

LINKING CEDAW, GR 26 AND  
ILO CONVENTION 189:  
EMPOWERING MIGRANT WOMEN  
WORKERS

**Professor Aurora Javate-De Dios**  
Philippine Representative to the ACWC

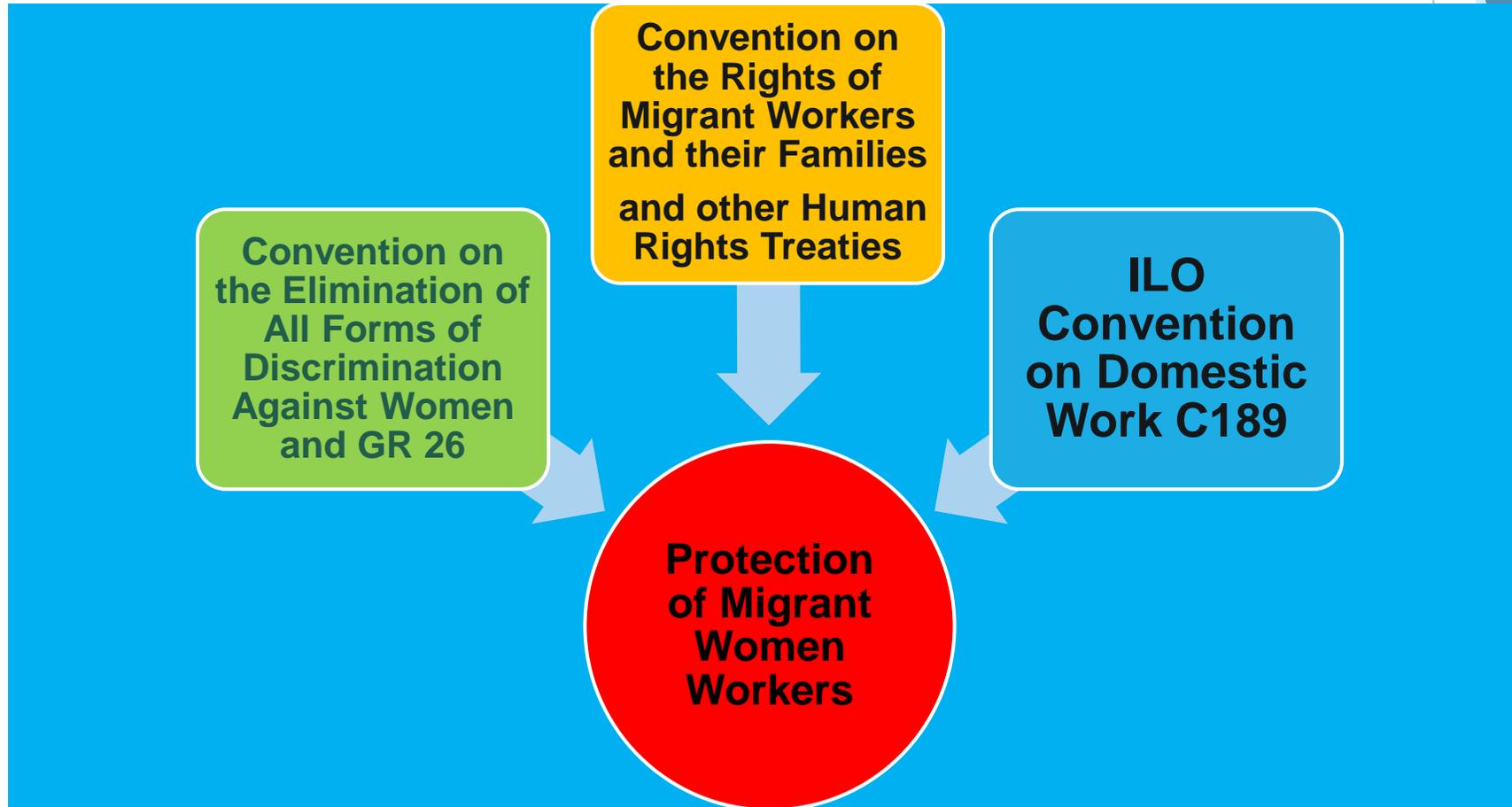
# Objectives of the Presentation

- ▶ Explain the importance of gender and rights perspectives in protecting and empowering migrant women workers;
- ▶ Link CEDAW, GR 26 and ILO 189 as tools for women migrant workers ;
- ▶ Explore how these instruments can be harnessed to protect the rights and empowerment of migrant women

# Why Are International Human Rights and Labor Standards Important?

- ▶ Sets the international norms and standards in the treatment of migrant women by countries of origin and countries of destination;
- ▶ Sets state obligations in protecting migrant women;
- ▶ Provides guidelines in carrying out state obligations

# LINKING HR TREATIES , CEDAW, GR 26 AND ILO CONVENTION 189



# Defining Empowerment

- ▶ Empowerment: basic concept of women's rights and human development that refers to the process through which people individually and collectively become conscious of how power relations operate in their lives and gain the necessary confidence and strength to change inequalities and strengthen their economic, political, and social position.
- ▶ Empowerment is described as a process in which individuals gain power, and in which power is understood not in terms of domination ("power over"), but rather as creative power ("power to"), shared power ("power with"), and personal power ("power from within") (INSTRAW, 2013)

# Gender and Rights Perspectives

- ▶ Gender relations affect (and are affected by) each step in the migration cycle, then it is necessary to incorporate **gender as a central analytical category**. For women migrants, this means understanding the reasons for migrating; the impact of these decisions individually as well as to their families and their specific needs and vulnerabilities before, during and after their migration experience.
- ▶ This analysis should be conducted not only at the household level, but also at the community, institutional, national, and transnational levels, taking into account the diversity of men and women and the ways in which gender identities are constructed and reconstructed throughout the migratory process.
- ▶ **Rights-Based Approach** takes into account the principles of human rights and the international human rights treaties as guidelines in policy formulation.

# WHAT DOES CEDAW DO FOR WOMEN ? (1)

- ▶ **PROVIDES THE LEGAL FRAMEWORK FOR THE PROTECTION OF WOMEN'S HUMAN RIGHTS AND THE CLAIMING OF RIGHTS AND ENTITLEMENTS OF WOMEN UNDER INTERNATIONAL LAW;**
- ▶ **SETS THE STANDARDS AND NORMS FOR DOMESTIC AND INTERNATIONAL LEGAL SYSTEMS IN THE TREATMENT OF WOMEN**
- ▶ **DEVELOPS GENERAL RECOMMENDATIONS TO ELABORATE SPECIFIC ISSUES ON WOMEN WITH A GENDER PERSPECTIVE;**
- ▶ **BASES OF MOBILIZATION AND AWARENESS BUILDING ON THE RIGHTS OF WOMEN;**
- ▶ **187 COUNTRIES HAVE RATIFIED OUT OF 194 WITH 54 RESERVATIONS;**

# What Does CEDAW Do for Women? (2)

- ▶ Under the CEDAW, violations can be perpetrated by the **state**, as well as other **non-state actors** such as individuals, organizations and enterprises and can occur both at the public and private spheres;
- ▶ Provides for **temporary special measures** to accelerate de facto equality
- ▶ It recognizes the persistence of **social, cultural and customary practices** which impede the equality of women and men;

# Three Over-arching principles of CEDAW

**SUBSTANTIVE EQUALITY**  
(De Jure and De Facto)

**NON  
DISCRIMINATION (Art. 1)**

**STATE OBLIGATION**

# Substantive Equality

- ▶ Equality in law (de Jure) is not enough;
- ▶ Equality must be viewed in terms of results and outcomes (De Facto)

▶ CEDAW

▶ Article 1: definition of discrimination against women

“Any **distinction, exclusion or restriction made on the basis of sex** which has the effect or purpose of **impairing or nullifying** the **recognition, enjoyment or exercise by women, irrespective of their marital status**, on a basis of equality of men and women, **of human rights and fundamental freedoms** in the political, economic, social, cultural, civil or any other field”

# STATE OBLIGATION : WHAT DOES IT MEAN?

- ▶ a) Obligations of **MEANS AND RESULTS** – state is required to take **SPECIFIC STEPS** to ensure compliance with the Convention;
- ▶ b) Obligation to **RESPECT, PROTECT AND FULFILL**- states must not act in a way that violates women's human rights by not committing acts discriminatory to women . Further, states must **REPEAL** discriminatory laws and policies and all its agents must refrain from any discriminatory action
- ▶ c) **Obligation to Protect** – requires SP to prevent the violation of the Convention by third parties such as non state actors **by enacting anti discriminatory laws and policies; imposing sanctions against such acts and by providing mechanisms for redress;**
- ▶ d) **Obligation to Fulfill** – women's human rights should be fulfilled by promoting of equality thru **ALL MEANS** to bring about systematic change in norms and standards in the treatment of women (progressive implementation)

# CEDAW and Migration

- ▶ As the only human rights Convention devoted to a more critical understanding of the impacts of unequal gender relations in women's enjoyment of their human rights, CEDAW sharpens and enriches the analysis of migration through a critical discussion of its gender dimensions;
- ▶ CEDAW provides a critical framework to unravel the gender specificities of issues around migration from the pre departure stage and throughout the migration process and migration experiences of women.
- ▶ Migration has always been a matter of concern to the Committee, and thru GR 26 provides a comprehensively analysis the complex, multifaceted implications of this phenomenon.

# GR 26 on Women Migrant Workers (CEDAW - December , 2008)

- ▶ **-Respect for migrant rights are not a matter of benevolence or choice but are legal obligations under international law which bind all governments. Under international law, the rights of all migrants , regardless of their migration status, are protected.(D’Cunha, 2005;Grant, 2005; Taran, 2003);**
- ▶ **- Migrants and migrant women in particular contribute in significant ways to the economic and social development of both sending and receiving countries. When their rights and opportunities for decent and legal work are made available, they can contribute more to development rather than when they are exploited;**
- ▶ **- A gender and rights framework sharpens the analysis of the of migration phenomenon and provides useful and more holistic guideposts to policymaking and practical approaches in response to migration issues;**
- ▶ **Sex and gender based human rights concerns related to migrant women need to be addressed by states as a matter of obligation and in compliance with the provisions of CEDAW including in particular Art 1, 2 and the rest of the substantive provisions;**
- ▶ **Rights and obligations of states under CEDAW applies to all women including migrant women living in the same territory.**

# General Recommendation 26 , CEDAW

- ▶ Lifting or abolition of discriminatory laws on women including migrant women ;
- ▶ Ensuring gender sensitive safe, informed and non discriminatory gender policies on migration for countries of origin and destination ;
- ▶ Diplomatic and consular protection including for undocumented migrants
- ▶ Access to social services and legal remedies in destination countries
- ▶ Social inclusion policies;
- ▶ Gender sensitive family reunification schemes;
- ▶ Bilateral cooperation including for reporting and monitoring to prevent cases of abuse ;
- ▶ Exchange of best practices

# ILO Convention 189

- ▶ Complements and strengthens provisions of CEDAW and GR 26 on the protection of women migrant workers as well as ICMW;
- ▶ In adopting Convention No. 189 and Recommendation No. 201, the ILO Conference gave a clear message: Domestic workers, like other workers, have the right to decent working and living conditions.
- ▶ C 189 calls for the respect for the human rights, freedoms particularly the freedom of association, collective bargaining and the elimination of discrimination in work and occupation (Art 3)
- ▶ The Convention provides for minimum protection of domestic workers in terms of decent work conditions; fair remuneration and protection from abuses and exploitation;
- ▶ Spells out state obligations to ensure that domestic workers are not exploited by recruitment agencies and their employers (Art 15)
- ▶ Allows for flexibility in implementation on the part of the state;

# Three Levels of Protection Standards on Women Migrant Workers

- Laws recognizing domestic work as well as laws, policies and governance system regulating migration

- Regional agreements
- ASEAN DECLARATION ON THE PROMOTION AND PROTECTION OF MIGRANT WORKERS

- International human rights standards
- ICMW; CEDAW, GR 26, ILO CONVENTION, CERD, CAT, CRC, CRPD ETC

# CONCLUSION

- ▶ We have enough international instruments to protect women migrant workers including undocumented migrants;
- ▶ Ensuring the rights and freedoms of women migrant workers ensures their well being which is a matter of right . This in turn makes for a more efficient and productive work force that contributes to the economies of both sending and receiving countries;
- ▶ States need to view human rights obligations towards migrants in general and women workers in particular as part of their own good governance practices that positively benefits their economies and their society over the long term as long as they need and demand migrant workers in their countries.