
RIGHTS OF MIGRANT GIRLS AND WOMEN IN TRANSIT: THREATS AND CHALLENGES

Aurelija Pūraitė

*Mykolas Romeris university Academy of Public Security Department of Law
Marorinio str. 27, LT-44211 Kaunas, Lithuania
Telephone (+370 37) 303655
E.mail: aurelija.puraite@gmail.com*

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Annotation. The migration is widely discussed phenomena, with multiple approaches and problematic areas. The author of this research will address the problems that migrating women and girls face. There are gaps in the political perspective, as well as legislative gaps, affecting the situation of migrant women and their children, especially girls, who find it difficult to migrate. Gender-sensitive measures to address violence and other violations of migrating women and girls, including gender-sensitive law enforcement measures, shelters, counselling services and prevention programmes are absent. Migrant girls also face gender-specific challenges, risks and vulnerabilities. Migrant girls due to their migration status, age and gender, are even more at risk and more vulnerable during the migration process, thus putting them at greater risk of violating their rights. Gender discrimination is present in countries of origin and destination, as well as during migratory journey. Gender inequalities, including violence against women and girls, can be both a root cause for migration and a violation of their rights during the migratory process. Therefore, the purpose of the research is to detect the legal gaps in international legal regulation, causing the inadequate protection of the rights of migrant women and girls, focusing more specific attention on the rights of the migrant girls and indicating the fundamental rights that due to lack of political will are kept outside the scope of protected areas.

Keywords: migration, human rights, violation of rights, women's and girls' rights

INTRODUCTION

Migration is one of the social and economic phenomena that have a direct impact on the security of countries in the broadest sense. Modern migration flows are determined by most economic reasons, but the military, political and civil, climatic crises also affect the development of this phenomenon. It should be noted that, according to various data, migration mostly takes place within continents without crossing continental borders, however, especially in Europe, recent discourses on migration from North Africa and the Middle East are constantly escalating at various political, economic, legal and social levels.

According to different data and analysis presented by scholars (Martin & Herzberg, 2014; World Bank, 2020; Grabska, de Regt, Del Franco, 2019; Cortina, Taran, Raphael, 2014), female migrants compose almost 50 per cent of all migrating people in their age group, and they are an important and too often overlooked part of the migration phenomenon. According

to UNICEF, there are nearly 50 million children who have migrated across borders or been forcibly displaced (UNICEF, 2016).

Gender-based discrimination is one of the reasons, why women, adolescent females, and girls migrate from their origin countries and the root one in many cases. The drivers of female migration may be found at the individual, familial and societal levels. The gender is what makes their transit even more complicated, as they face triple challenges and violations of their rights – because of the gender, because of the age (the younger female is, the more threats are addressed), and the migrant status itself. It is female migrants who more often are victims of sexual exploitation, human trafficking, forced prostitution, labour force exploitation, also they face multiple and intersecting forms of discrimination, such as xenophobia or racism.

There have been many efforts to address the resulting marginalization of women's rights, including the adoption of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979). The uncomfortable truth is that women (not just migrants) in many parts of the world feel much worse than men in almost all areas of social well-being, even though, at least recently, all states declare that they adopt at least minimum international legal standards to promote equal human rights (Otto, 2014). The CEDAW protects all women, including migrant women, however, due to huge illegal migration, when women are provoked to migrate through irregular or informal channels, that leave them outside the protection of the law and vulnerable to abuse by agents, smugglers and traffickers.

Even more vulnerable are girls as a separate subject of both specific rights and their possible violations. The UN Convention on the Rights of the Child (CRC, 1989) transformed traditional human rights protections by recognizing that children are capable of being active rights-holders who participate in decisions concerning their well-being. The CRC has stimulated the adoption of a wide range of international and regional legal instruments regarding children's rights, which recognize the importance of a child-centred approach to human rights (Van Bueren, 2014). However, rights of migrant children are not the core discussions of politicians and even scholars, although it is supposed that migrant girls have additional rights with regards to their age under the Convention on the Rights of the Child (CRC) and their gender under the CEDAW.

There are gaps in the political perspective, as well as legislative gaps, affecting the situation of migrant women and their children, especially girls, who find it difficult to migrate. Gender-sensitive measures to address violence and other violations of migrating women and

girls, including gender-sensitive law enforcement measures, shelters, counselling services and prevention programmes are absent. Migrant girls also face gender-specific challenges, risks and vulnerabilities. Migrant girls due to their migration status, age and gender, they are even more at risk and more vulnerable during the migration process, thus putting them at greater risk of violating their rights. Gender discrimination is present in countries of origin and destination, as well as during migratory journey. Gender inequalities, including violence against women and girls, can be both a root cause for migration and a violation of their rights during the migratory process.

Therefore, the purpose of the research is to detect the legal gaps in international legal regulation, causing the inadequate protection of the rights of migrant women and girls, focusing more specific attention on the rights of the migrant girls and indicating the fundamental rights that due to lack of political will are kept outside the scope of protected areas.

Methodology. To achieve the aforementioned purpose in this essay following methods of research would be applied: method of scientific literature analysis- for disclosure of theoretic aspects presented by various scholars regarding the concepts migration and fundamental rights protection as supporting arguments for scientific reasoning; method of synthesis - for presenting the comprehensive synthesis of the concepts of fundamental rights protection of woman and girls in the global context of rights of migrants; method of content and source analysis- for the analysis of scientific literature, statistical information and legal sources; methods of logic and generalization - will be used in summarizing the analyzed theoretical and practical scientific material and providing the conclusive remarks.

RIGHTS OF MIGRANT WOMEN AND GIRLS AT A POLICY AND INTERNATIONAL LEGISLATIVE LEVEL

Are rights of migrant girls violated, or are we merely speaking about not fulfilment of those rights because of objective reasons? As without doubt could be stated bearing in mind the situation of women, adolescent females and girls in migration - “*a particular human right of some particular person is unfulfilled when this person lacks secure access to the object of that human right*” (Pogge, 2013). Here we must not forget that rights of migrating people are generally difficult to implement, as they usually are the nationals of different states than they reside at a particular moment when they have a need or a wish to enjoy the particular right. “*Progress in human rights standard-setting, promotion, and enforcement is not possible*

without local buy-in” (Mertus, 2012), therefore there always is a contradiction between the rights of migrating people and real economic possibilities (and political will) of the host countries to fulfil those rights, especially when we are talking about social and economic rights. Recently the latest relevant document adopted New York Declaration for Refugees and Migrants (UN, 2016) reaffirmed the aim to “*fully protect the human rights of all refugees and migrants, regardless of status; all are rights holders*”. The separate stress is made on the gender aspects, the intention is declared to ensure that “*large movements of refugees and migrants mainstream a gender perspective, promote gender equality and the empowerment of all women and girls and fully respect and protect the human rights of women and girls*” (para. 31). However, Para. 52 of the Declaration only aims to consider “*developing non-binding guiding principles and voluntary guidelines, consistent with international law, on the treatment of migrants in vulnerable situations, especially unaccompanied and separated children who do not qualify for international protection as refugees and who may need assistance*”. It is obvious, that there is a lack of strong determination to solve the emerging problems related to migrating children in an uncompromised way, keeping the interests of a child at primary importance.

Human rights are evolving from the traditional universal idea to a “multicultural” one, whereby rights are interpreted to respond to the needs of the communities and individuals directly concerned (Lenzerini, 2014). The fact that most rights are not absolute highlights the fact that diverse views and disagreement will exist (Kay, 2003). For example, some Muslim states have made general reservations conditioning the applicability of the CEDAW in their respect on the proviso and within the limits that it is compatible with the prescriptions of the Shari’ah.

The problem is, that female migrants usually are migrating because of economic reasons, or because they consider themselves as an inseparable part of their male family members, and their migration reasons are not individual nor determined by conditions, allowing them to achieve refugee status. Therefore, they usually face difficulties to have protection with the meaning of the Convention Related to the Status of Refugees (adopted in 1951). As Kneebone correctly notices, “*persons feeling for economic reasons, or persons fleeing generalized violence, where not “proper” refugees, and that if the states chose to assist them, it would be for “humanitarian” motives*”. However, while female migration is often considered as dependents (with tight links with their families), the past decades have disclosed the transformation of that situation, as women and girls increasingly migrate independently.

As para. 60 of the New York Declaration indicates, it is acknowledged and intended 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*”. However, it is very doubtful if and what real powers international community may have to combat gender-based violence or any other gender-related crimes in national states. What international community, international institutions, agencies and other stakeholders could do, is to empower legal standards and norms, making them legally binding in all possible levels and aspects. That is not an easy task to do, as it was said, migrant women and girls are especially vulnerable to deprivation, hardship, discrimination and abuse, due to their status as migrants, their status based on gender and their vulnerability based on a young age. As Martin and Herzberg (2014) indicate, “*particularly forced migrants, face real risks of physical and sexual abuse during travel and in the country of destination. In short, their rights are violated frequently, drastically and all too often with impunity*”. Paradoxically, the greater the rights according to these international policy frameworks and treaties, the less they are protected in reality.

Most probably the most shocking data is related to migrating children (and in this group girls prevail), that experience physical, sexual and mental violence. Children, especially those who travel alone or become separated from their families, or lost on a trip, experiences various forms of violence and exploitation during their travels. For most, these dangers remain even when the destination of the journey is reached, and for some the circle of violence and coercion becomes constant. Violence can take the form of state procedural action (detention) as an expression of public attitudes (xenophobic attacks), such as exploitation by employers, others violence by children in schools or public (including bullying and abuse) (Fazel & Mina, 2012). It is not possible to obtain reliable data about the level of violence faced by migrating women and children, but based on all sources that could be considered as reliable it could be stated, that the level of this problem is pervasive.

One of the most widely discussed forms of violence against children is trafficking. According to the data presented in 2012, one in three detected victims of trafficking is a child. Girls and boys are both affected, although nearly twice the number of girls have been detected as trafficking victims (UNODC, 2014), globally, the vast majority of detected trafficking is for either sexual exploitation (just over half) or forced labour (40 per cent). Smuggling is another

and an even more common problem for travelling children with and without their families. Smuggling, differently from human trafficking, could be considered as a kind of a commercial transaction between smugglers and migrants, in which the smuggler agrees to organize the passage of illegal migrants to another country for a certain fee, expressed in financial or material form. In this case, mostly because of being illegal, a journey that involves violence or sometimes turns into human trafficking. Those circumstances often are the primary obstacles for migrant women and girls to be protected under international legal provisions, as their status is not determined by any regulation. Even in cases when the immediate dangers of migration journey have passed, children can face a lifetime of discrimination and disenfranchisement, as they struggle to obtain legal identity, which allows them to implement at least basic rights and services. For women and girls, situations like that are often accompanied by social, cultural and legal circumstances from their national states, which prevent them from having personal documents (such as birth certificates) or possibility to implement their rights without the permission of some male relative. For example, the Convention on preventing and combating violence against women and domestic violence (entered into force in 2014) contains obligations to provide for migrant women and asylum-seekers with their residency permits. 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.

It is worthwhile mentioning that in the regional level under the Gender Equality Strategy 2018-2023 (Council of Europe, 2019) protecting the rights of migrant, refugee and asylum-seeking women and girls is a new strategic objective. This establishing clear framework document indicates that the strengthening of institutional mechanisms for gender equality will determine future progress to improve gender equality. Therefore it is obvious, that without institutional determination (i.e., without a will of people, having the power to create and implement legal binding norms) the future of women and girls (including migrating ones) rights will be only sound theoretical idealistic ideas without clear impact on the real situation of vulnerable groups.

THE FUNDAMENTAL VULNERABLE RIGHTS OF MIGRANT WOMEN AND GIRLS AND THEIR PROTECTION POSSIBILITIES

Several fundamental rights could be indicated as the most often violated speaking about migrating women and girls, in particular, right to health, education, working and employment conditions. In this chapter, we will focus our attention on right to education, which is one of the most often violated by host states of migrant girls and adolescents in transit, and right to adequate health care, which is an essential need for female migrants bearing in mind the conditions of migration and possible sexual and other physical abuses that they face during their migration process.

The New York Declaration for Refugees and Migrants Right (para. 59) affirms that certain needs of migrating children are of the utmost importance, therefore need more protection, the international community declares its preparedness “*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 are a primary consideration in all relevant policies*”. The right to education among the ones mentioned is one of the most important, at the same time – difficult to implement, causing huge costs and expenses, and needs direct involvement of the host states. The nature of the right to education is such that positive state action is needed to achieve the full realization of this right. The obligation to fulfil requires states to make the various types of education available and accessible for all and to maintain that level of realization, which may involve a variety of measures (Coomans, 2014). Quite a few international legal instruments are foreseeing the right to education.

The right to education originally came to be expressed in the now-familiar terms for the very first time in Article 26 of the Universal Declaration of Human Rights (UN, 1948). It should be noted that at the time the Universal Declaration was signed only a minority of the world’s young people had access to any kind of formal education and almost half of the world’s adult habitats could not read (World Education Report, 1994). Therefore, the aspiration to grant free and compulsory elementary education should be evaluated as a modern and progressive for that time.

The provisions of the Universal Declaration of Human Rights have been specified and complemented by two later documents—the special document dedicated to education, the UNESCO Convention against Discrimination in Education (1960), and the International

Covenant on Economic, Social and Cultural Rights (1966). The International Covenant on Economic, Social and Cultural Rights devotes two articles to the right to education—Articles 13 and 14. Article 13, the longest provision in the Covenant, is the most wide-ranging and comprehensive article on the right to education in international human rights law. In this research, we will focus our attention on those provisions of this article, that have a direct relation to the rights of migrating girls and female adolescents. Article 13 amplifies the general right to education with references to primary education (“which shall be compulsory and available free to all”), secondary education (“in its different forms”, “generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education”), higher education (to be made “equally accessible to all, based on capacity”), and “fundamental education” (for those who have not received or completed primary education). The most significant difference between the right to achieve secondary and higher education is that while secondary education “shall be made generally available and accessible to all”, higher education “shall be made equally accessible to all, based on capacity” (Pranevičienė & Pūraitė, 2010).

The UNESCO Convention against Discrimination in Education (1960) was the first international treaty to be adopted concerning education as such. The Convention is the first legally binding instrument which provides for standards and quality of education. The Convention prohibits any “discrimination” or any distinction, exclusion, limitation or preference, “based on race, colour, sex, language, religion, political or another opinion, national or social origin, economic condition or birth” (Article 3 of the Convention and Preamble to the Convention). But the provisions of the Convention further foresee situations which would not be deemed to constitute discrimination. It is allowed to establish or maintain separate educational systems or institutions for pupils of the two sexes, if these systems or institutions offer equivalent access to education, provide teaching staff with qualifications of the same standard as well as school premises and equipment of the same quality, and allow taking the same or equivalent courses of study.

The latest specific international legal document foreseeing the right to education is the Convention on the Rights of the Child, which dedicates 3 articles (articles 28-30) to education. The obligations of States Parties concerning primary, secondary, and fundamental education are not identical. States obliged to “make primary education compulsory and available free to all”, to “encourage the development of different forms of secondary education, including

general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need”, and to “make higher education accessible to all based on capacity by every appropriate means”. The Convention at the same time promotes, supports, and protects the core value of the Convention—human dignity is innate in every child and is his or her equal and inalienable right. Article 29 adds a qualitative dimension which reflects the rights and inherent dignity of the child to the right to education recognized in Article 28.

There are several regional documents dedicated to the protection of human rights. Several of them are directly related to the right to education or at least focus specific emphasis on this right (for example, The European Convention on Human Rights (1950), The African Charter on the Rights and Welfare of the Child (1999), The American Convention on Human Rights (1978), and The Arab Charter on Human Rights (1994)). As regional human rights documents pay more attention and respect regarding specific cultural, religious, moral issues, and the protection of human rights in the particular geographic areas, it could be presumed that imposing these documents should not discontent the governments of the states and those to whom the corresponding provisions are dedicated. However, the understanding of the content and application issues of the provisions of the regional documents regarding the right to education is not less complicated than those of the international legal documents. This could be explained by the presence of multicultural and multi-religious environments in the regions of Africa or America.

Obstacles faced by migrant girls in exercising their right to education include language barriers, the assessment and recognition of previous education and the transfer of qualifications. They face further challenges from legal hurdles that make it more difficult to enrol in education, due to their or their parents’ migration or residence status. Besides, the environment in a new school also plays a crucial role, as stigmatization and discrimination may discourage migrant children from attending school. Most importantly, access to education must be completely separated from the fear of being deported. When firewalls are not in place, meaning that the personal data of migrant children and their families may be shared with the immigration authorities, migrant girls are more reluctant to enrol in education and realize their basic right (UNICEF, 2017). Summarizing, it is clear, that both at policy and legislative levels the provisions must ensure access to secondary and tertiary education for adolescent and young women who migrate as well as those who are left behind by migrating parent and to increase

the access of adolescent and young women to primary and reproductive health care services, including programs to address gender and sexual-based violence.

Another clear and undoubtedly serious threat to girls and young female migrants is the health needs, which are very specific and require access to appropriate health and mental health services, including reproductive healthcare. Among most often issues, there are adolescent pregnancy, sexually transmitted diseases, HIV/AIDS and sexual and gender-based violence (WHO, 2012). Here, it is necessary to distance from a possible too academic approach and from escalating an artificial philosophical approach to the universality of human rights and to assess cultural differences and realities for teenagers and young women to have real access to culturally and linguistically sensitive programs dealing with the trauma of crimes committed against them. As research shows, crossing borders clandestinely puts young women at risk of rape by border guards, smugglers, bandits, and other criminals. Young women travelling alone may have little choice but to sell sex for survival, or to establish partnerships in transit or at destination simply for protection. The risk of sexual violence also increases in sex-segregated and unregulated sectors of the economy, for example for female traders, domestic workers and sex workers (Haour-Knipe & Grondin, 2003).

As indicated in the report of the Special Rapporteur on the human rights of migrants (2019), migrant women and girls often do not have reliable access to health care or reproductive health-care services in transit and destination countries. More often this is determined by factors such as the lack of information or health-related education, isolation, or the inability to gain access to services based on the legal status, for fear of deportation or other repercussions, particularly for migrants in irregular situations.

CONCLUSIONS AND RECOMMENDATIONS

To better protect girls, adolescents and young female migrants, there is a need for a better understanding at the policy level of their specific conditions and needs, as well as the specific threats to this group due to their gender, age and cultural and social vulnerabilities. The aim of policies, therefore, must be to maximize the beneficial aspects of migration for this group while minimizing potential harms. All policies must be based on gender perspective and in accordance with the fundamental rights approach. Migrant girls often are the most vulnerable group of migrants, and they benefit from even less coverage than women or boys, as gender and age are rarely considered in migration laws and policies. Therefore, it is necessary to create policies

that would take into consideration gender and age factors elaborating further legal provisions. The understanding of children needs is the core for future policy development, which includes introducing measures to strengthen child protection systems from violence and exploitation; implementing legal and operational alternatives to detention wherever children (or their families) are involved, given the negative impact of detention on a child's development; developing clear policy guidance to keep children from being separated from their parents during border control processing and any migrant legal processes; incorporating gender as a vulnerability factor that needs special attention and more specialized protection mechanisms and tools; providing education, health, shelter, nutrition, water and sanitation, and access to legal and psychosocial support to migrating girls and all children in essence. Those goals could not be reached without increased collective efforts by governments, communities and the private sector actors, as reaching this goal is not only a responsibility of all international community, but also is a common interest.

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