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Mediterranean City-to-City Migration

Dialogue, Knowledge and Action

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The enjoyment of Human Rights and Access to basic services

Thematic paper

Introduction

Any movement that takes place outside the regulatory norms of a **sending**, **transit** and **receiving** countries is known as **irregular migration**. Although there is no clear or universally accepted definition of irregular migration, destination countries will define it in terms of **entry**, **stay** or **work** in a country without the necessary authorization or documents required under immigration regulations. This includes human trafficking.

Migrants, have particular rights related to their status of non-nationals residing in a State. The benefits afforded to or limits placed on them often depend on the regulations of the State they inhabit. However, there is a set of **International minimum standards** to be applied, defined by public international law; including respect to treatment of non-nationals present on a territory (or their property) is an obligation. Further, denial of justice, unwarranted delay or obstruction of access to courts is in breach of the international minimum standards. These minimum set of rights are accompanied by additional regulations to be applied according to the circumstance regarding migration of each individual residing in another State than one he or she is a national in. Thus, accountability is imperative and requires effective mechanisms that ensure that local or regional public institutions are following the standards.

I. Global Challenges surrounding basic service provision

The increasing scale of urbanization over the past 20 years, has contributed to informality in cities, a rising demand in services, increasing costs of infrastructure provision, and a legacy of underinvestment in asset replacement and infrastructure extension; this has deeply affected the way in which populations in vulnerable situations access basic services. Moreover, poor operational management, maintenance, inefficient consumption, and inequitable distribution of the services continue to exacerbate the spatial socio-economic segregation in cities. These challenges have been exacerbated by rapid urbanization process and continuing weaknesses in understanding basic services as infrastructure and its associated governance and regulation.

Box 1. The key figures and facts around basic services worldwide:

- Currently, 1.2 billion people gained access to improved sanitation in urban areas from 1990 to 2012, while the number without sanitation in urban areas has increased by 542 million. In the same period, 1.6 billion people gained access to piped drinking water; whereas 720 million urban residents still do not have access to a piped water supply.
- Approximately 60% of the area expected to be urbanized by 2030 has yet to be built; \$57 trillion in global infrastructure investment will be required between 2013-2030
- Cities generate over 2 billion tons of municipal waste; this is predicted to double over the next 15 years.

The rising demand for basic services within urban infrastructure such as water supply, electricity, drainage and sewerage can be correlated to urbanization patterns, many of which are directly affected by migration. Current trends show that there is a need for a more rigorous management approaches, as well as public policy and instruments that promote an inclusive investment in strategies and discourage waste.

Challenges specific to migrants

Migrants, irrespective of their legal status, face several challenges when trying starting a new life in a foreign country. The gap between holding a residence permit and being able to enjoy the same quality of life or similar conditions as nationals is a difficult one to bridge. One needs to take into account that the financial situation of immigrants is often insufficient and thus does not guarantee **access to basic services**. This includes accessing to water, electricity for cooking or heating, housing solutions, access to health and education services, to decent employment, etc. Additionally, discrimination is a barrier.

Even though some European cities might have regulations in place to accommodate the influx of migrants and provide them adequate basic services, such as Spain, Belgium, Austria, Italy, and France, they have different manners and placing an emphasis in certain basic services over others. The reality in the Mediterranean shows that most cities are still not prepared to guarantee adequate basic services to irregular influxes of people. The so-called “refugee crisis in the Mediterranean” in 2015 is a particular example of how the infrastructure systems in place can easily be overburdened.

Furthermore, when analysing in depth the data around accessibility to basic services of long-term migrants, the access gap between locals and migrants takes shape. As mentioned above, discrimination also plays a role in the access to basic services due to access to employment. In France, for instance, managers are more reluctant to hire Maghrebis and Sub-Saharan Africans for better paid and more prestigious jobs. The aforementioned constraints increases the vulnerability of migrant population vis a vis the ability to pay for basic services.

II. Human Rights framework and international agendas mandating basic services

States, as signatories of human rights conventions, have the responsibility to ensure the respect and enjoyment of Human Rights- as they are the duty bearers. For this strong reason, a human rights-based approach is vital to deal with the improvement of the living conditions of migrant populations because:

Just as native citizens, migrants have the right to: “...a *standard of living adequate for the health and well-being of her/himself and of her/his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond her/his control*”, as stated in article 25.1 of the **Universal Declaration of Human Rights**. Thus, health, nutrition, clothing, housing, security and employment are widely understood and integrated as “basic services”; and should, therefore, be ensured to guarantee the

fulfilment of the Declaration. Added to this, article 1 states that everyone is entitled to all the rights and freedoms set forth the Declaration. This basic statement is, however, frequently unobserved in relation to migrants' enjoyment of basic rights in the host country.

Currently, the **2030 Agenda for Sustainable Development**, has strongly reflected the Human Rights principles with the promise of "*leaving no one behind*". Within the Sustainable Development Goals, SDG 11.1 "*By 2030, ensure access for all to adequate, safe and affordable housing and basic services, and upgrade slums*".

Moreover, building up on the urban dimension of the SDGs, the **New Urban Agenda (NUA)** recently signed in Quito, commits to "*Leave no one behind (...) by ensuring equal rights and opportunities, socioeconomic and cultural diversity, and integration in the urban space (...) and by providing equal access for all to physical and social infrastructure and basic services, as well as adequate and affordable housing*." It addresses migrants and basic services particularly in art. 28: We commit ourselves to ensuring full respect for the human rights of refugees, internally displaced persons and migrants, regardless of their migration status, and support their host cities (...).

Human Rights or Fundamental Rights?

The Universal Declaration on Human Rights adopted by the United Nations General Assembly in 1948 and signed in Paris represents the first global expression of the belief that all human beings are entitled with rights inherent to their dignity. The Declaration has served as the foundation for two binding UN Human Rights covenants: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

The European Convention on Human Rights is the European charter of Human Rights for European countries. It was signed in 1950 by the members of the Council of Europe as a way of ensuring the respect for Human Rights in Europe after the atrocities happened in World War II as well as a call to democracy to face Russian communism. The content includes a selection of some of the rights in the Universal Declaration and how the enforcing judicial mechanism might operate. It is overseen and enforced by the European Court of Human Rights in Strasbourg.

The Charter of Fundamental Rights of the European Union, which brings together in a single document the fundamental rights protected in the EU. It includes all the rights of the named European Convention, which the European Institutions should be following when implementing EU Law, under the watch of the Court of Justice of the EU. It is legally binding since the entry into force of the Treaty of Lisbon, in December 2009. The Court of Justice of the EU in Luxemburg ensures its implementation.

If a state that signed any of these three international conventions causes an injury to any of the rights named in the different documents, the individual that has been damaged has the right to bring an action against the correct Tribunal.

The following table portrays the main basic services as listed in the Universal Declaration of Human Rights:

Basic Services are Human Rights		
State's obligation to guarantee:	Article 25.1 of the Universal Declaration of Human Rights	
Provision of Water and sanitation services	Water	<i>"the right to safe and clean drinking water and sanitation"</i>
Ensuring discrimination in access to food is inexistent	Food	<i>"nutritionally adequate and safe food"</i>
Providing medical care in equal quality and circumstances	Health	<i>"the enjoyment of the highest attainable standard of physical and mental health"</i>
Ensuring housing accessibility and condemning forced evictions	Housing	<i>" physically accessible and affordable housing opportunities"</i>
Education affordability without discrimination	Education	<i>"equality of educational opportunities without distinction"</i>
Equal access to other social services	Social Security -in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood, against forced evictions.	<i>Realizing the non-discrimination main basic Human Right</i>

Migrant populations are particularly vulnerable to a lack of certain basic services, which vary according to each context. For instance, some of the main challenges faced by migrants include accessing sufficient, safe affordable water; physically available sanitation; health assistance, economically and legally accessible education (without discrimination); nutritionally adequate and safe food and security of housing, and protection from forced evictions. Although the enjoyment of these services should be ensured by public authorities, the reality is that due to national legal regulations, governance problems, or *de facto* discrimination, migrants can't access them.

III. The share of responsibility and accountability between local, national, and regional governments

Human Rights issues are a shared responsibility across governmental levels and sectors. However, the variety of International Organizations and Governing authorities at different levels i.e.: national, regional, and local add layers of subdivisions that act as a barrier to implementation. If the tasks of each sector or level are disconnected from one another, groups in vulnerable situations, such as migrants, are prone to have their needs unaddressed by the authorities. As stated in the Congress of Local and Regional Authorities 2014 by the EU Fundamental Rights Agency, FRA, *"Local and regional authorities have an obligation to support the fulfilment of human rights. They have the responsibility to respect human rights in their own work and to guarantee human rights respect for services that are commissioned, delegated or financed by them but carried out by other actors."*

Navigating the complex nature of basic services according to Human Rights frameworks

As duty bearers, Governments have the following obligations when guaranteeing Human Rights provided in the form of a basic services: to respect, protect and fulfil each of the “essential features” of each of them, in terms of availability, accessibility, acceptability, and adaptability. Nonetheless, when governments lack the capacity to address all basic services, or are overburdened by irregular demand, there are certain basic services that might be deemed more vital than others.

- *How then, can the access to some priority basic services facilitate the access to others? And what can local governments prioritize with regards to basic services in each different context?*
- *What is the role of local governments as enforcers of human rights and anti-discrimination legislation? What examples can be drawn?*

An example of the above can be illustrated by migrant workers; their accessibility to basic services can be hindered or promoted by the working atmosphere. The often precarious situation of migrant workers can lead to abuses of their economic, social and cultural rights. People smuggling or trafficking happens often with irregular fluxes of migrant workers and leaves a space for abuses to occur. For instance, when housing is offered by the employer, this can be used as an opportunity for further exploitation, as this gives more control to the employer over the migrant. In such cases, migrants can often be found living in precarious situations where the minimum standards for basic services are not met. In other cases, migrants can be left to finance their living costs; namely basic services.

Consequently, the need to minimize living expenditure can lead to migrants living in extremely poor housing conditions: lack of basic infrastructure including sanitation, electricity and potable water, and lastly overcrowding. Moreover, access to social basic services such as health can often be problematic. This all means that whatever the conditions the migrant is facing, either living with full respect of Human Rights, or having their Human Rights violated, affordability will always play a major role in advancing accessibility.

IV. Conclusions

Recognizing migrants as rights holders, acknowledging the benefits that they bring to destination countries and facilitating their integration into society is key to improving the living conditions of this group and the overall population, as well as instituting a system of fair recruitment for international labour migration. Failing to recognize the huge value of migrants and to support their integration legitimizes abuse and exploitation.

There are myriad ways in which destination countries can support the integration of migrants into society. **Ensuring that migrants have equal access to basic services is a foundation for the rest.** Likewise, destination countries should facilitate migrants' access to justice without fear of detection, detention or deportation, in order to help migrants fight for their rights. Despite legal, economic and other hurdles, national and local governments should seek to ensure that their administrations have the necessary capacities so that migrants can access basic social protection services irrespective of their migration status. Although international Human Rights conventions and UN resolutions signed by many countries clearly recognize that migrants, as any other citizen, have the right to access basic services, reality shows otherwise. Human Rights including education, housing and health are not always accessible to migrants for a variety of reasons such as legal barriers, discrimination, economic situation and others. Public authorities at all levels must ensure the implementation of their subscribed commitments to human rights and non-discrimination by seeking to give newcomers the same opportunities as that of long-term residents.

V. Glossary of Terms

Migration is the movement of a person or a group of persons, either across an international border, or within a State. It refers to any kind of movement of people, irrespective of length of stay and causes. Migration is often catalysed by people's hope and search for better futures or opportunities for themselves or their families. It is often compelled or aggravated by conflict, discrimination, poverty, lack of employment opportunities, etc.

A leading cause of migration is **labour migration** where nationals move in pursuit of employment opportunities. This is a cause often addressed by most States in their migration laws and some States take an active role in regulating outward labour migration and seeking opportunities for their nationals abroad. Another contributor to migration is coercion; **forced migration** includes an element of coercion such as threats to life and livelihood, whether arising from natural or man-made causes. Migrants who fall under these categories are often further marginalized. Although, International public law provides standards and obligations to guide and influence how forced migrants are to be treated, they are rarely enforced, which compounds their situation of vulnerability. Unaccompanied minors, women or persons with disabilities, or any other group that might require or need special attention to guarantee their protection within these groups are even more vulnerable. Asylum seekers, Refugees and Internally Displaced Persons (IDPs) often characterized as those who migrate due to coercion.

- **Asylum seekers** are those who seek safety from persecution or serious harm in a country other than their own and await a decision on the application for refugee **status** under relevant international and national instruments. In case of a negative decision, they must leave the country and may be expelled, as may any non-national in an irregular or unlawful situation, unless permission to stay is provided on humanitarian or other related grounds. Despite their applications being rejected, most try as much as possible to remain in the country.
- **Refugees** are people who, owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinions, are outside the country of their nationality and are unable or, owing to such fear, are unwilling to avail themselves of the protection of that country. Once a person is given the refugee **status**, they are entitled with a set of Rights.
- **Internally Displaced Person (IDP)** are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have **not crossed** an internationally recognized State **border**
- **Statelessness persons**, who are persons not considered as a national by any State under the operation of its law, or resettled persons who are relocated and integrated into another geographical area and environment, generally also fall under the forced migration group.

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