

2nd edition - BRIDGING PAPER 1 - January 2017

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 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 labour rights for migrant workers.



CREDITS: Kerem Yucel

The bridging documents can be downloaded on www.terredeshommes.org, www.destination-unknown.org and www.madenetwork.org/documents
Correspondence: info@terredeshommes.org

 Global Forum on
MIGRATION & DEVELOPMENT

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

Sustainable Development Goals (SDGs)²

- 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.

NY Declaration for Refugees and Migrants³

- 35. We recognize that refugees and migrants in large movements are at greater risk of being trafficked and of being subjected to forced labour. (...)
- 46. (...) We will commit to reducing the costs of labour migration and promote ethical recruitment policies and practices between sending and receiving countries.
- 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.
- 84. Welcoming the positive steps taken by individual States, we encourage host Governments to consider opening their labour markets to refugees. We will work to strengthen host countries' and communities' resilience, assisting them, for example, with employment creation and income generation schemes. In this regard, we recognize the potential of young people and will work to create the conditions for growth, employment and education that will allow them to be the drivers of development.

Recommended Principals⁴

- 5. Children during all phases of migration shall not be separated from their parents or primary caregivers (unless this is in their best interests).
- 7. Child protection systems shall protect all children, including children on the move and children affected by migration.

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

2 http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E

3 http://www.un.org/ga/search/view_doc.asp?symbol=A/71/L.1

4 <http://principlesforcom.jimdo.com/> and <http://destination-unknown.org/wp-content/uploads/recommended-principle-EN.pdf>

Key Recommendations

- 1** Address the factors which push children (taking into account age and gender) to migrate for work in development efforts, including in the implementation of the SDGs.
- 2** Ensure that the labour rights of migrant adolescents legally allowed to work are covered in national legislation, the global compact for safe, orderly and regular migration and the implementation of SDG 8.8.
- 3** Increase the outreach and assistance of migrant and labour units, and other stakeholders, to migrant working children, regardless of their labour and residence status.
- 4** Separate labour inspections and courts from immigration enforcement.
- 5** Disaggregated data on migrant working children, including by occupation, age and gender, and feed it into relevant policy debates and programmes.
- 6** States ratify and/or implement provisions of international treaties protecting the rights of migrant parents and children with the support of employers and other stakeholders.

Context

The labour rights of migrants is primarily considered an adult's issue. Even in the SDGs, goal 8.7, which focuses on issues related to forced labour, slavery and trafficking specifically mentions children, while goal 8.8 on labour rights does not refer to children. Yet, children are directly affected, as many migrate in search of labour opportunities, while others engage in work during the migratory process, in particular if it is lengthy or their status is irregular.

Despite the near universal ratification of the UN Convention on the Rights of the Child, and ILO Conventions on the Minimum Age for Admission to Employment⁵ and the Worst Forms of Child Labour,⁶ an estimated 168 million children are in labour situations. Amongst these children, an estimated 5.5 million are in forced labour, which encompasses economic exploitation, sexual exploitation and child soldiers.⁷ Throughout the world, migrant and refugee children face greater risks, as they may engage in work from an early age, in conditions that are inadequate or hazardous for their age or development, or even exploitative.

Children are also indirectly affected by labour laws which apply to parents who migrate for work. The International Convention on the Rights of All Migrant Workers and Members of their Families, 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. Yet, the low ratification of this Convention by many countries of destination and the limited implementation in the States parties lessen its impact.

5 C138, Convention concerning the Minimum Age for Admission to Employment, 1973

6 C 182, Worst Forms of Child Labour Convention, 1999

7 www.alliance87.org

Key challenges and issues

Child migrants in child labour

Children migrating for labour purposes

In international law, provisions related to children working primarily focus on child labour, especially the worst forms of child labour. The main provisions⁸ focus on: protecting them from all forms of exploitation (economic, sexual and other) and violence, injury, abuse or maltreatment; performing hazardous work; interfering with their education; setting and respecting minimum ages (usually 14 or 15 years old); ensuring appropriate regulations of the hours and conditions of employment; and developing penalties or other sanctions to ensure the effective enforcement of these measures.

Under international labour law, however, children aged 14/5 to 17 years old are entitled to migrate and work, provided they do not end up in the worst forms of child labour. Their migration in search of employment is often questioned and their labour rights are insufficiently covered by national labour laws, as they are not considered to be workers. The labour rights of adolescents who are legally allowed to work should be addressed in SDG 8.8. Younger children, however, are de jure not entitled to work. Yet de facto, many younger children do work, including reported cases of refugee or migrant children as young as five. The realities of working migrant children of different age groups and gender should be included in the future compact for safe, orderly and regular migration and the compact on refugees.

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.”⁹ 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. These children may later 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 or has an irregular status.

8 The provisions are from the CRC and the ILO Conventions.

9 Early migration and child trafficking in West Africa, African Movement of Working Children and Youth, Enda Tiers- Monde Jeunesse Action 2008

Exploitation of migrant children and related protection regimes

As children often 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. Labour inspections could play a more important role in ensuring follow-up on these children in cooperation with civil society organisations to manage the cases. Civil society operating at local level often has a focus on getting children out of exploitative situations, ensuring access to schooling and only performing lighter work.

The advantages children 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 young girls sometimes use it as an opportunity to make their dowry.

The working conditions of migrant children are more likely to be harmful or exploitative. In a study, reported cases of child labour of migrant children in Kenya, Nepal and Peru were compared to cases of local children. Despite the limited number of cases considered (430 cases), there was a trend indicating that with regards to working hours, pay, exposure to hazardous work, violence, denial of food, bondage, living conditions and access to education, migrant children were worse off than local ones.¹⁰

Because of their age, they lack labour rights. 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 abuse and exploitation.

Child migration and commercial sexual exploitation

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, civil society organisations have invested in awareness raising campaigns to warn young girls not to leave home. Increasing evidence shows, however, the limited impact of such interventions, as awareness raising alone is insufficient to change behaviour. In many countries, young girls feel strong pressure to leave home, forcing them to ignore the many risks.

10 Child migrants in child labour: an invisible group in need of attention, 2012, International Labour Organization and Child Helpline International, available at: <http://www.ilo.org/ipecinfo/product/download.do?type=document&id=20535>

Labour migration and children of migrant workers

Migration regimes have an impact not only on the migrant worker, but also on his/her family. Current findings on this subject are contradictory. The subject is in itself challenging as it requires quantifying well-being, relations within the family and the environment and so on. Furthermore, available data is limited and insufficiently 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 largely absent in both research and policy debates.

Evidence shows that there are a number of external factors influencing the impact parents' migration 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, and support given to the caregiver back home by the extended family, community and governments.

It is generally accepted that remittances play an important role in the lives of families which 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.

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 States that are not yet a party to the International Convention on the Rights of Migrants Workers, migrants' protection is only regulated by national law, leading to a varying range of protection.

Impact on child–parent relations

Money and visa regimes make it difficult for families to join migrants 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 have to take on numerous extra household chores, while boys might have to work to complement the parents' remittances, if any. Cases of neglect by caregivers are reported and absent parents are blamed for youth problems such as delinquency, drug use and underage 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.¹¹

Meanwhile, children who migrated with their parents may face different challenges. Parents' poor working conditions can have an impact on their lives. Undocumented families are more likely to live in poverty and have worse labour conditions. In addition to the economic impact, undocumented parents may struggle to have sufficient time and energy to engage with their children's education and development, as their focus is on trying to meet their basic needs. Finally, if parents can not work in the formal sector and generate sufficient income, there is more pressure on children to work, potentially in more exploitative conditions.

Supporting migrant parents and children makes the difference

Evidence 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. ICTs should be provided to migrant parents to stay in touch with children left behind, where possible. While it does not make up for the physical daily absence, it helps maintain family ties. Emerging evidence illustrates 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.¹²

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 70s "we asked for workers and human beings came."

11 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/2013/1>

12 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.