareness raising campaigns through which the young girls are usually warned not to leave home. Increasing evidence shows, however, the limited impact of such interventions. Awareness raising on its own is insufficient to change behaviour. In many countries, young girls feel strong pressure to leave home and this forces them to ignore the many risks.

Labour migration and children of migrant workers

What does research tell us?

Migration regimes have an impact not only on the migrant worker, but also on his/her family, including the children. Current findings on this subject remain contradictory. The subject is in itself challenging as it requires quantifying well-being, relations within the family and with the environment, and so on. Moreover, the available data is limited and not sufficiently disaggregated. Information such as age of migrants, gender, social status, family construction elements are often missing. The voices of migrants and their family are also weak both in research and policy debates.

Evidence, however, shows that there are a number of external factors influencing the impact parents' migration has on children. These not only include the financial means at the disposal of the migrant and his/her children, but also visa and travel regime, employment conditions, access and use of ICTs, support given to the caregiver back home by the extended family, community and governments, and so on.

First of all, it is generally accepted that remittances play an important role for the families of migrant workers who stayed behind. Large proportions of these remittances are used to finance children's education. However many migrants are so poorly paid that it can be difficult for them to save. Other elements such as social protection against work accidents, health insurance, transaction and bank costs all impact the remittances received back home.

Often, the pressure to save money, forces migrants to avoid travelling home to visit their families. Many of them have difficulties to negotiate leave even for short periods. In some circular migration programmes run by a few countries, travelling back is even contractually excluded. In other countries, permanent or long-term residents lose the right of return if they spend more than six months or a year abroad regardless of the family reasons behind it. The situation is even more difficult for migrants residing irregularly, as they cannot travel back freely. In the majority of States that are not yet a party to the International Convention on the Rights of Migrants Workers and Members of their Family, migrants' protection is only regulated by national law, which is mostly inadequate.

Impact on child-parent relations

Money and visa regimes also make it difficult for their family to join them in destination countries. As a consequence, relations between migrant parents working abroad and their children back home are weakened. Countries such as Philippines, Mexico, Bolivia, The Dominican Republic, Moldova, Tajikistan, Kyrgyzstan Uzbekistan and Romania have a large number of children who are cared for by relatives as a result of their parents' migration. Evidence shows that the impact on these children differs depending on who is the remaining caregiver and the kind of support the caregiver and children receive from the extended family and community. In certain cases, children are left on their own without care by any adults or under the care of adults too old and unable (i.e. grandparents) to look after the child properly. Girls might suffer in such cases from extra household chores, while boys might have to work to complement the parents' remittances, if any. Cases of neglect by caregivers are also reported and absent parents are blamed for youth problems such as delinquency, drugs and premarital sex. Children are reported to become increasingly quarrelsome and have difficulties developing healthy friendships with other children. In some cases, their grades get worse resulting in school dropout. They may end up seeing their parents only as sources of gifts and money, losing interest and initiative to work.^[6]

^[6]See i.a J. Costachi, «What are the characteristics, behaviours and problems for children with families? Case stories: Central Asia» and V Cruz, «'Thinking Globally and Acting Locally' Children left behind: Their experience in Americas», in Doha International Family Institute, QSCIENCE, Volume 13, Family, Migration and Dignity Special Issue, available at: <http://www.qscience.com/toc/qproc/2013/17>

Supporting migrant parents and children makes the difference

However, evidence also shows that institutions, programmes and services developed by governments and other stakeholders can play an important role in supporting caregivers and promote the children's protection and welfare. The use of ICT both by the child left behind and the migrant parent, while it does not make up for the physical daily absence, it could help maintain family ties and should be provided. Some emerging evidence shows that when there is enough support for the caregiver and child left behind, there are virtually no real differences between the health and well-being of children of migrant and children of non-migrant parents.^[7]

Last but not least, there is even less evidence on the impact the separation from the children and family has on migrant workers, their wellbeing, social life and labour productivity. The impact, however, is very likely to be there. The Swiss writer Max Frisch wrote about the guest workers arriving in Europe in the 70^s « we asked for workers and human beings came. »

^[7]Ibid., Maruja, A.B. Asis, « Looking after the left-behind families of overseas Filipino workers: The Philippine experience »



Acknowledgment: The bridging papers were drafted by Lisa Myers, Mirela Shuteriqi and Ignacio Packer for Terre des Hommes www.terredeshommes.org and the Destination Unknown Campaign www.destination-unknown.org. Appreciation goes out to the representatives of a broad range of organisations who provided insightful comments and stimulating discussions to prepare these initial papers. Discussions will continue during the Civil Society Days (and beyond) to strengthen efforts to bridge the migration, development and child rights perspectives in the 5 year Action Plan for Collaboration.

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