

# BRIEF ON FORMULATING AND IMPLEMENTING GENDER RESPONSIVE MIGRATION, LABOUR AND TRAFFICKING LAWS IN MOLDOVA



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## INTRODUCTION

In the context of globalization, migration has different effects on "developed" and "developing" countries. In recent decades, Moldova has suffered the effects of weak policies and structural adjustment programmes, with an increase in poverty, inequality, marginalization, unemployment and the underground economy, which led to cuts in social spending in areas of public services such as health and education. Increasing poverty has exerted greater pressure on women who sought to find alternative strategies to support their families, which, in turn, has led to an increase in the proportion of migrant women workers, the "feminization of migration".

Women have always migrated, sometimes independently, in legal or illegal ways, sometimes dependent on the family or for its reunion. The position of migrant women is often different from that of male migrants in terms of legal migration channels, the sectors to which they migrate, forms of abuse they suffer and the consequences.

In order to understand the specific problems faced by migrant women and develop regulatory policies to prevent and combat gender discrimination, exploitation and abuse, female migration needs to be studied from the perspective of gender inequality, the traditional roles assigned to women, gender-segregated labour markets, widespread gender-based violence and the feminization of poverty and labour migration worldwide.

Policies and legislation focused on migration management, including the integration of migration into development strategies, to protect the rights of this category of people, must be gender-sensitive.

The perspective of gender equality and women's empowerment in promoting policies relating to migration and development are reflected both in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the International Convention on the on the Protection of the Rights of all Migrant Workers and Members of their Families.

In accordance with the approach outlined in the Declaration and Platform for Action adopted in Beijing at the 4th World Conference on Women, in September 1995, gender discrimination and gender inequalities should be identified at all stages of the migration process to take into account the specific vulnerabilities of women migrant workers, and give them the legal tools to achieve their ambitions.

The Guide on Gender-Sensitive Labour Migration Policies developed by OSCE in Vienna, Austria<sup>1</sup> proposes taking into account three important aspects of human rights, when developing indicators to reflect a high degree of security

and justice in labour migration processes of women:

- *The right of women to legal migration:* Ensuring access and participation of women in safe and legal employment opportunities and protection against abuse and violence;
- *Rights in the migration process:* Providing safety and security in the process of employment, remuneration, control over earnings, decent working conditions, the right to family life, access to legal services, decision-making, health care and information, etc.
- *Rights exercised as a result of migration:* Facilitate and encourage potential positive outcomes of migration for women, by increasing their autonomy and extending their potential in negotiating conditions of work in the country of destination, having control over their earnings, enhancing their decision-making power at household level in the country of origin and increasing their capacity for social networking, etc.

Taking as a reference the provisions of CEDAW, General Recommendation No. 26 (GR 26) targeting female migrant workers was adopted in order to clarify those aspects of the rights of women that need special attention<sup>2</sup>.

Recommendation No. 26 identifies three categories of immigrant female workers who require protection:

- 1) Women migrant workers who migrate independently;
- 2) Women migrant workers who join their spouses or other members of their families who are also workers;
- 3) Undocumented women migrant workers who may fall into any of the above categories.

The Recommendation encourages countries to develop laws and policies to protect their rights as **women, workers and migrants** in various discriminatory situations during labour migration in **countries of origin, transit and destination**.

Taking into account the guidance provided by the above-mentioned international instruments, this Guide offers concise guidance on how to formulate and implement gender-sensitive legal standards in the area of migration, labour and human trafficking.

<sup>2</sup>Adopted by the 42nd session of the CEDAW Committee in November 2008, see [http://www2.ohchr.org/english/bodies/cedaw/docs/GR\\_26\\_on\\_women\\_migrant\\_workers\\_en.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/GR_26_on_women_migrant_workers_en.pdf)

<sup>1</sup> See: <http://www.osce.org/eea/37228>

## 1. GENERAL RECOMMENDATIONS

1. The main objective of the legislative process in terms of ensuring gender equality and excluding gender-based discrimination is to ensure that the activities of the authorities are coherent, coordinated and visible, in order to enhance their impact so as to best meet the needs of women migrants.
2. In order to ensure coherent, coordinated and visible policies, a cross-cutting and integrated approach is required through a well-structured mechanism. This means exchange of information, analysis, data collection, collaboration, protective mechanisms, accessibility of services and, at the same time, accountability and monitoring and control measures to identify and prevent rights violations are required.
3. In order to develop gender-sensitive labour migration policies, the legal framework should be based on internal and external quality assessments drawing on positive and negative experiences, new relationships and emerging trends. The following basic indicators should be taken into account in making this assessment:
  - statistical data, disaggregated by sex, and gender analysis;
  - The extent to which women and men contribute to policy development;
  - The extent to which gender issues are reflected in programmes/policies on labour migration, including performance indicators for achievement of gender equality;
4. Organizational capacity to develop and make changes.
5. All legislation, regulations, customs and practices that discriminate against women should be amended or eliminated.
6. The principles of human rights and gender equality should be enshrined in laws and regulatory acts on labour migration, in order to:
  - recognize the right of women migrants workers to the protection of universal human rights, including the right to life, the right to personal freedom and security, the right not to be subjected to torture, degrading and inhuman treatment, the right to be free from discrimination based on gender, race, ethnicity, culture, nationality, language, religion or other status, the right to a decent life, the right to an adequate standard of living, the right to equality before the law and the right to a fair trial.
  - ensure effective measures to eliminate all forms of discrimination against women and ensure that

they will be able to exercise and enjoy *de jure* and *de facto* the same rights as men, including in the area of labour migration.

- exclude from all regulatory acts and regulations, including intergovernmental agreements, provisions that could lead to the restriction of certain rights or, indirectly, to discrimination against women migrants' workers.
7. The adoption of policies conducive to the establishment or extension of parental leave and other childcare leave to help distribute the burden of care between men and women.
  8. Increased public investment in social protection to meet the needs of women for social protection and care arising in situations related to poor health, disability, unemployment.
  9. The adoption of economic and social policy measures needed to promote the social value of care and unpaid household work carried out by women, and recognition of its economic value.

## 2. RECOMMENDATIONS RELATING TO MIGRATION FROM THE COUNTRY OF ORIGIN

### A. PRE-DEPARTURE FROM THE COUNTRY OF ORIGIN

1. The legal framework should include regulations and provide effective tools to exclude socio-economic and political marginalization that influence the decision to migrate for work. These factors include:
  - Tightening labour division based on gender in the formal and informal sectors of production and provision of services;
  - Exclusion of stereotypes and discrimination against women in all fields (education, work, family);
  - Exclusion of the male entertainment culture that creates demand for women as entertainers.
2. Policies for promoting gender equality should give more importance to gender equality issues in the labour market, in particular problems related to:
  - the low proportion of women in management positions;
  - exclusion of any elements that may lead to the wage gap between women and men;
  - insertion of women into the labour market, based on: pre-training counselling, employment contract targets, training, pre-selection, selection, recruitment through internships with employers;
  - training objectives and indicators of the quality of

training for trainees, especially women, and not just quantity indicators, such as the unemployment rate;

- inclusion of awareness of gender equality and non-discrimination in the training process;
- mainstreaming women's employment in local development strategies, in urban and rural communities;
- diversification of employment and training strategies for women according to context, rural or urban environment.

3. The regulatory framework should provide guarantees of freedom of movement, within the country and abroad, and exclusion of any limitations of that gender-based right, as follows:

- all restrictions on free movement must meet three criteria: be prescribed by law, pursue a legitimate aim and be necessary in a democratic country;
- provisions restricting the movement of women according to the consent of the husband or male relatives should not be allowed;
- violations of a person's right to free movement must be punished by law.
- the legal framework should provide clear and consistent information on the conditions of legal movement and exclude ambiguous rules which may create uncertainties and situations that may influence a person to seek illegal ways of migration;
- the law must provide women with the right to obtain the necessary travel documents without any limitation of this right, dependent on the consent of the spouse or male relatives.

4. The legal framework should ensure the existence of a sufficiently developed system of permanent monitoring bodies on migration issues, and specifically the problems of women migrants. In particular, it is necessary to:

expressly designate the authority or authorities responsible for information;

- provide and improve institutional supervision of the observance of specific legislation by private employment agencies recruiting for work abroad,
- prescribe enhancement of institutional efforts to minimize illegal migration;
- prescribe signing of bilateral government agreements on employment in countries of destination;
- prescribe the identification of opportunities for signing intergovernmental agreements on employment to provide jobs fairly to women and men, reversing the trend to provide jobs for men only and in certain areas only;
- prescribe increasing efforts to include in bilateral agreements those areas of labour which are currently predominantly more informal (domestic workers, personal care workers looking after children, the elderly or sick), etc.

6. Ensure that local employment agencies develop and implement gender-sensitive employment programmes for women.

## B. RECRUITMENT PRIOR TO DEPARTURE

1. In order to eliminate the vulnerability of women in relation to their employers, the law must prescribe and provide equal access to education, training and information on migration from credible and reliable sources, particularly on:

- legal immigration in safe conditions,
- migration via affordable channels:
- avoiding exposure to trafficking;
- access to employment and social protection services, such as healthcare and education services for women and their families in countries of destination
- the right of association in the country of destination

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