

Recommendations for addressing women's human rights in the global compact for safe, orderly and regular migration

Outcome of expert meeting in Geneva
November 2016





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RECOMMENDATIONS FOR ADDRESSING WOMEN'S HUMAN RIGHTS IN THE GLOBAL COMPACT FOR SAFE, ORDERLY AND REGULAR MIGRATION

1: Overarching Principles

The following recommendations for addressing women's human rights in the global compact for safe, orderly and regular migration are grounded in international human rights law, and provide direction on the full inclusion of women's rights in the formulation and implementation of the global compact on safe, orderly and regular migration. In particular, the recommendations that follow reaffirm the legally binding obligations of States Parties under the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), as further elaborated in General Recommendations No. 26 (2008) on women migrant workers, and No. 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women; the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (ICRMW), as further elaborated in General Comments No. 1 (2011) on migrant domestic workers and No. 2 (2013) on the rights of migrant workers in an irregular situation and members of their families; the *International Convention on the Elimination of Racial Discrimination* (ICERD), as elaborated in General Recommendation No. 25 (2000) on gender-related dimensions of racial discrimination; the *International Covenant on Economic, Social and Cultural Rights* (ICESCR); and the *International Covenant on Civil and Political Rights* (ICCPR). Further the commitments made under international labour standards through the widely ratified ILO conventions of general application as well as those that contain specific provisions on migrant workers including the *Migration for Employment Convention, 1949* (No. 97), the *Migrant Workers Convention, 1975* (No. 143) and, more recently, the *ILO Convention concerning Decent Work for Domestic Workers, 2011* (No. 189) and the attending Domestic Workers Recommendation, 2011 (No. 201).

The following recommendations underline the need to ensure a human rights-based and gender-responsive approach to migration governance, which respects the dignity of all migrants throughout all stages of migration, and protects their rights under international law, including the principles of equality and non-discrimination. These recommendations are informed by the *2030 Agenda for Sustainable Development*, which is grounded in international human rights law and recognizes that the systematic mainstreaming of a gender perspective in the implementation of the 2030 Agenda is crucial;¹ and includes in Goal 5.c the commitment to adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels. The recommendations are also guided by the *Addis Ababa Action Agenda of the Third International Conference on Financing for Development*, which reiterates the need for gender mainstreaming, including targeted actions and investments in the formulation and implementation of all financial, economic, environmental and social policies. The Addis Ababa Action Agenda also includes a commitment to adopt and strengthen sound policies and enforceable legislation, and to transformative actions for the promotion of gender equality and women's and girls' empowerment at all levels, to ensure women's equal rights, access and opportunities for participation and leadership in the economy and to eliminate gender-based violence and discrimination in all its forms (par [6]).² The recommendations are also informed by the *Declaration of the High-level Dialogue on International Migration*

¹ UN General Assembly (2015) Transforming our World: the 2030 Agenda for Sustainable Development, A/Res/70/1, para 20

² UN (2015) Addis Ababa Action Agenda of the Third International Conference on Financing for Development, para 6.

and Development adopted in October 2013 which recognized that women and girls account for almost half of all international migrants at the global level, and the need to address the special situation and vulnerability of migrant women and girls by, inter alia, incorporating a gender perspective into policies and strengthening national laws, institutions and programmes to combat gender-based violence, including trafficking in persons and discrimination against them.³

The recommendations are further informed by the *Paris Agreement* which acknowledged the importance of gender-responsive adaptation action, and highlighted that action must respect, promote, protect and fulfil the rights of migrants, gender equality and the empowerment of women;⁴ the *Sendai Framework* which highlights the gender dimensions of disaster risk reduction, including the role that women play in disaster risk reduction and the importance of women's empowerment for preparedness and capacity building for alternate livelihood means in post-disaster situations⁵ (which may result in the temporary or permanent movement of individuals and/or communities); the *Durban Declaration* which specifically urges States to place particular focus on gender issues and gender discrimination where multiple barriers faced by migrant women intersect, and stresses that detailed research should be undertaken not only in respect of human rights violations but also on the contributions women migrants make to countries of origin and destination;⁶ and *Habitat III*, which recognizes the need to give attention to multiple forms of discrimination faced by women and migrants, regardless of their migration status, and commits to strengthening synergies between international migration and development by ensuring safe, orderly and regular migration through planned and well managed migration policies.⁷ The recommendations affirm and complement the Global Migration Group's *Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations within large and/or mixed movements*.

The recommendations address the rights of women at all stages of migration. This includes women and migrants, including women migrant workers, across countries of origin, transit and destination, and women remaining in or returning to countries of origin, as well as those impacted by migration. Such a broad application is adopted so that the rights of women at all stages of migration are addressed, promoted and protected in the context of global structural drivers of migration and inequality.⁸ Equally, the recommendations seek to reverse negative misperceptions and attitudes towards women's migration⁹ and to treat all women in migration equally and without discrimination on the grounds of their migration status, intentions or migration route.

³ UN General Assembly (2013) Declaration of the High-level Dialogue on International Migration and Development, A/68/L.5, para 11

⁴ UN (2015). Paris Agreement.

⁵ UN (2015) Third UN World Conference on Disaster Risk Reduction, Sendai, Japan

⁶ (2001). Declaration of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

⁷ UN General Assembly (2016). Draft outcome document of the United Nations Conference on Housing and Sustainable Urban Development (Habitat III), A/CONF.226/4

⁸ In particular, in relation to the global care chain, it is recognized that the interaction between women and migration can be complex and its effects far reaching; e.g. a migrant woman assuming a paid reproductive care role in a country of destination may directly and indirectly impact upon the role of a non-migrant woman in a country of origin or destination.

⁹ In particular, those trends that see women migrant workers entering precarious feminized sectors of work as a result of global structural inequalities.

The global compact on migration should **make commitments to the following with respect to women at all stages of migration in countries of origin, transit and destination regardless of categorization or status:**

- 1.1. **Eliminate all direct and indirect forms of discrimination against women at all stages of migration by any person, organization or enterprise**, recognizing that different forms of discrimination may intersect, especially on (but not limited to) the grounds of race, migration status, marital status, sexual orientation and gender identity, pregnancy, parenthood, nationality, class, ethnicity, religion or belief, age, and/or disability.
- 1.2. **Pursue by all appropriate means and without delay a policy of eliminating racial discrimination, taking effective measures to condemn all acts, manifestations and expressions of racism, racial discrimination, xenophobia and related intolerance against women in migration** and the stereotypes applied to them, including on the basis of religion or belief, and other intersecting forms of discrimination, including gender, age, physical and mental ability, sexual orientation and gender identity, and migration status. Measures should ensure that serious and extreme instances of hate speech and incitement to hatred are prohibited as criminal offences and brought for review by an independent court or tribunal. While affirming free speech, measures should challenge negative perceptions, divisive language categorizing 'good and bad migrants', references to migrants as 'illegal' and hate speech perpetuated through the media. Measures should also include implementation of the UN Secretary General's multi-stakeholder campaign to counter xenophobic and racist discourse.
- 1.3. **Develop gender-responsive, human rights-based migration policy without delay**, which recognizes the agency of women in migration, promotes their empowerment and leadership and moves away from addressing migrant women primarily through a lens of victimhood.
- 1.4. **Acknowledge the important contributions made by women migrants to sustainable development and social change in countries of origin, transit and destination**, as well as the complex interrelationship between gender, migration and development. Recognize and value women's (including migrant workers) integral and expanding contribution to global value and care chains as vital to ensuring economic growth and human development — even though women's (including migrant workers) labour is often undervalued, underpaid, de-skilled, and exploited due to gender-based stereotypes and discrimination. Recognize the positive contribution of women migrants to sustainable and inclusive development, and acknowledge that development cannot be truly sustainable and inclusive until it encompasses and fosters the full economic, social and political empowerment and the leadership of women and girls at all stages of migration.
- 1.5. **Conduct robust gender-responsive research and enhance data collection, acquisition, analysis, and accountability measures** in order to highlight the contributions made by women in migration, as well as the gendered drivers of migration (including economic, racial or gender inequality, conflict, environmental degradation and disasters), and the situation and realities of women migrants in every phase of the migration process. Enhance the capacity, collection and dissemination of data through supporting quantitative and qualitative research on migration and violations of migrant women's rights, including exploitation and trafficking, disaggregated by sex, age, and migration status (and intersecting factors including race, ethnicity, and nationality where possible) in order to enhance gender-responsive and evidence-based policies, inform advocacy, challenge negative perceptions and prevent abuses and

exploitation. Further, gather specific data on the number and sex of migrants in transit and at border-crossings, including interceptions, detentions, deaths, abuse and injury at maritime, land or air borders. Encourage data sharing, respecting at all times that such data gathering must not compromise privacy rights and cannot be used for immigration enforcement purposes.

- 1.6. **Build the capacity of policy makers and decision making bodies** to ensure that they adequately promote and protect the rights of women in migration in their approach to economic and social development, migration governance and labour management.
- 1.7. **Ensure the development, implementation, monitoring and evaluation of policies and legislative frameworks are transparent and participatory**, including by ensuring the meaningful and effective participation of women migrants, civil society, and migrant women's organisations, without fear of reprisal; as well as ensuring unrestricted access of independent monitoring bodies, national, regional and international human rights mechanisms, ombudspersons, national preventive mechanisms and other relevant bodies to locations and information required to effectively monitor human rights of migrant women and girls.
- 1.8. **Ensure that gender-responsive and human rights-based policies and programmes are adequately resourced**, such as through the allocation of financial resources to State and non-State actors to research, design and implement migration policies which promote and respect the human rights of women at all stages of migration. Adequate resourcing should also include human resources through the establishment of special inter-departmental monitoring, co-ordination and intervention bodies, which should have operational capacity to address the needs of migrant women and girls at all stages of migration.
- 1.9. **Ratify international conventions (and withdraw all reservations) that promote and protect the rights of women at all stages of migration and incorporate their provisions into national law**; in particular, the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families, the Convention on the Elimination of All forms of Discrimination against Women and its Optional Protocol, the International Convention on the Elimination of Racial Discrimination, the Convention on the Rights of the Child, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, ILO conventions including the ILO Convention concerning Decent Work for Domestic Workers, 2011 (No. 189), the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

2. Improving migrant women's access to migration pathways that promote empowerment and protect rights

- 2.1. **Provide access to migration pathways which promote empowerment of women and protect their rights**. Review and repeal all gender discriminatory provisions which constitute restrictions or exclusions in law or practice that limit opportunities for women and girls to migrate, or that do not recognize the capacity, autonomy and agency of women and girls in decision making.
- 2.2. **Eliminate sex-specific bans and discriminatory restrictions on women's migration** which limit the mobility rights of women migrants on the basis of age, marital status, migration status, pregnancy and/or maternity status, among other factors. Lift restrictions that ban out-migration for women migrants to

specific regions or States, as well as those that require women to obtain permission from a spouse or male guardian to obtain a passport to travel. Further, ensure that visa schemes do not discriminate against women, such as by restricting their employment to job categories where women predominate and from job categories where men predominate, or by excluding female-dominated occupations from visa schemes. Repeal laws or regulations which prohibit women migrant workers from marrying nationals or permanent residents, becoming pregnant or securing independent housing, and ensure access to family reunification for women in migration.

- 2.3. **Ensure that the irregular entry, stay and work of migrants is not considered a criminal offence** and that any administrative sanctions applied to irregular entry are proportionate and reasonable; taking into account all circumstances of entrance and stay, in particular in the event of death, divorce or spousal separation from a migrant worker with regular status. Ensure that migrants are not liable for criminal prosecution for having used the services of smugglers. Ensure at all times that measures aimed at addressing irregular migration and combating transnational organized crime do not adversely affect the human rights and dignity of women and girls, including transgender women and girls, and do not criminalize them or their movement, including before departure, during transit, at borders, in destination countries and upon return; recognizing that, among other things, restrictive and securitized policies foster the vulnerability of women and girls to trafficking and sexual exploitation.
- 2.4. **Prevent and combat trafficking and exploitation of women and girls in line with international human rights law, norms and standards**, recognizing the increased risk of trafficking that women and girls face due to economic precarity, conflicts, post-conflict contexts and natural disasters, and when they lack nationality and identity documents.
- 2.5. **Develop and provide access to programmes that seek to regularize the status of migrants or lead to permanent residence**, with specific measures taken to address migrant women and girls with irregular migration status or who are stateless in countries of transit or destination, in particular in situations where children are unaccompanied or where women have been victims of crime, abuse or exploitation.
- 2.6. **Recognize the particular vulnerabilities of women and girls rendered stateless** through changes in national borders or definitions of citizenship (discriminatory or otherwise), through laws that do not extend citizenship to migrants and for children born to women with an irregular status, among other factors.
- 2.7. **Establish, operate and maintain adequate, gender-responsive systems for effective search and rescue at sea**, ensuring that search and rescue operates under a broad understanding of distress. Ensure that such measures are proactive and in accordance with international laws, with the primary objective of saving lives. Establish and support efforts to search for people who have disappeared or died on their journey; and facilitate recovery, identification and transfer of human remains and notification of families, both at the national and transnational levels.
- 2.8. **Promote joint action between States**, trade unions and other non-State actors including migrant women organisations, focusing on greater sharing of information and good practices, including in the identification of perpetrators of violations, abuse and exploitation. Encourage cooperation within the framework of joint pilot projects that produce shared results and shared learning. Ensure that all

agreements are transparent, publicly available and incorporate measures for oversight, monitoring and enforcement. Encourage the conclusion of binding bilateral, multilateral or regional agreements that are in line with international human rights law, norms and standards and promote the rights of migrant women and girls.

3. Women's human rights through all stages of migration

- 3.1. **Ensure that migrant women enjoy access to economic, social and cultural rights that is equivalent to that of nationals**, in line with international human rights law, norms and standards, including education, decent work, training, housing, social benefits and healthcare services, including sexual and reproductive health and mental health services.
- 3.2. **Ensure that migrant women enjoy access to civil and political rights that is equivalent to that of nationals**, in line with international human rights law, norms and standards, including access to justice, public and political life and personal security within the home, at work, at school and public spaces.
- 3.3. **Guarantee all migrant women their right to freedom of movement**, in line with international human rights law, norms and standards, including the right of all women to leave any country including their own.
- 3.4. **Ensure that information on the rights of women in migration is available and accessible** in countries of origin, transit and destination. Information should be easy to understand and encompass the right to freedom of movement, economic social and cultural rights, civil and political rights, labour rights, freedom from harm, as well as information on available remedies, access to justice and complaint mechanisms in case of violations. Information should provide clarity on the risks and realities of all regular and irregular migration channels.
- 3.5. **Develop and provide gender-responsive and human rights-based tools and training to State and non-State actors** such as relevant public and private recruitment agencies, employers, the judiciary and relevant State employees, including judicial officers, border officials, law enforcement personnel, local authorities, immigration authorities, labour administration and social service and health-care providers, consulates or embassies, or their agents. Adequately equip such actors to identify and address the distinct needs of women and girls in migration, including on the gendered and intersectional nature of rights

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