

## **30<sup>th</sup> Anniversary of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 4 November 2009**

1. On the occasion of the 30th anniversary of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), OHCHR (HRTB), in partnership with the United Nations Economic Commission for Europe (UNECE) and UNIFEM celebrated a half-day panel discussion on **“Women and migration in Europe, including in the context of the financial crisis”** focusing on the European region and CIS countries. The event was held in Geneva on 4 November 2009, following the regional meeting of the ECE in preparation for the 15-year review of implementation of the Beijing Platform for Action, also held in Geneva on 2-3 November 2009.
2. The discussion was attended by more than 100 participants from civil society groups, international organizations and representatives from permanent missions to the United Nations Office at Geneva. Ms. Jane Connors, Director of the Special Procedures Division moderated the event. The panellists were Ms. Violet Awori and Ms. Violeta Neubauer, members of the CEDAW Committee, Mr. Sergiu Sainciuc, Deputy Minister of Economy and Commerce of the Republic of Moldova, Ms. Filomenita Mongaya Hogsholm from KULU, the Danish WIDE Platform and BABYLAN and Ms. Virginia Wangare Greiner, Chair of the European Network of Migrant Women, representing civil society.
3. There were also interventions by means of video conference from UN sites in Brussels, Moldova, Tajikistan, and Kazakhstan. Due to technical problems the participants from Kyrgyzstan were encouraged to send in their questions and comments in writing. The organisation of the present report follows the structure of the panel discussion and does not necessarily reflect the views of OHCHR.

### **Moderator’s opening statement**

4. The Director of the Special Procedures Division, Ms Jane Connors, welcomed all participants present on behalf of the organizers and delivered an opening statement in which she noted the contributions made by CEDAW in allowing for affirmative action measures by States parties to ensure substantive equality between women and men and the protection of migrant women. Ms Connors stated that since CEDAW had begun consideration of reports in 1983, the Committee had developed its practice of constructive dialogue with States parties from a general assessment of a State party’s performance to an in-depth analysis and assessment of progress in, and obstacles to, implementation in each State, against the objective criteria provided in the Convention. It was also noted that the Committee’s concluding observations now constituted concrete guidance to States parties on how to strengthen implementation and the impact of the Convention. The Committee’s determination to place the Convention on equal footing with other human rights treaties by expanding its monitoring procedures beyond consideration of reports, was noted as a major factor leading to the speedy elaboration of the Optional Protocol to the

Convention – adopted ten years ago - which now had 99 States parties and enabled the Committee to receive petitions and conduct inquiries.

5. It was further noted that article 21 of the Convention empowered the Committee to make suggestions and general recommendations based on the examination of reports and information received from States parties, and represented one key achievement of the Committee. The 26 general recommendations adopted to date, grounded in knowledge acquired through the consideration of reports from diverse States parties, had provided the Committee's collective views, of the appropriate measures States should take to fulfil their obligations under the Convention and how these obligations should be applied in varying situations. General recommendation No. 26 focuses on women migrant workers and was identified as of major significance to the event's discussion. So, was the work of the Committee on Migrant Workers and Members of their Families, which recently discussed the question of migrant domestic workers during its eleventh session, a month before the event. Both Committees emphasized the gendered nature of migration, the opportunities it created, but also the risks it could pose to the enjoyment by women of their rights. The moderator further noted that the panel provided an opportunity to consider ways and means to protect migrant women's rights in Europe throughout the migration process and allowed for the exploration of strategies to address the effects of the financial crisis on women in this region, a subject that CEDAW also addressed in a statement adopted in January 2009.

### **Questions to the panellists from the moderator**

#### **'The common responsibilities of countries of origin and destination with respect to the protection of the rights of migrant women according to the CEDAW Committee'**

6. The Convention and the Committee's General Comment No. 26 on Women Migrant Workers was highlighted by Ms. Awori as reference instruments for States parties in the formulation of gender-sensitive and human rights-based policies to facilitate the protection of human rights in all aspects of migration. In addition, it was discussed that both countries of origin and destination had the responsibility of supporting and developing a reliable database based on credible research and analysis into the specific problems and needs of migrant women and formulating comprehensive gender sensitive rights based policies.
7. With regard to the obligations of countries of origin, several possible measures were mentioned. These included but were not limited to: 1) lifting discriminatory bans on migration on the basis of age, marital status, pregnancy or maternity; 2) education and training of all stakeholders; 3) the delivery of free or affordable pre-departure training and information on the countries of destination, which accurately convey the potential risks of migrating and the discrimination migrant women could face; 4) disseminating information on reliable recruitment agencies, networks and their legal rights; and 5) encouraging the role of the media in raising awareness on migration issues.

8. Similarly, countries of destination also had the responsibility of implementing measures that guaranteed non-discrimination, which included but were not limited to: 1) lifting of discriminatory bans on migration, especially in relation to family reunification; 2) granting the same constitutional and civil law protections, including labour rights, to migrant women as those enjoyed by women of the country of destination; 3) guaranteeing access to legal remedies and compensation for work-related injuries; 4) protecting against confiscation of travel or identity documents by employers; and 5) monitoring the practices of recruitment agencies to ensure that contracts issued by such agencies are unified and do not violate women migrant workers' rights as well as prosecuting agencies for acts of violence or exploitation committed against women migrant workers. In this regard, the benefits of bilateral and regional cooperation agreements and the involvement of migrant workers themselves as well as NGOs in the monitoring and implementing process were also highlighted.

**'Experiences on the ground: human rights challenges of women migrant workers in Europe including the multiple discrimination suffered by migrant women'**

9. Ms. Mongaya Hogsholm highlighted the issues of: women migrant workers employed in households, specifically as au pair girls in Europe, who had suffered the non-respect of the terms of contracts, the unavailability of timely access to remedies, and the lack of implementation of existing international legal standards as concerns. In fact, litigation against an employer was noted as almost impossible for most migrant women in Europe. Further, it was mentioned that migrant women employed in the employer's household were vulnerable to abuse including sexual assault. In some cases au pairs who had become pregnant had been immediately sent home or been forced to undergo abortion. The case of the Philippines in which an official ban on its citizens migrating as au pairs had been passed in an attempt to stem the violations committed against au pairs overseas was also noted. However, Ms. Mongaya Hogsholm noted such legislation had hindered rather than facilitated the protection of women migrant workers, and the official non-recognition of au pairs by the Philippines had made the repatriation of the remains of a Filipina au pair who had died impossible.
10. The panellist reiterated that over 200 million people lived outside of their countries of birth or nationality- forty-nine percent of which were women- and so migrants would compose the fifth largest country in the world if put together. She indicated that the majority of migrants came to Europe due to Europe's demographic deficit, and that Europe itself needed the labour of women migrant workers. Therefore, she suggested that it was time for European States to take a more realistic approach to migration, given these figures, and protect migrants' rights through better adherence to the relevant international conventions. Ms. Wangare Greiner also brought to the attention of participants the social cost of migration on countries of origin. As more and more women migrated at the same time that family reunification schemes in Europe became stricter, increasingly children of migrant women left behind were being raised by relatives.

11. Ms. Wangare Greiner stated that many women migrants in Europe depended on their husbands or employers for their legal status and that the majority of migrant women had no access to trade unions or did not have union membership. She pointed out that this led to discrimination and vulnerability in other areas, such as in sexual health and reproductive rights; gender-specific violence; and employment and remuneration. In general, migrant women became more exposed to exploitation and discrimination in the labour market. As a result, many women migrant workers faced job insecurity, no access to social benefits, excessive working hours, the need to hold multiple part-time jobs and a total dependence on employers' goodwill. For undocumented women migrants the risks and discrimination were even greater and the lack of immigration papers and status hindered their access to legal recourse. Further, even when violence and abuse were perpetrated by the employer, migrant women tended not to file reports to the police out of fear of deportation.
12. It was also noted that women migrant domestic workers faced a further vulnerability due to private homes not being recognized as a workplace and that domestic and care work often were not recognized as work. As a result, women in such employment were unable to enjoy the benefits of labour laws. In light of these and other human rights challenges faced by women migrants, Ms. Mongaya Hogsholm and Ms. Wangare Greiner insisted on the need for States' policies to secure independent legal status and work permits for women migrants as well as to facilitate regularisation programmes for migrant workers in general so that they did not unintentionally fall into irregular status.
13. It was mentioned that in order to promote migrant women's professional mobility, States should set up prompt and transparent procedures for the recognition of qualifications from countries of origin as well as provide free language courses. Further recommendations discussed by the panellists included that employment mobility should be guaranteed by not tying migrant women workers to a single employer and that States in Europe should ensure that migrant women have access to health care and information on sexual and reproductive health. Specific legislation protecting migrant women from violence should be drafted and implemented and gender mainstreaming should be incorporated in all migration policies at the national and EU levels.

**'The consequences of the financial crisis on the rights of migrant women in the European region and the CIS countries and possible ways of mitigation'**

14. Mr. Sainciuc reminded participants that at this moment, only a partial assessment could be made but that already the effects could be felt. He highlighted the specific case of Moldova stating that Moldova had suffered an enormous impact from the financial crisis, including a 27% drop in GDP growth, a 34% decrease in the volume of remittances, a two-fold increase in unemployment, which had impacted more women than men, and an overall negative influence on the economy, especially the agricultural sector which traditionally employs a large number of women. He highlighted other issues of concern, such as the breakdown of the family unit as a result of the financial crisis, which had added an additional burden on the State.

15. He noted the different programs and plans of action the Government of Moldova had put in place that aimed to: 1) increase employment, particularly amongst women, including through the development of small and medium sized enterprises (SMEs) since one thirds of these workers are women; 2) increase social protection programmes for migrant workers and prepare migrant workers abroad for retirement, namely through pensions and relevant social insurance so they can benefit from the same levels of social protection /social insurance as persons in countries of destination; and 3) conclude bilateral agreements in CIS countries and eventually the Russian Federation, Bulgaria and Portugal.

**‘Ways to render migration and integration policies in the European region and CIS countries more gender sensitive and more protective of migrant women’s rights’**

16. Ms. Neubauer stressed that in order to render policies more gender sensitive, States parties had to fully implement the CEDAW Convention. It was reiterated that, as parties to the Convention, States were responsible for creating the right conditions for implementation and had to take systematic steps to empower women. She cautioned that migrant women should not only be referred to as a vulnerable group and victims but also as agents for change contributing to social and economic life. The diverse situation of women in the European region and the CIS countries was highlighted and therefore it was important to gather reliable and adequate qualitative and quantitative information in order to better understand where and why women migrate, the opportunities they seek and the challenge they face.

**Questions to the panellists by video links**

17. **Participants joining by video link from Belgium** addressed the issue of instances of female genital mutilation (FGM) taking place in immigrant communities in Europe and UNIFEM’s recommendations in light of these practices. In response Ms. Wangare Greiner highlighted the importance of role models from within the communities and stated that in the end, changes in attitude had to be initiated from within the diaspora communities themselves.

18. Another question asked for examples of good practices in the training and provision of information in countries of origin with regards to living and working conditions in countries of destination. Ms. Awori noted that reliable information on women migrants was often missing from State party reports to CEDAW. The CEDAW Committee encouraged States parties to facilitate migration and to engage the media and communications sector in that regard. In respect of training, she noted that most training and awareness-raising was carried out by NGOs and that States parties needed to get involved in order to ensure that women were aware of their rights and which rights they could claim. Ms. Mongaya Hogsholm noted that migrant workers should be made aware of the dangers they may encounter in destination countries. She provided the example of the Philippines as a case in which the State was involved through two agencies in efforts to guarantee protection. It was in

such cases that NGO intervention and collaboration could prove useful, and in her experience, it was mostly NGOs that worked on facilitating pre-departure information and support to migrants.

19. Mr. Sainciuc stressed that migrant workers were often not employed in the professions for which they had been trained; as is the case with regards to Moldovan migrants and so adequate information and pre-departure preparation played a very important role. He briefly addressed the issue of returnee migrant workers who, through a favourable environment, could open their businesses and increase business opportunities. Ms. Connors referred to that a recent report on the Committee on the Rights of Migrant Workers' Day of General Discussion focusing on the rights of migrant domestic workers contained much information on the topics that were being discussed today.
20. **Participants joining by video link from Kazakhstan** asked whether Memoranda of Understanding existed between labour unions and other bodies for the protection of women. Exercising the right of association was noted as a challenge for migrant women, who often could not join unions due to lack of contracts. But for migrant women who had contracts, increased awareness of their right of association should be aimed for, including by translation of information into native languages. A pilot case of NGOs working with labour unions concerning the status of au pairs was presented. Mr. Sainciuc stated that although several labour unions from countries of origin were in negotiations with those from countries of destination, so far no text for cooperation between labour unions existed. Ms. Neubauer highlighted an important initiative by trade unions in several countries which consisted on encouraging workers to keep a record of their skills.
21. With respect to social protection and the question of who carried out the monitoring of the labour code, Mr. Sainciuc noted that in Moldova labour contracts were needed as proof of a working relationship and that by government decree the contracts that were concluded place responsibility for repatriation of remains or compensation payment, in the case of death or work-related injuries of a migrant employee, on the country of destination. Moldova had also adopted responsibility for paying fifty percent of the cost for transporting the remains back home in case of accident or death, but stressed the duty of the employer to also contribute. The role and importance of labour inspectorates in many countries of destination to ensure compliance with that State's labour legislation was also highlighted.
22. Ms. Neubauer and Ms. Awori noted that the Committee recommended increased State party involvement to adopt adequate regulation, especially with regards to private recruitment agencies in origin countries in order to prevent abuses. In addition to adequate training for migrants, legal assistance and safeguarding remittances, the importance of adequate training for migrants was reiterated. States parties could also work to enhance their consular services, including the registration of persons at embassies and informing migrant workers of emergency evacuation sites in order to safeguard diplomatic protection. The individual complaints mechanism in the Optional

Protocol could also prove useful in many countries in this regard and in opening up access to channels of remedy to women migrant workers.

23. One question addressed migration due to environmental factors and Ms. Neubauer noted that this was a topic that CEDAW could cover in its reporting procedure, and for which the Optional Protocol could be an important instrument in the future. It was suggested that it was necessary to research and collect data concerning people migrating due to environmental factors.
24. **Participants joining by video link from Moldova** reiterated the situation of migrants working in the households and asked what the best system for monitoring migrant workers in households could be, as well as the best outreach system. Panellists agreed that a major challenge in domestic work was the lack of official recognition as well as societal and cultural barriers recognizing domestic work as proper work. To combat such views, NGOs and the media should mobilize the larger public through educational campaigns. Despite the obstacles in the case of domestic migrant workers, Ms. Neubauer stated that good practices existed in the European region and CIS countries. It was pointed out that the practice of developing visa schemes for domestic workers and health services providers was carried out by countries such as Canada, Italy, Germany and the United Kingdom. CEDAW encouraged States parties to make legal employment more accessible and to extend national laws so that they also apply to non-nationals. Model contracts, such as the one developed by the ILO and the European Trade Union Federation were good practices and had been developed in various countries to facilitate proof of an employer-employee relationship. The gender guidelines for migration developed by OSCE were also pointed out as a good instrument. Nonetheless, visa schemes needed to be improved to avoid binding women migrant workers to one particular employer or obliging them to live in the employer's home.
25. Issues that were also brought up were the vulnerability of migrant women employed in domestic work to sexual assault or abuse, yet access to justice to secure redress for sexual violence had proved to be limited for domestic workers. There was also a widespread lack of awareness amongst women migrant workers of national complaints mechanisms or the protections offered by their consulates and embassies in cases of sexual violence. As a result, such women put up with the violence for a long time before violations were exposed.
26. Efforts carried out by countries of destination in order to ensure that legal frameworks protecting victims of trafficking were implemented and that trafficked victims were returned in accordance to relevant legal standards were also discussed. Various panellists noted that the immigration status of victims of trafficking in many countries was tied to their willingness to testify in court against traffickers. As a result, many victims of trafficking did not stay long enough to testify or were unwilling to testify. In such cases, as well as in cases in which there was no trial because the trafficker had not been apprehended, the victim was simply sent home. Recruitment agencies could be motors of trafficking by promising false jobs, and the panellists called for more State involvement to tackle this issue.

27. Participants raised questions related to social costs of migration and requested practical recommendations on how to prevent separation of parents and children left behind, as well as on the issue of reintegration of families. It was pointed out that having children accompany their parents to countries of destination had not always proved to be a better solution. Due to long working hours, migrant parents rarely spent sufficient time with their children, even if they were together in the same country. Moreover, many migrant women who gave birth to children in countries of destination faced unfair disadvantages in child-rearing, especially if their circumstances obliged them to do this alone and noted that the diaspora could play a positive role.
28. Ms. Neubauer and Ms. Awori clarified there had been no case of groups of women or individual women using the petition or enquiry mechanisms of CEDAW for the protection of their rights with regard to migration. They also noted, however, that civil society, was active in bringing the Committee's attention to violations of rights faced by migrant women.
29. In response to a question concerning the minimum levels of protection for migrant women, Ms. Neubauer and Ms. Awori reminded States parties that the provisions of the CEDAW Convention itself constituted minimum levels of protection for all women, including for migrant women. The Committee thus encouraged legislation that outline minimum levels of protection based on the Convention through its concluding observations. Further, it was pointed out that sometimes, the issue was not the absence of legal provisions for protection, but rather, their implementation.
30. A question was posed concerning effective mechanisms that provided opportunities including education to children of migrant workers. Ms. Neubauer cited the new legislation on labour migration passed in Sweden as an exemplary example of national legislation sensitive to the minimum protections laid out in the Convention applicable to migrant women and their families.

### **Questions to the panellists from participants in Geneva**

31. A number of issues were brought up in the discussion, including: internal migration; the protection of women and children from exploitation by traffickers; and implementation of existing legal frameworks in light of slow ratification of the International Convention on the Protection of All Migrant Workers and the Families (ICRMW).
32. It was noted that the latest UNDP Human Development Report 2009 on migration identified four times as many internal migrants as there are international migrants, and more attention needed to be paid to this aspect since the Convention of Migrant Workers only covered international migrant workers and discussions were usually dominated by references to international migrant workers. Ms. Neubauer and Ms. Awori noted that attention was also given to ways in which States parties could empower women who were potential internal or international migrants so that they were aware of their

rights. Nonetheless, the discussion focused on international migrants during today's event because, unlike internal migrants whose basic rights and needs were covered by domestic legislation, many women migrants had few such guarantees once they left their home countries. This protection gap was compounded by the fact that human rights violations suffered by international migrant women were not as visible or given as much media attention as those suffered by internal migrants.

33. With regards to the protection of women and children from exploitation, discrimination and trafficking in persons and the gap in terms of identifying victims of trafficking, a global plan of action had been proposed against trafficking. A proposal was also made from one participant to engage on a general recommendation to consolidate and strengthen this plan of action. Further, it was also noted that the Palermo Protocol and article 6 of the CEDAW Convention are legally binding. CEDAW members indicated that the Committee would continue to look for dynamic ways to enhance their role in encouraging States parties to ratify and implement the CEDAW Convention.
34. To conclude, the moderator emphasized the necessity to ratify existing human rights instruments, in particular ICRMW; to implement the treaties ratified, with the full implementation of CEDAW as a crucial element; to create mechanisms available to all women and migrant women in particular; and gather good practices.

#### **Closing statement by Patrice Robineau on behalf of UNECE and UNIFEM**

35. The interventions during this event highlighted a wide range of human rights violations with which a large number of women migrants are confronted with in the ECE region both in their public and family life: domestic violence; no right to go out for domestic workers and even, in some cases, food and sleep restriction; lack of a proper working contract and sometimes, even when there is a contract, conditions therein are not respected; insufficient payment for their work; absence of social rights and lack of benefits in particular, health care; dependence on employer's goodwill; deprivation of a real family life (e.g. separation from their children).
36. The various testimonies expressed during the discussion demonstrate that migration is an economic and social reality which needs to be addressed in a human rights perspective. In this respect, three basic principles have been highlighted: i) protection of women migrants' rights is first and foremost the responsibility of the state which has to comply with the provisions of the relevant human rights tools, in particular those of the CEDAW Convention and the Convention on Migrant Workers ; ii) this protection has to be effected not only in the public sphere but also in the private sphere (at home or as domestic workers); iii) the main challenge is to set up concrete measures and policies which would ensure the *effective implementation* of the rights of migrant workers and their families, with an equal treatment of women and men. The reduction of this "implementation gap" in the ECE region calls for the mobilization and joint efforts of a wide range of actors:

The State has the responsibility of: i) engendering migration policies; ii) engaging in bilateral agreements with the countries of origin on key issues such as security of migration, training, information on job availability, conditions for returning to home country, etc.; iii) obliging employers to respect workers' and social rights of migrants workers; iv) promulgating ethical codes for private recruitment agencies; v) strengthening the means of the judiciary system for penalizing the perpetrators of violence against migrant women both at home and at the workplace; vi) setting up a system of monitoring the respect of migrant workers' rights, for both women and men; vii) on this basis, making a quantitative and qualitative analysis of the cases of human rights violations, identifying their causes and shaping new policies and measures accordingly.

The social partners:

*Employer associations* should: i) promote and ensure the application of the legislation and ethical codes related to the respect of migrant workers' rights at the workplace; ii) together with workers' unions, support training schemes targeted to migrant workers; iii) engage in a dialogue with public authorities on job creation and related required skills (including in the case of foreign direct investments) which would provide information on job opportunities and facilitate the employment of both women and men migrant workers.

*Worker associations* should: i) pay more attention to the specific situation of women migrant workers, including domestic workers, in order to better protect their rights; ii) establish a mechanism monitoring this situation on a regular basis; iii) bring more consistently cases of violation of workers' rights affecting migrants to the relevant public authorities; iv) engage in a dialogue with the unions of the countries of origin in order to assess problems related to migrations of women and initiate appropriate action.

NGOs have an important role to play through: i) highlighting human rights violations concerning women migrants, involving the media to expose concrete cases of such violations; ii) assessing migration policies from a gender perspective and building up independent monitoring mechanisms; iii) networking both within and between the countries of origin and the countries of destination in order to maximize the efficiency of their action in support of women migrants; iv) further providing assistance to women migrants who are in conditions of extreme poverty or victims of violations of their rights, particularly domestic violence, trafficking, discrimination in recruitment and lay-offs, and forced repatriation.

37. With demographic changes in the region [aging population in the "north" and large numbers of job seekers esp. young in the "south" and "east"], and current economic and financial situation, migration is likely to be an even more important issue to address in the Europe and CIS region. In this context, it should be envisaged to promote national and regional action plans highlighting and specifying the above-mentioned engagements to be taken in both countries of origin and destination. Such action plans should include: i) bilateral

governmental agreements covering social protection issues for migrants; ii) a strengthened role for consulates of migrants' sending countries; iii) the caveat of private household not being considered a workplace; iv) legislation on domestic work ; v) mechanisms, including redress and sanctions, to monitor recruitment agencies and private employers, in collaboration with labour inspectorates, migrant workers associations and unions; vi) social protection for returnee migrants in sending countries; and vii) the issue of the children left behind in both sending and receiving countries.

38. In order to be concretely and effectively implemented, such action plans would require specific resource allocations, a political willingness, and true commitment and cooperation among the actors identified above and who were so well-represented during this event through the panelists in Geneva and the representatives in Almaty, Bishkek, Brussels, Chisinau and Dushanbe who participated in the videoconference.

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