



USING THE INTERNATIONAL HUMAN RIGHTS SYSTEM TO PROTECT AND PROMOTE THE RIGHTS OF WOMEN MIGRANT WORKERS

SUMMARY

This Brief provides an overview of the international human rights system as it applies to the promotion and protection of women migrant workers' rights. Using examples from UN Women's joint EU-funded project "Promoting and Protecting Women Migrant Workers' Labour and Human Rights: Engaging with International, National Human Rights Mechanisms to Enhance Accountability" (the Project), which is anchored nationally in three pilot countries: Mexico, Moldova, and the Philippines, this Brief illustrates how these mechanisms can be used by governments, civil society and development partners, to enhance the rights of women migrant workers in law and practice.

The United Nations system monitors human rights at the international level through human rights monitoring mechanisms. These are UN Charter-based bodies, which derive their authority from the UN Charter and Treaty bodies, which were created under the international human rights treaties and composed of independent experts mandated to monitor State Parties' compliance with their treaty obligations. Most of these bodies receive secretariat support from the Human Rights Council and Treaties Division of the Office of the High Commissioner for Human Rights (OHCHR).¹

Charter-Based Bodies

Human Rights Council

The Human Rights Council was created in 2006 and is an intergovernmental body comprised of 47 UN Member States elected by the majority of members of the UN General Assembly. Members of the Council each serve for three years and up to two consecutive terms. The Human Rights Council is responsible for strengthening the promotion and protection of human rights, addressing and making recommendations on human rights violations, and serving as a forum to "prevent abuses, inequity and

discrimination, protect the most vulnerable, and expose perpetrators".² Processes that function under the auspices of the Human Rights Council include, among others, the Universal Periodic Review and Special Procedures.

Universal Periodic Review

The Universal Periodic Review (UPR) provides the opportunity for states to declare what actions they have taken to fulfil their human rights obligations and improve human rights in their country. The UPR Working Group holds three two-week sessions each year. In each session 14 countries are reviewed, with the intention being that the UN membership is reviewed in its entirety within a four-year cycle. Each State review is assisted by a group of three states, known as "troikas", who serve as rapporteurs. In the review process, each State under review submits a national report which includes its actions on addressing human rights and human rights obligations in its country. The review is also based on information contained in the reports of independent human rights experts and groups, such as Special Procedures, human rights treaty bodies, and UN entities, as well as

¹ See: <http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>

² Ibid.

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information from other stakeholders, including non-governmental organisations and national human rights institutions. The outcome of the review process is an “outcome report”, which contains the questions, comments and recommendations by states to the country under review.

The UPR process has the potential to play a critical role in increasing State accountability in relation to strengthening the promotion and protection of the rights of women migrant workers. Through the consideration of information from States, independent human rights bodies and civil society, the UPR is an important tool to which governments can be held accountable to the rights of women migrant workers.

Practical tips:

- Refer to the OHCHR webpage at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRSessions.aspx> to identify when the next UPR is taking place in your country;
- Identify opportunities to provide information on women migrant workers that will be considered as part of the review;
- Conduct consultations with women migrant workers and their support organisations to identify the key information that you want to present to the review.

Good practices from the project:

The Commission on Human Rights in the Philippines (a national human rights institution) incorporated the rights of women migrant workers into their UPR report, following a

[briefing from UN Women and civil society partners.](#)

Special Procedures

The Special Procedures of the Human Rights Council are independent human rights experts with mandates to “examine, monitor, advise, and publicly report on thematic issues or human rights situations in specific countries.”³ Special Procedures are either an individual (called a Special Rapporteur or an independent expert) or a working group comprised of five members, each representing one of the five United Nations regional groupings. Special Procedures report annually to the Human Rights Council and the majority also report to the General Assembly. Mandates cover human rights in the civil, cultural, economic, political, and social spheres.

The rights of women migrant workers are specifically addressed within the mandate of the following Special Procedures:

- the Special Rapporteur on the human rights of migrants;⁴
- the Special Rapporteur on violence against women, its causes and consequences;⁵
- the Working Group on the issue of discrimination against women in law and in practice;⁶ and
- the Special Rapporteur on trafficking in persons, especially women and children.⁷

The Human Rights Council resolution 6/30 (2007) requests all special procedures, “regularly and systematically to integrate a gender perspective into the implementation of their mandate

³ Ibid.

⁴ See: <http://www.ohchr.org/EN/Issues/Migration/SRMigrants/Pages/SRMigrantsIndex.aspx>

⁵ See: <http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/SRWomenIndex.aspx>

⁶ See:

<http://www.ohchr.org/EN/Issues/Women/WGWomen/Pages/WGWomenIndex.aspx>

⁷ See:

<http://www.ohchr.org/EN/Issues/Trafficking/Pages/TraffickingIndex.aspx>

including when examining the intersection of multiple forms of discrimination against women and to include in their reports information on and qualitative analysis of human rights of women and girls”.⁸

Special Procedures undertake country visits, act on individual cases of alleged human rights violations, conduct thematic studies, engage in advocacy and raise public awareness, and provide advice for technical cooperation.

Practical tips:

- Working with national stakeholders, identify the need and invite a Special Procedure to visit your country;
- Provide relevant Special Procedures with evidence and sex-disaggregated data on the situation of women migrant workers and ask them to provide technical support to States in the promotion and protection of the rights of women migrant workers’;
- Lobby the Special Procedures to issue a statement or public advocacy materials related to the rights of women migrant workers;
- Invite Special Procedures to international events, workshops, and meetings on the issues of women migrant worker rights;
- Using recommendations by the Special Procedures as the basis for advocacy to enhance policy and programming on women migrant workers’ rights.

Good practice from the project:

The Working Group on the issue of discrimination against women in law and practice are better able to identify and respond to the issues of women migrants in their country reviews, following an experts’ meeting with representatives from government and civil society from Mexico, Moldova and the Philippines, and experts of the Committee of

Migrant Workers and the Committee on the Elimination of Discrimination against Women.

Treaty-Based Bodies (and their treaties)

Human rights treaty bodies are committees of independent experts that monitor implementation of the core international human rights treaties. States that are party to a treaty must take steps to ensure that everyone in the State can enjoy the rights set out in the treaty. States submit regular reports to the relevant treaty body on progress made towards compliance with the treaty. Committees gather information widely, including through shadow reports. These reports, whether public or not, are drafted by members of academia and civil society organisations, and accompany and complement the reports prepared by the governments. On review of the reports, the Committee will provide guidance to the country on the way forward. There are nine core international human rights instruments, each with its own committee of experts:

1. *International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)* - Committee on the Elimination of Racial Discrimination (CERD);
2. *International Covenant on Civil and Political Rights (ICCPR)* - Human Rights Committee (CCPR);
3. *International Covenant on Economic, Social and Cultural Rights (ICESCR)* - Committee on Economic, Social and Cultural Rights (CESCR);
4. *Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)* - Committee on the Elimination of Discrimination against Women (CEDAW Committee);
5. *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or*

⁸ UN Human Rights Council (2007). “Integrating the human rights of women throughout the United Nations system” A/HRC/RES/6/30.

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Punishment (CAT) - Committee against Torture (CAT);

6. *Convention on the Rights of the Child (CRC)* - Committee on the Rights of the Child (CRC);
7. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) - Committee on Migrant Workers (CMW);
8. *International Convention for the Protection of All Persons from Enforced Disappearance (CPED)*; Committee on Enforced Disappearances (CED);
9. Convention on the Rights of Persons with Disabilities (CRPD) - Committee on the Rights of Persons with Disabilities (CRPD).

The rights contained in the international human rights treaties are universal and inalienable, and are not dependent on citizenship or migration status, with the exception of voting rights. As such, countries of origin, transit and destination are required by international law to protect the rights of migrant women and girls within their territories, regardless of nationality, origin, religion, race, or migratory status.

Both the ICCPR and the ICESCR provide that States ensure that all individuals are ensured the rights in each of their conventions, without distinction based on sex. Further, the ICERD provides in its General Recommendation 25 provisions on gendered dimensions of racial discrimination.

The CEDAW and ICRMW are particularly important treaties in the protection of women migrant workers' rights.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

CEDAW and its General Recommendation 26 on Women Migrant Workers (GR 26) provides a strong framework to support the formulation of gender-

responsive, rights-based policy on migration. Ratified by 189 States, and described as the Bill of Rights for Women, CEDAW is the most comprehensive treaty on the human rights of women. By ratifying CEDAW, States commit themselves to undertake a series of measures to end discrimination against women in all forms, including the commitment to:

- incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws;
- establish tribunals and other public institutions to ensure the effective protection of women against discrimination; and
- ensure the elimination of all acts of discrimination against women by persons, organisations or enterprises.

The convention includes obligations to suppress trafficking in women (Article 6); provides equal rights with men to acquire, change or retain nationality (Article 9); eliminates discrimination against women in the field of employment (Article 11); eliminates discrimination against women in the field of healthcare and ensure access to healthcare including that related to family planning and specifically maternal care (Article 12); and accords the same rights to women with regards to the law in relation to the movement of persons and the freedom to choose residence and domicile (Article 15.4).

GR 26 provides more specific guidance to States Parties on how to respect, protect and fulfil the human rights of women migrant workers, providing recommendations specific to countries of origin, transit and destination. The scope of GR 26 extends to women migrant workers who migrate autonomously, those who join their spouses or other members of their families who are also workers, and undocumented women migrant workers. GR 26, paragraph 23 sets out the

common responsibilities of countries of origin and destination as: formulation of gender-responsive migration policy; active involvement of women migrant workers in policy formulation; and the undertaking of quantitative and qualitative research, data collection and analysis to ensure that policies are gender-responsive.

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)

The ICRMW is the most extensive international instrument on the acknowledgement of the human rights of documented and undocumented migrants.

ICRMW provides for the rights of migrant workers and their families without distinction on the grounds of sex (Article 1); that no migrant worker be held in slavery or be required to perform compulsory labour (Article 11); the right to receive urgent medical care on the basis of equality with nationals (Article 28); the right to equality of treatment in accessing educational services, vocational services, housing, social and health services and participation in cultural life (Article 43); the unity of the family be protected (Article 44 and 50); cooperation between States to promote sound, equitable and humane conditions for migrant workers, in relation to labour, social, economic and cultural needs (Article 64); and that States collaborate to prevent illegal or clandestine movements and employment of migrant workers in an irregular situation (article 68 and 69).

The Committee for Migrant Workers (CMW) General Comment No. 1 notes the omission of specific references to either domestic work or domestic workers in a broad range of national and international frameworks of law. It offers guidance on how States can implement their obligations under the ICRMW with respect to migrant domestic workers. General Comment No. 2

addresses the rights of migrant workers in an irregular situation and members of their families and, in particular, provides that States should ensure that those sectors dominated by women migrant workers, such as domestic and care work, should be protected by labour laws and subject to inspections.

Practical tips:

- Check the calendar of country reviews by treaty bodies to see when the next relevant review is in your country, see: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/MasterCalendar.aspx?Type=Session&Lang=En;
- Coordinate with other stakeholders in your country to join or establish a treaty body review working group;
- Engage with the treaty body pre-sessional reviews, and lobby to have women migrant workers addressed in the List of Issues Prior to Reporting, as sent to the States;
- Engage the national human rights institutions in the review;
- Support the development of a reporting methodology, that includes the incorporation of issues relating to women migrant workers;
- Conduct and facilitate consultations with women migrant workers and their organisations to inform the State and shadow reports;
- Offer briefings to those responsible for both State and shadow reporting;
- Use the Concluding Observations of the treaty bodies as the basis for developing a national plan towards the promotion and protection of the rights of women migrant workers.

Good practices from the project:

- The Mexican government and civil society increased their understanding of how to use the observations of the CMW and CEDAW reviews, in framing policy and programming on women migrant workers, through a forum that included representatives from the two committees;

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- Civil society participants who attended the forum with the CMW and CEDAW Committees in Mexico used the opportunity to develop a methodology for CEDAW shadow reporting;
- In the Philippines, civil society partners and the Commission on Human Rights were supported in preparing a list of key issues on the rights of migrant workers, to be included in the 2016 CEDAW and 2017 ICRMW reviews;
- In Mexico and the Philippines, UN Women supported civil society to include the rights of women migrant workers in their shadow reports to the CMW and CEDAW Committees respectively. UN Women also supported civil society representatives to present their submissions in person during the treaty body sessions.

Strengthening the treaty bodies

It is equally important to work directly with the treaty bodies to advocate for greater attention to the issues of women migrant workers in their reviews.

Practical tips:

- Offer briefings to the Committees on the issues of women migrant workers in relation to a specific country, or in general terms;
- Invite Committee representatives to national and international events and workshops on the rights of women migrant workers;
- Encourage and facilitate greater collaboration between the treaty bodies and Special Procedures, States and civil society, to agree on priorities for protecting and promoting the rights of women migrant workers.

Good practices from the project:

- UN Women enhanced understanding of the CMW and the CEDAW Committees on the intersection of gender and migration through engagement with committee members on direct briefings, technical support, the issuing of a joint statement, and

through fostering increased partnership between the Committees;

- UN Women co-organised a side event to the 64th CEDAW Session on 21 July 2016 with OHCHR, including panellists from the CMW and CEDAW Committees, international organisations, and civil society exchanging on the importance of addressing the needs of women migrant workers through both treaty review processes;
- A joint statement by the CMW and CEDAW Committee, OHCHR and UN Women was developed on addressing gender dimensions in large-scale movements of refugees and migrants, which was released on 19 September 2016 to coincide with the UN Summit for Refugees and Migrants.

Conclusion

Through both the UN charter and treaty-based bodies, State and non-State actors have the opportunity to report on the situation of human rights in their countries and the extent to which they are complying with international obligations. In doing so, they have the opportunity to receive advice and recommendations from human rights experts. The promotion and protection of women migrant workers' rights can be advanced by engaging with these bodies and their review processes, as illustrated by the joint EU - UN Women project. State and non-State actors can use the calendar and timetable of these review processes as a framework for monitoring progress in promoting and protecting the rights of women migrant workers.

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