

5. Gender-Based Violence in the Workplace

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Women migrant workers are vulnerable to violence during all phases of migration: at home, when being recruited for migrant work, while in transit, and once in the host country, at work. This vulnerability is heightened for domestic workers, who live in close proximity to – often inside the homes of – their employers. One woman working as a domestic worker explained her experience this way: after answering a knock on her door, she was accosted and brutally raped by her employer. The experience was “horrible,” she said, adding “I will not forget it all my life. I still hear him knocking on my door. I still have nightmares.”⁹ Two women in another study had received stab wounds and cuts from broken glass as a result of a struggle during attempted rapes by their domestic employers.

Women domestic workers are vulnerable to gender-based violence, including sexual abuse, because of their close proximity to – and often complete dependence on – their employers. Employers often foster this dependence and isolation, confiscating travel, work, or residence papers, forbidding workers to leave the premises without escort or only for specific reasons, and severely limiting contact with the external world. In such circumstances, violence goes unreported, and women rarely find assistance. For these women, violence may come at the hands of the employer, their relatives (especially teenage sons), or family guests and associates, as well as male employees in the same household. In one ILO study, half of all foreign domestic women workers interviewed reported that they were victims of verbal or physical (including sexual) abuse. Women have reported being the object of a whole range of assaults – from verbal abuse to slapping, beating, rape and other forms of torture. These assaults are sometimes used as “punishment” for work considered slow or sloppy, or

for behaviour regarded as inappropriate or insubordinate. Psychological abuse is also used against women migrant workers: threats of deportation, withholding of wages, and denigrating, abusive and racist commentary have all been reported.

Many women working in domestic service report being punished, and even fired, for having “affairs” with their male employers when the

employer’s wife found out about the sexual harassment or abuse visited upon the worker. In some cases, women who have sought assistance or protection from their female employers after being abused have found themselves turned out for “seducing” their male employer. Similarly, women who sought assistance from the police have found themselves abused by officers, or forced to pay bribes for basic help.

Responding with Human Rights Treaties

The ***Convention on the Elimination of All Forms of Discrimination Against Women*** provides clear and robust protection against gender-based violence, including sexual assault and harassment. The treaty’s definition of discrimination has been interpreted to include these abuses. Similarly, the ***International Covenant on Civil and Political Rights*** has interpreted the Covenant’s protections against sex discrimination as including a prohibition on gender-based violence. The committees monitoring compliance with both of these treaties, as well as the committee monitoring the ***International Covenant on Economic, Social and Cultural Rights***, have recognized the devastating impact of gender-based violence and harassment on women in the workplace and called on states to end these abuses. The ***International Convention on the Elimination of All Forms of Racial Discrimination*** guarantees the right to security of person and protection against bodily harm; this norm applies equally for men and women. The ***International Convention on the Protection of the Rights of All Migrant Workers and their Families*** requires states to protect migrant workers and their families from attacks on their physical security and safety.

Efforts to end gender-based violence aimed at women migrant workers will often require a strategic approach involving a broad set of actors. 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:

Laws and programmes established to prevent violence against women at the hands of employers, their friends and relatives. Such programmes should include monitoring and penalties for abusive employers, as well as services for women who survive gender-based violence.

Education or “know your rights” campaigns might be required to ensure migrant women know they can obtain legal redress.

Police, the judiciary, and health providers must respond effectively to gender-based violence against women migrant workers, and may require training in this area.

Host governments may also need to conduct public awareness campaigns concerning the right of migrant women to be free from violence, and the obligations on employers to ensure their safety in the workplace.

What the Treaties Say on Gender-based Violence

Convention on the Elimination of All Forms of Discrimination Against Women

Article 2 calls on governments *to take appropriate measures to eliminate discrimination against women by any person, organisation or enterprise*. In its General Recommendation on Violence Against Women (No. 19, 1992), it makes clear that *gender-based violence fits within the definition of discrimination against women under CEDAW*, and specifies that *gender-based violence is violence that is directed against a woman because she is a woman or that affects women disproportionately*. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. General Recommendation 19 states that *sexual harassment in the workplace is a form of violence against women*. The Committee explains that such conduct can be humiliating and may constitute a health and safety problem. Sexual harassment is discriminatory when the woman has reasonable grounds to believe that her objection to the harassment would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment. The Committee also expressed *special concern for the situation of domestic workers, whose working conditions should be monitored by states parties, in part to prevent sexual abuse*.

Convention on the Elimination of All Forms of Racial Discrimination

Article 5(b) guarantees the *right to security of person and protection by the state against violence or bodily harm*, whether inflicted by government officials or any individual group or institution.

International Covenant on Civil and Political Rights

The Human Rights Committee has made clear that *sexual harassment is a form of sexual discrimination prohibited under the Convention*: 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*, and 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 Covenant on Economic, Social and Cultural Rights

The CESCR has *interpreted the sexual equality provisions of the ICESCR to prohibit sexual harassment in the workplace*. 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

All migrant workers have the right to be *free from torture, or cruel, inhuman or degrading treatment*, according to Article 10. Article 16(2) guarantees

the right of migrant workers and members of their families 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 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)

Morocco 1994: “The Committee is also concerned that labour laws and regulations are largely ignored or disregarded in the informal and traditional sectors of the economy and that the absence or limited presence of labour inspectors in these sectors has impeded the effective implementation of regulations relating to just and favourable conditions of work, including health and safety of the workplace.” (14)