



Helena Olea holea@alianzaamericas.org

Gender Responsive Migration Policies contributions by Alianza Americas to the Webinar convened by the Special Rapporteur on the Human Rights of Migrants. May 21, 2019

“Gender responsiveness” in immigration

Gender responsive migration policies are those that consider and address the specific needs and situations of women and men, their sexual orientation and gender identity, considering their religion and cultural background and power differentials. These policies are developed questioning whether there is explicit or implicit bias in the design and implementation of migration policies, and also question any inherent heteronormative elements. They should thus address the specific and differentiated needs and situations that women and girls face, considering the causes of their emigration, safety considerations in their transit, and integration possibilities, including regularization. Additionally, protections against discrimination of LGBTQ persons should also be part of gender responsive migration policies.

Existing or forthcoming good practices or initiatives of gender-responsive migration legislation, policies or practices at the country or regional levels.

The policy discussion on the importance of establishing firewalls to guarantee access to services that ensure human rights, shielding irregular migrants from immigration enforcement is relevant, but leaves out interesting examples of regularization paths based on the State obligation to ensure and protect rights to all persons under its jurisdiction. These policies exemplify specific existing gender responsive policies, reflected on legislation and practices in the Americas.

- Pregnant women living in Chile are able to apply and obtain a visa to ensure their access to medical care. The reasoning behind this policy is to ensure prenatal care for the mother and the unborn, which would otherwise become a high-risk pregnancy and birth. This same visa is available for any persons undergoing a medical treatment. (Visa por embarazo y tratamiento médico)
- Parents of a child born in countries that apply *ius solis*, such as Mexico or Chile, are granted a resident visa on the basis of their relationship to their child. No age restriction applies. This regularization alternative is particularly important for parents of newborns or children who require special care, who are not forced to seek a regular migratory status through their employment. Caring responsibilities are acknowledged and there is a path towards regular status. (Visa por vínculo con Chileno o Mexicano)
- In the United States of America, women victims of domestic violence from a partner or spouse who is a citizen or a permanent resident, can apply for the VAWA visa enabling them to break their dependent migratory status on their aggressor.

- Also, in the United States, victims of gendered violent crimes can apply for the U visa, on the basis of their reporting of the crime and their collaboration with the investigation, prosecution and punishment of the crime.
- Argentina's immigration legislation includes considerations on the impact on the deportation of a family member on the rest of the family, considering both their economic contributions, as well as their role as care givers. Immigration authorities may decide against a deportation in order to protect the rights of the children, of family members, family unity and family life.
- Civil society organizations are also advancing towards gender responsive policies: migrant and refugee shelters have established a dormitory and bathroom section for transsexual persons. (Mexico)
- Differentiated consular protection for women. (Mexico)

Challenges and/or obstacles in the implementation of gender-responsive migration legislation and/or policies.

Gender responsive policies must start from the political decision to ensure and protect the human rights of migrants throughout the migration process. Gender responsive policies are the result of the decision to treat with dignity and respect all migrants and thus establish appropriate measures to ensure personal integrity in immigration control procedures and to create pathways for regular status, that consider the specific and differentiated realities of men and women in the labor market, within their families and cultures, and bearing in mind the specific needs of LGBTQ persons. Similar due considerations should apply in sanctioning procedures, including the possibility to deport or expel a migrant.

Key challenges are the lack of political will and the decision to prioritize other concerns or policy goals over ensuring and protecting the human right of migrants. Failure to design and implement gender responsive policies result in discriminating by action or omission preventing many women and LGBTQ persons from migrating under a regular status and leaving many in irregular status.

Maximizing the gender responsive impact of these interventions

There are a number of policy considerations that are fundamental to maximize the impact of gender responsive policies and they include:

- Training of public officials, not only migration enforcement and other responsible authorities, but all public officials, understanding that migration responsive policies are also inter-related to other public policies and thus health workers, educators, police officers, and operators of the justice system must be trained in including a gender perspective in their work that considers the impact of the migration experience.
- Policies should not revictimize, discriminate or stigmatize migrants. The inclusion of a gender responsive framework to migrants, should refrain from assuming their inherent vulnerability, but rather empower them.
- Affordable fees for immigration proceedings are essential to avoid forcing many migrants into dangerous, unsafe jobs or criminal activities to afford their regularization.
- Elimination of regularization requirements that are almost impossible to obtain as well as costly. Simplification of the issuance of documentation by countries of origin is fundamental for the implementation of gender responsive policies. Legalization of documents should be simplified, and costs must be lowered.

- Revision of medical examinations and testing as part of the regularization process is essential to dispute the entrenched belief that foreigners bring diseases, thus subjecting them to STD testing among others, which are demeaning.
- Information is necessary. Most often those that could benefit from gender responsive migration policies are unaware of them. Furthermore, often there is a rupture between those who provide health care (physical and psychological), education, job training, police officials, administration of justice officials, social workers, and immigration authorities and practitioners. In other words, the lack of information and frequent exchange inhibits the design and effective implementation of gender responsive immigration policies.

Support that could relevant stakeholders (other than Governments) could provide to make migration policies, legislation, and practices more gender responsive

Non-governmental relevant stakeholders can identify cases that need to be addressed and craft jointly with public officials: gender responsive policies. Multi-disciplinary discussions that consider specific needs and perspectives can contribute greatly to the design and implementation of gender responsive policies. Non-governmental actors contribute exchanging information and offering training to service providers.

Migrant themselves must participate actively in the design and implementation of gender responsive immigration policies. They can identify their needs and craft appropriate policy responses. Finally, relevant stakeholders will continue to challenge migration policies that fail to respond to differentiated gender needs and will continue participating in initiatives and spaces to design and implement the differentiated policies that address the voices and needs of migrant women, girls, and LGBTQ persons.