

GENDER DIMENSION OF MIGRATION KEY CHALLENGES FACED BY MIGRANT WOMEN

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ABSTRACT

Along with the increasing feminisation of migration in the world, dangers and challenges faced by migrant women are constantly on the rise. Often, neither domestic nor international law are providing adequate legal and procedural guarantees for the migrant and asylum-seeking women. Accordingly, it is of critical importance that international migration management addresses the special vulnerabilities and needs of women.

INTRODUCTION

Migration is one of the most significant characteristics of globalisation. Some experts consider human migration to be one of the components of globalisation together with free movement of capital, goods and information. However, it may well be argued that human migration is the core element of globalisation, since the movement of people has a substantial impact on local customs and traditions.¹

Throughout the last two decades, certain aspects of international migration have become particularly relevant. They tend to intertwine with facets of domestic and international law, in the latter connection particularly with International Refugee Law, International Human Rights Law and Human Trafficking. Increased migration flows have brought a number of important issues to our attention: an examination of international migration procedures and practices indicates that women belong to a particularly vulnerable and marginalised migrant group.² Migrant, refugee/asylum-seeking women face many legal barriers, social problems and challenges. The risks of these women to be subjected to human rights violations are real. Moreover, migrant women represent high-risk groups for becoming victims of human trafficking.³

Even though the vulnerabilities of women are rather obvious, neither national nor international law are providing adequate responses to the challenges of international migration that are shaped by gender. An examination of existing international instruments, national legislation and practices suggests that law does not effectively guarantee the protection of migrant women. While in recent years, several positive steps were taken to support migrant women and to provide them with further legal guarantees,⁴ existing practices and standards cannot fully protect migrant women, provide reasonable guarantees and respond to the continuing threats they might face.

¹ Aman, "Migration and Globalization," 2 *Ind. J. Global Legal Stud.* 1(1994): 1-3.

² Calavita, "Gender, Migration, and Law: Crossing Borders and Bridging Disciplines," 40 *Int'l Migration Rev.* 104 (2006): 111-115.

³ Musacchio, "Migration, Prostitution and Trafficking in Women: An Overview," 5 *German L.J.* 1015 (2004): 1015-1017.

⁴ The examples are discussed below.

The present paper explores and analyses the human rights abuses migrant women are subjected to, as well as the legal and social underpinnings of such abuses, together with other gender facets of international migration.

1. THE FEMINISATION OF MIGRATION AT THE GLOBAL LEVEL

Movements of people are as old as humankind and every migratory flow has its typical underpinnings. According to one survey conducted in the mid-nineties, the proportion of men, women and children in the total number of migrants was directly related to the character of the migration wave, the country of origin and the socio-economic opportunities in the destination area of immigration. Also, according to the survey, between 1840 and 1924, for instance, women made up 20 per cent of all international migrants.⁵ Since the 1960s, however, the global picture has dramatically changed – the pattern of male-dominated migration has undergone a major transformation that led to the dominance of females. Statistical data indicates that between 1960 and 2010 women constituted 47 per cent of all migrants. This feminisation of migration that as indicated started in the late 1960s has become more tangible during the 1990s and the 2000s.⁶

Every migratory flow is characterised by a plethora of factors. Sociologists consider the feminisation of poverty and the feminisation of work, together with the general increase in the female population, to be the key drivers of the feminisation of migration.⁷ The feminisation of poverty is mostly but not only the result of patriarchal traditions demonstrated by the economic discrimination of women. Even though numerous international organisations, international instruments, government strategies and non-governmental organisations strive to eradicate gender inequality in the labour market, recent surveys still indicate gender pay gaps of 30 per cent on the average.⁸ Furthermore, according to a 2015 United Nations report⁹ and a 2017 World Bank study,¹⁰ in many cases, women are economically dependent on their spouses, and in developing countries often legal barriers persist that restrict women's rights to own land and inheritance rights. The United Nations Food and Agriculture Organisation's database indicates that only 12 per cent of agricultural landholders around the world are women.¹¹ Women are also deprived of the possibility to make

⁵ Gabaccia, "Women of the Mass Migrations: From Minority to Majority, 1820-1930", in *European Migrants: Global and Local Perspectives*, edited by Dirk Hoerder and Leslie Page Moch, (1967): 327.

⁶ UNDP, "Human Development Report 2009," accessed December 10, 2019, http://hdr.undp.org/sites/default/files/reports/269/hdr_2009_en_complete.pdf.

⁷ Caritas International, *The Female Face of Migration-Background Paper*, (2010): 9-1

⁸ Schwab, "The Global Gender Gap Report 2015." Report presented at the World Economic Forum, Davos, January 23-25, 2015.

⁹ UN, (2015), *The World's Women 2015 Trends and Statistics*, ხელმისაწვდომია: <https://unstats.un.org/unsd/gender/worldswomen.html>.

¹⁰ Milazzo et al, *Governance and Women's Economic and Political Participation: Power Inequalities, Formal Constraints and Norms*, World Development Report, (2017).

¹¹ See "Food and Agriculture Organisation of the United Nations Database", available at: <http://www.fao.org/gender-landrights-database/en/>.

decisions regarding private and family finances.¹² The above documents further make it clear that women tend to work three hours more than men. Additionally, women are underrepresented in leading positions. As stated in many studies, by 2015 men significantly outnumbered women in the executive, legislative and judicial branches of government. Glass ceilings existed too in the media and private sector - less than 4 per cent of CEOs were women. Progress has been slower in developing countries than in developed countries.¹³ All those examples of gender economic inequality are important drivers of the feminisation of poverty.

As has already been noted earlier, the feminisation of work decisively impacts on the feminisation of migration. This phenomenon is illustrated by the demand for labour in developed countries that is gender-selective in favour of women regarding the service-, and domestic work sectors.¹⁴

Additionally, problems in the countries of origin that influence the feminisation of migration are domestic violence and challenges in education and healthcare. Statistics suggest that 2/3 of illiterate persons are women and come mostly from developing countries.¹⁵

Many statistics shed light upon this trend. In particular, 2013 data suggest that 44 per cent of 150 million migrant workers were women, of whom 75 per cent migrated to high-income countries, 12 per cent to upper-middle-income countries, 11 per cent to middle-income countries, and 2.4 per cent to low-income countries.¹⁶ Women perceive mobility as an opportunity to get away from economic inequality, political instability and discrimination. Migration is also perceived as a search for a better life for women and their children, social stability and access to education. Statistics indicate that these expectations are frequently not met.¹⁷ Migrant women in destination countries work mostly within the service sector as cleaners and care workers. Most qualified female migrants are employed in the healthcare and education spheres.¹⁸ As regards educated migrants, men tend to earn usually 15 per cent more than women.

2. INTERNATIONAL MIGRATION AND GENDER-SPECIFIC PROBLEMS

Migration is an opportunity for women to break free from societal pressures, economic inequality, poverty, stigmatisation and discrimination, but proper determination of the risks associated with migration is of utmost importance since risks often tend to overcome the positive aspects of mobility. Migrant women are

¹² *Supra*, note 10.

¹³ *Supra*, notes 10, 11.

¹⁴ *Supra*, note 8.

¹⁵ *Supra*, notes 10, 11.

¹⁶ ILO, *Global estimates on migrant workers: Results and Methodology - Special Focus on Migrant Domestic Workers*, (2015): 15-33.

¹⁷ *Supra*, note 11.

¹⁸ *Supra*, notes 10, 11.

victims of verbal, physical and sexual violence. Gender discrimination of migrant women is acute in the labour market: women perform dangerous work, and women migrant workers receive lower wages than men or experience non-payment of wages. Migrant women are also deprived of social and legal guarantees. As their families depend on their remittances, migrant women however continue to perform their duties regardless of the gross human rights violations they are subjected to and of conditions threatening their life and health.¹⁹

During the migration journey, women are likely to become targets of human trafficking. Reports of the United Nations Office on Drugs and Crime²⁰ suggest that most victims of trafficking are women and girls. It is further stated that between 2007 and 2014, a vast majority of victims – more than 50 per cent – were trafficked for sexual exploitation. Of these victims, 97 per cent were females.²¹ Women represented 36 per cent of the victims trafficked with the purpose of forced labour.²² Even though there are no specific data on the number of migrant women's ratio to victims of trafficking – as trafficking might or might not entail an element of crossing an international border – according to several studies, migrant women are particularly exposed to the risks of sexual exploitation and sexual slavery.²³ Unfortunately, trafficking is not the only risk faced by migrant women. The refugee crisis in Europe has clearly demonstrated the many risks and damages women faced regarding their international mobility. An Amnesty International report concludes in this respect that most of asylum-seeking and migrant women are exposed to risks of physical and psychological abuse, exploitation and sexual harassment.²⁴ Asylum-seeking women face the first major challenges when crossing borders illegally. According to asylum-seeking women, “everybody knows that there are two ways of paying smugglers – with money or with the body.”²⁵ Reports of international organisations confirm that sexual exploitation of women by smugglers is widespread. This is manifested by “forced” prostitution that consists in pressuring women to consent under the threat of abandonment. The reports also suggest that in several instances family members offer women for sexual exploitation in exchange for

¹⁹ Bhargava, “Optimal Asylum,” V. J. Transatl L., 46 (2013).

²⁰ UNODC, (2009), Global Report on Trafficking in Persons, Executive Summary, 8-9, available at: http://www.unodc.org/documents/human-trafficking/Executive_summary_english.pdf; UNODC, (2016), Global Report on Trafficking in Persons, 23, available at: http://www.unodc.org/documents/dataandanalysis/glotip/2016_Global_Report_on_Trafficking_in_Persons.pdf.

²¹ Id.

²² Id.

²³ FitzGerald, “Biopolitics and the Regulation of Vulnerability: the Case of the Female Trafficked Migrant,” 6 Int'l J. L. Context (2010): 277-286.

²⁴ Amnesty International, (2016), Female Refugees Face Physical Assault, Exploitation and Sexual Harassment on their Journey through Europe, available at: <https://www.amnesty.org/en/latest/news/2016/01/female-refugees-face-physical-assault-exploitation-and-sexual-harassment-on-their-journey-through-europe/>.

²⁵ Benhold, “On Perilous Migrant Trail, Women Often Become Prey to Sexual Abuse,” New York Times, January, 2016.

border crossing.²⁶ Not only women from the Middle East but also 80 per cent of African women migrating to Europe and women from Central America migrating to the US are exposed to such abuse by smugglers, as indicated by a 2014 study.²⁷ Smugglers are not the only abusers whom women tend to encounter on their way to the country of destination.

Amnesty International reports shed light on the fate of women placed in migrant detention centres in Greece, Hungary and Slovenia where they are victims of physical and sexual violence, and humiliation. Migrant women are also vulnerable to abuse by border patrols, police, security services and other migrants.²⁸ Migrant and asylum-seeking women generally face challenges in administrative centres and refugee camps of the host country. Several reports suggest that women are especially victimised in mixed camps, where there are no separate living spaces for men and women or where women cannot lock their personal space.²⁹ The situation is reportedly particularly alarming in the German refugee camp located in Bonn, where women and men enjoy the same toilet facilities and bedrooms. This not only puts women at risk in general but also poses a serious threat to their health – many women cannot adequately provide hygienic care for themselves.³⁰ However, ordinary camps also have shortcomings – especially then when family members are settled in different centres at considerable distance from each other or when transgender asylum-seekers are settled in camps based on their biological sex and not their gender preference. This increases the potential for violence in view of their vulnerabilities.³¹

Migrant women domestic workers, who originate in countries where the families of the employee are accountable for the registration of migrant workers in order to work legally may face serious problems when their family deliberately or accidentally does not register the migrant worker, and the migrant therefore is automatically considered to be illegal and exposed to the risk of expulsion.³² Fear of deportation and existing socio-economic barriers are additional factors that migrant women are not ready to report violent acts perpetrated against them or to cooperate with the relevant authorities in order to punish the perpetrators. There is no doubt that perpetrators are aware of those circumstances which creates an environment of

²⁶ Schlein, “*Refugee Women Seeking Safety in Europe Risk Sexual Abuse, Violence*,” *Voice Of America*, January, 2016.

²⁷ McIntyre et al, “*Is Rape the Price to Pay for Migrant Women Chasing the American Dream?*,” *Splinternews*, September, 2014.

²⁸ *Supra*, note 26.

²⁹ *Supra*, note 26, Bonn, “*No 'Safe' Asylum for Female Refugees in Europe*,” *DW*, October, 2015.

³⁰ *Id.*

³¹ Hernandez-Truyol, *Glocalizing Women's Health and Safety: Migration, Work and Labor*, *Santa Clara Journal of International Law* 48, (2017): 52-56.

³² Platform for International Cooperation on Undocumented Migrants Submission to the 54th Session of the Committee on the Elimination of Discrimination against Women General Discussion on “Access to Justice”, 2013.

impunity for the violence perpetrated against migrant and asylum-seeking women. In addition to the practical challenges discussed above, migrant and asylum-seeking women also face legal barriers. During border crossings and asylum procedures, States tend to ignore gender specific issues of migration. Historically, gender-based persecution has been wide-spread – examples include mass rapes and forced pregnancies during the Bosnian War,³³ the heinous crimes perpetrated against women in Cambodia under the Pol Pot regime,³⁴ and persecution and enslavement of women by the Islamic State.³⁵

Whether the existing international or regional legal framework affords protection to women asylum seekers who are victims of gender-based persecution is still unresolved.³⁶ The bottom line in this regard is Article 1 of the 1951 Convention Relating to the Status of Refugees according to which a refugee claimant must establish that he or she has a well-founded fear of being persecuted for reasons of race, religion, nationality, *membership of a particular social group* or political opinion.³⁷ Gender is not specifically referenced in this definition of a refugee. While the 1991 United Nations High Commissioner for Refugees (UNHCR) Guidelines on the Protection of Refugee Women contain an explicit requirement for States to include *gender-based persecution among the qualifications for membership in a particular social group*,³⁸ many States refuse to comply with this requirement.³⁹ US case law is particularly non-committal in this regard. During the 2000s, one case was much publicised in which a US immigration judge refused to grant asylum to a girl fleeing from Russia who claimed to be a victim of group rape and abuse by Chechen mafia members, having been abducted 100 times for 30 months. Notwithstanding the horrific circumstances of the case, the judge found that the victim had not been persecuted because of her *membership in a particular social group* and thus did not qualify for asylum.⁴⁰ US courts are still reluctant to link gender-based persecution to membership in a particular social group – an interpretation that some professionals suggest could lead to a massive influx of members of a multitude of social groups.⁴¹

³³ Swiss, "Rape as a Crime of War: A Medical Perspective," 5 JAMA 612, (1993): 612-623

³⁴ Anderson, "Turning Reconciliation on Its Head: Responding to Sexual Violence under the Khmer Rouge," 3 Seattle J. Soc. Just. 785, (2005): 790-795.

³⁵ Davis, "Reimagining Justice for Gender-Based Crimes at the Margins: New Legal Strategies for Prosecuting ISIS Crimes against Women and LGBTIQ Persons," 24 Wm. & Mary J. Women & L. 513, (2018): 514-517.

³⁶ Condon, "Asylum Law's Gender Paradox," 33 Seton Hall. L. Rev. 207, (2002): 210-216.

³⁷ The 1951 Convention Relating to the Status of Refugees, the 1967 Protocol Relating to the Status of Refugees, available at: <https://www.unhcr.org/protection/basic/3b66c2aa10/convention-protocol-relating-status-refugees.html> (Georgia ratified the Convention in 1999).

³⁸ UNHCR, Guidelines on the Protection of Refugee Women: Legal Procedures and Criteria for the Determination of Refugee Status, 1991, UN Doc. ES/SCP/67 57.

³⁹ Larkin, "Sex and Gender Violence in Asylum Law: Expanding Protection beyond Domestic Violence," 9 Drexel L. Rev. 227, (2016): 228-236.

⁴⁰ Basova v. INS, No. 98-9540, 1999 U.S. App. LEXIS 15715, 10th Cir. July 14, 1999.

⁴¹ Marsden, "Domestic Violence Asylum After Matter of L-R-," 123 YALE L.J., 2512, (2014): 2526; Niang v. Gonzales, 422 F.3d 1187, 1199, 10th Cir. 2005.

Procedural and legal dimensions of migration are also complicated. Uniform procedures in interviewing applicants for refugee status and regarding accommodations for applicants do not exist.⁴² As noted earlier, women migration is often driven by the will to escape domestic or sexual violence, gender discrimination and stigma. The victims of such acts are often unable or reluctant to speak up. Those circumstances are compounded by cultural and linguistic barriers, for example when the translator or the interviewer is a man, or when the interview is attended by a family member. Such obstacles have a considerable negative impact on the legal protection of asylum-seeking women. Analysts have referred to these problems when trying to explain why the US expelled more illegal migrant women than men, in the 2000s.⁴³

3. LEGAL GUARANTEES FOR MIGRANT WOMEN AND ASYLUM-SEEKING WOMEN

Having discussed the risks and threats that migrant and asylum-seeking women are likely to face, it is necessary to explore what legal safeguards and forms of protection are provided for these women in international law and the adequacy of those provisions.

The 1948 Universal Declaration of Human Rights (UDHR), whose important place as a pillar of customary law is undisputed,⁴⁴ envisages the right to adequate health in Article 25. It covers a wide range of rights, including those to adequate work and housing, as well as to healthcare.⁴⁵ Accordingly, States are under an obligation to ensure minimal but essential standards of housing in refugee camps and centres for migrants and asylum-seekers.

Additionally, and importantly, various international human rights conventions that are binding legal texts for States parties to those instruments contain minimum legal provisions for the protection of migrant women. Examples include multiple UN treaties: the 1976 International Covenant on Civil and Political Rights (ICCPR),⁴⁶ the 1976 International Covenant on Economic, Social and Cultural Rights (ICESCR),⁴⁷

⁴² Young, "Gender and Migration: An Evolution in Protection," 24 *In Defense of the Alien*, 233, (2001): 235.

⁴³ *Id.*

⁴⁴ Bilder, "The Status of International Human Rights Law: An Overview" in, *International Human Rights Law and Practice*, ed. James C. Tuttle, (Philadelphia: International Printing Co. 1978), 1-8; Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*, (New York: Random House Trade Paperbacks), 17.

⁴⁵ See the 1948 Universal Declaration of Human Rights (UDHR), available at: https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf.

⁴⁶ See the 1966 UN International Covenant on Civil and Political Rights (ICCPR), available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx> (Georgia acceded to the Convention on 25.01.1994).

⁴⁷ The 1966 UN International Covenant on Economic, Social and Cultural Rights (ICESCR), available at: <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx> (Georgia acceded to the Convention on 3.08.1994).

the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),⁴⁸ the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (CERD),⁴⁹ the 1989 Convention on the Rights of the Child (CRC),⁵⁰ and the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW).⁵¹ These instruments include the prohibition against any form of discrimination, the right to security and safety of the person, the prohibition of slavery, the right to an adequate living standard and standard of health, and of healthy working conditions, the right to physical and mental health, the right to education.⁵² The 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), referred to above, that aims at ensuring the equal rights of men and women in the enjoyment of all social and political rights,⁵³ is legally binding for 193 States.

As has been noted, the 1951 Geneva Convention Relating to the Status of Refugees and its 1967 Protocol contain important safeguards for migrant and asylum-seeking women. One of the cornerstones of the Convention is the principle of non-refoulement – that return to a country where there are substantial grounds to believe that the individuals may be subjected to torture or to cruel, inhuman or degrading treatment or punishment is prohibited.⁵⁴ In view of the historical context at the time of its elaboration, the Convention focuses mainly on persecution for reasons of race, religion, nationality, membership in a particular social group or for one's political opinion; and thus regrettably does not include gender-based persecution.⁵⁵ (See however the UNHCR Guidelines of 1991, referred to above, that provide for such inclusion.)

The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) remains an important source regarding the gender perspective of migration. It spells out the fundamental right to equal treatment with nationals of the receiving State, applicable to all migrant

⁴⁸ The 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), available at: <https://www.ohchr.org/documents/professionalinterest/cedaw.pdf> (Georgia acceded to the Convention on 25.11.1994).

⁴⁹ The 1965 International Convention on the Elimination of All Forms of Racial Discrimination (CERD), available at: <https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx> (Georgia to the Convention acceded on 2.07.1999).

⁵⁰ The 1989 Convention on the Rights of the Child (CRC), available at: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx> (Georgia acceded to the Convention on 2.07.1994).

⁵¹ The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), available at: <https://www.ohchr.org/en/professionalinterest/pages/cmaw.aspx> (Georgia is not a Party to the Convention).

⁵² See Articles 8, 9, and 26 of the ICCPR; Articles 2, 7, 12, and 1 of the ICESCR; Articles 2, 10, and 12 of the CEDAW; Article 2 of the CERD; Articles 24 and 28 of the CRC.

⁵³ See Articles 2, 10, and 12 of the CEDAW.

⁵⁴ See Article 33 of the 1951 Convention Relating to Status of Refugees.

⁵⁵ Binder, "Gender and the "Membership in a Particular Social Group" Category of the 1951 Refugee Convention," 10 COLUM.J. GENDER & L. 167, (2001): 169-70.

workers and members of their families, including those in an irregular situation. Article 16 enshrines the right to liberty and security of person, and to protection against violence, including by public officials. The Convention also deals with the vulnerabilities of illegal migrants and applies to a wide range of issues important to migrant workers. Examples in this regard include the right to information regardless of frontiers, monitoring of employment agencies, safe working conditions, and conditions of return of migrant workers and members of their families to their State of origin. Accordingly, the Convention is an important legal instrument for countries of destination, countries of transit and countries of origin.⁵⁶

The 1949 Migration for Employment Convention⁵⁷ and the 1975 Migrant Workers Convention⁵⁸ specifically address labour migration and migrant workers' rights - the primary purpose being the protection of migrant workers from discrimination and exploitation. These two ILO Conventions are not widely adhered to - the 1949 Migration for Employment Convention has been ratified by 43 States, and the 1975 Migrant Workers Convention by 18 States.

International treaty law also strives to provide adequate legal responses to the phenomenon of human trafficking which affects many migrant women. The core instrument in this regard is the 2000 UN Convention against Transnational Organized Crime and its supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children ("Palermo Trafficking Protocol"). They provide for specific legal standards to prevent and combat trafficking, protect victims, and promote cooperation among states to achieve those objectives. This is one of the most important mechanisms for the protection and support of female victims of trafficking.⁵⁹

In addition to these international instruments, the protection of human rights of migrant women is also the subject of regional treaties, such as the 1977 European Convention on the Legal Status of Migrant Workers⁶⁰ and the 2005 Convention

⁵⁶ See Articles 8-24 of the ICRMW.

⁵⁷ The 1949 Migration for Employment Convention (Convention No. 97), available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312242 (Georgia is not a Party to the Convention).

⁵⁸ The 1975 Migrant Workers Convention (Convention No. 143), available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C143.

⁵⁹ The 2000 UN Convention against Transnational Organized Crime, available at: <http://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html> (Georgia signed the Convention on 13.12.2000); the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children Supplementing the United Nations Convention Against Transnational Organized Crime, available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx> (Georgia signed the Protocol on 13.12.2000); Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime, available at: https://www.unodc.org/documents/southeastasiaandpacific/2011/04/som-indonesia/convention_smug_eng.pdf (Georgia signed the Protocol on 13.12.2000).

⁶⁰ The 1977 European Convention on the Legal Status of Migrant Workers, available at: <https://>

on Action against Trafficking in Human Beings, adopted under the auspices of the Council of Europe.⁶¹

As demonstrated above, numerous international instruments provide legal guarantees for migrants, but gender mainstreaming remains a big challenge. Existing international frameworks do not guarantee adequate protections for women seeking asylum when they are victims of gender-based persecution since this category is not explicitly recognized and thus the principle of non-refoulement inapplicable to them.⁶² Even then when States have ratified/adhered to international and regional instruments that provide specific legal guarantees for migrant women, their actual implementation by those States and monitoring of their international obligations, especially regarding domestic migrant women workers, is a serious problem.⁶³

4. BEST PRACTICES OF A GENDER-SENSITIVE MIGRATION POLICY AND MANAGEMENT

Highlighting the experience of States that have successfully included the gender-specific needs of migrant and asylum-seeking women in their policies and management procedures and consequently reduced those women's vulnerabilities should assist us in complying with our obligations under international, regional and national law.

Noteworthy in this regard is, for example, the case of the Philippines who as a country of origin established an effective system for the protection of potential migrant women. This system includes training for migrating females on their rights in the country of destination. Filipino women migrate primarily to South Korea, Spain, Italy, and Singapore where the Government of the Philippines has also special representatives to assist migrant women. Furthermore, Philippine embassies provide context-based and capacity-building training for the women in destination countries.⁶⁴

Canada can be regarded as a role model of a gender-sensitive destination country. It is a pioneer in establishing the right to asylum for victims of gender-based persecution.⁶⁵ It has also developed a gender-sensitive immigration policy model. According to a "gender-based analysis" matrix, every new immigration policy- and legislative issue is tested as to its potential gender impact.⁶⁶

South Africa provides another example of good practice. It has enacted legislation

rm.coe.int/1680077323 (Georgia is not a Party to the Convention).

⁶¹ The 2005 Convention on Action against Trafficking in Human Beings, available at: <https://rm.coe.int/168008371d> (Georgia acceded to the Convention on 1.02.2010).

⁶² Supra, note 42.

⁶³ Supra, note 34.

⁶⁴ Sabban, "Migrant women in the United Arab Emirates: The case of domestic workers," Genprom Series on Gender and Migration, Working Paper No 10, (2002): 20-28.

⁶⁵ Supra, note 42.

⁶⁶ Kawar, "Gender and Migration: Why are Women more Vulnerable?." Paper presented at the International Labour Conference, 92nd Session, Geneva, June 1-17, 2004.

for domestic workers that covers, inter alia, gardeners, drivers and persons who take care of children, the old and the disabled; it provides domestic workers with comprehensive labour rights and standards starting with the setting of minimum wages, working hours, overtime, annual leave, maternity leave, sick leave, etc. Legislation also includes a mandatory wage increase of 8% for all employees across the board.⁶⁷

CONCLUSIONS

In view of the above, modern migration tendencies suggest that migrant women are one of the most vulnerable groups of migrants. Possible risks and vulnerabilities are numerous. Although international law provides many guarantees for migrant women, the risks and potential rights' violations are not adequately addressed. Two of the most obvious weaknesses of the existing international framework are the absence of an explicit reference to the right to asylum for victims of gender-based persecution and thus the non-applicability of the principle of non-refoulement. The legal systems of the States that require families of employees to register migrant workers should be corrected since this requirement increases the vulnerability of migrant women who are at the "mercy" of their families. Additional deficiencies lie with asylum-interviewing and placement procedures when, instead of a thorough investigation of facts, expulsion is considered to be the best response. Because of the stigmatising environment in the countries of origin, women victims of sexual abuse and violence face challenges in the process of return and integration.

In order to adopt a gender-sensitive approach, States should examine and take into account the impact that any relevant provision they adopt would have on the vulnerabilities of migrant and asylum-seeking women. Efforts to promote gender equality in migration policies should thus include subjecting every new policy to the test of potential gender equality impact; States should strive to eradicate stigmatisation of and discriminatory attitudes towards women. Women should have equal access to education and be ensured equal economic rights with men. In order to prevent criminal acts directed against migrant women, States should raise awareness about their rights and vulnerabilities.

Overall, the feminisation of migration entails multi-dimensional challenges and problems. To confront this situation successfully, the concerted action of many stakeholders is required. Improving the situation of women in the countries of origin as well as preparing them for safe migration is as important as the monitoring of the rights of migrant women in the countries of transit and of destination. At the same time, the risks and vulnerabilities of migrant women should be a continuous focus of international migration management.

⁶⁷ ILO, *Best Practice Case Studies from South Africa*, (2016): 13-16.