

#### 4. Dangerous and Degrading Working Conditions – Safety and Health

If injured on the job, migrant workers are frequently denied medical treatment and risk losing their positions.

Many refer to the kind of work migrant labourers typically perform as the “three-D jobs”: *dirty, degrading* and *dangerous*. Included in this category are those jobs at the lowest ends of the pay scale that are often deemed undesirable by the local labour force. Such work is usually offered through temporary or short-term agreements, and may be in the informal or illegal sectors. The ILO has found that there is a significant link between working in the informal economy, being female, and being poor. Indeed, women in the informal sector are often found poorly-paid positions within the commercial sex sector, low-wage garment and “sweatshop” enterprise, or domestic work. The worst positions in these sectors are often filled by irregular migrants, who are especially vulnerable to exploitation and to safety and health hazards, since they are frequently marginalised and have little recourse to protection by the authorities. Furthermore, work in these sectors is often unregulated, leaving even those brave enough to seek official assistance without clear legal rights.

Women who work in domestic service are often exposed to health and safety threats, including exposure to strong cleaning agents without adequate information about risks and precautions (and in some cases with employer-imposed restrictions on taking precautions like wearing gloves), and dangers within the home, including sexual harassment and violence (addressed in a separate section, below). If injured on the job, migrant workers are frequently denied medical treatment and risk losing their positions. Benefits extended to non-migrant workers are often not available to women migrants – especially those working in domestic service – either because domestic workers are not considered

“employees” under national labour law, or because laws explicitly exempt non-nationals from protections and benefits. Indeed, women migrant workers engaged in domestic service are often

exempted from health insurance, pension, social security, and unemployment programmes, where these exist.

## Responding with Human Rights Treaties

The *Convention on the Elimination of All Forms of Discrimination Against Women* guarantees women the equal right to protection of health and safety in working conditions, including the safeguarding of the function of reproduction. Similarly, the *International Convention on the Elimination of All Forms of Racial Discrimination* ensures equality in working conditions and public health and medical care. Through its provisions on the right to the highest attainable standard of health, the *International Covenant on Economic, Social and Cultural Rights* has been interpreted to require that hazards in the workplace be minimized and that health facilities must be made available for all – including women and immigrants, regardless of status – without discrimination.

The *International Convention on the Protection of the Rights of All Migrant Workers and their Families* requires states to extend the same health and safety standards to migrant workers as they apply to their nationals. The Convention also explicitly guarantees to all migrant workers and members of their families the right to receive any medical care that is urgently required on a basis of equality with nationals, and bars refusal of such care on the basis of irregular status. In sum, then, the provisions of the major human rights treaties protect the rights of women migrant workers to adequate, non-discriminatory health and safety protections. To meet the burden of non-discrimination and equality, these protections must be equal to those available to men and to nationals, and should also be tailored to respond to any unique or especially burdensome health and safety vulnerabilities women migrant workers may encounter on the job.

States may need to take a number of steps to ensure that women migrant workers are brought within the protective reach of adequate health and safety protections. 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 may need to assess the specific health and safety requirements and vulnerabilities of women migrant workers in the workplace, and to devise a national plan to respond to the findings.

States will usually be required to adopt regulations, conduct inspections, and devise other measures aimed at minimizing risks and hazards for workers, and to ensure that those protections are applicable to all workers – including migrants, and including those in the informal sector.

In relation to migrant women, these measures should include all the protections afforded to men and to nationals, as well as measures tailored to the workplace hazards migrant women encounter most frequently.

Health services should be made available to non-citizen workers.

Measures designed to protect women's reproductive health must be carefully crafted; overly protective measures may not be allowed to bar women's access to employment opportunities and may amount to discrimination. Protections must therefore be firmly anchored in scientific knowledge and up-to-date practices.

To fulfill their obligation to protect these rights with respect to women migrant workers, regulatory agencies and their inspection staffs should be adequately funded, trained, and tasked concerning the situation of women migrant workers.

## What the Treaties Say on Workplace Safety

### Convention on the Elimination of All Forms of Discrimination Against Women

Article 11 guarantees women the *equal right to protection of health and to safety in working conditions*, including the safeguarding of the function of reproduction. It requires states to provide *special protection to women during pregnancy* in types of work proved to be harmful to them. Article 11 also protects women's *right to social security and the right to paid leave*, on a basis of equality with men.

Article 12 provides that states must ensure women equal access to health care services, including those related to family planning. In its General Recommendation on Women and Health (No. 24, 1999), the CEDAW Committee called on states to give *special attention to the needs of migrant women*, who may suffer ill-effects on their health status due to vulnerabilities and discrimination.

### 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.

Article 5(e)(iv) guarantees *equality before the law without distinction as to race, colour, or national or ethnic origin*, with respect to the right to public health, medical care, social security and social services.

### 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 12 recognizes the right of everyone to the *enjoyment of the highest attainable standard of physical and mental health*. In interpreting this provision, the Committee has underscored the requirement that health facilities must be accessible to everyone without discrimination. Article 12 also provides that states must take steps necessary to improve all aspects of environmental and industrial hygiene, and to

prevent, treat, and control occupational diseases. In its General Comment on Article 6 (No. 14, 1984), the Committee on Economic, Social and Cultural Rights specified that these steps must be aimed at *minimizing the causes of health hazards inherent in the working environment*. Article 12 further requires states to create the conditions necessary to assure to all medical service and medical attention in the event of sickness. In General Comment 14, the CESCR stressed that states are under the obligation to *respect* the right to health by, *inter alia*, *refraining from denying or limiting equal access for all persons, including illegal immigrants*, to preventive, curative and palliative health services; *abstaining from enforcing discriminatory practices as a state policy*; and *abstaining from imposing discriminatory practices relating to women's health status and needs*.

The Committee also explained that to eliminate discrimination against women, there is a need to *develop and implement a comprehensive national strategy for promoting women's right to health throughout their life span*. Such a strategy should include interventions aimed at the prevention and treatment of diseases affecting women, as well as policies to provide access to a full range of high quality and affordable health care, including sexual and reproductive services. A major goal should be reducing women's health risks, particularly lowering rates of maternal mortality and protecting women from domestic violence.

The realisation of women's right to health requires the *removal of all barriers interfering with access to health services*, education and information, including in the area of sexual and reproductive health. It is also important to undertake preventive, promotional and remedial action to shield women from the impact of harmful traditional cultural practices and norms that deny them their full reproductive rights.

### **International Convention on the Protection of the Rights of All Migrant Workers and their Families**

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 safety and health provisions*. The same Article also requires states to take all appropriate measures to ensure that *migrant workers are not deprived of any rights concerning conditions of work on the basis of irregularities in their work or residence status*. Article 25 also provides that *employers may not be relieved from obligations toward their workers on the basis of irregularities*.

Article 28 guarantees migrant workers and members of their families the *right to receive any medical care that is urgently required* for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the state concerned. Such *emergency medical care may not be refused them by reason of any irregularity with regard to stay or employment*.

Article 70 requires states to take measures not less favourable than those applied to nationals to *ensure that working and living conditions of migrant workers and members of their families in a regular situation are in keeping with the standards of fitness, safety, health and principles of human dignity*.

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:** “The Committee urges the Government to develop a general policy to address the particular needs of immigrant and migrant women with regard to their protection, health, employment and educational needs. The Committee also urges the Government to ensure that repatriation efforts are consistent with women’s safety and protection needs. The Government should also consider entering into bilateral agreements with women migrants’ countries of origin to ensure adequate protection of women’s rights and safety. The Committee encourages the Government to assess the situation of all minority women with a view to ensuring adequate support for them.” (210)

**Turkey 1997:** “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.” (202)

### Committee on the Elimination of Racial Discrimination

**Saudi Arabia 2003:** “The Committee welcomes the recent initiative taken to include non-Saudis in a health insurance system.” (6)

**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. Members of the Committee also wished to know whether the provision of health care, education and training services applied to migrant workers and their families, and whether facilities existed for foreign students to attend schools in which they could study their mother tongue.”

### 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.” (20)

**Republic of Korea 2001:** “The Committee regrets that the specific conditions of work to which the so-called ‘irregular workers’ are subject have not been clarified during the dialogue. Information from independent sources indicate that ‘irregular’ workers are distinguished from ‘regular’ workers, although they often perform the same tasks, in that irregular workers receive lower wages, pension benefits, unemployment and health benefits and have less job security. It also notes that the proportion of irregular workers in the general labour force has grown to half, the great majority of them women.” (17)