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SENDING COUNTRIES: SOUTH ASIA

Federal Democratic Republic of Nepal



A. COUNTRY CONTEXT

Nepal is a landlocked country in South Asia bordered to the north by the People’s Republic of China and to the south, east and west by India. The population estimated at 29,890,686¹ is comprised of many different ethnic groups. The official language is Nepali, however a wide variety of other languages are spoken throughout the country. The majority of the population are Hindu (80.6 percent), while 10.7 percent are Buddhist, 4.2 percent Muslim and 3.6 percent Kirant.² The country endured 10 years of civil war between 1996 and 2006, which was followed by a peace accord and general election in 2008. The leaders of the main political parties have committed to finalizing the peace process and drafting a new Constitution, however political deadlock has stalled progress.³

The decades-long conflict severely inhibited the development of infrastructure and the economy. Today Nepal is one of the poorest countries in the world, with about one-third of its population living below the poverty line. A shortage of economic opportunities has resulted in approximately three-quarters of Nepalis depending on agriculture for their livelihood.⁴ Nepal is a low-income country⁵ and ranks “low” on the UNDP’s latest human development index.⁶ Gross national income was placed at 540 US dollars per capita in 2011.⁷

1 US Central Intelligence Agency, *The World Factbook 2012 - Nepal*, (2012). Available from: <https://www.cia.gov/library/publications/the-world-factbook/geos/np.html>

2 Ibid.

3 International Crisis Group, *Nepal’s Constitution: the Political Impasse*, Press release (Brussels, 27 August 2012). Available from: www.crisisgroup.org/en/publication-type/media-releases/2012/asia/nepal-nepals-constitution-the-political-impasse.aspx

4 US Central Intelligence Agency, *The World Factbook 2012*

5 Available from: <http://data.worldbank.org/country/nepal>

6 Available from: <http://hdrstats.undp.org/en/countries/profiles/NPL.html>

7 Available from: <http://data.worldbank.org/country/nepal>

Human Development Index	Low human development
Stock of migrants from Nepal 2011	7.2 million ⁸
Annual growth rate of immigrants (1960-2005)	2%
Share of the population migrating for employment (2011)	24%
Proportion of females among migrant workers (2011)	15% ⁹

Nepal is primarily a labour-sending country, with approximately 4 million Nepalese migrants working in India alone, and 3.2 million working in other countries. Poverty, social inequalities, unemployment and underemployment are major push factors driving Nepalis to migrate for work. Foreign labour migration has had a significant impact on the socio-economic fabric of Nepal. Worker remittances are estimated at 209 billion Nepalese rupees per year, roughly 22 percent of gross domestic product, and have helped reduce Nepal's poverty level from 42 percent to 31 percent.¹⁰ However, increased migration for employment has also led to increased vulnerability of the most marginalized groups in Nepal, including women.

B. KEY GENDER AND HUMAN RIGHTS ISSUES

Nepal has ratified or acceded to seven of the nine core international human rights instruments, including the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) and its Optional Protocol. The government has not ratified the Convention on the Protections of the Rights of All Migrant Workers and Members of their Families (CMW), or the Convention for the Protection of All Persons from Enforced Disappearance (CED). In its recent Concluding Observations on Nepal, the CEDAW Committee noted with satisfaction Nepal's ratification of most of the human rights conventions. It stated however, that the adherence to all nine of the major human rights treaties would "enhance the enjoyment of women of their human rights and fundamental freedoms in all aspects of life," and thus encouraged the government to consider ratifying the CMW and CED.¹¹

The government has taken steps to promote and protect the human rights of women. Specifically, in 2007 it established the National Women's Commission (NWC), mandated to: monitor and investigate cases of violence against women; provide legal aid; monitor the state's obligations to reporting to the UN under CEDAW; coordinate with government and other agencies for mainstreaming gender policy in national development; and conduct research to recommend

8 UN Women, *Background page - Nepal*. Available from: <http://migration-unifem-apas.org/nepal/index.html>

9 Ibid.

10 Ibid.

11 CEDAW Committee, *Concluding Observations of the Committee on the Elimination of Discrimination against Women - Nepal* (CEDAW/C/NPL/CO/4-5), (Forty-ninth session, 2011), para. 48. Available from: www2.ohchr.org/english/bodies/cedaw/

and monitor reforms.¹² The NWC's Five Year Strategic Plan (2009-2014) highlights substantive equality for women as one of its guiding principles. Other gender-sensitive legislative initiatives have included: the Gender Equality Act of 2006, which amended or repealed a number of civil and criminal laws, such as those related to rape and sexual harassment to promote gender equity; the Human Trafficking and Transportation Control Act in 2007; the 2009 Domestic Violence Act; and a special resolution, passed in 2006, that guarantees women 33 percent of the seats in the Constituent Assembly. These legislative and policy initiatives all represent good gender-sensitive rights-based good practices in line with article 2 of the CEDAW which obligates States parties to "adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women" and to "take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women."

Despite these measures, human rights abuses against women, particularly in the form of rape, domestic violence, dowry-related deaths (refers to the occurrences of brides being killed for bringing "insufficient" money and jewels as dowry), sexual harassment, forced labour and forced prostitution remain common. According to experts, "violence against women is one of the major factors responsible for the poor health of women, livelihood insecurity, and inadequate social mobilization".¹³ Noting this problem the CEDAW Committee has urged Nepal to give priority attention to addressing discriminatory and harmful practices against women and girls and adopting comprehensive measures aimed at combating violence.¹⁴

Nepalese women migrating for employment also face multiple human rights abuses. Many have been trafficked to other countries and exploited as domestic workers or prostitutes. Serious indebtedness to recruitment brokers is also common and often leads to debt bondage. Critics charge that while the Government has instituted some measures to protect migrant women from exploitation, many of these initiatives are not effectively funded or implemented and women migrant workers remain vulnerable to abuse.¹⁵ The CEDAW Committee addressed this issue urging the Government to fully implement article 6 of the Convention in part by "implementing the Human Trafficking and Transportation (Control) Act to ensure that perpetrators are punished and victims adequately protected, assisted and provided with shelter."

C. KEY STAKEHOLDERS

The Ministry of Labour and Transport Management (MoLTM) is the focal ministry for overseas employment. Within the MoLTM the Foreign Employment Promotion Board (FEPB)

12 National Women's Commission of Nepal, *Nepal's Implementation Status of the CEDAW – a report to Supplement the Combined Fourth and Fifth Periodic Report Submitted to the CEDAW Committee by the Government of Nepal* (Kathmandu, 26 June 2011). Available from: www2.ohchr.org/english/bodies/cedaw/docs/ngos/NWC_Nepal49.pdf

13 US State Department, *Human Rights Report 2011 - Nepal (2011)*. Available from: www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper

14 CEDAW Committee, *Concluding Observations 2011*, paras. 20 and 32(d).

15 Amnesty International, *Briefing to the UN Committee on the Elimination of Discrimination against Women – Nepal*, (Forty-ninth session, 2011), p. 5. Available from: www.unhcr.org/refworld/docid/4e1719ef2.html

has been established to promote the foreign employment business, to make the sector safe, systematic, and decent, and to protect the rights and interests of overseas workers and foreign employment entrepreneurs. The FEPB is chaired by the Labour Minister and includes representatives from the private sector such as recruitment firms, trade unions, and orientation agencies.

The Migrant Resource Centre (MRC), within the FEPB provides counselling and guidance to migrant workers regarding the basic requirements for overseas employment, so that those interested in migrating can make an informed choice. One of the main aims of the centre is to prevent prospective migrant workers from being trafficked and/or cheated by unscrupulous agents, and to put them in a better bargaining position with recruiting agencies.

The National Women's Commission (NWC) prepares national policies related to women's rights, analyses the gender-sensitivity of existing policies and laws, and makes recommendations to the government for gender-sensitive policy reform; provides legal and other support to vulnerable women; creates awareness regarding social, cultural, and traditional behaviours that are harmful to women; monitors the implementation of Nepal's obligations under international instruments regarding gender injustice; and recommends ways to make public offices and spaces more gender-friendly.

Pourakhi is a non-governmental organization of women migrant workers which aims to ensure respect for the rights of migrant women throughout the entire migration process, including pre-departure and during employment. Activities focus on capacity-building, empowerment, networking, and information dissemination.

Pravashi Nepali Coordination Committee (PNCC) is a large network of Nepalese migrant workers across Gulf countries. It aims to promote the rights of migrant workers through advocacy, counselling, lobbying and empowerment of workers. Activities including training, establishment of cooperative banks to improve access to money earned overseas, publication of materials to raise awareness, organization of programmes to bring together stakeholders, and coordination with the Nepalese Government.

Nepal Association of Foreign Employment Agencies (NAFEA) is an umbrella organization of 750 recruiting agencies, which aims to ensure the migration process is dignified and professional. To that end it has formulated a Code of Conduct to reduce irregularities of foreign employment. NAFEA also advocates with the government to sign MoUs and bilateral agreements with receiving countries that ensure respect for the rights of migrant workers.

National Network on Safe Migration includes more than 26 organizations working together to advocate and monitor action related to the protection of the rights of migrant workers. Activities include efforts to raise extensive awareness on safe migration, and lobby different stakeholders for necessary policy amendments.

D. RATIFICATION RECORD

The following table illustrates Nepal's ratification status of international treaties related to women migrant workers.

TREATIES	RATIFICATIONS
MWC	-
CEDAW	22 April 1991
ICCPR	14 May 1991 a
ICESCR	14 May 1991 a
ICERD	30 January 1971 a
ILO C29 Forced or Compulsory Labour	3 January 2002
ILO C87 Freedom of Association	-
ILO C97 Migration for Employment	-
ILO C98 Right to Organize and Collective Bargaining	11 November 1996
ILO C100 Equal Remuneration	10 June 1976
ILO C105 Abolition of Forced Labour	30 August 2007
ILO C111 Discrimination in Employment	19 Sept 1974
ILO C138 Minimum Age for Employment	30 May 1997
ILO C143 Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers	-
ILO C181 Private Employment Agencies	-
ILO C182 Prohibition of the Worst Forms of Child Labour.	3 January 2002

E. COMPLIANCE WITH CEDAW

DISCRIMINATION

According to Nepal's National Women's Commission, "women in Nepal are discriminated [against] several times over. They are poorer than men with less access to property, income, inheritance and credit and often have little control over their own or overall household earnings. They are less educated and more likely to be engaged in non-skilled work rather

than in better paid professional, technical and management-related jobs. Though women's contribution to agricultural production is above 60 percent, the total land holdings are only 8 percent. Also, most women workers, over 70 percent, are confined to self-employed, unpaid and low-wage informal activities. Only 12 percent of employed women are in the civil service and 1.76 percent are in the judicial service".¹⁶

While the interim Constitution and several other laws prohibit discrimination based on gender, none provide a definition of what constitutes discrimination. Without such a definition, the laws may be interpreted narrowly to guarantee only formal equality, and thus will not be effective in ensuring substantive equality as is required by the CEDAW. Additionally, Nepal's interim Constitution fails to address both direct and indirect discrimination, it does not explicitly prohibit multiple discrimination, discrimination by association, segregation or harassment, and it only applies to acts of the State, even though CEDAW requires that discrimination by private actors be prohibited as well.¹⁷ In its Concluding Observations the CEDAW Committee stated its concern that the principle of equality between women and men is not embodied in the Constitution and its prohibition of discrimination against women is not in line with article 1 of the Convention. The Committee urged the government to include in the new Constitution provisions ensuring substantive equality, and a definition of discrimination that encompasses both direct and indirect discrimination, and covers both public and private actors.¹⁸

Discrimination against women in Nepal is also fuelled by a patriarchal system that perpetuates women's subordination. The National Women's Commission has noted that "many women do not question [this system] and to a certain degree believe that men have the right to control their lives and bodies."¹⁹ Regarding this issue the CEDAW Committee observed that "patriarchal attitudes and deep-rooted stereotypes that discriminate against women remain entrenched in the social, cultural, religious, economic, and political institutions and structures of Nepalese society and in the media," and thus urged the government to enact a comprehensive strategy, with concrete goals and timetables, to eliminate such patriarchal attitudes and stereotypes, in accordance with articles 2(f) and 5(a) of the Convention.

Women migrant workers from Nepal also face discrimination throughout the migration process. The 2007 Foreign Employment Act bans discrimination based on gender and includes measures to guarantee women's security and rights when seeking jobs abroad.²⁰ However, inadequate implementation of the law has meant that women migrant workers continue to suffer from forced labour, exploitation, sexual abuse and harassment, underpayment of wages, excessive work, limitation of mobility, and denial of access to health, education and legal justice.²¹ The CEDAW Committee welcomed the adoption of the Foreign Employment

16 National Women's Commission of Nepal, *Nepal's Implementation Status of the CEDAW*, p. 3.

17 Equal Rights Trust, *Parallel report submitted to the 49th Session of the CEDAW Committee in relation to the combined fourth and fifth periodic reports submitted by the Government of Nepal*, (Kathmandu, July 2011), paras. 9, 14, and 20.

18 CEDAW Committee, *General Observations – Nepal, (Forty-ninth session, 2011)*, para. 9. Available from: www2.ohchr.org/english/bodies/cedaw/

19 National Women's Commission of Nepal, *Nepal's Implementation Status of the CEDAW*, p. 3.

20 Migrant Forum in Asia, *Good Practices taken by Asian States to Effectively Supervise Recruitment Agencies* (Quezon City, Philippines, 14 October 2009), p. 11. Available from: www2.ohchr.org/english/bodies/cmw/docs/DGD/MigranForumAsia.pdf

21 Women's Rehabilitation Centre Nepal (WOREC), POURAKHI, Youth Action Nepal, and Pravasi, *Shadow Report on Nepal for Consideration During the 49th Session of CEDAW* (n.p., n.d.), p. 3. Available from: http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/MFA_Nepal49.pdf

Act but raised its concern that: Nepalese women migrant workers are concentrated in the informal sector; they have limited opportunities to receive pre-departure information and skills training; there is a lack of institutional support both from the Government of Nepal and in countries of employment to promote and protect the rights of Nepalese women migrant workers.²² Additionally, the Government's ban on women under 30 travelling to Gulf countries for work is also discriminatory. The ban was in response to several allegations of Nepalese domestic workers being abused by their employers,²³ however the CEDAW Committee noted in General Recommendation 26 that such bans restrict women's right to migration and should be lifted.²⁴ To remedy the problems, the Committee urged the Government instead to "(a) investigate the cause of women's migration, create employment or self-employment opportunities for women within the country and ensure women have access to loans; and (b) establish mechanisms to promote safe migration procedures and protect and fulfil women's rights through the migration cycle."

POLICY MEASURES

The Government has enacted several labour and migration policies that incorporate gender and human rights perspectives. For example, the 2005 Labour and Employment Policy stipulates that the State must internalize international commitments and standards of promoting gender equality in all matters related to employment and labour rights. Additionally, the 2006 Labour Migration Policy aims to promote cooperation with members of the South Asian Association for Regional Cooperation (SAARC), and destination countries, in order to develop a joint perspective and strategy to protect the rights of migrant workers. The policy provides for "effective supervision and management at international borders and points of departure in order to control human trafficking and informal migration" and "enables the Nepalese labour sector to organize and streamline its plans according to the basic guidelines provided by the ILO [International Labour Organization]."²⁵ These policies are good gender-sensitive rights-based practices in line with the CEDAW Committee's General Recommendation 26, which urges governments to: formulate policies on the basis of equality and non-discrimination; regulate all aspects of migration to facilitate access for women migrant workers to work opportunities abroad; promote safe migration; and ensure the protection of the rights of women migrant workers.²⁶

Other policies, however, infringe upon the rights of women migrants. For example, the Government has discouraged women from migrating for work to the Gulf countries, especially as domestic workers. The government's policy is to provide permission only in those cases where the Nepalese embassy of the destination country approves. This is in response to widespread allegations of abuse experienced by Nepalese women employed as domestic

22 CEDAW Committee, *Concluding Observations 2011*, paras. 33-34.

23 Human Rights Watch, "Nepal: Protect, Don't Ban Young Women Migrating to Gulf", (New York, 14 August 2012). Available from: www.hrw.org/news/2012/08/14/nepal-protect-don-t-ban-young-women-migrating-gulf

24 CEDAW Committee, *General recommendation No. 26*, para. 24(a).

25 International Labour Organization and UNDP, *HIV and Mobility in South Asia (Bangkok, 2010)*, p. 104. Available from: http://asia-pacific.undp.org/practices/hiv/avids/documents/HIV_and_Mobility_in_South_Asia_web.pdf

26 CEDAW Committee, *General recommendation No. 26*, para. 23(a).

help. However, instead of protecting women, the Government's refusals to grant permission have led women to use informal channels and illegal agents/brokers to migrate for work. According to the Ministry of Labour and Transport Management, up to 90 percent of the women working in Gulf countries are undocumented, which means they did not receive mandatory pre-departure training, do not have access to many benefits of the Foreign Employment Act, and have limited access to support from formal protection mechanisms within the country destination, as well as in Nepal.²⁷ Policies effectively banning domestic workers (the majority of whom are women) from employment in certain countries are discriminatory and contradict General Recommendation 26, which urges States parties to the CEDAW to repeal discriminatory restrictions on women's migration. Instead the Government should continue to enter into bilateral agreements with receiving countries, and focus on promoting safe migration and an enabling work environment for women.

The Government's policies requiring prospective migrant workers to undergo mandatory HIV/AIDS testing before their departure and/or during work tenure also violate women migrant workers' human rights. According to the Forum for Women Law and Development, an advocacy group, "in many cases, women migrant workers are not consulted, and their test results are shared either with their recruiters or their employer. Additionally, they face forced termination of their employment and/or deportation from the country of employment because of their HIV status. However, there are limited interventions to provide alternative employment opportunity for those tested positive."

Furthermore, the group notes, "there are no policies to address the issues of confidentiality, compensation, stigma and discrimination related to women migrant workers and HIV/AIDS."²⁸ General Recommendation 26 states that "all required pre-departure HIV/AIDS testing or pre-departure health examinations must be respectful of the human rights of women migrants. Special attention should be paid to voluntariness, the provision of free or affordable services and to the problems of stigmatization."²⁹

TRAFFICKING AND FORCED LABOUR

According to the US State Department's 2012 Trafficking in Persons (TIP) Report, "Nepalese women and girls are subjected to sex trafficking in Nepal, India, and the Middle East, and also are subjected to forced labour in Nepal and India as domestic servants, beggars, factory workers, mine workers, and in the adult entertainment industry." Many women use labour brokers and recruitment agencies to secure legitimate employment, but subsequently are trafficked and face conditions of forced labour, including withholding of passports, restrictions on movement, non payment of wages, threats, deprivation of food and sleep, and physical or sexual abuse.³⁰

27 WOREC, POURAKHI, Youth Action Nepal, and Pravasi, *Shadow Report on Nepal*, p.66.

28 *Ibid*, p. 68.

29 CEDAW Committee, *General recommendation No. 26*, para. 24(d).

30 US State Department, *Trafficking in Persons Report 2012 – Nepal (2012)*, p. 260-261. Available from: www.state.gov/j/tip/rls/tiprpt/2012/

PROSECUTION

Nepal's 2007 Human Trafficking and Transportation Control Act prohibits trafficking in persons, including the selling of human beings and forced prostitution, and prescribes penalties from 10 to 20 years' imprisonment.³¹ Additionally, because fraudulent recruitment significantly increases the risk of trafficking, the Foreign Employment Act criminalizes the sending of migrant workers abroad based on fraudulent claims of conditions or employment, or without ensuring proper documentation.³² The passage of these laws are in compliance with article 6 of the CEDAW, which obligates governments to take all appropriate measures, including legislation, to suppress trafficking in women and exploitation of prostitution of women. Despite strict penalties however, complicity by government officials in trafficking-related offenses remains problematic. A culture of impunity for politically connected perpetrators results in few investigations, prosecutions, or convictions of government officials for complicity in trafficking. Failure to prosecute trafficking offenders is in violation of the CEDAW, and specifically General Recommendation 26, which states that governments "should take active measures to prevent prosecute and punish all migration-related human rights violations that occur under their jurisdiction, whether perpetrated by public authorities or private actors."³³

PROTECTION

The government recently developed two policy initiatives designed to provide better protection to victims of trafficking, including the National Minimum Standards for Victim Care, and the Standard Operating Procedures for shelter homes. Additionally, the Ministry of Women, Children, and Social Welfare (MWCSW) partially funds eight NGO-run shelter homes for female victims of trafficking, domestic violence, and sexual assault. These represent good, gender-sensitive, rights-based practices in line with the CEDAW Committee's General Recommendation 19, which states that governments should ensure protective measures for victims of gender-based violence including counselling, rehabilitation and support services.³⁴

While these efforts are laudable, many migrant workers who are trafficking victims have experienced difficulty in seeking support from the Department of Foreign Employment, the Foreign Employment Promotion Board, and Nepalese diplomatic missions in destination countries. Additionally, because Nepal has no formal system for proactively identifying victims among high-risk persons, some victims are penalized for acts committed as a result of being trafficked. For those victims who are identified, the government does not routinely encourage them to participate in investigations against their traffickers.³⁵ The failure to ensure victims receive the necessary support to seek redress is in violation of General Recommendation 26 which states that governments "must properly train and supervise

31 US State Department, *Trafficking in Persons Report 2012*, p. 261.

32 *Ibid.*, p. 262.

33 CEDAW Committee, *General recommendation No. 26*.

34 CEDAW Committee, *General recommendation No. 19 on violence against women*, (UN Doc A/47/38 at 1, 1993), (Eleventh session, 1992), para. 24(t)(iii). Available from: www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19

35 US State Department, *Trafficking in Persons Report 2012*, p. 261.

their diplomatic and consular staff to ensure they fulfil their role in protecting the rights of women migrant workers abroad. Such protections should include quality support services available to women migrants.”³⁶ In its Concluding Observations the CEDAW Committee also urged Nepal to address this problem by “providing information and training with respect to anti-trafficking legislation to the judiciary, law enforcement officials, immigration and border police, and social workers in all parts of the country”.³⁷

PREVENTION

In August 2011, the National Committee for Controlling Human Trafficking established a secretariat and the Government appointed a coordinator under the oversight of a joint secretary. Additionally, in March 2012, the Government endorsed the National Plan of Action on Trafficking. These initiatives will help to guide efforts at preventing trafficking. Other prevention efforts include: radio programmes sponsored by the Foreign Employment Promotion Board that promote awareness about safe migration; promotion and celebration of anti-trafficking day each September; and anti-trafficking training for all Nepalese military troops and police assigned to international peacekeeping forces. These efforts comply with article 6 of the CEDAW, which obligates governments to take all appropriate measures to suppress trafficking. In its Concluding Observations, the CEDAW Committee welcomed the adoption of the national plan of action against trafficking. However, it also noted its concern about the lack of specific data on trafficking in women and girls and called upon the government to fully implement article 6 of the Convention by, among other things, “collecting and analyzing data on all aspects of trafficking and prostitution, disaggregated by age, sex and country of origin, in order to identify trends.”³⁸

EMPLOYMENT

According to the Government, the majority of women in Nepal are employed in the informal sector working in agriculture, or domestic help or care-giving jobs.³⁹ Although the Interim Constitution guarantees equal remuneration for men and women, overall, women earn about three-quarters of what men earn both in agricultural and non-agricultural sectors. With respect to the formal sector, studies have shown appalling working conditions in certain industries where women predominate, such as carpet and garment manufacturing.⁴⁰ The failure of the State to adequately address these inequalities is in violation of article 11 of the CEDAW, which obligates governments to “take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular ... the right to equal remuneration, including

36 CEDAW Committee, *General recommendation No. 26*, para. 24(j).

37 CEDAW Committee, *Concluding Observations 2011*, para. 21(g).

38 *Ibid.*, para. 22(a).

39 Nepal, *Combined Fourth and Fifth periodic Report of State Party to the CEDAW Committee* (Kathmandu, 9 November 2010), para. 132.

40 Forum for Women Law and Development, *Shadow Report on the Fourth and Fifth Periodic Report of the Government of Nepal on CEDAW*, (Kathmandu, 2011), p. 37.

benefits ... and the right to protection of health and safety in working conditions.” The CEDAW Committee highlighted these problems in its most recent Concluding Observations on Nepal. It expressed its concern about “the high proportion of women in the informal sector, and the widespread prevalence of sexual harassment in the workplace.” To remedy these problems and better protect the rights of women it urged the government to better regulate the informal sector and ensure that women are not exploited, and also enact and ensure effective implementation of the draft law on sexual harassment in the workplace.⁴¹

Gender-based discrimination and inequity, combined with widespread poverty, have pushed increasing numbers of women to seek employment in the international market. Official statistics show that 11,007 Nepalese women emigrated in 2008, a sizeable increase from the 316 women migrants reported for 2007. Additionally, a UNDP report has noted that “for every documented female migrant leaving Nepal, an equal number of undocumented female migrants are likely travelling on cheap flights to foreign countries through irregular channels via major cities in India or through Bangladesh. Circumventing the undeclared ban of the Government of Nepal on female migration, especially to Gulf countries and Malaysia, is the likely reason for this significant increase in undocumented migration.”⁴²

The new Foreign Employment Act 2064/(2007) was enacted in order to address some of these problems by ensuring the safety of overseas employment, managing the migration process, and protecting the rights and welfare of migrant workers. The Act is a gender-sensitive rights-based good practice in that it incorporates provisions to eliminate gender discrimination and, among other things, obligates the State to: provide mandatory gender-sensitive rights-based pre-departure orientation sessions; ensure women migrant workers are reimbursed for pre-departure orientation fees; establish a welfare fund to promote education and health of the families of women migrant workers and returnees; establish a fund to compensate the families of deceased or disabled migrant workers and those that have been sent back due to the economic crisis; provide insurance coverage in cases of death; and compensate migrant workers in cases of injury and disability or compensate the family of deceased migrant workers.⁴³

Other provisions of the Act regulate the licensing of recruitment agencies, the recruitment processes, and include provisions for redress. In addition, pursuant to the Foreign Employment Regulations of 2008, Labour Attachés have been deployed in six countries that have significant numbers of Nepalese migrants, to provide advice and better protection of workers’ rights. Countries with such attachés are Kuwait, Republic of Korea, Qatar, Saudi Arab, Malaysia and the United Arab Emirates (UAE).⁴⁴ The Labour Attaché serving in the UAE is a woman.

Despite these initiatives however, Nepalese migrant workers, and women in particular continue to be subjected to abuse and exploitation. According to a report by Amnesty International, “measures adopted by the Nepalese government in the name of protecting women from

41 CEDAW Committee, *Concluding Observations 2011*, paras. 29-30.

42 International Labour Organization and UNDP, *HIV and Mobility in South Asia*, p.96.

43 Forum for Women Law and Development, *Shadow Report*, p.68-69.

44 Asia Foundation, *As Demand for Migrant Labour Grows Opportunities for Women Emerge, but Risks Prevail* (San Francisco, 7 March 2012). Available from: <http://asiafoundation.org/in-asia/2012/03/07/as-demand-for-migrant-labor-grows-opportunities-for-women-emerge-but-risks-prevail/>

the risk of such exploitation have failed. Legislative provisions prohibiting exploitation and regulating the recruitment of migrant labour from Nepal are not effectively implemented.”⁴⁵ The report highlights the situation of migrant domestic workers in particular, and notes that despite regulations, many Nepalese women searching for work opportunities become seriously indebted to brokers and recruitment firms, and are forced to work in conditions that are considerably different from those originally promised to them. Many women report exhausting workloads where they are forced to cook, clean, wash clothes, iron and take care of children for 12-21 hours per day, while being provided with inadequate food and having wages withheld or reduced. Some are also subjected to verbal and physical abuse from their employers.⁴⁶ The CEDAW Committee has urged the Government to address these issues by focusing on (1) decreasing the number of undocumented workers, (2) ensuring more effective pre-departure information and skills training, (3) improving protections for women working in informal sectors, and (4) providing better institutional support both in Nepal and in countries of employment to promote and protect the rights of women migrating for work.⁴⁷

RECRUITMENT AGENCIES

Those seeking employment abroad typically use either recruitment agencies or individual brokers to assist them in securing a job and travelling to the destination country. As of 2011, there were 924 officially licensed recruitment agencies, many of which are located in Kathmandu, and some of which have branch offices at the district level. The Department of Foreign Employment (DFE) is mandated with ensuring that all advertising by recruitment firms is informative and meets ethical standards and firms found to be in violation can be fined up to 100,000 rupees. Despite this, many firms’ advertisements exaggerate salaries, benefits and working conditions. Additionally, firms often publicize much lower placement fees than those actually charged to prospective workers. Sub-agents working at the village level often refer would-be migrant workers to agents at the district level who in turn refer the worker to a recruitment firm in the capital. Each agent receives a commission per migrant recruited. The law requires a deposit for a sub-agent to receive an official licence, but few bother with registration. There are thousands of sub-agents operating in Nepal, but reports show that in 2011, fewer than 10 were registered with the DFE.⁴⁸

Sub-agents are prohibited from charging prospective workers fees, however, this is common practice. Additionally, recruitment firms are prohibited from charging more than the maximum fees dictated by the law, but overcharging is common practice. A migrant workers’ advocacy forum has found that “the placement fee charged to the migrant worker depends on his/her financial status. In the case of migrant workers who have worked abroad in the past, they have a higher capacity to bargain, which allows them to negotiate for lower fees. Many prospective

45 Amnesty International, *Briefing to the UN Committee*, p. 5.

46 Ibid, p. 6.

47 CEDAW Committee, *Concluding Observations 2011*, para. 33.

48 Migrant Forum in Asia, *Labour Recruitment to the UAE, Gaps Between Policy and Practice in Sri Lanka, Nepal, Bangladesh and the Philippines* (Quezon City, Philippines, January 2011), pp. 20-21. Available from: www.mfasia.org/resources/information-a-educational-materials/321-labour-recruitment-to-the-uae-gaps-between-policy-practice-in-sri-lanka-nepal-bangladesh-and-the-philippines

migrants are forced to take out a loan from the bank with an interest rate of 5 percent. The prospective worker is bound to the agent, as the agent often keeps the passport of the migrant worker until the date of departure. As the migrant worker does not receive a receipt from the agent, it is difficult to lodge a formal complaint if a problem arises. Agreements are kept orally.”⁴⁹

In General Recommendation 26, the CEDAW Committee urged governments to “adopt regulations and design monitoring systems to ensure that recruiting agents and employment agencies respect the rights of all women migrant workers” and “implement accreditation programmes to ensure good practices among recruitment agencies.”⁵⁰ In its Concluding Observations for Nepal, the Committee noted the problems with unethical recruitment practices and called upon the Government to “prosecute and punish persons engaged in illegal recruitment processes” and “provide assistance for migrant women in seeking redress.”

To remedy some of these problems the Nepal Association of Foreign Employment Agencies has established a Code of Conduct that encourages members to practise fair and transparent recruitment processes and holds agencies accountable for the protection of migrant workers.⁵¹ Among other things, the Code states that prospective migrant workers should: receive clear explanations of expenses such as service and air charges; should not be sent to do jobs that will adversely affect their health or where they will be discriminated against; and should be given required training before being sent on assignment. Importantly, the Code also states that there shall be no discrimination against women in the selection of workers and that preference should be given to women in job placement.⁵² This is a good gender-sensitive rights-based practice in line with article 11 of the CEDAW, which affords women the right to equality in the field of employment, and in line with article 4, which encourages the use of special measures to ensure de facto equality for women.

REGIONAL AND BILATERAL AGREEMENTS

To combat trafficking at the regional level, in 2002 the South Asian Association for Regional Cooperation (SAARC) member states adopted the Convention on Preventing and Combating Trafficking of Women and Children for Prostitution. All seven SAARC states, including Nepal, have signed and ratified this convention.⁵³ Nepal has also signed bilateral labour agreements with Qatar, Republic of Korea, UAE, Bahrain, and Japan, and is engaging with discussions with Oman, Lebanon and Malaysia regarding agreements with those countries.⁵⁴ In general these agreements stipulate rights and obligations for recruitment agencies, job seekers and employers, and aim to ensure transparency in pay, benefits, selection processes, remittance

49 Migrant Forum in Asia, *Labour Recruitment to the UAE*, p. 22.

50 CEDAW Committee, *General recommendation No. 26*, para. 24(c).

51 UN Women, *UN Women in Action – Nepal* (webpage, u.d.). Available from: www.migration-unifem-apas.org/nepal/UNIFEM_in_Action.html

52 Nepal Association of Foreign Employment Agencies (NAFEA), *Code of Conduct, Kathmandu*, (9 November 2005). Available from: <http://www.nafea.org.np/index.php?linkId=35>

53 International Labour Organization and UNDP, *HIV and Mobility in South Asia*, p. 104.

54 Centre for the Study of Labour and Mobility, *Migration in Nepal*, (webpage, n.d.). Available from: www.ceslam.org/index.php?pageName=content&contentId=148

repatriation procedures, and minimum qualifications. The agreements also prohibit certain actions such as: demanding exorbitant fees from workers, providing false information about working conditions, and misleading workers about required qualifications and experience, regulations, and wages.⁵⁵ These agreements are examples of good rights-based practices in line with the CEDAW Committee's recommendation that Nepal "sign bilateral agreements with countries of employment with adequate provisions ensuring the security of women migrant workers."⁵⁶

However, according to migrant worker advocates, the Government must do more to ensure these agreements conform to international human rights and labour standards, and to ensure that they are effectively implemented. Specifically, States parties to the agreements must cooperate to better regulate recruitment and employment processes and put in place mechanisms to punish those found to violate the human rights of women migrant workers.⁵⁷ The CEDAW Committee noted the urgency of this and urged the government to "establish mechanisms in the country of destination to deal with the violation of the rights of women migrant workers during employment."⁵⁸

EQUALITY BEFORE THE LAW – WOMEN'S ACCESS TO JUSTICE

The Foreign Employment Act 2007 contains provisions for redress in cases where laws related to migration for employment are violated. Penalties include fines and imprisonment for violation of recruitment agency licensing requirements (article 43), for sending minors abroad for employment (article 45), and for sending migrants to a country that is not approved by the Government of Nepal (article 46). Chapter 10 sets out the procedure for investigation and inquiry, which includes a one-year statute of limitations on filing the claim (article 60), that runs from the date of return of the migrant worker to Nepal. Chapter 11 provides for the establishment of a three-member Foreign Employment Tribunal, chaired by the Judge of Appellate Court (article 64), and with a right to appeal decisions to the Supreme Court (article 66).

Chapter 12 specifies that, in order to help resolve problems encountered by Nepalese migrants working abroad, the Government must appoint labour Attachés to those countries where 5,000 or more workers have been sent for foreign employment. According to the Act, the Labour Attachés are mandated to assist in the resolution of disputes that arise between migrant workers and their employers (article 68). These are good rights-based practices in line with General Recommendation 26 that urge governments to ensure legal sanctions for breaches of the law by recruitment agencies and to ensure the availability of legal assistance in connection with migration for work.⁵⁹

55 International Labour Organization and UNDP, *HIV and Mobility in South Asia*, p. 105.

56 CEDAW Committee, *Concluding Observations 2011*, para. 34(d).

57 Forum for Women Law and Development, *Shadow Report*, pp. 67-68.

58 CEDAW Committee, *Concluding Observations 2011*, para. 34(d).

59 CEDAW Committee, *General recommendation No. 26*, para. 24(c)(i) and 24(f).

However, many Nepalis are employed through informal processes, and thus do not have binding contracts with their employer specifying the terms and conditions of work. Additionally, because the majority of Nepalese women migrant workers are employed in informal and unregulated sectors such as domestic work, they generally are not protected by labour laws. These obstacles, combined with a lack of awareness about their rights, make it difficult to access justice mechanisms and seek remedies for rights violation.⁶⁰ The CEDAW Committee noted its concern about the large numbers of undocumented Nepalese women migrant workers and their concentration in the informal sector. It urged the Government to “establish mechanisms to promote safe migration procedures and protect and fulfil women’s rights throughout the migration cycle” and “provide assistance for migrant women who are seeking redress.”⁶¹

The government has made some efforts to increase access to justice for returning women migrant workers. For example, it worked with UN women to initiate an enterprise development scheme to support the reintegration of returnee women migrant workers who had suffered as a result of irregular migration.⁶² Additionally, the government provides free legal aid services to victims of fraud related to foreign employment, and in cases of trafficking, sexual exploitation, and domestic violence.⁶³ Also, pursuant to a Supreme Court order, the Government has established safe homes in Saudi Arabia, Qatar, Kuwait and the UAE to provide protection to victims of trafficking. In its Concluding Observations, the CEDAW Committee has acknowledged Nepal’s progress in promoting access to justice for women, commenting on that fact that the judiciary has rendered a number of gender-sensitive decisions which have contributed to enhancing the status of women and protecting their rights.⁶⁴

ANALYSIS AND CONCLUSIONS

Nepal’s low economic growth rates and high levels of unemployment have left many Nepalis with no choice but to migrate for work. Labour migration has become one of the defining features of Nepal’s economy and society, and increasing numbers of women are joining the ranks of Nepalis emigrating for employment. Consequently the Government has enacted several laws and policies, and undertaken several initiatives, designed to promote and protect the human rights of migrant workers, including women, including: Ratification of seven of the nine core international human rights instruments, including the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) and its Optional Protocol.

- The National Commission on Women’s Five Year Strategic Plan (2009-2014) highlights substantive equality for women as one of its guiding principles.

60 Forum for Women Law and Development, *Shadow Report*, pp. 68.

61 CEDAW Committee, *Concluding Observations 2011*, paras. 34(b) & (e).

62 Global Migration Group, *Gender Sensitive Remittances, Savings and Investment Schemes* (webpage, n.d.). Available from: www.globalmigrationgroup.org/en/remittances-policy-and-programme-experiences

63 CEDAW Committee, *Concluding Observations of the Committee on the Elimination of Discrimination against Women - Nepal* (CEDAW/C/NPL/CO/3), (Thirtieth session, 2004), para. 192. Available from: www2.ohchr.org/english/bodies/cedaw/

64 CEDAW Committee, *Concluding Observations 2004*.

- The Gender Equality Act of 2006 amended or repealed a number of civil and criminal laws, including those related to rape and sexual harassment.
- The Domestic Violence Act of 2009.
- Passage of a 2006 resolution guaranteeing women 33 percent of the seats in the Parliament/Constituent Assembly.
- The 2007 Foreign Employment Act bans discrimination based on gender and includes measures to guarantee women's security and rights when seeking jobs abroad. The Act also provides for legal sanctions for breaches of the law by recruitment agencies and provides for the availability of legal assistance in connection with migration for work.
- The 2005 Labour and Employment Policy stipulates that the State must internalize international commitments and standards of promoting gender equality in all matters related to employment and labour rights.
- The 2006 Labour Migration Policy provides for supervision and management at international borders and points of departure in order to control human trafficking and informal migration.
- The 2007 Human Trafficking and Transportation Control Act prohibits trafficking in persons, prescribing penalties from 10 to 20 years' imprisonment, and criminalizes the sending abroad of migrant workers by individuals or agencies based on fraudulent claims or without ensuring proper documentation.
- Development of the National Minimum Standards for Victim Care and Standard Operating Procedures for shelter homes (for victims of trafficking and abuse).
- The Ministry of Women, Children, and Social Welfare (MWCSW) partially funds eight NGO-run shelter homes for female victims of trafficking, domestic violence, and sexual assault.
- The Government established a National Committee for Controlling Human Trafficking and endorsed the National Plan of Action on Trafficking.
- Labour Attachés have been deployed in six countries that have significant numbers of Nepalese migrants, in order to provide advice and better protections of workers' rights.
- The Nepal Association of Foreign Employment Agencies has established a Code of Conduct that encourages members to practice fair and transparent recruitment processes and makes agencies accountable for the protection of migrant workers. The Code also states that there shall be no discrimination against women in the selection of workers and that preference should be given to women in job placement.
- Nepal joined neighbouring countries in ratifying the SAARC Convention on Preventing and Combating Trafficking of Women and Children for Prostitution.
- The Government has signed bilateral labour agreements with Qatar, Republic of Korea, UAE, Bahrain, and Japan, and is engaging with discussions with Oman, Lebanon and Malaysia regarding agreements with those countries.
- The government has worked with UN Women to initiate an enterprise development scheme to support the reintegration of returnee women migrant workers who have suffered as a result of irregular migration.
- Free legal aid services are provided to victims of fraud related to foreign employment, and in cases of trafficking, sexual exploitation, abortion, and domestic violence.
- The judiciary has issued a number of gender-sensitive decisions which have contributed to enhancing the status of women and protecting their rights.

These are all positive developments, however despite these efforts, in most communities women continue to be governed by patriarchal traditions, and women's rights are often poorly

enforced. Human rights abuses against women, particularly in the form of rape, domestic violence, dowry-related deaths, sexual harassment, forced labour and forced prostitution remain common. Nepalese women migrating for employment often face additional human rights abuses including trafficking, exploitation and debt bondage. While the Government has instituted some measures to protect migrant women from exploitation, many of these initiatives are not effectively funded or implemented. In order to address these problems, legislative reform must continue and enforcement mechanisms must be improved to ensure migrant women's human rights are protected.

RECOMMENDATIONS

- Ratify the Convention on the Protections of the Rights of All Migrant Workers and Members of their Families and the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children.
- Give priority attention to addressing discriminatory and harmful practices against women and girls and adopt comprehensive measures aimed at combating violence against women.
- Amend the draft law on the National Human Rights Commission with a view to achieving full compliance with the Paris Principles.
- Amend all remaining discriminatory legislation.
- Take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure the right to equal remuneration, including benefits and the right to protection of health and safety in working conditions.
- Better regulate the informal sector and ensure that women are not exploited.
- Enact and ensure effective implementation of the draft law on sexual harassment in the workplace.
- Fully implement the Human Trafficking and Transportation (Control) Act to ensure that perpetrators are punished and victims adequately protected, assisted and provided with shelter.
- Enact employment initiatives to reduce the number of women workers who are confined to self-employed, unpaid and low-wage informal activities.
- Ensure women have access to loans.
- Include in the new Constitution provisions ensuring substantive equality, and a definition of discrimination that encompasses both direct and indirect discrimination, and covers both public and private actors.
- Enact a comprehensive strategy, with concrete goals and timetables, to eliminate patriarchal attitudes and gender stereotypes.
- Investigate and document the cause of women's migration.
- Develop bilateral agreements and memorandums of understanding with all of the countries to which Nepalese women migrate in search of work, and ensure that such agreements fully reflect women's human rights and are in conformity with CEDAW.
- Regulate all aspects of migration to facilitate access for women migrant workers to work opportunities abroad, promote safe migration and ensure the protection of the rights of women migrant workers.
- Repeal discriminatory restrictions on women's migration, such as those that discourage

women from migrating for work to the Gulf countries, and instead focus on ways to promote safe migration and an enabling work environment for women.

- Ensure that all required pre-departure HIV/AIDS testing or pre-departure health examinations are respectful of the human rights of women migrants. Special attention should be paid to voluntariness, the provision of free or affordable services and to the problems of stigmatization.
- Take active measures to prevent, prosecute and punish all migration-related human rights violations whether perpetrated by public authorities or private actors.
- Properly train and supervise diplomatic and consular staff to ensure they fulfil their role in protecting the rights of women migrant workers abroad. Such protections should include quality support services available to women migrants.
- Provide information and training with respect to anti-trafficking legislation to the judiciary, law enforcement officials, immigration and border police, and social workers in all parts of the country.
- Establish a formal system of proactively identifying victims of trafficking among high-risk persons.
- Collect and analyse data on all aspects of trafficking and prostitution, disaggregated by age, sex and country of origin, in order to identify trends.
- Increase efforts to decrease the number of undocumented Nepalis migrating for work.
- Deliver or facilitate free or affordable gender- and rights-based pre-departure information and training programmes that raise prospective women migrant workers' awareness of potential exploitation; including: recommended contents of labour contracts; legal rights and entitlements in countries of employment; procedures for invoking formal and informal redress mechanisms; processes to obtain information about employers; cultural conditions in countries of destination; stress management; first aid and emergency measures, including emergency telephone numbers of home embassy, and services; information about safety in transit, including airport and airline orientations; and information on general and reproductive health, including HIV/AIDS prevention. Such training programmes should be targeted at women who are prospective migrant workers through an effective outreach programme and held in decentralized training venues so that they are accessible to women.
- Improve protection for women working in informal sectors.
- Provide better institutional support both in Nepal and in countries of employment to promote and protect the rights of women migrating for work, including those who used informal means to migrate.
- Adopt regulations and design more stringent monitoring systems to ensure that recruiting agents and employment agencies respect the rights of all women migrant workers.
- Implement accreditation programmes to ensure good practices among recruitment agencies.
- Prosecute and punish persons engaged in illegal recruitment processes and provide assistance for migrant women in seeking redress.
- Establish mechanisms in the country of destination to deal with the violation of the rights of women migrant workers during employment.
- Develop a confidential and safe system of filing complaints and facilitate access to justice for victims of violence, employment discrimination and exploitation and sexual harassment.

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