

Human Rights Protections Applicable to Women Migrant Workers



A UNIFEM Briefing Paper

United Nations
Development Fund for Women



Asia Pacific and Arab States Regional Programme on Empowering
Women Migrant Workers in Asia

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Introduction: Feminised Labour Migration in the Context of Globalisation¹

Globalisation has ushered in increasing migration for labour For women, these trends spell increased vulnerability to exploitation and abuse.

The International Labour Organisation estimates that there are between 80 and 100 million migrant workers in the world today. Women account for a significant portion of these workers, and in some countries they make up more than half of the migrant worker population. Indeed, many analysts speak of the increasing feminisation of migration. This feminisation results from a number of global forces in which gender roles and sex discrimination are intertwined with globalisation.

Trends contributing to this process include: the growing demand for labour in fields dominated by women (especially the service sector); the lower cost of production when labour-intensive tasks are shifted to women migrant workers; and the sex-stereotyping of large business enterprises and governments that may see women as cheap, temporary, or supplemental labourers whose “docile” nature makes them easily exploited. Other forces are more regional, including changes brought about by the oil booms in Western Asia, where the employment of foreign domestic workers has become a status symbol, country-specific labour shortages in sectors dominated by women, and the increasing participation of women in the labour market in newly industrialising countries.

From the perspective of women seeking work, a wide variety of factors combine to make border-crossing an attractive, acceptable, or – in desperate circumstances – the only viable option. For example, in countries where structural adjustment policies and privatisation have been imposed, broad cuts to the public sector often have a disproportionate impact on women, who make up a sizable proportion of the lower-level public sector jobs in many countries. Unemployment and cuts in social services may send such women abroad in search of new opportunities.

In other places, women flee conflict or the aftermath of conflict, or cross borders for personal security, fleeing violence and abuse.

Most job opportunities for women migrants are in unregulated sectors, including domestic work, informal/“off the books” industries or services, and criminalised sectors, including the sex industry. This means that even women who cross borders legally may find themselves in unregulated – and often irregular – work situations. In addition, the majority of opportunities that offer legal channels of migration are in male-dominated sectors such as agriculture and construction work, putting women at a great disadvantage. The ILO explains that “the demand for foreign labour reflects the long term trend of informalization of low skilled and poorly paid jobs, where irregular migrants are preferred as they are willing to work for inferior salaries, for short periods in production peaks, or to take physically demanding and dirty jobs.”²

In summary, globalisation has ushered in increasing migration for labour at the same time as it has resulted in decreasing regulation of the labour market, growth in the informal sector, and the emergence of new forms of exploitation. In the midst of these trends, many governments are tightening migration controls. This interplay of competing incentives sets the scene for exploitation of those most desperate: irregular border-crossers, those in the informal sector, and the poor. For women, these trends spell increased vulnerability to exploitation and abuse, and continuing inequality with men.

This briefing paper will examine some of the specific types of discrimination and abuse women migrant workers face, focusing particular attention on the plight of women domestic workers. It will examine human rights standards relevant to these abuses, and suggest some of the steps states may be obliged to take under these treaties. While the negative consequences of globalisation cannot

be contained by any one state, all have responsibilities to ensure the rights of those under their jurisdiction are respected. Indeed, in a world of increasing interdependence, the protection of women’s rights must be a global endeavour.

Purpose and Approach

This briefing paper is intended to provide some tools for human rights advocates working to advance the rights of women migrant workers. It examines a set of concerns facing women migrant workers – with an emphasis on women in domestic service – using the five most relevant³ major human rights conventions: the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the International Covenant on Social, Economic and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), and the International Convention on the Protection of the Rights of All Migrant Workers and their Families (MWC).

These standards are discussed together for two main reasons. First, it is generally the case that more than one of the treaties will be in force in any given country. This means that the different standards will together inform the state’s approach to protecting the rights of women migrant workers. Second, the practice of the treaty bodies shows that there is considerable similarity in approach when it comes to women migrant workers. This makes sense, in part due to the overlapping norms embodied in the different conventions, and in part because of the normative effect of the broad ratification of the main treaties.⁴

This briefing paper examines the web of international norms that has been woven to protect women migrant workers in relation to the following topics:⁵

1. Exploitative terms of work – pay, hours and contracts.
2. Restrictions on the freedom of movement.
3. Labour market discrimination against women.
4. Dangerous and degrading working conditions.
5. Gender-based violence in the workplace.
6. Gendered forms of racism and xenophobia against women migrant workers.
7. Restrictions on migrant women's ability to organize for their rights.

After giving a brief overview of the issue concerned, each section will discuss the provisions of the treaties relevant to the violations under discussion, followed by examples of steps states may be required to take to ensure women migrant workers can enjoy their human rights. These measures are derived from treaty provisions, General Comments or Recommendations, and concluding comments and observations of the treaty bodies. The applicability of the various measures to any given state will depend on a number of factors, including: the ratification status of the relevant treaty and any reservations entered; the extent to which the relevant rights are already realized within the state; and the specific conditions in which women migrant workers find themselves in the state.

A more complete legal analysis of the issues presented in this document may be found in its companion document, *Human Rights Protections Applicable to Women Migrant Workers: A UNIFEM Legal Analysis*, also published by UNIFEM.⁶

1. Exploitative Terms of Work – Pay, Hours and Contracts

In some countries, those in the domestic sector do not count as “employees” under legal definitions.

A number of forces combine to render women migrant workers vulnerable to exploitative terms of work, especially in relation to pay, hours of work, and contracts. Restrictions on the right to cross borders for work, for example, create incentives for legal and illegal agents alike to take advantage of women migrant workers. Recruitment agencies – even when working legally – often charge steep fees for placement and travel; when working irregularly or without government oversight, such agencies often charge fees that are close to impossible to repay, trapping women migrants into conditions akin to debt bondage. Finally, agents who are working in direct contravention of national laws, facilitating women’s crossing of borders illegally, may use coercion, force, or false promises, placing women in clandestine domestic settings, illegal sex work, or exploitative sweatshops – practices that amount to trafficking.

Regardless of their means of entry, women migrants face myriad types of exploitation, and contract problems abound. Women who actually receive a contract may not understand the language in which it is written. They may find the contract they sign is later replaced by an inferior version stripped of worker protections, or they may be refused a copy entirely. In many places, contracts are concluded between the employer and recruitment agency alone, leaving the worker without any protection. In some countries, aliens or women who have contracts may face legal or economic barriers in accessing courts or other judicial institutions, and host country courts may deem the contracts unenforceable. As may be expected, women in the informal, irregular, or illegal sectors are rarely given contracts.

Women migrant workers face a range of abuses connected with compensation. Even when paid on time and according to the terms of any

contract they may have been given, women migrant workers are often paid substandard wages. Employers may deduct dubious or blatantly unfair charges, including fees for health services that are never received, or fees for rent in situations of squalor. Payments may be delayed, improperly calculated, or withheld arbitrarily. One common practice with respect to domestic workers is for employers to place payments into a bank account that they claim has been opened for the domestic worker, but to refuse her any access to this account until the end of her contract. In some places, employment agencies offer domestic employers the option of “returning” a migrant worker after a period of time – often as long as three months in some places – if their services are deemed unsatisfactory. During the trial period, the employee is rarely paid, and once they are “returned” they must begin a new probationary period, during which they will again likely not receive pay. This kind of cycle – in which the employee is working without wages – has reportedly lasted more than a year in some countries. Exorbitant fees for breaking contracts may be imposed. At the extreme end of the spectrum, women who are in conditions of debt bondage or slavery may not receive wages at all.

Women domestic workers often work in completely unregulated conditions: in some countries, those in the domestic sector do not count as “employees” under legal definitions. In such circumstances, employers take advantage of the vulnerability of women migrant workers by forcing or coercing them to work long hours, often without breaks or leisure time. Indeed, “unscheduled availability at all times” is often a characteristic of domestic work for women, an expectation modeled on gendered assumptions about women’s roles in the home.

Even when regulations do apply, discriminatory rules exempting domestic workers from normal hour limits, or setting long limits (as

much as 12-16 hours in some places) may exist. Exceptions to overtime and holiday pay rules also frequently apply to domestic workers. Further, women working as domestics rarely have days off – even in places where rest days are regulated, domestic workers may be exempted or subject to special rules allowing a single or half day of leisure instead of the standard number applicable to other workers. An ILO study conducted in one country found that not one of the women working as domestics surveyed benefited from a regular day off. While the families who employ domestics often explain the long hours by saying that such women are “part of the family,” this feeling is not shared by the employees themselves. One domestic worker explains: “We are treated like strangers, we are not allowed to sit on the furniture. It does not matter for them if you have a profession or not, you are here, you are a maid.” Another domestic worker adds: “When they talk about us they say words like: stupid, knows nothing, or maid. We are always inferior in their place.” And finally: “I am treated as a lower person because I am poor. They order us in a way that hurts. They don’t sympathize with us. We are vulnerable in their houses, because we are poor.”⁷

The ILO explains that a major cause of exploitation and ultimately forced labour is that labour standards are not applied or enforced, in either countries of destination or origin. These standards include respect for minimum working conditions and consent to working conditions. Tolerance of restrictions on freedom of movement, long working hours, poor or non-existent health and safety protections, non-payment of wages, substandard housing, etc. all contribute to expanding a market for trafficked migrants who have no choice but to work in conditions simply intolerable and unacceptable for legal employment. Worse still is the absence of worksite monitoring, particularly in such already marginal sectors as agriculture, domestic service and sex-work, which would contribute to identifying

whether workers may be in situations of forced or compulsory labour.⁸

States in which women migrants find employment may be required to adopt a wide variety of measures to ensure that women's rights to fair terms of work are fully respected, protected, and fulfilled. Based on the treaties and the guidance provided by the treaty monitoring committees, it is now clear that states may be required to adopt a range of measures to fulfill their obligations, including the following examples:

- Undertake comprehensive studies on the employment situation of women migrants. Such studies could include an examination of the impact of discrimination on the basis of sex, race or ethnicity, and alien status, and focus on issues such as the use of contracts and their terms, the enforceability of contracts, pay rates, working hours, the deduction of fees, and the use of training periods to withhold payment.
- States that exempt domestic or non-national workers from labour protections should take steps to extend labour protections – including working hours and minimum wage standards – to these groups.
- Although some fair and non-discriminatory amendments might be needed to account for specific differences in workplaces, regulatory schemes concerning working conditions and terms of employment should be made applicable to workers in domestic service.
- In places where regulations already apply to non-national and domestic workers, states should ensure that enforcement measures are effective, that monitoring takes place regularly, and that fines are imposed or licenses revoked wherever necessary.
- States must take proactive steps to ensure that women migrant workers are not trapped in debt bondage, and to remedy the situation when it does arise. States should consider extending assistance to women who have been the victims of debt bondage, including resources for rehabilitation and reintegration.

Responding with Human Rights Treaties

Through provisions on equal rights in employment, just and favourable working conditions, and equal protection under the law, the major human rights conventions offer robust protections for women migrant workers against exploitative terms of work.

The ***Convention on the Elimination of All Forms of Discrimination Against Women*** (CEDAW) guarantees women equal rights in employment, including: the same employment opportunities as men, the free choice of profession, and the right to promotion. The Convention also extends to women the right to equal remuneration, including benefits, and equal treatment for work of equal value.

The ***International Covenant on Economic, Social and Cultural Rights*** (ICESCR) recognizes the right to fair wages – defined in the Covenant as wages that, at a minimum, provide a decent living for the worker and her family. This right must be extended to women and men without discrimination, and includes the specific right to equal pay for equal work.

The ***International Convention on the Elimination of All Forms of Racial Discrimination*** (CERD) prohibits discrimination on the basis of race, colour, or national or ethnic origin in work, free choice of employment, and just and favourable working conditions.

Under the ***International Convention on Civil and Political Rights*** (ICCPR), all individuals – including aliens and citizens – are guaranteed equality before the law, which means that aliens may not be treated differently in court based on their alien status.

This guarantee of equality is amplified in the ***International Convention on the Protection of the Rights of All Migrant Workers and their Families*** (MWC), which clearly requires states to ensure that migrant workers benefit from the same terms of work as nationals, including remuneration, hours of work, overtime pay, weekly rest, and holidays with pay. The Convention also provides that migrant workers may claim their wages and other entitlements owed to them even if they have been expelled from the state of employment. The ICCPR and the MWC include protections against debt bondage or slavery-like practices.

What the Treaties Say on Exploitative Terms of Work

Convention on the Elimination of All Forms of Discrimination Against Women

Article 11(1) guarantees women *equal rights in employment*, including the right to the same employment opportunities as men and the application of the same criteria for selection in matters of employment. The same Article also provides that women have the equal right to free choice of profession, the right to promotion, job security, and *all benefits and conditions of service equal to men, as well as equal remuneration, including benefits*, and equal treatment for work of equal value, and equal treatment in the evaluation of the quality of work. Article 11(1) protects women's *right to social security and the right to paid leave*, on a basis of equality with men.

International Covenant on Economic, Social and Cultural Rights

Article 7(a) recognizes the right to the enjoyment of *just and favourable conditions of work*, including remuneration which provides all workers, at a minimum, with *fair wages and equal remuneration for work of equal value without distinction* of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; and a *decent living for themselves and their families*. Article 7(b) sets out the right to *safe and healthy working conditions*. Article 7(d) guarantees workers rest, leisure, and *reasonable limitations on working hours and periodic holidays with pay*, as well as remuneration for public holidays.

Article 2 calls on states to ensure that the *rights included in the Convention are exercised without discrimination of any kind* as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 3 requires states to ensure *the equal right of men and women to the enjoyment of all economic, social and cultural rights* in the Convention.

International Covenant on Civil and Political Rights

Article 14 provides that *all people shall be equal before the courts and tribunals*. In its General Comment on the Position of Aliens under the Covenant (No. 15, 1986), the Human Rights Committee emphasized that this guarantee of equality before the courts and tribunals applies to *aliens, who must not be treated differently from citizens on the basis of their status*. The Human Rights Committee made clear in its General Comment on the equality of rights between men and women (No. 28, 2000), that *women must have equal – and autonomous – access to justice under Article 14*. Article 8 provides that *no one shall be held in slavery, and that no one shall be held in servitude or required to perform forced or compulsory labour*.

Article 2 provides that states must respect and ensure to all individuals within its territory and subject to its jurisdiction the rights included in the Convention, *without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*. Article 3 places an obligation on states to *ensure the equal right of men and women to the enjoyment of all civil and political rights* within the Convention. Article 26 provides that *all persons are equal before the law*, and are entitled without any discrimination to *equal protection of the law*. The law should prohibit

discrimination and guarantee to all persons equal and effective protection against discrimination on any ground, including sex, race, colour, national or social origin, or other status.

International Convention on the Elimination of All Forms of Racial Discrimination

Article 5(e)(i) guarantees the *rights to non-discrimination on the basis of race, colour, or national or ethnic origin* in work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration.

International Convention on the Protection of the Rights of All Migrant Workers and their Families

Article 11 provides *that no migrant worker or member of his or her family shall be held in slavery or servitude*, and that no migrant worker or member of his or her family shall be required to perform forced or compulsory labour.

Article 25 provides that *migrant workers shall enjoy treatment not less favourable than that which applies to nationals* of the state of employment in respect of remuneration and other conditions of work, including overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship and any other conditions of work covered under domestic law. Article 25 also guarantees *equal treatment with nationals concerning other terms of employment* including minimum age of employment, restrictions on home work and any other matters that are considered a term of employment under domestic law. The same Article also requires states to *take all appropriate measures to ensure that migrant workers are not deprived of any rights*

concerning remuneration and other conditions of work on the basis of irregularities in their work or residence status. Under Article 25, *employers may not be relieved from obligations toward their workers on the basis of irregularities*. Article 22 guarantees *migrant workers the right to claim wages and other entitlements even if they have been expelled* from the country of employment.

Article 54(2) provides that if a migrant worker claims that the terms of his or her work contract have been violated by his or her employer, he or

she shall have *the right to address his or her case to the competent authorities of the state of employment* on the basis of equality with nationals of that state.

Article 1 provides that *the protections in the Convention are applicable without distinction of any kind as to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic, or social origin, nationality, age, economic position, property, marital status, birth or other status*.

Selected Concluding Comments and Observations from UN Treaty-Monitoring Committees

Committee on the Elimination of Discrimination Against Women

Germany 2000: “Noting the Government’s intention to commission a study on the living situation and social integration of foreign women and girls, the Committee requests the Government to undertake a comprehensive assessment of the situation of foreign women, including their access to education and training, work and work-related benefits, health care and social protection, and to provide such information in its next report.” (318)

India 2000: “The Committee is concerned with significant disparities in economic activity rates for men and women. It is concerned that the practice of debt bondage and the denial of inheritance rights in land result in gross exploitation of women’s labour and their impoverishment. The Committee requests the Government to enforce laws on bonded labour and provide women with self-employment opportunities and minimum wages in home-based production and the non-formal sector. It calls upon the Government to review laws on inheritance urgently and to ensure that rural

women obtain access to land and credit.” (82-83)

Committee on Economic, Social and Cultural Rights

Senegal 2001: “The Committee is concerned that, while half of Senegalese workers are employed in the informal sector, most of them still lack access to basic social services, including social security and health insurance, and work long hours in unsafe conditions. The Committee is concerned that the state party is not taking appropriate measures to protect the rights of domestic workers, mostly women and girls, especially with regard to their lack of access to basic social services, their unfavourable working conditions and their wages, which are far below the minimum wage.” (20-21)

Panama 2001: “The Committee is concerned about the lack of a sufficient number of labour inspectors and the reported widespread use of ‘blank’ contracts and temporary work contracts, which avoid the protection and

benefits that the law requires for persons employed under longer-term contracts.” (15)

Jordan 2000: “The Committee is concerned that non-Jordanian workers are exempted from minimum wage provisions, are denied participation in trade union activities and are excluded from the social security system. The Committee is concerned that the 1996 Labour Code does not provide any protection for persons working in family-owned and agricultural enterprises, and domestic labour. It is precisely with respect to work in these areas that protection is most needed because it often involves hazardous working conditions, and largely female and child workers.” (19-20)

United Kingdom (Hong Kong) 1994: “The Committee expresses its concern about the legal and social position of foreign employees known as domestic helpers in Hong Kong. It considers that these workers’ economic, social and cultural rights are seriously impaired by the so-called two-week rule which provides that a worker may neither seek employment nor stay more than two weeks in Hong Kong after the expiration of original employment; by the fact that maximum working hours are not set; and by the discriminatory practice of not being allowed to bring their families to Hong Kong, while professional migrant workers from developed countries are allowed to do so.” (29)

Human Rights Committee

Brazil 1996: “The Committee is concerned about the widespread problem of forced labour and debt bondage, especially in the rural areas.” (319)

Committee on the Elimination of Racial Discrimination

Israel 1998: “The Committee encourages the state party to adopt new labour legislation in

order to secure the protection against ethnic discrimination of the rights of Palestinians working in Israel on a daily basis; the rights of migrant workers, including undocumented workers, is also a matter of concern.” (17)

Kuwait 1993: “In respect of Article 5 of the Convention, members asked whether the right to equal access to and treatment before the courts was guaranteed for non-Kuwaitis.”

2. Locked in the Home – Restrictions on the Freedom of Movement

Seclusion is often extreme....
Women are often “hidden” in the homes of their employers to avoid detection by the authorities.

Women migrants who work in the domestic sector are especially vulnerable to violations of their freedom of movement. Those who employ domestic workers often confiscate the worker’s travel documents (a practice that is legally condoned in many places), often making it impossible for the worker to leave the country – even to return home – without permission. Many domestic workers live within the home, or on the same property as the employing family; often, the family forbids the worker from leaving the premises alone – and sometimes the worker will not be allowed to leave at all. For example, the ILO found that a travel agency in one country masquerading as an overseas employment firm asked women domestic workers to sign employment contracts stating explicitly that they were not permitted to leave the employer’s premises. Some employers compound the isolation this kind of seclusion causes by forbidding any contact with the outside world – even through telephone or mail. Seclusion is often extreme in the case of undocumented domestic workers. Such women are often “hidden” in the homes of their employers to avoid detection by the authorities. If detected, these hidden workers often suffer summary expulsion without regard to any outstanding wages or other benefits.

Many women working as domestic helpers are locked in the home by their employers whenever they are left alone – sometimes for extended periods. In addition to the routine problems this causes, many women in such circumstances report being terrified that a fire or some other emergency would occur and they would be unable to escape. In some places, it is illegal for a domestic employee to “run away” from the employer’s home; in such cases, the police search for the “runaway,” publish her name and photograph in the newspaper, and deport her summarily if she is located.

The social exclusion created by the cloistering of migrant women in domestic service can take a heavy toll: many women do not have the opportunity to form friendships or create community ties. The resulting solitude exacerbates women's vulnerability to abuse, and deprives them of possible support when violations occur. It also can lead to depression and other psychological difficulties. Women who are deprived of contact with their families may suffer especially severely, to say nothing of the impact on the workers' family members, especially children.

One domestic worker told ILO researchers that she became ill during her employment as a domestic helper and could no longer work. Her contract stated that she was required to pay US \$3,000 if she left her place of employment before the term of her employment had expired. Since she did not have the full fee, the woman offered \$300 – the sum total of her savings. When this was rejected as too little, the woman fabricated a mental illness to escape. Her employer's male relatives, as well as the local police, beat the woman before letting her return home.

In addition to fees charged by some agencies and employers when women migrants break their contracts, governments sometimes impose exit fees for time spent in the country illegally. In such instances, women are charged for each day they spent out of status. This means that women who have escaped harsh and abusive employment conditions – and thereby have fallen out of legal status because they are no longer lawfully employed – are literally fined for the abuse of their employers.

The actions needed to protect the rights of women migrant workers to freedom of movement will depend on the severity and prevalence of abuses in each state. Based on the treaties and the guidance provided by the treaty monitoring

committees, it is now clear that states may be required to adopt a range of measures to fulfill their obligations, including the following examples:

- States should ensure that all employers, agencies, and migrant workers themselves, are aware that it is completely forbidden for identity documents and work or residence papers to be confiscated or destroyed, and failure to obey should be investigated and punished. This is especially important in relation to women migrants working in domestic settings.
- Sending and host states should review domestic legislation and practice to ensure that women's right to freedom of movement is not subject to the approval of third persons, such as husbands, fathers, or other male relatives.
- Women should be allowed to freely obtain their own individual identity, work, and residence papers.
- Arbitrary restrictions on the ability of migrant workers legally in the country of employment to freedom of movement within that country should be removed.
- Restrictions on the right of all migrant workers to leave a country, and arbitrary limits on the ability to enter the home country and remain there, should be repealed or amended.
- Host country governments should take steps to end restrictions imposed by private employers – especially severe restrictions like locking in the home.

Responding with Human Rights Treaties

Under the major human rights treaties, the right to freedom of movement can be broken down into three main components: the right of an individual to move *within* a state when she is there legally, the right to *leave* any state, and the right to *return to her own* state. International human rights law does not guarantee rights more generally concerning free movement across borders.

The ***International Covenant on Civil and Political Rights*** makes clear that right to freedom of movement within a state may be limited under specified circumstances related to national security, public order, public health or morals, or the rights and freedoms of others. Restrictions on the freedom of movement may permissibly be imposed on individuals without lawful authorisation to be on the territory of a state. When subject to expulsion, however, migrants have the right to present their reasons for being present without permission. The right to leave a country, and to return to one's home country, however, may not be restricted arbitrarily. For women migrant workers, this means that protections are clearest for movement within a state of employment – so long as legal permission to be present has been granted, for movement out of a state of employment – regardless of status, and movement back to the home country – also regardless of status.

Under the ***Convention on the Elimination of All Forms of Discrimination Against Women***, women are guaranteed the right to equal exercise of the freedom of movement, which means that any restrictions based on sex – or which result in disproportionate disadvantages for women – amount to sex discrimination and must be dismantled.

Similarly, under the ***International Convention on the Elimination of All Forms of Racial Discrimination***, no restrictions to freedom of movement may be placed on individuals on the basis of race, colour, ethnicity, or national origin.

The ***International Convention on the Protection of the Rights of All Migrant Workers and their Families*** requires states to criminalise the confiscation and destruction of identity documents, such as passports, and residence or work papers.

What the Treaties Say on Restrictions to the Freedom of Movement

Convention on the Elimination of All Forms of Discrimination Against Women

Article 15 requires states to accord to men and women *the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile*. In its General Recommendation on Equality in marriage and family relations (No. 21, 1994), the CEDAW Committee explained that “[d]omicile, like nationality, should be capable of change at will by an adult woman regardless of her marital status. Any restrictions on a woman’s right to choose a domicile on the same basis as a man may limit her access to the courts in the country in which she lives or prevent her from entering and leaving a country freely and in her own right.” The Committee then stated clearly that “[m]igrant women who live and work temporarily in another country should be permitted the same rights as men to have their spouses, partners and children join them.”

Convention on the Elimination of All Forms of Racial Discrimination

Article 5(c) guarantees the *right of everyone, without distinction as to race, colour, or national or ethnic origin, freedom of movement and residence*. It also recognizes the *right of everyone, without distinction as to race, colour, or national or ethnic origin, the right to leave any country, including one’s own, and to return to one’s country*.

International Covenant on Economic, Social and Cultural Rights

Article 12 guarantees to *everyone lawfully within the territory of a state the right to liberty of movement and freedom to choose a residence within that territory*, and provides that *everyone has the right to leave any country, including his or her own*. Article 12 also *prohibits the arbitrary deprivation of the right of every person to enter his or her own country*. The same Article makes clear that *freedom of movement may only be restricted in a limited set of circumstances: to protect national security, public order, public health or morals, or the rights and freedoms of others*.

In its General Comment on the Freedom of Movement (No. 27, 1999), the Human Rights Committee underlined the importance of this right for women, noting that *it is incompatible with the right of a woman to move freely to subject that free movement to the decision of another person*. In its General Comment on the equality of rights between men and women (No. 28, 2000), the Human Rights Committee highlighted the importance of women’s ability to obtain identity documents such as a passport and travel papers. The Committee made clear that *restrictions on women’s ability to acquire such documents – such as requirements concerning the approval of third parties – violate women’s rights to freedom of movement under the ICCPR*.

Article 13 provides that aliens lawfully within the territory of a state party may be expelled from that territory only in pursuance of a decision reached in accordance with law. *Aliens also have the right to submit the reasons against their expulsion and to have their cases reviewed by, and be represented before, a competent authority, except where compelling reasons of national security otherwise require*.

Article 2 provides that states must respect and ensure to all individuals within its territory and subject to its jurisdiction the rights included in the Convention, *without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*. Article 3 places an obligation on states to ensure *the equal right of men and women to the enjoyment of all civil and political rights* within the Convention.

International Convention on the Protection of the Rights of All Migrant Workers and their Families

Article 8(1) guarantees the *right of migrant workers and members of their families to leave any state, including their state of origin*. This right shall not be subject to any restrictions except those that are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the Convention. Article 8(2) provides that migrant workers and members of their families shall have the *right at any time to enter and remain in their state of origin*.

Article 21 provides that it shall be *unlawful for anyone, other than a public official duly authorized by law, to confiscate, destroy or attempt to destroy identity documents, documents authorizing entry to or stay, residence or establishment in the national territory or work permits*. No authorized confiscation of such documents shall take place without delivery of a detailed receipt. In no case shall it be permitted to destroy the passport or equivalent document of a migrant worker or a member of his or her family.

Article 39 provides that *migrant workers who are documented and in regular status have the right to liberty of movement* in the territory of the state of employment and freedom to choose their residence there.

Article 1 provides that *the protections in the Convention are applicable without distinction of any kind as to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic, or social origin, nationality, age, economic position, property, marital status, birth or other status*.

Selected Concluding Comments and Observations from UN Treaty-Monitoring Committees

Human Rights Committee

Dominican Republic 2001: “The Committee expresses its . . . concern over the living and working conditions of Haitian workers and the tolerated practices that restrict their freedom of movement. The state party should give priority to addressing the issue of the working and living conditions of Haitian workers, and ensure that those workers can take advantage of the rights and safeguards laid down in Articles 8, 17 and 22 of the Covenant.” (17)

Armenia 1998: “The Committee expresses its grave concern about the incompatibility of several provisions of the Constitution with the Covenant: for example, Article 22 of the Constitution, which guarantees freedom of movement only to Armenian citizens, contravenes Article 12 of the Covenant.” (7)

Lithuania 1997: “The Committee expresses concern that the right of foreign nationals to freedom of movement may be restricted on grounds not compatible with the Covenant...”

Provisions which restrict freedom of movement in a manner incompatible with Article 12 of the Covenant should be repealed.” (15)

Sudan 1997: “The Committee is concerned that... immigration officers may arbitrarily require women to show... a male relative consents to their leaving the Sudan.” (14)

Gabon 1996: “With regard to the rights of non-Gabonese citizens and refugees living in Gabon, the Committee is concerned about legal impediments to their freedom of movement within the country as well as by the requirement of an exit visa for foreign workers, which run counter to the provisions in Article 12 of the Covenant.” (16)

Committee on the Elimination of Racial Discrimination

Saudi Arabia 2003: “The Committee has also noted with satisfaction that measures are taken to put an end to the practice of employers who retain the passports of their foreign employees, in particular of domestic workers.” (6)

Lebanon 1998: “In relation to Article 5 (e) (i) of the Convention, the situation of migrant workers is of concern, especially in relation to access to work and equitable conditions of employment. In this regard, reports of confiscations of passports of foreign workers by their Lebanese employees are a matter which should be looked into by the responsible authorities of the state party.” (15)

3. Labour Market Discrimination Against Women – at Home and Abroad

Perceived to be especially fit for domestic chores, women migrants are tracked into this sector even when they have professional training.

Gender-based discrimination in the labour market at home is one of the factors that lead women to cross borders in search of work. When pervasive, such discrimination can result in scarce opportunities, shrunken salaries, and limited horizons for women. Seeking a better fortune abroad becomes an attractive option. Gender discrimination in the labour market takes many forms, both direct and indirect. Three specific phenomena – the wage gap between men and women, labour market segregation by gender, and the glass ceiling – have been of particular concern to women workers in both sending and receiving countries. Unfortunately, women migrants usually find that discrimination is also present in the host country. Indeed, sometimes it is worse, with women migrants tracked into very specific sectors while men are recruited for others. Many women find their options limited to work in the domestic sector, for example, where they act as housekeepers, servants, personal assistants, tailors, cooks, and childcare attendants.

The Gender Wage Gap

In countries around the world, women have a documented disadvantage in earned income relative to men. The ILO reports that women earn 20-30% less than men worldwide. The causes for this difference are varied, but they are linked to labour market segregation, in which women and men tend to predominate in distinct fields, and the phenomenon of the glass ceiling, in which women are clustered in the lower rungs of the employment ladder. Wage-based discrimination is a major factor as well. Wage-based discrimination occurs when work of equal and comparable value is treated differently in terms of remuneration. For example, work involving repeated

lifting of heavy loads may be poorly paid when it entails women lifting household equipment or children in the domestic setting, and well paid when it concerns men lifting machine parts in the industrial sector.

Women migrant workers often find that their wages are lower than those of men who have crossed borders for work. In addition to this gender wage gap, in some countries, wages are more closely linked to the employee's national or ethnic origin than to their skills. Indeed, in several countries studied by the ILO, wage rates for domestic workers of certain nationalities and/or races were significantly higher than those of others.

Labour Market Segregation

Another way in which indirect, institutionalized discrimination in employment manifests itself is in labour market segregation. Segregation occurs when women and men are grouped in different occupations or in different sectors of the economy. When examined closely, the pattern of these groupings can often be linked to stereotyped ideas about men and women's roles, strengths, and weaknesses. For example, in many countries, women predominate in the fields of childcare, education, health care, and personal and household services, while men predominate in construction, utilities, transport and communications. Another important pattern that has been documented is that pay in the fields in which women predominate tends to be lower than the fields in which men predominate, contributing to the gender wage gap. The impact of privatisation on these trends is not completely clear, but initial research indicates that many of the sectors in which women predominate have been state-controlled fields, meaning that the picture may well worsen for women as those areas are privatized.

The causes of labour market segregation are

many and varied. Stereotypes play a significant role, influencing the choices individuals make, including an employer's preference among qualified candidates or a woman's choice among fields of study in preparation for an occupation.

Women migrant workers tend to be concentrated in the service sector, are clustered in women-specific jobs – both skilled and unskilled. Women migrants can be found in skilled positions such as nurses, teachers and secretaries, and unskilled jobs such as domestic workers, entertainers and hotel employees. In some countries, the majority of women are employed as housemaids or “nannies.” Women's work within the domestic sphere is heavily based on gendered expectations: perceived to be especially fit for work with children, housecleaning, and other domestic chores, women migrants are tracked into this sector even when they have professional training or qualifications. For example, 23 percent of domestic workers in one study conducted by the ILO had university degrees.

The Glass Ceiling

In addition to gender-based labour market segregation and the gender wage gap, the glass ceiling is holding women back from achieving equality with men in the labour market. The “glass ceiling” is a way of describing the phenomenon – evidenced all over the world – of an invisible barrier that keeps women from occupying the highest-level positions in the labour market. In countries at varying levels of development, evidence has shown that women are underrepresented at all levels of management, with the most dramatic gender disparities occurring at the very highest levels. This kind of discrimination is directly linked to the gender wage gap, since workers at lower levels bring in less money than managers and business leaders.

For women migrant workers, climbing to higher levels of responsibility is often impossible. Research shows that the heaviest concentration of women migrant workers is usually found at the lower end of the job hierarchy in both skilled and unskilled sectors. For women working in the domestic sphere, there is almost never any

possibility for advancement. While occasionally women domestic workers will be asked to train new colleagues, this work is not rewarded with increased pay or recognized as management in professional terms. Women in domestic service rarely have the opportunity to broaden their skills or obtain new qualifications.

Responding with Human Rights Treaties

Regarding discrimination in the workplace, the ***Convention on the Elimination of All Forms of Discrimination against Women*** provides the most robust protections, requiring states to ensure women have the same rights as men in the field of employment, and specifying that women have the right to equal remuneration and benefits for work of equal value. The Convention also requires states to ensure women have the same rights as men in the field of education; under this provision, sending states must ensure that women are not excluded from certain educational paths, and host states must ensure the same conditions for vocational guidance apply to women and men.

The ***International Covenant on Economic, Social, and Cultural Rights*** includes protections against gender discrimination as well as substantive rights to favourable working conditions for all. Although the Convention's provisions are open to interpretation concerning discrimination on the basis of alien status, the CESCR Committee has treated this kind of discrimination as prohibited under the Covenant. Taken together then, these provisions translate into guarantees for fair wages sufficient to support a decent living without distinction on the basis of gender or alien status.

The ***International Convention on the Elimination of All Forms of Racial Discrimination*** prohibits discrimination in employment, conditions of work, and remuneration on the basis of race, colour, or national or ethnic origin. These protections apply equally to men and women. Finally, the ***Migrant Workers Convention*** guarantees migrant workers – male and female alike – treatment not less favourable than that which applies to nationals in respect of remuneration. Based on the treaties and the guidance provided by the treaty monitoring committees, it is now clear that states may be required to take a range of steps to fulfill their obligations, including the following examples:

States may need to adopt the principle of equal remuneration for work of equal value, and develop job evaluation systems based on gender-neutral criteria. This could help migrant women by putting greater value on fields where they predominate, such as domestic work.

As a general rule, states should ensure that the same pay rates are applied to foreign workers as to citizens.

States may also need to adopt special measures aimed at directly combating gender-based labour market segregation.

Measures may be required on the part of both sending and receiving states to facilitate women's entry into growth sectors of the economy instead of traditionally female-dominated sectors.

States should watch carefully for the ways in which race and gender may interact to keep women migrant workers' wages low, and take corrective measures.

What the Treaties Say on Discrimination in the Workplace

Convention on the Elimination of All Forms of Discrimination Against Women

Article 11 requires states to ensure that women have the *right to the same employment opportunities*, including specifically the right to equal remuneration and benefits, and to equal treatment in respect of work of equal value. Article 11's guarantee of equal opportunities in employment includes a provision that requires states to ensure women have the equal right to promotion and the right to receive vocational training and recurrent training. The CEDAW Committee has noted, in its General Recommendation *on equal remuneration for work of equal value* (No. 13, 1989), that even though the principle of equal remuneration for work of equal value has been accepted in the legislation of many countries, more remains to be done to ensure the application of that principle in practice. In the same General Recommendation, the CEDAW Committee recommended that states consider the *study, development and adoption of job evaluation systems based on gender-neutral criteria* that would facilitate the comparison of the value of those jobs of a different nature, in which women presently predominate, with those jobs in which men presently predominate, and they should include the results achieved in their reports to the Committee. Finally, the Committee recommended that states should support, as far as practicable, the *creation of implementation machinery* and encourage collective agreements, where they apply, to ensure the application of the principle of equal remuneration for work of equal value.

Article 5 requires states to take all appropriate measures to *modify the social and cultural patterns of conduct of men and women*, with a view

to achieving the elimination of prejudices, and customary and all other practices which are *based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles for men and women*. Article 10 also requires states to ensure women have the right to *the same opportunities for access to programs of continuing education*, including adult and functional literacy programs, particularly those aimed at reducing any gap in education existing between men and women.

International Covenant on Economic, Social and Cultural Rights

Article 2 calls on states to *ensure that the rights included in the Convention are exercised without discrimination of any kind* as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 3 requires states to ensure *the equal right of men and women to the enjoyment of all economic, social and cultural rights* in the Convention.

Article 7(a) recognizes the right to the enjoyment of *just and favourable conditions of work*, including remuneration which provides all workers, at a minimum, with: *fair wages and equal remuneration for work of equal value* without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; and a *decent living for themselves and their families*. Article 7(c) sets out the right of *equal opportunity for everyone to be promoted in employment to an appropriate higher level*, subject to no considerations other than those of seniority and competence.

International Convention on the Elimination of All Forms of Racial Discrimination

Article 5(e)(i) guarantees the rights to *non-discrimination on the basis of race, colour, or national or ethnic origin in work*, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration.

International Convention on the Protection of the Rights of All Migrant Workers and their Families

Article 25 guarantees migrant workers *treatment not less favourable than that which applies to nationals of the state of employment in respect of remuneration*. This standard is applicable to all contracts – including those concluded within the private sector. Article 25 also makes clear that *employers cannot be relieved of their obligation to pay migrant workers fairly* on the basis of a migrant's irregular status. Article 1 provides that *the protections in the Convention are applicable without distinction of any kind as to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic, or social origin, nationality, age, economic position, property, marital status, birth or other status*.

Selected Concluding Comments and Observations from UN Treaty-Monitoring Committees

Committee on the Elimination of Discrimination Against Women

Greece 1999: “Noting that there are positive trends in the employment situation of women, the Committee remains concerned about the situation of women in the formal and informal labour market, including the high percentage of unemployed women and the continuing pay gap between women and men. It is also concerned that many of the new jobs occupied by women might provide only low pay and limited career prospects. The Committee is further concerned that the employment prospects for women in rural areas, for women who are migrating from the agricultural sector into other employment areas and for immigrant women remain precarious, especially for those with low skills or who are functionally illiterate.” (203)

Slovakia 1998: “The segregation of women and men into different employment sectors is not a valid justification for unequal pay between women and men. The Committee is concerned that job descriptions that link ‘physically

demanding’ elements to male strength and to higher pay for men may be based on a one-sided understanding of those elements. These descriptions may underestimate other physically demanding elements found in women’s work, thereby discriminating against women in terms of pay.” (87)

Turkey 1997: “The high level of unemployment of migrant urban female workers, the lack of measures to integrate them into the labour markets and the persistent occupational segregation in lower paid jobs impeded their upward mobility and further reinforced discrimination against women in the labour market... The Committee urged the Government of Turkey to take adequate measures to provide skills training, retraining and credit facilities or other support services that would provide employment opportunities or self-employment for urban migrant workers, to correct occupational segregation through concrete measures and to provide the necessary protection to working women to ensure their safety and healthy conditions of work.” (188, 202)

Committee on the Elimination of Racial Discrimination

Republic of Korea 1999: “While acknowledging the fact that the state party has recently taken measures to improve the status of foreign ‘industrial trainees’ and other foreigners working in the country, the Committee suggests that the Government of the Republic of Korea take further measures against discrimination in the labour conditions of foreign workers. The Committee also recommends that measures be taken to improve the situation of all migrant workers, particularly those with irregular status.” (16)

Lebanon 1998: “In relation to Article 5 (e) (i) of the Convention, the situation of migrant workers is of concern, especially in relation to access to work and equitable conditions of employment.” (15)

Committee on Economic, Social and Cultural Rights

Colombia 2001: “The Committee is also concerned that there is still a large disparity between the wages of men and women, particularly in the commercial sector, and that according to the Presidential Advisory Office on Women’s Equity, women’s wages in general are 25 percent lower than men’s... [The Committee] urges the state party to adopt a policy of equal pay for work of equal value as provided for in the Covenant and to reduce the wage gap between men and women.” (16, 37)

Libya 1997: “The Committee expresses its concern at reports that foreign workers who have come to work in the State party in connection with the Great-Man-Made River project are living and working in appalling conditions. According to a report of the Committee of Experts on the Application of Conventions and Recommendations of the International Labour Organisation (ILO), foreign

employees in the State party who are accused of infringing disciplinary rules may be punishable by penalties of imprisonment which can include compulsory labour. According to the same ILO report, the State party also maintains different rates of payment of pensions for foreign and Libyan workers which, in the view of the Committee, is discriminatory... It is... recommended that the status and working conditions of foreign workers be improved and without undue delay, and that these persons be treated with dignity and fully benefit from the rights enumerated in the Covenant.” (16, 22)

Republic of Korea 1995: “Particular concern is expressed as to the wage differential between men and women and to other discriminatory practices in the workplace including an apparently high rate of sexual discrimination in recruitment. The Committee expresses its concern with regard to the non-enforcement by the Government of its own policies and legislation in these matters.” (11)

4. Dangerous and Degrading Working Conditions – Safety and Health

If injured on the job, migrant workers are frequently denied medical treatment and risk losing their positions.

Many refer to the kind of work migrant labourers typically perform as the “three-D jobs”: *dirty, degrading and dangerous*. Included in this category are those jobs at the lowest ends of the pay scale that are often deemed undesirable by the local labour force. Such work is usually offered through temporary or short-term agreements, and may be in the informal or illegal sectors. The ILO has found that there is a significant link between working in the informal economy, being female, and being poor. Indeed, women in the informal sector are often found poorly-paid positions within the commercial sex sector, low-wage garment and “sweatshop” enterprise, or domestic work. The worst positions in these sectors are often filled by irregular migrants, who are especially vulnerable to exploitation and to safety and health hazards, since they are frequently marginalised and have little recourse to protection by the authorities. Furthermore, work in these sectors is often unregulated, leaving even those brave enough to seek official assistance without clear legal rights.

Women who work in domestic service are often exposed to health and safety threats, including exposure to strong cleaning agents without adequate information about risks and precautions (and in some cases with employer-imposed restrictions on taking precautions like wearing gloves), and dangers within the home, including sexual harassment and violence (addressed in a separate section, below). If injured on the job, migrant workers are frequently denied medical treatment and risk losing their positions. Benefits extended to non-migrant workers are often not available to women migrants – especially those working in domestic service – either because domestic workers are not considered

“employees” under national labour law, or because laws explicitly exempt non-nationals from protections and benefits. Indeed, women migrant workers engaged in domestic service are often

exempted from health insurance, pension, social security, and unemployment programmes, where these exist.

Responding with Human Rights Treaties

The *Convention on the Elimination of All Forms of Discrimination Against Women* guarantees women the equal right to protection of health and safety in working conditions, including the safeguarding of the function of reproduction. Similarly, the *International Convention on the Elimination of All Forms of Racial Discrimination* ensures equality in working conditions and public health and medical care. Through its provisions on the right to the highest attainable standard of health, the *International Covenant on Economic, Social and Cultural Rights* has been interpreted to require that hazards in the workplace be minimized and that health facilities must be made available for all – including women and immigrants, regardless of status – without discrimination.

The *International Convention on the Protection of the Rights of All Migrant Workers and their Families* requires states to extend the same health and safety standards to migrant workers as they apply to their nationals. The Convention also explicitly guarantees to all migrant workers and members of their families the right to receive any medical care that is urgently required on a basis of equality with nationals, and bars refusal of such care on the basis of irregular status. In sum, then, the provisions of the major human rights treaties protect the rights of women migrant workers to adequate, non-discriminatory health and safety protections. To meet the burden of non-discrimination and equality, these protections must be equal to those available to men and to nationals, and should also be tailored to respond to any unique or especially burdensome health and safety vulnerabilities women migrant workers may encounter on the job.

States may need to take a number of steps to ensure that women migrant workers are brought within the protective reach of adequate health and safety protections. Based on the treaties and the guidance provided by the treaty monitoring committees, it is now clear that states may be required to adopt a range of measures to fulfill their obligations, including the following examples:

States may need to assess the specific health and safety requirements and vulnerabilities of women migrant workers in the workplace, and to devise a national plan to respond to the findings.

States will usually be required to adopt regulations, conduct inspections, and devise other measures aimed at minimizing risks and hazards for workers, and to ensure that those protections are applicable to all workers – including migrants, and including those in the informal sector.

In relation to migrant women, these measures should include all the protections afforded to men and to nationals, as well as measures tailored to the workplace hazards migrant women encounter most frequently.

Health services should be made available to non-citizen workers.

Measures designed to protect women's reproductive health must be carefully crafted; overly protective measures may not be allowed to bar women's access to employment opportunities and may amount to discrimination. Protections must therefore be firmly anchored in scientific knowledge and up-to-date practices.

To fulfill their obligation to protect these rights with respect to women migrant workers, regulatory agencies and their inspection staffs should be adequately funded, trained, and tasked concerning the situation of women migrant workers.

What the Treaties Say on Workplace Safety

Convention on the Elimination of All Forms of Discrimination Against Women

Article 11 guarantees women the *equal right to protection of health and to safety in working conditions*, including the safeguarding of the function of reproduction. It requires states to provide *special protection to women during pregnancy* in types of work proved to be harmful to them. Article 11 also protects women's *right to social security and the right to paid leave*, on a basis of equality with men.

Article 12 provides that states must ensure women equal access to health care services, including those related to family planning. In its General Recommendation on Women and Health (No. 24, 1999), the CEDAW Committee called on states to give *special attention to the needs of migrant women*, who may suffer ill-effects on their health status due to vulnerabilities and discrimination.

Convention on the Elimination of All Forms of Racial Discrimination

Article 5(e)(i) guarantees the *rights to non-discrimination on the basis of race, colour, or national or ethnic origin* in work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to

equal pay for equal work, to just and favourable remuneration.

Article 5(e)(iv) guarantees *equality before the law without distinction as to race, colour, or national or ethnic origin*, with respect to the right to public health, medical care, social security and social services.

International Covenant on Economic, Social and Cultural Rights

Article 2 calls on states to *ensure that the rights included in the Convention are exercised without discrimination of any kind* as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 3 requires states to *ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights* in the Convention.

Article 12 recognizes the right of everyone to the *enjoyment of the highest attainable standard of physical and mental health*. In interpreting this provision, the Committee has underscored the requirement that health facilities must be accessible to everyone without discrimination. Article 12 also provides that states must take steps necessary to improve all aspects of environmental and industrial hygiene, and to

prevent, treat, and control occupational diseases. In its General Comment on Article 6 (No. 14, 1984), the Committee on Economic, Social and Cultural Rights specified that these steps must be aimed at *minimizing the causes of health hazards inherent in the working environment*. Article 12 further requires states to create the conditions necessary to assure to all medical service and medical attention in the event of sickness. In General Comment 14, the CESCR stressed that states are under the obligation to *respect* the right to health by, *inter alia*, *refraining from denying or limiting equal access for all persons, including illegal immigrants*, to preventive, curative and palliative health services; *abstaining from enforcing discriminatory practices as a state policy*; and *abstaining from imposing discriminatory practices relating to women's health status and needs*.

The Committee also explained that to eliminate discrimination against women, there is a need to *develop and implement a comprehensive national strategy for promoting women's right to health throughout their life span*. Such a strategy should include interventions aimed at the prevention and treatment of diseases affecting women, as well as policies to provide access to a full range of high quality and affordable health care, including sexual and reproductive services. A major goal should be reducing women's health risks, particularly lowering rates of maternal mortality and protecting women from domestic violence.

The realisation of women's right to health requires the *removal of all barriers interfering with access to health services*, education and information, including in the area of sexual and reproductive health. It is also important to undertake preventive, promotional and remedial action to shield women from the impact of harmful traditional cultural practices and norms that deny them their full reproductive rights.

International Convention on the Protection of the Rights of All Migrant Workers and their Families

Article 25 provides that migrant workers shall *enjoy treatment not less favourable than that which applies to nationals of the state of employment in respect of remuneration and other conditions of work, including safety and health provisions*. The same Article also requires states to take all appropriate measures to ensure that *migrant workers are not deprived of any rights concerning conditions of work on the basis of irregularities in their work or residence status*. Article 25 also provides that *employers may not be relieved from obligations toward their workers on the basis of irregularities*.

Article 28 guarantees migrant workers and members of their families the *right to receive any medical care that is urgently required* for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the state concerned. Such *emergency medical care may not be refused them by reason of any irregularity with regard to stay or employment*.

Article 70 requires states to take measures not less favourable than those applied to nationals to *ensure that working and living conditions of migrant workers and members of their families in a regular situation are in keeping with the standards of fitness, safety, health and principles of human dignity*.

Article 1 provides that *the protections in the Convention are applicable without distinction of any kind as to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic, or social origin, nationality, age, economic position, property, marital status, birth or other status*.

Selected Concluding Comments and Observations from UN Treaty-Monitoring Committees

Committee on the Elimination of Discrimination Against Women

Greece 1999: “The Committee urges the Government to develop a general policy to address the particular needs of immigrant and migrant women with regard to their protection, health, employment and educational needs. The Committee also urges the Government to ensure that repatriation efforts are consistent with women’s safety and protection needs. The Government should also consider entering into bilateral agreements with women migrants’ countries of origin to ensure adequate protection of women’s rights and safety. The Committee encourages the Government to assess the situation of all minority women with a view to ensuring adequate support for them.” (210)

Turkey 1997: “The Committee urged the Government of Turkey to take adequate measures to provide skills training, retraining and credit facilities or other support services that would provide employment opportunities or self-employment for urban migrant workers, to correct occupational segregation through concrete measures and to provide the necessary protection to working women to ensure their safety and healthy conditions of work.” (202)

Committee on the Elimination of Racial Discrimination

Saudi Arabia 2003: “The Committee welcomes the recent initiative taken to include non-Saudis in a health insurance system.” (6)

Kuwait 1993: “Members of the Committee requested further information on the situation of foreign workers in the post-occupation

period, and it was asked whether they enjoyed trade union rights. Members of the Committee also wished to know whether the provision of health care, education and training services applied to migrant workers and their families, and whether facilities existed for foreign students to attend schools in which they could study their mother tongue.”

Committee on Economic, Social and Cultural Rights

Senegal 2001: “The Committee is concerned that, while half of Senegalese workers are employed in the informal sector, most of them still lack access to basic social services, including social security and health insurance, and work long hours in unsafe conditions.” (20)

Republic of Korea 2001: “The Committee regrets that the specific conditions of work to which the so-called ‘irregular workers’ are subject have not been clarified during the dialogue. Information from independent sources indicate that ‘irregular’ workers are distinguished from ‘regular’ workers, although they often perform the same tasks, in that irregular workers receive lower wages, pension benefits, unemployment and health benefits and have less job security. It also notes that the proportion of irregular workers in the general labour force has grown to half, the great majority of them women.” (17)

5. Gender-Based Violence in the Workplace

Half of all foreign domestic women workers interviewed reported that they were victims of verbal or physical abuse.

Women migrant workers are vulnerable to violence during all phases of migration: at home, when being recruited for migrant work, while in transit, and once in the host country, at work. This vulnerability is heightened for domestic workers, who live in close proximity to – often inside the homes of – their employers. One woman working as a domestic worker explained her experience this way: after answering a knock on her door, she was accosted and brutally raped by her employer. The experience was “horrible,” she said, adding “I will not forget it all my life. I still hear him knocking on my door. I still have nightmares.”⁹ Two women in another study had received stab wounds and cuts from broken glass as a result of a struggle during attempted rapes by their domestic employers.

Women domestic workers are vulnerable to gender-based violence, including sexual abuse, because of their close proximity to – and often complete dependence on – their employers. Employers often foster this dependence and isolation, confiscating travel, work, or residence papers, forbidding workers to leave the premises without escort or only for specific reasons, and severely limiting contact with the external world. In such circumstances, violence goes unreported, and women rarely find assistance. For these women, violence may come at the hands of the employer, their relatives (especially teenage sons), or family guests and associates, as well as male employees in the same household. In one ILO study, half of all foreign domestic women workers interviewed reported that they were victims of verbal or physical (including sexual) abuse. Women have reported being the object of a whole range of assaults – from verbal abuse to slapping, beating, rape and other forms of torture. These assaults are sometimes used as “punishment” for work considered slow or sloppy, or

for behaviour regarded as inappropriate or insubordinate. Psychological abuse is also used against women migrant workers: threats of deportation, withholding of wages, and denigrating, abusive and racist commentary have all been reported.

Many women working in domestic service report being punished, and even fired, for having “affairs” with their male employers when the

employer’s wife found out about the sexual harassment or abuse visited upon the worker. In some cases, women who have sought assistance or protection from their female employers after being abused have found themselves turned out for “seducing” their male employer. Similarly, women who sought assistance from the police have found themselves abused by officers, or forced to pay bribes for basic help.

Responding with Human Rights Treaties

The ***Convention on the Elimination of All Forms of Discrimination Against Women*** provides clear and robust protection against gender-based violence, including sexual assault and harassment. The treaty’s definition of discrimination has been interpreted to include these abuses. Similarly, the ***International Covenant on Civil and Political Rights*** has interpreted the Covenant’s protections against sex discrimination as including a prohibition on gender-based violence. The committees monitoring compliance with both of these treaties, as well as the committee monitoring the ***International Covenant on Economic, Social and Cultural Rights***, have recognized the devastating impact of gender-based violence and harassment on women in the workplace and called on states to end these abuses. The ***International Convention on the Elimination of All Forms of Racial Discrimination*** guarantees the right to security of person and protection against bodily harm; this norm applies equally for men and women. The ***International Convention on the Protection of the Rights of All Migrant Workers and their Families*** requires states to protect migrant workers and their families from attacks on their physical security and safety.

Efforts to end gender-based violence aimed at women migrant workers will often require a strategic approach involving a broad set of actors. Based on the treaties and the guidance provided by the treaty monitoring committees, it is now clear that states may be required to adopt a variety of measures to fulfill their obligations, including the following examples:

Laws and programmes established to prevent violence against women at the hands of employers, their friends and relatives. Such programmes should include monitoring and penalties for abusive employers, as well as services for women who survive gender-based violence.

Education or “know your rights” campaigns might be required to ensure migrant women know they can obtain legal redress.

Police, the judiciary, and health providers must respond effectively to gender-based violence against women migrant workers, and may require training in this area.

Host governments may also need to conduct public awareness campaigns concerning the right of migrant women to be free from violence, and the obligations on employers to ensure their safety in the workplace.

What the Treaties Say on Gender-based Violence

Convention on the Elimination of All Forms of Discrimination Against Women

Article 2 calls on governments *to take appropriate measures to eliminate discrimination against women by any person, organisation or enterprise*. In its General Recommendation on Violence Against Women (No. 19, 1992), it makes clear that *gender-based violence fits within the definition of discrimination against women under CEDAW*, and specifies that *gender-based violence is violence that is directed against a woman because she is a woman or that affects women disproportionately*. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. General Recommendation 19 states that *sexual harassment in the workplace is a form of violence against women*. The Committee explains that such conduct can be humiliating and may constitute a health and safety problem. Sexual harassment is discriminatory when the woman has reasonable grounds to believe that her objection to the harassment would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment. The Committee also expressed *special concern for the situation of domestic workers, whose working conditions should be monitored by states parties, in part to prevent sexual abuse*.

Convention on the Elimination of All Forms of Racial Discrimination

Article 5(b) guarantees the *right to security of person and protection by the state against violence or bodily harm*, whether inflicted by government officials or any individual group or institution.

International Covenant on Civil and Political Rights

The Human Rights Committee has made clear that *sexual harassment is a form of sexual discrimination prohibited under the Convention*: Article 2 provides that states must respect and ensure to all individuals within its territory and subject to its jurisdiction the rights included in the Convention, *without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*, and Article 3 places an obligation on states *to ensure the equal right of men and women to the enjoyment of all civil and political rights* within the Convention.

International Covenant on Economic, Social and Cultural Rights

The CESCR has *interpreted the sexual equality provisions of the ICESCR to prohibit sexual harassment in the workplace*. Article 2 calls on states to ensure that the *rights included in the Convention are exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*. Article 3 requires states to ensure the *equal right of men and women to the enjoyment of all economic, social and cultural rights* in the Convention.

International Convention on the Protection of the Rights of All Migrant Workers and their Families

All migrant workers have the right to be *free from torture, or cruel, inhuman or degrading treatment*, according to Article 10. Article 16(2) guarantees

the right of migrant workers and members of their families to *effective protection by the state against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions.*

Article 1 provides that *the protections in the Convention are applicable without distinction of any kind as to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic, or social origin, nationality, age, economic position, property, marital status, birth or other status.*

Selected Concluding Comments and Observations from UN Treaty-Monitoring Committees

Committee on the Elimination of Discrimination Against Women

Greece 1999: “The Committee urges the Government to develop a general policy to address the particular needs of immigrant and migrant women with regard to their protection, health, employment and educational needs. The Committee also urges the Government to ensure that repatriation efforts are consistent with women’s safety and protection needs. The Government should also consider entering into bilateral agreements with women migrants’ countries of origin to ensure adequate protection of women’s rights and safety. The Committee encourages the Government to assess the situation of all minority women with a view to ensuring adequate support for them.” (210)

Turkey 1997: “The Committee urged the Government of Turkey to take adequate measures to provide skills training, retraining and credit facilities or other support services that would provide employment opportunities or self-employment for urban migrant workers, to correct occupational segregation through concrete measures and to provide the necessary protection to working women to ensure their safety and healthy conditions of work.” (202)

Committee on the Elimination of Racial Discrimination

Saudi Arabia 2003: “The Committee welcomes the recent initiative taken to include non-Saudis in a health insurance system.” (6)

Kuwait 1993: “Members of the Committee requested further information on the situation of foreign workers in the post-occupation period, and it was asked whether they enjoyed trade union rights. Members of the Committee also wished to know whether the provision of health care, education and training services applied to migrant workers and their families, and whether facilities existed for foreign students to attend schools in which they could study their mother tongue.”

Committee on Economic, Social and Cultural Rights

Senegal 2001: “The Committee is concerned that, while half of Senegalese workers are employed in the informal sector, most of them still lack access to basic social services, including social security and health insurance, and work long hours in unsafe conditions.” (20)

Republic of Korea 2001: “The Committee regrets that the specific conditions of work to which the so-called ‘irregular workers’ are subject have not been clarified during the dialogue. Information from independent sources indicate that ‘irregular’ workers are distinguished from ‘regular’ workers, although they often perform the same tasks, in that irregular workers receive lower wages, pension benefits, unemployment and health benefits and have less job security. It also notes that the proportion of irregular workers in the general labour force has grown to half, the great majority of them women.” (17)

Morocco 1994: “The Committee is also concerned that labour laws and regulations are largely ignored or disregarded in the informal and traditional sectors of the economy and that the absence or limited presence of labour inspectors in these sectors has impeded the effective implementation of regulations relating to just and favourable conditions of work, including health and safety of the workplace.” (14)

6. Gendered forms of Racism and Xenophobia Against Women Migrant Workers

In some countries, the very concept of *foreign domestic worker* carries with it a racialised, gendered stigma.

In addition to gender-based discrimination, women migrants – like their male counterparts – often face pervasive racial, ethnic, and religious discrimination. The types of discrimination faced by migrants cover the whole spectrum: from subtle forms of shunning and social exclusion, overt racist and xenophobic attitudes in public settings and in the media, to employment and housing discrimination and racist and xenophobic violence. The ILO reports that most migrant workers face discrimination and xenophobia aimed at foreigners in host countries. Indeed, a study conducted by the ILO found widespread (up to 37 percent in some places) xenophobic discrimination against *legal* workers in employment settings. Based on anecdotal evidence, discrimination against irregular workers is often even more intense. These forms of discrimination are gendered as well, with specific forms of racial or ethnic discrimination aimed specifically at women, including gender-based violence and harassment.

In some countries, the very concept of *foreign domestic worker* carries with it a racialised, gendered stigma, since women of certain nationalities overwhelmingly predominate in domestic services – work that is frequently perceived by the host community as servile and degrading. When translated into labour practices, ethnic, racial, and status-based discrimination usually results in low wages and poor working conditions for women from unpopular groups. Indeed, as noted earlier, in some countries, wages for women migrant workers are more closely linked to the employee’s national or ethnic origin than to their skills. Indeed, in several countries studied by the ILO, wage rates for women domestic workers of certain nationalities and/or races were significantly higher than those of others. These wage differentials were based on stereotypes about the “honesty,” “morality” and “intelligence” of different

groups as compared to the “wantonness” and “stupidity” of others.

These gendered and racialised forms of discrimination create barriers in access to services and redress when abuses occur. Police, labour officials, and health care officials may be reluctant to assist “foreigners,” and in some places certain services are routinely denied to

migrant workers, regardless of their status in the host country. In some places, migrant workers are singled out for abuse by state officials, including police or border agents. In places where services do exist for migrants, more subtle forms of discrimination, such as cultural insensitivity, lack of regard for language, or assumptions about religious differences, can complicate attempts to provide assistance.

Responding with the Human Rights Treaties

The major human rights treaties weave a protective web for women migrant workers against gendered forms of racial or xenophobic discrimination. While the ***Convention on the Elimination of All Forms of Discrimination Against Women*** does not explicitly refer to race or national origin, the Committee has made clear that states have obligations under the Convention to proactively prevent and redress acts of racism and xenophobia aimed at women. The ***International Convention on the Elimination of All Forms of Racial Discrimination*** makes clear that the state obligation to end racial and xenophobic discrimination and equality should be understood according to the substantive equality model. This means that an individual’s rights are violated not only when, for example, laws formally treat one racial group, national origin, or gender differently from other groups, but also when any law, policy, or action has the practical effect of disadvantaging them. When present in significant numbers, groups of migrant workers have the same rights as other minorities under the ***International Covenant on Civil and Political Rights***, including the right – in community with other members of their group – to enjoy their own culture, to profess and practice their own religion, and to use their own language. These rights must be respected, protected, and fulfilled for women and men equally. ***The International Covenant on the Protection of the Rights of All Migrant Workers and their Families*** guarantees the right of migrant workers to liberty and security of person, and to respect for their cultural identity.

The measures states will need to take to fulfill their obligations under the various conventions will vary according to the nature and severity of the forms of racial and xenophobic discrimination present. Based on the treaties and the guidance provided by the treaty monitoring committees, it is now clear that states may be required to adopt a variety of measures to fulfill their obligations, including the following examples:

States should take active steps to eliminate discrimination against migrant women by state or non-state actors, including collecting disaggregated data and conducting studies concerning the circumstances of such discrimination.

Allegations of abuse by state agents must be promptly investigated and, if substantiated, adequately punished.

Public awareness campaigns and attention to the intersection of racial and gender-based discrimination may be needed.

States may also need to implement programmes aimed at ensuring that women have access to legal redress for any violence or discrimination they may face.

States should educate migrant women about their rights, and about any services that may be available to them.

The state has an obligation to protect the rights of women migrants against acts of violence and discrimination carried out by individuals and groups; such acts should be effectively investigated and prosecuted where appropriate.

What the Treaties Say on Racism and Xenophobia

Convention on the Elimination of All Forms of Discrimination Against Women

In its contribution to the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, the CEDAW Committee noted that the Convention obliges states parties to work towards the realisation of the human rights of women in all fields throughout their life cycle, which are an inalienable, integral and indivisible part of universal human rights. This commitment also requires active intervention to *prevent all forms of discrimination against women, including preventing such discrimination in the context of racism, racial discrimination, xenophobia and related intolerance*. The Committee also observed that the reports submitted to the Committee by states demonstrate that women all over the world continue to suffer *multiple discrimination because of their sex and other factors of social exclusion*. This multiple discrimination is often suffered by women migrant workers, women asylum seekers and women of diverse race, ethnicity, caste and national origin.

International Convention on the Elimination of All Forms of Racial Discrimination

Article 1 defines the term “racial discrimination”

to mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the *purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life*. While Article 1(2) states that the Convention does not apply to distinctions, exclusions, restrictions or preferences between citizens and non-citizens, the Committee made clear in its General Recommendation on non-citizens (No. XI, 1993), *that this provision must not be interpreted to detract in any way from the rights and freedoms of aliens recognized and enunciated in other instruments*, especially the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

Under Article 2, states condemn racial discrimination and undertake to pursue by all appropriate means and without *delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races*. Included among the steps required of states under Article 2 is the obligation to *prohibit and bring to an end, by all appropriate means, including*

legislation as required by circumstances, racial discrimination by any persons, group or organisation. States are further required under Article 2 to encourage, where appropriate, integrationist multiracial organisations and movements and other means of *eliminating barriers between races*, and to discourage anything which tends to strengthen racial division.

Article 5 guarantees *equality before the law, including with respect to economic, social and cultural rights* such as the right to work, to just and favourable conditions, of work, to form and join trade unions, the right to housing and public health services, as well as the right to equal participation in cultural activities.

In its General Recommendation on gender-related dimensions of racial discrimination (No. XXV, 2000), the CERD Committee noted that there are *circumstances in which racial discrimination only or primarily affects women, or affects women in a different way, or to a different degree than men.* Such racial discrimination often escapes detection if there is no explicit recognition or acknowledgement of the different life experiences of women and men, in both public and private life.

International Covenant on Civil and Political Rights

Article 2 provides that states must respect and ensure to all individuals within its territory and subject to its jurisdiction the rights included in the Convention, *without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.* Article 3 places an obligation on states to *ensure the equal right of men and women to the enjoyment of all civil and political rights within the Convention.*

Article 20(2) requires states to *prohibit by law any advocacy of national, racial or religious hatred*

that constitutes incitement to discrimination, hostility or violence. In its General Comment on the Prohibition of propaganda for war and inciting national, racial or religious hatred (No. 11, 1983), the Human Rights Committee emphasized that in view of the nature of Article 20, states parties are *obliged to adopt the necessary legislative measures* prohibiting the actions referred to in Article 20.

Article 27 provides that in states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, *to enjoy their own culture, to profess and practise their own religion, or to use their own language.* In its General Comment on the Rights of Minorities (No. 23, 1994), the Human Rights Committee notes that Article 27 confers rights on persons belonging to minorities which “exist” in a state party. Given the nature and scope of the rights envisaged under that Article, it is not relevant to determine the degree of permanence that the term “exist” connotes. Those rights simply are that individuals belonging to those minorities should not be denied the right, in community with members of their group, to enjoy their own culture, to practise their religion and speak their language. Just as they need not be nationals or citizens, they need not be permanent residents. Thus, *migrant workers or even visitors in a state party constituting such minorities are entitled not to be denied the exercise of those rights.* As any other individual in the territory of the state party, they would, also for this purpose, have the general rights, for example, to freedom of association, of assembly, and of expression.

International Covenant on Economic, Social and Cultural Rights

Article 2 calls on states to *ensure that the rights included in the Convention are exercised without discrimination of any kind* as to race, colour, sex,

language, religion, political or other opinion, national or social origin, property, birth or other status. Article 3 requires states to ensure *the equal right of men and women to the enjoyment of all economic, social and cultural rights* in the Convention.

International Convention on the Protection of the Rights of All Migrant Workers and their Families

Article 1 provides *that the protections in the Convention are applicable without distinction of any kind as to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic, or social origin, nationality, age, economic*

position, property, marital status, birth or other status.

Article 16 provides that *migrant workers and members of their families have the right to liberty and security of person*, and that they are entitled to effective protection by the state against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions.

Article 31 requires states to ensure *respect for the cultural identity of migrant workers and members of their families* and to refrain from preventing them from maintaining their cultural links with their state of origin.

Selected Concluding Comments and Observations from UN Treaty-Monitoring Committees

Committee on the Elimination of Discrimination Against Women

Sweden 2001: “The Committee urges the Government to take effective measures to eliminate discrimination against immigrant, refugee and minority women and to strengthen its efforts to combat xenophobia and racism in Sweden. It also encourages the Government to be more proactive in its measures to prevent discrimination against immigrant, refugee and minority women, both within their communities and in society at large, to combat violence against them and to increase their awareness of the availability of social services and legal remedies.” (357)

Germany 2000: “The Committee calls on the Government to improve the collection of data and statistics disaggregated by sex and race/ethnicity of victims of violence motivated by xenophobia and racism, to put in place adequate protection mechanisms and to

ensure that foreign women victims of such attacks are made aware of their rights and have access to effective remedies. It also urges the Government to strengthen its efforts for the social integration of foreign women through educational and employment services, and through awareness-raising of the population. It also recommends that steps be taken to combat domestic violence and violence within the family and to increase foreign women’s awareness about the availability of legal remedies and means of social protection.” (318)

Bangladesh 1997: “On the matter of migrant women, the Committee noted from the report the lack of discussion and measures to protect women migrant workers from Bangladesh at all stages of the migration process.” (439)

Philippines 1997: “The Committee noted the major economic policies undertaken by the

Government, including economic and trade agreements at the regional and global levels, which will have a profound impact on women. In particular, the direction towards economic liberalisation and privatisation may have serious implications for the economic position of women and, in particular, on the economic position of women in the free-trade zones and in rural areas. The Committee was concerned that the trend towards feminisation of migration and its attendant problems, including violence against women migrant workers, might be exacerbated.” (283)

Committee on the Elimination of Racial Discrimination

Ecuador 2003: “The Committee is concerned at the reports on discrimination and hostility suffered by migrants, and calls on the state party to intensify its efforts in designing and implementing educational campaigns in order to combat racial discrimination within all sectors of society.” (20)

Saudi Arabia 2003: “The Committee is concerned about allegations of substantial prejudice against migrant workers, in particular those coming from Asia and Africa. The Committee invites the state party to report on the situation, in particular, of women domestic workers and draws the attention of the state party to its General Recommendation XXV on gender-related dimensions of racial discrimination.” (17)

Qatar 2002: “The Committee has taken careful note of the assurances by the state party delegation that the law guarantees all workers equal status. It wishes, however, to obtain further information on the practical implementation of this principle, particularly given the high proportion of migrant workers in Qatar. The Committee requests the state party to include in its next periodic report statistics disaggregated by migrants’ national origin, which would provide a better understanding of the economic and social standing of non-

nationals of Qatar in relation to their national and ethnic origins.” (21)

Portugal 2001: “The Committee notes with concern that, in some industrial and services sectors where illegal migrant workers are engaged, they are discriminated against. It recommends that the state party take measures to put an end to this discrimination.” (10)

Spain 1994: “Concern was expressed about de facto discrimination against members of the Gypsy community in the spheres of housing, education and employment and against migrant workers and foreign nationals in general. Also in connection with Article 5 of the Convention, information was requested on specific reported cases of racial discrimination in daily life and on the implementation of ILO Convention No. 111 [Discrimination in Employment].” (484)

Committee on Economic, Social and Cultural Rights

Poland 2002: “The Committee notes with regret that it did not receive a satisfactory answer from the state party as to whether migrant workers and members of their families have the right to appeal in courts. The Committee is concerned that the rights enshrined in the Covenant are insufficiently protected for a large number of migrant workers residing in Poland.” (15)

Republic of Korea 2001: “The Committee notes that deeply rooted traditions and cultural prejudices marginalise certain categories of persons, such as migrant workers, and many women.” (10)

Human Rights Committee

Switzerland 1996: “The Committee is concerned at the numerous allegations of ill-treatment in the course of arrests or police

custody, particularly in respect of foreign nationals or Swiss citizens of foreign origin and, in conjunction with them, reports on the authorities' failure to follow up complaints of ill-treatment by the police and the disproportionate nature, if not absence, of penalties." (13)

Italy 1994: "The Committee notes the emergence in certain parts of the population of Italy of a trend towards racism and intolerance against foreigners, particularly asylum-seekers and migrant workers, and the resurgence of certain elements militating in favour of political movements reminiscent of a past when human rights were seriously violated." (2)

Norway 1993: "The Committee notes the emergence in certain parts of the population of Norway of a trend towards intolerance against foreigners, particularly asylum-seekers and migrant workers." (4)

7. Restrictions on Migrant Women's Ability to Organize for their Rights

Undocumented women are often unable to openly organize for fear of reprisal and deportation.

In many countries, migrant women workers face barriers and restrictions on their ability to organize for their rights. In some countries, the restrictions are enshrined in the law and based on migrants' alien status: non-nationals may not be entitled to lawfully organize or join unions or other organisations. In other places, domestic workers may be specifically barred from union membership because they are not legally considered full employees under applicable labour law. Even in places where these restrictions are not in force, undocumented women are often unable to openly organize for fear of reprisal and deportation. Some barriers are even less formal – women domestic workers, for example, are often continually present at their place of work, and may face seemingly insurmountable barriers to organizing efforts in the form of their inability to meet with other workers or problems with the language of the host country. Employers of domestic workers often place limits on the workers' access to the larger community, and may monitor communications and activities.

Even when they are able to participate in unions or other organisations, women's voices may be lost within larger, often male-dominated unions. While men and women share labour concerns, women also often have distinct concerns as gendered workers. This is especially true with regard to women who are engaged in domestic service. Similarly, women of various nationalities, religions, or ethnicities may not feel they are adequately represented by unions dominated by different groups. This is especially true in places where racism and xenophobia against some groups is worse than it is against others. In response to these problems, some unions have begun outreach efforts specifically aimed at assisting the whole range of migrant women engaged in domestic work. The goals of such efforts are to regularize domestic labourers' status as workers and to obtaining better working conditions. Women's

organisations have also set up programs to assist women migrant workers in some countries. They frequently offer counselling, shelter for abused workers, and assistance with civil and criminal proceedings against abusive employers. Finally, women migrants have succeeded in setting up

their own self-help organisations in some countries. These NGOs provide needed support and resources for women asserting their rights. These efforts are nascent, however – and in many places, nonexistent.

Responding with Human Rights Treaties

The main human rights treaties protect the ability of women migrant workers to organize for their rights through provisions on the rights to freedom of association, equal participation in public life, freedom to form and join trade unions and other organisations, minority rights, and freedom from discrimination on the basis of sex, race, colour, national or ethnic origin, ethnicity or religion. The ***Convention on the Elimination of All Forms of Discrimination Against Women*** requires states to take measures to ensure women have the equal right to participate in NGOs and associations in the public sphere. The ***International Covenant on Economic, Social and Cultural Rights*** guarantees that everyone has the right to form and join trade unions, and the monitoring Committee has underscored the importance of not restricting this right during increasing globalisation.

The Human Rights Committee has called on states to recognize that migrant workers present in their territory have minority rights under the ***International Covenant on Civil and Political Rights*** when they form such a group, including the right to enjoy their own culture, practice their own religion, and use their own language. The ***International Convention on the Protection of the Rights of All Migrant Workers and their Families*** recognizes the right of all migrant workers – no matter what their status – to participate in, join, and seek support from unions, and the right of regular migrant workers to form their own trade unions. The steps states should take to ensure women have the ability to organise for their rights will depend a great deal on the severity of the existing restrictions, and on the efforts that have already been made. Based on the treaties and the guidance provided by the treaty monitoring committees, it is now clear that states may be required to adopt a variety of measures to fulfill their obligations, including the following examples:

States should review their laws and regulations to ensure that migrant workers have the right to participate in and join trade unions and related organisations without restrictions based on non-citizen status, race, ethnic or national origin, or gender.

The participation of women migrant workers should not be restricted, and women and migrant workers should have the right to hold official and leadership positions within unions.

States should take measures to protect these rights by ensuring that unions do not discriminate against women or migrants.

States should ensure that migrant worker communities that constitute minority groups are given space to enjoy their rights to enjoy their culture, practice their religion, and speak their language as a community.

What the Treaties Say on Restrictions on the Right to Organize

Convention on the Elimination of All Forms of Discrimination Against Women

Article 7 requires states to take all appropriate measures to *eliminate discrimination against women in the political and public life of the country*. Article 7 also guarantees women the *equal right to participate in non-governmental organisations and associations* concerned with the public and political life of the country.

International Covenant on Economic, Social and Cultural Rights

Article 8 guarantees the *right of everyone to form trade unions and join the trade union of his or her choice*, subject only to the rules of the organisation concerned, for the promotion and protection of his or her economic and social interests. This right may not be restricted except as prescribed by law and as necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others. In a comment on globalisation, the CESCR expressed *concern that the right to form and join trade unions may be threatened by restrictions upon freedom of association, restrictions claimed to be “necessary” in a global economy*, or by the effective exclusion of possibilities for collective bargaining, or by the closing off of the right to strike for various occupational and other groups.

Article 2 calls on states to ensure that the *rights included in the Convention are exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*. Article 3 requires states to ensure the *equal right of men and women to the enjoyment*

of all economic, social and cultural rights in the Convention.

International Covenant on Civil and Political Rights

Article 22 guarantees everyone the *right to freedom of association with others, including the right to form and join trade unions for the protection of their interests*. This right can only be restricted as prescribed by law and necessary in a democracy in the interests of national security or public safety, public order, or the protection of the rights and freedoms of others.

Article 27 states that in states where ethnic, religious or linguistic minorities exist, persons belonging to such *minorities shall not be denied their right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language*. In its General Comment on the Rights of Minorities (No. 23, 1994), the Committee noted that Article 27 confers rights on persons belonging to minorities which “exist” in a state party. Given the nature and scope of the rights envisaged under that Article, it is not relevant to determine the degree of permanence that the term “exist” connotes. Those rights simply are that individuals belonging to those minorities should not be denied the right, in community with members of their group, to enjoy their own culture, to practise their religion and speak their language. Just as they need not be nationals or citizens, they need not be permanent residents. Thus, *migrant workers or even visitors in a state party constituting such minorities are entitled not to be denied the exercise of those rights*. As any other individual in the territory of the state party, they would, also for this

purpose, have the general rights, for example, to freedom of association, of assembly, and of expression.

Article 2 provides that states must respect and ensure to all individuals within its territory and subject to its jurisdiction the rights included in the Convention, *without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*. Article 3 places an obligation on states to ensure the *equal right of men and women to the enjoyment of all civil and political rights within the Convention*.

Convention on the Elimination of All Forms of Racial Discrimination

Article 5(d) guarantees the *right of everyone, without distinction as to race, colour, or national or ethnic origin*, to equality before the law in enjoyment of the right to *freedom of peaceful assembly and association*. Article 5(e) guarantees *the right of everyone, without distinction as to race, colour, or national or ethnic origin*, to equality before the law in enjoyment of the *right to form and join trade unions*.

International Convention on the Protection of the Rights of All Migrant Workers and their Families

Article 26(1)(a) protects the *right of migrant workers and members of their families to take part in meetings and activities of trade unions* and of any other associations established in accordance with law, with a view to protecting their economic, social, cultural and other interests, subject only to the rules of the organisation concerned. Article 26(1)(b) recognizes the right of migrant workers and members of their families to *join freely any trade union and any such association*, subject only to the rules of the organisation concerned. Article 26(1)(c) further recognizes the right of migrant

workers and members of their families *to seek the aid and assistance of any trade union* and of any such associations. Article 26(1)(2) specifies *that no restrictions may be placed on the exercise of these rights except in a very narrow set of circumstances*. Article 40 provides that *migrant workers who are documented and members of their families have the right to form associations and trade unions* in the state of employment for the promotion and protection of their economic, social, cultural and other interests. This right may not be restricted, except in a very narrow set of circumstances.

Article 1 provides that *the protections in the Convention are applicable without distinction of any kind as to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic, or social origin, nationality, age, economic position, property, marital status, birth or other status*.

Selected Concluding Comments and Observations from UN Treaty-Monitoring Committees

Committee on the Elimination of Discrimination Against Women

New Zealand 1994: “The Committee also noted its concern that changes in legislation were likely to weaken the trade union movement in New Zealand. Without strong union support, women in paid employment would lack the means to negotiate better employment conditions with their employers.” (662)

Committee on the Elimination of Racial Discrimination

Croatia 1999: “The Committee recommends that the state party take concrete measures in order to guarantee freedom of association without distinction as to ethnic origin and that mass media, in all their forms, including electronic form, are open to all ethnic groups without distinction.” (20)

Venezuela 1997: The Committee “further recommends that particular attention be given to the effective implementation of Article 5 (e) and that relevant information be provided in the next periodic report on the measures taken in this regard, particularly as far as the indigenous population and migrant workers are concerned.” (15)

Kuwait 1993: “Members of the Committee requested further information on the situation of foreign workers in the post-occupation period, and it was asked whether they enjoyed trade union rights.”

Human Rights Committee

Senegal 1997: “The Committee is concerned over the lack of full enjoyment of freedom of association, in particular the fact that foreign workers are barred from holding official positions in trade unions, and that trade unions may be dissolved by the executive. Therefore: The Committee recommends that the state party take all necessary measures to permit foreign workers to hold official positions in trade unions, and provide guarantees and legal redress to trade unions, in accordance with Article 22 of the Covenant, against dissolution by administrative measures.” (16)

Estonia 1995: “The Committee expresses concern at limitations to the exercise of freedom of association for long-term permanent residents in Estonia, particularly in the political sphere.” (22)

Committee on Economic, Social and Cultural Rights

Senegal 2001: “[I]t is a matter of concern that foreign workers are still not permitted to hold trade union offices, in spite of the Committee’s recommendation to that effect in 1994.” (22)

Jordan 2000: “The Committee is concerned that non-Jordanian workers are exempted from minimum wage provisions, are denied participation in trade union activities and are excluded from the social security system. The Committee is concerned that the 1996 Labour Code does not provide any protection for persons working in family-owned and agricultural enterprises, and domestic labour. It is precisely with respect to work in these

areas that protection is most needed because it often involves hazardous working conditions, and largely female and child workers.” (19-20)

El Salvador 1996: “The Committee considers that the legal restrictions on trade-union freedom and the right to strike are far too extensive. In the view of the Committee, the prohibition on aliens occupying positions of responsibility within a trade union is contrary to the Covenant. The Committee is concerned at the numerous reports it has received of violations with virtually total impunity in enterprises located in duty-free zones of the rights contained in Articles 7 and 8 of the Covenant.” (19)

End Notes

1 The factual descriptions in this briefing paper are based on a variety of sources, including the following: The periodic and mission reports of the UN Special Rapporteur on Migrant Workers, Ms. Gabriela Rodriguez Pizarro; the reports of the UN Special Rapporteur on Violence Against Women, Ms. Radhika Coomaraswamy; the ILO's Working Paper series on Women and Migration (GENPROM); the ILO's series of International Migration Papers; the ILO's series of Working Papers on the Informal Economy (Employment Sector), International Migration, Racism, Discrimination and Xenophobia: A Discussion Paper Prepared by the ILO, IOM, and OHCHR, 2001; Commission on Human Security, Human Security Now (2003); Patrick A. Taran & Eduardo Geronimi, Globalisation, Labour and Migration: Protection is Paramount (ILO, 2002), as well as the reports of the various treaty bodies.

2 Taran & Geronimi, at 5.

3 Because the briefing paper focuses on adult women, the Convention on the Rights of the Child and the rights of girls are not examined here.

4 The exception is the Migrant Workers Convention, which as of May 2003 had 21 ratifications. The other treaties are very broadly in force: as of 2 May 2003, the ICESCR had 146 states parties; the ICCPR, 149; CERD, 166; and CEDAW, 172.

5 This paper includes standards applicable to both regular and irregular migrants, but it does not address trafficking. This is the result of an assessment of the existing need for analysis: a wide variety of excellent human rights-based analyses of trafficking already exist. Rather than duplicate these efforts, we concentrate here on issues of specific importance to women migrant workers.

6 The accompanying legal analysis includes an examination of international labour standards, which are not included in this condensed document.

7 ILO–GENPROM Working Paper No. 10: Rima Sabban, Migrant Women in the United Arab Emirates: The Case of Female Domestic Workers, at 20.

8 Id. at 11.

9 Id. at 30.

About UNIFEM

UNIFEM is the women's fund at the United Nations. It provides financial and technical assistance to innovative programmes and strategies that promote women's human rights, political participation and economic security. Within the UN system, UNIFEM promotes gender equality and links women's issues and concerns to national, regional and global agendas by fostering collaboration and providing technical expertise on gender mainstreaming and women's empowerment strategies.



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