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peace for the twenty-first century”

### Statement submitted by Centro de los Derechos del Migrante, Inc., a non-governmental organization in consultative status with the Economic and Social Council\*

The Secretary-General has received the following statement, which is being circulated in accordance with paragraphs 36 and 37 of Economic and Social Council resolution 1996/31.

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\* The present statement is issued without formal editing.



## **Statement**

### **Women in Labour Migration Programs: Challenges to Gender Equality**

Every year, hundreds of thousands of women are recruited to work in the United States (U.S.) on work visas or through employer-sponsored cultural exchanges. Globally, women make up an increasing portion of the migrant workforce. In 2015, the International Labour Organization found that approximately 66.6 million of the 150 million migrant workers across the world were female. While temporary work visas have the potential of providing critical opportunities for women, particularly those living in rural areas, to earn greater incomes and to provide increased care for their families, women's experiences are often marred by systemic gender-based discrimination and exploitation, as highlighted herein.

For over a decade, Centro de los Derechos del Migrante, Inc. (the Center for Migrant Rights, or CDM) has provided leadership development and training as well as legal representation to workers recruited for jobs in the U.S. After hearing first-hand accounts of the discrimination migrant worker women encounter at all stages of the temporary labour migration programs, CDM in partnership with the University of Pennsylvania Law School's Transnational Legal Clinic (TLC) has undertaken a study to systematically document women's experiences to better understand how the programs operate in service of and to the detriment of women, and to identify best practices for stemming gender-based exploitation, discrimination, and abuse.

### **Study Finds Temporary Labour Migration Programs Facilitate Systemic Discrimination against Women and Discrimination in Recruitment**

Insufficient government oversight and regulation in labour migration programs allows for employers and recruiters to deny women equal access to employment opportunities with impunity. In the U.S., employers both channel women into gendered jobs with lower pay than men, such as childcare, housekeeping, and secretarial jobs, while also shutting them out of some jobs all together: this is most clearly the case in agriculture, where women make up a mere 3.5% of the H-2A seasonal workforce, the country's largest agricultural visa program. Even when employers offer women employment within a sector also occupied by men, employers assign women to gendered roles often accompanied by lower pay and unequal earning potential when compared to their male counterparts. One study participant noted, "[My employers] hired me as an Animal Scientist but had me cleaning food bins and bathrooms. They paid me less than the other workers." The failure of the U.S. government to regulate recruitment creates a vacuum in which recruiters feel emboldened to deny women equal access to job opportunities resulting in unequal earning potential and other forms of abuse and exploitation.

### **Gendered Abuses During Employment**

Women participating in CDM's study reported persistent discrimination in the workplace often characterized by rights violations and exclusion from basic services. The typical industries employing women through the labour migration programs combine poor health and safety records with time- or quota-pressured production standards, as well as lack of overtime pay and other wage violations. Furthermore, employers frequently fail to provide migrant workers access to basic services that could protect and provide redress to women. Seventy-five percent of survey participants reported that employers provided little access to basic services including

food, a telephone, health care, or legal services. These conditions negatively impact the physical, mental, and emotional health of women.

Hefty recruitment fees that leave workers in debt, excessive monitoring and scrutiny of workers' personal matters and relationships, employer-controlled housing, document retention, denial of access to transportation or communication, and threats of retaliation all result in an extreme power imbalance between employers and workers creating conditions ripe for human trafficking. Trafficking is further facilitated by the lack of visa portability that allows employers to exercise complete control over workers' legal status.

### **Lack of Access to Justice**

Access to justice is critical to ensuring accountability, redress, and, ultimately, workers' basic human rights. When governments allow employers to assign rights and privileges to workers based on sex, they deny women their equal right to justice. For example, workers employed under the H-2A agricultural visa in the U.S. are among the only workers employed on a labour migration visa eligible for government-funded legal services. But, as noted above, employers systematically deny women H-2A employment, leaving the overwhelming majority of women without access to counsel and an ability to seek redress and accountability when their workplace rights are violated. Lack of governmental monitoring and enforcement of anti-discrimination law, coupled with workplace abuses, such as wage theft and health and safety violations, contributes to a deterrence gap and systemic, gendered-forms of discrimination.

### **The Unique Role of Women**

U.S. labour migration programs fail to account for women's multiple social and economic responsibilities as workers, mothers, and primary family caregivers. Because women must juggle multiple responsibilities, women disproportionately bear the burden of unpaid care work, and are ultimately disadvantaged in terms of full economic participation in the labour force. The overwhelming majority of women participating in CDM's study reported being the primary source of income and support for their children and other family members in their care, and devote more than half of their earnings to provide that care. Notwithstanding this, U.S. labour migration programs fail to guarantee migrant women access to childcare subsidies or other support services that recognize migrant worker women's roles in their family and their community. The government's failure to provide women in temporary labour migration programs access to existing family support services contributes to a cycle of gender inequality, particularly for women in rural and poor communities that lack sufficient income-earning opportunities.

### **Suggested Best Practices**

The following best practices for ensuring equality and non-discrimination for women in labour migration programs reflect the experiences and recommendations of women who have participated in labour migration programs in the U.S. These best practices have relevance to labour migration programs across the globe.

Relevant governmental institutions should work with non-governmental organizations to collect and make accessible current and complete data on labour migration programs. A publicly-available interagency database should allow women to verify the existence of a job, the visa category, the industry of work, the terms of employment, the identity of the employer, the entire chain of recruiters between the

employer and the worker, and lawsuits filed by previously employed workers. Websites like *Contratados.org*, a “Yelp” for migrant workers launched by *Centro de los Derechos del Migrante*, can create a space where women may safely describe the quality of their experiences with specific employers and recruiters and find know-your-rights information regarding the various visa programs, encouraging the vindication of rights and access to justice. Access to similar databases will be a major step in informing and advising migrant worker women of their rights and opportunities, especially women who find themselves isolated geographically in their hometowns or their workplaces, and mitigates the ushering of women into abusive and gendered positions.

National legislative, administrative, and judicial bodies must use such data to reform labour migration programs and stem abuses. For instance, such data would catalyse legislative action prohibiting recruiters from charging workers recruitment fees, mandating visa portability, and holding employers strictly liable for discrimination.

Governmental agencies must engage in rigorous monitoring of labour migration programs and enforce laws and regulations relevant to all stages of the process, including recruitment, employment, and access to justice. A coordinated response will provide more robust policing of discrimination, ameliorating the enforcement and deterrence gap that currently jeopardizes the development of safe, orderly, and regular migration for working women.

Governments must increase access to justice, information, and support services. Protecting women who report abuses from retaliation in the recruitment process, including blacklisting from future recruitment, must be prioritized.

### **Conclusion**

Around the world, women seek labour migration opportunities to access higher wages, cultural exchange, and a better life. Unfortunately, U.S. labour migration programs fail to serve as a model for other countries to emulate: they are plagued by systemic flaws that render the programs insidious facades for gendered discrimination and resulting abuses. Such flaws call into question the programs’ compliance with international standards of equality and non-discrimination, and render illusory the promises of the programs.