

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



Prepared by the Legal Consultant, Tatiana Catană,
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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, Austria¹ 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 attention².

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.

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

² 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

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:

- outline clearly the responsibility and reporting lines of the various bodies promoting gender equality in government structures;
- provide clarity on how the Government Committee on gender equality cooperates with other central and local professional bodies,
- include issues of migrant women in national and local strategies.

5. Regulatory rules in the field of labour migration should increase the capacity and powers of authorities to monitor and check compliance of employment contracts and the rights of migrants in countries of destination. In this respect, the law shall:

- provide women migrants with access to information on legal ways of employment and

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;
- access to justice for rights violations in countries of transit and destination.
- access to information in the language they know;
- the diplomatic missions and institutions for the protection of migrants where they can go for help if needed.

2. State agencies and public organizations should provide **pre-departure and pre-employment training** for potential migrant women seeking employment, taking into account the vulnerability and increased risk of women being sexually abused during transit and of being trafficked or otherwise exploited in destination countries.

3. To exclude economic burdening of women with excessive charges in the migration process, laws should contain unambiguous rules prohibiting the abusive collection of fees by those employment and recruitment agencies both in the country of origin and the country of destination.
 4. Legislation should recognize women migrant workers who have suffered trauma or have been forced into exploitation as eligible for free state legal aid and social-medical assistance for rehabilitation;
 5. The law should contain provisions to ensure women migrants who report abuse or discrimination do not lose residence and work permits as a result. The law should also enable the extension of such permits during and after any legal proceedings or trial.
 6. Laws governing the activity of diplomatic missions should contain clear obligations for their representatives to meet, intervene and extend all support to women migrant workers, who, for lack of mobility, may find it impossible to lodge a complaint and may be suffering from violence and abuse for long periods. Lack of mobility may be due to the following reasons:
 - restrictions on movement imposed by their employers at their place of work or stay;
 - they prohibition on using the phone or joining any cultural groups or associations.
 - dependency on their spouses or employers in the case of domestic women workers
 - passports withheld by the employers
 - fear of reprisals
- designated competent authorities who grant assistance and protect victims;
 - free programmes to assist victims of exploitation and trafficking that include social, medical, legal aid, shelter, food, professional training, and support in finding a job.
 - assistance and protection of victims is not conditioned by their willingness to cooperate with law enforcement in the prosecution of offenders;
 - victims who are foreign citizens are entitled to the same right for assistance;
 - rules provide and recognize the right to receive residence permits;
 - explicit rules exonerate victims of exploitation from criminal liability for acts committed by them in connection with this status;
 - rules expressly provide for the competent authority to recognize the status of the victim and criteria under which she/he is eligible for assistance and protection programmes;
 - the legal framework provides for the length of the assistance programmes and the possibility to benefit from long-term assistance and protection.

3. Persons who migrate have the objective of making substantial savings, which mostly are transferred into the country through informal financial intermediaries. thus putting those savings at some risk. In this regard policies and a regulatory framework are needed to diversify the scope of banking services and international transfers and enhance their accessibility, including in rural areas.

C. RETURN OF MIGRANTS TO THE COUNTRY OF ORIGIN

1. Exclusion of any discriminatory rules in the pre-migration process or upon return home that can lead to labelling or stigmatisation associated with migration of women or gender-based discrimination. If this is the case, it will be necessary to:
 - exclude any mandatory rules requiring women migrants to undergo HIV/AIDS testing;
 - include rules of confidentiality in relation to information on persons who have suffered from exploitation and provision of the assistance to which they are entitled.
2. For women victims of exploitation and trafficking, the law must specify their entitlement to legal assistance and protection. Rules governing the right of victims to assistance and protection must ensure the following:
 - initiation of prosecutions is not dependent on the victim's willingness to cooperate with law enforcement;

3. RECOMMENDATIONS RELATING TO THE MIGRATION PROCESS IN TRANSIT COUNTRIES

1. Legislation must provide appropriate rules on the protection of women migrant workers' rights against violations related to illegal migration and human trafficking committed in the transit country. These rules should provide guarantees for women's rights violations to be prevented and mitigated by:
 - active measures for prevention, prosecution and punishment of violations of the legislation on migration committed by representatives of public authorities or by private actors for the preparation or forgery of documents, organizing illegal border crossings, transportation of migrants, etc.

- Provision of services and assistance in situations where women migrants have been abandoned by the people who escorted or guided them;
- Training, monitoring and supervision of state representatives (border police, investigators, officers of the National Bureau for Migration and Asylum) on how to properly implement gender-sensitive and non-discriminatory practices when it comes to women migrants.

4. RECOMMENDATIONS RELATING TO MIGRATION IN THE COUNTRY OF DESTINATION

1. Gender policies and legal framework In countries of destination that ensures their implementation should aim to achieve greater economic autonomy and equality in the workplace.
2. Laws should contain mandatory provisions which prohibit employment intermediaries, employers, including individuals, from collecting and withholding (including as guarantee) passports, identity cards, entry, stay or work permits of women migrant workers. Allowing such practices must be prosecuted and penalized.
3. The rules should contain explicit provisions stating which category of civil servants are authorized to collect documents, under what specific circumstances and by what means, so as to exclude abuses by public officials;
4. Legal protection of women migrant workers' rights:
 - Labour legislation should provide women migrant workers with the same rights and protection as granted to all workers in the country, including the right to organize and freedom of association.
 - Contracts for women migrant workers should be legally valid.
5. Occupations dominated by women migrant workers (domestic work, some forms of entertainment, carers of the elderly, children's nannies, etc.) should be protected by law by adopting regulations that require individual employers or employment agencies to sign contracts with employees, covering wages, working hours, health and safety conditions, holiday leave, and overtime pay, as well as provisions pertaining to social protection.
6. Provide legal mechanisms for employees hired informally, i.e. without an employment contract. Remuneration equivalent to the usual remuneration for work performed in those areas may be ordered.
7. Labour legislation should provide mechanisms for monitoring the working conditions of women migrants, especially in occupations where women are the predominant workforce. The competent authority, the State Labour Inspectorate, should be vested with the right to verify compliance with labour laws in the informal sector, including domestic work.
8. The legal framework should include rules regarding measures to prevent xenophobia and racial hatred, cultural stereotypes, and ensure respect for the cultural identity of women migrants and not prevent them from maintaining cultural ties with their country of origin.
9. Legal provisions on the right to family reunion.
10. The legal framework should ensure better access of women migrants to healthcare:
 - rules should provide flexible criteria for access to healthcare for illegal migrants: health is not just an emergency but a fundamental right that must be respected at all times.
 - rules should guarantee the security and protection of women and children, even if they do not have legal documents.
 - healthcare providers should respect the cultural context of their patients.
 - work with women migrant organizations to calibrate their services and/or raise the level of cultural sensitivity.
 - develop projects that aim to improve the quality of life for women migrants, while ensuring at funds for their implementation.
11. Improving the conditions for migration:
 - The right to family reunification, annual visits, residence permit without being conditioned by maintaining the same job; extension of official migration channels for women migrants working as carers.
 - Clear policies in the field of social protection: recognition and provision of benefits in their country of origin for social insurance contributions paid in countries of destination.
12. Bilateral and regional cooperation. Migration policies should encourage the signing of bilateral and regional agreements between countries that send or receive migrants and transit countries, to protect the rights of women migrant workers by including the following measures on:
 - border controls;
 - regulation of migration;

- exchange of appropriate information and practices for the protection of women migrants;
- cooperation on identifying perpetrators of violations of women migrant workers' rights;
- promoting safe migration procedures;
- the obligation to respect, protect and enforce human rights of women throughout the migration cycle;
- procedures for the recognition of social and economic contributions of women migrant workers in their countries of origin and countries of destination, including from their domestic work activities;
- signing bilateral intergovernmental agreements in the field of labour migration.

13. When signing the relevant agreements, local labour market trends should be taken into account to exclude distortions emerging as a consequence of prioritizing some jobs within these agreements which may lead to lower labour supply in the local market in these sectors;

14. Agreements should include two different types of provision, to provide benefits for women migrant workers, as follows:

- a. General best practices that have a positive impact on women, such as protective provisions in sectors not covered by national labour law, e.g. domestic work;
- b. Measures which take into account the gender dimension, such as assessment of the impact of agreements; including gender advisers with experience on migration, at all stages, from creation to implementation of such agreements; and providing training to raise awareness of the gender dimension among all staff involved in the process.

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