

## **Promoting and Protecting Women Migrant Workers' Labour and Human Rights through CEDAW and CMW**

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***[Paper presented by Pramila Patten, CEDAW Member]***

I would like to commend the organisers of this event for their initiative in bringing the 2 Committees together to discuss how best we can use the 2 Conventions to enhance accountability of States Parties in the protection of women migrant workers.

Migration is a global issue that is rightly attracting more and more global attention. Everywhere around the world, people leave their countries in search of a safer or better life. While migration can offer new opportunities it can also expose female migrants to new or increased risks. Many flee **difficult conditions** only to face even greater struggles, including human rights violations, poverty and discrimination. Today, we cannot ignore the fact that migration is taking place at a time of global economic and financial distress; an increase in irregular migration and against an international backdrop of growing intolerance of migrants and migration. The irregular status of migrants further exacerbates their risk of falling victim to discrimination, abuse or exploitation. Although core labour law provisions also protect migrants with an irregular status, the risk of detection and deportation make such rights elusive in practice, and access to redress mechanisms difficult, even in the event of serious crimes.

Although both men and women migrate, migration is not a gender-neutral phenomenon. Various factors, such as globalization, the wish to seek new opportunities, poverty, gendered cultural practices and gender-based violence in countries of origin, natural disasters or conflicts determine women's migration. The position of female migrants is also different from that of male migrants in terms of legal migration channels, the sectors into which they migrate, the forms of abuse they suffer and the consequences thereof. For example, when we talk about migrant domestic workers, we know that women make up the overwhelming majority of domestic workers; that they are specifically vulnerable

to gender-based forms of discrimination and violence and work in an economic sector with limited labour law standards.

I will focus my presentation on the CEDAW Convention and its relevance and application to women migrant workers. The human rights guarantees contained in CEDAW are far-reaching in addressing the situation of WMW. CEDAW contains a range of provisions relevant to the protection of women migrant workers. Under article 2, States parties must address all aspects of their legal obligations under the Convention to respect, protect and fulfil women's right to non-discrimination and to the enjoyment of equality. Article 2(e) which obliges States Parties to eliminate discrimination against women by any person, organization or enterprise" and imposes a due diligence obligation on States parties to prevent discrimination by private actors, is very relevant to the situation of women migrant workers who enter into private contracts with their employers.

Article 2 of CEDAW recognizes intersecting forms of discrimination faced by particular groups of women based on both their sex and on other characteristics such as race and obliges States Parties to legally recognize and prohibit such intersecting forms of discrimination and their compounded negative impact on the women concerned. This is very relevant to women migrant workers who are vulnerable to discrimination on several grounds. We are increasingly seeing austerity measures that discriminate against migrant workers, xenophobic rhetoric that encourages violence against migrants, and proposed immigration laws that allow the police to profile migrants with impunity. Other relevant substantive provisions include Article 11 which addresses comprehensively the obligation of States Parties to eliminate discrimination against women in employment and occupation; Article 12 on access to health care. CEDAW also contains specific articles to address exploitation of prostitution and trafficking (Article 6); access to economic and social benefits in its Article 13 which are all relevant to the situation of WMW.

The Committee addresses the situation of women migrant workers during its dialogue with States Parties and makes recommendations in it concluding

observations. It has also brought the spotlight on WMW through the adoption of GRs.

In its GR 28 on “core obligations of States Parties under Article 2”, the Committee spelt out that CEDAW protects all women, including women migrant workers; obligations of States Parties apply without discrimination both to citizens and non citizens, including women migrant workers.

In 2008, it adopted a specific GR No 26 on “Women migrant workers” in which it affirmed that migrant women, like all women, should not be discriminated against in any sphere of their life and reiterates that CEDAW protects all women, including migrant women, against sex- and gender-based discrimination. GR 26 is very comprehensive and addresses factors influencing women’s migration; it sets out the full range of sex- and gender-based human rights concerns related to migrant women which occur in countries of origin, transit and destination and contains many recommendations, with an attribution of responsibilities specific to countries of origin, transit and destination as well as some common to both countries of origin and destination. In GR 26, the Committee stressed that while States are entitled to control their borders and regulate migration, they must do so in full compliance with their obligations as parties to the human rights treaties they have ratified and that includes the promotion of safe migration procedures and the obligation to respect, protect and fulfil the human rights of women throughout the migration cycle.

The Committee has made reference to WMW in other GRs such as in GR 24 on “Women and Health” adopted in 1999 in which it spelt out that special attention should be given to the health needs of WMW and more recently in GR 31 on “Access to justice”, in which it addressed restrictions imposed in some countries on the use of the legal system by women migrant workers to obtain remedies for discriminatory labour standards, employment discrimination or sex- and gender-based violence. The Committee explicitly referred to migrant women workers as a “disadvantaged group” for whom legal assistance is particularly important for ensuring their equal access to justice as well as the importance of providing them with appropriate and accurate information concerning available

justice systems and their eligibility for support, including legal aid or social services.

Since its early sessions, during examination of States Parties' reports, the CEDAW Committee has systematically addressed the situation of WMW and given that female migrants are not a homogenous group, the Committee has focused on the most vulnerable migrants namely domestic workers whose workplaces are unseen, behind closed doors and out of the public eye as well as low skilled female workers in highly unregulated markets and WMW in irregular situation.

Examination of States Parties' reports in recent years unfortunately reveals the same catalogue of human rights abuses suffered by WMW, irrespective of their legal status, characterized by discrimination, exclusion, exploitation and abuse; physical and sexual violence, inhumane working conditions (such as unpaid wages, excessive working hours, confiscation of passports and restrictions on freedom of movement and communication, in particular under the sponsorship system (*kafael*)) with no legal protection as most often they fall outside the scope of labour laws in place; they are most vulnerable to trafficking and sexual exploitation; have no effective access to legal aid and complaint mechanisms; no access to shelters and rehabilitation services; no access to health care, including sexual and reproductive health care and emergency obstetric services; they are often subjected to mandatory HIV/AIDS testing. As non-citizens, they face unique difficulties, often due to discrimination in their access to essential services like healthcare, education, social security, housing, water and sanitation.

The Committee has been particularly concerned about regular documented migrant workers who lose their status through no fault of their own and the fact that many are forced into a situation of irregularity through an arbitrary, unlawful or discriminatory act. Just to give you a concrete example- there are countries where WMW with valid work permits, are liable to be deported on grounds of pregnancy or the diagnosis of sexually transmitted diseases such as HIV/AIDS or if they marry a national of that country.

I just want to add that in examining States Parties reports, the Committee does take into account and reference the work of other treaty bodies and more

particularly that of the Committee on Migrant Workers. We also systematically recommend ratification of both the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families as well as the Domestic Workers Convention, 2011 (No. 189), of the International Labour Organization.

Another point, I wish to make is that the Committee has engaged not only with host countries but also with sending countries and has urged them to monitor the work of the recruitment agencies. Recommendations made include the need:

- to strengthen the inspection of recruitment agencies and training centres with a view to monitoring human rights abuses;
- impose penalties on companies that fail to respect the rights of the employees they recruit;
- prosecute and punish persons engaged in illegal recruitment processes, including the traffickers of migrant women for forced labour and sexual exploitation;
- to develop bilateral agreements and memorandums of understanding with the countries to which women migrate in search of work and to address issues relating to the severe risk of exploitation of unskilled migrant workers, the confiscation of their passports and their contracted debts with recruitment agencies.

On occasions, the Committee has gone further by asking States Parties to address the root causes of women's migration, including through the creation of conditions necessary for sustainable development and of safe and protected jobs for women as a viable economic alternative to migration or unemployment.

CEDAW contains a reporting procedure and States Parties are obliged to submit a report a year after ratification and then every four years. The Committee also has a Follow up procedure whereby it selects two sets of concerns that it considers to be most critical and requests the State Party in question to submit a follow-up report within a year or two. Both the reporting procedure and the follow up procedure are important accountability mechanisms.

Though time does not permit me to do so in a very elaborate manner, I just want to mention the Optional Protocol to CEDAW which is an important accountability tool. Ratified by 107 States Parties, the OP introduces two additional

procedures: an individual complaints procedure whereby individuals or groups of individuals may submit claims of violations of rights enshrined in the Convention and an inquiry procedure whereby the Committee may initiate inquiries into situation of grave or systematic violations of rights under the Convention. The OP significantly supplement CEDAW'S monitoring strength by offering women direct means to seek redress for violations of their rights under the Convention.

**In conclusion, I would like to say as human mobility becomes more complex, and the journeys taken by many migrants more perilous, it becomes all the more urgent to ensure that States Parties bring human rights at the forefront of migration and forge national policy responses that address migration based on human rights principles.**

Migration empowers women ONLY when it occurs through regular channels, when they can make informed choices, and when they have access to legal protection, services and social networks in countries of origin and destination. Achieving this requires actions at different levels – from the community to the international – and cooperation within and across sectors (international organisations, government agencies, the private sector and civil society).

As a Committee, we will continue to address the plight of all WMW and will leave no one behind; we will endeavor to use all the SDGs with targets that relate directly to migration, but more especially SDG 5 and SDG 8 which are particularly important for women migrant workers.

In enhancing accountability, we must ensure that the post-2015 agenda applies to all countries and to all people. It should be acknowledged that migrant women live in poverty, are marginalised and discriminated against in all host and transit countries, including in countries with the highest human development standards. The one and only way to reduce inequality and discrimination affecting WMW is the protection of their human rights and labour rights, which form the cornerstone of fairer migration policies. In so doing, only a human rights-based approach can give development analysis and policies the improved measurability and enforceability that it needs, and produce the better outcomes that we all strive for- namely to bring WMW out of the shadows; to banish their invisibility, to realize sustainable development and ensure dignity for all WMW.

