

GUIDE

FOR THE DEVELOPMENT OF
MIGRATION LEGISLATION IN
MEXICO WITH A GENDER
PERSPECTIVE

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PRESENTATION

Promoting safe migration for women, and supporting countries in the adoption of the regulatory framework proposed by the Convention on the Elimination of All Forms of Racial Discrimination against Women (CEDAW) through its General Recommendation No. 26 (CEDAW GR 26), is a fundamental goal of the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), which is committed to the promotion of the rights of women migrants. Since it was created in 2010, UN Women has furthered the Convention and its Recommendation 26 as powerful instruments for the protection of the rights of women migrant workers.


In order to promote and protect the rights of migrant workers and to count on a legal framework in line with the international instruments ratified by Mexico, it is essential that the law includes and protects these people. In the light of this, we are therefore presenting this **Guide for the Development of Migration Legislation in Mexico with a Gender Perspective**, which is intended as a contribution to the formulation and implementation of migration laws with a gender equality perspective and considering the context of the country.

Within the framework of the project *Promoting and Protecting Women Migrant Workers' Labor and Human Rights: Engaging with National and International Human Rights Mechanisms to Enhance Accountably*, an initiative funded by the European Union and implemented in three countries at the global level (Mexico, Moldova and the Philippines), UN Women is committed to promoting the rights of women migrant workers and protecting them against exclusion and exploitation at all stages of migration. With this contribution, we reiterate our commitment to highlighting the status of women migrant workers, thus pushing forward the agenda for the protection of their rights and contributing to improved management of labor migration and governance, both of which are crucial factors for achieving economic growth and development.

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THIS **GUIDE** INTENDS TO PROVIDE SOME PRACTICAL TOOLS FOR THE MEMBERS OF CONGRESS WHO ARE RESPONSIBLE FOR **CREATING MEXICAN MIGRATION LEGISLATION WITH A GENDER PERSPECTIVE**, SO THAT IT HAS A **POSITIVE IMPACT ON WOMEN MIGRANT WORKERS** IN ACCORDANCE WITH **INTERNATIONAL STANDARDS ON HUMAN RIGHTS**.



Mexico is a signatory both to the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), and to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and is therefore legally bound by these Conventions, and by the recommendations presented by the Committees of each of these instruments.



Porque migrar
no es un delito.



ALVARO E. Guadamuz

Some of the **rights of women migrant workers recognized by General Recommendation No. 26 of the CEDAW** are:

Substantive equality between men and

women Equal employment opportunities

No discrimination Life free from

violence

Maternity and work-family reconciliation

Health and social security

Elimination of all forms of labor exploitation

Collective bargaining and unionization

Freedom of movement

Social inclusion: access to education and health services for women and their children

Access to justice

Access to migratory documentation for a regular stay with employment authorization

Access to family unity and the right to an identity (including children)

2011

Since the 2011 reform to the Political Constitution of the United Mexican States (the Constitution) in the area of Human Rights,¹ Mexico has made great efforts to harmonize its legislation with international instruments on human rights. In this respect, during recent years there have been changes in favor of women migrant workers: on the one hand, new laws were created, such as the 2011 Migration Law, which brought about significant progress on the issue of immigration, and the 2012 General Law to Prevent, Punish and Eradicate Crimes relating to Trafficking in Persons and to Protect and Assist the Victims of these Crimes, and its latest amendment of March 2014; and the 2007 General Law on Women's Access to a Life Free of Violence, its latest amendment of April 2014 and its relevant regulations, with its various reforms, the latest from March, 2014. On the other hand, in 2012 the Federal Labor Law (Ley Federal del Trabajo) was amended in order to give it a gender perspective² and to strengthen labor inspections, among other objectives.³

¹ Since the 2011 reform, observance of the law in Mexico implies respect for international treaties. This means that these international instruments are an essential part of the Mexican legal order and their principles are mandatory for the Mexican Government. In this respect, the first article of the Constitution establishes the control of conventionality: "In the United Mexican States, all individuals shall be entitled to the human rights granted by this Constitution and the international treaties signed by the Mexican State, as well as to the guarantees for the protection of these rights. Such human rights shall not be restricted or suspended, except for the cases and under the conditions established by this Constitution itself." (Supreme Court of Justice of the Nation, 2013).

² The principle of substantive equality between women and men workers, as well as new rights of responsible paternity, and of conciliation and co-responsibility in family life and work, were included to accompany reproductive and maternity rights.

Although these new laws and reforms represent some progress toward the protection of the rights of women migrant workers, they do not fully address the human mobility and labor dynamics which are characteristic of the southern border, in particular with regard to women.⁴ Thus, most women migrant workers who come from Central America work irregularly because they do not have the necessary legal residence documents or work permits. These women participate in the informal economy doing precarious work for very low pay. Few qualifications are required and they are employed in invisible sectors which are considered "feminine," such as domestic service, caregiving, street vending, agriculture and the sex industry.

The vulnerability of women is compounded by the intersection of multiple forms of discrimination based on race, ethnic origin, socio-economic position, nationality, age, migratory status and gender related qualities. These forms of discrimination can also be found at the legal level. For example, in the case of Mexico, the laws tend to maintain the stereotypes of "women caregivers" and "men providers" by issuing women with migratory documents which are associated to their male partners, as financially dependent individuals with no authorization to work. This lack of acknowledgment of the rights of women has profound implications, not only because they have fewer opportunities and a more limited access to employment, but also because it highlights their vulnerability in the abusive conditions of their informal work, as well as in situations of domestic violence.

³ The 2012 reform to the Federal Labor Law increased the penalties for employers (art.994). This reform led to the reform of the Regulations on Labor Inspections, including technical assistance, extraordinary reviews and alternative mechanisms to labor inspections (arts.18, 28, and 46, respectively).

⁴ For more information about *de jure* compliance of Mexican legislation with CEDAW General Recommendation No. 26 on the effective protection of the rights of women migrant workers from Central America in Chiapas see: UN Women and IMUMI (2014a). Mexican law and the rights of women migrant workers. Un análisis del cumplimiento de jure de la Convención sobre la Eliminación de todas las formas de Discriminación Contra la Mujer (CEDAW) y su Recomendación General no. 26.



ACKNOWLEDGING GENDER EQUALITY AND REGULATING THE WORK OF WOMEN MIGRANTS, AS WELL AS GUARANTEEING THEIR RIGHTS IN ACCORDANCE WITH INTERNATIONAL STANDARDS, ARE A MATTER OF EQUALITY AND EFFICIENCY WHICH IS CRUCIAL TO ALL ASPECTS OF DEVELOPMENT. IN THIS RESPECT, MIGRATION LEGISLATION WITH A GENDER PERSPECTIVE OFFERS SEVERAL ADVANTAGES:

IT PROMOTES EQUAL OPPORTUNITIES AND RIGHTS BETWEEN MEN AND WOMEN.

IT REDUCES THE VULNERABILITY OF WOMEN MIGRANT WORKERS TO EXPLOITATION AND VIOLENCE.

IT ENCOURAGES THE RESPECT OF THE RIGHTS AND HUMAN SAFETY OF THE MIGRANT POPULATION.

IT ENCOURAGES A MORE EFFICIENT AND EFFECTIVE MANAGEMENT OF SERVICES AND RESOURCES WHEN ATTENDING THE MIGRANT POPULATION.

IT IS MORE REPRESENTATIVE.

IT CONTRIBUTES TO HUMAN DEVELOPMENT AND SOCIAL EQUALITY.

The **government of Mexico** defines migration in the 2013-2018 National Development Plan as an increasingly important challenge for the country. Likewise, it acknowledges the conditions of greater vulnerability faced by women in the migration process and it concludes that using a gender perspective is decidedly relevant in this matter (SHCP, 2013a). It therefore created a programmatic framework for the 2013-2018* period in which it continues the efforts to harmonize the law with international regulations initiated with the 2011 reform on the issue of human rights.



* The Mexican government established a programmatic framework for the 2013-2018 six-year period. This includes the National Development Plan, cross-cutting programs such as the gender and migration programs, and the programs of each ministry. In these instruments the Executive Branch sets forth the objectives, priorities and strategies that will guide the actions of the public federal administration during the six year period.

Listed below are the key aspects which should be considered in order to have migration legislation with a gender perspective which aims to **guarantee the effective enjoyment of the human and labor rights of women migrant workers.**

The list includes, but is not limited to, problematic situations and some recommendations toward their favorable resolution.



UN Women/Eduardo Carola

STEPS FOR
CREATING
MEXICAN
MIGRATION
LEGISLATION
WITH A
GENDER
PERSPECTIVE

1

Harmonize national legislation with international regulations on the protection of the rights of women migrant workers.*

The legislation should:

GUARANTEE SUBSTANTIVE EQUALITY BETWEEN MEN AND WOMEN UNDER THE LAW

PROBLEM

THE PROVISIONS THAT REGULATE
MIGRATORY DOCUMENTATION INDIRECTLY
DISCRIMINATE AGAINST WOMEN

Currently, the regulations on migratory documentation exclude women migrant workers from Central America at the southern border from access to safe conditions when they enter, stay and work in Mexico.

For example, the complex requirements and cost of migration documentation are an indirect form of discrimination against women. Between January, 2011 and July 16, 2014, the INM only issued 153 employer certificates to hire foreign women as domestic workers (INM Chiapas Federal Delegation, 2014), while one third of Central American women in Chiapas (PEA) and 70% of women who cross temporarily are domestic workers (INEGI, 2011; INM *et al.*, 2012). In this respect, migration legislation does not help regulate the migration of women workers. In fact, it excludes them from labor rights such as social security, and leaves them unprotected from the abuse of employers, thus failing to reach the goal of ensuring their rights.

* In the Annex, there is a table which systematizes the recommendations made by the CEDAW in its General Recommendation No. 26 on women migrant workers, and by the CMW in its General Comment No.1 on domestic workers, for each of the violations or obstacles to accessing the rights of women migrant workers identified by the CEDAW General Regulation No. 26.

RECOMMENDATIONS

GENERATE A QUOTA SYSTEM THAT WILL GUARANTEE SUBSTANTIVE EQUALITY BETWEEN MEN AND WOMEN AND A GENDER-SENSITIVE MIGRATION REGULARIZATION SYSTEM

In accordance with the Migration Law and its Regulations (art.120), the INM and the Department of Labor and Social Security (Secretaría de Trabajo y Previsión Social, STPS) shall design a quota system that will determine the authorization of work visas. The recommendation is that this system should guarantee substantive equality between men and women; that is, it should include the types of work carried out by a large part of the women workers from Central America at the southern border: domestic service, retail sales activities, waitressing, agriculture and entertainment. This action implies taking into consideration the labor market at the cross-border region, labor discrimination against women in Mexico and the feminization of migration.

Another recommendation is to facilitate legal employment through migration regularization channels which are gender-sensitive, for example, by creating flexible payment plans for migration duties and fines (which take into consideration the occupation, wage differences and the number of persons to be regularized in a family).

Eliminate stereotypes such as “women caregivers” and “men providers” from the law

PROBLEM

NEGATIVE STEREOTYPES WHICH DISCRIMINATE
AGAINST WOMEN AND PREVENT THEM FROM
HAVING ACCESS TO THE LABOR MARKET UNDER
THE SAME CONDITIONS AS MEN

The laws tend to maintain the stereotypes of "women caregivers" and "men providers" by issuing women with migratory documents which are associated to their male partners, because they are considered to be financially dependent individuals with no authorization to work.

Migration Law contains important loopholes: the process for obtaining residence permits independently from their husbands, or which facilitate the legal permanence of women who are fleeing from abusive husbands is not clear. Thus, in addition to denying women access to the labor market under equal conditions to those of men, the Migration Law fails to adequately protect women who are victims of domestic violence.

RECOMMENDATIONS

ISSUE AN INDEPENDENT MIGRATION DOCUMENT FOR
WOMEN

There should be two ways in which women can migrate: as dependents, if one of the spouses has work, or independently, by issuing women migrants with a residence and work permit document separately from their spouses. These separate documents would acknowledge the work carried out by women and their contribution to development in full equality with men. This would also put women in a better position for demanding respect for their rights.

PROTECT THE LABOR RIGHTS OF WOMEN MIGRANT WORKERS

PROBLEM

NO STRUCTURES FOR GUARANTEEING DECENT
WORKING CONDITIONS IN OCCUPATIONS CONSIDERED

TO BE "FEMININE":

THE CASE OF WOMEN DOMESTIC WORKERS

The Federal Labor Law still does not acknowledge full labor rights to occupations with high concentrations of women or considered "feminine," such as domestic work. Women migrants who work in domestic service on the southern border share the same discrimination under the law as their Mexican counterparts.

The Federal Labor Law establishes a work day of up to 12 hours without considering the payment of extra time (art. 333), while the Social Security Law establishes that access to social security for women domestic workers is optional (art.13). Without the right to social security, there is limited access to maternity leave, the right to a pension, care for children, disability subsidies, vacations and Christmas bonuses, among other benefits.

Migrant women in domestic service usually work in conditions which are unfair or which affect their dignity, under threat of being reported to the authorities due to their irregular migratory status (INMUJERES, 2008, Instituto Estatal de las Mujeres de Chiapas, 2008; Rojas, Fernández, Ángeles, 2008; Fernández, 2012). The General Anti-Trafficking Law (La Ley General de Trata) defines this practice as "forced labor" (art. 22 III). However, neither the General Anti-Trafficking Law nor the Federal Labor Law provides any specific provisions concerning the supervision and inspection of the labor conditions of domestic workers. In this respect, the law tends to aggravate the lack of protection of the rights of women workers who are already in situations of acute vulnerability.

Finally, there are inconsistencies between labor law and migration law. Verification of work offers and working conditions for foreigners requires close cooperation between labor and migration authorities. This is currently absent in labor regulations.

RECOMMENDATIONS

ACKNOWLEDGE RIGHTS AND PROMOTE THEIR COMPLIANCE BY INSPECTING WORKING CONDITIONS

Acknowledge the rights of domestic women workers, specifically regulate the work day and guarantee the right to social security. In this respect, the CEDAW Committee has recommended that Mexico should ratify ILO Convention No. 189 on decent work for domestic workers.

The CMW committee recommended that Mexico should supervise the working conditions of women who do domestic work, both in 2006 (para. 34) and in 2011 (para. 38).

PREVENT VIOLENCE AGAINST WOMEN MIGRANT WORKERS

PROBLEM

NO MECHANISMS FOR THE PREVENTION OF VIOLENCE AGAINST WOMEN MIGRANT WORKERS

The Federal Labor Law prohibits harassment and sexual harassment (art. 133). It does not provide for any remedies to compensate for the damage caused to women or men workers who lose their jobs as a result of this violence. In the case of migrant women, this means that in addition to losing their jobs, their migratory status also becomes irregular, since all migration documents containing the work permits are associated with the job offered by one employer. Thus, under the Migration Law a woman migrant worker has limited possibilities of terminating a work relationship even when she is being exploited.

RECOMMENDATIONS

STRENGTHEN THE PROVISIONS FOR THE INSPECTION OF WORKING CONDITIONS IN THE FEDERAL LABOR LAW AND IN THE MIGRATION LAW. REMOVE THE LINK BETWEEN WORK PERMITS FOR MIGRANT PEOPLE AND AN EMPLOYER'S WORK OFFER

In order to prevent violence against women workers, labor inspections should be strengthened through a law which ensures that in practice:

- a. Employers are evaluated in terms of compliance with the law and decent working conditions,
- b. Sanctions are encouraged for non-compliance with and violation of the rights of women workers, and
- c. Access to labor justice for women migrant workers is facilitated. It further recommends the issuance of documents to women migrant workers which authorize them to work without any association to an employer.

Guarantee their access to justice

PROBLEM

NO EFFECTIVE ACCESS FOR WOMEN MIGRANT WORKERS TO
EXISTING MECHANISMS
OF LABOR CONCILIATION AND JUDICIAL ACTIONS

According to the Federal Labor Law, the Department of Labor and Social Security (STPS) delegates the resolution of different labor disputes to the local conciliation and arbitration boards. However, the boards send back the cases involving foreigners to the federal agencies, thus showing that responsibilities are not complied with at any level. In practice, the tasks of labor supervision and conciliation are assigned to a foreign entity, such as a consul, who is not the competent authority (Ancheita and Bonnici, 2013).

RECOMMENDATION

LEGISLATION SHOULD SPECIFY THAT THE BOARD IS
RESPONSIBLE FOR ENSURING ACCESS TO JUSTICE
FOR WOMEN MIGRANT WORKERS

Create standards for instructing the conciliation and arbitration boards on their obligations to guarantee the respect of women migrant workers' rights, regardless of their immigration status.



PROMOTE SOCIAL INCLUSION AND FAMILY UNITY

PROBLEM

NO EFFECTIVE ACCESS FOR WOMEN MIGRANT WORKERS TO RIGHTS AND SERVICES, SUCH AS HEALTH AND EDUCATION

The Migration Law provides for the right to health (art. 8), the right to education (art. 8), the right to identity (arts.9 and 12) and the right to family unity (arts. 2, 10, 12, 54 and 55). However, the discretionary interpretation of the Migration Law, for example concerning the right to health through health services, may be raised as an obstacle to accessing this service and right.

In addition, since an Individual Registration Number (Clave Única del Registro de Personas, CURP) is required for accessing most services, women workers with an irregular status, including Mexican women, and their children are prevented from exercising their rights and from accessing these services.

RECOMMENDATION

LEGISLATION SHOULD SPECIFY THE RESPONSIBILITY OF HEALTH CARE AND EDUCATION SERVICE PROVIDERS TO ENSURE ACCESS TO HEALTH CARE AND EDUCATION FOR WOMEN MIGRANT WORKERS AND THEIR CHILDREN

Create standards for instructing health care and education service providers on their obligations to guarantee the respect of women migrant workers' rights, regardless of their immigration status.

2

Introduce special temporary measures or affirmative actions to compensate for the forms of discrimination which have had a negative effect on the current situation of women migrant workers,

PROBLEM

GENDER-NEUTRAL PROCESSING OF MIGRATION

DOCUMENTS RESULTS IN DISCRIMINATION AGAINST

WOMEN: THE CASE OF WOMEN MIGRANT

AGRICULTURAL WORKERS IN CHIAPAS

Immigration for agricultural work in Chiapas generally takes place in family groups (Rojas, 2013). Most Guatemalan families are not able to afford the cost of obtaining documents for all family members as required by the law,¹ so they only process a work permit for the man or the head of the family. As a result, women, who are effectively going to work, are documented as “companions” (Rojas and Ángeles, 2012) or enter the country irregularly (Fray Matías de Córdova Human Rights Center, Institute for Women in Migration and Doctors of the World France-Mexico Mission 2013).

Due to the marginalization² they are subjected to in their countries of origin, women migrants who do agricultural work are not usually in a position to recognize

¹ The cost of the document for a cross-border worker is \$305.65 and is free for workers with minimum wages or less. This aspect of migration makes it possible for the wife and children to apply for entry into the country as financial dependents. Pursuant to art. 77 of the Guidelines, the cost of the documents for each companion is also \$305.65. According to Emif Sur, *Procedentes de México, 2009*, 50.9% of the temporary crossings were made by women who earn more than a minimum wage, while 40.7% were women who earn less than one minimum wage and who could be exempt from paying for the document (which cost \$1,904 at that time). Due to lack of information and recognition of the work carried out by women agricultural workers, this population does not have access to migration documents. This year only 18.6% of temporary crossings (by men and women) used the Visiting Agricultural Worker Migration Form or the Cross-Border Worker Migration Form (INM *et al.*, 2012).

² Marginalization is the exclusion generated by the production model proposed by various social groups for development and its benefits. The marginalization index includes the following elements: illiteracy and incomplete elementary school studies; homes with no sewage or sanitary facilities, no electricity, no running water, dirt floors and overcrowded, conditions; small villages; and incomes lower than two minimum wages (CONAPO, 2013).

and achieve greater equality of opportunities and rights between men and women. These measures should be included in the budget, with specific resources.

and/or exercise their own rights. For example, the chances for women to negotiate their own contracts and working conditions are usually restricted due to the traditional practice of carrying out negotiations between the recruiter or employer and the male members of the family group.

This discrimination continues when the employer does not include women in the list of personnel to be hired (labor offer) which he submits to the INM for document processing, since he will pay less in wages (in terms of labor costs and social security) than if he hires them formally. Thus, when migrant women cross the border and register their stay, the migration authorities register them as "companions," even though they know that they are going to work with the men on the farms (Rojas and Ángeles, 2012; Rojas, 2013).

RECOMMENDATION

PROPOSAL FOR AFFIRMATIVE ACTION

TO MITIGATE ANCESTRAL DISCRIMINATION

To address the disadvantageous situation of many women migrant workers, affirmative actions through legislation are needed to enable them to obtain free documents as cross-border workers. This specific temporary action would compensate for some of the negative impacts of discrimination suffered by women for hundreds of years, and would begin to generate a cultural change in the families of cross-border workers, contractors, employers and migration authorities in the region.

3

Use Evidence

Create a diagnosis of the cross-border labor market, the demand for women migrant workers and the conditions of access for women migrant workers to this market; generate information and knowledge on women migrant workers from Central America in Chiapas and their migration dynamics, and produce statistical data broken down by sex, in order to detect inequalities in access to decent work and the ability to exercise their rights.

PROBLEM

THE MIGRATION LAW DOES NOT CONTRIBUTE TO
THE INCLUSION OF WOMEN MIGRANT WORKERS FROM
CENTRAL AMERICA IN THE LABOR MARKET
IN DECENT WORKING CONDITIONS

The Department of the Interior estimates that in 2013, 59% of the foreigners who worked on the southern border did not have authorization and 54% of the people who entered the country with a Regional Visitor Card (who are not authorized to work for pay) worked and/or stayed in Mexico longer than the 72 hours authorized (SEGOB, 2014). This shows that more information is needed on women migrant workers and their access to the cross-border labor market in order to make migration requirements affordable and to help regularize their migration and work status. This is a crucial step towards promoting the exercise of the rights of migrants.

RECOMMENDATIONS

MAKE AMENDMENTS TO THE LAW BASED ON EVIDENCE IN
ORDER TO PROMOTE ACCESS FOR WOMEN MIGRANT
WORKERS TO THE LABOR MARKET AND TO DECENT
WORKING CONDITIONS, FOR EXAMPLE:

Establish more affordable requirements for the migratory documentation of these people, and exempt them from paying fees and fines; extend permits to include remunerated activities for regional visitors; extend work permits which cover independent work to temporary residents and visitors (with authorization to carry out remunerated activities), and establish a quota system which would guarantee substantive equality between men and women.

4 Prepare the draft legislation with inclusive language¹, otherwise it will simply continue to reproduce asymmetric, hierarchical and unequal relations. For example, the Federal Labor Law only makes explicit reference to women workers or women

when addressing maternity rights during the gestation and lactation periods. Women should be included in the remaining articles of the law.

¹ See: INMUJERES (2012); Universidad Pedagógica Veracruzana, Unidad de Género (2011); CONAPRED (2009); and Fundación Centro Tecnológico de la Información y la Comunicación y Unión Europea (2008).



5

Take into consideration the opinions of experts, civil society organizations and women migrant workers themselves when preparing the draft legislation, as suggested by CEDAW General Recommendation No. 26.

RECOMMENDATIONS TO STATES PARTIES:

COMMON RESPONSIBILITIES OF COUNTRIES OF
ORIGIN AND DESTINATION. PARAGRAPH 23.

THE COMMON RESPONSIBILITIES OF COUNTRIES OF
ORIGIN AND DESTINATION INCLUDE, BUT ARE NOT
LIMITED TO, THE FOLLOWING:

- b) Promote the active involvement of women migrant workers and relevant non-governmental organizations: 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)); of CEDAW.

The articles cited in the recommendations are those articles in the Convention which correspond to the elimination of all forms of discrimination against women.

6

Relate migration law to a gender-sensitive budget

A gender-sensitive migration law must be supported by a budget which has been fairly defined and distributed, in recognition of the different realities, needs and interests presented by women and men. It should also provide funds for resolving existing inequalities, otherwise it will simply reinforce them. In this respect, budget allocations are important because (UN Women, 2014):

- a) they establish the goals and specific actions that should be taken in order to reduce gender inequality;
- b) they help promote plans and projects with a gender perspective;
- c) they help monitor expenses and the commitment of the Executive Branch to gender equality;
- d) and they promote the creation of public agendas on gender equality.

For example, if the legislation provides for affirmative actions, such as the actions recommended to resolve problem 7, there will need to be a budget allocation in order for these to take effect. This budget allocation should be determined according to impact indicators associated with the goals of the affirmative action, such as: the number of women documented as agricultural workers, the percentage increase in the number of documents issued to women workers compared to the previous year, the number of agricultural work offers for women migrant workers, the percentage increase in the number of women contracted for regular agricultural work compared with the previous year. This is because current indicators are predominantly management-related and do not measure the results against a reduction of the equality gap between men and women (UN Women, 2013).

7

Analyze the impact of migration legislation on gender relations

It is important to examine the potential consequences of the application of the law for women and men in order to analyze their differences. This analysis should be made from a substantive approach to gender equality, both in terms of the goals and the results of any public action.

- a. The above examples show some of the ways that legislation should be analyzed in order to measure the impact of laws on the exercise of migrants' rights, on their access to the labor market and on gender relations.
- b. The results of this analysis should be used for making proposals and correcting drafts, in the same way as some of the recommendations presented in this guide, in order to prevent or reverse gender inequalities which were initially overlooked.
- c. Finally, it is important to note that public resources shall also be allocated in order to ensure gender equality.

ANEXO

TABLE 1

International framework for the protection of the rights of women migrant workers signed by Mexico

Violations and/or Obstacles to Access to the HR of Women Migrant Workers	CEDAW
Labor market discrimination against women migrant workers	
Sexual and gender discrimination in the labor market Failure to acknowledge women's work Work permits are for men and not for women	Art. 2, 11
Employers prefer to hire men Lower wages for women than for men Discrimination due to pregnancy	
Obstacle: intersection of gender discrimination with xenophobia	
<i>Discrimination, racism and xenophobia against women migrant workers</i> Cultural stereotypes Lower wages for certain ethnic groups and/or nationalities	Arts. 2, 5, 11
Obstacle: gender-based violence in the workplace	
Physical, psychological, sexual and gender violence in the workplace	Art. 2
Obstacle: terms and conditions of exploitation in the workplace	
Terms and conditions of work	
Hazardous, abusive and exploitative work terms and conditions	Art. 2, 11
Lack of safety, hygiene and/or privacy in work and housing conditions	
Women trapped in jobs with abusive employers or in abusive relationships with their husbands	Art. 2
Restrictions on organizing and associating for their protection and collective bargaining	Art. 2, 11
Situations of deceit, coercion and/or exploitation or human trafficking	Arts. 2 and 6

CEDAW General Recommendation No.26	CMW	General Comment No. 1 on domestic migrant workers
<p>— Para. 13 and 14 Para. 13 and 14, and subs. a) Para. 13 Rec. 26, subs. a) Para. 18</p>	<p>Art. 25 1 Art. 25 Art. 25 (1) — Art. 25 (1) Art. 25 (1)</p>	<p>Para. 61 — — — — Para. 22 and 61</p>
<p>Para. 14.15</p>	<p>Art. 7</p>	<p>Para. 60 and 61</p>
<p>Para. 17, 20 and Rec. 26, subs. g),</p>	<p>Art. 16</p>	<p>Para. 13 g)</p>
<p>Para. 13, and Rec. 26, subs. b), d), and h) Paras. 17 and Rec. 26, sub. a) Paras. 20 -22, and Rec. subs. f) Rec. 26, subs. b) Paras. 22, and Rec. 26, subs. d)</p>	<p>Art. 7, 8, 10, and 16 para. Art. 16 (2) Art. 26, 40 Art. 11</p>	<p>Paras. 13, 53 Paras. 13, 53 Paras. 45-47 Paras. 51</p>

Obstacle: restrictions to freedom of movement

Confiscation or destruction of women workers' travel or identity documents
Employment conditions restrict freedom of movement for women migrant workers to go home, while coercion and abuse are obstacles for returning to their countries of origin

Arts. 2, 5, 11, 15

Obstacle: limitations to the right to health (including children)

Access to health (including children)
Sexual and gender discrimination in terms of health
Obstacles that prevent their children from having access to health, including medical emergencies.
No access to sexual and reproductive health services and counseling
c. Discrimination due to HIV/AIDS

Arts. 2 and 12

Obstacle: obstacles to accessing education

Obstacles that prevent their children from accessing an education

Art. 10

Obstacles to accessing justice

Obstacles to accessing justice

Restrictions to accessing legal counseling (free) and the justice system
Stereotyping means that women have less access to justice than men
Women do not have access to protection (and emergency housing), health and justice after being abused
Women do not have protection against situations of deceit. There are no mechanisms that protect women against

Art. 2, 15

Art. 2, 15

Obstacles: restrictions to collective bargaining and organization

Restrictions on organizing and associating for collective protection and negotiation

Art. 11, and 15

Paras. 21,
and Rec. 26, subs. d)

Rec. 26, subs. d)

Art. 21
Art. 8, and 39

Paras. 12 and 39
Paras. 13 a), and d),
and paras. 39

Paras. 17
Rec. 26, subs. i)
Rec. 26, subs. j)
Paras. 17, and
Rec. 26, subs. i)

Paras. 17

Art. 27
Art. 25, Para. 1, subs. a)
Art. 43
Art. 25, Para. 1, subs. a)
Art. 28
Art. 45
—

Paras. 42-44
Paras. 43 and 59
—
Paras. 61

Rec. 26, subs. k)

Art. 30
Art. 45

Paras. 57 and 59

Paras. 21, and Rec. 26,
b) c), l)

Art. 16, 4, 5, 6, 7, 8

Art. 18 (1) (3)

Paras. 49 and 50
—
Para. 50

Rec. 26, subs. b)

—
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—

Rec. 26, subs. f) and i)

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Rec. 26, subs. d)
Rec. 26, subs. b) and f)

Para. 22, Rec. 26,
subs. b)

Art. 26

Paras. 45-47

Obstacles to accessing migration documentation	
Obstacles to accessing migration documentation	Art. 2
Obstacle: restrictions to marrying a Mexican citizen	
Obstacles which prevent them from marrying a Mexican citizen	Art. 2 f)
Obstacle: Obstacles to achieving family unity	
Obstacles to family unity	—
Obstacle: Obstacles to accessing the right to an identity	
Obstacles that prevent their children from having an identity	—

Table 2

ILO Conventions which, when ratified by Mexico, will contribute to strengthening the protection of the rights of.

Convention 81, Labor Inspection Convention (1947).

Convention 97, Migration for Employment Convention (1949).

Convention 102, Social Security (minimum standards) Convention (1952). This convention has been accepted with reservations by Mexico. It is recommended to accept Part XII (Equality of Treatment of Non-national Residents).

Convention 118, Equality of Treatment Convention (1962). This convention has been accepted with reservations by Mexico.

Convention 129, Labor Inspection (Agriculture) Convention (1969).

Convention 143, Migration for Employment Convention (Supplementary Provisions) (1975).

Convention 156 and Recommendation 165 on Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities (1981).

Rec. 23, subs. a and 26, subs. a) and f)	Art. 69, paras. 1 and 2	paras. 51-53
Rec. 26, Subs. a)	—	—
Para. 19, Rec. 26, Subs. e)	Art. 44, paras. 1, 2	Para. 54 and 55
Rec. 26, subs. k)	Art. 29	Para. 58

Convention 183 and Recommendation 191 Maternity Protection Convention (2000).

ILO Convention 189 and Recommendation 201 on Decent Work for Domestic Workers (2011)

Source: Prepared by the author based on ILO (2014).

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