

ISSUE 2

Steps for Ensuring Gender-Responsive Access to Services and to Justice in the Global Compact for Migration

The [GCM^{Gender}] Guidance Note series, presented by the Expert Working Group¹ for addressing women's human rights in the Global Compact for Migration (GCM), identifies key challenges in migration governance whilst providing clear and concrete guidance on how to ensure that the human rights of all women and girls in migration are at the core of the GCM, through the development and implementation of gender-responsive migration policies in accordance with international human rights frameworks. Further guidance is elaborated in the Expert Working Group's recommendations for addressing women's human rights in the GCM: <http://www.unwomen.org/en/digital-library/publications/2017/3/addressing-womens-rights-in-global-compact-for-migration>

Economic, Social and Cultural rights are guaranteed to all persons as outlined in the International Covenant on Economic, Social and Cultural Rights and the 2030 Agenda for Sustainable Development. To ensure that these rights are realised, Member States committed to shared responsibility of development financing in both the 2030 Agenda for Sustainable Development and the Addis Ababa Action Agenda. While many countries are already providing access to healthcare, basic services and social protection at a national level, the following Guidance Note outlines key challenges and actions to be taken in order to realise these rights for all women and girls in the context of migration.

KEY CHALLENGES

Access to Services to Realise Economic, Social and Cultural Rights (ESCR)

- Access to services for all migrant women and girls, regardless of migration status, is essential to respect, protect and fulfil their economic, social and cultural rights. As guaranteed in international human rights instruments, the GCM should clearly affirm the principle of non-discrimination based on gender, age, race, ethnicity, national origin or migration status. Women and girls of diverse sexual orientations and gender identities must also be guaranteed access to services and justice without fear of abuse or discrimination.
- Access to services is essential to address gender-based discrimination and promote gender equality. Migrant women in care-giving roles must be able to access healthcare, housing, education and justice. Lack of such access results in violations of ESCR; gaps in education and training which lead to gender inequities in the workplace; and increased vulnerability to gender-based violence.
- There must be a clear separation between access to services and immigration enforcement activities. Confidentiality and data protection are crucial for migrants' ability to access public services. It is vital to safeguard the trusted role of service providers whose priority is the welfare of the service user. Officials who provide public services, including health care professionals, teachers, social workers and other social service providers, must be able to perform their fundamental social responsibility without interference. Professional independence and integrity, and the ability to deliver are undermined when service providers are called on to share data or carry out immigration enforcement activities. Such duties can also jeopardise confidentiality obligations and undermine data protection rules.
- The full spectrum of health services, including sexual and reproductive health as well as mental health, must be guaranteed to all migrant women and girls in countries of origin, transit, destination and return.
- All migrant women and girls have the right to an adequate standard of living. Neither migrants with an irregular migration status, nor those who help them to exercise their right to an adequate standard of living should be criminalised.

Access to Justice

- All migrant women and girls must have safe access to justice regardless of migration status. To this end, migrant women must have full and independent legal standing regardless of marital or other civil status, or in the case of divorce or separation. This is critical for survivors of sexual and gender-based violence, as well as those who are victims of abusive spouses or employers.
- All migrant women and girls who are survivors of sexual and gender-based violence and other human rights abuses must be guaranteed safe and confidential reporting services, without fear of arrest or deportation. They must also have access to targeted services including psychosocial support, trauma counselling, legal advice and comprehensive healthcare.
- All migrant women and girls, regardless of migration status, should have access to gender-responsive and culturally appropriate legal advice, legal aid and interpreting services. The number of necessary steps to be able to access justice must be reduced as much as possible.

Access to complaint mechanisms

- Women migrant workers must have safe access to complaint mechanisms for labour rights' violations as well as labour inspection services. Women migrant workers must have the ability to make complaints against their employers or others, including on grounds of sexual harassment and violence in the workplace, and have access to remedies. Migrant women must be able to report labour abuses without fear of arrest, deportation, or further abuse from employers.
- Governments at the municipal, regional and national level should provide information on available remedies, access to justice and complaint mechanisms in cases of human rights violations, including labour rights, as well as violations of other contractual rights including rental agreements, bank contracts etc.

KEY ACTIONS

Legislate

- Support the development of gender-responsive legislation and policies to guarantee equal access to services for all migrant women and girls, regardless of migration status. This includes regulations and practices necessary to ensure legal standing, due process, the right to defence and access to free legal counsel for migrants who file reports of violations. Special visas that guarantee protection for survivors of gender-based violence or labour rights violations should be adopted in national policies.

Safeguard

- Maintain the independence of social services, confidentiality and data protection and safeguard the trusted role of service providers whose priority is the welfare of service users, through both administrative and legislative policy.

Prevent and protect

- Establish confidential gender-based violence prevention and protection services, including hotlines and shelters. Create national and transnational referral pathways that are universally applicable and accessible, regardless of migration status.

Report

- Provide access to safe and confidential reporting services for all migrant women and girls, including women and girls of diverse sexual orientations and gender identities, who experience human rights abuses and violations of labour rights and ensure that access to such services is not dependent on migration status.