

General recommendation No. 26 on women migrant workers

Introduction

CEDAW decided at its 32 session in January 2005 to issue this general recommendation regarding those categories of women migrant workers who may be at risk of abuse or discrimination. The general recommendation was later adopted at the 42nd session in October 2008.

The GR contributes to the fulfillment of obligations of State parties to respect, protect and fulfil the human rights of women migrant workers, alongside (i) legal obligations contained in other treaties (ii) the commitments made under plans of action of world conferences (iii) the important work of migration focused treaty bodies especially this committee.

It is noted that while the convention on Migrant workers protects individuals, including migrant women on the basis of their migration states, CEDAW protects ALL women, including migrant women, against sex and gender based discrimination.

Migration presents new opportunities but it may also place their human rights and security at risk.

Hence this GR aims to elaborate on the circumstances that contribute to the specific vulnerability of many women migrant workers and experiences of sex and gender based discrimination as a cause and consequence of the violations of their human rights.

While States are entitled to control their borders and regulate migration, they must do so in full compliance with their obligations as parties to the human rights treaties they have ratified or acceded to. That includes the promotion of safe migration procedures and the obligation to respect, protect and fulfill the human rights of women throughout the migration cycle.

The scope of the general recommendation is limited to addressing the situations of the following categories of migrant women who, as workers, are in low-paid jobs, may be at high risk of abuse and discrimination and who may never acquire eligibility for permanent stay or citizenship.

These categories of migrant women are:

- (a) Women migrant workers who migrate independently;
- (b) Women migrant workers who join their spouses or other members of

their families who are also workers;

(c) Undocumented women migrant workers who may fall into any of the above categories.

CEDAW, however, emphasizes that all categories of women migrants fall within the scope of the obligations of States parties to the Convention and must be protected against all forms of discrimination by the Convention. Although both men and women migrate, migration is not a gender-neutral phenomenon. The position of female migrants is different from that of male migrants in terms of legal migration channels, the sectors into which they migrate, the forms of abuse they suffer and the consequences thereof. To understand the specific ways in which women are impacted, female migration should be studied from the perspective of gender inequality, traditional female roles, a gendered labour market, the universal prevalence of gender-based violence and the worldwide feminization of poverty and labour migration. The integration of a gender perspective is, therefore, essential to the analysis of the position of female migrants and the development of policies to counter discrimination exploitation and abuse.

Factors influencing women's migration

Women currently make up about one half of the world's migrant population. Various factors, such as globalization, opportunities, poverty, gendered cultural practices and gender-based violence in countries of origin, natural disasters or wars and internal military conflicts determine women's migration. These factors also include the exacerbation of sex-specific divisions of labour in the formal and informal manufacturing and service sectors in countries of destination, as well as a male-centred culture of entertainment, the latter creating a demand for women as entertainers. A significant increase in the number of women migrating alone as wage earners has been widely noted as part of this trend.

Sex- and gender-based human rights concerns related to migrant women

Violations of the human rights of women migrant workers occur in countries of origin, countries of transit and countries of destination and this general recommendation addresses all three.

In countries of origin before departure

Even before they leave home, women migrant workers face myriad human rights concerns, including complete bans or restrictions on women's out-migration based on sex or sex combined with age, marital status, pregnancy or maternity status, occupation-specific restrictions or requirements that women must have written permission from male relatives to obtain a passport to travel or migrate.

Women are sometimes detained by recruiting agents for training in preparation for departure, and they may be subject to financial, physical, sexual or psychological abuse. Women may also suffer the consequences of restricted access to education, training and reliable information on migration.

In countries of transit

Women migrant workers may face a variety of human rights concerns when transiting through foreign countries. When travelling with an agent or escort, women migrants may be abandoned if the agent encounters problems in transit or upon arrival in the country of destination. Women are also vulnerable to sexual and physical abuse by agents and escorts.

In countries of destination

Once they reach their destinations, women migrant workers may encounter multiple forms of de jure and de facto discrimination. There may be situations where women migrant workers face additional hazards compared to men because of gender-insensitive environments that do not allow mobility for women, and that give them little access to relevant information about their rights and entitlements. Gendered notions of appropriate work for women result in job opportunities that reflect familial and service functions ascribed to women and therefore occupations in which women dominate are domestic work or certain forms of entertainment.

In addition, such occupations may be excluded from legal definitions of work, thereby depriving women of a variety of legal protections.

Women migrant workers thus face hazards on the basis of sex and gender, as well as on the basis of their migrant status.

Women migrant workers often suffer from inequalities that threaten their health. They may be unable to access health services, including reproductive health services, because insurance or national health schemes are not available to them, or unaffordable fees.

Discrimination may be especially acute in relation to pregnancy. Women

migrant workers may face mandatory pregnancy tests followed by deportation if the test is positive; coercive abortion or lack of access to safe reproductive health and abortion services, when the health of the mother is at risk, or even following sexual assault; absence of, or inadequate, maternity leave and benefits and absence of affordable obstetric care, resulting in serious health risks.

Women migrant workers are more vulnerable to sexual abuse, sexual harassment and physical violence, especially in sectors where women predominate.

Domestic workers are particularly vulnerable to physical and sexual assault, food and sleep deprivation and cruelty by their employers.

Access to justice may be limited for women migrant workers. In some countries, restrictions are imposed on the use of the legal system by women migrant workers to obtain remedies for discriminatory labour standards, employment discrimination or sex- and gender-based violence.

There may be other impediments, such as unresponsive and hostile officials and, at times, collusion between officials and the perpetrator.

In addition to these formal barriers, practical barriers may prevent access to remedies. Many may not know the language of the country and do not know their rights.

They often lack knowledge of their embassies and it may be very difficult for women migrant domestic workers who are scarcely ever out of sight of their employers to even register with their embassies or file complaints. As such, women may suffer violence and abuse for long periods of time before the situation is exposed. In addition, the withholding of passports by employers or the fear of reprisal if the women migrant worker is engaged in sectors that are linked to criminal networks prevent them from making a report.

Undocumented women migrant workers are particularly vulnerable to exploitation and abuse because of their irregular immigration status, which exacerbates their exclusion and the risk of exploitation. They may be exploited as

forced labour, and their access to minimum labour rights may be limited by fear of

denouncement. They may also face harassment by the police.

Recommendations to States parties

Common responsibilities of countries of origin and destination

These include:

(a) Formulating a comprehensive gender-sensitive and rights-based policy:

States parties should use the Convention and the general recommendations to formulate a gender-sensitive, rights-based policy on the basis of equality and non-discrimination to regulate and administer all aspects and stages of migration, to facilitate access of women migrant workers to work opportunities abroad, promoting safe migration and ensuring the protection of the rights of women migrant workers

(articles 2 (a) and 3);

(b) States parties should seek the active involvement of women migrant workers and relevant non-governmental organizations in policy formulation, implementation, monitoring and evaluation (article 7 (b));

(c) States parties should conduct and support quantitative and qualitative research, data collection and analysis to identify the problems and needs faced by women migrant workers in every phase of the migration process (article 3).

Responsibilities specific to countries of origin

Countries of origin must respect and protect the human rights of their female nationals who migrate for purposes of work. Measures that may be required include, but are not limited to, the following:

(a) Lifting of discriminatory bans or restrictions on migration on the basis of age, marital status, pregnancy or maternity status.

(b) Education, awareness-raising and training all stakeholders.

(i) Deliver or facilitate free or affordable gender- and rights-based pre-departure information and training programmes that raise prospective women migrant workers' awareness of potential exploitation, including: recommended contents of labour contracts, legal rights and entitlements in countries of employment etc.

(ii) Provide a list of authentic, reliable recruitment agencies and create a unified information system on available jobs abroad;

(v) Promote community awareness-raising concerning the costs and benefits of all forms of migration for women and highlight the risks, dangers and opportunities of migration;

(vi) Encourage the media, information and communication sectors to

contribute to awareness-raising on migration issues;

Regulations and monitoring systems, as follows:

States parties should adopt regulations and design monitoring systems to ensure that recruiting agents and employment agencies respect the rights of all women migrant workers.

- Legal and administrative assistance: States parties should ensure the availability of legal assistance in connection with migration for work. (articles 3 and 11);

- Safeguarding remittances of income: States parties should establish measures to safeguard the remittances of women migrant workers

- Facilitating the right to return: States parties should ensure that women who wish to return to their countries of origin are able to do so free of coercion and abuse (article 3);

- Diplomatic and consular protection: States parties must properly train and supervise their diplomatic and consular staff to ensure that they fulfil their role in protecting the rights of women migrant workers abroad.

Responsibilities specific to countries of transit

States parties through which migrant women travel should take all appropriate steps to ensure that their territories are not used to facilitate the violation of the rights of women migrant workers. Measures that may be required include, but are not limited to, the following:

(a) Training, monitoring and supervision of Government agents and to ensure that their border police and immigration officials are adequately trained, supervised and monitored for gender-sensitivity and non-discriminatory practices when dealing with women migrants (article 2 (d));

(b) States parties should take active measures to prevent, prosecute and punish all migration-related human rights violations that occur under their jurisdiction.

Responsibilities specific to countries of destination

States parties in countries where migrant women work should take all appropriate measures to ensure non-discrimination and the equal rights of women migrant workers, including in their own communities. Measures that may be required include, but are not limited to, the following:

(a) Lifting of discriminatory bans or restrictions on immigration:

(b) States parties should ensure that constitutional and civil law and labour codes provide to women migrant workers the same rights and protection that are extended to all workers in the country, including the right to freely associate. They should ensure that contracts for women migrant workers are legally valid. In particular, they should ensure that occupations dominated by women migrant workers, such as domestic work and some forms of entertainment, are protected by labour laws. The laws should include mechanisms for monitoring workplace conditions of migrant women, especially in the kinds of jobs where they dominate.

(c) Access to remedies: States parties should

(i) Promulgate and enforce laws and regulations that include adequate legal remedies and complaints mechanisms, and put in place easily accessible dispute resolution mechanisms, protecting both documented and undocumented women migrant workers from discrimination or sex-based exploitation and abuse;

(ii) Provide temporary shelters for women migrant workers who wish to leave abusive employers, husbands or other relatives

(d) States parties should ensure that employers and recruiters do not confiscate or destroy travel or identity documents belonging to women migrants.

(e) States parties should ensure that family reunification schemes for migrant workers are not directly or indirectly discriminatory on the basis of sex (article 2 (f));

(g) Training and awareness-raising: States parties should provide mandatory awareness-raising programmes concerning the rights of migrant women workers and gender sensitivity training for relevant public and private recruitment agencies and employers and relevant State employees, such as criminal justice officers, border police, immigration authorities, border police and social service and health-care providers (article 3);

(h) Monitoring systems: States parties should adopt regulations and design monitoring systems to ensure that recruiting agents and employers respect the rights of all women migrant workers. States parties should closely monitor recruiting agencies and prosecute them for acts of violence, coercion, deception or exploitation

Protection of undocumented women migrant workers:

the situation of undocumented women needs specific attention. Regardless of the lack of immigration status of undocumented women migrant workers, States parties have an obligation to protect their basic human rights.

If they are arrested or detained, the States parties must ensure that undocumented women migrant workers receive humane treatment and have access to due process of the law, including through free legal aid. If deportation cannot be avoided, States parties need to treat each case individually, with due consideration to the gender-related circumstances and risks of human rights violations in the country of origin (articles 2 (c), (e) and (f));

Bilateral and regional cooperation

1. States parties who are sending or receiving and transit countries should enter into bilateral or regional agreements or memorandums of understanding protecting the rights of women migrant workers as elaborated in this general recommendation (article 3);
2. States parties are also encouraged to share their experience of best practices and relevant information to promote the full protection of the rights of women migrant workers (article 3);
3. States parties should cooperate on providing information on perpetrators of violations of the rights of women migrant workers. When provided with information regarding perpetrators within their territory, States parties should take measures to investigate, prosecute and punish them .