

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

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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)