

# CEDAW-BASED LEGAL REVIEW OF 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>

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was signed by the Philippines on 15 July 1980 and was entered into force on 03 September 1981. It has three underlying principles, namely: non-discrimination (Article 1); state obligation and due diligence (Articles 2-5); and, substantive equality (Article 4).

States Parties to the CEDAW are legally bound to put these principles and provisions into practice. In keeping with the Philippines' commitment under CEDAW, Congress passed several laws addressing discrimination against women. Among which are the Anti-Rape Law (Republic Act [RA] No. 8353), Anti-Violence Against Women Act (RA 9262), and most importantly, the Magna Carta of Women (RA 9710), a landmark law that aims to eliminate discrimination against women through the recognition and protection of the rights of Filipino women, especially those in marginalized sectors.

Among the duties of the State under RA 9710 is to ensure the protection and promotion of the rights and welfare of migrant women, regardless of their work status. The law also protects them against discrimination in wages, conditions of work, and employment opportunities in host countries, as well as access to skills training before taking on job overseas and possible retraining upon return to the country.

Pursuant to this, the CEDAW Committee has also issued two pertinent General Recommendations: General Recommendation 19 on Violence Against Women and General Recommendation 26 on Women Migrant Workers.

The Philippine law that addresses trafficking and exploitation of women is the Anti-Trafficking in Persons Act of 2003 (RA 9208), which was further amended by the Expanded Anti-Trafficking in Persons Act of 2012 (RA 10364). With regard to migration, the Philippine Congress has passed RA 8042 or Migrant Workers and Overseas Filipinos Act of 1995, which was further amended by RA 10022.

Translating gender mainstreaming into practice to protect women migrant workers requires gender-sensitive legislation on labor migration and trafficking. The review of related literature reveals that studies on Philippine laws on trafficking and migration focused on five major themes, such as: victim protection in trafficking vis-à-vis domestic laws on vagrancy, problems encountered in the implementation of the laws, the use of the Philippine experience to establish the need to strengthen state policies, migration and trafficking in the context of socio-economic implications and cross-cultural comparisons on the extent of state protection. These studies do not

adequately situate the progress of State legislation as regards its international obligations under the CEDAW and the review of the laws specifically from the gender perspective.

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 in improving laws that protect women migrant workers. The CEDAW is an excellent framework for gender equality legal reviews, particularly because it sets an international norm and standard for gender equality that covers all aspects of women's lives, including civil and political rights, as well as economic, social and cultural rights. The CEDAW provides a comprehensive definition of discrimination, which includes both direct and indirect discrimination and mandates both formal and substantive equality.

This review comprised chiefly of desk research. To determine whether the Philippines has complied with its state obligations, the study used the UN-identified CEDAW indicators contained in the handbook entitled *Do Our Laws Promote Gender Equality?* The indicators on trafficking and prostitution were used in addition to other indicators that came up during consultation with stakeholders. These helped determine whether or not the Philippines is exerting adequate efforts to combat trafficking of persons. Although the CEDAW legal review publication identifies

several indicators on trafficking and prostitution, there are none on migration. To enrich the study, desk research was augmented by consultations with key stakeholders. The Multi-Stakeholder Consultations (Pre-Review and Post-Review Stage) aimed to ensure that the objectives and desired outcomes of the Legal Review/Research are achieved.

The Migrant Workers and Overseas Filipinos Act of 1995, as amended, and particular sections of RA 9208 or the Anti-Trafficking in Persons Act, as amended, were reviewed and measured against the CEDAW standards and legal indicators, to determine full, partial or no compliance.

Based on the findings from the CEDAW-based legal review, amendments in the laws are recommended in the areas of access to justice, penalties and claims, services, training programs, information and education and expanding rights' protection.

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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.

# CEDAW-BASED LEGAL REVIEW OF MIGRATION AND ANTI-TRAFFICKING LAWS IN THE PHILIPPINES

## I. Background

### *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*

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.

The CEDAW, which entered into force on 3 September, 1981 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

- To establish tribunals and other public institutions to ensure the effective protection of women against discrimination.
- To ensure elimination of all acts of discrimination against women by persons, organizations or enterprises.

By accepting the Convention, States commit themselves to undertake a series of steps to end discrimination against women in all forms. This includes the following measures:

The principle of state obligation is the second core theme of the CEDAW. It is the principle that not only should states be obliged to pursue *de jure* gender equality, but that they must 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). CEDAW, in this way, differs from other conventions by providing specific areas

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