

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

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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.”