

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)