

Office of the United Nations Special Representative of the Secretary-General (SRSG) for International Migration

United Nations, 2 UN Plaza, DC2-1820, New York, N.Y. 10017

E-mail eva.akerman-borje@un.org and christine.matthews@un.org

Submission by:

Jenna L. Hennebry, Ph.D.

Associate Professor, International Migration Research Centre (IMRC)

Communication Studies & Balsillie School of International Affairs

67 Erb Street W., Waterloo Ontario, Canada, N2L 6C2 | Phone: +1-226-772-3139

Fax: +1-226-772-3004 | Email: jhennebry@wlu.ca | Website: imrc.ca

Profile: <http://www.balsillieschool.ca/people/jenna-l-hennebry> | Skype: jenna.hennebry

Re: Input to the Secretary-General's report on the global compact for safe, orderly and regular migration.

Addressing systemic gender inequality in global migration

The New York Declaration commitments are a step forward in the protection of the rights of migrants. However, without significant efforts to meaningfully mainstream gender throughout the Global Compact for Migration (GCM) will render it unresponsive to the gendered drivers, experiences and impacts of migration. Although, gendered responses are noted ¹ in the document, gender must be embedded throughout the GCM in order to signal a serious commitment for half of the world's migrants.

Women migrants face gendered risks of exploitation and abuse throughout migration, gendered conditions of work, pay inequity, poor levels of social protection and barriers to accessing labour and human rights – all of which have gendered consequences for their health and wellbeing, and hinder efforts to alleviate gender inequality and realize sustainable development. Such gendered realities and risks impact all stages of migration (e.g. pre-departure, transit, employment, return and integration). Factors contributing to gendered risks can be traced to persistent structural issues in countries of origin, transit and destination, yet most efforts at addressing such issues have focused on tweaking migration policy and border security regimes (often resulting in heightening risks and curtailing rights), rather than addressing root causes within the system.

The GCM cannot fail to address **gender inequality as both a driver of migration and a continued outcome of the way international migration is governed**. For the GCM to shift the paradigm for years to come, it must recognize gaps and consequences of the current system; namely: (1) that gender inequality is a primary driver of migration, (2) restrictive and gendered pathways for regular migration for women have negative impacts for women migrants and reproduce gender inequality, (3) that gendered experiences and practices of migration require gender-responsive governance, not greater

¹ As a commitment to prevent and respond to sexual and gender-based violence. See: United Nations. (2017). New York Declaration | RefugeesandMigrants. Retrieved September 23, 2017, from <http://refugeesmigrants.un.org/declaration>

securitization or restriction. The discussion below examines how gender inequality is embedded in the current global migration governance regime, and is then followed by specific recommendations.

Lack of access to education, discrimination in labour markets, weak social protection systems and insufficient access to child care, lack of property rights, gender-based violence and many other manifestations of gender inequality are drivers of migration. For example, in Nepal, a 57.4% literacy rate means that work prospects for many women remain limited to agriculture and domestic work (both low paying, or unvalued work).² Among women in the Nepalese labour force, only 8.3% are paid for their work³, and women have particularly poor access to social protection. Migration as a response to such factors heightens precarity and creates conditions prone to exploitation and abuse. Gendered opportunities to move, then further compound these inequalities.

Access to migration pathways that lead directly to permanent residency are often limited for women, who may lack credentials or capital necessary to meet application requirements due to inequality in countries of origin. Canada's Immigration and Refugee Protection System has long had uneven outcomes for women applicants, with fewer women entering as principal applicants, particularly in economic class categories than men for decades.⁴ Recognizing such systemic biases, Canada has implemented a "Gender-based Analysis Plus (GBA+)"⁵ tool to assess gender equity and biases in the policies and practices and guide gender-responsive policy frameworks to address gender inequality, recognize and value the experience and skills of women applicants.

Unlike most permanent immigration systems, regular migration pathways provide alternative modes of entry and durations of stay (such as through work visa regimes or managed temporary migration programs) and serve to channel women migrants into gendered occupations, and create conditions that perpetuate precarity and gender inequality. Managed bilateral or multilateral labour migration agreements have become state's preferred options to maintain orderly flows of such forms of labour migration, but remain largely gender-blind and neglect human rights concerns.⁶ In addition, they often limit mobility rights in countries of destination, and lock women migrant workers into gendered occupations characterized by deskilling, poorly protected labour rights, and high risk of exploitation and abuse.

Recruitment is often a primary site of gender discrimination embedded into labour migration. For example, Spain's agricultural guest worker program with Morocco specifically recruits women who are mothers, largely due to perceptions that such workers are compliant, docile workers with delicate hands suited for small fruit, and are likely to return to their countries of origin to care for their children at the

² Sijapati, B., Bhattarai, A., & Pathak, D. (2015). *Analysis of Labour Market and Migration Trends in Nepal*. Kathmandu. Retrieved from [http://ceslam.org/mediastorage/files/Labour market n migration_gizver 3.pdf](http://ceslam.org/mediastorage/files/Labour%20market%20n%20migration_gizver%203.pdf)

³ Acharya, S. (2015). *Gender, Jobs and Education: Prospects and Realities in Nepal*. Kathmandu. Retrieved from <http://unesdoc.unesco.org/images/0023/002335/233521e.pdf>

⁴ In 2015, 37% of principal applicant Skilled Workers and 30% of principal applicant Express Entries were women. See <http://www.cic.gc.ca/english/resources/publications/annual-report-2016/index.asp#s4.4>

⁵ <http://www.swc-cfc.gc.ca/gba-accs/intro-en.html>

⁶ See: Hennebry, J. L., Grass, W., Williams, G., Williams, K., Chikanda, A., Walton-Roberts, M., & Crush, J. (2015). *Bilateral Labour Migration Agreements, Development and Trade: Complexity, Contradiction and Coherence*. Waterloo.

end of their contracts. They also require consent from male spouses to participate in the program.⁷ Though the Morocco-Spain BLA has remedied some of the most egregious human rights violations that occurred when employers previously hired mostly undocumented migrants,⁸ the program restricts mobility rights between employers, and offers no path to permanent status or family reunification.⁹ Similarly, gender assumptions and discrimination are found in the Mexican-Canadian Seasonal Agricultural Worker Program (SAWP) with women accounting for only 3 per cent of SAWP workers due to recruitment biases, leaving women migrant worker (WMWs) needs and risks unconsidered.¹⁰ The gender discrimination in both programs has remained unaddressed. Under the Philippines-KSA bilateral agreement, employers are required not to withhold passports, and workers are to be protected by labour regulations, but despite this program, WMWs still face abuse and exploitation since labour law is insufficient and employers have power over all domestic workers' affairs, including repatriation. Indeed, despite the improved articulation of rights for domestic workers under this agreement, the regulations remain unenforceable, little is done to counter the situations of abuse¹¹, nor the continued and often heightened gender discrimination and exposure to gender-based violence and abuse upon return. Many labour migration programs have fostered the growth of recruiters and labour brokers as migrants seek to navigate restrictive and complex systems. This creates additional vulnerability to exploitation, trafficking and in the case of recruitment, debt and the use of exorbitant fees by recruiters.

In response to the gendered risks encountered by women migrants, governments have imposed restrictions on mobility, such as deployment bans, which are generally imposed on women, and are meant to serve as 'protective policies'.¹² Several highly documented cases of exploitation and trafficking of Nepali WMWs have emerged over the last decades and the Nepali state has reacted to these cases by periodically deploying travel bans that deny exit permits to WMWs. Between 1997 and 2008, the government of Nepal enacted at least ten different migration policies targeting women, from complete to partial migrant bans.¹³ Similarly, the Indonesian government banned migrant domestic workers, a sector dominated by WMWs, from travelling to work in 21 different Middle Eastern countries in May

⁷ See: Mannon, S. E., Petrzela, P., Glass, C. M., & Radel, C. (2012). Keeping them in their place: migrant women workers in Spain's strawberry industry. *International Journal of the Sociology of Agriculture and Food*, 19, 83.; Zeneidi, D. (2017). *Gender, Temporary Work, and Migration Management: Global Food and Utilitarian Migration in Huelva, Spain*. Springer

⁸ Zeneidi, 2017

⁹ Mannon et al, 2012; Zeneidi 2017

¹⁰ See: Otero, Gerardo, and Kerry Preibisch (2010). *Farmworker Health and Safety: Challenges for British Columbia*. British Columbia, Canada: WorkSafeBC. ; Preibisch, K. L., & Grez, E. E. (2010). The other side of el Otro Lado: Mexican migrant women and labor flexibility in Canadian agriculture. *Signs: journal of women in culture and society*, 35(2), 289-316.

¹¹ A 2011 report published by the Committee on Overseas Workers Affairs (COWA, 2011) detailed that many female domestic workers availed of the Filipino Workers Resource Centre (FWRC) and about 15 per cent of those workers were there because of maltreatment or abuse. A further 14 per cent were overworked, while 4 per cent were subject to rape and humiliation. See Committee on Overseas Workers' Affairs (2011). *The Conditions of Overseas Filipino Workers in Saudi Arabia*. Available from http://focusweb.org/sites/www.focusweb.org/files/COWA_report_Saudi.pdf .

¹² See: Carling, J. (2005). Gender dimensions of international migration. *Global migration perspectives*, 35, 1-26.

¹³ See: Grossman-Thompson, B. (2016). Protection and Paternalism: Narratives of Nepali Women Migrants and the Gender Politics of Discriminatory Labour Migration Policy. *Refuge*, 32(3), 40.

2015 after the execution of two Indonesian workers found guilty of murder in Saudi Arabia.¹⁴ The Philippines has also utilized deployment bans on domestic migrant workers to countries that the government deems unsafe, and this has included Saudi Arabia, Lebanon, and other countries in the Middle East and the Gulf.¹⁵

Recommendations for addressing systemic gender inequality in global migration

The Global Compact for Migration must address systemic gender inequality in contemporary global migration governance that limits the effective protection of human rights and the realization sustainable development for *all*. The following provides recommendations on implementation mechanisms for the GCM in order to adopt a gender-responsive approach, as well as key commitments to be made that are relevant to the enhancing the protection of labour and human rights for women migrants:

1. Recommend the ratification of international conventions (and withdraw all reservations) that promote and protect the rights of women at all stages of migration and incorporate their provisions into national law; in particular, the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families, the Convention on the Elimination of All forms of Discrimination against Women and its Optional Protocol, the International Convention on the Elimination of Racial Discrimination, the Convention on the Rights of the Child, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, ILO conventions including the ILO Convention concerning Decent Work for Domestic Workers, 2011 (No. 189), the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.
2. Establish new or support existing mechanisms to enhance gender responsiveness of the GCM
 - 2.1. Embed gender responsive language in all texts pertaining to the GCM and subsequent implementation initiatives and documents;
 - 2.2. Create subcommittee or taskforce to focus on gender responsive policy coherence and communication across committees and entities to collectively support, monitor and evaluate the GCM outcomes going forward (e.g. Committee for Migrant Workers, CEDAW Committee, ILO, IOM, etc);
 - 2.3. Develop gender analysis/assessment requirements for multi/bilateral labour agreements between states prior to their establishment, as part of the negotiation process. This process could be carried forward by both states with the joint guidance of the CEDAW Committee and CMW, the ILO and the IOM. Utilize existing review processes such as the LOIPR used by Treaty Bodies, to formulate a new review process aimed at the GCM that considers the gendered drivers of migration, the elimination of restrictive and gendered pathways for regular migration for women, the protection of the labour and human rights of women migrants as indicators operationalized in a scoring or reporting process that is transparent.

¹⁴ See: Walden, M. (2017, September 7). Despite migration ban, Indonesian domestic workers still face forced labour and abuses in the Gulf. Retrieved September 11, 2017, from <https://www.equaltimes.org/despite-migration-ban-indonesian>

¹⁵ See: Campbell, K. (2013, September 9). Protection Through Restriction: Controlling Women’s Mobility in Asia. Retrieved September 11, 2017, from <https://www.asiapacific.ca/blog/protection-through-restriction-controlling-womens-mobility>

- 2.4. Support data gathering and transparency on migration and violations of migrant women's rights, including exploitation and trafficking, transit, interceptions, detention, death, and injury at land, sea and air borders. Encourage data sharing, respecting always that such data gathering must not compromise privacy rights and cannot be used for immigration enforcement purposes.
3. Address the drivers of irregular migration for work, including those factors in countries of origin that prevent women from accessing decent work and social protection, and those factors in countries of destination that promote demand for cheap, flexible labour, especially in the care sector. The GMC must work with states to:
 - 3.1. Enhance policy coherence between migration, employment and social policies, particularly income security and care policies, in order to address barriers to accessing decent work, and social protection for women in countries of origin, transit and destination. Ensure women migrant workers have full access to social protection in countries of destination, transit and origin, either through bilateral social protection agreements or national systems.
 - 3.2. Recognize and value women's contributions to global value and care chains as vital to ensuring economic growth and human development across all countries.
 - 3.3. Ensure that employment policies promote equality of opportunity and equal treatment for women in the labour market, in particular through targeted vocational training, skills development, recognition programmes and active labour market policies.
 - 3.4. Seek to reduce informality and labour market segmentation based on gender and nationality, and enhance occupational mobility both within and outside of female dominated sectors.
 - 3.5. Repeal laws or regulations that make the rights of women migrant workers contingent on marital status, pregnancy, or maternal status, and ensure access to family reunification for women in migration.
 - 3.6. Regulate and recognize skills in traditional and undervalued sectors, including domestic and care work.
 - 3.7. Ensure migrant women have access to standardized contracts of employment and that all contracts of employment are free, fair and fully consented to, transparent, enforceable and in a language the migrant worker understands.
 - 3.8. Ensure the effective promotion and protection of the labour rights of women migrant domestic workers in relation to, inter alia: normal hours of work, overtime compensation, periods of daily and weekly rest, paid annual leave; maternity leave, access to pension schemes; the right to a safe and healthy work environment; elimination of all forms of forced or compulsory labour; decent living conditions that respect privacy; freedom of movement and communication; effective recognition of the right to collective bargaining; effective protection against all forms of abuse, harassment and violence; the right to keep hold of travel and identity documents; and the right to change employers.
4. Invest in measures to counter the gender discrimination and stigmatization, stereotypes, and gender-based violence faced by women migrants in countries of destination, transit and upon return to countries of origin.
5. Avoid gender discriminatory provisions or policies which constitute restrictions or exclusions in law or practice that limit opportunities for women and girls to migrate, or that do not recognize the capacity, autonomy and agency of women and girls in decision making.

- 5.1. Avoid requirements that women obtain permission from a spouse or male guardian to obtain a passport to travel, or in any limit access to migration.
- 5.2. Avoid sex-specific bans which limit the mobility rights of women migrants on the basis of gender, age, marital status, migration status, pregnancy and/or maternity status, etc.
- 5.3. Encourage states to recognize skills and experience of women, implement gender-based assessment of permanent immigration systems to addresses discrimination and biases in selection processes, and to provide greater access to permanent immigration opportunities that are not tied to sectors or occupations.
6. Decriminalize irregular entry, stay and work of migrants, and ensure that any administrative sanctions applied to irregular entry are proportionate and reasonable; taking into account all circumstances of entrance and stay, in particular in the event of death, divorce or spousal separation.
7. Counter the challenges faced by women in accessing formal remittance transfer systems to reduce remittance costs in line with commitments made under the 2030 Agenda for Sustainable Development. Provide access to remittance transfer systems, financial inclusion and financial literacy training regardless of migration status or informal employment status for women. Incorporate a gender perspective in financial inclusion policies and strategies in the context of new remittance platforms.