



GMG Issues Brief No. 3: Migration as an enabler for inclusive social development

This paper is intended to inform the discussions of the third thematic meeting of the Global Forum on Migration and Development 2013-2014. The meeting will address legal frameworks for promoting, protecting and fulfilling the human rights of migrants and their families, including through measures that empower migrants. It will also explore how financial and social remittances could improve positive human development outcomes, particularly in the areas of health and education.

Squaring the realities of migration with the aspiration for inclusive social development requires dedicated policy attention to: 1) respect, protection and fulfilment of the human rights of all migrants in transit and destination; and 2) the impacts of migration and the remittances it generates on the human rights and human development of migrants' families and communities in countries of origin. This paper seeks to address both aspects outlined above.

I. Introduction

Migration and the international human rights framework

No society can develop to its true potential when entire segments of that society are blocked from contributing by legal, physical, economic, social, cultural or political barriers.¹ Migration can be an enabler of equitable, inclusive and sustainable social and economic development to the benefit of countries of origin, transit and destination, but only if it is first an enabler of the human development of migrants and their families. To achieve that goal, attention should be devoted not merely to migration policies but also to public policies in education, health and social protection. These policies need to guarantee equal access to services and socio-economic opportunities for migrants and their families. Considering moreover that gender equality is a fundamental condition for the full enjoyment of human rights, the rights of both female and male migrants must be respected, protected and fulfilled.

According to the human rights framework, all migrants are entitled to all human rights, including labour rights. Any restrictions, including those based on their nationality or immigration status, must pursue a legitimate aim and be proportionate to the achievement of this aim. Migrants face several barriers to access their human rights, in policy and in practice. For example, migrants in an irregular situation are often reluctant to approach public services, to access health-care services, send their children to school, report crimes or seek redress, for fear of losing their employment or being reported, sanctioned or expelled. As the Global Migration Group (GMG) has noted, "Although States have legitimate interests in securing their borders and exercising immigration controls, such concerns cannot, and indeed, as a matter of international law, do not trump the obligations of the State to

¹ Open letter of 6 June 2013 on human rights in the post-2015 agenda of the United Nations High Commissioner for Human Rights. Available from www.ohchr.org/Documents/Issues/MDGs/HCOpenLetterPost2015.pdf The whole range of policies that relate to development must include considerations of productive employment and decent work, education and health care, adequate housing, food, a voice in public decisions, a free, active and meaningful participation in public affairs, fair institutions of justice, participation in cultural life and a sense of personal security for all women and men alike, including migrants and their families.

respect the internationally guaranteed rights of all persons, to protect those rights against abuses, and to fulfil the rights necessary for them to enjoy a life of dignity and security”.²

The human rights framework requires States to consider practical measures to fulfil their obligations. For example, the Committee on the Rights of the Child (CRC) has observed that administrative and financial barriers to accessing services should be removed, including through the acceptance of alternative means of proving identity and residence, such as testimonial evidence.³

In a landmark decision on 15 June 2012, the Obama Administration issued an executive order to provide residence and work permits to young migrants (no more than 30 years old) who entered the US before age 16, have lived in the country for at least five years, are in school, high-school graduates or military veterans in good standing, and have clean criminal records. The so-called *Deferred Action for Childhood Arrivals* (DACA) does not provide a permanent residence status, but grants a suspension of deportation proceedings and issues renewable temporary permits of residence.⁴

Migration, remittances and empowerment

Migration, remittances and development are inextricably linked together. When the migration experience is successful, migrants remit and this affects positively families left behind. Successful migration depends not just on the regular flow of remittances and financial support, but also on the creation of strong affective and effective ties and communications links between those who leave and those who stay.

At the micro level, many empirical studies have highlighted the positive contribution of international remittances to household welfare.⁵ Financial remittances alleviate migrant households' poverty by lifting their liquidity constraints. They help them to meet food, housing and healthcare needs as well as financing education, often through informal channels.⁶ This can be seen as a form of social protection because it diversifies risks and enhances livelihoods. Remittances are also used for savings, purchasing consumer goods as well as services – although in the first instance they are likely to be used to pay off debts accrued in the migration process. In the cases of Mexico and El Salvador, almost 80 per cent of familial remittances are sent for family maintenance purposes, including subsistence needs. It has also been shown in a Bank of Jamaica study of the usage of remittances, that some 14% of remittances to households were spent on education, and 7% on medical expenses.⁷ However, it has been argued that since remittances are mixed with other sources of household income, it is generally not possible to tie migrant remittances to specific expenditures.

² Statement of the Global Migration Group on the Human Rights of Migrants in Irregular Situation: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10396&LangID=E>

³ Committee on the Rights of the Child, Report on the 2012 Day of General Discussion on the rights of all children in the context of migration, September 2012, para. 86. Available at: <http://www2.ohchr.org/english/bodies/crc/docs/discussion2012/ReportDGDChildrenAndMigration2012.pdf>

⁴ Additional information is available at the USCIS website: <http://www.uscis.gov/>.

⁵ De Haas 2007, Remittances and social development: a conceptual review of the literature, Geneva: UNRISD. Rappoport and Docquier 2005, 'The Economics of migrants' remittances' Institute for the Study of Labor (IZA), Bonn.

⁶ “Analyses of remittance utilization patterns show that remittances are mostly used to purchase food, clothing and to cover other basic needs. In addition, recipient households are often obligated to use a substantial portion of the received funds to repay debts incurred to support or to initiate migration. Consequently, despite the dominating motivation to support children left behind and their caretakers, in actuality only a small portion of received remittances is spent explicitly on children.” In De la Garza, R. (2010) Migration, Development and Children Left Behind: A Multidimensional Perspective, UNICEF, Policy, Advocacy and Knowledge Management, Division of Policy and Strategy, New York.

⁷ C. Henry (2011) Remittances to Jamaica, Kingston: the Bank of Jamaica

The positive impacts of migration and remittances may be moderated by various factors. For instance locally, both migration and remittances may accentuate rather than mitigate income inequalities. International migration is a selective process from which the poorest households are often largely excluded, and therefore the ensuing remittances are also selective and not necessarily going to children in the poorest households. Moreover the evidence of remittances' impact on education and health is more mixed and country-specific, underscoring the need to improve impact evaluation methodologies and to produce better individual-level data, in particular longitudinal data.

Financial and social remittances (ideas, knowledge, values, practices and skills) that migrants bring home or that they send from abroad, can have an important impact in enabling migrants and their families to access their human rights and improve their lives. Yet although financial remittances can correlate with an improvement in health and education outcomes for migrants' families, it is important to note that these remittances do not replace the obligations of States to fulfil the fundamental human rights of their citizens; such as providing access to food, health, housing, education, and decent work, without discrimination. Universality of these services is key to ensuring an equitable society. This will lead to better opportunities and outcomes for all, including those left behind, and to maximizing the impact of financial remittances when they are used for human development purposes. Remittances are private money, often earned at a high personal cost to the sending migrant, and there is little evidence that governments or international organizations are in a better position than the recipients of remittances to make sensible decisions about their use.

Remittances can also benefit the larger community through their indirect effects, for instance by creating local employment opportunities. Collective remittances, such as those channelled through hometown associations, can also improve the provision of public goods and services and benefit everyone, including members of non-migrant households. With activities ranging from the construction of basic infrastructure, classrooms and health centres to the donation of school and medical supplies, migrant associations can have positive impacts on health and educational outcomes in origin communities.⁸ However, evidence from Mexico and El Salvador indicates that only a small proportion of those who send money home remit for community development purposes.⁹

Finally, social remittances (norms, practices, identities and social capital) are an important asset to households and communities in countries of origin. Remittances are one of the strongest transnational ties between sending and receiving communities and these transfers are embedded in networks of solidarity and reciprocity among households in different countries. While the effects of the know-how, norms, values, knowledge, behaviour, practices and skills that migrants bring with them or send back to their countries of origin are less tangible and harder to capture, social remittances influence perceptions on health, education and women's empowerment. They can challenge traditional gender roles, and change attitudes to health care, reproductive health (fertility, antenatal care, breastfeeding) and education. However, this kind of transfer does not always result in positive behavioural changes.

Migration, gender dynamics and empowerment

Understanding the impact of migration and remittances also requires considering the gendered dynamics inherent in these processes. While migration can bring new employment and opportunities, it also bears great risks for women, many of whom will end up at the lower end of the job market¹⁰. Migration has a profound and complex impact on gender relations, both at the household and

⁸ Elizabeth Thomas-Hope et al (2009), *Development on the Move: Measuring and Optimising Migration's Economic and Social Impacts*, Institute of Public Policy Research (IPPR) London and Global Development Network (GDN) Delhi.

⁹ Cortina, J and R, de la Garza. (2004) *Immigrant Remitting Behavior and Its Developmental Consequences for Mexico and El Salvador*, The Tomas Rivera Policy Institute: Los Angeles, p. 21

¹⁰ http://www.unifem.org/gender_issues/women_poverty_economics/women_migrant_workers.html

community level. Migration can become an empowering experience for women and enhance their autonomy. Women who migrate from traditional to advanced industrial societies may be exposed to new gender dynamics and become familiar with new norms regarding women's rights and opportunities. Through migrant women, these new social or cultural values may be transmitted back to the sending country, leading to greater empowerment of women and girls, including political and parliamentary participation. However, migration can also reinforce traditional gender roles, be it because migrant women normally fill highly gendered occupations, because of barriers to integration at destination, increased family and generational tensions due to migration, etc. Women migrants in irregular situations usually have little or no access to social services and legal protection, which makes them subject to abuses such as harsh working and living conditions, low wages, illegal withholding of wages and premature termination of employment.

Studies suggest that investments in schooling and housing, as well as health expenditures are among the primary goals of migrant women. Research suggests that given cultural and gender norms women tend to have spending behaviours that favour family welfare (with a few exceptions related to food expenditures), such as education, healthcare and housing, more than men.¹¹ Increases in the resources that women control have been associated with increased allocation towards education and improved child health and nutrition, as well as women's own wellbeing. However, some studies suggest that the impact is not uniform across all school-age children.

In the United States, legislation provides temporary legal migration status to migrants who are victims of certain crimes, including human trafficking through a specific temporary 4-year residence and work permit - the U Visa. In Spain, legislation on gender-based violence applies to all women, including migrant women, on Spanish territory regardless of their residence status, and establishes the state's responsibility to guarantee the use of the services provided by the law. The Spanish Immigration Act, as amended by a recent reform in 2011, grants specific protection to undocumented women survivors of violence. In France, the Immigration Law of 2003¹² provides that undocumented women who separate from a violent spouse can have their residence card renewed. Ireland has institutionalized the representation of migrant women's groups in the development and implementation of policies to eliminate violence against women.

II. The human rights-based approach

The concept of **empowerment** is located in the human rights-based approach both as an element and an outcome. The human rights-based approach is a conceptual framework which is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. Empowerment itself could be understood as a process which strengthens the ability of individuals, in terms of knowledge, skills and opportunities, to claim their rights and to challenge underlying structures, practices and mentalities that lead to marginalisation and exclusion. At the same time, the process of securing rights should be empowering; i.e. it is important for people to be able to enjoy and exercise their rights, rather than merely possess them *de jure*.

Effective **participation** can build capacity and rights awareness. It allows migrants to see themselves as full members of society and autonomous agents rather than merely as the subjects of decisions taken by others. Empowerment as a human rights concept focuses therefore on the **agency** of migrant women, men, boys and girls. Migration policies that view migrant women or migrant children as exclusively vulnerable and passive migration actors, and not as active and individual rights-holders, will not be able to adequately respond to their differentiated situation and specific needs so as to foster

¹¹ Ribas-Mateos, N. 2008. Gender, Remittances and Development: The Case of Filipino Migration to Italy - Final Abbreviated Fieldwork Report. INSTRAW.

¹² LOI n° 2003-1119 du 26 novembre 2003 relative à la maîtrise de l'immigration, au séjour des étrangers en France et à la nationalité.

the positive outcomes migration can hold for them. Mobility should not be considered as something negative per se. On the contrary, migration, when it takes place in the right conditions and policy environment, can open up opportunities for civil, political, economic, social and cultural empowerment.

Further, and in order to understand and claim their rights, migrants must be able to access relevant and timely **information**. In this context, it is important to note that building the capacities of migrants to claim their rights goes beyond awareness-raising on the risks of migration, including trafficking and smuggling. Training programs should also inform relevant government authorities as well as migrants about their rights and build migrants' capacities for meaningful participation. It is also important to acknowledge that migrants can be well aware of the risks that they will have to take during their migration process, but the factors compelling them to migrate, as well as factors such as a lack of regular migration channels and family reunification avenues, can leave them with little choice but to undertake risky and precarious movements through irregular channels. In these circumstances, where opportunity and risk are so closely intertwined, information alone is not enough to empower migrants.

In Sri Lanka, initiatives undertaken by the State include training programmes by the Bureau of Foreign Employment (SLBFE) for registered migrants prior to departure, and the establishment of pilot regional migrant information and service desks. Tajikistan has developed awareness-raising campaigns and training to inform and support migrant workers before they leave.

An important aspect of effective participation is the ability of all migrants to raise their voice, participate equally in and be heard during **decision-making** processes that affect them. Children in the context of migration, for example, should be able to participate meaningfully in all decisions that affect them or their parents, and have the right to be heard in proceedings concerning their or their parents' admission, residence, expulsion, and have access to administrative and judicial remedies against their own or their parents' deportation, to ensure that all decisions are in their best interests.

In 2007, the Council of Europe Committee of Ministers adopted the Recommendation on Life Projects for Unaccompanied Migrant Children, which promotes "life projects" as a tool to ensure that all decisions and actions relating to unaccompanied children are based on the best interests of the child and geared towards ensuring his/her protection, safety and personal development. The objectives of the programme are to ensure social integration, to enhance personal and cultural development, to provide adequate housing, health care, education, and vocational training, and to consider future employment of unaccompanied children. Participating countries include Andorra, Belgium, Bulgaria, Spain, France, Italy, Norway, Netherlands, Portugal and Switzerland.

One way of securing such participation is through membership in non-governmental organisations, women, youth or migrants organizations/associations, trade unions, representative workers' and employers' organizations, faith-based organizations and other relevant forms of **association**. It would also be important to recognize the right of migrants to establish their own associations and through that contribute both to the life within their communities and society at large. Trade unions in origin and destination countries are concluding bilateral agreements to better protect migrant workers. For example, the Memorandum of Understanding between the General Federation of Nepalese Trade Unions (GEFONT) and the Korean Confederation of Trade Unions (KCTU) enables the KCTU to represent Nepalese migrant workers in grievance procedures or labour dispute settlements.

Migrants and their families should be able to participate in the development, implementation and evaluation of migration policy itself as well as in national and local policies and planning on such issues as employment, social protection and health, education, housing, financial inclusion, integration and social inclusion, access to justice and cultural life, and combatting racism, xenophobia

and discrimination. The rights of migrants will remain vulnerable to abuse unless they enjoy protection under the law and are able to demand **accountability**.

In Georgia, legislation on the status of foreigners and stateless persons provides that migrants have the right to apply to courts and other State bodies in order to protect their persons, property and other rights and sets out that such individuals shall enjoy the same procedural rights as citizens. In Guatemala, migrants, have access to courts of law and the labour and social security courts. In addition, migrants have access to the complaint mechanisms of the Office of the Human Rights Advocate. Several measures have been adopted in Mexico to guarantee access to justice for irregular migrants, such as the creation of the public prosecution service for migrants in the state of Chiapas, as well as the protocols adopted by the National Institute of Migration in 2010 for the identification and assistance of migrants who are victims of crime.

All migrants, regardless of their status or circumstance, are **rights-holders**. The human rights-based approach requires **duty-bearers** to meet their obligations towards rights-holders through the development of laws, policies and practices that address discrimination and enable migrants to enjoy their civil, political, economic, social and cultural rights, and that fully take into account the different needs, expectations and aspirations of female and male migrants. Further, it obliges States to examine the human rights consequences of existing migration policies such as the absence of sufficient regular migration channels including for low-skilled labour and for family reunification, criminalisation of irregular entry or stay, immigration detention, forced expulsion and deportation, family separation, and punitive border control measures in the absence of protection-sensitive entry systems. The need for safe access to territory and protection is imperative in case of mixed migratory flows to prevent the *refoulement* of those at risk.

The House of Rights is a project based in the Municipality of Desamparados, Costa Rica, that aims to protect the rights of asylum-seekers, refugees, migrants and local persons at risk through a self-reliance strategy that focuses on providing adequate orientation and legal aid in order to assist and empower them in finding employment and accessing public services, especially in the areas of health and education.

III. Empowerment and agency in the specific context of migrants' right to health

Article 12 of the ICESCR is considered to contain the fullest and most definitive articulation of the right to health. It protects the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. States that are party to the ICESCR have an obligation to ensure provision of: equal and timely access to basic preventive, curative, rehabilitative health services and health education; regular screening programmes; appropriate treatment of prevalent diseases, illnesses, injuries and disabilities, preferably at community level; essential drugs; and appropriate mental health treatment and care. They also have an obligation to prevent, treat and control epidemic, endemic, occupational and other diseases.

The CESCR has provided that States are under the obligation to respect the right to health by, *inter alia*, refraining from denying or limiting equal access for all persons, including asylum seekers and migrants in an irregular situation, to preventive, curative and palliative health services.¹³ All persons, irrespective of their nationality, residency or immigration status are entitled to primary and emergency medical care.¹⁴

¹³ CESCR, General Comment No. 14 The right to the highest attainable standard of health (Article 12), E/C.12/2000/4, 11 August 2000, para. 34

¹⁴ CESCR, General Comment No. 19: The right to social security (Article 9)), E/C.12/GC/19, 4 February 2008, para. 37. The former Special Rapporteur on the Human Rights of Migrants has said: "While States have

A core obligation in relation to the right to health is that States must draw up and implement a national public health strategy and plan of action to protect, respect and fulfil the right to health of disadvantaged and marginalised individuals and groups, including migrants.¹⁵ In 2008, the World Health Assembly adopted a resolution on the health of migrants which recommended that States should promote migrant-sensitive health policies, including information, service provision and further that they should promote equitable access to public health resources.¹⁶

The Government of Thailand recently announced that from 12 August 2013 a low-cost health insurance policy would be made available to all migrants, regardless of their status. In addition, a special insurance policy costing 365 baht per year (about US\$12) will be available for migrants to buy for their children up to seven years of age. The coverage package is the same as that received by Thai citizens covered by the widely praised Universal Health Coverage Scheme, including access to immunization services and anti-retroviral therapy. Migrant parents can buy a policy for their children aged over seven at the same rate as adults (2,200 baht or about US\$70 per year). In South Korea, irregular migrants can receive emergency care free of charge, and hospitals are able to claim reimbursement from the government.

Health risks and vulnerabilities that migrants face are often not directly linked to their access to health services themselves, but can be a result of policies that are made outside the health sector, such as in the fields of immigration, labour, and foreign affairs. For instance, health care institutions can be required to report data on the legal status of their patients to immigration authorities. In addition, when immigration enforcement operations are conducted in or around medical facilities, this can represent a clear barrier to the access to health of migrants in an irregular situation. Hence, irregular migrants' access to health care is often impeded both by lack of adequate legislation and migrant's own fear that they may be reported and detained or expelled by the authorities. A human rights-based approach recognizes this fact and seeks to ensure coherence between different policy domains.

There are several countries in the Americas where national legislation gives equal access to health care for undocumented migrants, including children. These include Argentina, Mexico, Trinidad and Tobago and Uruguay. The Argentina 2004 migration law contains standards to ensure full respect for human rights of migrants and their families. This legislation recognizes the right to migrate based on the principles of equality and universality and guarantees equal access for migrants and their families to social services, public property, health education, justice, employment and social security.¹⁷ In Chile, a decision of the Ministry of Health ensures access to emergency medical care for irregular migrants and access to health care for pregnant women and children in an irregular situation.

The realization of the right to health of migrants requires developing and implementing migrant sensitive policies that incorporate a public health approach and equitable services for migrants regardless of their status; ensuring that migrant health services are culturally, linguistically, and epidemiologically appropriate; promoting coherence among policies of different actors that may affect migrants' ability to access health services; mitigating the burden of out-of-pocket health spending and

developed different criteria for what constitutes emergency healthcare, this regrettably does not address the fundamental issue of not conditioning health care to a person's immigration status. In this regard, mere commitment to emergency care is unjustified not only from a human rights perspective, but also from a public health standpoint, as a failure to receive any type of preventive and primary care can create health risks for both migrants and their host community." Special Rapporteur on the human rights of migrants, J. Bustamante, Annual Report to the Human Rights Council, A/HRC/14/30, para. 28.

¹⁵ See CESCR General Comment No. 14, the right to highest attainable standard of physical and mental health, 2000, para. 19.

¹⁶ Sixty First World Health Assembly, Health of Migrants WHA61.17 (24 May 2008).

¹⁷ Ley de Migraciones, Law 25.871, 2004.

moving towards pre-payment services; and developing and strengthening bilateral and multilateral social protection agreements between source and destination countries including healthcare benefits.

In 2013, the Government of Sweden has introduced reforms to the health care system. The reform grants access to health care, including ordinary care, to undocumented children under the age of 18 and grants access to health care “that cannot be postponed”, including dental care, maternity care, contraceptive counseling and sexual and reproductive care to all undocumented migrants. In addition, the new reform stipulates that county councils would be able to offer undocumented migrants the same level of care that is available to residents.

There are specific challenges around mental health and psycho-social development faced in particular by irregular adolescent and youth migrants that require particular attention. In countries where adolescents enjoy additional legal entitlements and rights because they are under the age of 18 (and thus legally children), this rarely extends to resolving their migration status, resulting in prolonged periods of anxiety about the future, with negative implications for enjoyment of rights and well-being during childhood, as well as after. Moreover, any such additional protections afforded to adolescents because they are children often end abruptly on reaching the age of majority (usually 18 years). As they make the transition from childhood to adulthood, irregular adolescent and youth migrants are forced to adjust to the reality and limitations of living with an irregular migration status, including lack of access to higher education and the formal labour market¹⁸, which may leave them vulnerable to exploitation and abuse (see below section on education). These concrete barriers to empowerment and participation are not only harmful in the short term, at a critical stage of individual development, but severely limit the opportunities and benefits of migration enjoyed by individuals and their communities in the long term. Thus, the special protection granted to children under international and domestic law should not automatically disappear when a person turns 18 years old; instead, adequate follow-up, support and transition measures for children when they reach 18 years of age should be provided.¹⁹

In the United States, some states and local governments have extended coverage for undocumented children with their own funds. For example, both the State of Illinois and the City of San Francisco have specific programs to provide health care to uninsured children under the age of 19 whose families meet the income requirements, regardless of migration status. Other States, including Belgium, France, Italy and the Netherlands, have implemented administrative systems to give irregular migrants access to a range of health services. The right to equal access of all children to health care is recognized in Greece, Portugal, Romania and Spain.

Women migrants, especially irregular migrants, often lack access to adequate sexual and reproductive health care, including maternal health care such as contraceptive counselling and services, or HIV counselling, testing and treatment. Migrant women and girls should have access to education on sexual and reproductive health and information on where to obtain safe services. Sensitization of health-care providers is also important; they must be knowledgeable of laws and regulations that govern migrants’ access to health care. The development and implementation of policies that recognize and respect the rights of all migrants to health, and the specific health needs of female migrants, is hence crucial.

¹⁸ For a discussion of this and related issues, see: Special Rapporteur on the human rights of migrants, Prof. François Crépeau, PICUM, National University of Lanús (2013), Human Rights of Undocumented Adolescents and Youth. Available at: <http://www.globalmigrationgroup.org/uploads/gmg-topics/mig-data/Human-Rights-of-Undocumented-Adolescents-Youth.pdf>.

¹⁹ See: Committee on the Rights of the Child, Report on the 2012 Day of General Discussion on the rights of all children in the context of migration, September 2012, para. 69. Available at: <http://www2.ohchr.org/english/bodies/crc/docs/discussion2012/ReportDGDCChildrenAndMigration2012.pdf>

In Morocco, a day-care center delivering mother and child health services and social counseling for migrant women and children was opened in Rabat in 2011, within the framework of the ‘Tamkine-Migrants’ project. Within twelve months, the center received 357 women and children from sub-Saharan countries, and records show that the number of social counseling sessions provided are double those foreseen at the beginning of the project.

Remittances and the right to health

Financial remittances can have an impact on the ability of the families and communities of migrants in their country of origin to access their right to health. For children left behind, these effects seem to be mediated by the length of time since parental migration took place and the age of the child. A study in Albania found that remittances improve children’s overall health because they enable families to provide better diets and to attain access to health care.²⁰ In addition, a recent literature review on children left behind in south-east Asia looks at the impact of changing arrangements and relationships of care, including the impact on children’s physical health and psychological wellbeing. It reported that: “remittances contribute to better nutrition and access to modern healthcare and child care services. On the downside, left-behind children also seem to have a higher vulnerability to the spread of HIV/AIDS, a higher rate of drug use and heroin addiction and suffer higher levels of emotional disruption, stress and sadness.”²¹

Social remittances also influence health outcomes. A study involving migrants from the Dominican Republic to the United States found that many became more health conscious. They were more likely to drink bottled water, keep animals out of living spaces, and recognize the importance of annual check-ups. Knowledge about contraception also reached non-migrants in rural Guatemala, sent both by migrants’ family members and friends in the United States and people who moved to Guatemala’s cities.²² Social remittances may also encourage the view that the state is responsible for providing services such as healthcare.

IV. Empowerment and agency in the specific context of migrants’ right to education

Everyone has the right to education (art. 26.1 Universal Declaration on Human Rights (UDHR), art. 13 International Covenant on Economic, Social and Cultural Rights (ICESCR). With the view to achieving this right, States should make primary education compulsory, available and free to all and all appropriate means should also be used to make free secondary education available and accessible; higher education should be accessible to all on the basis of capacity (art. 13.2 ICESCR, art. 28 CRC). Despite global recognition that it is a right that is not only fundamental in itself, but also key to empowerment and development, the right to education is often restricted for children, adolescents and youth in the context of migration, particularly for those in an irregular situation. Restrictions on access to education and a lack of opportunities for them to regularise their status not only result in an abuse of their human right to access education, but also in wasted potential and can have harmful impacts, including in terms of mental health and psycho-social development. Education is an investment in the future.

The fundamental right of all children to education, regardless of their migration status, is recognized in Argentina, Belgium, Chile, Italy, Mexico, Spain, Thailand, the Netherlands and Uruguay. In France, there is a ministerial circular to the same effect. In Argentina, the legislation is clear that irregular status should not prevent a foreign student from gaining admission to any educational

²⁰ Institute for Economy, Finance and Business 2007.

²¹ Asia Research Institute in Singapore (2013) “Transnational Migration and Changing Care Arrangements for Left-Behind Children in Southeast Asia.” Available at: http://www.ari.nus.edu.sg/docs/wps/wps13_207.pdf.

²² Levitt and Lamba-Nieves (2010)

institution, whether it is public or private, national, provincial or municipal, primary, secondary, tertiary or a university. In addition, educational institution authorities shall provide guidance, counselling and advice on the procedures necessary to regularize residence status.

The Committee on Economic, Social and Cultural Rights (CESCR) has recognised that education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. For children of migrants in an irregular situation, school is an opportunity to integrate and be included in the societies to which they or their parents have moved. Education may even make it possible for them to obtain a regular residence permit at the age of eighteen.²³ The Committee on the Elimination of Racial Discrimination has directed States to ensure that all migrant children, regardless of their migration status, have access to free and compulsory primary and secondary education, and to ensure that public educational institutions are accessible to migrants and children of irregular migrants²⁴. In order to ensure the right to primary education, the CESCR has directed States to eliminate all direct costs of schooling, such as school fees, as well as alleviate the adverse impact of indirect costs, such as expenses for school materials and uniforms, on migrant children's access to primary education.²⁵ States should also consider the adoption of measures facilitating the insertion of migrant children in mainstream education.

In the United States, the Supreme Court ruled in the landmark *Plyler v. Doe* case²⁶ in 1982, that it was a violation of the Constitution to deny undocumented children free compulsory education under the same conditions as citizen and regular migrant children. A number of States have fully implemented this ruling to include access to other school-based services, such as free and reduced-price meals and educational assistance for children with learning disabilities. Furthermore, currently 16 states have instituted laws to allow undocumented students who meet specific requirements to receive in-state tuition rates at public universities.

Migrant children in an irregular status face numerous barriers in accessing education in law and in practice. They are often expected to show evidence of their identity, residence, birth and sometimes their health or medical records before they can attend school. In some cases, children are also obliged to pass a language examination to attend a public school. States should simplify the formalities for enrolling migrant children and children born to migrant parents in school, and should ensure firewalls on information sharing between education institutions and immigration authorities.

Legislation in the Netherlands explicitly prevents schools from sharing personal information with others (e.g. the immigration authorities) and to refuse registration on the ground of immigration status. In Flanders, Belgium, a provision by the Flemish Minister of Education states explicitly that head teachers are not required to inform the police of the administrative status of children and their parents, and guarantees that undocumented migrants will not be arrested in the vicinity of the school. This extended to all Belgian territory through a circular letter signed by the Ministry of Interior on April 2003, recalling that police services cannot enter schools in order to carry out deportations.

²³ OHCHR, *Le droit à l'éducation des enfants migrants*, Discussion paper on migration, March 2007, pp. 2 and 26. At: http://www2.ohchr.org/english/bodies/cmw/docs/Droit_education_fr.pdf.

²⁴ CERD, General Recommendation No. 30, Discrimination against non-citizens, 10/01/2004, para. 30. Also see, CMW, General comment No. 1 on migrant domestic workers, CMW/C/GC/1, 23/02/2011, para. 57

²⁵ CESCR, General Comment No. 11 (1999) on plans of action for primary education (art. 14), para. 7.

²⁶ *Plyler v. Doe*, 457 U.S. 202 (1982) Appeal from the United States Court of Appeals for the Fifth Circuit No. 80-1538, Argued: December 1, 1981, Decided: June 15, 1982.

In Italy, school registration is possible even if no identification documents are available, on the basis of declared data.²⁷ The law is clear that the right to education includes receiving formal recognition of education and the final school-leaving qualification, regardless of whether students have a residence permit or identity documents. Diplomas should be issued with the personal data declared at the moment of registration. The Portuguese legal framework of Entry, Stay, Exit and Removal of Foreigners of the National Territory (Law n° 23/2007) was modified in 2013 (by Law n° 29/2012) and provides access to education to all migrant children, regardless of their legal status. In Spain, undocumented children can legally access subsidies and grants, which are vital for many undocumented children to meet the extracurricular expenses of attendance in school (such as uniforms, books, transport, and meals).²⁸ Further, Spanish legislation clearly allows undocumented children to carry out internships. The contract is made between the educational institution and the internship provider. As there is no internship or employment contract between the student and the internship provider, there is no requirement for the student to have a valid work permit.²⁹

Educational strategies could be developed to strengthen the capabilities of marginalized communities as a whole, while specifically addressing the educational needs of vulnerable migrants within such communities. In order to empower children in the context of migration, education should focus on providing them with intergenerational, intercultural and social skills, in addition to child-friendly information about their rights and how to (re)-claim them. Education is the primary vehicle by which economically and socially marginalised adolescents and youth can overcome poverty, seize opportunities, and obtain the means to participate fully in their communities, whether they be in countries of origin, transit or destination. As an empowerment right, education has an invaluable social development potential and can enable children, adolescents and youth to reach their full potential.

In July 2005, the Cabinet of the Royal Government of Thailand issued a Resolution on the Education of Unregistered Persons requiring that all children be provided with access to all levels of education regardless of their citizenship status or that of their parents or guardians. The government allocates additional funds to the Ministry of Education to defray the costs of providing educational services to migrant children.

In order to prevent exclusion and discrimination based on gender and to avoid being limited to low paid jobs, migrant women and girls must quickly have access to education and further vocational training to acquire new skills and capacities. Access to capacity building is moreover crucial for migrant women who want to set up their own income generating activities as an alternative to unemployment.

Remittances and the right to education

While there seems to be consensus that by increasing household income – primarily through remittances – migration has a positive impact on child school attendance and literacy in countries of origin, the results vary by country, gender and the socioeconomic backgrounds of households. Studies in the Philippines suggest that a 10 per cent increase in remittances relative to initial income increases school attendance by more than 10 per cent and reduces child labour by approximately three hours a

²⁷ National Immigration Law T.U. 286/98

²⁸ Organic Law 4/2000 de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social.

²⁹ Real Decreto 1147/2011, de 29 de julio, por el que se establece la ordenación general de la formación profesional del sistema educativo.

week.³⁰ In Mexico remittances improve child literacy and school attendance rates,³¹ in El Salvador remittances are correlated with a reduction in dropout rates,³² in Ecuador remittances have enabled many migrant children to regularly attend school including more elite institutions,³³ while in Guatemala remittance-receiving households seem to spend more on education than on consumption.³⁴

Improvements are evident in the Philippines, where remittances are used to send children to private schools, which are considered to be better than public schools.³⁵ Children of Overseas Filipino Worker (OFW) parents exhibit not only better academic performance, but also greater involvement and participation in academic organizations and extra-curricular activities.³⁶ A similar array of positive outcomes has been found in Albania and Moldova.³⁷ Remittances also contribute to narrowing the gender gap in terms of access to education, although, according to some qualitative studies, this seems to be limited to primary education only.³⁸

Migration's effects on education are, however, moderated by a variety of factors, including age, gender, frequency of parental visits and the socioeconomic characteristics of migrant households.³⁹ Most of the studies gauging the impact of migration on education tend to focus on quantity rather than quality; they provide evidence of increases in spending on education but little on outcomes. It is still unknown, for instance, how remittances contribute to the quality of learning among children who have either one or both parents absent for extended periods of time. Moreover, evidence regarding the positive impact of remittances on education must be weighed against the negative effect that parental absence – particularly that of the mother – has on the development and overall school performance of children left behind.⁴⁰

Remittances themselves may also have a detrimental effect, as one study in Egypt⁴¹ has noted, if they signal that unskilled work can be rewarding and that additional income can be earned independently of schooling. This could also be characterized as an aspect of social remittances; i.e. the emulation effect of having a migrant family member, making migration a more attractive proposition, possibly at the expense of education. Remittances may also be saved to finance a young household member's future migration.

³⁰ Yang, D. (2008) "International Migration, Remittances, and Household Investment: Evidence from Philippine Migrants' Exchange Rate Shocks." *The Economic Journal*, 118 (528), 591- 630

³¹ Lopez-Cordova, E. (2005) "Globalization, Migration and Development: The Role of Mexican Migrant Remittances." *Economia* 6 (1): 217-256

³² Edwards, A and Ureta, M. (2003)—International Migration, Remittances, and Schooling: Evidence from El Salvador. *Journal of Development Economics* 72(2): 429–61

³³ Camacho Z. ,Gloria and Katty Hernandez B. 2007. Children and Migration in Ecuador: Situation Diagnostic. Centre for Social Planning and Research. UNICEF.

³⁴ Adams, R. H., Cuecuecha, A., Page, J. (2008) "Remittances, Consumption and Investment in Ghana." World Bank Policy Research Working Paper 4515

³⁵ Bryant, J. (2005) "Children of international migrants in Indonesia, Thailand, and the Philippines: a review of evidence and policies," Innocenti Working Papers inwopa05/31, UNICEF Innocenti Research Centre

³⁶ Edillon Rosemarie G. "The Effects of Parents Migration on the Rights of Children Left Behind", Asia Pacific Policy Center, UNICEF, 2008.

³⁷ Institute for Economy, finance and Business. 2007. "Impact of Remittances and Migration on Children and Families Left Behind" and UNICEF Moldova, undated.

³⁸ Bensaid, M and A, Ibourk. (2008) Impact social des transferts de Fonds des Marocains résidant à l'étranger: Une revue de littérature UNICEF- DPS, Policy and Strategy Working Paper.

³⁹ Other factors include mother versus father migration, remittance behaviour, length of absence, frequency of visits, means of communication, household dynamics.

⁴⁰ UNICEF Moldova, undated, 21.

⁴¹ International migration, remittances, and the human capital formation of Egyptian children

Likewise, although there is some evidence that the increasing feminization of migration contributes to greater investment in education, some studies suggest that the impact is not uniform across all school-age children.⁴²

Social remittances can shift attitudes towards education. Highly-skilled immigrants can encourage the non-migrant population in their home countries to invest in education and contributing to human capital generation. A study found that as more young migrants from one area of the Dominican Republic completed high school and went on to higher education in the United States, their non-migrant peers also increasingly wanted to go to college.

V. Conclusions

Migration in general and remittances in particular will have a much more positive effect when the right social and economic policies are in place. When the migration experience is successful, migrants can remit and this will usually affect positively their families and communities left behind. In the ultimate analysis, successful migration depends on respect, protection and fulfilment of the human rights of all migrants as well as their families and communities in countries of origin.

Making remittances work for development, and to ensure a positive human rights impact, is not straightforward. Although remittances may represent a significant source of external financing for countries of origin, these flows continue to be private transfers. Their use is discretionary and limited by the preferences of households that receive them and are mostly used at the household level for consumption purposes. Therefore, government interventions that seek to influence the use of remittances are highly constrained by the private nature of the income flow.

Despite these constraints, remittances represent an important intra-household source of external financing that could potentially be used to enhance access to human rights and human development. There is the potential for increasing the positive effects of remittances on health and education, but this depends on several factors, including the socio-economic characteristics of the household, their own private preferences, as well as the priority placed on equitable access to education and healthcare services.

A human rights-based approach to the design and implementation of migration policies means that States are obliged to formulate and scrutinize all such policies by measuring them against human rights standards and benchmarks, and to strive to ensure that they are responsive to the human rights of all migrants, with a particular focus on the most marginalized and excluded. There is increasing evidence that a human rights approach to migration policy and practice leads to better and more sustainable human development outcomes. Educated, healthy and empowered migrants are better able to lift themselves and their families out of poverty and in doing so to contribute to the wider community and economy in countries of origin, transit and destination.⁴³

Key policy recommendations

Key policy recommendations to ensure a human rights-based approach to migration in order to

⁴² For example, a study in Jordan found evidence that in some communities the eldest daughter's education may end because she is required to take on additional household responsibilities in the absence of her mother, even as her young siblings benefit from greater educational opportunities derived from increased household income.

⁴³ Report of the Secretary General, Promotion and protection of human rights, including ways and means to promote the human rights of migrants, A/68/292, para. 90.

enhance the empowerment of migrants and their families include:

(1) Empowerment and a human rights-based approach to migration policy and practice:

- increasing access to regular migration channels for labour and family reunification including where possible by putting in place non-discriminatory regularization programs;
- removing existing legal and practical barriers for migrants and their families to access rights and services regardless of status by making their rights explicit in legislation and by guaranteeing the access of all migrants to justice and remedies.
- instituting a clear separation between immigration enforcement and the provision of services such as health, education and housing as well as access to justice. This should include training and awareness-raising of public officials and clear regulations that explicitly prevent public officials from sharing information or refusing service provision on the basis of immigration status;
- empowering migrants and their families to effectively participate in decision-making processes that affect them and ensuring that migrants and their families are able to participate in the development, implementation and evaluation of migration policy itself as well as in relevant national and local policies and planning;
- guaranteeing the effective access of all migrants, regardless of their status, to adequate healthcare. The exclusion of migrants from public health systems is not just a violation of migrants' rights; it is also counterproductive from a public health perspective.
- guaranteeing the effective access to quality primary and secondary education for all children in the context of migration, regardless of status, as well as to non-compulsory education, vocational training, higher education, trade schools, and traineeships.

(2) Financial and social remittances and their impact on empowerment and inclusive social development, with a focus on health and education

- considering migrant households' needs and human rights within the broader development and social protection agenda; i.e., improving social services and infrastructure, ensuring equal and full access to education, social services and health care and expanding job creation measures and support decent work conditions in countries of origin.
- reducing the costs of remittance transfer fees and maximizing the impact of remittances by addressing, primarily through universal social policies, basic vulnerabilities that prevent populations from investing in health and education.
- supporting migrant and diaspora organizations in countries of destination and strengthening their links with organizations in countries of origin, in order to facilitate and enhance transfer of social remittances and empowerment of both migrants and non-migrants.
- developing specific programmes for children left behind. Social programmes should include benefits for single-parent migrant households and surrogate caregivers such as grandmothers and other relatives. Provisions should also be made for the special needs of female-headed households.
- More research is necessary that: a) distinguishes between the impact of remittances and the impact of migration *per se*; and b) that analyses the relationship between them. Migrant family households that do not receive remittances should not be overlooked. To improve the quality of evidence, governments should consider including a comprehensive module on the impact of remittances in their routine national surveys.

Relevant documentation

- GFMD, Concept paper: <http://www.gfmd.org/en/gfmd-2012/key-2013-2014-activities>.
- Report of the Secretary-General on the Promotion and protection of human rights, including ways and means to promote the human rights of migrants, A/68/292: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N13/422/65/PDF/N1342265.pdf?OpenElement>
- CMW, General comment No. 2 on the rights of migrants workers in an irregular situation and members of their families: http://www2.ohchr.org/english/bodies/cmw/docs/CMW_C_GC_2_ENG.PDF
- CRC, Report of the 2012 Day of General Discussion on the Rights of All Children in the Context of International Migration:: <http://www2.ohchr.org/english/bodies/crc/docs/discussion2012/ReportDGDChildrenAndMigration2012.pdf>
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