

International human rights framework for women migrant workers in South East Asia throughout the migration process

Factsheet

International Conventions and Regional Human Rights Standards in the Framework:

1. CEDAW: The Convention on the Elimination of All Forms of Discrimination against Women
2. GR No. 26: the CEDAW Committee’s General Recommendation No. 26 on Women Migrant Workers
3. ICRMW: International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
4. GC No. 1: the Committee on Migrant Workers’ General Comment No. 1 on Migrant Domestic Workers
5. ASEAN Declaration: The ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers

| | Human rights violations & concerns | Protections under the Framework |
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| Pre-departure in countries of origin. Decision to migrate | Socio-economic and political marginalization that compels migration for work. | <ul style="list-style-type: none"> • CEDAW Articles (Art) 1-16, on factors that compel migration for work and GR No. 26 paragraph (Para) 8 on factors influencing women’s migration. • The ASEAN Declaration obliges countries of origin to ensure access to employment and livelihood opportunities as sustainable alternatives to migration. |
| | Bans or restrictions on migration based on sex and gender. This ranges from requirements for a male spouse or relative to consent to a woman’s migration or travel with them to outright bans on the migration of women and girls. | <ul style="list-style-type: none"> • CEDAW Art 2: legal guarantees, penalties for violations; GR No. 26 Recs 24(a) and 26(a) requiring both sending and receiving countries to lift bans on women’s labour migration. • ICRMW Art 8: freedom of movement to and from state of origin; and GC No 1. Para 61 on removing bans on women’s migration. |
| Recruitment and immediate pre-departure | <p>Lack of access to credible, reliable information, education and training on how to:</p> <ul style="list-style-type: none"> • migrate via safe, legal and affordable channels; • avoid exposure to trafficking; • access labour and social protections such as health insurance and services and education for women and their families, in destination countries; • access justice mechanisms for rights violations in countries of transit and destination. | <ul style="list-style-type: none"> • CEDAW Art 10: equal rights to education and GR No. 26 Para 8: factors influencing women’s migration; Para 10: pre-departure human rights concerns; Para 21: access to justice; and Rec 24(b): duties of countries of origin including comprehensive gender-sensitive information service provision. • ICRMW Arts 13(2) and 33 and GC No 1 Paras 9 and 28: right to pre-departure information, awareness raising and training. • ASEAN Declaration Paras 11 and 13 oblige countries of origin to: enhance measures protecting and promoting migrant workers’ rights and prepare them for deployment. Para 17 calls on ASEAN to take concrete measures against trafficking. |
| | Economic exploitation and abuse including sexual and gender-based violence (SGBV) by employment agencies and other service providers. | <ul style="list-style-type: none"> • CEDAW Art 2: legal guarantees, penalties for violations, Art 5: gender discrimination, Art 11: equal rights in employment and 16: equal rights in the family. GR No. 26 Para 10 and Rec 26(c) on regulating employment agencies. • ICRMW Arts 64-66 on regulating migration including recruitment and GC No. 1 Paras 9 and 33-36 on exploitation by employment agents and measures to regulate them. • ASEAN Declaration Para 14 requires recruiters to be regulated and monitored. |

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| In countries of transit | Lack of knowledge on travel routes and destination, abandonment, physical and sexual abuse, etc. | <ul style="list-style-type: none"> • CEDAW Art. 10: equal rights to education; GR No. 26 Para 12 and Rec 25: human rights concerns in transit and responsibilities of transit countries. • GC No 1. Paras 10 and 31: women and girls face particular risks including SGBV; and transit, sending and receiving countries must cooperate to regulate migration. • The ASEAN Declaration Para 20 promotes assistance to ASEAN migrant workers in crisis or conflict from embassies and consulates, including outside ASEAN. |
| On site in countries of destination | Sex- and gender-specific labour market discrimination: non-recognition of women's work, exploitative terms and conditions of work and stay, and unfair and abusive living conditions including for domestic workers. | <ul style="list-style-type: none"> • CEDAW Art 2: legal guarantees, penalties for violations; GR. No. 26; Para 10: pre-departure abuse including detainment; Paras 20-22: women migrant workers' vulnerability to sexual abuse and violence, including the undocumented; Rec 26 (c)(i): prevention of violence, Rec 26(f): allowing workers to leave abusive employers without losing their visa; Rec 26 (i): social services including for victims of abuse; (k) protection for undocumented migrant women especially victims of abuse. • ICRMW Art 16(2) protection against violence towards migrant workers and their families; GC. No. 1. Para 13: abusive working conditions; Para 14: heightened risk of abuse for child domestic workers; Para 53: States should avoid making visa status tied to employers to prevent and address violence and abuse. |
| | Gendered racism and xenophobia against women migrant workers (cultural stereotypes on sexual availability; lower wages for some ethnic and nationality groups compared to others, etc.) | <ul style="list-style-type: none"> • CEDAW Art 2: legal guarantees, penalties for violations; Art.5: discriminatory gender role/ trait stereotypes; Art.11: equal rights to employment; Art.15: equality before the law. GR No. 26 Para 14: racism experienced in countries of employment. • ICRMW Art 7: non-discrimination; Art 31: respect for cultural identity of migrant workers and their families. GC No. 1 Para 60: gender discrimination. • The ASEAN Declaration affirms CEDAW which has been ratified by all ASEAN Member States. |
| | Restrictions on freedom of movement and on organizing and associating for collective bargaining and protection. | <ul style="list-style-type: none"> • CEDAW Art 2: legal guarantees, penalties for violations; Art.5: discriminatory gender role/ trait stereotypes; Art.11: equal rights to employment; Art.15: equality before the law. GR No. 26 Para 22: access to justice including right to organize and associate; Rec 26 (b): legal protection of women migrant workers' rights including to organize and associate; Rec 26(d): legal protection on freedom of movement; • ICRMW Art 8: freedom of movement to and from country of origin; Art 26: right to organize and freely associate; and Art 39: freedom of movement within country of destination. GC. No. 1 Para 12: restriction of movement due to employers' confiscation of passports; Para 13 (a): working conditions restricting freedom of movement to the home; Para 39: freedom of movement, especially for live-in domestic workers; and Paras 45-47: right to organize for collective bargaining and protection. • ASEAN Declaration affirms CEDAW. |
| | Physical and mental health and well-being concerns, such as discrimination on the basis of pregnancy and HIV status, including mandatory sexual and reproductive health testing, without consent, access to wider sexual and reproductive health service, and counselling. Migrant workers' children and families may also face de facto and de jure barriers to accessing health care, including emergency medical care. | <ul style="list-style-type: none"> • CEDAW Art 2: legal guarantees, penalties for violations; Art 12: equal rights to health and health care. GR. No 26: Para 17: inequalities threatening women migrant workers' health; Para 18: pregnancy-related discrimination; Rec 24(d): health services especially pre-departure by countries of origin; Rec 26 (i) and (j): access to health services, including for undocumented migrant women, in countries of destination. • ICRMW Art 27: social security for migrant workers and their families on par with nationals in countries of employment; Art 28: emergency medical care: GC. No. 1: Para 22: mandatory health testing including for sexual and reproductive health; Para 24: exclusion from social security laws and lack of gender-sensitive health-care coverage; Paras 42-44: social security protection; Para 56: special protections preventing children from performing hazardous work; Para 59: health and education for children of migrant workers; • ASEAN Declaration reaffirms the organization's commitment to improving the quality of life and well-being of their people, especially the vulnerable and disadvantaged. |
| | Lack of safety and privacy, including specific privacy concerns faced by women and girl migrant workers, such as the accommodation arrangements of live-in domestic workers. | <ul style="list-style-type: none"> • CEDAW Art 2: legal guarantees, penalties for violation. GR. No 26: Para 17 lack of privacy and hygiene in working and living conditions, especially related to health. • ICRMW Art 14: privacy of migrant workers and their families. GC. No. 1: Para 26(d) privacy concerns of employers regarding inspections of their homes as workplaces noted; and Para 61: gender discrimination. • ASEAN Declaration Para 6 obliges states of destination to work towards harmony and tolerance. |

Human rights violations & concerns

Protections under the Framework

On site in countries of destination

Physical, psychological, and sexual and gender-based violence (SGBV), including from: employers, employment agencies, spouses and family members, law enforcement authorities including police, border and customs officials and judicial officers.

Trafficking (acts of overt and covert deception, coercion, exploitation: e.g. contract substitution, bondage and slavery).

- CEDAW Art 2: legal guarantees, penalties for violations; GR. No. 26; Para 10: pre-departure abuse including detainment; Paras 20-22: women migrant workers' vulnerability to sexual abuse and violence, including the undocumented; Rec 26 (c)(i): prevention of violence, Rec 26(f): allowing workers to leave abusive employers without losing their visa, Rec 26 (i): social services including for victims of abuse; (k) protection for undocumented migrant women especially victims of abuse.
- ICRMW Art 16(2) protection against violence towards migrant workers and their families; GC. No. 1. Para 13: abusive working conditions; Para 14: heightened risk of abuse for child domestic workers. Para 53: States should avoid making visa status tied to employers to prevent and address violence and abuse.
- ASEAN Declaration provides access to justice for victims of discrimination, abuse, exploitation and violence.

- CEDAW Art 2: legal guarantees, penalties for violations. GR No. 19 on violence against women addresses trafficking.
- ICRMW Preamble acknowledges trafficking. GC no. 1 Para 51 supports access to legal migration channels to prevent trafficking and smuggling.
- ASEAN Declaration Para 17 commits Member States to take concrete measures to prevent or curb smuggling and trafficking in persons, including by introducing stronger penalties.

Return and reintegration

Disproportionate personal and social costs and discrimination upon return (e.g. moral rehabilitation of young women returnees, stigmatization in sex-segregated contexts, appropriation of remittances by family, lack of gender-sensitive reintegration services).

- CEDAW: Art 5: gender discrimination; Art 11: equal rights in employment; Art 12: equal rights to health and health care; Art 15: equality before the law; Art 16: equal rights within the family. GR No. 26 Para 24(h): facilitating women's right to return free of coercion and abuse; Para 24(i): comprehensive socio-economic, psychological and legal services aimed at facilitating migrant women's reintegration.
- ICRMW Art 67: cooperation by States Parties for orderly return, with a view to promoting adequate economic conditions for resettlement and facilitating durable social and cultural reintegration. GC No. 1 Para 16: difficulties in reintegrating into labour market and society and transferring pensions and social security benefits; Para 17: access to justice impeded because of legal status; Para 50(c): States Parties encouraged to enter into bilateral agreements to ensure access to justice for migrant domestic workers; Para 62(c): expedite the return of migrant domestic workers to avoid trapping them in shelters for lengthy periods.
- ASEAN Declaration Para 16 commits Member States to enforce human resource development and reintegration programmes.

