

CEDAW 64 Side Event “Promoting and Protecting Women Migrant Workers’ Labour and Human Rights through CEDAW and CMW”

Palais des Nations, Room XXIV, Geneva on 21 July 2016, 1:15 – 2:45 p.m

Excellencies

Ladies and Gentlemen

- A very good afternoon to you all. As the Vice-Chair of the Committee for the Protection of the Rights of All Migrant Workers and Members of Their Families, I would like to thank OHCHR and UN Women for organizing this event, and the CEDAW Committee for hosting this side event along with the CMW Committee. It is a real pleasure to be with you here today.
- 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.¹ 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*”².

- 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”³. The Convention delineates rights that apply to all migrant workers regardless of their status⁴ and then distinguishes further rights of migrants who are documented or in a regular situation.⁵

¹ The report of the Secretary-General "In Safety and Dignity: Addressing Large Movements of Refugees and Migrants"

² Article 2 (1) Convention, art. 2. Article 3 of the Convention excludes from its scope of application a number of categories of workers, including certain employees of international organizations and of States, investors residing outside of their State of origin, whose status are regulated by general international law or specific agreements; students and trainees; and seafarers and workers on offshore installations who have not been admitted to take up residence and engage in a remunerated activity in the States of employment. Moreover, refugees and stateless persons are only included under the Convention if such application is provided in national legislation (art. 3(d)).

³ Convention, art. 1.

⁴ Convention, Part III.

⁵ Convention, Part IV.

- 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 according to the Convention on Migrant Workers. This was reason that 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.⁶ *“Women make up the overwhelming majority of these workers”*⁷

⁶ See International Labour Organization (ILO) (2009), “Decent Work for Domestic Workers”, Report IV(1), International Conference, 99th session, 2010.

⁷ The Committee on Migrant Workers in its Comment No 1.

- The terms “domestic work” or “domestic worker” *have not yet been defined in any international instruments*. However, drawing on common elements found in definitions set out in national legislation⁸, the Committee notes 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*.⁹ 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.¹⁰ 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

⁸See ILO (2009), “Decent Work for Domestic Workers”, report IV(1), International Conference, 99th session 2010; José Maria Ramirez-Machado, *Domestic Work, Conditions of Work and Employment: A Legal Perspective*, ILO (2003).

⁹ The Committee on Migrant Workers in its Comment No , Para 6.

¹⁰ Ibid, Para 7.

domestic workers who are non-documented or in an irregular situation, and thus particularly vulnerable to human rights violations.¹¹

- 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.¹²

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- The sustainable development defines as development which ***meets the needs of the present without compromising the ability of future generations to meet their own needs.*** There is requirement to look the sustainable development under of three inter-related pillars: ***economic development, social development and environmental protection.*** Also, there are some intentions to include ***the preservation of cultural diversity as a forth pillar.***
- The Principle 20 of Rio Declaration defines that: ***“Women have a vital role in environmental management and development. Their full participation is***

¹¹ Ibid, Para 21

¹² Ibid, Para 24.

therefore essential to achieve sustainable development.” At the same time, women continue *to be underrepresented* to all spheres of life, particularly in decision making processes *and overrepresented* among the world’s most vulnerable groups. They don’t enjoy equal access to resources as men.

- 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*.

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- The approach of the Committee to the issue of women migrant workers fully follows obligations of state parties from the Convention and in particular the Recommendations to states defined in the General comment No 1. During of 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).
- Particularly focus of the Committee during of the review process is *on the issue of cooperation among states* of origin, states of transit and states of employment, including *the issue of agreements between states* and *the issue of diplomatic missions and their accessibility to migrant workers*. A part of dialog with state parties is *the issue of recruitment agencies*, including their licensing, monitoring, inspection and evaluation and sanctions and penalties.
- *Conditions of work* are particular 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.¹³ Accordingly, the Committee asks information does national law ensure 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 protection of the right of migrant domestic workers to freedom of movement and residence*, 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 to family unity, particularly protection of children and* atc.
- 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

¹³ General Comment, Para 37.

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 to the gender-based discrimination that they face throughout the migration process.

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- Strengthening strategic international human rights mechanisms with aim to ensure accountability to women migrant workers at all stages requires a proper assessment of a current situation. In that context, I would like to draw your attention on several crucial aspects related to the work of CMW which creates space for further action. Those aspects include the following facts:
 - ✚ The CMW is a young committee which is still in the process of development own practices and methods related to some key human rights aspects. Priority under of this is an assessment of the position of most vulnerable groups, including particularly women, having in mind size of their participation in migration processes;

- ✚ A limited number of ratifications has burning obstacle for more effective action of the Migrant Worker Committee. A particularly problem is the lack of ratifications from development countries, as states of destinations. This prevents the Committee to review the position of women migrants in those states. This means that there is no an effective international independent monitoring of migration processes in those countries. This opens space for stronger cooperation between CEDAW and the Migrant Workers Committee;
- ✚ The individual complaint mechanism in according to the Article 77 of the Convention *has not yet entered into force*.

- In view of the upcoming High Level Meeting on addressing large movements of migrants and refugees, political leadership and commitment is needed now more than ever to ensure that migration policies put the human rights of women migrants, as human beings, at the forefront.

In this context, I free do propose that CEDAW and CMW, together with UN Women and ILO and NGOs develop some joint guidelines which both committees will use for the review the status of women migrants, during of the reporting process.

