



Human Rights Situation of Women Migrants and Their Communities

Regional Overview and Recommendations for the UN Mandate Holders

Introduction

In the current global economic and political crisis, migration continues to be a survival strategy for many people in the Global South. Growing number of women are moving within countries and across borders to seek employment opportunities, or/and escape from violence, discrimination, climate crisis, conflict, and poverty. Increased feminisation of migration has become an overt trend in the globalised world – around half of an estimated 272 million migrants who live and work outside their countries of origin are women, and approximately 66.6 million of them are migrant workers.

At the same time, migrant women face unprecedented challenges with the deregulation of labour policies and gender-specific restrictions in migration policies. Governments, recruitment agencies and other corporations depend on a flexible, mobile and cheap labour force to meet the labour demands under exploitative labour contracts and weak or no protections. At the same time, migration policies increasingly pose barriers to mobility that criminalise migrants and make them more vulnerable to exploitation in destination countries. With these circumstances, migrant women struggle with multiple and intersecting forms of discrimination and inequalities, restrictions in movement, labour rights violations, sexual and gender-based violence, racism, and xenophobia.

In the face of different forms of human rights violations, APWLD and migrant groups in the region are building and strengthening the movement of women migrants who are able to claim their rights to decent work, living wage, freedom of movement and right to organise. To end the marginalisation and exploitation, migrant women and the grassroots communities must be central to efforts, and their stories and lived experiences must be heard and learned.

In this context, APWLD convened a virtual consultation with UN mandate holders to provide grassroots migrant women's organisations in Asia Pacific with an opportunity to directly interact with them and share their challenges and stories. The consultation, which was held on 10 November 2021, aimed to provide an opportunity for grassroots women and their organisations to share trends around rights violations, to influence the thematic focus of the mandate holders' reports, and to share strategies and strengthen networks.

This regional message summarises the findings and recommendations presented by the civil society participants of the virtual consultation. Ten civil society grassroots organisations from seven countries¹ participated in the consultation to present key issues and challenges pertaining to the human rights of women migrants, along with key recommendations in response to current migration crises.

¹ Including Asthaa Parivaar from India; Kabar Bumi from Indonesia; Indonesian Migrant Workers Union (IMWU), Hong Kong; Nurzholber, Women Support Centre (WSC), and Public Fund for Support of Youth and Women "Danko" from Kyrgyzstan; Tenaganita from Malaysia; National Alliance for Women Human Rights Defenders (NAWHRD) and Aaprabasi Mahila Kamdar Samuha (AMKAS) from Nepal; Migrante International from the Philippines.

Human Rights Situation of Migrant Women in Asia and Pacific²

Structural Factors Driving People Away from the Places Where They Lived

As most women migrate without choice in the regions, they do so for a variety of reasons, including poverty, insufficient employment opportunities, climate change, poor infrastructure, and to escape from sexual and gender-based violence. Indonesian women migrant workers in Hong Kong reported no decent job prospects in Indonesia as the main reasons to work abroad. Similar factors drive labour migration in Kyrgyzstan, such as high unemployment and harsh environmental conditions. It has been documented in Nepal that women who are continually abused by their husbands and in-laws are forced to leave their country of origin in order to escape from domestic violence because the government has not provided them with any support or access to justice.

Lack of Safe Migration Options and Pathways: A Gateway for Human Rights Violations

Options and pathways for just and safe migration for women in the region are very limited or non-existent. As part of the migration process, including internal migration as well as international cross-border migration, there is a risk of exploitation by recruitment agencies and organised groups of human trafficking. For instance, Nepal's travel bans and other travel restrictions have forced Nepali women to embark on dangerous migration journeys in search of work. As a result of the ban, Nepali women have been forced to travel through dangerous routes and illegal channels to seek work abroad.

Indonesian citizens must travel through private recruitment agencies to work abroad legally. In addition to not improving protection for women migrant workers, this requirement also often results in exploitation and manipulation by recruitment agencies, training schools and loan companies. According to Kabar Bumi, one of the civil society organisation participants, it was documented that more than 84 percent of workers had their personal documents confiscated by their employers as a means of securing payment for their recruitment fees. These personal and original documents are sometimes never returned.

Migrant domestic workers and their families end up in debt bondage due to the extortionate recruitment cost of migration that is converted to a loan agreement with a high interest rate. Migrant domestic workers who fail to repay their loans are intimidated and threatened by recruitment agencies as well as loan companies.

During their employment in destination countries, women migrant workers experience violence and exploitation in multiple forms. Despite being abused or working in slavery-like conditions, most of women migrant workers were unable to leave the employment due to the debt bondage caused by the illegal recruitment fee.

² This section features key findings from stories and evidence collected by APWLD and her national civil society partners through Feminist Participatory Action Research (FPAR).

Slavery-like Working Conditions: Violence and Exploitation

There is an especially high risk of slavery-like working conditions for women migrants in the region. Most women migrant workers share similar experiences of no rest day, limited food provision, forced to live in poor housing conditions, as well as complete isolation due to the lack of communication with their families and the outside world. Under the COVID-19 pandemic, they also faced a significant increase in workload. Civil society participant from Malaysia, Tenaganita, has received 350 cases of abuse in 2020, with 70 percent of those coming from migrant domestic workers. Similarly, Kyrgyz women migrants, when they worked abroad, experienced sexual and gender-based violence (SGBV) as well as a gender pay gap. In India, Aastha Parivaar documented that migrant sex workers who refused to take on more clients were physically abused, forcing them but to work. As sex workers risk criminalisation, human rights violations are rarely reported.

These human rights violations and exploitation did not cease at the end of the employment period but continued afterward with long-term negative consequences. The study of AMKAS, Nepal found that more than 90 percent of the returnee migrants had psychosocial problems and that 15-20 percent suffered from severe mental illness due to their violent and abusive experiences in their migration.

Discriminatory Policies and Regulations Against Women and Migrants

Most laws, policies or regulations, including those supposed to protect women migrants, are discriminatory based on gender. For instance, minimum wage law, labour law, social security and basic services are not applicable to women migrant workers and domestic workers in many of the countries because of their intersecting identities as migrants, women and informal sector workers in Asia and the Pacific.

According to the Employment Act in Malaysia, for instance, domestic workers are considered domestic servants and consequently are not covered by national labour laws or social protection, which directly leads to widespread abuses against migrant workers. Similarly in Nepal, 90.5 percent of women do not have an employment contract and hence are not covered by comprehensive protection mechanisms. The COVID-19 pandemic led to the loss of employment of 85 percent of domestic workers in Nepal, who did not receive any assistance with their social security.

Laws, policies, administrative regulations and practices also make healthcare services difficult to access for many migrants. In Kyrgyzstan, the registration system was unfriendly and complicated, there was lack of information and the health infrastructure was faulty, which prevented migrants from receiving basic healthcare services. Additionally, returnee migrant mothers are often denied or terminated child allowance in Kyrgyzstan for multiple reasons, which include challenges to prove the eligibility and the barriers for returnee women migrants to access the information and re/apply for the allowance.

Inadequate Access to Justice and Absence of Law Enforcement

Women migrants often lack access to government assistance and support due to language barriers and lack of information. There are few legal mechanisms to handle complaints and compensate women workers who have been exploited by recruitment agencies. It is not uncommon for illegal recruitment agencies not to be prosecuted and continue their business as usual putting more women migrants at the risk of gross human rights violations.

The exploitation of migrant workers adds to the risk of arrest and detention for migrants with irregular status. Currently, Migrante International is supporting 52 Filipino migrant girls who were victims of human trafficking and were working as domestic workers in Syria. The support from the Philippines consulate was insufficient and inappropriate – the survivors remained in Syria for 2-3 years in a padlocked shelter after they ran away from the abusive employers. Currently, they are awaiting legal proceedings before leaving the country. Similarly, women in Kyrgyzstan who have experienced violence against them were unable to access legal support or redress mechanisms. The inability to access legal assistance has prevented most women migrants from accessing justice, leaving them with the only choice to be silent and endure long-term trauma and suffering as the consequences of their violent experiences.

Recommendations for UN mandate holders

We call on UN mandate holders to put forward the following recommendations to member states and address the specific issues of women migrants and their communities:

Address the Root Causes of Forced Migration:

1. States should eliminate all adverse drivers and structural factors that force people to leave their country of origin, including by ensuring decent work, living wage and education opportunities, poverty eradication, free from violence, rule of law, and protection of human rights and fundamental freedoms, including women's bodily autonomy and rights. States should pay specific attention to address the increasing risk of climate-induced migration, ongoing and emerging conflicts and political instability in the region that force people to leave their own livelihood, communities, and country.

Ensure a Rights-based Recruitment Process for Migrant Workers:

2. States should adopt and implement a zero recruitment and administrative fee policy for all migrant workers. Labour recruiters and recruitment agencies should be prohibited from charging or shifting recruitment fees or related costs to migrant workers to prevent debt bondage, exploitation, and slavery-like forced labour.
3. States should establish effective mechanisms to monitor and regulate the practices of recruitment agencies. Labour recruiters and recruitment agencies who are found involved in overcharging, document forgery and confiscation, and other illegal practices should be subjected to prosecution or conviction.
4. States should establish complaint and redressal mechanisms for migrants who become victims to malpractices and human rights violations of recruiters.
5. States should implement awareness raising on recruitment monitoring mechanisms for women migrants and their communities. Free mandatory skills and legal rights training should be provided by the government before the pre-departures.

Ensure Safe and Orderly Migration:

6. States should respect the human rights of migrants and ensure all measures are implemented to achieve safe and orderly migration. These measures should be gender

responsive. Discriminatory migration policies and travel restrictions on women based on gender and occupation should be abolished.

7. States should develop law and policies to address the needs of migrants who have become victims/survivors of human trafficking and recruitment malpractices.

Ensure Access to Decent Work and Living Wage:

8. Migrant workers should have access to decent work, living wage and equal access to employment opportunities.
9. Employers should ensure that recruitment and employment conditions and policies respect, protect and fulfill human rights and fundamental freedoms of women migrant workers, including those expressed in international labour standards. In particular, migrant workers must be guaranteed their right to living wage, holidays/rest days, social security, rights to change and terminate employment, the right to freedom of association and collective bargaining as well as prevention and elimination of forced labour, child labour and discrimination in respect of employment and occupation.
10. All migrant workers, including the internal migrants, should not be deprived of any rights based on their migration or employment status.

Provide Protection to Women Migrants from Sexual and Gender-based Violence:

11. States should develop gender-responsive policies to address the particular needs and vulnerabilities of sexual and gender-based violence victims/survivors.
12. States should allocate resources and provide shelters, hotline, assistance, health care, including mental health care, counselling, and access to justice and remedies to women migrants who experience sexual and gender-based violence.

Ensure Access to Universal Healthcare for Migrants:

13. Migrant workers, regardless of their migration and employment status, should be able to exercise their right to health, including universal public healthcare services. Legislative, policy, and administrative measures should be put in place to ensure migrants' timely and effective access to affordable, accessible, acceptable, and high quality health care services, facilities and goods at all stages of migration.

Enable Access to Justice and Legal Redress for Migrants:

14. States should adopt legislative, policy and other measures to address the obstacles for migrants to access justice and remedies, including language and information barriers.
15. States should provide sufficient and adequate services to facilitate migrants' access to legal complaint mechanisms to seek legal redress.
16. States should facilitate cross-border law enforcement and access to remedy to prevent and counter international criminal offences that put migrants in danger.

Specific Recommendations for Mandate Holders to Act Upon:

17. Develop best practices materials/guidelines to guide member states for legal and policy reform/formulation to protect the human rights of migrant women.

18. Ensure more frequent consultations with the grassroots civil society organisations working with women migrants and their communities to strengthen the connection between mandate holders and migrants.
19. Develop a thematic report on the consequences of climate change and conflicts in Asia Pacific on women who are forced to migrate away from their home countries.

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