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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 the second edition of the child rights bridging papers commented at the Civil Society Days of the Global Forum on Migration and Development (Dhaka, Bangladesh, 8 to 10 December 2016) and an output of the Civil Society Days. It examines specificities affecting children on the move and other children affected by migration related to migrant women and girls.



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The bridging documents can be downloaded on www.terredeshommes.org,
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 Global Forum on
MIGRATION & DEVELOPMENT

Key SDGs, sections of the NY Declaration and Recommended Principals:¹

Sustainable Development Goals (SDGs)

- 3.7 By 2030, ensure universal access to sexual and reproductive health-care services, including for family planning, information and education, and the integration of reproductive health into national strategies and programmes
- 3.8 Achieve universal health coverage, including financial risk protection, access to quality essential health-care services and access to safe, effective, quality and affordable essential medicines and vaccines for all
- 5.2 Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation
- 5.3 Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation
- 5.4 Recognize and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household and the family as nationally appropriate
- 8.7 Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms
- 8.8 Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment
- 10.7 Facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies
- 16.2 End abuse, exploitation, trafficking and all forms of violence against and torture of children
- 16.3 Promote the rule of law at the national and international levels and ensure equal access to justice for all

NY Declaration for Refugees and Migrants

Annex I – Reception and admission

- 5. (c) Assess and meet the essential needs of refugees, including by providing access to adequate safe drinking water, sanitation, food, nutrition, shelter, psychosocial support and health care, including sexual and reproductive health, and providing assistance to host countries and communities in this regard, as required;
- 29. “We recognize and will take steps to address the particular vulnerabilities of women and children during the journey from country of origin to country of arrival. This includes their potential exposure to discrimination and exploitation, as well as to sexual, physical and psychological abuse, violence, human trafficking and contemporary forms of slavery.”
- 31. (...) We will provide access to sexual and reproductive health - care services. We will tackle the multiple and intersecting forms of discrimination against refugee and migrant women and girls. (...)
- 33. “Reaffirming that all individuals who have crossed or are seeking to cross international borders are entitled to due process in the assessment of their legal status, entry and stay, we will consider reviewing policies that criminalize cross border movements”. (...)
- 35. “We recognize that refugees and migrants in large movements are at greater risk of being trafficked and of being subjected to forced labour. We will, with full respect for our obligations under international law, vigorously combat human trafficking and migrant smuggling with a view to their elimination, including through targeted measures to identify victims of human trafficking or those at risk of trafficking. We will provide support for the victims of human trafficking. We will work to prevent human trafficking among those affected by displacement.”
- 36. “With a view to disrupting and eliminating the criminal networks involved, we will review our national legislation to ensure conformity with our obligations under international law on migrant smuggling, human trafficking and maritime safety”. (...)
- 48. “We call upon States that have not done so to consider ratifying, or acceding to, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. We call also upon States that have not done so to consider acceding to relevant International Labour Organization conventions, as appropriate. We note, in addition, that migrants enjoy rights and protection under various provisions of international law.”
- 57. “We will consider facilitating opportunities for safe, orderly and regular migration, including, as appropriate, employment creation, labour mobility at all skills levels, circular migration, family reunification and education -related opportunities. We will pay particular attention to the application of minimum labour standards for migrant workers regardless of their status, as well as to recruitment and other migration -related costs, remittance flows, transfers of skills and knowledge and the creation of employment opportunities for young people.”

¹ These are directly relevant, but they do not preclude other relevant ones.

58. (...) "It should also respect the rules of international law and must in addition be conducted in keeping with the best interests of children and with due process." (...)
59. We reaffirm our commitment to protect the human rights of migrant children, given their vulnerability, particularly unaccompanied migrant children, and to provide access to basic health, education and psychosocial services, ensuring that the best interests of the child is a primary consideration in all relevant policies.
60. "We recognize the need to address the special situation and vulnerability of migrant women and girls by, inter alia, incorporating a gender perspective into migration policies and strengthening national laws, institutions and programmes to combat gender-based violence, including trafficking in persons and discrimination against women and girls."

Recommended principles to guide actions concerning children on the move and other children affected by migration²

1. Children on the move and other children affected by migration shall be considered children first and foremost and their best interests shall be a primary consideration in all actions concerning them.
3. Children have the right to liberty of movement within their State, and to leave their State and any other.
6. No Child is Illegal - Children should be protected against all forms of discrimination.
7. Child protection systems shall protect all children, including children on the move and children affected by migration.

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. Call upon States to ratify and implement the ILO Convention on Domestic Workers and the Council of Europe Convention on preventing and combating violence against women and domestic violence.
3. 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.
4. Address gender discrimination as part of the implementation of the SDGs within national development plans, non-discrimination laws and policies and by mobilising communities, families, men and boys to support girls and women.
5. Provide opportunities for more legal and safe migration, better working conditions for migrant women and girls, including independent work and residence permits.
6. Consult with migrant girls to design, implement and evaluate policies, programmes and services provided by States, international, non-governmental and diaspora organisations.
7. 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.
8. Ensure that the police's duty is to provide services, protection and justice for victims (e.g. cases of gender-based violence) with irregular migrant status rather than denounce them to immigration enforcement.

² <http://destination-unknown.org/wp-content/uploads/recommended-principle-ES1.pdf> y <http://principlesforcom.jimdo.com/>

Context

There is always a gender dimension³ in migration including amongst children, whether they⁴ migrate themselves or remain in their countries of origin. With women and girls estimated to account for close to 50 percent of international migrants,⁵ the feminisation of migration has been increasingly acknowledged, including by policy-makers. This gender dimension, which is reflected both in the NY Declaration for Refugees and Migrants and relevant SDGs, now needs to be translated into policies specifically aimed at women and girls in the context of migration. The recommendations and benchmarks of the 2016 GFMD Civil Society Days provide a key opportunity to raise specific issues relevant to girls, who in the past have usually been covered by general recommendations about women or children.

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. These includes gender-specific factors, such as 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.⁶ This can not only have an impact on them, but also on their children.⁷ Yet, despite the potential benefits of female migration, it is also recognised that the costs can be high for the women and girls 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.

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.

3 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.

4 For the purpose of this paper, girls and boys are under the age of 18.

5 There are significant national and regional variations both for women and girls (e.g. it is high in the Americas).

6 Gender equality refers to equal rights, responsibilities and opportunities of women and men and girls and boys.

7 In the case of girls, it can have an impact on their future children.

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 196 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 gender and age are rarely taken into account in migration laws and policies. For instance, independent female migrants may face obstacles in legal migration. In certain countries,⁸ 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 15⁹ 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 migration policies contribute to limiting regular migration channels and reducing their rights, by relegating them to vulnerable labour sectors and putting 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),¹⁰ 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 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. SDG target 17.18 related to the availability of high-quality, timely and reliable data should contribute to filling the gaps in data relevant to girls in the context of migration.

8 There are also States which encourage female migration, as the demand for female workers has grown in certain sectors.

9 The ages according the ILO Convention 138 on the Minimum Age of Admission to Employment

10 UPR is a UN review mechanism of the overall human rights situation of all UN Member States by all UN Member States.

In addition to collecting data, States should share information to facilitate cooperation. This has, for instance, been raised under UPR with regards to trafficking women and children as well as sexual exploitation of migrant women and girls. While UNHCR, IOM and UNICEF¹¹ are collecting and sharing more data on children, there is still limited disaggregated data according to gender and age.

The disaggregation by age and gender of all data collected from international organisations, non-governmental organisations, academics, diaspora groups and others working on issues relevant to migrant girls is essential. 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

Gender discrimination is present 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 broader society have different impacts on the ways girls and boys migrate. These are also reflected in the discriminatory migratory policies, which limit 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 smugglers and traffickers, 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.

Poor 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, badly remunerated and often highly feminised jobs,¹² 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, violence and abuse by employers, especially if their work or residence permits are dependent on their employer. 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. Similar issues face women who are reliant on spousal visas, as they and their children may be left with a choice of becoming undocumented or staying in violent situations.

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 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.

11 UNICEF, *Uprooted: The Growing Crisis for Refugee and Migrant Children*, 2016

12 This can also be the case for more highly skilled girls and women.

Gender-based violence

A prevalent manifestation of gender discrimination is gender-based violence. Migrant or asylum-seeking women and girls, especially if they are undocumented or have an irregular status, are particularly susceptible to violence. Yet this issue is receiving little attention from policy-makers, as they focus on how to limit irregular migration.

The limited opportunities for regular migration for girls increase the risks of being subjected to violence. Adolescent girls are regularly reported to not being made to pay for their journey in return for 'repaying their debt' upon arrival, including through prostitution. Even those who are not in exploitative work, but are dependent on the good will of their employers or spouse to have a regularised status, are disproportionately vulnerable to physical and sexual abuse. Girls and women also face violence in reception and detention centres.

Victims of gender-based violence are less likely to come forward, in fear of risking deportation if they get in contact with the police. Their fears are often well founded, as the police's duty to denounce those without a valid residence permit to immigration policies often overrides the protection they should be providing these women and girls in cases of domestic and sexual violence. Thus, instead of accessing shelters, health and victim services and justice, these women and girls may get arrested, detained and deported.¹³ The fact that undocumented migrant women and girls are unable to go to the police to seek protection even becomes incorporated into the abuse.

To increase vulnerable women and girls' access to justice, initiatives are being taken to address the culture of impunity. For instance, the Convention on preventing and combating violence against women and domestic violence,¹⁴ which entered into force in 2014, contains obligations for migrant women and asylum-seekers, such as providing them with their own residency permits. ***In addition, the EU Victim's Directive establishes « minimum standards on the rights, support and protection of victims of crime », those rights should be accessible for victims of crime in all EU Member States, regardless of their residency status.*** Yet the challenge remains of transforming these norms into realities for the girls and women concerned.

Undocumented and stateless migrant women and children

With the rise in international migration, especially of women, there is a growing number of children with no legal link to a State. In 2016, 27 States continue to limit women's ability to pass on nationality to their children.¹⁵ As a result, 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 and access to basic services, such as health and education. The same may happen if the father does not recognise the child or his identity is unknown.

Children born to migrant women in transit and destination countries face even higher risks of statelessness. If their mothers are not entitled to nationality or to transferring it, children can inherit their status. 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.

13 IPPF European Network, Gender-based violence in Europe, From Choice, a World of Possibilities, November 2009

14 It is applicable to girls under the age of 18.

15 These States are in Africa, Asia-Pacific, the Caribbean and the Middle East.

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.¹⁶ 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.¹⁷ 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'.¹⁸ These children may end up undocumented or 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 may face greater responsibilities, which may result in dropping out of school to work or taking on more domestic chores. Prevailing gender roles influence the responsibilities boys and girls take, thus reinforcing these roles instead of providing more opportunities.

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 the women. 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.

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.

16 NIDS. The Nepal Migration Year Book. 2012

17 Catherine Flagothier, Children affected by migration from South Asia to Middle East, Terre des hommes, 2014

18 This right is the predominant rule in the Americas.

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