



MIGRATION, GENDER, AND LABOR IN THE CRMW AND THE GCM

To the United Nations Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families
in response to the call for inputs on the
“Draft General Comment No. 6 on the Convergence of the Convention and the Global Compact for Safe, Orderly and Regular Migration”
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by the Center for Migration, Gender, and Justice

Introduction:

Around the world, women make up almost half of all migrant workers (42% of the estimated 164 million migrant workers) and are moving more independently in the search for work and better perspectives for themselves and their families (UN Women, 2020). Yet, their migration experiences often reproduce gender inequalities as migrant women tend to work in gendered employment sectors. For instance, migrant women are disproportionately employed in service-sector jobs such as domestic work and health care (UN Women, 2016). These gendered experiences in the labor market are addressed in various international legal-institutional frameworks including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CRMW) and the Global Compact for Safe, Orderly and Regular Migration (GCM).

As noted in the “Draft General Comment No. 6 on the Convergence of the Convention and the Global Compact for Safe, Orderly and Regular Migration” (from here on Draft General Comment No. 6), the CRMW and the GCM are “unique, complementary and mutually reinforcing in advancing migration governance and in promoting and protecting the rights of all migrants, regardless of their migration status” (p.1). Yet, when it comes to gender dynamics in migration, there is space for further alignment on gender-responsiveness as it pertains to convergence and complementarities between the CRMW and the GCM as well as other international legal-institutional frameworks and review processes.

Gender-Responsiveness: CRMW and GCM

In regards to cross-cutting and interdependent guiding principles as it pertains to gender dynamics in migration such as gender-responsiveness, several key provisions in the CRMW and the GCM must be considered. For example, the CRMW addresses gender dynamics in migration with reference to sex (as category of protection) and in the emphasis placed on protecting migrant workers *and their families* whereas the GCM establishes gender-responsiveness as a Guiding Principle for its 17 Objectives.

According to the GCM, gender-responsiveness is defined in the following manner:

“The Global Compact ensures that the human rights of women, men, girls and boys are respected at all stages of migration, their specific needs are properly understood and addressed and they are empowered as agents of change. It mainstreams a gender perspective, promotes gender equality and the empowerment of all women and girls, recognizing their independence, agency and leadership in order to move away from addressing migrant women primarily through a lens of victimhood” (p.4).

The noted mainstreaming of a gender perspective in migration is reflected in the GCM’s mention of and engagement with gender dynamics, notably that gender is mentioned 29 times, women are mentioned 19 times, gender-responsiveness is mentioned 18 times, and girls are mentioned 5 times. Nevertheless, in both, the CRMW and the GCM, sexual orientation, gender identity, and gender expression (SOGIE) are neither explicitly mentioned nor engaged with. Protections with regards to gender dynamics in migration (i.e. gender-responsiveness) thus largely operate within the gender binary in the CRMW and the GCM, an aspect that can be addressed in the proposed Draft General Comment No. 6.

As found by a recent study of the ILO and UN Women (2022), migrant workers with diverse SOGIE in South-East Asia experience discrimination at multiple levels. The report draws on surveys and interviews with 147 migrant workers with diverse SOGIE from countries such as Cambodia, Myanmar, the Philippines, and Vietnam. 41% of those surveyed reported that they migrated to work in order to escape from “violence, discrimination, or restrictions on personal freedom” (ILO, 2022). Indeed, the study showed that for 85% of transgender and gender diverse persons, workplace discrimination in countries of origin was cited as a main motivation for migration (Ibid.).

The report notes that there is still “limited policy- and practice-oriented literature that focuses on the experiences of ... migrant workers with diverse SOGIE,” but emerging research on the matter gestures to a correlation between “higher levels of diverse-SOGIESC inclusion and national economic growth” (ILO, UN, 2022, p. 78; see also: Badgett et al. 2017, Flores, 2021).

As data and discourse on the intersection of migration, gender, and labor with considerations to SOGIE continues to emerge, *the Draft General Comment No. 6 offers a space where the specific challenges and needs of migrant workers with diverse SOGIE can be recognized* by including an expansive understanding of gender beyond the binary (see also: ILO, 2019).

Gender-Responsiveness: Other international legal-institutional frameworks

In reference to clarifying and specifying existing obligations of State parties to the CRMW and State parties to other relevant international legal-institutional frameworks, protections with regards to violence and harassment are important to consider, not least for women migrant domestic workers (MDWs) (CMGJ & IDWF, 2022). In this context, the ILO Domestic Workers Convention (C189) and the ILO Convention on Violence and Harassment (C190) are imperative.

The ILO C189, which entered into force in 2013, has been ratified by 35 countries; mainly by countries of origin - not destination countries - of MDWs. The Convention guarantees labor protections for domestic workers and recognizes their important contributions to the economy in the Preamble:

“Domestic work continues to be undervalued and invisible and is mainly carried out by women and girls, many of whom are migrants or members of disadvantaged communities and who are particularly vulnerable to discrimination in respect of conditions of employment and of work, and to other abuses of human rights...” (ILO C189, Preamble)

The Convention upholds the right of domestic workers to freedom of association, the elimination of all forms of forced labor, the abolition of child labor, and the elimination of discrimination in regards to employment and occupation (Art. 3, §2). Article 5 further emphasizes that “each Member [ratifying state] shall take measures to ensure that domestic workers enjoy effective protection against all forms of abuse, harassment and violence.”

The recently enforced ILO C190 adds to the CRMW and the ILO C189 as a binding legal-institutional framework and complements the 2018 GCM in important ways. The Convention is the first international treaty to recognize the right to work free from violence and harassment. It includes formal and informal economies as protected spaces and acknowledges private households as workplaces. The Convention applies to all workers regardless of their migration status and speaks to power disparities between employers and employees. ILO C190 defines violence and harassment in broad terms, notably including economic and emotional harm.

Furthermore, the Convention explicitly refers to the protection from and prevention of violence and harassment targeted against MDWs. For example, Article 9 mandates States to “adopt laws and regulations requiring employers to take appropriate steps commensurate with their degree of control to prevent violence and harassment in the world of work.” This includes gender-based violence (GBV) and harassment associated with psychological risk (Art. 9, §b).

Article 9 also emphasizes that States are to provide relevant and accessible information and training to domestic workers to ensure that they know their rights and can identify acts of violence and file complaints (Art. 9, §b). Provisions for enforcement and remedies in this context are outlined in Article 10 which establishes that States must “ensure easy access to appropriate and effective remedies and safe, fair and effective reporting and dispute resolution mechanisms and procedures in case of violence and harassment of work” (Ibid.) This includes protecting “the privacy of those individuals involved and confidentiality, to the extent possible” and the provision for the affected workers “to remove themselves from a work situation... without suffering retaliation or other undue consequences” (Ibid.).

In considering gender-responsiveness in migration in the context of labor, *reference to the ILO C189 and ILO C190 can be made in the Draft General Comment No. 6* as a way of clarifying and specifying the existing obligations of States in relation to the CRMW and the GCM.

Gender-Responsiveness: International Review Processes

In terms of increasing attention to existing and additional international review processes, further considerations regarding the International Migration Review Forum (IMRF) are imperative with regards to gender dynamics in migration. To this end, our (Center for Migration, Gender, and Justice) recently developed Gender-Migration Index (GMI) offers important contributions (CMGJ, 2022).

The GMI is a guidance tool for gender-responsiveness and migrant-inclusion in policy. The Index is based on an indicator system that provides benchmarking criteria to ensure that the intersection of migration and gender is considered in policy planning, implementation, monitoring, and evaluation. The indicator system assesses the extent to which gender dynamics are mentioned, engaged with, and committed to, and is based on a ‘traffic light’ framework that corresponds to limited, moderate, and extensive levels of gender-responsiveness. As a new methodology in the field of migration, the GMI offers an innovative and sustainable practice in the context of the GCM and beyond, including the CRMW.

In developing the GMI, we conducted several sample case studies based on GCM Voluntary National Reviews (VNRs) submitted by countries; VNRs provide insights on gender-responsiveness in migration at the national and regional level. Our case studies included analyses of GCM VNRs submitted by Germany, Jordan, Mexico, the Gambia, and Turkey in which labor policy was identified as a critical area when it comes to gender-responsiveness as per the GMI (CMGJ, 2022).

Given these findings and the next steps planned for the GMI, such as applying the guidance tool in analyses of relevant documents submitted by UN Member States as part of other international review processes (i.e. CRMW), *the Draft General Comment No. 6 provides a platform where attention to the GMI can be raised.*

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