

Presentations



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Addressing Human Rights Violations Against Women Migrant Workers through CEDAW

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On the right: Ms. Gabriela Rodríguez Pizarro

Photo: Migrants Rights International, Geneva

Vulnerability of Women Migrant Workers

Distinguished experts and participants, on several occasions I have expressed concern at the vulnerability of poor migrant women and the abuse and violation of their human rights. This includes violence, racial discrimination and xenophobia at all phases of the migration process. Migrant women predominantly work in the informal labour market and migrant domestic workers find themselves in situations of special vulnerability as many are undocumented.

Due to the “hidden” character of domestic work, abuse is less visible and the employee is extremely dependent on the employer. Since domestic work is generally not legally regulated, the terms and conditions of work are often unilaterally established by the employer. In addition to abuse and discrimination arising from their immigration status, national origin and their lower status jobs, women migrants are too frequently victims of violence, including sexual assault at the work place. In many countries, workers’ residence permits are held by the employer and are withdrawn if the migrant

worker quits or changes job, making migrant women entirely dependent on their employers.

Migrant women are also particularly vulnerable to trafficking by criminal networks. Restrictive immigration or emigration policies and lack of information and opportunities often lead migrants to cross borders illegally with the help of criminal networks. Women are cheated by traffickers who promise easy money abroad. Once persuaded, the women are transported through irregular channels to a foreign country where – more often than not – they are abused, forced into the sex industry or obliged to work as domestic workers in slave-like conditions.

Overt forms of violence – rape, torture, arbitrary execution, deprivation of liberty, forced labour and forced marriage – are perpetrated against women who are simply seeking to exercise their freedom of movement. It is disturbing that in many cases corrupt officials facilitate the smuggling and trafficking of women.

Another concern is that certain countries grant special visas to women recruited by

employment agencies to travel abroad for work as so-called “entertainers” in night clubs. These women are forced to perform degrading work and are sexually exploited in the country of employment.

Some States enact progressive and protective measures, including mandatory registration and insurance coverage. Nonetheless, women migrant workers are increasingly in vulnerable situations, subjected to abuse and in some cases death. Administrative measures to contain irregular migration pay no attention to the individual history of migrants. Often there are no specific provisions regarding the detention of pregnant women, children and other vulnerable groups. They are detained in conditions that often violate basic human rights that are detrimental to their physical and mental health.

The lack of automatic mechanisms for judicial or administrative review of the lawfulness of

detention is always coupled with the lack of other procedural safeguards such as access to interpreters and lawyers, the right to be informed of the grounds for detention and appeal mechanisms and the right to inform consular or embassy representatives. The UNHCHR has also received numerous complaints alleging mistreatment and sexual abuse of migrants during the process of deportation and/or repatriation.

CEDAW and Migrant Women

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) deals with some of the issues raised above. For example, the CEDAW Committee has expressed concern at certain practices and legal labour provisions that could lead to discrimination against women workers on reproductive health and maternity issues. The Committee has reviewed the measures States use to combat trafficking and exploitation, and



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it has raised issues of discrimination with regard to nationality laws, access to education and the employment of migrant women.

The CEDAW Committee has also raised the issue of the discriminatory consequences of age limits for spousal reunification implemented by some countries, and has expressed concern at the forced repatriation of unsuccessful asylum seekers and rape and/or other atrocities.

The Committee has also expressed concern at the lack of systematic data collection on violence against women, including domestic violence, violence in detention centres and prisons and sexual harassment at the workplace and in other institutions. In some countries no specific legislation has been enacted to combat domestic violence and sexual harassment. The CEDAW Committee has expressed concern at this as well as at the limited information on trafficking in women and girls and the exploitation of women in prostitution.

Conclusions and Recommendations

The basic principle of human rights is that all persons should by virtue of their essential humanity enjoy the same rights, with no distinctions except minor legal differences between citizens and non-citizens in a particular country. However, many States continue to make significant distinctions between citizens and non-citizens with respect to civil, political, economic, social and cultural rights. In the absence of an international obligation on any country to admit non-nationals into their territory, there is a strong need for clear and comprehensive standards governing the rights of non-citizens to be implemented by governments and for an effective monitoring of compliance.

CEDAW provisions are very relevant in this regard, not only for ensuring the rights of women living regularly in the territory of a State, but also to prevent irregular migration and to combat trafficking. Gender inequality, discrimination, human rights violations and extreme poverty are some of the push factors for the migration of women. Addressing these issues would help address the problem of irregular migration.

A first recommendation would therefore be to ask countries of origin for information on measures taken to address the causes of irregular migration, or of massive migration flows.

Particular attention should be given to measures undertaken by states of origin, transit and employment to prevent trafficking in women, to combat corruption among

“I would like to invite the CEDAW Committee to consider introducing a General Recommendation on Migrant Women”

officials, and to strengthen national legislation to protect victims and prosecute perpetrators. States should also take measures to prevent illegal or irregular recruitment that render women vulnerable to traffickers and slavery-like conditions.

It is important to review efforts undertaken by states to ensure access to medical treatment and education for migrants and their children. Other issues of relevance are: measures undertaken to combat negative stereotyping, racial discrimination and xenophobia against migrant women; efforts to ensure fair application of labour standards; measures to favour reintegration by both states of origin and destination (transfer of remittances, local development, micro-credit); and measures to ensure family reunification. It is also important to pay particular attention to the treatment of irregular migrant women, including girl-children, especially in the event of detention and deportation.

It is crucial to strengthen our co-operation. For example, it would be extremely useful to share information on a regular basis, including on good practices, to support and strengthen one another's recommendations and conclusions, and make them more action-oriented. Communication is also

crucial in order to discuss old and new trends and to study ways and means to combat discrimination and violence against migrant women. I would like to invite the CEDAW Committee to consider introducing a General Recommendation on migrant women. This could be an independent comment or a joint effort with other Committees. The CERD Committee is ready to begin working toward an updated General Recommendation on the rights of non-citizens.

Finally I would like to recommend strong co-operation between the CEDAW Committee and the soon-to-be-established Committee on the Convention for the Protection of the Rights of All Migrant Workers and Members of their Families. This is an important first opportunity for dialogue and we should all stand ready to strengthen co-operation.

End Notes

(i) An overview of the violations to which migrant women are vulnerable is available in the addendum to my last report to the Commission summarizing communications from and to Governments (E/CN.4/2003/85/Add.1).

(ii) For example, the CEDAW Committee expressed concern that foreign married women with temporary residence permits in Denmark who experience domestic violence face a worsened situation after a July 2002 amendment to the Aliens Act. This amendment changes the required number of years of residence from three to seven before a permanent residence permit may be obtained. This may therefore dissuade victims of domestic violence from leaving their abuser. The CEDAW Committee recommended that revocation of temporary residence permits of foreign married women who experience domestic violence and legislative changes on residency requirements should not be undertaken without a full assessment of the impact of such measures. The Committee, after welcoming the legislative reforms introduced

by Tunisia to eliminate discrimination against women, was still concerned about the remaining discriminatory provisions, especially in the nationality law. The Committee expressed concern that although the Constitution provides for the equality of all citizens and the 1997 amendment to the Constitution introduced the concept of non-discrimination with regard to political parties, it does not contain a specific definition prohibiting discrimination against women and there is no definition of such discrimination in accordance with Article 1 of the Convention, which prohibits both direct and indirect discrimination.

(iii) For all the issues mentioned above I would like to stress that my next report to the General Assembly will contain specific recommendations as well as some good practices. Detailed information on situations that increase women's vulnerability will be provided, as well as successful and less successful measures implemented by a variety of actors to address problems.



Photos: Nick Rain