

Universal Periodic Review on Nepal

Written submission of the Migrant Forum in Asia network to the for the 23rd Session of the Universal Periodic Review, 4 November 2015



Date of submission: 30 March 2015

A. Background

1. The human rights commitments of Nepal were evaluated on 25 January 2011 at the first cycle of the Universal Periodic Review (tenth session). Concluding recommendations were put forward by the UPR Working Group to Nepal for consideration and relevant implementation. The following recommendations, which are connected with migration, development and human rights, gained the acceptance and support of Nepal in 2011:

1. Groundwork is also being carried out with a view to joining other treaties, particularly the Convention on the Rights of Migrant Workers and Members of Their Families...(Response from paragraph 47)
2. Protect its citizens from labor exploitation at home and abroad by providing improved regulation and oversight of workplace practices (paragraph 106.40)
3. Continue its efforts to achieve equitable socio-economic development, address poverty alleviation through its overarching objective according to its current policies and Action Plans with the support by the international community in order to meet the targets of MDGs (paragraph 106.44)

2. Nepal will be reviewed once again during the second cycle of the UPR at its twenty-third session on 4 November 2015. Migrant Forum in Asia¹ through this written submission takes the opportunity to follow through on the above recommendations, as well as highlight ongoing issues and advocate for the rights of migrant workers and members of their families from Nepal.

3. While Nepal attempts to pursue political and socio-economic reforms since its transition from a decade-long armed insurgency, sustainable, decent living and work opportunities remain scarce. Agriculture and infrastructure programs are still inadequate, limiting people from fully participating in the development of the country. Migration for employment becomes the only available option for families particularly in rural areas, because it is increasingly being pushed as a labor and development policy by the government in its response to the country's economic poverty. Estimates indicate that there are over 3.5 million Nepali migrant workers worldwide, with a large proportion of that population employed mainly in low- and semi-skilled jobs, such as construction and domestic work in the Gulf countries and Malaysia.²

¹ [Migrant Forum in Asia \(MFA\)](#) is a network of grassroots organizations, trade unions, faith-based groups, migrants and their families and individual advocates in Asia working together for social justice for migrant workers and members of their families. Since 1994, MFA has thrived into a formidable migrants' rights advocacy network in Asia, affecting significant influence to other networks and processes on the globe. To date, MFA is represented in 26 countries in the Asia - Pacific. MFA members and partners are also coalitions and networks, bringing the membership in the region close to 260, and growing each year. MFA members in Nepal who made this written submission possible are: All Nepal Women's Association (ANWA), Migrants' Center Nepal – AHRCDF, POURAKHI, Women's Rehabilitation Center Nepal (WOREC), Pravasi Nepali Coordination Committee (PNCC) and Youth Action Nepal (YOAC).

² Department of Foreign Employment, June 2014 data.

B. Policy measures

4. The government of Nepal has established standard recruitment fees for migrant workers going for jobs in the Middle East and Malaysia. For the Middle East, recruitment fees are supposedly fixed at 70,000 NRs or approximately 700 USD while it is 80,000 NRs or 800 USD for Malaysia. While this standard was set in an attempt to thwart overcharging of fees, it still does not serve as a deterrent for recruitment agencies and the illegal practice is prevalent with most or all of the financial burden being shouldered by the migrant workers and members of their families. Article 7 of ILO C181 Private Employment Agencies Convention (1997) states that “private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers.” Nepal is not a State Party to this Convention, as well as to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (UN Migrant Workers Convention, 1990). Hence, the government does not have the full means to regulate, monitor and prosecute fraudulent recruitment agencies. While institutions such as the Department of Foreign Employment (DOFE) facilitates the recruitment and placement of workers abroad and the Foreign Employment Act of 2007 includes provisions in administering and monitoring “licensees [i.e. recruitment agencies]”, the functions and implementation of these institutions lack teeth, have not demonstrated bringing justice to migrant workers and members of their families, and have not brought prosecution and criminalization of fraudulent recruitment activities.

5. Nepal entered into bilateral agreements with Bahrain, Japan, Qatar, South, Korea, and UAE. National laws and international human rights and labor rights treaties offer comprehensive coverage and oversight for the promotion and protection of the rights of all migrant workers and members of their families. Bilateral agreements in the form of Memorandum of Understanding (MOU) become necessary for States in situations in which protection needs are immediate and ratification of relevant conventions and their incorporation into national law and policy will take too much time. However, bilateral mechanisms are becoming the main reference points for migration management and the precedence of national and international statutes are less prioritized. Bilateral agreements fail to consider fundamental issues in the protection of the rights of migrant workers and members of their families. Many of these rights violations and the measures to address them are not reflected in the MOUs. Although some bilateral instruments include general clauses on protection, enforcement mechanisms remain weak.

6. Nepal, like other countries of origin, negotiates different wages with countries of destination, citing the move as a way to protect their migrant workers. However, these bilateral negotiations are more like competitions in entering into bilateral agreements, accepting substandard minimum wages for their workers and challenging destination country governments less forcefully on subpar working conditions and concerns of human and labor rights violations. Unhealthy competition results in a race to the bottom, whereby workers are entered into employment arrangements in which standards are at the lowest and in which they have the fewest rights.

7. Violations against the human rights and labor rights of Nepalese migrant workers occur in both countries of origin and destination, making both the receiving States and the government of Nepal accountable. For Nepal’s part, it has the responsibility to look after and respond to the issues that confront and affect their nationals abroad in accordance with international human rights treaties and principles such as the Vienna Convention on Diplomatic Relations (1961),

Vienna Convention on Consular Relations (1963) and the Maastricht Principles on Extra Territorial Obligations in the Area of Economic, Social and Cultural Rights (2011).³

8. Additionally, migrant communities and migrants' rights advocates have long held that foreign missions must strengthen their presence, responses, and advocacy on behalf of their nationals, particularly when human rights violations occur. The consular department of a mission or consular post is usually the first point of contact for migrant workers, particularly those in distress who are seeking assistance. Consular departments are not only responsible for the safe migration of their nationals to the destination country through documentation services, but must be an immediate resource and source of support for migrant workers in distress.

C. Implementation of human rights obligations

1. Prohibition of slavery, forced labor and traffic in persons (UDHR Article 4; CEDAW Article 6)

9. Credible reports from migrant support groups in Nepal and studies of international human rights bodies cite the rampant unscrupulous practices of private recruitment agencies, including sub-agents and brokers acting independently of recruitment companies.⁴ Recruitment agencies take advantage of the hardships endured by families in Nepal by promising the latter employment in countries of destination, with salaries that are higher than what they can typically earn in their hometowns.

10. Because of the push (poverty, unemployment or underemployment) and pull (employment, better salaries and better standards of living) factors of migration, families decide to take risks and accept the jobs that are being offered by recruitment agencies. But this comes with a hefty financial obligation. In order for families to secure their family members jobs in the countries of destination, they have to pay unreasonably large sums of recruitment fees to the agents, the payment of such are sourced from savings, family possessions and loans. Recruitment agents conceal the real nature of the workers' employment abroad and the requirements including the costs of migration. Intending migrant workers are pressured to pay between 90,000 NRs to 120,000 NRs (900-1200USD) in recruitment fees that only cover the costs of visa and airline ticket

³ The Maastricht Principles are a restatement of law based on existing conventional and customary international law. Drawn from international law, the Maastricht Principles clarify the content of extra-territorial State obligations to realize economic, social and cultural rights but also explicitly apply to the full spectrum of civil, cultural, economic, political and social rights. Refer to the Global Initiative for Economic, Social and Cultural Rights, "Working Paper on Human Rights Law Sources: UN Pronouncements on Extra Territorial Obligations," February 2015,

<http://globalinitiative-escr.org/wp-content/uploads/2015/02/150202-Human-Rights-Law-Sources-ETOs.pdf>

⁴ Open Working Group on Labour Migration and Recruitment, "Civil Society Contributions to the Special Rapporteur's Report to the UN Human Rights Council on Migrant Labour Recruitment," 31 October 2014, <http://recruitmentreform.org/wp-content/uploads/2014/11/OWG-Report-to-the-SR-FINAL.pdf>; Open Society Foundations, "Migrant Workers' Access to Justice at Home: Nepal," June 2014, http://www.opensocietyfoundations.org/sites/default/files/migrant-nepal-report-english-20140610_1.pdf; The Guardian, "Nepal's crackdown on migrant worker exploitation: more no go than pogo?" 1 May 2014, <http://www.theguardian.com/global-development/2014/may/01/nepal-clampdown-migrant-worker-exploitation-operation-de-pogo>; "Hélène Harroff-Tavel and Alix Nasri / International Labour Organization, "Tricked and trapped: human trafficking in the Middle East," 2013, http://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_211214.pdf; and Bandita Sijapati, Amrita Limbu and Manisha Khadka, "Trafficking and Forced Labour in Nepal: A Review of the Literature," November 2011.

processing and exclude passport fees, medical clearance, local transportation expenses, accommodation and food. The agencies do not provide migrant workers and their families receipts and documentation of the payment, they withhold the passports and contracts of the latter should there be any complaints or suspicions about the employment arrangements. Migrant workers and their families are then forced to proceed with the terms of recruitment however dubious these arrangements are since they have already risked so much and incurred massive debts.

11. Equally concerning is the recruitment of women for domestic work in the countries of destination. The minimum age requirement for such work was 30, and then later on changed to banning all women to go to the Gulf States for domestic work.⁵ This regulation although may seem as well-intentioned does not actually protect the rights of women migrant workers but discriminates and makes them vulnerable to exploitation, irregular migration and labor trafficking. Rogue recruitment agencies facilitate irregular movement, and have on recorded accounts forged documentation of women migrant workers to evade the travel ban.⁶

2. Right to work and to just and favorable conditions of work / Freedom of movement (UDHR Articles 23 (1-3), 13 (1); CEDAW Articles 2, 11 (1.a to 1.f), 15 (4); ESCR (Article 2))

12. Rights violations against Nepalese migrant workers continue from the recruitment phase to the countries of destination. Because labor rights and access to justice mechanisms of both the origin country and countries of destination are poorly implemented or non-existent, Nepalese migrant workers, who are predominantly low- and semi-skilled, bear the impact of labor rights and human rights abuses.

13. Upon arrival at the airports in countries of destinations, passports and other identification documents of migrant workers are confiscated by their sponsors or employers. The practice of passport confiscation prevails⁷ which is in violation of article 13 of the Universal Declaration of Human Rights and CEDAW Articles 2(e) and 15.4; General Recommendation No.26 (2008) Article 26.iii.d, for women migrant workers).

14. Field visits and fact-finding missions reveal the abhorrent working and living conditions of Nepalese migrant workers in the countries of destination.⁸ Construction workers for instance cram in camp sites with inadequate provisions of food, water, and sanitation. They work in extreme conditions (weather, long working hours) to meet the demands of contractors who scurry to finish construction deadlines. At the end of the day, workers' salaries are either delayed, underpaid, or not being paid at all.

⁵ Ekantipur, "Government to lower migrant woman age bar to 25," 19 December 2014, <http://www.ekantipur.com/2014/12/19/top-story/govt-to-lower-migrant-woman-age-bar-to-25/399222.html>

⁶ Recruiters facilitate irregular migration through the open border with India. High recruitment fees force women migrant workers to migrate via India, which is much "cheaper" but risky.

⁷ Among several reports include: Building and Wood Workers International, "Malaysia: Exploitation of migrant workers," 31 January 2015, <http://www.bwint.org/default.asp?index=6002>; Anti-Slavery International, "Into the Unknown: Exploitation of Nepalese migrant domestic workers in Lebanon," May 2014, http://www.antislavery.org/includes/documents/cm_docs/2014/i/into_the_unknown_report.pdf; and International Trade Union Confederation, "The Case Against Qatar," March 2014, http://www.ituc-csi.org/IMG/pdf/the_case_against_qatar_en_web170314.pdf

⁸ Idem

15. Nepalese migrant domestic workers have distinct experiences of human rights and labor rights abuses. Their jobs are confined in private households making it difficult for labor inspectors or consular representatives to monitor their working conditions. They are excluded from labor laws which can provide them full coverage of labor rights protection and facilitate access to justice. Due to the Kafala system, they cannot leave their employers without getting written permissions from the latter. Several reliable reports unanimously reveal the exploitation Nepalese migrant domestic workers have to endure in the workplace. The only way for them to escape abuses is either to run away or commit suicide. Running away is considered as a criminal act, and migrant domestic workers are subjected to arrest, detention and deportation. Shelters provided by embassies and community support groups are their places of last resort. Although embassies strive to give assistance to migrant domestic workers in distress, the former are ill-equipped to extend the essential psychosocial and legal support to the latter.

3. Right to life, liberty and security of the person (UDHR Article 3; CEDAW Article 11.1.f)

16. The violations against the right to health of Nepalese migrant workers are increasingly alarming. Documentation of violations, health cases, deaths⁹, and suicide rates of migrant workers in the countries of destination are consistent and highlight the ongoing neglect of States. The following statistics quantify the situation which demands concerted action by both countries of origin and destination:

“Five hundred and forty-nine migrant Nepali workers died in Gulf countries in 2014. According to the data made available by the Nepali embassies in the Gulf countries, 549 Nepali migrants, including 20 women, died in Saudi Arabia, Qatar, Kuwait, UAE, Bahrain and Oman last year. The causes of their deaths were attributed to, among others, road accidents, workplace accidents and the natural causes.”¹⁰

“Qatar has admitted that 964 workers from Nepal, India and Bangladesh died while living and working in the Gulf state in 2012 and 2013... “We know from just two sources - the Indian and the Nepali figures - that more than 4,000 workers will die before a ball is kicked in Qatar.”¹¹

“Altogether 361 Nepali migrant workers in Malaysia have died due to various reasons including ailments, accidents, and suicide among others in the year 2014 alone. According to the data released by Nepai Embassy in Malaysia, 11 people lost their lives while working in factories, 52 people died of different chronic ailments, 36 died in accidents, 46 committed suicide. The actual reasons behind the deaths of the 216 people [are] still not known.”¹²

⁹ The most common cause of death among male migrant workers is sudden cardiac arrest. These migrant workers were young and healthy when they left Nepal, so dying of cardiac arrest in the countries of destination is questionable.

¹⁰ Ekantipur, “549 Nepali workers died in Gulf countries in 2014,” 15 January 2015, <http://www.ekantipur.com/2015/01/15/top-story/549-nepali-workers-died-in-gulf-countries-in-2014/400406.html>

¹¹ BBC Sports, “The human struggle to get Qatar ready for the World Cup,” 24 February 2015, <http://www.bbc.com/sport/0/football/31600385>

¹² myRepublica, “361 Nepali migrant workers in Malaysia died in 2014: Embassy report,” 26 December 2014, http://www.myrepublica.com/portal/index.php?action=news_details&news_id=89291

17. The UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health emphasized his concerns on the right to health of migrant workers on his visit to Malaysia – one of the major countries of destination for Nepalese migrant workers:

“Documented migrants are forcibly tested before initiating their journey in the countries of origin, and are denied work permits if found to be HIV/AIDS positive or pregnant. This practice poses a serious problem with respect to the right not to be discriminated on the basis of health status, the right to privacy, and the fundamental principle of informed consent. There are also reports indicating that migrant workers suffer from high levels of exploitation at the workplace, including physical, sexual and emotional abuse, as well as high occupational risks.”¹³

D. Recommendations

In light of the above issues that affect the rights of Nepalese migrant workers and members of their families, we urge the government of Nepal to consider the following recommendations.

1. Ratification and implementation of labor rights and human rights treaties

1. Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. As stated in Nepal’s response to the UPR Working Group’s recommendations in March 2011, “Groundwork is also being carried out with a view to joining other treaties, particularly the Convention on the Rights of Migrant Workers and Members of Their Families.”
2. Ratify ILO C189 - Decent Work for Domestic Workers Convention, 2011 (No. 189)
3. Ratify ILO C097 - Migration for Employment Convention (Revised), 1949 (No. 97) and ILO C143 - Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)
4. Ratify ILO C181 - Private Employment Agencies Convention, 1997 (No. 181) as the ratification and implementation of this convention would protect the rights of Nepali workers and prevent the abuses of unscrupulous private employment and recruitment agencies.
5. Enforce the provisions of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and General Recommendation 26; as well as the International Covenant on Economic, Social and Cultural Rights (ICESCR)

2. National policies

1. Create sustainable, decent work in the country so that people will have options, with migration for employment as an informed choice rather than a necessity.

¹³ Preliminary observations and recommendations by the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health Mr. Dainius Pūras Country Visit to Malaysia, 19 November to 2 December 2014, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15370&LangID=E>

2. Substantial information on the migration process needs to be provided to migrants at the grassroots level, i.e. village development committee (VDC) level, to enable migrants to have informed choices.
3. Amend the Foreign Employment Act to make it in line with international human rights mechanisms such as the UN Migrant Workers Convention and ILO C189. The amended Foreign Employment Act needs to specify the roles and responsibilities of government ministries and line agencies working on migration.
4. Abolish recruitment fees for workers seeking jobs abroad. No worker should have to pay recruitment fees to secure decent work.
5. The government needs to implement effective monitoring mechanisms for regulation of recruitment agencies.
6. Bilateral agreements should refer to normative frameworks such as ILO R86 and the Multilateral Framework on Labour Migration and cover the whole spectrum of migration, including recruitment, pre-departure, arrival in the countries of destination, return, and reintegration.
7. Repeal restrictive and discriminatory policies targeting women migrant workers, such as the ban of the Nepali government on migration of domestic workers to the GCC countries migrants.
8. Demand transparency from the Foreign Employment Promotion Board (FEPB). The Migrant Workers Welfare Fund which FEPB administers should contribute to the welfare of migrant workers.
9. Meaningful and sustainable reintegration programs should be established for returning migrant workers, as well as repatriated distressed migrant workers, particularly women.

3. Protection mechanisms in countries of destination

1. In accordance with the Vienna Conventions on Diplomatic Relations (1961) and Consular Relations (1963), instruct Nepali diplomats to focus their attention on diplomatic interventions aimed at ensuring migrant workers' long-term interests, and instruct labor attachés and diplomatic officers to focus on direct, immediate, gender-sensitive assistance.
2. Provide adequate training for mission staff in gender, social, and cultural sensitivity, labor laws, and migrant workers' rights prior to deployment. Continued support for such capacity building must also be provided.
3. Resources for embassies and missions need to be prioritized to include provisions for legal assistance and rapid response mechanisms for migrants in distress. Legal assistance should be provided for all migrant workers in countries of destination.
4. Establish in national law specific procedures for the quick, safe and effective rescue of abused and exploited migrant workers. Remove all barriers that confine and prevent the victim from escaping the abusive workplace.