

**CEDAW**

9º PERIODIC REPORT OF MEXICO SUBMITTED TO THE COMMITTEE ON THE  
ELIMINATION OF DISCRIMINATION AGAINST WOMEN

**REPORT ON THE SITUATION ON THE RIGHTS OF  
WOMEN IN MIGRATION AND THEIR CHILDREN IN MEXICO  
SUBMITTED TO THE COMMITTEE ON THE ELIMINATION  
OF DISCRIMINATION AGAINST WOMEN**

**Shadow Report CEDAW/C/MEX/9**

June, 2018

## EXECUTIVE SUMMARY

### **Report on the Situation on the rights of women in migration and their children in Mexico submitted to the Committee on the Elimination of Discrimination against Women**

Mexico faces a broad range of challenges to effectively guarantee the rights of migrant women in Mexico. This report focuses on three specific deficiencies rooted in Mexican migration legislation and policies that fail to guarantee substantive equality between migrant women and men.

First, while Mexican immigration legislation and policy are gender-neutral, in practice, they discriminate against women migrant workers from Central America in their access to work authorization and limit their right to decent work, social welfare, health and justice. For example, female agricultural workers are registered as “companions” to their spouses and are not granted work permits even though they work. For domestic workers, the requirement of a formal job offer from a private employer to obtain work authorization often prohibits migrant women from acquiring an immigration document.

Second, Mexican migrant women workers also lack equal job opportunities in the United States and Canada due to gender discrimination of agencies and/or private contracting agents during the recruitment processes.

Third, discriminatory elements in civil registry requirements directly or indirectly exclude migrant women, including Mexican women returning to their country of origin. As a result, their children often lack identity documents and are denied access to other rights, including education. Because women are generally responsible for obtaining documentation and registering their children in school and health services, they are disproportionately affected by discriminatory requirements.

We hope the Committee on the Elimination of Discrimination against Women (the Committee) includes the following recommendations in its Final Observations to the Mexican State to ensure substantive equality between migrant women and men in their access to immigration documentation and work authorization:

CEDAW Articles 2 and 4:

Eliminate the requirement of a formal employment letter to obtain work authorization from Mexican immigration law and its related regulations. Furthermore, introduce temporary special measures granting immigration documentation with work authorization to women migrant domestic and agricultural workers, including budgetary allocations to the National Institute of Migration (*Instituto Nacional de Migración, INM*) for implementation.

- Affirmative action allowing migrant women domestic workers to regularize their immigration status granting them work authorization, without requiring a job offer or fees.
- Affirmative action allowing women agricultural and domestic workers to obtain Transborder Temporary Worker status without requiring a formal job offer or fees.

CEDAW Articles 2 and 11:

Guarantee women migrant workers from Mexico equal opportunities and treatment in the recruitment and hiring processes for jobs abroad.

- Monitor the recruitment process in Mexico for labour migration programs abroad and adequately sanction those who discriminate, collect fees or otherwise violate the rights of women.

- Include gender guidelines in the supervision processes of recruitment agencies allowing inspectors to identify discriminatory practices against women and adequately punish those who do not respect their rights.
- Collect and publish data, disaggregated by sex, on migrants who participate in labour migration programs.
- Better inform migrant workers on their rights and access to legal services to enable them to make effective legal complaints in cases of non-compliance, through collaboration with civil society organizations or online through platforms for women workers such as [Contratados.org](https://www.contratados.org).

The report also suggests for the Committee recommends Mexico to eliminate discriminatory practices and to guarantee access to the right to identity and education for the children of migrant women workers:

CEDAW Article 3: Eliminate discriminatory elements that directly or indirectly exclude women in migration and their children from local laws and regulations regarding civil registration of birth, marriage, divorce and Mexican nationality registration as well as access to the Unique Population Registry Code is Mexico's (*Clave Única del Registro de Población, CURP*)<sup>1</sup>. Similarly, promote and facilitate the certification of Mexican nationality in Mexican Consulates in the United States and other countries.

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<sup>1</sup> The *CURP* is a unique identification number used to register individuals living in Mexico, both nationals and foreigners, as well as Mexican nationals living abroad. It has been established as a requirement in all government programs to access services and entitlements in Mexico. The National Population Registry (*El Registro Nacional de Población, RENAPO*), an agency of the Ministry of Interior (*Secretaría de Gobernación, SEGOB*), is responsible for issuing CURP. For more information, visit <https://www.gob.mx/segob/renapo#2033>

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## I. INTRODUCTION

This proposal is the result of the participatory work of several organizations, networks and human rights defenders working with migrants and persons subject to international protection in Mexico, North America and Central America.

It is a document prepared by the *Colectivo Migraciones para las Américas* which aims to submit updated information to the Committee for the Elimination of Discrimination Against Women (the Committee) on the situation of women in migration<sup>2</sup> in Mexico. It includes some of the main challenges and points of concern that civil society has identified through its work. It also proposes issues to be addressed by Mexico in its Presentation of the Ninth Periodic Report on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

The work carried out by Institute for Women in Migration (IMUMI) under the *UN Women project Promoting and Protecting the Rights of Migrant Women Workers within the National and International Human Rights Mechanisms to Improve Accountability*, sponsored by the European Union, has been a valuable input in the development of this report.

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<sup>2</sup>The focus on women in migration includes all women and their families impacted by migration and the conditions that affect their access to rights in a context of mobility, including in their country of origin, transit, destination and return. See [http://womeninmigration.org/wp-content/uploads/2017/06/Berlin-2017\\_2-Womens-Agency1.pdf](http://womeninmigration.org/wp-content/uploads/2017/06/Berlin-2017_2-Womens-Agency1.pdf). Therefore, in this report, we will focus on women migrant workers and on the access to rights of women in migration and their children.

## **CEDAW**

### **9° Periodic Report of Mexico Submitted to the Committee on the Elimination of Discrimination Against Women**

Report on the situation on the rights of women in migration and their children in Mexico, submitted to the Committee on the Elimination of Discrimination against Women. Shadow Report CEDAW/C/MEX/9

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## II. WOMEN IN MIGRATION CONTEXTS AND THEIR CONDITIONS IN MEXICO

Mexico is part of one of the most dynamic and complex world migration systems – North America, where the main destination of migrants is located, the United States<sup>3</sup>.

Mexico faces a series of challenges to effectively guarantee the rights of migrants, especially for women and children, as a country of origin, transit, destination and return.

The Committee for the Elimination of Discrimination against Women (the Committee) indicates in its *General Recommendation no. 26 on Women Migrant Workers* (par. 2), that migration can offer women new opportunities and be a means for economic empowerment. However, it can also place their human rights and safety at risk. At every stage of the migratory cycle, women in migration face sex- and gender-based discrimination as a cause and consequence of the violation of their human rights.

The framework in which the mobility of women develops intervenes in the migration outcome. While migration policy can promote women's autonomy and contribute to development, governance and peace, it can also deepen patterns of inequality<sup>4</sup>. Therefore, regulating the recruitment process and the work of migrant women, as well as guaranteeing their rights according to international standards, is a matter of equality and efficiency – keys to development in all its facets<sup>5</sup>. To this end, countries have adopted the following 2030 sustainable development goals: facilitate the orderly, safe, regular and responsible migration and mobility of people, through the implementation of planned and well-managed migration policies (goal 10.7) and end all forms of discrimination against women and girls (goal 5.1).

Mexico and other member parties of United Nations made a commitment to implement the 2030 Agenda for Sustainable Development and the *New York Declaration for Refugees and Migrants* (2016). At the same time, they recognized the need to address the special circumstances and conditions of vulnerability of migrant women and girls by incorporating a gender perspective in migration policies (UNGA, A/71/L.1, 2016, par. 60).

Accordingly, this report presents specific challenges that Mexico faces in relation to a) women migrant workers having access to immigration documentation to work; b) Mexican migrant workers having access to work legally in the United States and Canada with equal opportunities and treatment in the recruitment processes; and c) Mexican migrant women and their children who are returning from the United States to have access to their right to identity and education. Below is a brief analysis of the conditions of women in different migration stages in Mexico.

### a. Women migrants returning to Mexico

12 million Mexicans live in the United States (equivalent to 10% of Mexico's population), 47% are women and more than half live in an irregular immigration status. Both the economic crisis and the crackdown of US immigration policy have led to an increase in return migration in Mexico, either "voluntarily" (1.4 million between 2005 and 2010), or by deportation, referred to by governments as "repatriation" (2.8 million removals between 2008 and 2013). Women constitute 12% of repatriations<sup>6</sup>.

<sup>3</sup> R Smith (2000), 'Dilemas y perspectivas del sistema migratorio de América del Norte' *Comercio internacional* 50 4, p. 289.

<sup>4</sup> Martínez Pizarro, Jorge (2011), *Migración internacional en América Latina y El Caribe. Nuevas tendencias, nuevos enfoques*, Santiago de Chile, CEPAL, <http://www.cepal.org/publicaciones/xml/4/43634/lcr2170.pdf>

<sup>5</sup> UNIFEM (2005), *Claim and Celebrate Women Migrant's Human Rights through CEDAW. The Case of Women Migrant Workers*, UNIFEM, Bangkok; Foro Mundial sobre Migración y Desarrollo (FMMD) / Global Forum on Migration and Development (2011), "Checklist to protect and support migrant domestic workers", *Domestic Workers at the Interface of Migration & Development: Action to Expand Good Practice*, Thematic roundtable co-organized by the governments of Ghana, Jamaica and Switzerland, UN Women, et. al., [http://imumi.org/attachments/26\\_2.pdf](http://imumi.org/attachments/26_2.pdf)

<sup>6</sup> SEGOB (2014), *Programa Especial de Migración 2014-2018*, Diario Oficial de la Federación, Mexico, April 30 p. 10, <http://www.dof.gob.mx/>

These have a significant negative impact on the lives of Mexican migrants, especially because they frequently involve family separations, where, in most cases, the deported mother must fight for custody of her US-born children.

Upon returning to Mexico, migrant women and their binational families encounter difficulties in exercising their rights and accessing public services, such as education and health, because the legal procedure for Mexican identity recognition<sup>7</sup> stands as a barrier for children born outside the country<sup>8</sup>. The lack of a policy, such as the implementation of a Unique Identity Document as stipulated in the General Law on Population (*Ley General de Población*), creates discretionary criteria among authorities to determine which documents are valid proof of identity, even when the documents are issued by other federal authorities; for example the consular identification issued by the Ministry of Foreign Affairs (SRE), driver's license or other migration documentation<sup>9</sup>.

In the recognition of nationality, even though the Constitution considers any person born to a Mexican mother or father to be a Mexican national, irrespective of the place she or he was born, the process and requirements for the certification of said nationality is filled with bureaucratic obstacles with little to no public information. Additionally, local, state and federal authorities use discretionary criteria which results in non-compliance by the State in recognizing its nationals in accordance to Article 30 of the Mexican Constitution.

According to *INEGI* (Instituto Nacional de Estadística y Geografía, INEGI) estimates, in March 2015, a total of 287,367 children born to a Mexican parent abroad were entitled to Mexican nationality, however, many of them were unable to certify it, and consequently, 27,135 children were unable to enroll and attend school<sup>10</sup>. This situation disproportionately affects women, because mothers assume the responsibility of granting their children access to a legal identity and education upon return. While doing so, they face discrimination and institutional violence, in addition to high personal and social costs. For example, they are sometimes threatened by authorities with losing the custody of their children due to the lack of legal certainty of their Mexican identity.

## **b. Mexican women migrant workers in the United States and Canada**

Women in Mexico lack equal opportunities to access jobs offered abroad, mainly in the United States and Canada, and face gender discrimination during the recruitment process in Mexico. In 2015, the National Employment Service placed 20,791 Mexican nationals to work in Canada under the Mexico-Canada Seasonal Agricultural Workers Program (SAWP). Women comprised 3.5% of this contingent of workers, totaling to 708<sup>11</sup>.

Through the H-2 visa program in the United States, hundreds of thousands of Mexican men and women travel to the United States to work for less than one year in unskilled or low-wage jobs, either in agriculture (H-2A visa) or in the hotel industry, seafood production, packaging and other services

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[nota\\_detalle.php?codigo=5343074&fecha=30/04/2014](http://nota_detalle.php?codigo=5343074&fecha=30/04/2014)

<sup>7</sup> The certification of Mexican nationality requires a birth certificate to be presented with an Apostille, and obtaining the latter is difficult for those who are residing outside the country of issuance.

<sup>8</sup> The Guardian (2016), *Uprooted in Mexico: the US children 'returned' to a country they barely know*, by Nina Lakhani and Mónica Jacobo, July 13, <https://www.theguardian.com/world/2016/jul/13/immigration-us-children-migrants-returned-to-mexico>, Los Angeles Times (2016), *Nearly half a million U.S. citizens are enrolled in Mexican schools. Many of them are struggling*, by Kate Linthicum, September 14, <http://www.latimes.com/world/mexico-americas/la-fg-mexico-return-migration-schools-20160913-snap-story.html>

<sup>9</sup> See <http://imumi.org/sep/index.html> , [http://www.dof.gob.mx/nota\\_detalle.php?codigo=5480031&fecha=18/04/2017](http://www.dof.gob.mx/nota_detalle.php?codigo=5480031&fecha=18/04/2017)

<sup>10</sup> *INEGI* (2017), *Informe. Niñas, niños y adolescentes binacionales (EEUU – México) residentes en México y no cuentan con un acta de nacimiento mexicana ni Clave Única de Registro de Población (CURP)*, Report developed by the Specialized Interinstitutional Coordination to identify the potential population that could access "Soy México" program, Mexico.

<sup>11</sup> Public information request IFAI folio 0000500122217.

(H-2B visas)<sup>12</sup>. In 2016, the number of Mexicans that migrated to the United States to work with an H-2A visa was 123,231 and 61,128 did so with an H-2B visa<sup>13</sup>. According to the latest available data, it is estimated that women constitute 4% of migrant workers with an H-2A visa<sup>14</sup> and 12% of those who work with the H-2B visa<sup>15</sup>. The latter offers lower wages and less protection<sup>16</sup>, leaving migrant workers vulnerable to other type of abuse.

The low number and variance in the proportion of women working in the United States with these visas reflect that women face gender discrimination in the recruitment process in Mexico. Civil society organizations have documented how recruitment agencies and independent agents deny access to work visas because they are women, send them offers for more precarious jobs (H-2B visas) or place them in jobs that are gender-stereotyped<sup>17</sup>. These actions by recruiters have a negative impact on the ability of migrant workers to exercise their rights in the United States.

As previously stated by the Committee, recruitment agencies and their agents commit other abuses that have differentiated effects on men and women, such as the collection of illegal recruitment fees<sup>18</sup> and the special vulnerability migrant workers face when their travel and identity documents are retained<sup>19</sup>. Despite the Mexican government's responsibility, specifically the Ministry of Labour and Social Security (*Secretaría del Trabajo y Previsión Social, STPS*), to ensure that recruitment agents and employment agencies comply with the provisions that regulate the selection, hiring and placement of workers abroad, no concrete action to counteract these - and other - abuses have been carried out. Moreover, the Mexican government has not been able to identify these recruitment agencies and independent agents due to the lack of monitoring and compliance with the obligation to maintain a current registry of said actors<sup>20</sup>, generating a context of impunity that perpetuates discrimination against women and other abuses inherent in the recruitment system in Mexico.

Finally, it is difficult to account for the presence of women in this migration flow because a) most employers using these programs select their workers through recruitment agencies and/or private agents that are part of a complex, opaque and often informal international supply system<sup>21</sup>; b) the government of Mexico lacks this information, including state entities such as the National Employment Service (*Servicio Nacional de Empleo, SNE*); and c) the United States government does not publish information on visas disaggregated by sex.

<sup>12</sup> See 8 U.S.C § 1101(a)(15)(H)(ii)(a)-(b).

<sup>13</sup> US Department of State, *FY 2016 Nonimmigrant Visas Issued*, <https://travel.state.gov/content/dam/visas/Statistics/Non-Immigrant-Statistics/NIVDetailTables/FY16%20NIV%20Detail%20Table.pdf>

<sup>14</sup> Highlights a small percentage when women comprise 28% of the agricultural workforce in the United States. Farm Worker Justice (2013), *Selected Statistics on Farmworkers 2* (analysis of data of the The National Agricultural Worker Survey), <https://www.farmworkerjustice.org/sites/default/files/NAWS%20data%20factsht%201-13-15FINAL.pdf>

<sup>15</sup> U.S. Government Accountability Office (GAO) (2015), *GAO-15-154, H-2A and H-2B visa programs: Increased Protection Needed for Foreign Workers* <https://www.gao.gov/products/GAO-15-154>

<sup>16</sup> For example, the H-2A visa requires the employer to provide housing and workers have the right to receive free legal services. *Comunicación Pública MEX 2016-1*, submitted by Centro de los Derechos del Migrante, Inc. to the National Administrative Office in Mexico under the North American Labor Cooperation Agreement, <http://www.cdmigrante.org/wp-content/uploads/2012/01/Comunicacio%CC%81n-pu%CC%81blica-bajo-el-ACLAN-2016-espan%CC%83ol.pdf>

<sup>17</sup> El Centro de los Derechos del Migrante (2017), *U.S. At Fault for Labor Rights Violations under NAFTA, claim Migrant Worker Women*, <http://cdmigrante.org/cdmigrante.org/u-s-at-fault-for-labor-rights-violations-under-nafta-claim-migrant-worker-women/>

<sup>18</sup> See General Recommendation No. 26 par. 10. It should be noted that in a report developed by CDM, 100% of women migrant workers affirmed having to pay a recruitment fee. El Centro de los Derechos del Migrante (2010), *Picked Apart: The Hidden Struggles of Migrant Worker Women in The Maryland Crab Industries*, p.1, <http://www.cdmigrante.org/picked-apart-the-hidden-struggles-of-migrant-worker-women-in-the-maryland-crab-industry/>

<sup>19</sup> See General Recommendation No. 26, par. 26 d).

<sup>20</sup> Art. 19, *Reglamento de Agencias de Colocación de Trabajadores*, published in DOF on 3/03/2006

<sup>21</sup> See International Labor Recruitment Working Group (2013), *El Sueño Americano en Venta: Como Solucionar Abusos en el Reclutamiento Laboral Internacional*, <http://www.aft.org/sites/default/files/news/ILRWGblueprint2013.pdf> See also Centro de Los Derechos del Migrante, Inc. (2013), *Revelando el Reclutamiento: Fallas Fundamentales en el Programa de Trabajo Temporal H-2 y Recomendaciones para el Cambio*, [http://www.cdmigrante.org/wpcontent/uploads/2013/02/Revelando-el-Reclutamiento\\_Espanol\\_Final.pdf](http://www.cdmigrante.org/wpcontent/uploads/2013/02/Revelando-el-Reclutamiento_Espanol_Final.pdf)

### c. Central American Women Migrant Workers in Mexico

In the southern states of Mexico bordering Guatemala and Belize, intraregional migration emerges due to their history and proximity, as well as the search for opportunities. Chiapas is a particular pull node for Central Americans that comprise three types of migration inflows: those who work in a transborder modality<sup>22</sup>, temporary workers<sup>23</sup>, and permanent residents. Although there is a low rate of immigration to Mexico (the number of people born abroad living in Mexico is lower than 1% of the total population, while in other OECD member countries, immigrants constitute 13% of the total population)<sup>24</sup> the population born in Guatemala, Honduras, El Salvador and Nicaragua residing in Mexico grew 61% between 2000 and 2010<sup>25</sup>.

Central American migration flow to Mexico comprises a large portion of women<sup>26</sup>. These are young women of productive and reproductive age with high levels of illiteracy and few years of schooling who go to Chiapas for work. The majority of women from Guatemala are indigenous and are engaged in domestic and agricultural work. In general, Central American migrant women workers are in an irregular immigration status and are inserted in precarious jobs in the informal economy where decent work conditions are not met and abuses and lack of access to rights prevail. Migrant workers on farms, homes and entertainment centers in Chiapas face exploitative conditions<sup>27</sup>.

Currently, regulations on immigration documentation and work authorization prevent Central American migrant workers on the southern border from accessing a livable income as well as permanence and work in Mexico<sup>28</sup>. Therefore, only 6% of transborder workers and 22% of temporary workers have a work permit<sup>29</sup>. This situation responds to the following factors: First, the work authorization is linked to a job offer. Second, there are contradictions between migration regulations and feasibility in practice. Third, the requirements to process it are complex and expensive for this population. Finally, the legislation and the policy in question do not consider factors rooted in sex-specific divisions of labour and in power relations between men and women, as well as intersecting forms of discrimination based on criteria such as nationality, ethnicity and socioeconomic status.

All these factors act as barriers to access immigration documentation and work authorization for most Guatemalan domestic workers in Chiapas. Therefore, women are in a situation of greater vulnerability to abuse by their employers, under constant threat of being reported to the National Institute of Migration (*Instituto Nacional de Migración, INM*). In this way, Mexican immigration legislation and

<sup>22</sup> The transborder relocation or commuting refers to the population movement that results between the place of residence and another, without a change in residency, associated to the performance of labour activities, medical attention or tourism.

<sup>23</sup> They are considered temporary female workers due to the duration of their stay, which can vary, at least 24 hours to several months. The unifying criteria is that female workers consider their residency to be outside of Mexico.

<sup>24</sup> According to analysis of data from INEGI on Population and Housing Census, while the foreign-born population residing in Mexico in 2000 comprised 0.5%, in 2010 it reached 0.9%. However, a large proportion of this population are children of Mexican nationals. INEGI, 'Población nacida en otro país residente en México, 2000 y 2010', *Censos de población y vivienda*, <http://www.inegi.org.mx/sistemas/sisept/Default.aspx?t=mdemo63&c=23634&s=est>

<sup>25</sup> INEGI, 'Población nacida en otro país residente en México, 2000 y 2010', *Censos de población y vivienda*, <http://www.inegi.org.mx/sistemas/sisept/Default.aspx?t=mdemo63&c=23634&s=est>

<sup>26</sup> UN Women and IMUMI (2015a), *Las trabajadoras migrantes centroamericanas en Chiapas. Recomendaciones de política pública para garantizar el ejercicio de sus derechos*, p.11, <http://www.unwomen.org/~media/headquarters/attachments/sections/library/publications/2015/las%20mujeres%20migrantes%20en%20chiapas%20recomendaciones%20de%20politica%20publica%20pa.pdf>

<sup>27</sup> UN Women and IMUMI (2015a), *Las trabajadoras migrantes centroamericanas en Chiapas. Recomendaciones de política pública para garantizar el ejercicio de sus derechos*, p.9, <http://www.unwomen.org/~media/headquarters/attachments/sections/library/publications/2015/las%20mujeres%20migrantes%20en%20chiapas%20recomendaciones%20de%20politica%20publica%20pa.pdf>

<sup>28</sup> UN Women and IMUMI (2015b), *Guía breve para desarrollar legislación migratoria con perspectiva de género*, Mexico, European Union, UN Women and IMUMI, <http://www2.unwomen.org/~media/field%20office%20mexico/documentos/publicaciones/2014/guia%20breve%20onu%20mujeres.pdf?v=1&d=20150820T192817>

<sup>29</sup> UN Women and El Colegio de México (2015), *Las trabajadoras migrantes en la frontera sur de México, México*, <http://www2.unwomen.org/~media/field%20office%20americas/documentos/publicaciones/4%20las%20trabajadoras%20migrantes%20en%20frontera%20sur%20de%20mexico/agenda%20de%20investigacion%20difusin.pdf?v=1&d=20150603T004233>

policy is gender-neutral, discriminating against Central American women in Mexico and promoting their irregular migration and informal work without effective protection and guarantee of their workers' rights<sup>30</sup>.

According to CEDAW's Article 2(f), State parties must "take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women." In Article 4, CEDAW includes "the adoption by State parties of temporary special measures aimed at accelerating de facto equality between men and women."

In 2008, The Committee's *General Recommendation no. 26 on Women Migrant Workers*, stated that State Parties "should ensure that their visa schemes do not indirectly discriminate against women" (paragraph 26 a) and "should enact provisions relating to independent residency status. Regulations should be made to allow for the legal stay of a women who flees her abusive employer or spouse or is fired for complaining about abuse" (par. 26 f).

#### **d. Indigenous migrant women in Chiapas**

Indigenous women in Chiapas face acute levels of violence due to the intersection of several types of discrimination: gender, ethnicity, language, socioeconomic level and schooling, among others. In their families, women face constant physical and sexual violence, usually accompanied by alcohol abuse. They rarely report it because of the discrimination and revictimization they face in the justice system and in their communities. Organizations in Chiapas have documented that physical and sexual family violence is a major cause in their decision to migrate. At the same time, they have shown that another form of violence that forces them to migrate occurs when they are left in debt and in serious situations of patrimonial dispossession because their spouses pledged the lands and houses where they lived. Sometimes, they even suffer community expulsions because they are unable to pay debts or community contributions<sup>31</sup>.

Each year, dozens of trucks full of temporary labourers leave the Highlands of Chiapas region, heading to states in the Northwest of Mexico. The working conditions of these women workers, whether engaged in agriculture or domestic work, are those of labour exploitation and servitude, with low wages, no benefits and no access to health, and daily sexual harassment<sup>32</sup>.

<sup>30</sup> UN Women and IMUMI (2014), *Legislación mexicana y derechos de las trabajadoras migrantes. Un análisis del cumplimiento de la Convención sobre la Eliminación de todas las formas de Discriminación Contra la Mujer (CEDAW) y su Recomendación General no. 26 en la legislación*, Mexico, European Union, UN Women and IMUMI, <http://www.unwomen.org/~media/headquarters/attachments/sections/library/publications/2015/legislacion%20mexicana%20y%20derechos%20de%20las%20trabajadoras%20migrantes.pdf>

<sup>31</sup> Deyanira Clériga Morales, *Mujeres indígenas en las migraciones*, Voces Mesoamericanas.

<sup>32</sup> ENLACE and Voces Mesoamericanas, *Jornaleras y jornaleros migrantes en Sonora*, <http://vocesmesoamericanas.org/wp-content/uploads/2017/06/Informe-preliminar-Jornaleros-Indigenas-Migrantes-en-Sonora.pdf>

### III. WOMEN IN MIGRATION. OBSTACLES TO ACCESSING RIGHTS AND RECOMMENDATIONS

#### 1. CEDAW ARTICLES 2 AND 4

##### a. Barriers to immigration documentation and work authorization for women migrant workers.

In the Law of Migration (article 52), immigration documentation and work authorization for remunerated activities is subject to an employer job offer. This situation disproportionately affects women migrant workers, especially those from Central America, whose employment opportunities are limited to labour activities that have been historically assigned to women, such as domestic work or services. As mentioned below, it also harms agricultural workers.

Research conducted by scholars, civil society organizations, government institutions and international organizations show that the lack of interest by employers in having their employees obtain a work permit enables them to use a worker's fear of deportation as an element of manipulation, abuse and threat, and avoid payment of benefits and social security (access to health, compensation for accidents at work, maternity leave, etc.)<sup>33</sup>.

The Ministry of the Interior (*Secretaría de Gobernación, SEGOB*) recognizes that "the irregular status of these workers, particularly domestic workers, places them in a situation of special vulnerability in light of abuses by employers"<sup>34</sup>. According to the General Law on Trafficking (article 22, section III), work carried out under the threat of being reported due to an irregular migration status is considered "forced labor".

<sup>33</sup> For more information on women migrant workers with a gender perspective, see the UN Women's research areas available in: <http://mexico.unwomen.org/es/digiteca/publicaciones?topic=e67c3cc684ce482d812861bd59c3d054> Although a considerable number of research makes reference to the specific inequalities in access to opportunities for men and women throughout the migration process, including the specific abuses faced by migrant women, a gender perspective has not been the primary focus. Among others, see: Rojas Wiesner, Martha and Ángeles Cruz, Hugo (2001), "Más que acompañantes... trabajadoras agrícolas. Mujeres migrantes en la frontera México-Guatemala", in *Travesaño 2000. Temas de población*, Year 4, No. 9, Revista del Consejo Estatal de Población del Estado de Guanajuato, November, p. 3-8; Rojas Wiesner, Martha (2002), "Mujeres migrantes en la frontera sur de México", in *Migración: México entre sus dos fronteras, 2000-2001*, Mexico, Foro Migraciones, p. 93-101; Cortez Pérez, Daniel, Cáceres Ruiz, Carlos and Venegas Cheyral, Roselí (2005), *Diagnóstico General de los flujos de trabajadores temporales de la frontera sur de México: resumen de principales hallazgos y tendencias a futuro*, Mexico, CEM/ INM; Marroquín, Raúl (2005) "Trabajadoras domésticas y trabajadores agrícolas de Guatemala en México: Proceso de contratación en la frontera sur", in Gutiérrez, Juan Carlos (coord.) *Memorias del Seminario Internacional. Los Derechos Humanos de los Migrantes*, Mexico, Human Rights Cooperation Program/ Mexico-European Commission/Ministry of Foreign Affairs (SRE); Rojas Wiesner, Martha (2007), "Mujeres y migración en la frontera sur de México", in *Les Cahiers ALHIM*. 14, pp. 147-167; Rojas Wiesner, Martha, Fernández Casanueva, Carmen and Ángeles Cruz, Hugo, (2008) "Trabajo y migración femenina en la frontera sur de México", in Herrera, Gioconda y Ramírez, Jacques (eds.) *América Latina migrante: estado, familias, identidades*, Quito, Ecuador, FLACSO/ Ministry of Culture of Ecuador, p. 141-158; Instituto Estatal de las Mujeres de Chiapas (2008), *Estudio diagnóstico de la situación de violencia y vulnerabilidad de las mujeres migrantes en Chiapas. Reporte final del Estudio*, conducted by Antonio Landa Guevara, Tuxtla Gutiérrez, Chiapas, Instituto Estatal de las Mujeres de Chiapas; INMUJERES (2008), *Condiciones de migración internacional de mujeres (mexicanas y centroamericanas) en su traslado hacia el norte de México*, Coordinated by Ana María Chávez and Ricardo Antonio Landa, Mexico, Instituto Nacional de las Mujeres/Dirección General de Evaluación y Desarrollo Estadístico; Pérez García, Nancy (coord.) (2010), *Hacia la construcción de políticas públicas a favor de las mujeres migrantes. Caso Chiapas, México*, Mexico, INCIIDE Social and Sin Fronteras; Cruz Salazar, Tania (2011), "Racismo cultural y representaciones de inmigrantes centroamericanas en Chiapas", in *Migraciones Internacionales*, Vol. 6, Num. 2, July-December, p. 133-157; Le Goff, Hélène and Weiss, Thomas Lothar (2011), *La trata de personas en México. Diagnóstico sobre la asistencia a víctimas*, México, OIM-Mexico Mission; Pérez García, Nancy and Roldán Dávila, Genoveva (2011), *Mujeres migrantes en el Soconusco. Situación de su derecho a la salud, la identidad y el trabajo*, México, Iniciativa Ciudadana y Desarrollo Social (INCIIDE Social A.C.); Leyva, René and Quintino, Frida (eds.) (2011), *Migración y salud sexual y reproductiva en la frontera sur de México*, Mexico, National Institute of Public Health (*Instituto Nacional de Salud Pública*), AECID and UNFPA; Fernández Casanueva, Carmen Guadalupe (2012), "Tan lejos y tan cerca: involucramientos transnacionales de inmigrantes hondureños/os en la ciudad fronteriza de Tapachula, Chiapas, in *Migraciones Internacionales*, Vol. 6, Num. 4, July-December, p. 140-172; Rojas Wiesner, Martha (2012), "Las familias de las mujeres guatemaltecas en el sur de México", in Salvador Berumen Sandoval, Nina Frías Valle and Julio Santiago Hernández (coords), *Migración y familia. Una mirada más humana para el estudio de la migración internacional*, Centro de Estudios Migratorios-INM and Tilde Editores, pp. 139-177; Rojas Wiesner, Martha and Ángeles Cruz, Hugo (2012), "La situación de las mujeres migrantes en la frontera de México con Guatemala", in Tuñón Pablos, Esperanza and Rojas Wiesner, Martha (coords.) (2012), *Género y migración*, México, ECOSUR, El Colegio de la Frontera Norte, El Colegio de Michoacán, CIESAS, vol.1: Ancheita Pagaza, Alejandra Constanza and Bonnici, Gisele Lisa (2013), *¿Quo Vadis? Reclutamiento y contratación de trabajadores migrantes y su acceso a la seguridad social: dinámicas de los sistemas de trabajo temporal migratorio en Norte y Centroamérica. Informe de investigación*, México, INEDIM; Centro de Derechos Humanos Fray Matías de Córdova, Instituto para las Mujeres en la Migración, Médicos del Mundo Francia-Misión México (2013), *Mesa de diálogo sobre el acceso de personas migrantes y sus familiares a programas y servicios en Chiapas*, Tapachula, Chiapas, June 17.

<sup>34</sup> SEGOB (2014), *Programa Especial de Migración 2014-2018*, Diario Oficial de la Federación, Mexico, April 30, [http://www.dof.gob.mx/nota\\_detalle.php?codigo=5343074&fecha=30/04/2014](http://www.dof.gob.mx/nota_detalle.php?codigo=5343074&fecha=30/04/2014)

In search for solutions to this problem, it is important that the State takes into account the labour market of the transborder region, the discrimination of the gendered labour market in Mexico, as well as the feminization of migration.

The following are barriers to access immigration documentation and work authorization for Central American women migrant workers in the southern border of Mexico, especially those employed as domestic and agricultural workers.

### **i. Agricultural workers**

In the case of agricultural work in Chiapas, migration usually takes place in a family unit. The majority of Guatemalan migrant families only process work authorization documentation for the man or head of the family. There are two reasons for this:

1. Lack of information on documentation fees and recognition of women's agricultural work excludes women from accessing immigration documentation and work authorization. As most families are unable to afford the documentation for all their members as permitted by legislation, they process only one temporary worker permit. Women either cross the border irregularly or are registered as "spouses" and end up working informally in farms, without access to benefits and social security. While the cost of the "spouse" document is the same as the worker's authorization (\$339 Mexican pesos), the Transborder Temporary Worker document (*Tarjeta de Visitante Trabajador Fronterizo, TVTF*)<sup>35</sup> is free for those who earn minimum wage or less. According to *EMIF Sur* (Encuesta sobre Migración en la Frontera Sur, EMIF Sur) (from Mexico, 2009), 40.7% of temporary female crossings are women who earn up to a minimum wage<sup>36</sup> and could be exempted from the document fee<sup>37</sup>.
2. The marginalization that characterizes the conditions in the country of origin of Guatemalan agricultural migrant workers in Mexico can act as a barrier to recognize and/or assert their own rights. For example, their chances of negotiating their hiring and work conditions are commonly restricted by the traditional negotiation practice between the recruiter or employer and the male members of the family. This discrimination persists when the employer excludes women from the list of personnel to be hired which is submitted to the *INM* for immigration documentation. The employer prefers to hire women informally, since it means a lower payroll cost (in terms of unpaid labour benefits and social security). Immigration authorities issue documentation based on the employer's request which disregards the interests of the person being documented. As a result, most women are registered as companions to their spouses, although they are aware they are going to work. Therefore, women work without authorization, informally, as dependents, and without full rights.

In addition to agricultural work, women migrant workers carry out unpaid activities that allow labour-force reproduction (cook and wash clothes for their families and take care of their children). In the same way, sometimes they are asked to carry out cleaning tasks in the houses of the farm owners, not necessarily remunerated activities. In the exploitation of some crops, even when the entire family works, only the head of the household is entitled to a salary<sup>38</sup>.

<sup>35</sup> This category allows a Guatemalan or Belizean national entry into Mexico and permission to work in the southern border region for a year, with authorization for enter and leave the country without restriction. An employment offer is required to qualify for this category. *SEGOB* (2016), *Migración y movilidad internacional de mujeres en México. Síntesis 2015*, [http://www.politicamigratoria.gob.mx/work/models/SEGOB/CEM/PDF/Estadisticas/Migracion\\_Mujeres/MM\\_2015.pdf](http://www.politicamigratoria.gob.mx/work/models/SEGOB/CEM/PDF/Estadisticas/Migracion_Mujeres/MM_2015.pdf)

<sup>36</sup> *INM et al* (2012), *Encuesta sobre Migración en la Frontera Sur de México 2009 (EMIF Sur)*, Serie histórica 2004-2009, Mexico.

<sup>37</sup> Reglamento de la Ley de Migración, arts. 134-136, Ley Federal de Derechos, arts. 8 and 16; *Lineamientos para trámites y procedimientos migratorios*, art.77.

<sup>38</sup> Rojas Wiesner, Martha, Fernández Casanueva, Carmen and Ángeles Cruz, Hugo, (2008) "Trabajo y migración femenina en la frontera sur de México", in Herrera, Gioconda y Ramírez, Jacques (eds.) *América Latina migrante: estado, familias, identidades*, Quito, Ecuador, FLACSO/



In Worker document. This figure does not reach 15% of the total *TVTF* granted per year. Despite the strategy proposed by the Mexican government to facilitate obtaining immigration documents for the 2014–2018 period<sup>39</sup>, *Table 1* shows a decrease in the number and proportion of documented women migrant workers with a *TVTF* in the latter part of the period in comparison to men. In 2017, women constituted 12.7% of the total number of people authorized to work with a *TVTF*.

**Table 1. Foreign nationals with work authorization through *TVTF* 2013-2017, disaggregated by sex**

YEAR	TOTAL	MEN	WOMAN	WOMEN AS A % OF TOTAL
2013	15,160	12,788	2,372	15.65
2014	14,648	12,269	2,379	16.24
2015	15,885	13,524	2,361	14.86
2016	14,876	13,016	1,860	12.50
2017	12,387	10,810	1,577	12.73

Source: Elaborated by author based on data from INM (2013, 2014, 2015, 2016, and 2017), Documentation and condition of stay in Mexico.

**ii. Domestic workers**

Women migrant domestic workers are disproportionately affected when immigration documentation and work authorization are dependent on a job offer since compliance with the requirements is practically impossible, its cost is high and the service hours to carry out the procedure overlap with the work schedules of working women who often do not have permission from their employers to leave.

For example, for a woman migrant domestic worker - coming from the neighboring municipality of San Marcos in Guatemala - to enter Mexico and to work in a documented manner, requires that a homeowner in Chiapas be registered with the *INM* as an employer (who must be a taxpayer and be up-to-date with tax payments) and submit a job offer to *INM* to request a visa authorization for the domestic worker.

Between January 2011 and July 16, 2014, the *INM* issued 153 employer certificates to hire foreign nationals as domestic workers in Chiapas<sup>40</sup>. The low number of registered employers stands out when in cities like Tapachula, Central American women, especially indigenous Guatemalan women, perform practically all domestic work<sup>41</sup>. According to the *EMIF Sur*, 70.1% of temporary crossings and 30.9% of transborder crossings of migrant women correspond to this type of workers<sup>42</sup>. Additionally, the Population Census (2010) indicates that a third of Central American women who reside and work in Chiapas and are 12 years of age and older are domestic workers (1,558 women)<sup>43</sup>.

Ministry of Culture of Ecuador, p. 141-158; Rojas Wiesner, Martha and Ángeles Cruz, Hugo (2012), “La situación de las mujeres migrantes en la frontera de México con Guatemala”, in Tuñón Pablos, Esperanza and Rojas Wiesner, Martha (coords.) (2012), *Género y migración*, Mexico, ECOSUR, El Colegio de la Frontera Norte, El Colegio de Michoacán, CIESAS, vol.1; Ancheita Pagaza, Alejandra Constanza and Bonnici, Gisele Lisa (2013), *¿Quo Vadis? Reclutamiento y contratación de trabajadores migrantes y su acceso a la seguridad social: dinámicas de los sistemas de trabajo temporal migratorio en Norte y Centroamérica. Informe de investigación*, Mexico, INEDIM.

<sup>39</sup> Strategy 3.2. SEGOB (2014), *Programa Especial de Migración 2014-2018*, Diario Oficial de la Federación, Mexico, April 30, [http://www.dof.gob.mx/nota\\_detalle.php?codigo=5343074&fecha=30/04/2014](http://www.dof.gob.mx/nota_detalle.php?codigo=5343074&fecha=30/04/2014)

<sup>40</sup> *INM*, Chiapas Federal Delegation, 2014.

<sup>41</sup> Centro de Derechos Humanos Fray Matías de Córdova (2012), *Por el reconocimiento a la contribución significativa de las trabajadoras del hogar en la economía global. Situación de las y los trabajadores del hogar en la ciudad de Tapachula, Chiapas*, Tapachula.

<sup>42</sup> *INM et al* (2012), *Encuesta sobre Migración en la Frontera Sur de México 2009 (EMIF Sur)*, Serie histórica 2004-2009, Mexico.

<sup>43</sup> *INEGI* (2010), *Base de Microdatos de la muestra del Censo de Población y Vivienda del año 2010*, Mexico.

Given the difficulty in obtaining a job offer by an employer registered with *INM*, and the need for women to cross the border safely, immigration authorities recognize that many migrant domestic workers from Guatemala have the Regional Visitor Card (*Tarjeta de Visitante Regional, TVR*), which allows them to cross the border for short stays but does not grant them a work permit to perform remunerated activities<sup>44</sup>.

**Table 2. Foreign nationals with work authorization through TVR 2013-2017, disaggregated by sex**

YEAR	TOTAL	MEN	WOMAN	WOMAN AS A % OF TOTAL
2013	45,158	27,208	17,950	39.75
2014	112,038	57,132	54,906	49.01
2015	114,217	59,025	55,192	48.32
2016	89,816	45,243	44,573	49.62
2017	75,429	37,559	37,870	50.20

Source: Elaborated by author based on data from *INM* (2013, 2014, 2015, 2016, and 2017), Documentation and condition of stay in Mexico.

*Table 2* shows that between 2013 and 2015, the number of women with *TVR* increased (from 17,950 in 2013 to 55,192 in 2015). Although this number fell in 2016 and 2017, the percentage of women documented with *TVR* continued to increase (50.20% of total *TVR* granted in 2017). However, this immigration permit allows them to enter and remain in Mexico for a period of less than three days and does not grant them authorization to work or to receive remuneration. Migration laws and regulations contemplate sanctions and cancellations of *TVR* for breach of obligations when the person works with that document<sup>45</sup>.

After the enactment of the 2011 Law on Migration, the Mexican government issued a Temporary Migration Regularization Program (*PTRM*) in 2015<sup>46</sup>. Although this program aims to facilitate the regularization of foreign nationals residing in Mexico irregularly who have a family, are employed or have business ties in the country, it also discriminates against women domestic workers.

On the one hand, the requirements are very demanding, the procedure must be done online, the administrative processes are highly bureaucratic and the costs are high in relation to the salaries earned by Central American women migrant workers in Chiapas<sup>47</sup>. On the other hand, unlike previous versions of the Regularization Program (prior to the Law on Migration), in the Program model that was executed in 2015 and 2017, the immigration documentation (temporary residence) did not include work authorization. To obtain it, it required an additional procedure in addition to a job offer.

For example, a female domestic worker with years of residence and work in Chiapas seeking to regularize her migration status with work authorization, had two options under the 2015 *PTRM*:

- a) Submit a job offer issued by a person with an employer status with *INM* to be granted a domestic worker authorization, or b) provide proof of taxpayer status, which would allow her to

<sup>44</sup> Presentation of report launched, titled *Impacto de la nueva Ley de Migración y su Reglamento en la población migrante asentada en el Soconusco*, Mexico, August 5 2014.

<sup>45</sup> Law on Migration (*Ley de Migración*), Art.52; Ordinance, Art. 132 and 136; Guidelines for migration procedures (*Lineamientos para trámites y procedimientos migratorios*), Art.72, 73 and 74.

<sup>46</sup> *SEGOB* (2015), *Programa Temporal de Regularización Migratoria*, Diario Oficial de la Federación, México, January 12 2015, [http://dof.gob.mx/nota\\_to\\_doc.php?codnota=5378303](http://dof.gob.mx/nota_to_doc.php?codnota=5378303)

<sup>47</sup> *Cimacnoticias* (2015), *Con programa temporal, más trabas que apoyos para migrantes*, by Angélica Jocelyn Soto Espinosa, Mexico, January 12 2015, <http://www.cimacnoticias.com.mx/node/68561>; *Animal Político* (2015), *Los costos que tienen que pagar los migrantes para regularizar su situación en México*, por Tania Montalvo, México, January 14, 2015, <http://www.animalpolitico.com/2015/01/pagar-derechos-comprobar-domicilio-en-mexico-tener-identificacion-requisitos-para-que-migrantes-tengan-residencia/>; *El Economista*, *Regularización migratoria, inaccesible debido a altos costos*, by Ana Langner, Mexico, January 14, 2015, <http://eleconomista.com.mx/sociedad/2015/01/14/regularizacion-migratoria-inaccesible-debido-altos-costos>; *BBC Mundo* (2015), *El polémico programa de regularización migratoria de México*, by Alberto Nájjar, Mexico, January 23 2015, [http://www.bbc.com/mundo/noticias/2015/01/150121\\_mexico\\_polemica\\_reforma\\_migratoria\\_an](http://www.bbc.com/mundo/noticias/2015/01/150121_mexico_polemica_reforma_migratoria_an)

have authorization to work independently. However, in order to be a taxpayer in Mexico, proof of immigration documentation with work authorization is required. This legal loophole makes it practically impossible to process an immigration document as an independent worker, more so for a domestic worker.

Civil society organizations have carried out intensive advocacy work with immigration authorities to expand access to worker status for migrants in vulnerable situations, such as domestic workers, in the 2015 and 2017 PTRMs. In the drafting of the 2015 PTRM, the Working Group on Migration Policy (GTPM)<sup>48</sup> sought to a) include work authorization in the regularization process itself, as offered in the versions of the program implemented between 2000 and 2008; b) provide greater stability for applicants with access to permanent residency (instead of temporary residency); and c) reduce the application fee<sup>49</sup>. In 2014, the GTPM submitted to INM the *Proposal to Implement an Affirmative Action to Expand Access to Immigration Documentation and Work Authorization for Central American Migrant Women in Chiapas through the PTRM*<sup>50</sup>. These proposals have been taken up again in the work carried out by the INM Citizens' Council in the drafting of the 2017 PTRM.

However, to date, immigration authorities have not included the recommendations submitted by civil society nor have they eliminated the barriers to obtain immigration documentation and work authorization for migrant domestic workers in the PTRM. In Chiapas, it is difficult to implement the *Ley Federal de Derechos*, (art.16) that exempts immigration procedure fees for people earning minimum wage or less. Therefore, if the Program in 2015 sought to regularize 30,000 people who entered Mexico prior to November 9, 2012<sup>51</sup>, it only managed to provide immigration documentation to 10% of the target population (3,030 people)<sup>52</sup>.

**Table 3. Individuals from Northern Central American Triangle regularized through the PTRM 2015-2017, disaggregated by sex**

YEAR	TOTAL	WORK CATEGORY	% OF TOTAL	MEN	WOMAN	WOMEN AS A % OF TOTAL
2015	852	137	16.07%	437	415	48.70
2016	653	34	5.20%	346	307	47.01
2017	2,384	25	1.04%	1330	1054	44.21

Source: Elaborated by author based on data from INM (2013, 2014, 2015, 2016, 2017), Documentation and condition of stay in Mexico.

<sup>48</sup> The GTPM is comprised of: Alianza Américas; AAMX Asylum Access México; Casa del Migrante de Saltillo - Frontera con Justicia A.C.; Centro de Derechos Humanos Fray Matías de Córdova, A.C.; Coalición Pro defensa del Migrante de Baja California; CMDPDH Comisión Mexicana de Defensa y Promoción de los Derechos Humanos A.C.; DHIA Derechos Humanos Integrales en Acción A.C.; Fundación Appleseed México; FUNDAR Centro de Análisis e Investigación, A.C.; IMUMI Instituto para las Mujeres en la Migración; Iniciativa Ciudadana para la Promoción de la Cultura del Diálogo, A.C.; INEDIM Instituto de Estudios y Divulgación sobre Migración; INSYDE Instituto para la Seguridad y la Democracia; M3 Movimiento Migrante Mesoamericano; REDIM Red por los Derechos de la Infancia en México; SJM México, Servicio Jesuita a Migrantes - México; SMR Scalabrinianas: Misión para Migrantes y Refugiados; Sin Fronteras, I.A.P.; SOS Aldeas Infantiles de México, I.A.P.; Leticia Calderón, Analyst in migration issues; Brenda Valdés, Consultant; Elba Coria, Consultant; Gisele Lisa Bonnici, Consultant; Manuel Ángel Castillo, Researcher.

<sup>49</sup> GTPM (2015), Press Release: *Programa Temporal de Regularización Migratoria, poco accesible para personas migrantes irregulares*, México, January 13 2015, <http://www.sinfronteras.org.mx/attachments/prog-regularizacion.pdf>; GTPM (2015), *Comunicado de prensa: GTPM respalda extensión del Programa Temporal de Regularización Migratoria*, México, December 16 2015, <http://www.sinfronteras.org.mx/index.php/en/press-room/press/601-gtpm-respalda-extension-del-programa-temporal-de-regularizacion-migratoria>; Terra (2015), *Especialistas reprochan poco avance de ley migratoria*, por Silvia Garduño, México, May 26 2015, <https://noticias.terra.com.mx/mexico/especialistas-reprochan-fallas-y-poco-avance-de-la-ley-de-migracion,b3e37b27ebbf72db74019c14f5c5a3ad949vRCRD.html>

<sup>50</sup> GTPM, Centro de Derechos Humanos Fray Matías de Córdova and Instituto para las Mujeres en la Migración (2014), *Programa de Regularización Migratoria como una Acción Afirmativa. Propuesta para ampliar el acceso a la documentación migratoria con autorización para trabajar a las mujeres migrantes centroamericanas en Chiapas*, México, August 5 2014, <http://imumi.org/attachments/2014/Accion-Afirmativa-regularizacion-migratoria-2014.pdf> presented to immigration authorities during the launch of the report titled *Impacto de la nueva Ley de Migración y su Reglamento en la población migrante asentada en el Soconusco*, México. The data published by INM in 2015 and 2016 add to a total of 3,063 individuals regularized during the period.

<sup>51</sup> SEGOB (2014), Press Release on December 27 2014.

<sup>52</sup> INM (2016), Public information request 0411100025016, *Oficio INM/DGRA/1827/DRA/2016*, April 19 2016.

*Table 3* shows the number of nationals from El Salvador, Guatemala and Honduras who regularized their stay within the *PTRM* in the 2015 - 2017 period according to *INM* data. While the number of women of these nationalities who regularized their status between 2015 and 2017 doubled, the proportion of women has declined. Currently, there is no public data on how many women were authorized to work.

**b. RECOMMENDED ACTIONS for the Committee to observe to the Mexican State in order to guarantee access to immigration documentation and work authorization for women migrant workers:**

- **CEDAW Articles 2 and 4: Eliminate the requirement of a formal employment letter to obtain work authorization in Mexican immigration law and regulations.**

This recommendation is based on CEDAW Article 2 f) which stipulates that State parties must “take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against women.”

It is furthered substantiated through *General Recommendation no. 26 on Migrant Workers*. In 2008, the Committee recommended that States parties “should ensure that their visa schemes do not indirectly discriminate against women” (par. 26 a) and “should enact provisions relating to independent residency status. Regulations should be made to allow for the legal stay of a woman who flees her abusive employer or spouse or is fired for complaining about abuse” (par.26 f).

Accordingly, in 2011, the Committee for the Protection of the Rights of All Migrant Workers and their Families, in its *General Comment no. 1 on Migrant Domestic Workers*, refers to art. 69 of the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and states that: “State parties should take appropriate measures to address the extreme vulnerability of undocumented migrant domestic workers, especially women and children. In particular, State parties should consider policies, such as regularization programmes, to avoid or resolve situations in which migrant domestic workers are undocumented or are at risk of falling into irregular status” (CMW /C/GC/ 1, par.52).

It also observes that “State parties should avoid making the migration status of migrant domestic workers conditional on the sponsorship or guardianship of a specific employer, since any such arrangement may unduly restrict the liberty of movement of migrant domestic workers and increase their vulnerability to exploitation and abuse, sometimes in conditions of forced labour or servitude” (CMW / C / GC / 1, par. 53).

Finally, among its 2017 observations to Mexico, it recommended to the State (CMW/C/MEX/CO/R.3, paragraph 30) to:

1. Regularize migrant women with work authorization independently from the employer, spouse or relatives, and at affordable costs<sup>53</sup>;
2. Generate mechanisms for selecting candidates for bilateral labour migration programs that are gender-sensitive;

The Committee can contribute to the implementation of these recommendations through a series of observations to Mexico to accelerate de facto equality between men and women in their access to immigration documentation and work authorization in Mexico:

<sup>53</sup> In order for residency permits with work authorization to be issued in Mexico independently of the employer, especially for women migrant domestic workers, modifications are required on Art. 52 of the Law of Migration, Articles 115, 119 and 123 of the ordinance, Articles 8 and 16 of the National Law of Rights (*Ley Federal de Derechos*) and Chapter III of the General Guidelines for expedition of visas issued by *SEGOB* and Ministry Foreign Affairs (*SRE*).

- **CEDAW Article 2 and 4: Introduce temporary special measures or affirmative action granting immigration documentation with work authorization to women migrant domestic and agricultural workers, including budgetary allocations to the INM for implementation**
  - i. Affirmative action that allows women agricultural and domestic workers to obtain Transborder Temporary Worker status (Tarjeta de Visitante Trabajador Fronterizo, TVTF) without requiring a formal job offer or fees.
  - ii. Affirmative action to allow migrant women domestic workers to regularize their migration status and grant them work authorization, without requiring job offer and fees.

These specific temporary actions will compensate for some of the adverse effects of the discrimination that women have experienced for centuries and begin to generate a cultural change in the families of border workers, contractors, employers and immigration authorities in the region. At the same time, they would contribute in recognizing and valuing domestic and agricultural women workers, as well as domestic work within Mexican legislation and public policies.

Establishing an affirmative action to guarantee access to immigration documentation and work authorization for migrant agricultural and domestic women workers will allow a qualitative leap in favor of equal opportunities, rights and obligations between men and women, not only for access to migration documentation, but also to guarantee the right to decent work, social security, health and justice<sup>54</sup>.

The adoption of affirmative actions to provide immigration documentation and work authorization for women migrant workers is based on CEDAW's Article 4 par.1, relating to the adoption of temporary special measures to accelerate de facto equality between men and women.

#### **The Committee has issued specific observations to Mexico in this area:**

- In 2006, it expressed concern of the underutilization of temporary special measures and encouraged Mexico to increase its implementation "in order to accelerate the achievement of substantive equality between women and men" (CEDAW/C/MEX/CO/6, par 22 and 23).
- In 2012, the Committee urged Mexico to adopt "measures to guarantee equal opportunities for women and men in the labour market, including resorting to special measures of a temporary nature" (CEDAW/C/MEX/CO/ 7-8, par. 29a).

Other UN bodies have also expressed observations to Mexico on this subject<sup>55</sup>:

The UN Special Rapporteur on the rights of migrants recommended Mexico in 2002 to reform legislation in order achieve equality for men and women in the recognition of their individual migration status and to continue to provide migration regularization programs with the support of civil society (E/CN.4/2003/85/Add.2, par.54).

<sup>54</sup> UN Women and IMUMI (2014), *Legislación mexicana y derechos de las trabajadoras migrantes. Un análisis del cumplimiento de la Convención sobre la Eliminación de todas las formas de Discriminación Contra la Mujer (CEDAW) y su Recomendación General no. 26 en la legislación*, México, European Union, UN Women and IMUMI, <http://www.unwomen.org/~media/headquarters/attachments/sections/library/publications/2015/legislacion%20mexicana%20y%20derechos%20de%20las%20trabajadoras%20migrantes.pdf>; UN Women and IMUMI (2015a), *Las trabajadoras migrantes centroamericanas en Chiapas. Recomendaciones de política pública para garantizar el ejercicio de sus derechos*, p.9, <http://www.unwomen.org/~media/headquarters/attachments/sections/library/publications/2015/las%20mujeres%20migrantes%20en%20chiapas%20recomendaciones%20de%20politica%20publica%20pa.pdf>; UN Women and IMUMI (2015b), *Guía breve para desarrollar legislación migratoria con perspectiva de género*, México, European Union, UN Women and IMUMI, <http://www2.unwomen.org/~media/field%20office%20mexico/documentos/publicaciones/2014/guia%20breve%20onu%20mujeres.pdf?v=1&d=20150820T192817>

<sup>55</sup> UN Women and IMUMI (2016), *Compromisos de México con los Derechos Humanos de las trabajadoras migrantes*, México, European Union, UN Women and IMUMI, <http://www2.unwomen.org/~media/field%20office%20mexico/documentos/publicaciones/2016/compromisos%20mexico%20derechos%20humanos%20trab%20migrantes-para%20difusi%C3%B3n.pdf?v=1&d=20160217T205424>

In 2006, the Committee for the Protection of the Rights of All Migrant Workers and Members of their Families recommended that Mexico take measures to protect women domestic workers through access to a regular migration status (CMW/C/MEX/CO/1, par. 34). In 2011, it suggested designing and implementing a comprehensive immigration regularization policy accessible to all migrant workers and their families in an irregular immigration status (CMW/C/MEX/CO/2, par. 54) and in 2017, it reiterated and expanded such recommendations (CMW/C/MEX/CO/ R.3, par. 30).

During the 2013 Universal Periodic Review, the UN Human Rights Council recommended Mexico to continue efforts aimed at improving the situation of migrant workers within its territory, as well as to protect and defend their rights (Report by Working Group A/HRC/25/7, rec.148.73).

The Law on Migration (Article 30) recognizes women as a type of migrant in a vulnerable situation and mandates the National Institute for Women (*Instituto Nacional de las Mujeres, INMUJERES*) to carry out inter-institutional actions, in coordination with the *INM*, to address the issues affecting migrant women, and to improve compliance with international treaties and agreements to which Mexico is a member. In the same manner, it must promote actions aimed at improving the social condition of the female migrant population and eradicating all forms of discrimination against them.

Migration regulations (Art. 143) give *SEGOB* the power to issue general temporary administrative measures in order to establish the assumptions, requirements and procedures applicable to the regularization of foreign nationals in the country.

The National Development Plan (NDP) considers making tangible commitments assumed by Mexico in ratifying the CEDAW and contributing to the fulfillment of its recommendations. It contemplates the need to carry out special actions aimed at guaranteeing women's rights and preventing gender differences from creating inequality, exclusion or discrimination. At the same time, it recognizes the conditions of greater vulnerability faced by women in different migration situations, concluding the relevance of a gender-sensitive and rights-based migration policy<sup>56</sup>.

The gender transversal programs derived from the National Development Plan (National Program for Equal Opportunities and Non-Discrimination of Women-*PROIGUALDAD* and Special Migration Program-*Programa Especial de Migración, PEM*), also contemplate affirmative actions in favor of migrant women to help eliminate inequalities. While *PROIGUALDAD* grants *SEGOB* the authority to promote affirmative actions to guarantee the rights of migrant women, including for internal, international and transmigrant<sup>57</sup> women, *PEM* is more specific and states that the *SEGOB*, *SRE* and *INMUJERES* (Instituto Nacional de las Mujeres) must take affirmative actions to<sup>58</sup>:

- a) "promote and facilitate the issuance of migration documents for individuals in a situation of vulnerability" (including women) (line of action 3.2.7).
- b) "ensure migrant women can obtain migration documents independently of their partners" (line of action 3.2.9).
- c) "facilitate the regularization process for foreign nationals in Mexico, prioritizing family unity and the best interest of the child" (line of action 3.2.8).

It is important to note that the *PEM* lacked a budget to execute these programmed lines of action. Therefore, it is very significant that the recommendation of affirmative actions in favor of women migrant workers includes the need for a budget allocation for the implementation of said actions.

<sup>56</sup> SHCP (2013), *Plan Nacional de Desarrollo 2013-2018*, Diario Oficial de la Federación, México, May 20, pp.23, 96 and 99, <http://pnd.gob.mx/>

<sup>57</sup> SHCP (2013), *Programa Nacional para la Igualdad de Oportunidades y no Discriminación contra las Mujeres. PROIGUALDAD 2013-2018*, Diario Oficial de la Federación, Mexico, August 30, <http://pnd.gob.mx/wp-content/uploads/2013/11/Programa-Nacional-para-la-Igualdad-de-Oportunidades-y-no-Discriminaci%C3%B3n-contra-las-Mujeres-2013-2018.pdf>

<sup>58</sup> *SEGOB* (2014), *Programa Especial de Migración 2014-2018*, Diario Oficial de la Federación, Mexico, April 30, [http://www.dof.gob.mx/nota\\_detalle.php?codigo=5343074&fecha=30/04/2014](http://www.dof.gob.mx/nota_detalle.php?codigo=5343074&fecha=30/04/2014)

For its part, the *PEM* lacks information that would allow the development of impact indicators for the migrant population and their families. Therefore, in order to know the population size of temporary women workers who could benefit from a special measure aimed at accelerating equal access to immigration documentation and work authorization between men and women, it is imperative to have disaggregated statistics by sex. At the same time, it is necessary to monitor and evaluate the documentation processes of the *TVTF* and the *TVR*, as well as the *PTRM*, from a gender perspective.

In 2009, the UN Special Rapporteur on the rights of migrants had recommended that Mexico dedicate additional resources to improve data on the work of migrants in the domestic sphere (number and nationality, as well as employers). It was also suggested to examine possible abuses in the recruitment process through inquiries of recruitment agencies and systems for the registration of migrant workers for domestic work (A/HRC/11/7/Add.2, par. 91).

These recommendations could be carried out if *INM* implements the *PEM*'s<sup>59</sup> lines of action that propose generating migration registries and statistics that account for sex, nationality, ethnicity and age differences (1.5.6); and developing monitoring and evaluation mechanisms for migration programs and actions (1.5.8), including the implementation of the *PROIGUALDAD*'s<sup>60</sup> line of action which seeks to generate statistical information to measure progress in gender and social and cultural change (1.5.9).

**c. RECOMMENDED ACTIONS based on ARTICLE 2 and 11 of the CEDAW that the Committee may observe to the Mexican State in order to guarantee women migrant workers from Mexico equal opportunities and treatment in the recruitment and hiring processes for employment abroad.**

- i. Monitor the recruitment process in Mexico for labour migration programs abroad and adequately sanction those who discriminate, collect fees or otherwise violate the rights of women.
- ii. Include gender-sensitive guidelines of supervision of recruitment agencies that allow inspectors to identify discriminatory practices against women and adequately sanction those who do not respect their rights.
- iii. Collect and publish data disaggregated by sex on migrants who participate in labour migration programs abroad.
- iv. Better inform migrant workers on their rights and access to information on legal services to enable them to make effective legal complaints in case of non-compliance, with support of civil society organizations or online, through platforms for female workers such as *Contratados.org*.

These recommendations are necessary to strengthen the gender perspective of the observations to Mexico already made by the Committee for the Protection of the Rights of All Migrant Workers and their Families: In 2011, it recommended the implementation of a system to monitor individuals and organizations involved in relocating Mexican migrants and necessary measures when offenses are committed, as well as better inform (2011) and empower (2017) migrant workers on their rights (CMW/C/MEX/CO/2, paragraph 44 and CMW/ C/MEX/CO/R3, par.18c).

<sup>59</sup> *SEGOB* (2014), *Programa Especial de Migración 2014-2018*, Diario Oficial de la Federación, Mexico, April 30, [http://www.dof.gob.mx/nota\\_detalle.php?codigo=5343074&fecha=30/04/2014](http://www.dof.gob.mx/nota_detalle.php?codigo=5343074&fecha=30/04/2014)

<sup>60</sup> *SHCP* (2013), *Programa Nacional para la Igualdad de Oportunidades y no Discriminación contra las Mujeres. PROIGUALDAD 2013-2018*, Diario Oficial de la Federación, Mexico, August 30, <http://pnd.gob.mx/wp-content/uploads/2013/11/Programa-Nacional-para-la-Igualdad-de-Oportunidades-y-no-Discriminaci%C3%B3n-contra-las-Mujeres-2013-2018.pdf>

## 2. CEDAW ARTICLE 3

### Barriers to reintegration rights for migrant workers and their children:

#### Access to identity

In terms of nationality, people with a Mexican parent, regardless of their place of birth, are considered Mexican by birth according to Article 30 of the Political Constitution of Mexico (*Ius Sanguinis*). However, they need to carry out an administrative procedure for the nationality certification, known as “*inscripción*” or “*inserción*”, at a Mexican consulate, or upon return to Mexico at the civil registry. The process of certification of Mexican nationality is easier to process in a Mexican consulate because they ask for fewer requirements; for example, they do not request an Apostille or official translation of the birth certificate. Once in Mexico, in order to recognize the Mexican nationality of people born abroad, it is necessary to submit a legalized birth certificate, or with an Apostille, and an official translation (Federal Code of Civil Procedure, art. 546). The process, which should be offered at no cost according to Article 4 of the Political Constitution, currently has a fee (a requirement payment included in federal and state regulations). The Apostille requirement is practically impossible to obtain for the majority of women who return to Mexico, as seen in documented cases that were legally represented by IMUMI and other organizations serving Mexican women who were deported or had returned to Mexico from the United States<sup>61</sup>.

The majority of Mexican women living abroad are unaware of the administrative procedure and its requirements for the certification of the Mexican nationality of their children, resulting in very few families requesting from abroad. Additionally, when a return occurs as a result of a deportation, it becomes difficult for women and their families to manage the transfer of foreign documentation after a return to Mexico.

These barriers leave children of Mexican migrant workers without legal status and without access to rights and services in Mexico. *SEGOB* recognizes in the *PEM* that women, mothers of US-born children are disproportionately affected by the difficulties of integration<sup>62</sup>. In 2016, the Mexican government launched the “*Soy México. Birth record of the Mexican-American population*” program to facilitate the certification of Mexican nationality through an electronic verification of the US birth document. However, there is a need for structural public policies that consider the marginalization and conditions of inequality that women in migration experience, as well as their specific needs of their children to access their right to identity without discrimination.

Furthermore, a national identity document – which is stipulated in the General Law on Population (Art. 103) such as a Citizen Identity Card, currently does not exist and its absence creates ambiguity on the requirements established by authorities for Mexican nationality certification. Consequently, access to rights, services or social programs by women and their children is subject to the discretion of public servants. The lack of an identity document, as well as public policies that respond to the migration and transnational dynamics, impose costs and exclusion of women in migration.

#### Access to education

The lack of a document that can serve as proof of identity and Mexican nationality and policies that que facilitate access for women in migration and their children, has resulted in a regression in the access to other rights like education. Key bureaucratic and interpretation barriers exist; lacking a gender perspective and a consideration of the principle of pro persona or the best interests of the child.

<sup>61</sup> The Guardian (2016), *Uprooted in Mexico: the US children ‘returned’ to a country they barely know*, by Nina Lakhani and Mónica Jacobo, July 13, <https://www.theguardian.com/world/2016/jul/13/immigration-us-children-migrants-returned-to-mexico>

<sup>62</sup> *SEGOB* (2014), *Programa Especial de Migración 2014-2018*, Diario Oficial de la Federación, México, April 30 p.48-50, [http://www.dof.gob.mx/nota\\_detalle.php?codigo=5343074&fecha=30/04/2014](http://www.dof.gob.mx/nota_detalle.php?codigo=5343074&fecha=30/04/2014)



Additionally, the lack of awareness by federal and local authorities of the difficulties and conditions of inequality that women in migration and their families face, is in itself a barrier preventing this population from exercising their rights, including the constitutional right to an education granted to every person living in the territory<sup>63</sup>.

These issues have been highlighted by civil society organizations<sup>64</sup>, and eventually, in 2017 the General Law on Education (LGE) and federal regulations, such as Secretarial Agreement 286 were modified. States across the country are obligated to implement this federal legal framework on education, rendering the harmonization with local legislation unnecessary. Nevertheless, there are technical barriers linked to *CURP* access, which in practice, it is required for school enrollment. At the moment, the key obstacle is on the implementation of recent normative changes by education authorities and the lack of dissemination of information by all authorities that have contact with women in migration and their families. Consequently, it is necessary to increase awareness among key state actors and to disseminate information on the Ministry of Education's website.

According to *INEGI* estimates, in March 2015, a total of 287,367 children born outside of Mexico and who have the right to Mexican nationality through a parent, lacked Mexican nationality certification; of this group, a total of 27,135 were not enrolled and did not attend school<sup>65</sup>. Mothers, migrant women, are the ones who assume the responsibility of creating options so that their children can exercise their right to education upon return. In doing so, they face discrimination and disproportionate personal and social costs.

**b. RECOMMENDED ACTIONS based on ARTICLE 3 that the Committee can observe to the Mexican State in order to guarantee a return and reintegration without discrimination for women in migration and their families:**

- **CEDAW Article 3: Promote and facilitate the certification of Mexican nationality in Mexican consulates.**

This recommendation is supported by CEDAW Article 3 and its *General Recommendation no. 26* on women migrant workers, stating that State parties must train their diplomatic and consular staff to ensure they comply with their obligation to protect the rights of women migrant workers and provide them with legal assistance (par. 24 j).

- **CEDAW Article 3: Eliminate discriminatory elements that directly or indirectly exclude women in migration and their children from local laws and regulations regarding civil registration of their Mexican nationality registration.**
  - i. Modify Article 546 of the Federal Code of Civil Procedures to eliminate the requirement of legalization (or Apostille) of birth certificates for the beneficiary population of Article 30, subsection a, section II of the Constitution. That is, to facilitate the certification of Mexican nationality for children of Mexican women in migration, without the need of an Apostille or legalization of a birth certificate. It is possible to prove filiation with the birth certificate of the child born abroad accompanied by the birth certificate of the Mexican parent.

<sup>63</sup> Access to education of children and adolescents in migration <http://imumi.org/sep/index.html>

<sup>64</sup> Reforma (2017), Advierten burocracia en revalidación, February 15, <https://www.reforma.com/aplicacioneslibre/articulo/default.aspx?id=1046582&md5=b035cf3e231a80344245b290f1a8ed5b&ta=0dfdbac11765226904c16cb9ad1b2efe&lcmd5=34ea57c1e81b-38209f4b0a6872fe1d10>

<sup>65</sup> *INEGI* (2017), *Informe. Niñas, niños y adolescentes binacionales (EEUU – México) residentes en México y no cuentan con un acta de nacimiento mexicana ni Clave Única de Registro de Población (CURP)*, Report developed by the Specialized Interinstitutional Coordination to identify the potential beneficiary population which could access the "Soy México" program, Mexico.

- ii. Enunciate Mexican identity documents issued by government authorities, in Mexico and abroad, so that they are officially valid. This would mark an important step, but it is not a structural solution, as women and children in migration must be guaranteed access to an identity document independent of a voter registration identification, passport, military card; the latter can only be presented by men.
  - iii. Harmonize state (local) income laws with Art. 4 of the Constitution, so that the cost of the first civil act is eliminated, be it civil registration or certification ("*inscripción*" or "*inserción*") of Mexican nationality, in all the civil registries in the country.
  - iv. Harmonize state (local) ordinances, Civil Codes in some states and in others the Civil Registry Law or Regulation, to Art. 9 of Law on Migration, to eliminate the requirement of legal stay or migration documentation, placed directly or indirectly, for civil acts requested by migrant women and their children such as registration of birth, marriage or divorce.
  - v. Evaluate the implementation of the Special Program on Migration, and objective 1 on legislative harmonization on identity and education, and objective 4 on access to rights upon return, from a gender perspective as well as the related objectives and lines of action in PROIGUALDAD.
- **CEDAW Article 3: Eliminate discriminatory elements that directly or indirectly exclude women in migration and their children from access to education.**
    - i. Eliminate administrative barriers for CURP access or to prevent the requirement of a CURP to access rights or services, given that these procedures generate discrimination and institutional violence; additionally, to a large extent, women in migration bear the cost of these barriers.
    - ii. Implement normative changes to LGE, Secretarial Agreement 286 and admissions regulations, to eliminate identity accreditation as a prerequisite to access, accreditation, revalidation and school certification.
    - iii. Adapt technological platforms and forms so that school enrollment is not dependent on an identity document. Create a mechanism for training and certification of key actors (education, migration among others) to disseminate, evaluate and adapt the information on education normative changes at all levels to the dynamics of women in migration and their families.

These recommendations are based on the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which establishes that "every migrant worker and every member of his or her family shall have the right to recognition everywhere as a person before the law" (art. 24) and "Each child of a migrant worker shall have the right to a name, to registration of birth and to a nationality" (art. 29).

CEDAW's Articles 2 and 3 and *General Recommendation no. 26*, recommend that State parties "facilitate the reintegration of women who have returned to their countries of origin" and "ensure that service providers do not take advantage of the vulnerability of women migrant workers returning to their countries of origin" (par. 24 i).

Other UN agencies have issued observations to Mexico on this subject<sup>66</sup>:

In 2009, in its First Universal Periodic Review, the UN Human Rights Council recommended Mexico to ensure effective access to education for all children, particularly migrant and indigenous children, and to take effective measures against their exclusion in the education system (Group Report of Work A/HRC/11/27, rec. 93.73)

In 2011, the Committee for the Protection of the Rights of All Migrant Workers and Members of their Families observed that Mexico needs to adopt effective measures so that civil registry officials register all births of the children of migrant workers without discrimination, regardless of their migration status (CMW/C/MEX/CO/2, par. 40), and in 2017 it suggested to establish a simplified procedure for Mexican nationality certification of children born to a Mexican parent and to guarantee their access to education and other social services (CMW/C/MEX/CO/R.3, pars. 52 and 54).

In 2013, in its Second Universal Periodic Review, the UN Human Rights Council recommended Mexico to protect and effectively guarantee the security and human rights of migrants, especially women and children, guaranteeing their access to justice, education, health, and civil registry, as well as incorporating the principle of the best interests of the child and family unit (Report of the Working Group A/HRC/ 25/7, rec.148.175).

Furthermore, the 2013-2018 NDP includes lines of action guided by these recommendations. On the one hand, the *PEM* considers harmonizing federal and local legislation on health, education and civil registry acts within the regulatory framework for migration (line of action 1.1.2), reforming laws and regulations on population to guarantee the right to identity of migrants and their families (line of action 1.1.3) and strengthening inter-institutional mechanisms and agreements to guarantee the right to identity of migrants and their families (line of action 3.2.1). On the other hand, it considers strengthening the capacity of Mexican Consulates to issue identity documents (action line 3.2.2). Finally, it considers promoting the recognition of migration and identity documents to facilitate access to services (line of action 4.1.1), as well as promoting the design and execution of public policies to consider migration criteria and a gender perspective (line of action 2.4 .1).

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<sup>66</sup> UN Women and IMUMI (2016), *Compromisos de México con los Derechos Humanos de las trabajadoras migrantes*, Mexico, European Union, UN Women and IMUMI, <http://www2.unwomen.org/~media/field%20office%20mexico/documentos/publicaciones/2016/compromisos%20mexico%20derechos%20humanos%20trab%20migrantes-para%20difusi%C3%B3n.pdf?v=1&d=20160217T205424>

## **IV. SUMMARY OF OBSERVATIONS FOR THE COMMITTEE TO ISSUE TO THE V MEXICAN STATE**

1. Eliminate the formal employment letter as a requirement for receiving work authorization in the Mexican immigration law and regulations.
2. Introduce the following temporary special measures or affirmative action granting immigration documentation with work authorization to women migrant domestic and agricultural workers, including budgetary allocations to the INM for implementation:
  - i. Affirmative action that allows women agricultural and domestic workers to obtain Transborder Temporary Worker status without requiring a formal job offer or fees.
  - ii. Affirmative action that allows migrant women domestic workers to regularize their migration status and grants them work authorization without requiring job offer and fees.
3. Guarantee Mexican women migrant workers equal opportunities and treatment during the recruitment and hiring processes for employment abroad.
  - i. Monitor the recruitment process in Mexico of labour migration programs abroad and adequately sanction those who discriminate, collect fees or otherwise violate the rights of women.
  - ii. Include gender-sensitive guidelines in the supervision processes of recruitment agencies that allows inspectors to identify discriminatory practices against women and adequately punish those who do not respect their rights.
  - iii. Better inform migrant workers on their rights and access to legal assistance that enable them make effective legal complaints in cases of non-compliance, with support of civil society organizations or online, through platforms for women workers such as [Contratados.org](http://Contratados.org)
4. Collect and publish data disaggregated by sex on migrants participating in labour migration programs abroad.
5. Promote and facilitate the certification of Mexican nationality in Mexican Consulates.
6. Eliminate discriminatory elements that directly or indirectly exclude women in migration and their children from local laws and regulations regarding civil registration of their Mexican nationality registration.
  - i. Modify Article 546 of the Federal Code of Civil Procedures to eliminate the requirement of legalization (or Apostille) of birth certificates for the beneficiary population of article 30, subsection a, section II of the Constitution. That is, to facilitate the certification of Mexican nationality for children of Mexican women in migration, without the need of an Apostille or legalization of a birth certificate. It is possible to prove filiation with the birth certificate of the child born abroad accompanied by the birth certificate of the Mexican parent.
  - ii. Enunciate Mexican identity documents issued by government authorities, in Mexico and abroad, so that they are officially valid. This would mark an important step, but it is not a structural solution, as women and children in migration must be guaranteed access to an identity document independent of a voter registration identification, passport, military card; the latter can only be presented by men.

- iii. Harmonize state (local) income laws with Art. 4 of the Constitution, so that the cost of the first civil act is eliminated, be it civil registration or certification (“inscripción” or “inserción”) of Mexican nationality, in all the civil registries in the country.
  - iv. Harmonize state (local) ordinances, Civil Codes in some states and in others the Civil Registry Law or Regulation, to Art. 9 of Law on Migration, to eliminate the requirement of legal stay or migration documentation, placed directly or indirectly, for civil acts requested by migrant women and their children such as registration of birth, marriage or divorce.
  - v. Evaluate the implementation of the Special Program on Migration, and objective 1 on legislative harmonization on identity and education, and objective 4 on access to rights upon return, from a gender perspective as well as the related objectives and lines of action in PROIGUALDAD.
7. Eliminate discriminatory elements that directly or indirectly exclude women in migration and their children from access to education.
- i. Eliminate administrative barriers for CURP access or to prevent the requirement of a CURP to access rights or services, given that these procedures generate discrimination and institutional violence; additionally, to a large extent, women in migration bear the cost of these barriers.
  - ii. Implement normative changes to LGE, Secretarial Agreement 286 and admissions regulations, to eliminate identity accreditation as a prerequisite to access, accreditation, revalidation and school certification.
  - iii. Adapt technological platforms and forms so that school enrollment is not dependent on an identity document. Create a mechanism for training and certification of key actors (education, migration among others) to disseminate, evaluate and adapt the information on education normative changes at all levels to the dynamics of women in migration and their families.

## V. PENDING QUESTIONS

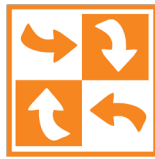
1. What steps has the State taken to improve the creation, dissemination and use of statistics disaggregated by sex and age on the situation of migrants? Please add detailed information on:
  - a. The number of working women documented with TVTF with work authorization, disaggregated by occupation and age.
  - b. The number of migrant women regularized with work authorization through the Temporary Immigration Regularization Program, disaggregated by occupation and age.
2. What measures will the State take to ensure effective access to immigration documentation and work authorization for migrant women, especially Central American women agricultural and domestic workers in Chiapas, in compliance with CEDAW and the Committee's General Recommendation no. 26?
3. What steps is Mexico considering to ensure gender sensitive budgets focused on migrant and returned women at the state and municipal levels?
4. How is the State implementing the regulatory framework to guarantee the right to legal identity and Mexican nationality for migrants and their children? Please add particular information on:
  - a. Constitutional Article 30, subsection a), section II.
  - b. Constitutional Article 4 concerning the right to identity and to be registered immediately at birth and the free issuance of the 1st certified copy of the 1st birth certificate copy (added on June 17, 2014).
  - c. Article 9 of the Law on Migration.
5. How is the Mexican State and its 33 state entities implementing the Soy Mexico Program to facilitate the certification of Mexican nationality, which exempts the requirement of legalization/Apostille of the birth certificate through electronic verification for beneficiary population? particularly:
  - a. Progress at the local and at the federal level
  - b. Potential beneficiary population, disaggregated by sex and age
  - c. Population benefited from the use of electronic verification, disaggregated by sex and age, state entity where the procedure was requested and the state entity of the United States from where the verified document was issued.
  - d. Number of procedures performed by a woman (mother, grandmother or guardian) in the case of minors.
6. How is the State implementing the regulatory framework to guarantee access to education in the 33 state entities in country for all migrants and their families? In particular:
  - a. Agreement Number 07/0615 by which 286 is amended establishing guidelines that determine the standards and general criteria for revalidation of studies completed abroad and the equivalence of studies, as well as the procedures for accreditation of knowledge corresponding to educational levels or school grades acquired in a self-taught modality through work experience or job training certification (Agreement no. 286 of June 11 of 2015).

- b.** Specific norms for primary and secondary education related to the registration, re-enrollment, accreditation, promotion, regularization and certification of said education levels (2015).
- c.** Criteria for the entry, retention and graduation of secondary education, including the issuance of official school certificates upon completion.
- d.** Agreement Number 02/04/17 by which 286 is amended establishing guidelines that determine the standards and general criteria for revalidation of studies completed abroad and the equivalence of studies, as well as the procedures for accreditation of knowledge corresponding to educational levels or school grades acquired in a self-taught modality, through work experience or job training certification (2017)<sup>67</sup>.
- e.** General Law on Education. Decree by which various provisions of the General Law on Education (2017) are amended and added<sup>68</sup>.

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<sup>67</sup> [http://www.dof.gob.mx/nota\\_detalle.php?codigo=5480031&fecha=18/04/2017](http://www.dof.gob.mx/nota_detalle.php?codigo=5480031&fecha=18/04/2017)

<sup>68</sup> [http://www.dof.gob.mx/nota\\_detalle.php?codigo=5477211&fecha=22/03/2017](http://www.dof.gob.mx/nota_detalle.php?codigo=5477211&fecha=22/03/2017)



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MIGRATORIA

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Mujer  
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