

Global Forum for Migration and Development (GFMD)

“Integrating a gender perspective into the development of the Global Compact for Migration”

Side Event co-organized by UN Women, Government of Bangladesh and Government from the Gulf State (TBD)

10 December 2016 | 13h00–14h30

Presentation by Jose S. Brillantes, Chair of the Committee on Migrant Workers

- International migration is a complex phenomenon dealing with overlapping issues relating to the human rights of migrants, mixed migration flows, international protection, smuggling and trafficking, as well as other push and pull factors affecting migration, which calls for a comprehensive approach placing the human rights of migrants at the forefront.
- Women make up half of the world’s population and at the same time, they make up approximately half of the 244 million international migrants worldwide contributing to sustainable development. As defined by the Article 2(1) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families the term *“migrant worker”* refers to any person who *“is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national”*.
- Accordingly, the Convention expressly *provides protection to migrant workers and their family members* not only when the migrants are actually working, but “during the entire migration process of migrant workers and members of their families, which comprises preparation for migration, departure, transit and the entire period of stay and remunerated activity in the State of employment as well as return to the State of origin or the State of habitual residence”. The Convention delineates rights that apply to all migrant workers regardless of their status and then distinguishes further rights of migrants who are documented or in a regular situation.
- The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CWM) *identified very early a problem of recognition of migrant domestic workers* and ensuring their protection in accordance with the Convention on Migrant Workers. Noting the omission of express references to either domestic work or domestic workers in a broad range of national and international frameworks of law, the Committee at its eleventh session held in October 2009 adopted the General Comment No. 1 on Migrant Domestic Workers in order to provide States with guidance on how to implement their obligations under the Convention.
- The General Comment No 1 recognized that: *“Domestic work is an important occupation for millions of individuals, accounting for up to 10 per cent of total employment in some countries and that there is no accurate data on the number of domestic workers throughout the world, partly due to the high incidence of undeclared domestic work and the fact that national statistics often do not count domestic workers as a distinct category”*. However, such data as are available show that domestic work accounts for between 4 and 10 per cent of total employment in developing countries and between 1 and 2.5 per cent in industrialized countries. *“Women make up the overwhelming majority of these workers”*.

- When the Committee prepared its General Comment No. 1, the terms “domestic work” or “domestic worker” have not yet been defined in any international instruments. Drawing on common elements found in definitions set out in national legislation, the Committee noted that the term “domestic worker” generally refers *to a person who performs work within an employment relationship in or for other people’s private homes, whether or not residing in the household*. The Committee considers that migrant domestic workers are included in the term “migrant worker” as defined in article 2, paragraph 2, of the Convention and that any distinction made to exclude migrant domestic workers from protection would constitute a prima facie violation of the Convention. The Committee recognised that in many countries, *domestic workers are not legally recognized as “workers” entitled to labour protection*. A number of premises and special definitions are used to exclude domestic workers from the protection of labour laws, including the consideration that they work for private persons, who are not considered to be “employers”.
- *Laws regulating the conditions of entry and stay in countries of employment are often a source of specific vulnerabilities for migrant domestic workers*. Overly restrictive immigration laws may lead to higher numbers of migrant domestic workers who are non-documented or in an irregular situation, and thus particularly vulnerable to human rights violations.
- Domestic workers, especially those who are migrants, *are often excluded from rights under national law related to social security*. The lack of social security benefits and of gender-sensitive health care coverage further increases the vulnerability of migrant domestic workers and their dependence on their employers.
- There is *gendered division of labour in everyday life*, in which, women continue to play a dominant role in providing unpaid care to family members and taking care of domestic chores. Women are often dependent on men’s income and less protected through financial savings, pension entitlements and property in their name what brings women at greater risk of poverty. Therefore, *empowerment of women and ensuring the equality between women and men*, including: equal rights, opportunities and responsibilities became a keystone for achievement of human rights, social justice and sustainable development. There is the critical link between investing in women and achieving sustainability goals. In achievement those goals, particular attention should be given to: *economic empowerment, women in rural areas and reproductive rights*.
- The approach of the Committee to the issue of women migrant workers fully follows obligations of State parties under the Convention and in particular the Recommendations to States defined in the General comment No 1. During the review process, the Committee *checks has state party organized pre-departure awareness-raising and training to disseminate information to women migrant workers on their rights* under the Convention as well as the conditions of their admission and employment before and their rights and obligations under the law and practice of other States (article 33).
- During the review process the Committee also focuses particularly on *cooperation among States* of origin, States of transit and States of employment, including *agreements between States* and *the work of diplomatic missions and their accessibility to migrant workers*. A part of the dialogue with State parties is devoted to *recruitment agencies*, including their licensing, monitoring, inspection and evaluation and sanctions and penalties.
- *Conditions of work* are particularly important for migrant domestic workers. Therefore, the Committee requires from State parties that *the rights of migrant domestic workers should be dealt with within the larger framework of decent work for domestic*

workers. Accordingly, the Committee asks whether national law ensures equal protection of domestic workers, including provisions related to minimum wages, hours of work, days of rest, freedom of association, social security protection, including with respect to maternity, pension rights and health insurance, as well as additional provisions specific to the circumstances of domestic work.

- In this process the Committee also *checks that the right of migrant domestic workers to freedom of movement and residence is protected and fulfilled*, including by ensuring that migrant domestic workers are not required to live with their employers or stay in the house during their time off (article 39). States should also ensure that migrant domestic workers retain possession of travel and identity documents (article 21).

- There is also *review of situation related to enjoyment of right to freedom of religion of belief and expression, access to justice and remedies, access to regular migration status, respect for family unity, protection of children*, etc.

- Recognizing *that most domestic workers are women and girls* and taking into consideration traditional roles, the gendered labour market, the universal prevalence of gender-based violence and the worldwide feminization of poverty and labour migration, the Committee in its Comment No 1 took position that States should incorporate a gender perspective in efforts to understand their specific problems and develop remedies for the gender-based discrimination that they face throughout the migration process.

- Recent concerns expressed by the Committee in relation to domestic migrant workers include that:

- They are subject to abuse and exploitation, ranging from absence of days off and of rest and sleep, non-payment of wages, verbal abuse, restricted communication and food deprivation, overtime work without proper compensation, confiscation of their passports by their employers and threats of deportation to verbal and sexual abuse, including rape;

- Women continue to be compelled to become domestic migrant workers due to lack of equal access to employment in their countries of origin owing to discriminatory social practices as well as domestic violence;

- Women are at times sent abroad by their s or family members because of the financial incentives provided.

- The Committee has recommended that State parties for example:

- Ensure access to justice to migrant domestic workers and strengthen labour inspection services to effectively monitor conditions of work and to receive, investigate and address complaints of alleged violations;

- Promote the enhancement and empowerment of migrant women in vulnerable situations by, inter alia, conducting an assessment and taking concrete measures to address the feminization of migration in their labour migration policies;

- Establish sanctions, including loss of accreditation, for recruitment agencies, labour brokers and other intermediaries that engage in unethical and illegal practices that violate the rights of migrant domestic workers.

- The Committee has further recommended that:

- Domestic work should be regulated by national legislation to ensure that domestic migrant workers enjoy the same level of protection as national workers with respect to

minimum wage, hours of work, days of rest, freedom of association, and other conditions of work;

- Migrant domestic workers have explicit, written terms of employment, in a language that they understand, outlining their specific duties, hours, remuneration, days of rest and other conditions of work in contracts that are free, fair, fully consented to and that are legally enforceable in both State of origin and State of employment;
- It should be banned to charge recruitment fees to domestic migrant workers.
- Our Committee is a crucial mechanism for ensuring accountability to women migrant workers at all stages of their migration process. The limited number of ratifications of the Convention – 49, the lowest of all human rights treaties – significantly limits the effectiveness of our Committee, especially since no major destination country has ratified. Gaining new ratifications thus remains a priority for my Committee. I hope that some of you present here can show leadership on this issue so that we can soon celebrate our 50th ratification and many more to come.
- In order to offset the limitation of low ratifications, our Committee has started to co-operate more closely with the Committee on the Elimination of Discrimination Against Women (CEDAW), which overseas Convention ratified by 174 States. One of the results of this co-operation is the key elements for addressing women's human rights in the Global Compact for safe, regular and orderly migration presented in this side event.