

CEDAW and Women's Migration in Asia

Factsheet

CEDAW

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted on 18 December 1979 and entering into force on 3 September 1981 is an international Convention that is also known as the "International Bill of Rights for Women". It is one of the core human rights treaties, and with 187 States Parties, CEDAW remains one of the most highly ratified UN Conventions. Governments who commit to CEDAW are legally bound to eliminate discrimination against women, including women migrant workers. The Convention comprehensively defines discrimination against women as including sexual and gender-based violence against women, and other human rights violations. CEDAW enjoys widespread support throughout Asia – for instance all Member States of ASEAN (the Association of Southeast Asian Nations) have ratified CEDAW.¹ Several other Asian countries have also made the commitment to implement CEDAW. All Member States of the South Asian Association for Regional Cooperation have committed to CEDAW.²

Like other core human rights treaties, CEDAW has a Committee that acts as an accountability mechanism – holding Member States to their obligations. The CEDAW Committee consists of 23 experts on women's rights from around the world.³ It performs a crucial monitoring and oversight role including assessing State Parties' compliance by: reviewing reports by States Parties and civil society including gender equality and women's empowerment organizations; assessing individual complaints of human rights violations; and creating jurisprudence (aids to interpret specific articles of CEDAW), called General Recommendations.

The CEDAW Convention is a unique tool to ensure full and equal participation and enjoyment of rights by women in all spheres of socio-economic, civil and political life. It seeks to reduce their vulnerability to abuse and exploitation of all kinds – on the basis of sex, gender, class, race, ethnicity, nationality and any other status.

"Some people still speak of human rights standards as "just words on paper", but this is certainly not the case for CEDAW. CEDAW has become a living law."
– Michelle Bachelet, speech at "CEDAW 30: A Celebration of the 30th Anniversary of the Committee on the Elimination of Discrimination against Women", 9 July 2012.

Migration and Women's Rights

The transnational mobility of women, especially young women moving independently, in search of decent work and sustainable livelihoods, is part of the rising tide of international migration, which is one of the "mega trends" of the 21st Century. Despite migration's benefits and the development potential of women migrant workers' contributions to economies and societies at home and abroad, women migrant workers face unique human rights concerns. However, because migration has largely been perceived as a gender-neutral, or even male phenomenon, migrant women's concerns and contributions have remained largely invisible.

Migrant women have been primarily perceived as dependents of migrant men, their families and communities. Their specific needs and interests have been subsumed under general concerns of their spouses, families, and even the state. However, the feminization of migration is a conspicuous new feature of international migration, propelled by globalization and characterized by an increased demand for women's labour, especially in feminized sectors of the economy and women's changing roles in economies and societies.

However, the feminization of migration is a conspicuous new feature of international migration, propelled by globalization and characterized by an increased demand for women's labour, especially in feminized sectors of the economy, and women's changing roles in economies and societies.⁴ Feminization is most visible in Asia,⁵ where women represent over half of all migrant workers. In some countries the figures are even higher – in Indonesia for instance, 83% of outgoing migrant workers are women,⁶ while in Sri Lanka, where migrant women have outnumbered men since the late 1990s, women migrant domestic workers make up the majority of outgoing migrants.⁷

Discrimination is a fundamental violation of women migrant workers' human rights, and thwarts human development. It is a drain on economic resources, erodes productivity, and constrains economic growth and development. It is therefore important that state and non-state actors in countries of origin and employment implement policies, legislation and programmes that promote and protect the rights of women migrant workers, in line with international human rights standards.⁸

1. UN Women (2008) Time for Action: Implementing CEDAW. "Foreword".

2. While most SAARC member states have ratified, as of August 2012 Bangladesh, the Maldives and Pakistan had acceded to CEDAW (which has the same legal effect as ratification).

3. OHCHR "Factsheet on CEDAW" (undated).

4. UN Women (2008) Gender, Migration and Development p. 12.

5. Ibid, p. 13.

6. IOM (2011) Labor Migration from Colombo Process Countries: Good Practices, Challenges and Way Forward p. 25.

7. Sri Lanka Statistics and Census Bureau (2010) "Bulletin of International Migration".

8. UN Women (2005) Claim and Celebrate Women Migrants' Human Rights through CEDAW p. iii.

CEDAW and Migration: General Recommendation No. 26¹⁰

To specifically address gender concerns in migration, UN Women supported the CEDAW Committee with the development of a CEDAW General Recommendation addressing gender and migration. This is because of CEDAW's crucial importance to protecting and empowering women, especially those most at risk of discrimination such as women migrant workers. The CEDAW Convention is the sole international legal instrument designed to promote and protect women's rights – socio-economic, civil and political – in both the public and private spheres. States Parties are obliged to protect and promote women's human rights, and are also accountable for rights violations by non-state actors, including the family.

Migration, especially poor women's out-migration for work, is a complex, multi-faceted phenomenon. Socio-economic and political discrimination against women in the public and private spheres is both the cause for poor women migrating to meet survival needs, as well as the cause and consequence of rights violations at all stages of the migration cycle.⁹ The Convention highlights measures

to be undertaken by States Parties to end discrimination – civil, economic, political, legal, health, education, rural development, family, culture and tradition. Several of these are relevant to addressing discriminatory conditions compelling women's migration for survival and to combating human rights violations against women migrants at different stages of the migration cycle.

The CEDAW General Recommendation No. 26, (GR No. 26) adopted by the CEDAW Committee in 2008, provides a bridge between CEDAW's broad guarantee against discrimination, and the unique needs of women migrant workers. Both CEDAW and the GR No. 26 contain robust protection for women migrant workers, throughout the migration cycle. Developed with both the support of UN Women and substantial consultation with civil society, including women migrant workers and their supporters and organizations, the CEDAW GR No. 26 adds value in three key ways:

- It takes a unique and comprehensive approach to protecting women migrant workers by ensuring that they are

protected throughout the migration cycle. This approach of addressing the particular human rights concerns of women migrant workers throughout the migration cycle has since been adopted by other human rights bodies, including the Committee on Migrant Workers in its General Comment No. 1 on Migrant Domestic Workers (adopted in 2010).

- It identifies and targets those women migrant workers who are especially at risk of human rights violations, such as those who: migrate independently; join spouses and family members abroad; and are undocumented.
- It outlines specific obligations for countries of origin, transit, and destination. These include gender-sensitive national laws, policies, programmes, and measures to protect women migrant workers. The CEDAW GR No. 26 also encourages bilateral and multilateral cooperation between governments. Effectively, this promotes gender-sensitive migration governance and coherence between labour, migration and trafficking laws and policies.

Key protections from CEDAW General Recommendation No. 26 require States Parties to:

- Facilitate women's access to safe, low-cost, legal migration channels including by: removing bans and restrictions on women's out-migration on the basis of sex, gender, and intersecting forms of discrimination; providing comprehensive gender- and rights-based pre-departure information and services for prospective women migrant workers; regulating recruitment agencies, employers, and private sector agents involved in labour migration; training, monitoring and supervising government agents involved in the migration process, especially in transit, and holding those who abandon or abuse women in transit accountable; removing indirect discrimination against women via visa schemes that tie women to feminized jobs; and enforcing family reunification schemes.
- Ensure that constitutional and civil law, as well as labour laws, provide to women migrant workers the same rights that are extended to all workers in the country, including key labour and social protections. This includes enforcing legally binding, valid contracts for women migrant workers with fair terms and conditions. Occupations dominated by women migrant workers such as domestic and entertainment work must be covered under labour laws, especially concerning wage and working hour regulations, health and safety codes, holidays and leave, and workplace monitoring.
- Enforce access to justice for women migrant workers, including redress for human rights violations at all stages of the migration cycle. Measures include: providing legal reviews of employment contracts to ensure legal validity; implementing adequate legal remedies and complaint mechanisms that protect all women migrant workers, documented and undocumented; training and gender-sensitizing consular and diplomatic staff so they can appropriately assist women migrant workers; providing shelters for abused women migrant workers; removing legal restrictions, including those concerning visas and immigration requirements, for women seeking redress; and facilitating legal assistance including free legal aid.
- Maximise women migrant workers' contributions to development by safeguarding their remittances and providing comprehensive return and reintegration services to women migrant workers on return to their countries of origin.

UN Women's Role – a Regional Programme on Empowering Women Migrant Workers in Asia

UN Women's work with women migrants draws upon international human rights standards, including CEDAW and the GR. No. 26 on Women Migrant Workers, and encompasses countries of origin, transit and destination. Working with governments, civil society and the private sector, efforts focus on promoting safe migration for women, eliminating trafficking, and enabling policy, institutional and socio-economic environments that ensure women's equal opportunities and benefits from migration. Specific programme support goes towards establishing laws and practices that protect women migrants' human rights, drawing connections between gender concerns in migration and development including plans and national poverty reduction strategies, strengthening migrants' organizations, and brokering exchanges between source and destination countries to advance labour and social protections.

9. Ibid p. 41.

10. CEDAW General Recommendation No 26 on Women Migrant Workers (CEDAW/C/2009/WP.1/R, 2008)