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

Rights of migrant women :

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).



Photo of Andrea Frazzetta – Terre des Hommes Italy

Recommendations

- 1 Call upon States to include a child and gender perspective in migration and asylum laws and policies in countries of origin, transit and destination in line with the CRC, CEDAW and other relevant treaties.
- 2 Collect, disaggregate and analyse data according to age, sex and migration status and used it to inform programmes, influence policy, drive investment and track progress towards greater gender equality.
- 3 Address gender-based discrimination (a significant push factor) in countries of origin within national development plans, non-discrimination laws and policies and by mobilising communities, families, men and boys to support girls and women.
- 4 Provide opportunities for more legal and safe migration as well as better working conditions for migrant women and girls, including to facilitate contact or travel with families left behind.
- 5 Consult with migrant girls to design, implement and evaluate policies, programmes and services provided by States, international, non-governmental and diaspora organisations.
- 6 Pass or enforce laws and ensure accountability of legal frameworks that protect the rights of girls in the context of international migration, providing them with access to services and justice in line with States international obligations, especially for victims of trafficking and sexual exploitation.
- 7 Call upon States to ratify and implement the ILO Convention on Domestic Workers.

Context

There is always a gender dimension^[1] in migration, whether women and girls^[2] have migrated themselves or remained in their countries of origin. With women and girls estimated to account for close to 50 percent of international migrants,^[3] the feminisation of migration has been increasingly acknowledged, including by policy-makers. However, this gender perspective has yet to be translated into policies aimed at women and girls in the context of international migration. Even in the recommendations and benchmarks of the 2014 GFMD Civil Society Days, the gender dimension was barely mentioned.

While female migration was historically closely linked to the family (i.e. as dependents), the past decades have seen women and girls increasingly migrating independently, including as the main income-earners. In addition to migrating in search of better opportunities (e.g. education and work), to send remittances or to join their husband or parents, they may also migrate to avoid the violations of their rights in their countries of origin. This includes fleeing from gender discrimination, limiting gender norms, pressure to marry (early and/or forced marriage) or to escape sexual or other forms of violence and abuse.

Female migration has undeniably raised both prospects and challenges for women and girls. On the one hand, it can provide them with greater independence, freedom and self-confidence and enhance their status, which contribute to empowering them and advancing gender equality.^[4] This can not only have an impact on them, but also on their children.^[5] Yet, despite the potential benefits of female migration, it is also recognised that the costs can be high for the women and girls themselves and, at times, the families left behind. The gender-based discrimination, which is often amongst the root causes for migration, frequently remains or is exacerbated throughout the migration process and in the conditions in which they live and work in countries of destination. For instance, they are more vulnerable to abuse (e.g. physical, sexual and verbal) and to be trafficked for sexual exploitation.

^[1] The impact of migration depends on various factors, many of which have gender implications, such as the type of migration (temporary, permanent, irregular or regular), the sectors they work in and the risks they face. ^[2] For the purpose of this paper, girls and boys are under the age of 18. ^[3] There are significant national and regional variations both for women and girls (e.g. it is high in the Americas). ^[4] Gender equality refers to equal rights, responsibilities and opportunities of women and men and girls and boys. ^[5] In the case of girls, it can have an impact on their future children.

In addition to the double deficit in legislation and policies, which considerably limits the respect of the rights of migrant children, migrant girls also have to contend with challenges, risks and vulnerabilities specific to their gender. Migrant girls can, therefore, be considered to face a triple deficit based on their migratory status, age and gender, putting them at greater risks of violations of their rights.

Issues and challenges

International human rights framework for the rights of migrant girls

As the rights enshrined in international human rights treaties extend to anyone within the jurisdiction of a State party regardless of their status, migrant girls should in principal benefit from comprehensive protection, as they are covered by more treaties. Girls have additional rights with regards to their age under the Convention on the Rights of the Child (CRC) and their gender under the Convention to End Discrimination against Women (CEDAW). Furthermore, these treaties are nearly universally ratified, with 195 and 189 States parties respectively. Under the CRC, some of the most relevant rights include family reunification, combating the illicit transfer and non-return of children, preventing their sale and trafficking and protecting them from economic exploitation and hazardous work as well as sexual exploitation and abuse. CEDAW builds on these rights to reinforce the elements relevant to discrimination based on their gender, including ones relevant to trafficking, exploitation and prostitution, equal right to education, employment and health. These treaties provide the standards for both a gender and child perspective in migration laws and policies.

Paradoxically, the greater their rights according to these treaties, the less they are protected in reality. In practice, migrant girls often benefit of even less coverage than women or boys, as the gender and age perspectives are rarely taken into account in migration laws and policies. For instance, independent female migrants may face obstacles in legal migration. In certain countries,^[6] especially in Asia, emigration restrictions on female migration have included a general ban on women migrating for work (with the exception of professionals), a ban for certain sectors (e.g. domestic workers) or age limits. The minimum age for male migration has often been the same as the national minimum working age, so boys over the age of 14 or 15^[7] can legally migrate for work. Meanwhile, female migration has often been characterised by a higher age limit, sometimes as high as 35, so girls or women below the minimum age can only migrate in an irregular way. These State policies contribute to greatly reducing their rights and put them at risk of exploitation and abuse (e.g. violence and rape).

States have received many recommendations from relevant treaty bodies and other human rights mechanisms regarding measures to take to fulfil migrant girls' rights. In the case of the Universal Periodic Review (UPR),^[8] States have accepted a number of recommendations related to the non-discrimination of domestic workers and protecting their rights; scaling up efforts to identify, providing care and not penalising women and children who have been trafficked for prostitution; preventing violence against them as well as developing policies which protect and guarantee their rights. By accepting recommendations, States commit to implementing them over the next four and a half years.

Impact of limited data on girls' migration on policy-making

Female migrants are rarely visible in existing data on migration, despite accounting for close to 50 % of all migration. There is insufficient disaggregated data based on gender and age, as well as whether migrant girls are unaccompanied, accompanied or trafficked, making them invisible. There is also limited data on the sectors in which girls often end up working, as a high proportion of these sectors are

^[6] There are also States which encourage female migration, as the demand for female workers has grown in certain sectors. ^[7] The ages according the ILO Convention 138 on the Minimum Age of Admission to Employment ^[8] UPR is a UN review mechanism of the overall human rights situation of all UN Member States by all UN Member States.

unregulated, invisible (e.g. domestic work), informal (e.g. agriculture, cleaning services or textile industry) or in activities which may be deemed criminal or against public order (e.g. prostitution). By being statistically invisible and with an often irregular migratory status, this puts them at greater risk.

In addition to collecting data, States should share information to facilitate cooperation. This was, for instance, raised under UPR with regards to trafficking women and children as well as sexual exploitation of migrant women and girls. This should also be encouraged from international organisations, non-governmental organisations, academics, diaspora groups and others working on issues relevant to migrant girls, as it is only through a more comprehensive picture that policies can be developed to better protect their rights.

Gender-related vulnerabilities through the migration process

Discrimination based on gender is present to various degrees in countries of origin and destination, as well as during migratory journey. The constraints of gender norms, such as gender-specific roles defined in the family, community and the broader society have different impacts on the ways girls and boys migrate. As mentioned above, there are more discriminatory migratory policies often limiting regular migration channels for girls, including in their countries of origin. Gender inequalities, including violence against women and girls, can be a root cause for migration and a violation of their rights during the migratory process.

The opportunities open to girls to migrate are more likely to be in vulnerable labour sectors or as dependents of male migrants. Girls may also not have as much access to information about the potential risks of migration, especially if unaccompanied, and resort to migration through smuggling and trafficking, exposing them to violence and abuse during their migration journey and in the country of destination, as well as high debts if they borrowed money to pay smugglers and an obligation to repay their debt over long periods of time.

More exploitative working conditions and limited labour rights for girls

Migrant women, and especially girls, face significant obstacles in the labour market. They are often confined to limited, low-skilled and badly remunerated jobs,^[9] including in the domestic and care sector, hotel and catering services, agriculture, sweatshops and other assembly lines as well as the entertainment and sex industry. These jobs are rarely in the formal sector and/or it can be difficult to acquire a work permit and legal status. Furthermore, they are often associated with poor working conditions, limited labour rights, withheld wages, insecurity, exploitation and considerable risks of violence and sexual harassment and abuse.

In countries of destination, many of these occupations may be excluded from legal definitions of work, thereby depriving them of a variety of legal protections. Working predominantly in largely unregulated occupations, girls are particularly vulnerable to exploitation and abuse by employers. For example, it can be difficult to obtain binding contracts concerning terms and conditions of work. It also increases the risk of child labour, as girls may be employed from a young age in certain sectors, such as domestic work. If the accommodation is at the employer's, they may be further disempowered or exploited.

Given the nature of these jobs, girls have a lower prospect of migrating in a regular way and having a regular status in the country of destination. An irregular status not only means that they have no legal protection, but they are more likely to accept adverse working conditions, fearing denunciation and deportation. Their migration may also have resulted from trafficking and/or smuggling, especially

^[9] This can also be the case for more highly skilled girls and women.

in cases where cultural constraints and gendered international emigration and immigration policies limit their ability to migrate. Often girls are not only at high risk of trafficking for sexual exploitation (including under false pretences of regular work), but they may be criminalised for working in this industry, despite being victims. These greater risks of exploitation or abuse have been noted by the Committee on Migrant Workers, the Committee on the Rights of the Child and other human rights bodies.

Children born to migrant women and the risk of statelessness

With the rise in international migration, especially of women, there is a growing number of children with no legal link to a State. In 2014, 27 States limited women's ability to pass on nationality to their children.^[10] Women left behind may not be able to transmit nationality to their children due to such laws. However, even if they can transmit nationality, they often need the documentation of both parents to obtain a birth certificate for their child. If migrant men have their documentation with them, this can block the official registration of their children and prevent them from obtaining the nationality of their home country.

Children born to migrant women in transit and destination countries face even higher risks of statelessness. There have been numerous documented cases of women from Sub-Saharan Africa arriving pregnant in Morocco, including women who were raped along the journey. Many of these children born there are not registered at birth either with the Embassies of their country of origin or the Moroccan authorities. This may be due to a lack of knowledge of the process, the consular services being limited or inexistent, or the mothers being undocumented or irregular migrants, therefore not wanting to draw attention to themselves.


Meanwhile, migrant women who are pregnant or have children in destination countries can face other issues. For instance, there were over 140,000 undocumented Nepali female migrant workers in the Middle East.^[11] A study conducted by Terre des Hommes showed that if these women were pregnant, they were usually sent home. Due to Nepal's citizenship law, children born to Nepali mothers and foreign fathers cannot receive Nepali nationality. Furthermore, upon their return, the mothers and children were often stigmatised and had less access to services.^[12] Children born to migrant mothers with an irregular migratory status may not be registered in countries of destination for fear of being deported, even if they might be entitled to nationality through 'right of the soil'.^[13] These children may end up stateless, limiting amongst other things their access to services. Furthermore, if they are sent back to their mother's country of origin, they may not be considered a citizen of that country either.

The impact of migration on women and children back home

Migration of a parent entails changes in the previous arrangements concerning the division of care and other domestic responsibilities within a household. Even if parents successfully arrive in the country of destination and find some kind of employment, it can take a while to be in a position to send remittances. If they are successful, it can have a positive impact on the nutrition, health and education of children, but in the meantime children face greater responsibilities, such as dropping out of school to work or taking on more domestic chores.

Globally, despite the fact that migrant men generally get better paid than women, female migrants send around the same amount of remittances. Women have been found to send higher proportions of their salaries, do it more regularly and over longer periods of time, which is beneficial for the family, although undoubtedly means worse living conditions for them. While most men send their remittances to their wives, women often send them to other women (e.g. carers of their children) to ensure that it goes straight to their children.

^[10] These States are in Africa, Asia-Pacific, the Caribbean and the Middle East. ^[11] NIDS. The Nepal Migration Year Book. 2012 ^[12] Catherine Flagothier, Children affected by migration from South Asia to Middle East, Terre des hommes, 2014 ^[13] This right is the predominant rule in the Americas.



If men migrate, women back home often become heads of households, having control over the use of the remittances, with a notable impact on children's well-being and access to services. The migration of their husbands can, therefore, contribute to empowering them and improve their status. However, if the remittances are sent to a male relative, it may make them and their children more vulnerable to poverty and abuse.

Despite the positive impact of remittances on children, the absence of parents can lead to a more limited access to services, especially if they need their parents' documentation to obtain birth certificates or identity cards to register for school, healthcare or travel. In societies, where the mother is the main carer, the emotional impact of her absence may be greater, especially if children have been left behind with another carer. If migrant women had better working conditions, visas and regular migratory statuses, they could travel home more frequently to attenuate the potential negative impact of their absence.

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