

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

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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)