

**GUIDANCE NOTE**

**FORMULATING AND IMPLEMENTING  
GENDER-RESPONSIVE AND  
COHERENT MIGRATION AND  
ANTI-TRAFFICKING LAWS  
IN THE PHILIPPINES**



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# EXECUTIVE SUMMARY

As part of the universal mandate to promote gender equality and the empowerment of women, UN Women actively supports the promotion and protection of the rights of women migrant workers and safe migration for women at the global, regional and country levels. Around the world, a record number of women are now migrating to seek work and better opportunities. Even though migration may provide these benefits for women, it also poses a lot of risks, including unfair treatment, exploitation and vulnerability to different forms of violence especially in the informal sector such as domestic and care workers. Migration policies and practices have been slow to recognize these risks and take steps to make the process safe for women. In the Southeast Asia region, the feminization of migration is most visible and usually associated with out-going flows of women migrants particularly from Indonesia and the Philippines, where women make up 62-75 per cent of workers who are deployed legally on an annual basis.<sup>1</sup>

Translating gender mainstreaming into practice to protect women migrant workers requires gender-sensitive legislation on labor migration and trafficking. A CEDAW-based Legal Review of the Magna Carta of Migrant Workers and the anti-trafficking laws in the Philippines is indispensable to give concrete recommendations on improving laws that protect women migrant workers. It aims to identify gender discrimination in laws and underscore state obligations to address existing gender discrimination in laws. The legal review also intends to determine deficiencies in Philippine laws on migration and trafficking and how they fail to comply with the CEDAW legal framework for women's human rights as well as ascertain critical areas for reform and recommendations of ways by which the state can comply with CEDAW obligations.

A well-executed CEDAW-based Legal Review of migration and anti-trafficking laws will ensure

a deeper understanding of gender equality standards that are contained in CEDAW and other international human rights instruments. It will also lay a groundwork for enhanced gender-responsive migration and anti-trafficking laws by relevant government agencies.

Furthermore, a CEDAW-based Legal Review will provide the basis for capacity development activities among lawmakers, government and national oversight institutions on gender mainstreaming. Specifically, it will facilitate the identification of institutions and strategic mechanisms to target capacity development support for formulation, amendment and implementation of gender-responsive and coherent migration and anti-trafficking laws.

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<sup>1</sup> UN Women (2011) Gender, Migration and Development – Emerging Trends and Issues in East and Southeast Asia. Bangkok: UN Women.

# INTRODUCTION

## History

Also known as the Women’s Convention and the International Bill of Rights for Women, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was adopted by the United Nations (UN) General Assembly on 18 December 1979. It was signed by the Philippines on 15 July 1980 and ratified by the Philippine Senate on 05 August 1981. As of May 2015, 189 states have ratified or acceded to the CEDAW. It entered into force on 3 September 1981.

## Underlying Principles

The CEDAW has three underlying principles: non-discrimination (Article 1); state obligation and due diligence (Articles 2 - 5); and, substantive equality (Article 4).

The principle of non-discrimination is the first underlying theme that runs throughout the CEDAW text. “Discrimination against women” is defined in Article 1 of the CEDAW as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” By accepting the Convention, States commit themselves to undertake a series of steps to end discrimination against women in all forms.

The principle of state obligation is the second underlying theme that runs throughout the CEDAW text. It is the principle that not only obliges states to pursue *de jure* gender equality, but that they must also do so in practice, and in many different domains. For example, in addition to promoting

women’s rights in the country broadly, State Parties are obliged to seek out legislation on equality before the law regarding marriage, the right of women to vote and the right to choose a domicile and residence (CEDAW, Articles 15 - 17).

Substantive equality is the third underlying theme of CEDAW. It requires that “women be given an equal start and that they be empowered by an enabling environment to achieve equality of results,”<sup>2</sup> and that special measures to protect women be created in the face of existing unbalanced gender equality. The principle of substantive equality is a two-pronged approach to achieving the fulfillment of women’s equality to men. First, State Parties are obliged to take all actions as necessary to achieve equality between women and men. Second, States are obliged to take special measures to correct existing inequalities in power between men and women. Recognizing that the absoluteness of gender-neutral laws will obscure the differences between women and men, substantive equality accepts that “under certain circumstances, non-identical treatment of women and men will be required in order to address such differences.”<sup>3</sup>

States Parties to the CEDAW are legally bound to put these principles and provisions into practice. The Philippines has been recognized globally for its good practices in adopting laws in support of gender equality. However, emphasis on further strengthening the legal framework for women’s human rights is necessary.

## USEFULNESS OF CEDAW AS A FRAMEWORK FOR LEGAL REVIEW

Translating gender mainstreaming into practice to protect women migrant workers requires gender-sensitive legislation on labor migration and trafficking. A CEDAW-based Legal Review of the Magna Carta of Migrant

<sup>2</sup> CEDAW General Recommendation 25, paragraph 8.

<sup>3</sup> *Id.*

Workers and the anti-trafficking laws in the Philippines is indispensable to give concrete recommendations on improving laws that protect women migrant workers.

One way by which these concerns may be addressed is by identifying the gaps in Philippine laws and recommending changes that will make laws CEDAW-compliant.

A CEDAW-based Legal Review aims to achieve the following:

1. Locate gender discrimination in laws; underscore state obligations to address existing gender discrimination in laws.
2. Identify and highlight deficiencies in Philippine laws on migration and trafficking and how they fail to comply with the CEDAW legal framework for women's human rights.
3. Identify areas for reform.
4. Recommend ways by which CEDAW obligations can be complied with by the State.

A well-executed CEDAW-based Legal Review of migration and anti-trafficking laws will ensure the following:

1. A deeper understanding of gender equality standards that are contained in CEDAW and other international human rights instruments.
2. Enhanced gender responsive migration and anti-trafficking laws.

institutions and mechanisms to target capacity development support for formulation, amendment and implementation of gender-responsive and coherent migration and anti-trafficking laws.

## THE 8 STEPS OF A CEDAW-BASED LEGAL REVIEW

The handbook *Do Our Laws Promote Gender Equality?* expounds on the steps that have to be taken for a CEDAW-based Legal Review. These 8 Steps and a brief discussion of each step are as follows:

1. Identify CEDAW Obligations
2. Identify Situation, Issues and Concerns
3. Identify Provisions Needed in Law
4. Determine CEDAW Legal Indicators
5. List Relevant Legislation
6. Analyse Compliance
7. Draft Explanation and Comments
8. Formulate recommendations

### Step 1. Identify CEDAW Obligations

The CEDAW obligations are found in the General Recommendations of CEDAW, specifically General Recommendations 19 and 26 and Concluding Observations.<sup>4</sup> Using these resources, the legal obligations flowing from CEDAW can be determined.

The obligations should be further broken down, so that these can be matched with a particular *de*

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