

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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