



**IT'S A JOURNEY WE TRAVEL TOGETHER:  
WOMEN MIGRANTS FIGHTING FOR A JUST SOCIETY**

**Asia Pacific Forum on Women, Law and Development**



Title: IT'S A JOURNEY WE TRAVEL TOGETHER: Women migrants fighting for a just society

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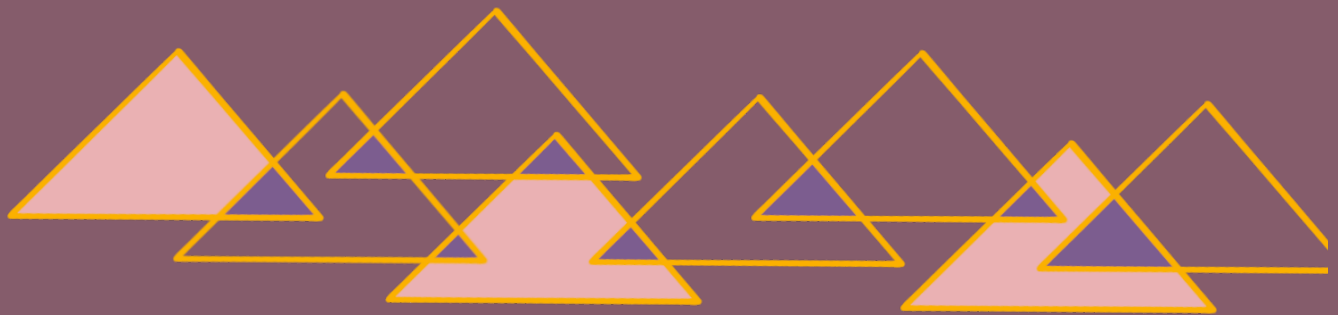
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**IT'S A JOURNEY WE TRAVEL TOGETHER:  
Women migrants fighting for a just society**

**Regional Feminist Participatory Action Research Report**

**APWLD  
Migrants United and Act for Human Rights (Migration) Programme  
2019-2021**



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# ACRONYMS

AMKAS	Aaprabasi Mahila Kamdar Samuha, Nepal
APWLD	Asia Pacific Forum on Women, Law and Development
ART	Antiretroviral therapy
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
EAEU	Eurasian Economic Union
FPAR	Feminist Participatory Action Research
GCM	Global Compact for Safe, Orderly and Regular Migration
GDP	Gross domestic product
HIV	Human immunodeficiency virus
ILO	International Labour Organization
IMWU	Indonesian Migrant Workers Union in Hong Kong, Hong Kong
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
IMRF	International Migration Review Forum
KABAR BUMI	Keluarga Besar Buruh Migran Indonesia (Association of Indonesian Migrant Workers Families), Indonesia
LGBTQI+	Lesbian, gay, bisexual, transgender, queer (or those questioning their gender identity or sexual orientation), intersex along with their allies
MOU	Memorandum of Understanding
NAWHRD	National Alliance of Women Human Right Defenders, Nepal
NGO	Non-governmental organisation
OHCHR	Office of the (UN) High Commissioner for Human Rights
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNODC	United Nations Office on Drugs and Crime





## ACKNOWLEDGEMENTS

From 2019 to 2021, the Asia Pacific Forum on Women, Law and Development (APWLD) partnered with seven organisations from six countries across the Asia region (Kyrgyzstan, Nepal, India, Malaysia, Indonesia and Hong Kong) to undertake Feminist Participatory Action Research (FPAR) as part of their Migrants United and Act for Human Rights (Migration) Programme. The FPAR supports and mentors young women researchers to undertake participatory research within their communities about women's experience of migration and the gendered power relations operating throughout the migration. Working with women at different stages of migration, the FPAR teams identified issues of concern and collected evidence to generate knowledge and inform collective advocacy to work towards structural change that will realise the human rights of migrant women and ensure a gender-just and right-

based migration. It is the journey of the migrant movement that we travel together. The FPAR are building grassroots women's movements, producing new knowledge tools and resources, and strengthening their capacity to advocate for their rights and for system change.

We are grateful for and honour the contributions of the following women and organisations:

Vaishali Santosh Balshankar and Seema Sayyed of Aastha Parivaar in India. Aastha Parivaar is a community-based and -led organisation of sex workers, including transgender and male sex workers. Their work includes HIV/AIDs, sexual and reproductive health issues and rights, legal literacy, and social protection.

Manata Sadykova, Cholpon Dzhumashalieva, Nurbiubiu Kerimova and Chynara Bakirova of DANKO in Kyrgyzstan. DANKO works on the issues of internal and external migration.

Shristi Bajracharya, Aakanchhya Shahi, Aayushi Bam, Renu Adhikari, Bhagwati Adhikari and Parbati Basnet of the National Alliance of Women Human Rights Defenders (NAWHRD) in Nepal. NAWHRD is an alliance of 21 organisations of women human rights defenders who work on a range of issues. Rights in mobility is a key area of NAWHRD's work, since this is a crucial issue in preventing trafficking in persons.

Amira Subba and Bijaya Kumari Rai Shrestha with Chetana Shreng, Sarda Maskey, Jivan Kala Rai of AMKAS in Nepal. AMKAS is run by returnee women migrant workers. Their work includes capacity building, policy, media mobilisation and support for survivors of human trafficking.

Nik Azura Binti Nik Nasron and Prema Thiyagu of Tenaganita in Malaysia. Tenaganita is an organisation that works on the protection and empowerment of women migrants and refugees in Malaysia.

Erwiana Sulistyaningsih and Sringatin of the Indonesian Migrant Workers Union (IMWU) in Hong Kong. IMWU is a trade union for Indonesian migrant domestic workers in Hong Kong dedicated to developing the capacity of Indonesian migrant domestic workers to defend their rights through education, training, advocacy and campaigning, cultural activities, paralegal services, shelter references, outreaching and solidarity programmes.

Poniyati, Karsiwen, Adzkiya Syahidah, Sumiyati and Tus Mulyani of Kabar Bumi in Indonesia. Kabar Bumi is a grassroots organisation of Indonesian migrant workers whose work includes handling of cases of trafficking and modern-day slavery, and community empowerment for families of migrant workers.



## EXECUTIVE SUMMARY

Migration seems to offer a chance at better prospects than many women in this region can find at home. However, whatever drives their decision to migrate, women's options for and experiences of migration are constrained by structural forces such as patriarchy, globalisation, militarism and fundamentalisms, the same forces that exert power over women's lives and limit the full realisation of their human rights in their countries of origin.

Migration has been normalised in large parts of Asia and the Pacific. Migrant workers are instrumentalised as drivers of sustainable development without commensurate concern about how or whether such development benefits migrants. They are widely seen as a necessary element of development, with the region accounting for nearly half of the world's remittances<sup>1</sup>. But this neoliberal model of development relies on low-wage, low-status

labour that keeps migrant workers compliant through precarity, a situation that allows many to abuse and exploit migrants with impunity.

Though temporary labour migration is regarded as a necessary strategy by many countries of origin, the authorities of these States do not do enough to guarantee that their citizens can migrate in safety and dignity. Despite repeated commitments in international policy forums to facilitate regular pathways for migration, countries of origin, transit and destination often impede rights-based migration. Some countries of origin ban women from migrating in the name of protection, an exercise in patriarchal power. Countries of transit and destination (in particular) are increasingly investing measures to control migration through militarised border enforcement and carceral responses to undocumented migration. Further, they seek to control migrants through denying or restricting the right to freedom of association and civic space. All such barriers make migrations, especially those through irregular channels, far more dangerous for the women migrants and, as the countries do nothing to address the structural factors driving migration, these barriers do not stop people undertaking migration.

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<sup>1</sup> Asia-Pacific Migration Report 2020. ESCAP. Retrieved from <https://www.unescap.org/announcement/asia-pacific-migration-report-2020>



This report describes the Feminist Participatory Action Research (FPAR) carried out by seven organisations from six countries across Asia and the Pacific region (Kyrgyzstan, Nepal, India, Malaysia, Indonesia and Hong Kong) between 2019 and 2021. The women migrants who partnered with APWLD in this research described how migration was an inevitable response to poor living conditions and prospects that deny their human rights and fundamental freedoms. Their migration is a refusal to accept this, showing initiative and resilience. They brought these characteristics to the FPAR, sharing their experiences and analyses and took on exclusion from legislation or bad laws and policies, exploitative recruitment agencies, abusive employers, and a lack of access to services and to justice. As the world changed with the spread of the COVID-19 pandemic, the partners had to adapt their plans, ensuring safety and instituting collective care mechanisms, as well as joining the pandemic response. Some had to cope with the digital divide, but others found opportunities amid the restrictions, expanding their reach as the world moved online.

Researching the most immediate concerns of women migrants from or in those countries, the FPAR findings demonstrate that, at home and abroad, women face systemic marginalisation and discrimination, putting them at a disproportionate risk of human rights abuses throughout the migration cycle. It also demonstrated that women migrants are not prepared to accept this. Building their skills, the FPAR partners have used the research findings as an evidence base for action – through communications and advocacy they have made connections, built alliances and strengthened movements, lobbied governments and raised their issues with UN representatives, and achieved meaningful change for their sisters and communities. And they are not finished.



# THE MIGRATION FPAR PARTNERS

The Partnering Organisations for the Migration FPAR 2019-2021 worked with returnees and current migrant workers in countries of origin and destination in Central, South, South East, and East Asia and also, in one FPAR, with internal (rural to urban) migrants.

## National Alliance of Women Human Rights Defenders (NAWHRD)

National Alliance of Women Human Rights Defenders, Nepal is a vibrant, strong and active women's network working from a feminist perspective. NAWHRD supports Women Human Rights Defenders working at different levels (primarily at the frontline) by building their capacity, supporting them in times of distress, advocating collectively for recognition of their work as human rights work and by creating protection/support mechanisms for them. NAWHRD also supports women whose rights get violated- especially victims/survivors of different forms of violence and further advocates for required policy changes to ensure the rights of all women, especially women from marginalised groups. Through FPAR, they identified domestic workers' human rights concerns, and mobilised the domestic workers to demand legal recognition and protection.

## Aaprabasi Mahila Kamdar Samuha (AMKAS), Nepal

AMKAS Nepal, an official non-profit entity functional under the affiliation of Social Welfare Council, is an organisation run and led by women migrant workers for the promotion of the rights and interests of migrant workers, especially women migrant workers, and their families. This research focused on the impact of the travel restriction and ban policies on women's foreign employment, and showed the importance of abolishing the ban in achieving safe migration as a fundamental human right.

## Aastha Parivaar, India

Aastha Parivaar (AP) is a registered federation of 12 community-based organisations that emerged from Aastha Project. AP aims at strengthening the sex worker community, providing a common platform for the empowerment of key populations (sex workers) including bar girls, street-based workers, home-based workers, and male and transgender workers. AP aims to address six main areas of need within the community to create a sustainable impact: HIV/AIDs and sexual health intervention, resources, crisis intervention, legal advocacy, social protection, reducing risk and vulnerability and children. They conducted the FPAR to examine the cause and consequences of human rights violations experienced by migrant sex workers and to organise them to demand legal protection and health care.

### **Public Fund for Support of Youth and Women “Danko”, Kyrgyzstan**

The Danko Public Fund for Support of Youth and Women missions are overcoming legal illiteracy, combating all types of violations of the rights and interests of women and young people, as the most vulnerable segments of the population, protecting and representing their interests at all levels of government. During FPAR, they explored the women’s experiences throughout the cycle of migration and identified their human rights concerns. They are also supporting women movement initiatives on developing advocacy plans and opportunities for policy changes and their involvement in the regional women’s movement.



### **Association of Indonesian Migrant Workers Families - Keluarga Besar Buruh Migran Indonesia (KABAR BUMI), Indonesia**

KABAR BUMI, established in 2015, is a grassroots organisation of returned migrants and the families of migrants. Prior to joining KABAR BUMI in Indonesia, many of its members were already involved with migrant’s organisations in different countries where they were working as migrant workers. Their FPAR focused on the private employment agencies’ practice of personal document confiscation, and its impact on the rights of returning women migrant workers.

### **Tenaganita Women’s Force, Malaysia**

Tenaganita is a Malaysian Human and Labour Rights, non-governmental organisation with a vision for a just, free and democratic society where all are equal human beings with dignity and rights. Its mission is to promote and protect the rights and dignity of all women, migrants and refugees while creating spaces collectively to achieve their full potential and liberation in a globalised world. In this FPAR, they identified the human rights violations faced by domestic workers in Malaysia and mobilised domestic workers to advocate for legal recognition and protection through national legislation.



### **Indonesian Migrant Workers Union in Hong Kong (IMWU-HK), Hong Kong**

The Indonesian Migrant Workers Union (IMWU) is a trade union for Indonesian migrant domestic workers in Hong Kong. IMWU is the direct result of the transformation of the Indonesian Group-Hong Kong established in 1993. IMWU is dedicated to empowering and developing the capacity of Indonesian migrant domestic workers to defend their human rights through education, training, advocacy and campaigning, cultural activities, paralegal services, shelter references, outreaching and solidarity programmes. The FPAR investigated and collected evidence of overcharging and illegal recruitment practices against Indonesian migrant domestic workers.



## **REALITIES: OVERVIEW**

## AN EMPTY VILLAGE<sup>2</sup>



What does it mean to migrate? It means leaving home. In 2019, almost 107 million people from Asia and the Pacific have left home and lived outside their countries of origin<sup>3</sup>. Massive scale of rural-to-urban and cross-country migration has profoundly altered the socioeconomic and demographic structure of rural villages in the sending countries. These villages were once full of life, but as the years went by, women and men

<sup>2</sup> Title inspired by the situation facing some rural villages that can no longer provide sustainable livelihoods or the necessary social services, forcing residents to seek options elsewhere and leaving behind “ghost villages”, see for example: Kavita Upadhyay, 2018. Inside the ghost villages of Uttarakhand. The Indian Express, 24 June 2018, at <https://indianexpress.com/article/india/uttarakhand-baluni-saina-bhootiya-abandoned-villages-migration-5230715/>. In this case it was also linked with militarism as the villages were major recruitment sites for the armed services.

<sup>3</sup> Asia-Pacific Migration Report 2020. ESCAP. Retrieved from <https://www.unescap.org/announcement/asia-pacific-migration-report-2020>

in the prime of their life moved to seek foreign employment as a potential opportunity for a better life. These villages have now turned to a quiet and empty place. For many Asia Pacific women, migration probably means that family members remain behind. Most countries of destination for migrant workers – at least for those migrating into low-wage work – do not permit migrants to move or reunite with their family members. Some destination countries also impose restrictions on migrant workers forming a family while they are in the country. That means, for years at a time, connecting with family at home only by phone or on screen or maybe with short visits, if the contract allows, if the journey is feasible in the time allowed for a home visit, if the borders are not closed due to a public health or other emergencies. Such continuous contact with parents, combined with support in-country from guardians and the community, is critical to help the children of migrant parents deal with the absence of one or both of their parents and ensure their healthy psychological development.<sup>4</sup> Family separation is a norm of contemporary labour migration. Its lesson is intergenerational: it is teaching the children of migrants that migrating away from your family is the norm, not a choice that they could choose.

States’ commitment to globalisation and its pursuit of market liberalisation, deregulation and privatisation to benefit the most wealthy and strengthen the oligarchy across the region has sacrificed labour rights to attract capital investment, creating large numbers of working poor and marginalised social groups some of whom seek solutions to their impoverishment through migration. Governments across Asia and the Pacific have used the cover of the COVID-19 pandemic to further such neoliberal reforms. One example is Indonesia’s adoption of the 1,187-page

<sup>4</sup> UNICEF, n.d. Children “Left Behind”, UNICEF Working Paper, Retrieved from: <https://www.unicef.org/media/83581/file/Children-Left-Behind.pdf>

Omnibus Bill on Job Creation (commonly known as the Omnibus Law) in November 2020 that guts labour rights – delinking minimum wage from the cost of living and increasing precarity – and privatises energy, among other provisions. Similarly in India, the government has abolished multiple labour laws, ending or undermining protections on wages, working conditions, industrial relations, social security and occupational safety and health.

As part of the neoliberal policy agenda, government policy to minimise public expenditure, often combined with tax cuts for corporations and the wealthy and financial deregulation, drives government borrowing and household and sovereign debt. This has given rise to what in some countries amounts to a national labour export policy. This is where countries of origin rely on migrant workers' remittances to cover the shortfall in their obligations to realise social and economic rights to the extent that it necessitates an aggressive strategy of promoting and normalising migration to its citizens.<sup>5</sup> Countries like the Philippines and Indonesia have made the international export of temporary labour an explicit part of their economic development, as if their citizens are goods to be traded. This serves to cover some of the economic shortfall through as well as efforts for political reform and a more equitable economy at home. Over time, it makes countries of origin dependent on the income from remittances, entrenching inequalities between countries.

This between-countries inequality has a long history. Countries of origin are often struggling

<sup>5</sup> International Covenant on Economic, Social and Cultural Rights, Art. 2.1; Committee on Economic, Social and Cultural Rights, General Comment No. 3: The Nature of States Parties' Obligations, 1990; Committee on the Rights of the Child (CRC), 2016. General comment No. 19 on public budgeting for the realization of children's rights (art. 4), CRC/C/GC/19, 20 July 2016

**...WOMEN MIGRANTS FROM LOWER-INCOME COUNTRIES ESPECIALLY FROM THE GLOBAL SOUTH ... FULFIL SHORTAGES IN CARE AND DOMESTIC WORK, WHILE THEY IN TURN HAVE TO RELY ON FEMALE RELATIVES IN THEIR COUNTRIES OF ORIGIN TO CARE FOR THEIR OWN FAMILIES.**

to overcome underdevelopment, a legacy of the extractive drive of colonialism, imperialism and capitalist expansion. Decades on from independence, macro-economic policies and abusive tax practices across the region function in service of a growth-focused agenda to benefit the privileged few at the expense of the public sector and infrastructure spending. This agenda is prioritised over government spending on public services, where measures to ensure that everyone has access to health care, education and social safety nets are crucial to improve welfare and as part of poverty-reduction strategies and cannot be left to the market. Levels of social spending are low, though they vary across the region: sub-regional averages of expenditure on health, education and social assistance is 5.22 for South Asia and 7.74 for East Asia and Pacific as a percentage of GDP.<sup>6</sup> Many countries in the region spend less than 2 per cent of GDP on social protection (excluding health).<sup>7</sup>

For the economies of destination countries, the push for increased productivity and economic growth leads to an increase in the demand for labour, especially in the sort of low-status roles that are so far difficult to replace through automation.<sup>8</sup> Though advocates for these schemes claim they benefit migrant workers as well as the States of origin and destination, they are mainly

<sup>6</sup> Carolina Bloch, 2020. Social spending in South Asia: an overview of government expenditure on health, education and social assistance. Research Report No. 44. Brasília and Katmandu: International Policy Centre for Inclusive Growth and UNICEF Regional Office for South Asia. Retrieved from: <https://www.unicef.org/rosa/media/10016/file/Social%20spending%20in%20South%20Asia.pdf>

<sup>7</sup> Economic and Social Commission for Asia and the Pacific (ESCAP) and the International Labour Organization (ILO), 2021. The Protection We Want: Social Outlook for Asia and the Pacific. ESCAP, ST/ESCAP/2917

<sup>8</sup> Robert Miles, 1986. Labour migration, racism and capital accumulation in western Europe since 1945: an overview. *Capital & Class*, 10(1), 49–86, doi:10.1177/030981688602800105

fulfilling capitalism's need for cheap labour.<sup>9</sup> For the migrants, they may see some material benefit with improved incomes that they can invest in well-being, in education or training, for themselves and their families but it comes at the cost of realising their human rights, often for many years.

Globalisation, with its focus on economic growth and promise of improved living standards, relies on the unpaid and undervalued reproductive labour of women at home and the un- and under-paid work of women migrant workers, perpetuating gendered economic inequality. This gendered care work is at the core of the global economy; without it, the system would collapse.<sup>10</sup> Women's care labour is undervalued in both the market and the public sector in part because it is so feminised which, in a patriarchal world that maintains power through systematic and institutionalised sexism and interrelated discriminations, is devaluing. This permits States to prioritise tax incentives for the wealthy, often by cutting investment in social services, disproportionately affecting women, especially those from socially and economically disadvantaged groups.<sup>11</sup> High and middle-income countries address this, in part, through the global care chain with its highly unequal gender division of labour, bringing women migrants from lower-income countries especially from the global South to fulfil shortages in care and domestic work,

while they in turn have to rely on female relatives in their countries of origin to care for their own families.

Though a public good, the undervaluing of care work results in widespread decent work and rights deficits. Women migrant workers in the sector are usually in low-paid insecure jobs in the informal economy, excluded from the protection of labour laws and unable to realise their fundamental human rights. Their pay and status is not commensurate with the vital service they provide or their role in sustaining the economy by freeing others from their care responsibilities to take on remunerative work outside of the home. Women migrant workers, especially those in low-paid, low-status work, are kept compliant through precarity. Temporary labour migration programmes have become the dominant form of labour migration. They are promoted in UN documents,<sup>12</sup> and touted by States, some international organisations and academics as the model for migration governance. These schemes are synonymous with rights restrictions and have been described as "state-sanctioned programs of indentureship".<sup>13</sup> The women migrant workers are kept temporary though the roles they fill are often permanent, meaning that the schemes require regular supplies of workers. Once on these programmes, migrants typically face low wages and, often, forms of wage theft, lack of social protection and violations of other economic and social rights including poor working conditions that may amount to forced labour or trafficking in persons, all while being denied freedom of association and union rights.

The fear of losing whatever limited access to longer-term or permanent status may be possible,<sup>14</sup> being denied future contracts, or being

<sup>9</sup> Daniel Costa and Philip Martin, 2018. Temporary labor migration programs: Governance, migrant worker rights, and recommendations for the U.N. Global Compact for Migration. Economic Policy Institute, Retrieved from: <https://www.epi.org/files/pdf/152373.pdf>

<sup>10</sup> The economic value of just the unpaid care work performed mainly by women has been estimated at USD 11 trillion, or nine per cent of global GDP (as at 2018): ILO, 2018. Care work and care jobs for the future of decent work. International Labour Office – Geneva: ILO. OXFAM estimate that unpaid and paid care work sees women undertake the equivalent of six weeks full-time work more than men every year: Oxfam International, 2020. Time to Care: Unpaid and underpaid care work and the global inequality crisis

<sup>11</sup> OHCHR, Women are often hit harder by austerity and cuts: UN expert says, Press release, 22 October 2018, Retrieved from: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23749&LangID=E>

<sup>12</sup> Including the GCM

<sup>13</sup> Harsha Walia, 2022, Why climate justice must go beyond borders. Open Democracy, 20 January 2022, Retrieved from: <https://www.opendemocracy.net/en/oureconomy/climate-justice-migrant-labour-harsha-walia/>

<sup>14</sup> The lack of any pathway to permanent residency is another

deported – unable to complete their migration or cover the debts accrued in the migration process – forces compliance.<sup>15</sup> Even if migrants feel they were able to make a free choice to migrate, they are doing so within the structural process of neoliberal globalisation that positions labour migration for capital accumulation that sees many effectively undertaking forced economic migration, and certainly cannot live free once they have arrived in the country of destination.<sup>16</sup> Those States are primarily interested in importing labour, as a commodity, rather than people<sup>17</sup> who are rights-bearers with needs and aspirations. As a result, migrant workers on these schemes are not treated as fully human with the full spectrum of human rights. They are denied integration and often physically segregated from the host population; allowed to be in the country only temporarily, heavily restricted in the services available to them and required to return home at the end of their contract.

## AN INVISIBLE CHAIN

Different forms of oppression that drive migration follow the women migrants on their journey. Even in the best case scenario, where the migrant achieves their objectives – for example, gaining an education or earning relatively better salary and supporting family back home – this individual

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hallmark of these programmes

<sup>15</sup> Hila Shamir, 2017. The Paradox of 'Legality': Temporary Migrant Worker Programs and Vulnerability to Trafficking, in Prabha Kotiswaran (ed.). *Revisiting the Law and Governance of Trafficking, Forced Labor and Modern Slavery* (Cambridge Studies in Law and Society). Cambridge: Cambridge University Press; Harsha Walia, 2022, op cit.

<sup>16</sup> Robert Miles, 1986. Labour migration, racism and capital accumulation in western Europe since 1945: an overview. *Capital & Class*, 10(1), 49–86, doi:10.1177/030981688602800105; Nicola Piper and Matt Withers, 2018. Forced transnationalism and temporary labour migration: implications for understanding migrant rights, *Identities*, 25(5), 558–575, doi: 10.1080/1070289X.2018.1507957; Cristiana Bastos, Andre Novoa and Noel B. Salazar, 2021. Mobile labour: an introduction, *Mobilities*, 16(2), 155–163, doi: 10.1080/17450101.2021.1885840

<sup>17</sup> Piyasiri Wickramasekara, 2011. Circular migration: A triple win or a dead end? Global Union Research Network. Geneva: International Labour Office, pp. 85–86

action cannot remedy structural problems such as lack of decent work or sexual and gender-based violence, or the climate crisis. Migration may provide women's hope to escape from the



discriminations or violence that drove the decision to leave, but very soon, women migrants are often found themselves tied up with the invisible chain of patriarchy. Violence, racism and discrimination echo through the migration – and be waiting for the woman on her return. The expectations that flow from the stereotypes and claims to tradition that are dictated by patriarchy play a large role in the lives of women migrants in Asia and the Pacific.

The cultural construction of gender under patriarchy creates a complex patchwork of patriarchal formations which dictate rules and norms that are often invoked to justify discrimination and violent practices against women, girls and gender non-conforming people. This includes an expectation that women either migrate to support their families through working on low paid service jobs, or may confront the stigma of bad reputation in abandoning her family responsibility. The strong patriarchal norms do not necessarily prevent women's migration, for



example, in contexts where harmful practices against women and girls are more likely to also force women to migrate for work. The patriarchal culture creates the conditions to make migration seem like a better option - to leave a violent situation at home.<sup>18</sup> However, these embedded discriminations on the other hand can undermine women's migrations from the outset, with discriminatory laws, policies and practices against women in rights to land and inheritance and to education reducing their resources.

Sexual and gender-based violence is endemic<sup>19</sup> and can follow women through their migrations, as a driver of the migration, a risk or reality during their journey and time as a labour migrant. The risk is further heightened where women migrant workers experience multiple and intersecting forms of discrimination and inequalities, especially for those living with disabilities, who are indigenous and who identify as LGBTQI+.<sup>20</sup> This violence increased during the pandemic. For example, a rapid assessment reported that civil society organisations in Southeast Asia working with women migrants observed a 37 per cent increase in violence by employers and a 21 per cent increase in violence by family members.<sup>21</sup>

Pervasive racism is clearly evident in women migrants' everyday life and reinforced by intrinsically discriminatory and inadvertently racist legal schemes that make it difficult for people to escape the vicious cycle. Racism in intersection with nationality, class, caste, gender, language,

religion among other factors, in which prejudice thrives and driving xenophobia. This manifests in selective and restrictive immigration policies, police harassment and profiling, denial of access to services or differential treatment, hostile media and political discourses, and racial stratification of the (migrant) labour market, among others. The COVID-19 pandemic had exacerbated pre-existing systemic racism facing migrants across the world.<sup>22</sup> Women migrants and migrants workers have been the target of xenophobia. This has persisted at individual, community and systemic levels against foreigners, or those perceived to be foreign, in particular against individuals who are perceived as a non-white Other<sup>23</sup>. It manifests through physical and verbal abuse, social exclusion, denial access to goods and services, discriminatory restrictions and quarantine policies, including anti-migrant political rhetoric and actions.

## A CROWDED PRISON

Various states of unfreedom still largely predominate across Asia with authoritarian and fascist regimes, conflicts, coups, increased militarism, sectarian politics and fundamentalist and nationalist movements shrinking democratic spaces and bringing violence and other rights violations to people across this most populous global region. The misogyny and other discriminations that such rights-abusing systems give rise to and thrive on harm everyone. These inequalities drive migrations, within countries and

<sup>18</sup> Erin Trouth Hofmann and Guangqing Chi, 2021. Bride kidnapping and gendered labor migration: evidence from Kyrgyzstan. *Journal of Ethnic and Migration Studies*, doi: 10.1080/1369183X.2021.1931062

<sup>19</sup> UN Declaration on the Elimination of Violence against Women (1993)

<sup>20</sup> See, for example, Violence against women migrant workers: Report of the Secretary-General, A/76/245, 29 July 2021

<sup>21</sup> UN Women, 2020. Rapid assessment: Impact of COVID-19 on women's civil society organizations, May 2020, Retrieved from [https://asiapacific.unwomen.org/sites/default/files/Field%20Office%20ESEAsia/Docs/Publications/2020/06/CSO%20survey%20brief\\_26%20Aug%202020.pdf](https://asiapacific.unwomen.org/sites/default/files/Field%20Office%20ESEAsia/Docs/Publications/2020/06/CSO%20survey%20brief_26%20Aug%202020.pdf)

<sup>22</sup> Hennerbry J & KC H (2022) Quarantined! Xenophobia and migrant workers during the COVID-19 pandemic, IOM, Retrieved from <https://publications.iom.int/system/files/pdf/quarantined.pdf>

<sup>23</sup> See for example, Human Rights Watch, 2020. Covid-19 Fueling Anti-Asian Racism and Xenophobia Worldwide, 12 May 2020, Retrieved from <https://www.hrw.org/news/2020/05/12/covid-19-fueling-anti-asian-racism-and-xenophobia-worldwide>; Amanuel Elias, Jehonathan Ben, Fethi Mansouri and Yin Paradies, 2021. Racism and nationalism during and beyond the COVID-19 pandemic. *Ethnic and Racial Studies*, 44(5), 783-793, doi: 10.1080/01419870.2020.1851382. This echoes back to some of the earliest anti-migration legislation in the global north that aimed to stop Chinese immigration, see for example, Reece Jones, 2021. Facing Up to the Racist Legacy of America's Immigration Laws. *The New York Times*, 28 October 2021, Retrieved from <https://www.nytimes.com/2021/10/28/opinion/race-immigration-racism.html>

across borders as economic policies, development interventions, political agendas and legal systems are shaped to benefit the very few over the many.

Armed conflicts and military interventions drive migrations. The violence and threat of the conflict as well as its economic toll causes people to flee for safety and survival, and to secure a sustainable livelihood for themselves and their family.<sup>24</sup> Longer term, the environmental degradation that is the legacy of conflicts and contributes directly to climate change is also the driver of migrations.



But the links between militarism and migration go further than that and are more diverse. The rising global hostility toward migrants over recent years has fuelled a militarised response with increased border securitisation by State and corporate actors. Militarised responses are intrinsically linked with patriarchy, reinforcing its gendered logic of masculine protectors of obedient women and children at home.<sup>25</sup> Increasingly, these measures also rely on surveillance and monitoring technologies (such

<sup>24</sup> The Asia Pacific region generally has a lack of refugee protection mechanisms, with a low rate of ratification of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol

<sup>25</sup> Iris Marion Young. 2003. The Logic of Masculinist Protection: Reflections on the Current Security State. *Signs: Journal of Women in Culture and Society*, 29(1), 1-25

as cameras and motion sensors, drones, the use of biometrics) – that have a long association with racialisation – to track migrants and prevent them from crossing international borders.<sup>26</sup> Such anti-migrant efforts deliver sizeable corporate profits for the border security industry and wider immigration enforcement sector, while also diverting investment from the climate crisis and critical interventions to realise women's human rights.<sup>27</sup>

These rights restrictions typified by authoritarian-leaning States are not limited to asserting sovereignty through border security but extend deep into migration governance with the prevalence of temporary migration schemes across the region that typically deny migrants a range of their rights, notably the right to freedom of association. This is particularly concerning in the Asia Pacific context that sees particularly low union density and weak leverage, the result of years of regressive policies towards labour unions.

When people do protest, organise and resist – and they do, in myriad ways – they increasingly face the force of State and paramilitary violence. The crack downs on civil society and journalists have resulted in the targeting of migrant workers, union activists and NGO workers who speak out about abuses or provide assistance to migrants

<sup>26</sup> For example, Mark Maguire, 2012. Biopower, racialization and new security technology. *Social Identities* 18(5), 593-607; Petra Molnar, 2020. Technological Testing Grounds: Migration Management Experiments and Reflections from the Ground Up. EDRI and the Refugee Law Lab; Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance: Racial and Xenophobic discrimination and the use of digital technologies in border and immigration enforcement, A/HRC/48/76, 22 September 2021

<sup>27</sup> Todd Miller with Nick Buxton and Mark Akkerman, 2021. Global Climate Wall: How the world's wealthiest nations prioritise borders over climate action. Transnational Institute, Amsterdam; on wider issues of military expenditure see for example, Rajeswari Pillai Rajagopalan, Asian Military Spending: A Sign of Worsening Security Environment, *The Diplomat*, 4 March 2021 Retrieved from <https://thediplomat.com/2021/03/asian-military-spending-a-sign-of-worsening-security-environment/>, and data from the Stockholm International Peace Research Institute on military expenditure as proportion of GDP, Retrieved from <https://data.worldbank.org/indicator/MS.MIL.XPND.GD.ZS?locations=Z4-8S-US>

and the journalists who research and report on these cases. It also has a chilling effect that may prevent other activists and media raising similar concerns.<sup>28</sup>

Far from using immigration detention as a last resort when no other alternatives are viable, the security narratives that drive much of the migration governance in Asia and the Pacific see governments using detention against migrants in irregular status in ways that are often mandatory and open-ended, constituting arbitrary detention under international human rights law.<sup>29</sup> For

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<sup>28</sup> See for example, Human Rights Watch, 2013. Thailand: Navy Lawsuit Threatens Media Freedom, HRW, 19 December 2013, at <https://www.hrw.org/news/2013/12/19/thailand-navy-lawsuit-threatens-media-freedom>; Associated Press, Papitchaya Boonngok, 2015. Phuketwan Journalists Acquitted of Defaming Thai Navy, The Irrawaddy, 1 September 2015, Retrieved from <https://www.irrawaddy.com/news/burma/phuketwan-journalists-acquitted-of-defaming-thai-navy.html>; Report of the Special Rapporteur on the situation of human rights defenders, A/HRC/37/51, 16 January 2018; IDWFED, 2019. Hong Kong: Indonesian migrant domestic worker detained for 28 days for writing about Hong Kong protests, International Domestic Workers Federation, 1 December 2019, Retrieved from <https://idwfed.org/en/updates/hong-kong-indonesian-migrant-domestic-worker-detained-for-28-days-for-writing-about-hong-kong-protests>; BBC News, 2020. Malaysia arrests Bangladeshi migrant who criticised government on TV, BBC News, 25 July 2020, Retrieved from <https://www.bbc.com/news/world-asia-53537312>; OHCHR, 2020. Malaysia / COVID-19: "Stop crackdown on migrants, journalists and civil society" – UN rights experts, 21 May 2020, Retrieved from <https://www.ohchr.org/en/press-releases/2020/05/malaysia-covid-19-stop-crackdown-migrants-journalists-and-civil-society-un>; Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the human rights of migrants, AL MYS 1/2021, 16 February 2021, Retrieved from <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26013>; FMT Reporters, 2021. Activist to be charged over posting about immigration depot conditions, Free Malaysia Today, 26 July 2021, Retrieved from <https://www.freemalaysiatoday.com/category/nation/2021/07/26/activist-to-be-charged-over-posting-about-immigration-depot-conditions/>

<sup>29</sup> Everyone has the right to personal liberty and the human rights guidance is clear that migrants should not be detained solely on the basis of their irregular entry or residence, and immigration detention should gradually be abolished. Child migrants (or children of migrants) should never be detained for their migration status or that of their parents: Report of the Working Group on Arbitrary Detention, Annex: Revised Deliberation No. 5 on deprivation of liberty of migrants, A/HRC/39/45, 2 July 2018, paras.10, 11; Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, General comment No. 2 on the rights of migrant workers in an irregular

example, Australia has aggressively pursued a policy against irregular migration, including of asylum seekers and refugees. Under what has been described as "authoritarian neoliberalism",<sup>30</sup> they have established off-shore detention centres in Pacific Island States, the practice and conditions of which have been repeatedly condemned by human rights monitors.<sup>31</sup> Their unwavering commitment to deterring asylum seekers from reaching Australia has also seen them invest in immigration detention in other States in the region, notably Indonesia.<sup>32</sup> In some countries the immigration enforcement raids did not even stop for the pandemic, though the aerosol mode of transmission put individuals in immigration detention at heightened risk of infection.<sup>33</sup>

However, these militarised and securitisation approaches and technologies are in use beyond border policing and the ill-treatment of migrants, influencing many aspects of day-to-day life and were greatly expanded and normalised during the COVID-19 pandemic response.<sup>34</sup> The pandemic has

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situation and members of their families, CMW/C/GC/2, 28 August 2013, paras.2, 24

<sup>30</sup> Cameron Smith, 2019. 'Authoritarian neoliberalism' and the Australian border-industrial complex. *Competition & Change*, 23(2), 192-217, doi: 10.1177/1024529418807074

<sup>31</sup> For example, Human Rights Committee, Concluding observations on the sixth periodic report of Australia, CCPR/C/AUS/CO/6, 1 December 2017, paras.35-38; Committee on the Elimination of Racial Discrimination, Concluding observations on the eighteenth to twentieth periodic reports of Australia, CERD/C/AUS/CO/18-20, 26 December 2017, paras.29-33; Report of the Special Rapporteur on the human rights of migrants on his mission to Australia and the regional processing centres in Nauru, A/HRC/35/25/Add.3, 24 April 2017; Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to Australia, A/HRC/38/47/Add.1, 17 April 2018, paras.25, 73-5

<sup>32</sup> Amy Nethery, Brynna Rafferty-Brown, Savitri Taylor, 2013. Exporting Detention: Australia-funded Immigration Detention in Indonesia. *Journal of Refugee Studies*, 26(1), 88-109, doi: 10.1093/jrs/fes027

<sup>33</sup> OHCHR, 2020. Malaysia / COVID-19: "Stop crackdown on migrants, journalists and civil society" – UN rights experts. 21 May 2020, Retrieved from <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25900&LangID=E>

<sup>34</sup> Peter Guest, 2021. Singapore's tech-utopia dream is turning into a surveillance state nightmare. *Rest of World*, 16 November 2021, at <https://restofworld.org/2021/singapores-tech-utopia-dream-is-turning-into-a-surveillance-state-nightmare/>; Marie McAuliffe,

also seen various public health laws or imperatives cited to function as migration barriers as borders were closed. As well as casting (internal and cross-border) migrants as carriers of a disease, a stigma that led to abuses of some of those who did make it home, it has, and at time of writing still is, compounding the risks for migrants in the pandemic and causing violations of their human rights.<sup>35</sup> Away from the border, military forces and militarised law enforcement were deployed to implement lockdowns, curfews and surveillance.<sup>36</sup>

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Jenna Blower, and Ana Beduschi. 2021. Digitalization and Artificial Intelligence in Migration and Mobility: Transnational Implications of the COVID-19 Pandemic. *Societies*, 11(4), 135, doi: 10.3390/soc11040135

<sup>35</sup> Jenny Lei Ravelo, 2020. COVID-19 stigma high among certain groups in Asia-Pacific, survey reveals, Devex, 25 September 2020, Retrieved from <https://www.devex.com/news/covid-19-stigma-high-among-certain-groups-in-asia-pacific-survey-reveals-98179>; OHCHR, 2020. UN Human Rights Office urges Asia-Pacific States to release detained migrants, suspend forced returns amid COVID-19 crisis, OHCHR South-East Asia Regional Office, 9 April 2020, Retrieved from <https://bangkok.ohchr.org/un-human-rights-office-urges-asia-pacific-states-to-release-detained-migrants-suspend-forced-returns-amid-covid-19-crisis/>

<sup>36</sup> UN Women, 2020. *The First 100 Days of Covid-19 in Asia and the Pacific: A Gender Lens*. UN Women: Regional Office for Asia and the Pacific; Asia Centre, 2021. *The Securitisation of COVID-19 Health Protocols: Policing the Vulnerable, Infringing their Rights*. Asia Centre in collaboration with Harm Reduction International

# REALITIES: FOLLOW THE JOURNEY OF WOMEN MIGRANTS



*“Women migrant workers are exploited and oppressed by the capitalist and patriarchal system. Women migrants suffer from triple exploitation as workers, as migrants and as women. The unequal power relationship between men and women is at the core of our society. Works taken up by women are not respected. Women are seen as someone who can only do domestic work, rearing children and doing laundry. This is a tag by society. Because of patriarchy and unequal power relationship, domestic workers, sex workers, women in entertainment sector and other women migrants are being oppressed and discriminated in our society.” Aayushi Bam, the young researcher from NAWHRD*

*“International migration can be an empowering experience for women: women may leave situations where they have limited options for ones where they exercise greater autonomy over their own lives, thereby benefiting themselves as well as their families and communities. However, many women who migrate for reasons including work find themselves at risk for gender-based violence, discrimination and exploitation.” UN Secretary General, 2011<sup>37</sup>*

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<sup>37</sup> Violence against women migrant workers, Report of the Secretary-General, A/66/212, 29 July 2011, para.5

This section of the report looks at some of the challenges that women who participated in the FPAR have experienced throughout their migration – prior to leaving, through their journey, living and working in the country of destination, and on return home. These risks stem from factors intrinsic to their situation that undermine their human rights, or from other people – from facilitators, employers, State actors and other migrants. But all of these are located with patriarchy, globalisation, fundamentalisms, militarism and other oppressive systems that contribute to the construction of intersectional discriminations that disadvantage women migrants. It means that women face precarity and vulnerable situations<sup>38</sup> throughout their migration:<sup>39</sup>

- Prior to migration, where a lack of resources or indebtedness can lead to dependency, sometimes mandated in law, on a recruitment agency who may determine their country of destination as well as their employer and contract terms;
- During the migration, where women typically can access only limited-term contracts and, for the majority who work as domestic workers, very limited rights or exclusion from the protection of labour law and social protection;
- Post-migration, where the poor conditions of employment and resulting low levels of income and savings they were able to accumulate undermine women’s options for sustainable reintegration and can drive (and disadvantage) further migrations.

The FPAR findings demonstrate all too clearly

<sup>38</sup> OHCHR and the Global Migration Group, 2018. Principles and Guidelines, Supported by Practical Guidance, on the Human Rights Protection of Migrants in Vulnerable Situations, Retrieved from <https://www.ohchr.org/Documents/Issues/Migration/PrinciplesAndGuidelines.pdf>

<sup>39</sup> See, Rachel Silvey and Rhacel Parreñas 2019. Precarity chains: cycles of domestic worker migration from Southeast Asia to the Middle East. *Journal of Ethnic and Migration Studies*, doi: 10.1080/1369183X.2019.1592398

that women migrants at home and abroad face systemic vulnerability, putting them at greater risk of forced labour. They face protection gaps, where there is no law to offer protection or only bad laws and policies that seek to reinforce existing patriarchal boundaries and societal norms, or implementation gaps, where the law is an unfulfilled promise, existing only on paper.

## LEAVE HOME - STRUCTURAL FACTORS ERODING CHOICE

It is well-recognised by migrants, migrant rights defenders and States, that migration should be a choice, not a necessity.<sup>40</sup> However, too often, structural factors negate any meaningful choice for women, driving them away from their homes, compelling them to migrate in search of safety and dignity.



For their FPAR, NAWHRD identified a need to learn from rural women in Nepal who migrate to the capital, Kathmandu, to work as domestic workers. About 60 per cent of FPAR participants

<sup>40</sup> For example, UN Member States affirmed this in the New York Declaration for Refugees and Migrants, negotiated and adopted in 2016 (A/RES/71/1, 3 October 2016, para.43)

were from the so-called lower castes called Dalits and 30 per cent were indigenous women. For these women, the lack of sustainable livelihood through farming or agriculture-related work led them to seek better options in the cities of their own country.<sup>41</sup> Dalit women face intersectional discrimination in the context of gender as well as caste and other forms of social and racial discrimination. The UN Special Rapporteur on the human rights of migrants has reported on internal migrations in Nepal that are driven by poverty and the lack of economic opportunities and also because of climate change that sees a considerable proportion move seasonally or permanently from the hills to the southern plains and from rural areas to urban centres.<sup>42</sup>

In Kathmandu they stayed in slums or in small, rented rooms. They were able to move with their families, though in some cases their husbands had undertaken a cross-border labour migration in search of better paying work to support their family. Domestic work in Nepal has been shaped by a long history of social divisions, gender, caste and class discriminations, and labour exploitation and other rights abuses. The women who participated in NAWHRD's FPAR had faced different forms of inequality and discrimination based on their gender, sexuality, caste and age. One example cited was a particular form of sexual and gender-based discrimination endured by women in some areas of Nepal, chhaupadi (menstrual exile) which, imposes multiple restrictions on women during their menstruation, though banned in law.<sup>43</sup> Nepal

<sup>41</sup> Such movement is also often documented in response to the climate crisis, although this can also give rise to hazards that reduce such options: OHCHR in collaboration with the Platform on Disaster Displacement (PDD). 2018. The slow onset effects of climate change and human rights protection for cross-border migrants

<sup>42</sup> Report of the Special Rapporteur on the human rights of migrants on his mission to Nepal, A/HRC/38/41/Add.1, 30 April 2018, para.97

<sup>43</sup> Sophie Cousins, In Nepal, Tradition Is Killing Women. Foreign Policy, 6 January 2019, at <https://foreignpolicy.com/2019/01/06/in-nepal-tradition-is-killing-women-chhaupadi-womens-rights-menstruation/>; Harshita Rathore, 2019. Women in Nepal Face 40

## Internal migration

Internal migration is not included in the global governance of migration – the combined framework of legal norms and organisational structures that regulate and shape how States act in response to (international) migration in line with their international human rights obligations. Migration governance is focused on the rights of people who are (or will be) living and working outside of their own country, recognising that as non-nationals in countries of transit and destination, they face additional challenges in realising their rights. Internal migrants remain in their own country and as citizens,<sup>1</sup> should enjoy the full protection of national laws.

<sup>1</sup> Recognising that this is not the case for stateless persons

is a patriarchal society that, combined with the intersections of class, caste, gender and religion, preserve a hierarchical society in which these women are considered by many to be expendable and insignificant.

Though clearly essential to those who employ them, the work is not valued, with it viewed as an extension of women's gendered role in a patriarchal society. In spite of this long history of this work, women domestic workers face scrutiny and punishment from their husbands who mistrust their working outside the home. This worsened during the first wave of the COVID-19 pandemic and the lockdown imposed in response when domestic workers were expected to arrive early to work and stay the whole day. The domestic workers reported that they were in constant fear of being arrested or punished for violating the

Restrictions During Periods. The Diplomat, 6 December 2019, Retrieved from <https://thediplomat.com/2019/12/women-in-nepal-face-40-restrictions-during-periods/>; Rojita Adhikari, 2020. Bringing an end to deadly "menstrual huts" is proving difficult in Nepal. BMJ 368, m536, doi: 10.1136/bmj.m536

pandemic induced lockdown or curfew. Some stayed at the employer's house to avoid the arrest and then faced reproach and sometimes violence from their husbands who accused them of having an extra marital affair.

But life in the cities is not easy and many still face poverty, moving them on further in their search for a livelihood that can sustain them and their families in safety and dignity, this time across international borders. The FPARs with women migrant workers from Indonesia (by KABAR BUMI and IMWU) reported that the high rates of migration, especially of women, are the consequence of poor economic and social conditions in Indonesia that create extreme poverty and leave them unable to meet the needs of family on local wage levels. Migration seems to promise a solution to have better income for themselves and their family.

*“I used to work in a mobile phone store for a year in 2008 before I worked abroad. I just earned IDR 500,000 (USD 34) a month and it's not enough for my daily needs.” Interviewee AYS during the IMWU FPAR*

*“The reason I work in Hong Kong is that the salary is pretty high so that I can fulfil my family needs, send my kids to school, prepare their future, renovate my house, buy rice fields, and invest for a better future.” Interviewee MS during the IMWU FPAR*

Poverty both drives migration, making it necessary for women to seek a better source of livelihood, and makes it much more difficult by reducing women's ability to meet the requirements of migration, especially migration through regular (authorised) channels. Migration requires knowledge (of options, entry requirements, etc), time (to find a job abroad and make all the necessary arrangements), and financial investment. Women are often disadvantaged in this through the realities of patriarchal societies that see underinvestment in

their education, denial or restriction of land and inheritance rights, the gender pay gap, and other discriminations, all of which can undermine the reach of and access to the social networks that can support migrations. This lack of financial and social resources can increase the risks women face during their migrations.

Even where women overcome some of these discriminations and achieve a university degree for example, chronic underdevelopment in the country of origin can make it impossible to secure a viable livelihood for women to support themselves and their family.

*“I changed jobs in many different places a lot. I worked as a cashier in Yogyakarta for five years and earned only IDR 1,300,000 (USD 89) per month. I worked as an internet cafe operator for two years. Then, I moved to Kalimantan to sell chicken noodles and meatballs. I could earn IDR 1,500,000 (USD 103) in a month. I am a university graduate with an accounting major but it was still hard to find a job with a decent salary. I think it takes years working in Indonesia to get a one month salary working as a domestic worker in Hong Kong. As I am single, I have to plan for my future. I need to start thinking about how to secure my finances. I don't have a house and I have three siblings to feed. With all the money I earned by working in Indonesia, it wasn't enough to cover all the needs.” interviewee LIN during the IMWU FPAR*

Discussions of women's migrations often centre on the risk of violence they face during the journey and at destination. This is necessary, as gender-based violence is an epidemic, but migration may also be a strategy for women to leave abusive situations in their countries of origin.

The FPAR partners coordinated by AMKAS came from Sunsari district in Province 1, Eastern part of the outer Terai, Nepal, where the women, most of whom were Janjati, indigenous peoples, lived in poverty and faced social exclusion due to



caste and gender discrimination. Combined with domestic violence by husbands or fathers, which was reported by half of the interviewees, these intersecting factors were identified as the major drivers of women's migrations as they seek to improve their situation. The situation for women who suffer domestic violence is exacerbated by the patriarchal culture of the country that discriminates against divorced women and blames women for men's violence – effective barriers to women seeking assistance.

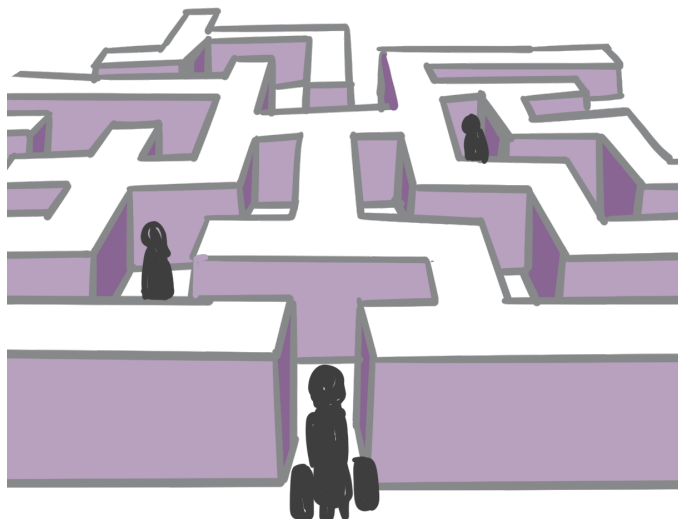
***“My husband was an alcoholic, and he constantly abused and tortured me and my family. At the moment, working abroad was the only option for me to escape from domestic violence and to improve my financial condition. So, I had to go to Saudi Arabia as an undocumented via Indian Airport.”*** Sumi (name changed), a returnee who participated in the AMKAS FPAR

Though migration may provide some respite from violence in the home, it may not be enough to change the situation and women migrants reported that they returned to the same violence:

***“Even though I came back from Saudi Arabia, my life is still the same as it used to be. Nothing has changed between those years. I still don't have enough to eat and I am experiencing domestic violence.”*** Interviewee in the AMKAS FPAR

The women who participated in Danko's FPAR described how the patriarchal traditions of Kyrgyzstan, which include harmful practices (see discussion in part 3: Behind the Doors, below), position women as dependent on the husband's family, which often denies them any economic agency and can be associated with violence and exploitation. Women's need to increase their income and provide financial support to their family drives many migrations. In contrast, AMKAS note in their FPAR that the demand for care work in the Global North has created an opportunity for Nepalese women to shift their unpaid reproductive

work in their own family to paid productive work in a foreign country. Of course, this in turn reduces pressure for public provision of child care and elder care in the countries of destination.<sup>44</sup>



## ON THE ROAD - BARRIERS TO SAFETY

Having made the decision to migrate, women migrants face many gender-specific barriers in addition to the bureaucratic hurdles common to prospective migrant workers. The FPAR focused on two in particular – bans on women's migrations from Nepal and exploitative fees charged by the private recruitment agencies (to whom the Indonesian government consigns much of the control over women's migrations). Both are paternalistic measures instituted in the name of protection while avoiding responsibility for the realities of women's migration that would require taking the necessary action to ensure rights-protective policies informed through regular engagement with women migrant workers. These have been described as two sides of a “triangle of oppression”, the third side being the absence of legal protections and resources if migrant workers face abuse in the country of destination, another

<sup>44</sup> Nancy Folbre, 2014. Who Cares? A Feminist Critique of the Care Economy. Rosa Luxemburg Stiftung—New York Office

factor documented in the FPARs.<sup>45</sup> This oppression keeps women migrant workers in exploitative and otherwise abusive working conditions, unable to leave due to the debt they owe, and the personal documents held as collateral.

### Doing harm in the name of protection

In response to public concern about the mistreatment of Nepali women migrant domestic workers, the government of Nepal has responded with paternalism rather than women's human rights. In particular, they have instituted a series of bans on women's migrations since 2009. These bans always target women's labour migrations but may be applied with respect to a specific country or countries of destination, labour sector(s), or age. Such measures communicate and feed a view that Nepali women are intrinsically weak to the extent that their rights must be restricted for their own protection. This is deeply insulting, a form of victim-blaming that does nothing to address the structural and other sources of human rights abuses against women. It is also ineffective in protecting the rights of women migrants, though it does contribute to harmful views about women in wider society. Another way in which bans fuel victim-blaming is by positioning migration – in particular, women's migration – as inherently dangerous. This undermines empathy and sources of assistance for women migrants whose rights are violated, as they transgressed these policies enacted “for their own good”. The partners in the AMKAS FPAR in Nepal decided to take on this paternalistic, protectionist and sexist response.

Bans and other discriminatory restrictions on women's migration are not in line with the States' human rights obligations that include the right

<sup>45</sup> Comment by a Human Rights Watch researcher, cited in: Genevieve LeBaron, Neil Howard, Cameron Thibos and Penelope Kyritsis, 2018. *Confronting root causes: forced labour in global supply chains*. openDemocracy and the Sheffield Political Economy Research Institute (SPERI), University of Sheffield

Both Indonesia and Nepal have identified themselves as “champion countries” for the implementation of the Global Compact for Migration (GCM).<sup>1</sup> A guiding principle of the GCM is that measures should be gender-responsive and recognise women's “independence, agency and leadership in order to move away from addressing migrant women primarily through a lens of victimhood.”<sup>2</sup>

<sup>1</sup> United Nations Network on Migration, Champion Countries Initiative, Retrieved from <https://migrationnetwork.un.org/champion-countries>

<sup>2</sup> Para.15, see also para. 32(e)

to leave any country including your own,<sup>46</sup> and comprehensive non-discrimination provisions.<sup>47</sup> The UN experts on women's human rights have repeatedly called for the repeal of sex-specific bans, including in their recommendations to the Nepal government specifically.<sup>48</sup> Similarly, in their examination of the situation of migrant domestic workers, the UN experts on migrant workers' rights called for States to repeal these bans and other discriminatory restrictions on women's migration.<sup>49</sup> The bans are also antithetical to the commitments made in adopting the GCM, which has objectives on enhancing availability and flexibility of pathways for regular migration and

<sup>46</sup> For example in the International Covenant on Civil and Political Rights (ICCPR), 1966, which Nepal ratified in 1991

<sup>47</sup> International human rights law is grounded in the principle of non-discrimination

<sup>48</sup> Committee on the Elimination of Discrimination against Women, General recommendation No. 26 on women migrant workers, CEDAW/C/2009/WP.1/R, 5 December 2008, para.26(a); Committee on the Elimination of Discrimination against Women, Concluding observations on the sixth periodic report of Nepal, CEDAW/C/NPL/CO/6, 14 November 2018, para.25(a)

<sup>49</sup> Committee on the Protection of the Rights of all Migrant Workers and Members of Their Families, General comment No. 1 on migrant domestic workers, CMW/C/GC/1, 23 February 2011, para.61 – noting that Nepal is not a State Party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families

ensuring decent work, among others.<sup>50</sup> Similarly, AMKAS note that the bans in Nepal breach a number of constitutional protections as well as domestic legislation provisions.<sup>51</sup> In confirming their participation as a GCM “champion”, the government of Nepal identified the objective of facilitating fair and ethical recruitment and safeguarding conditions that ensure decent work as their focus.<sup>52</sup>

Bans on women’s migrations do not prevent them from migrating and indeed, by reducing women’s control over their migration, they increase the risk that women will face human rights abuses at each stage of their migration.<sup>53</sup> In Nepal, the most recent iteration is a complete ban on migrant workers to the Gulf countries imposed by the government in March 2017. These have not stopped women migrating and Nepal’s open border with India facilitates their onward migration to the Gulf States. These bans are not unique to Nepal and have also been researched in Southeast Asia and other South Asian States.<sup>54</sup>

**IN EFFECT, BANS STRENGTHEN THE POSITION OF UNLICENSED MIGRATION AGENTS INCREASING THEIR ABILITY TO EXPLOIT WOMEN MIGRANTS THIS PUTS WOMEN MIGRANTS AT DISPROPORTIONATE RISK OF RIGHTS VIOLATIONS, INCLUDING TRAFFICKING IN PERSONS...**

For example, Sri Lanka bans women’s migration if they do not have their husband’s consent, have a disabled child or children under five years old; Cambodia sets a minimum age (21 years) for migration for domestic work and has been reported to require parental permission for these adult women before extending domestic worker contracts; Myanmar operates a generalised ban on migration for domestic work to any country for first-time migrant domestic workers and recruiters are required to ensure women migrant workers are placed in worksites with at least five women and ideally arrange for five women also to migrate together; the Philippines, which operates a age requirement (23 years) only for domestic workers, also reinstated a total ban on domestic worker migration to Kuwait in January 2020, in response to the death of a domestic worker [ks1] in the country after a temporary ban two years earlier<sup>55</sup>.

It would appear that the bans increase irregular migrations.<sup>56</sup> Half of the FPAR participants were undocumented workers and AMKAS report that an estimated 90 per cent of Nepalese migrant women and girls are undocumented. This is not by choice and research indicates that potential migrants would prefer to travel through regular channels for reasons of legitimacy and safety.<sup>57</sup> Instead, in their effort to survive and provide for their families, women are forced by the ban to take an indirect and dangerous route through irregular channels to Saudi Arabia, Qatar, Kuwait, Oman, Bahrain, the United Arab Emirates and Malaysia.

Irregular migration is a symptom of structural

<sup>50</sup> On a gender-responsive guide to the GCM that includes attention to the use of gender discriminatory provisions, including bans, see UN Women, 2021. Policies and Practice: A Guide to Gender Responsive Implementation of the GCM , Retrieved from [https://ppguide.unwomen.org/sites/default/files/2021-07/PP%20Guide\\_A4\\_Web\\_designed\\_FINAL.pdf](https://ppguide.unwomen.org/sites/default/files/2021-07/PP%20Guide_A4_Web_designed_FINAL.pdf)

<sup>51</sup> AMKAS cite the Constitution of Nepal (2015), Articles 17(2)(f), 18(2), 33(2), 51(5) and the Foreign Employment Act (2007) and Foreign Employment Policy (2012)

<sup>52</sup> Objective 6 – see, United Nations Network on Migration, Champion Countries Initiative, Confirmation letter of Nepal, at [https://migrationnetwork.un.org/sites/g/files/tmzbdl416/files/docs/nepal\\_confirmation\\_gcm-champion.pdf](https://migrationnetwork.un.org/sites/g/files/tmzbdl416/files/docs/nepal_confirmation_gcm-champion.pdf)

<sup>53</sup> ILO, 2015. No easy exit – Migration bans affecting women from Nepal. International Labour Office, Fundamental Principles and Rights at Work (FUNDAMENTALS); Labour Migration Branch (MIGRANT) - Geneva.

<sup>54</sup> Rebecca Napier-Moore, 2017. Protected or put in harm’s way? Bans and restrictions on women’s labour migration in ASEAN countries. International Labour Organization and UN Women. Bangkok: ILO and UN Women; Richa Shivakoti, Sophie Henderson and Matt Withers, 2021. The migration ban policy cycle: a comparative analysis of restrictions on the emigration of women

domestic workers. Comparative Migration Studies 9, 36, doi: 10.1186/s40878-021-00250-4

<sup>55</sup> *ibid*

<sup>56</sup> ILO, 2015. No easy exit, op. cit.

<sup>57</sup> ILO, 2015. No easy exit, op. cit.

vulnerability, demonstrating the lack of access to the requirements of regular migration, as well as creating or worsening situations of vulnerability for migrants. Such irregular migrations jeopardise women's human and labour rights and undermine the potential benefits of their migration. For example, the Nepali women who cannot migrate through official channels report that their undocumented status creates a situation of vulnerability that can be abused by unscrupulous employers who cut their wages or do not pay them for their work. They know they can take advantage of the fact that, due to their migration status, the women have little or no recourse to justice. Far from protecting women's human rights, bans cut off migrants' access to information on the migration process and push them to use dishonest brokers who are willing to work around and target women migrants, taking advantage of the ban and the situation of vulnerability it creates for those who need to migrate. In effect, bans strengthen the position of unlicensed migration agents increasing their ability to exploit women migrants.<sup>58</sup> This puts women migrants at disproportionate risk of rights violations, including trafficking in persons, especially under the sponsorship system (kafala) in operation in the Gulf States that cedes legal control to the employer over migrants' freedom of movement and their ability to change employment or leave the country, even in situations of abuse.

*"I went to Kuwait as an undocumented domestic migrant worker via India with help of an agent. In Kuwait, I used to work for a family where I had to do most of the household work such as cleaning, babysitting, washing and cooking. While staying there, I had to lie about my religion. My agent told me I had to pretend as a Christian or else I would have ended up in prison. While working for that house I was not paid full salary even though I used to work overtime. The payment of salary was not on time and on top of that they were very abusive. It became really difficult for me*

*to work for them, so I decided to run away from that house to another, but I was caught by the police of Kuwait while doing so. As I was an undocumented and illegal worker, I was put in prison for more than a month. There were many other women from the Philippines and India who were caught due to the same reason as mine. Soon after I was rescued by the embassy of Nepal and they helped me to release and return to Nepal."* Rina (name changed), a Nepali returnee from Kuwait who participated in the AMKAS FPAR

The AMKAS FPAR findings are stark – the women who were able to migrate through regular channels reported a positive experience, growing in autonomy and economic power. This contrasts with participants who migrated without documents who faced a dangerous journey and experienced abuses of their human rights (such as wage theft or human trafficking).

That Nepal feels it necessary to repeatedly institute bans as a response to women's migrations – and AMKAS note that there is no reliable data to prove that the ban has protected women from exploitation – demonstrates that they are not effective at using them as leverage for improved pay and working conditions and that they are a reflection of an overtly moral reaction to women's autonomy. Indeed, the bans serve to reaffirm restrictive gender norms invoked in the name of tradition and as such, can never improve labour conditions.<sup>59</sup> This regressive approach is deeply embedded in the country's approach to women's mobility. In February 2021, the Department of Immigration was criticised for a "patriarchal and preposterous" proposal that women under 40 going abroad on a visit visa would need their family's consent.<sup>60</sup> In July 2021, the local

<sup>59</sup> Shivakoti et al., 2021, op. cit.

<sup>60</sup> Chandan Kumar Mandal and Samiksha Baral, 2021. New rule for under-40 women's foreign travel draws ire as patriarchal and preposterous, The Kathmandu Post, 10 February 2021, Retrieved from <https://kathmandupost.com/national/2021/02/10/new-rule-for-under-40-women-s-foreign-travel-draws-ire-as-patriarchal-and-preposterous>

<sup>58</sup> ILO, 2015. No easy exit, op. cit.; Napier-Moore, 2017, op. cit.

government in Ratnanagar, a town in Nepal's Chitwan District of Bagmati Province, enacted a ban on women migrating for work if they have a child or children under two years of age.<sup>61</sup>

From their FPAR, AMKAS advocate that, instead of a blanket ban on the migration of women workers, the government of Nepal should work with governments of other countries of origin to demand stronger human rights protections for migrant workers in the Gulf. Similarly, Nepal's Commerce, Labour and Consumer Welfare Committee have called for regular migration of women migrant domestic workers to the Gulf States to be reinstated if several conditions, including the agreement of rights-based bilateral agreements, are met.<sup>62</sup>

### Profiting from exploitation

Two of the FPARs worked with women migrant workers from Indonesia – IMWU researching with Indonesian women migrant domestic workers in Hong Kong and KABAR BUMI in Indonesia with women returnees. Both reported on exploitative practices that arise from protectionist policies.

Like Nepal's migration bans, the Indonesian government have also imposed a policy on women migrants under the pretext of "protecting" them that in fact restricts their rights and can give rise to abusive situations. The government requires women migrant workers to register with and be legally bound to a private agency for the duration of their migration until their repatriation to

<sup>61</sup> Upasana Khadka, Nepal town to ban mothers migrating, Nepali Times, 6 July 2021, Retrieved from <https://www.nepalitimes.com/latest/nepal-town-to-ban-mothers-migrating/>

<sup>62</sup> Nepal currently has labour agreements with nine countries— Qatar, the United Arab Emirates, Bahrain, Japan, Israel, Jordan, South Korea, Malaysia and Mauritius. Chandan Kumar Mandal, 2020. House panel asks government to let Nepali women take up domestic help jobs in the Gulf, The Kathmandu Post, 1 October, Retrieved from <https://kathmandupost.com/national/2020/10/01/house-panel-asks-government-to-let-nepali-women-take-up-domestic-help-jobs-in-the-gulf>

Indonesia. This applies to every migration women undertake, not just their first.<sup>63</sup> The 2004 Law on Placement and Protection of Indonesian Workers Abroad No. 39 gives private agencies full authority to recruit, provide pre-departure training, search for employment abroad, and attend to the welfare of Indonesian migrant workers. Rather than realise its role as the main duty-bearer, the Indonesian government has consigned this responsibility to a private actor (the agencies and brokers) and reduced its accountability for its citizens working overseas as migrant workers to merely a regulatory and monitoring body.

The pre-departure trainings, that are mandatory in Indonesia for migrant domestic workers, take place in designated training centres. They do not necessarily provide quality training or conditions. The training stresses that the women should obey their employers, rather than focus on rights-based working practices and what action to take if they recognise warning signs of abuse. The women's stays at the centres can be lengthy as they may effectively function as a holding centre pending the migrant's deployment overseas, in some cases substantially extending the period that women are away from their families:

*"I stayed in the training centre for six months. The quarter was indecent in both the sleeping room and the classrooms. I brought my own blanket and pillow from home. My friends brought theirs as well." Interviewee WN during the IMWU FPAR*

<sup>63</sup> IMWU note that the Hong Kong government does not require the employers recruit migrant domestic workers through employment agencies and contrast the Indonesia practice with that of the Philippines, that requires Filipino migrant workers to migrate through employment agencies only for their first time travelling to Hong Kong. Migrant workers of other nationalities, such as those from Thailand, have the freedom to choose between processing through an agency or opting for direct hiring. Furthermore, though the Indonesian Ministry of Manpower's Ministerial Decree No. 98 (2012) set the fee for returning migrant workers at less than half that of those making their first deployment, IMWU report that in practice they are still charged the same higher rate.

This State's shifting of responsibility to manage women's migration has allowed the recruitment industry in Indonesia to flourish. Such brokers play a crucial role in providing information on migration processes and employment opportunities, assisting in women's navigation of the various regulatory requirements and bureaucracy of migration in origin and destination countries, and in some cases, determining working conditions.<sup>64</sup> There is clearly a potential conflict of interests in these profit-driven companies having such control given the role they play in producing and shaping prospective migrants' knowledge. Other research has found that making migrants reliant on recruiters, especially in an environment of impunity, increases the potential for forced labour or trafficking.<sup>65</sup> IMWU reports that the status of these placement agencies in Indonesia – where the law considers them as partners of the government in deploying and protecting migrant workers – renders it almost impossible to bring complaints against them and that any penalties are only administrative; none of the agencies are taken to court. The exact number of these agencies is difficult to obtain but encompasses informal recruiters working at the local village level, unregistered operators, intermediaries and subcontractors, to licensed brokers. This large-scale sector would not exist if it were not profitable and the source of their profit is migrant workers. The recruitment fees charged are certainly excessive in relation to actual costs incurred, on top of which this is then converted to a loan agreement with a high interest rate. Rather than ensuring rights protections throughout women's migrations, these agencies contribute to unfree labour practices in which migrants are mere commodities.<sup>66</sup> They are

<sup>64</sup> Christina Stringer, Ani Kartikasari and Snezhina Michailova, 2021. 'They make a business out of desperate people': The role of recruitment agents in cross-border labour chains. *Australian Journal of Management* 46(4), 672–689, doi: 10.1177/0312896220986895

<sup>65</sup> Napier-Moore, 2017, op. cit.

<sup>66</sup> This is this is echoed in the language commonly used in relation to these schemes, as well as in much migration research and advocacy, of "sending" and "receiving" countries. This strips

invested in migration to the extent that these agencies may themselves be considered drivers of migration.<sup>67</sup>

Above all things, it is profitable. IMWU and KABAR BUMI in their FPARs with Indonesian women migrant domestic workers report that during the administrative and pre-departure training phases the agencies make the women migrants sign papers without knowing what they are. The women migrate knowing that they have to repay some costs but do not understand the amount in detail. The placement agency does not allow the prospective migrants to read the details and the content of the work agreement and other documents they are given to sign, or provide them with copies of the signed employment documents, and does not answer their questions regarding placement fees.

***"Yes, I have been asked to sign a lot of papers and they did not explain what these papers are. I also didn't have time to read the papers, (didn't know) what the signature was for. No explanation."** Puji, participant in KABAR BUMI's FPAR*

In fact, the agencies do not have a standard placement fee and the women can face up to three tiers of fees, including money given to induce them to sign with the company, that many women do not realise will need to be repaid. IMWU report that Indonesian women migrant workers in Hong Kong face six to ten months of salary deduction to repay the placement fees,<sup>68</sup> during which time migrants are still expected to send some money to their families

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migrants of their agency and humanity and reduces them to the status of commodities

<sup>67</sup> Asia-Pacific Regional Coordination Mechanism (RCM) Thematic Working Group on International Migration, including Human Trafficking, 2015. *Asia-Pacific Migration Report 2015: Migrants' Contributions to Development*, ST/ESCAP/2738

<sup>68</sup> The Domestic Workers Convention, 2011 (No. 189) addresses fee deduction, providing that States should "take measures to ensure that fees charged by private employment agencies are not deducted from the remuneration of domestic workers" (Article 15(1)(e))

back home. Their remaining salary is not sufficient to meet the necessities of life in Hong Kong.

*“I only ate once when I took a day off. I really suppressed my expenses during my day off. It was a maximum of HKD 150 to 200 (USD 19 to 26) only for my day off expenses each month. It’s very limited because I only have HKD 500 (USD 64) remaining salary for a month, and it has to be enough for my needs in a month. It was too much even to have a new piece of clothes. Never ever thought about buying one pair of shoes, it was even a struggle for me to buy food. I was always worried that my money was not enough for me. I never borrowed money from my friend because I know that they were struggling as well.” Interviewee MS during the IMWU FPAR*

IMWU understand this practice of overcharging placement fees to be a form of gender-based economic violence against women that is being perpetuated by the State. The recognition of such fees as a form of economic coercion and their connection to labour exploitation is well known and it is well-established in international law that recruitment fees or related costs should not be charged to, or otherwise borne by, workers or jobseekers.<sup>69</sup> Recruitment fees are recognised as

<sup>69</sup> This has been recognised as an area of abuse of workers’ rights for nearly a century – the ILO’s Fee-Charging Employment Agencies Convention, 1933 (No. 34), called for the progressive abolition of fee-charging employment agencies with a view to profit (in its Article 2(1)). It has been addressed several times since, most notably in the Private Employment Agencies Convention, 1997 (No. 181) that in its Article 7(1) provides that “private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers”. In addition, the ILO Protocol of 2014 to the Forced Labour Convention, 1930, calls for measures to prevent forced or compulsory labour to protect “persons, particularly migrant workers, from abusive and fraudulent practices during the recruitment and placement process” (Article 2(d)) and in the accompanying Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203) call for ILO Member States to take preventative measures such as “promotion of coordinated efforts by relevant government agencies with those of other States to facilitate regular and safe migration and to prevent trafficking in persons, including coordinated efforts to regulate, license and monitor labour recruiters and employment agencies and eliminate the charging of recruitment fees to workers to prevent debt bondage and other forms of economic coercion,” para.4(i)), see also para.8(a). It is also recognised as one of the ILO’s General principles and

creating situations of vulnerability for migrant workers, including situations that constitute trafficking in persons, especially for those relegated to the informal economy.<sup>70</sup> It is one issue addressed in the GCM, of which Indonesia is a Champion country – meaning it has a role in sharing insights, lessons learned and promising practices to contribute to achieving the objectives of the GCM.<sup>71</sup> These unscrupulous practices are recognised by States to be one of the key causes of exploitation of women migrant workers.<sup>72</sup> And yet they continue. It is especially egregious as it is a direct violation of domestic law: the Indonesian government approved the Law on Protection of Migrant Workers (No. 18/2017), which states that migrant workers cannot be burdened with

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operational guidelines for fair recruitment: ILO, 2016. Fourth Supplementary Report: Outcome of the Meeting of Experts on Fair Recruitment. GB.328/INS/17/4, 2 October 2016, Retrieved from [https://www.ilo.org/gb/GBSessions/previous-sessions/GB328/ins/WCMS\\_532389/lang--en/index.htm](https://www.ilo.org/gb/GBSessions/previous-sessions/GB328/ins/WCMS_532389/lang--en/index.htm). Similarly, in the 2018 Global Compact for Safe, Orderly and Regular Migration, States affirmed the need to address the issue of recruitment or placement fees, recommending action to “Improve regulations on public and private recruitment agencies, in order to align them with international guidelines and best practices, prohibit recruiters and employers from charging or shifting recruitment fees or related costs to migrant workers in order to prevent debt bondage, exploitation and forced labour, including by establishing mandatory, enforceable mechanisms for effective regulation and monitoring of the recruitment industry” (para.22(c), emphasis added). The 2030 Agenda for Sustainable Development, under target 10.7 on safe migration, has a dedicated indicator 10.7.1: “Recruitment cost borne by employee as a proportion of yearly income earned in country of destination”

<sup>70</sup> See, for example, Report of the Special Rapporteur on the human rights of migrants: Labour exploitation of migrants, A/HRC/26/35, 3 April 2014; Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, A/HRC/33/46, 4 July 2016; United Nations Office on Drugs and Crime, 2015. The Role of Recruitment Fees and Abusive and Fraudulent Practices of Recruitment Agencies in Trafficking in Persons. UNODC, Vienna; Kevin Hyland, 2018. Eradicating Recruitment Fees is Crucial for Tackling Modern Slavery, Commentary, Institute for Human Rights and Business, 11 June 2018, Retrieved from <https://www.ihrb.org/focus-areas/migrant-workers/commentary-eradicating-recruitment-fees-for-tackling-modern-slavery>

<sup>71</sup> UN Network on Migration, Champion countries initiative: Frequently Asked Questions, December 2020, at [https://migrationnetwork.un.org/sites/g/files/tmzbd1416/files/docs/faq\\_champion\\_countries\\_initiative\\_dec\\_2020\\_0.pdf](https://migrationnetwork.un.org/sites/g/files/tmzbd1416/files/docs/faq_champion_countries_initiative_dec_2020_0.pdf)

<sup>72</sup> See for example, UN General Assembly, Violence against women migrant workers (resolution), A/RES/76/141 (2021), preamble

placement fees, and that these costs must be borne by the employer and local government.<sup>73</sup> It also provides a complaint mechanism. But this is just on paper, the 2017 law has not been implemented. In July 2020 Indonesian Migrant Workers Protection Agency issued a regulation on placement fees.<sup>74</sup> This again goes against the national and international laws that migrant workers should not bear the fees for their recruitment. This latest regulation simply provides that migrant domestic workers can apply for a loan to cover the recruitment/placement fees from the state-owned bank instead of private loan companies. This again goes against the national and international laws that migrant workers should not bear the fees for their recruitment.

Still free from the obligations of this paper law, the agencies use threats and intimidation of the migrant domestic workers in Hong Kong and sometimes of their families back in Indonesia in order to ensure payment. A major tool of coercion is the confiscation and retention of migrant workers' personal documents until the debt is repaid (see further below). The Indonesian and Hong Kong agencies collude with the private financial companies, loan sharks and debt collectors and can subject the migrant to non-stop phone calls, social media defamation and even sudden visits at their employer's house, which might lead to their termination. The migrant workers are responsible for the full payment even if they do not complete the two-year contract. Their debt simply rolls into the fees for the next employment contract in addition to the new fees the agency charges for finding the worker a new job.

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<sup>73</sup>This replaced the previous law, Indonesian Republic Act No. 39/2004 regarding Placement and Protection for Indonesian Overseas Workers, which provided regulations on the placement fees that agencies can impose on migrant workers, however agencies still overcharged them.

<sup>74</sup>Regulation Number 09 of 2020 concerning Exemption of Indonesian Migrant Worker Placement Fees. The regulation was implemented in August 2021

As well as the stress that this puts on migrant workers and their families, the burden of these fees and the repayment schedule pushes migrant women further into debt. In some situations, this can constitute debt bondage.<sup>75</sup> In addition to this being a rights abuse, it is also counterproductive to the purpose of labour migration and the role that serves for the country of origin, for example preventing migrant workers accumulating significant savings that they can invest on return to support economic development.

Migrant workers have little recourse to justice and effective remedies. Interviewees in the FPAR reported that they were afraid to report the overcharging that they experienced for fear of retaliation. For example they were reluctant to report it to the Indonesian Consulate General because they received threats from Hong Kong-based placement agencies and Indonesian-based recruitment agencies. There have been examples of agencies exacting retribution.

***“I didn't complain, I just kept silent. The recruitment agency told me to pay HKD 3,000 (USD 385) each month and continue for six months. I didn't complain to the Indonesian Government because I didn't know their contact. I'm afraid to address it to the recruitment agency in Indonesia. I'm worried that they would not process my departure, would cancel my job, or threaten me.” Interviewee WN during the IMWU FPAR***

There have been examples of agencies exacting

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<sup>75</sup>Debt bondage is defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery as “the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined” (Article 1(a)). Debt bondage also overlaps with forced labour which establishes debt bondage as “work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily” in the ILO Forced Labour Convention, 1930 (No. 29). See for example, Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, A/HRC/33/46, 4 July 2016



retribution, such as agencies extorting more money from migrant workers who protest the fees:

*“I remember when I complained to the recruitment agency related to a high placement fee. The recruitment agency staff told me not to tell anyone about the placement fee. It’s a secret that only us (the prospective migrants) and the staff know. If someone leaks this secret, they will be penalised. One of my cousins got a penalty of IDR 17 million (USD 1,170) from her recruitment agencies. At that time, my cousin wrote a statement telling people not to enrol in Mustari recruitment agency because they charge a high amount of placement fee. Then, one of the staff from the recruitment agencies called her out and charged her with an additional fee, HKD 1,800 (USD 231) for six months in order to be able to depart.”*  
Interviewee MS during the IMWU FPAR

In 2018, IMWU and some grassroots organisations started a group of paralegals in Hong Kong working at several posts on Sundays to raise awareness among the Indonesian migrant worker community on their day off and to provide support services to victims of overcharging. During the first two years of this work, the paralegal group documented 328 casefiles collected between 2018 and 2020 relating to 27 Indonesian-based recruitment agencies.

Private recruitment agencies and brokers can exercise a great deal of power, effectively controlling the women during their migration. In their FPAR, KABAR BUMI reports that one of the main ways the agencies exercise this power is by confiscating the women’s personal documents as collateral to guarantee that they repay their fees. They note that although this is a violation of the law, there is no legal enforcement – indeed, the law does not impose penalties on the parties or persons who hold others’ documents, a serious protection gap – with the result that no placement companies / recruitment agencies were closed or staff arrested because of this illegal and abusive

practice.<sup>76</sup> In this way, the charging of recruitment fees directly constitutes two rights abuses – the fees themselves and associated documentation retention – and can lead to others. It creates an often-coercive relationship between the company and the migrant worker, where the migrant may have little option but to endure decent work deficits as her documents will be withheld until she has paid off her placement fee.

The Covid-19 pandemic has added to the charges made by agencies and added to the migrant domestic workers’ debt:

Mahanani, a participant in KABAR BUMI’s FPAR who migrated to Singapore, described how she was originally offered a salary of SGD 550 (USD 412) and would have a six-month wage deduction for placement fees. However, after she started work, she was told the wage deduction period would be increased from six to eight months, which meant paying SGD 465 (USD 349) per month. During this extended repayment period, Mahanani only received SGD 85 (USD 64) remaining wages per month. She explained, *“The additional two months cut is to pay for the PCR test and quarantine fees”, even though at the beginning she was told that these costs were to be borne by the employer.*<sup>77</sup> The broker retains her documents until she has repaid the fees.

<sup>76</sup> ICMW article 21; the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers also affirms the right of migrant workers to hold passports and original personal and work documents

<sup>77</sup> In Singapore, the Government initially committed to bear the full costs of testing and treatment for all migrant workers but scaled this back to cover only those considered essential during the Circuit Breaker period. Employers were supposed to pay for the COVID-19 tests and stay-home notice for domestic workers. See, ILO, 2021. Supporting migrant workers during the pandemic for a cohesive and responsive ASEAN Community: Thematic background paper for the 13th ASEAN Forum on Migrant Labour; Cheryl Lin and Ang Hwee Min, 2021. Demand for new maids high despite extra costs amid COVID-19 restrictions, risk of imported cases, Channel News Asia, 7 Jan 2021 (Updated: 9 Feb 2021), Retrieved from <https://www.channelnewsasia.com/singapore/demand-for-new-maids-covid-19-costs-travel-restrictions-392191>

The companies take the originals of various important and personal documents including National Identity Cards (Kartu Tanda Penduduk (KTP)), Family Cards (Kartu Keluarga (KK)), marriage certificate, education certificate, and birth certificates etc. Most of these personal documents cannot be re-issued if the originals are lost. The FPAR interviewees shared that being without these personal documents, for an extended period sometimes even after they have returned from their migration, can have serious consequences for them and their families. For example, being unable to present their original school certificate can prevent them continuing their education to a higher level; without a family card they are unable to access welfare and assistance scheme from the village government; without their original ID cards they cannot apply for the land certificates; without their marriage book, they cannot apply for a bank loan because that requires the original copy of the marriage book. The confiscation and withholding of migrants' documents by agencies and employers can also force compliance and trap the workers in abusive employment relationships because they would lose their documents if they left or if they were sacked before they were able to repay the fees. In KABAR BUMI's FPAR, 73 per cent of the interviewees reported that their documents had been confiscated by the employment agencies or employers. [68 (76 per cent) of the women and six (54.5 per cent) of the men participating in the research]. Nearly half of the interviewees (48 per cent) reported that the company/employer subsequently lost their documents. Similarly, IMWU reported that their case files data showed that 77 per cent of complainants had their documents confiscated by the recruitment agencies and 46 per cent had their passport and employment contract

**THE INDIVIDUALISED APPROACH OF MEDIATION DENIES THE OPPORTUNITY TO VINDICATE RIGHTS AND PREVENTS RULINGS AND PRECEDENTS BEING APPLIED IN OTHER CASES. THIS EXTENDED REACH BY PRIVATISATION INTO REMEDIES INEVITABLY COMPROMISES RIGHTS AND DISADVANTAGES THE MIGRANT WORKER.**

confiscated by the Hong Kong-based placement agencies once they arrived from Indonesia. The migrants are allowed to get their documents back only after their debt is fully paid. The debt is still charged to them, and the documents held as collateral, in cases where the woman migrant worker does not undertake or complete the placement, for example due to changes in her personal circumstances (becoming pregnant) or labour rights abuses that cause her to return sooner than planned.

Migrant workers face numerous obstacles when they try to retrieve their documents from the agencies, not just the financial burden of repaying the fees. For

example, FPAR participants reported cases where the district and national offices shifted their responsibilities to one another; the agency had closed due to the pandemic or was far away, which cost a lot of money or was inaccessible during pandemic restrictions; or the agency was not registered which created additional challenges in filing legal proceedings to secure the return of their documents. KABAR BUMI reported that where migrants do bring complaints about this, the only available redress mechanism is mediation. Mediation is the privatisation of civil disputes and complaint mechanisms, a further abdication of State obligation for human rights abuses against migrant workers and more broadly, a rule of law issue. Taking these out of the civil justice system removes important elements of the process, notably due process protections but also the behaviour modification element that comes from it being a public process where courts provide "*authoritative statements of what the law is, who has rights and how those rights are to be vindicated*" and in doing so, serve to deter any repetition of the abuse by the defendant and similar conduct by

others.<sup>78</sup> The individualised approach of mediation denies the opportunity to vindicate rights and prevents rulings and precedents being applied in other cases. This extended reach by privatisation into remedies inevitably compromises rights and disadvantages the migrant worker. KABAR BUMI noted that the government does not provide enough support to migrant workers who bring complaints to help them navigate the complicated procedure, and only acts as a mediation facilitator. Migrant workers need support in this mediation process from the government or an NGO that has the necessary legal knowledge and can help redress the power inequality between the migrant and the agency.

## BEHIND THE DOORS - ENABLING VIOLENCE, DENYING RIGHTS

*“... violence against women is a manifestation of the historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of women’s full advancement, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men”*  
*UN Declaration on the Elimination of Violence against Women, 1994, preamble.*

In the Malaysia FPAR, Tenaganita shared analysis that the migrant domestic workers who seek out their assistance have experienced multiple – at least six – forms of abuse. These encompass various labour rights violations – of the right to fair wages and to make a decent living (salary deduction for accommodation, uniforms, food, leave or work permits or non-payment of wages); of the right to safe and healthy working conditions (long working

hours without overtime payment); of the right to rest, leisure and reasonable limitation of working hours (no rest days for months or years), and also confiscation of their passports by their employers or agency<sup>79</sup> – and also violations of the right to an adequate standard of living (deprived of quality food, have poor living and working conditions)<sup>80</sup> and verbal, physical and sexual abuse. Tenaganita reported that they received 350 cases of abuse in 2020, with 70 per cent of those coming from migrant domestic workers.

Migrants often rely on employment agencies or brokers, who charge them a sizable fee for their services. When these actors abuse their power and issue migrant workers with false documents, they put the migrants in a vulnerable situation with little recourse to justice. The authorities are more likely to arrest, detain and deport the migrants for being in irregular status than hold the agencies responsible for these rights abuses and ensure effective remedy for the migrants who have been harmed. Even if a migrant domestic worker is able to file a case for labour abuses, their status as an undocumented migrant can be a significant barrier to justice:



<sup>78</sup> Hazel Genn, 2012. Why the Privatisation of Civil Justice is a Rule of Law Issue. 36th F A Mann Lecture, Lincoln’s Inn (UK), 19 November 2012, p.16, Retrieved from <https://www.ucl.ac.uk/laws/sites/laws/files/36th-f-a-mann-lecture-19.11.12-professor-hazel-genn.pdf>

<sup>79</sup> Based on elements on the right of everyone to the enjoyment of just and favourable conditions of work elaborated in the ICESCR, Articles 6 to 8, and on ICMW article 21

<sup>80</sup> ICESCR Article 11

*Nona (not her real name), an undocumented worker is still fighting for her right to claim four years of unpaid wages. Nona's employer cited Nona's irregular migration status and claimed that she has no right to file her case in the Malaysia Labour court. The court supported this argument and ruled that Nona has no right to file the case based on her migration status. Although Nona is appealing this verdict, there remain many hurdles that she will have to pass to win the case: she needs to provide evidence to prove the employment relationship and that she did not receive any payment from her employer during the employment period. The employer is contesting the claim that Nona worked for him and it is difficult to prove the employer gave a false statement without an employment contract.*

As undocumented workers, migrant domestic workers reported having little control over their work and were made to work across multiple sites. Most of the 90 migrant workers who participated in the Malaysia FPAR reported that they work more than 12 hours a day and are denied the minimum wage protections; some, like Nona, are going unpaid. The stay-at-home orders of the COVID-19 pandemic response further increased the workload for many domestic workers. Half of the FPAR participants also reported that they had experienced situations where they were not permitted to contact their families. Some of the migrant workers reported abuses of their right to freedom of religion or belief, where their employer forced them to take off their scarf/hijab or took their bible. Some of the labour abuses documented in the FPAR amount to trafficking in persons, including of children:

*Aminah (not her real name) was 16 years old when she came to Malaysia by sea nine years ago. The recruitment agent lied to her and took all her money without providing her any documents. When she reached Malaysia, she*

*was sad, in pain, hungry and alone – and that is how she felt most of the time in the country. She had expected to live and work in regular status and earn money for her family, but she could not achieve what was expected. She did not receive her wages for months after working, did not have adequate food, and was forbidden to contact her family members.*

Tenaganita has also documented cases of violence by their employers against women migrant workers, some of which have been fatal. For example, in 2018, Indonesian migrant worker Adelina Lisao died aged 21 due to organ failure as the result of two years of neglect, physical abuse and forced labour from her employer in Malaysia who had also subjected her to emotional and financial abuse (non-payment). Although the employer, Ambika MA Shan, was arrested and charged with murder and under the Immigration Act for employing Adelina without a valid work permit, the High Court in Penang dropped the murder charge and granted a full acquittal in April 2019. This was appealed but the Court of Appeal affirmed the decision. This case is not unique, there is a culture of violence towards domestic workers and this ruling sent a strong message of impunity to employers, that they can abuse domestic workers to the point of death and face no consequence. The case is being appealed to the Federal Court, the highest level of jurisdiction system in Malaysia. Another example, in March 2020, Marian Kabu, from East Nusa Tenggara, Indonesia, was rescued by the police after she was tortured physically, psychologically and sexually for eight months by her employer. Although she managed to escape, she is cut for life. In response to the growing concerns about the increasing violation of migrant domestic workers' rights, the Indonesian and Malaysian governments have recently signed an MOU on the recruitment and protection of domestic workers.<sup>81</sup>This MOU carried

<sup>81</sup> Indonesia, Malaysia sign MoU on placement, protection of maids <https://www.freemalaysiatoday.com/category/>

various new agreements in protecting the labour rights of domestic workers, including a weekly rest day, inclusion of social security contribution through the Social Security Organisation (SOCSO) and guarantees on salary payments via the e-Wages system to ensure salaries are paid fully and not later than the seventh day of every month. However, the new minimum wage of RM1,500 (USD 356) per month will not be included in this MOU which will largely undermine the protection of migrant domestic workers. In addition, as a non legal binding document, MoUs have been found ineffective in protecting migrant workers. Widespread abuses by employers, such as withholding of passports, unfair wages and inadequate rest periods, were found in Malaysia despite having MoUs in place with several sending countries<sup>82</sup>.

Violence and harassment at work is incompatible with decent work and constitutes a human rights abuse, though it is all too common.<sup>83</sup> From their FPAR, Tenaganita report that migrant domestic workers usually face such abuses with impunity, given their exclusion from the labour law in Malaysia. This lack of a common legal standard for this sector not only leaves many outside the protection of the law, it also results in differing employment standards based on the nationality of migrant domestic workers, derived from the MOUs signed with each country. This is in violation of the principle of non-discrimination. Their exclusion from labour protections stems from

domestic workers in Malaysia being considered to be servants, not employees. Recognising domestic work as work in law is a critical first step to realising the human and labour rights of domestic workers.

Similarly, AMKAS also reported in their FPAR that being outside the purview of labour laws was part of the difficulty that Nepali migrants faced in accessing the legal system in the destination countries. But in this context, the ban on women's migration to the Gulf States is also part of the problem as it prevents them accessing information about the destination state and how to bring a legal complaint if their rights are abused. A FPAR participant reported that she was unaware about legal protection and welfare in the destination country which, together with language barriers and complicated and unfamiliar judicial procedure, prevented her from reporting the violence and harassment that she had experienced.

In Danko's FPAR, Kyrgyz migrant women reported that the biggest threat they faced in their migrations was violence, predominantly by Kyrgyz men – whether their partner or another migrant. This is an expression of the patriarchal culture and so-called traditional values that position women as male property and an extension of the domestic violence that is widespread in Kyrgyzstan. In Kyrgyzstan, this includes the particular form of harmful practices of bride kidnapping.<sup>84</sup> Although there are laws against violence against women, these are limited by weak enforcement and the practice and attitudes behind it persist.<sup>85</sup> It has

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nation/2022/04/01/indonesia-malaysia-sign-mou-on-placement-protection-of-maids/. Free Malaysia Today, 2 April 2022, Retrieved from <https://www.freemalaysiatoday.com/category/nation/2022/04/01/indonesia-malaysia-sign-mou-on-placement-protection-of-maids/>

<sup>82</sup> ILO. (2016). Review of labour migration policy in Malaysia. Retrieved from [https://www.ilo.org/asia/publications/WCMS\\_447687/lang--en/index.htm](https://www.ilo.org/asia/publications/WCMS_447687/lang--en/index.htm)

<sup>83</sup> The ILO describes violence and harassment in the world of work as referring to "a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment": Violence and Harassment Convention, 2019 (No. 190), Article 1.1

<sup>84</sup> Hofmann and Chi, 2021. op. cit. Hoffmann and Chi describe bride kidnapping as "a ritualised practice in which a woman is physically taken from her home or a public place, brought to the home of a prospective husband, and pressured into a marriage. Sometimes the pressure to marry comes from a threat of physical or sexual violence, but more often the social stigma of being kidnapped without marrying leads women to acquiesce to the kidnap marriage." (p.2)

<sup>85</sup> Human Rights Watch, 2019. Kyrgyzstan: Pressure Builds to Protect Women and Girls. 28 May 2019, at <https://www.hrw.org/news/2019/05/28/kyrgyzstan-pressure-builds-protect-women-and-girls>; UN, 2022. The ongoing fight against child marriage and

often been justified by invoking sociocultural customs and values and is rooted in “social attitudes according to which women and girls are regarded as inferior to men and boys based on stereotyped roles” that uphold patriarchal power relations.<sup>86</sup> This patriarchal violence intersects with nationalism – racial hatred and violence is well documented in Russia and Central Asian labour migrants are among those targeted.<sup>87</sup> The expression of patriarchal power over women’s bodies and autonomy and the experience of racism intersect with Kyrgyz men attacking Kyrgyz women in the destination country for dating non-Kyrgyz men. Kyrgyz migrant women may also be attacked for rejecting such attention. The consequences can be devastating.

***“My name is Albina and I am 46. I have two higher educations. Together with my husband in search of a better life we came to live in Moscow. We found a job right away. I got a job in human resources, and he went into business. ... We were doing well, and I was happy. But things were not going so well at work. One of the employees started paying attention to***

***me. I was laughing because I was a lot older than him. Being the staff in HR department, I explained that such behaviour is not welcome at work, and moreover, I am married. The reaction was terrible. He started screaming and smashing everything around him. He was dragged out of my office by force. We didn’t fire him; we just gave him a stern reprimand.***

***“Unfortunately, he took it too personally. My life turned into a nightmare. He sent threatening notes. One day I found a bag in my office with a dead cat inside. When I called him in and demanded an explanation, he said it wasn’t him. We had to fire him for inappropriate behaviour. In the evening after work, he met me and punched me in the stomach. I crouched down in pain. He dragged me behind the building by my hair. He said something, but I couldn’t hear him because I was in pain. Then, without getting answers to his questions, he set my hair on fire. I received a strong psychological trauma and started stuttering. I became afraid of any kind of feelings for me and divorced my husband.”*** Albina, a participant in Danko’s FPAR

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‘bride kidnapping’ in Kyrgyzstan, 20 February 2022, Retrieved from <https://news.un.org/en/story/2022/02/1111902>

<sup>86</sup> The Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child, Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child (2019) on harmful practices, CEDAW/C/GC/31/Rev.1–CRC/C/GC/18/Rev.1, 8 May 2019, para.6; see para.16 for the criteria of such practices

<sup>87</sup> Committee on the Elimination of Racial Discrimination, Concluding observations on the twenty-third and twenty-fourth periodic reports of the Russian Federation, CERD/C/RUS/CO/23-24, 20 September 2017, paras.15-16; IRIN News, Ethnic hatred in Russia on the rise, The New Humanitarian, 2 May 2006, Retrieved from <https://www.thenewhumanitarian.org/fr/node/202927>; IWPR Central Asia, 2016. Central Asian Migrants Face Prejudice in Russia. Institute for War and Peace Reporting, 22 March 2016, Retrieved from <https://iwpr.net/global-voices/central-asian-migrants-face-prejudice-russia>; Arman Kaliyev, 2018. Central Asian migrants describe injustice, racism in Russia. Central Asian News, 3 July 2018, Retrieved from [https://central.asia-news.com/en\\_GB/articles/cnmi\\_ca/features/2018/07/03/feature-01](https://central.asia-news.com/en_GB/articles/cnmi_ca/features/2018/07/03/feature-01); Aram Terzyan, 2019. The Rise of Nationalism and Xenophobia in Putin’s Russia: Implications for Immigrants from Central Asia and Caucasus. Center for East European and Russian Studies, Post-Soviet Politics Research Papers 1/2019, doi: 10.47669/PSPRP-1-2019

Women from Kyrgyzstan mostly migrate to Russia, Kazakhstan and Turkey. Kyrgyzstan, Russia and Kazakhstan are members of the Eurasian Economic Union (EAEU), which reduces the requirements for migration and provides Kyrgyz migrant workers with the same rights as citizens in areas such as employment, health care and education.<sup>88</sup> Kyrgyz migrants need only conclude a work contract and do not need to secure a work permit to be able to live and work in regular status in Russia and Kazakhstan. However, women migrants often are not given a written employment contract, rendering them undocumented. This puts their rights at risk and limits their access to justice. But the oppression of women under Kyrgyz culture is the greater threat to their rights and barrier to justice as it stops women from bringing

<sup>88</sup> For example, they have longer to register their presence in the country, which gives them time to find a job through social networks (up to 30 days after entry, instead of five as is required from migrants from other countries that also enjoy visa-free travel).

complaints or even seeking assistance. The prevalent discriminatory view of women migrants in Kyrgyz society is that they are assumed to engage in conduct deemed by those invested in maintaining patriarchal boundaries and norms as being immoral, of “dishonouring the family and the nation”. That is, Kyrgyz men assume that Kyrgyz women will be sexually active during their migration and seek to condemn them for that. The stigma associated with sexual autonomy can attach to migrant women whether or not they engage in consensual sexual relations or are victims of rape or other forms of sexual violence during their migration.

*“He was my colleague and I treated him like an older brother. He could pat me on the shoulder or ruffle my hair. And I did not pay any importance to this. Once he raped me, and then threatened that he would tell all the guys that I was not a virgin.... Who would help me? I didn’t know who to tell about it. You know that society will not understand. They will say that I provoked [it]. Many people think that if you are a migrant in another country, you do bad things there.”* Zhyldyz, a participant in Danko’s FPAR

The patriarchal gender order uses violence to sustain male dominance and silences women who experience that violence.<sup>89</sup> In combination with migrant status, women can be pressured to culturally reproduce the nation, through maintaining their traditional (gendered) roles and patriarchal norms as binding elements of the community.<sup>90</sup> When these norms are threatened, such as through migration that grants women greater autonomy, patriarchies may resort to greater moral regulation of “their” women.<sup>91</sup>

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<sup>89</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, E/CN.4/2004/66, 26 December 2003, para.35

<sup>90</sup> Nira Yuval Davis, 1997. *Gender and Nation*, Sage Publications, London

<sup>91</sup> Special Rapporteur on violence against women, 2003, para.37, op. cit.

Kyrgyz women were afraid to talk about being harassed by a colleague at work or about being raped, fearing the judgement of others. They do not report the violence to the police and live with the belief that no one can be trusted or help them. The Kyrgyz culture does not see these women as victims or survivors of sexual and gender-based discrimination and violence, but as persons who “violate” cultural rules and norms.<sup>92</sup> Danko describes the culture as causing women to lose faith in honesty and humanity. Some of the women who shared their experiences in the FPAR described how the threat or experience of violence ended their migration and they returned home and got married – returning to the traditional patriarchal culture.

*“With the help of a friend, I got a job as a waiter in a prestigious restaurant. They paid me well, but I had to put up with a terrible attitude from the manager. He could hug my waist or put his hand on my thigh. It was very unpleasant, but I had to put up with it because I had to send money home to my parents. One day after my shift, he offered to take me home. In the car, he started touching me, and when I screamed, he hit me several times. Then he pushed me out of the car and drove away. I felt dirty and wanted to kill myself. When I told my friend about this, she immediately took me to the police. It was late in the night and the police told me that I had come for nothing and that I probably had provoked him myself. I got depressed and went back to Kyrgyzstan. My parents were old, and their pension was not enough. I got married to support my family.”* A participant in the Danko FPAR described her migration to Russia when she was 23 years old

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<sup>92</sup> Report of the Working Group on the issue of discrimination against women in law and in practice, A/HRC/29/40, 2 April 2015, para.16

## AT THE FOREIGN LAND - DISCRIMINATORY POLICIES AND REGULATIONS

In India, Aastha Parivaar developed their FPAR with sex workers from Bangladesh and Nepal who had migrated in pursuit of safer and better working conditions. However, sex work is still criminalised in India, and this creates conditions in which unscrupulous actors can thrive. Criminalisation, along with the frequent conflation of sex work with human trafficking in law, policy and practice, increases the risk of human rights abuses against sex workers, including police violence and negative health outcomes.<sup>93</sup> It leaves sex workers largely outside the legal, medical and social services structures and greatly increases the risk to their rights and safety as they fear law enforcement authorities and political leaders as well as criminal actors.<sup>94</sup> Like the measures that force women migrants to rely on recruitment agencies and brokers, increasing the risk of rights abuses, criminalisation makes it more likely that migrant sex workers will have to engage with, if not rely on, brothel owners and agents.

***“Many sex workers do not have identity documents such as ration cards. The police target this community even on ordinary days. Now, during the lockdown, anybody who is seen on the street in these red-light areas is beaten without reason,”*** Migrant sex worker participant in the Aastha Parivaar FPAR

<sup>93</sup> Lisa Maher, Thomas Crewe Dixon, Pisith Phlong, Julie Mooney-Somers, Ellen S. Stein, Kimberly Page, 2015. Conflicting rights: How the prohibition of human trafficking and sexual exploitation infringes the right to health of female sex workers in Phnom Penh, Cambodia, Health and Human Rights, 17/1, Retrieved from <https://www.hhrjournal.org/2015/04/conflicting-rights-how-the-prohibition-of-human-trafficking-and-sexual-exploitation-infringes-the-right-to-health-of-female-sex-workers-in-phnom-penh-cambodia/>

<sup>94</sup> Police personnel are among the most commonly cited people who use violence against sex workers (along with clients). See for example, Manjima Bhattacharjya, Emma Fulu and Laxmi Murthy with Meena Saraswathi Seshu, Julia Cabassi and Marta Vallejo-Mestres, 2015. The Right(s) Evidence – Sex Work, Violence and HIV in Asia: A Multi-Country Qualitative Study. Bangkok: UNFPA, UNDP and APNSW (CASAM).



In addition, they face challenges common to many migrant workers such as the language barrier, lack of education and information, and issues related to being undocumented. They also face health problems particularly sexually transmitted infections and HIV/AIDS risks and stigma and discrimination associated with the vilification of sex work and sex workers.

In addition to the direct risks associated with criminalisation, the FPAR partners described how sex workers face numerous State and non-State actors seeking to implement policies that revolve around rescue and rehabilitation, on the premise that sex work is immoral. These do not effectively promote the human rights and well-being of sex workers but fuel discrimination and stigma. What they need is labour rights and safe access to services. The migrant sex worker partners identified a range of barriers to accessing health care services – principally, labour conditions, where women said they did not get time to visit the doctor, and financial concerns, where women felt they could not afford to visit a doctor. Like so many during the COVID-19 pandemic, the migrant sex workers interviewed in the FPAR had lost



their source of income as the bars and brothels were closed. Access to hospitals was also difficult due to restrictions on travel, a particular concern for women living with HIV/AIDs, who risked health issues if they did not have access to their Antiretroviral Therapy (ART) medicines.

The government-run hospitals provide free consultation and treatment, however their status as undocumented migrants means they do not have an Aadhar Card (citizenship document), which is required to attend the government hospital – this leaves a private doctor as their only option. For them, the simple act of going to see the doctor could trigger immigration enforcement procedures. They might be arrested, detained or deported. Only when public services, the criminal justice system and labour inspectorates operate with “firewalls”, that is, operate separately from immigration enforcement so that everyone, including all migrants, can access services and report crimes and labour abuses, without fear of having to disclose their migration status and therefore risk arrest, detention and deportation. Additionally, these institutions should not be required to ask about or share information about the migration status of individuals and should ensure that no data is shared with immigration enforcement without first being anonymised.<sup>95</sup> During Aastha Parivaar’s FPAR, on 7 October 2020, the National Human Rights Commission announced that it would recognise sex workers as informal workers. This provided them with access to various services, welfare and benefits under

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<sup>95</sup> François Crépeau and Bethany Hastie, 2015. The case for ‘firewall’ protections for irregular migrants: safeguarding fundamental rights. *European Journal of Migration and Law*, 17(2-3), 157-183; ILO, 2016. Promoting Fair Migration: General Survey Concerning the Migrant Workers Instruments, paras 480-482; OHCHR and the Global Migration Group, 2018. Principles and Guidelines on the Human Rights Protection of Migrants in Vulnerable Situations, Principle 12.8. Firewalls are recognised in the GCM, for example in para. 22(j) to ensure that migrants in the informal economy can bring complaints and para.15(b) on access to services, urging States to ensure any cooperation between service providers and immigration authorities does not compromise migrants’ safe access to services

government schemes during the pandemic. A plea filed by the Durbar Mahila Samanwaya Committee to the Indian Supreme Court, highlighted the suffering faced by sex workers who were left out of response measures during the pandemic. On 29 September 2020 the Supreme Court ordered all union and state territories to provide dry rations to all sex workers identified by the district authorities and National AIDS Control Organisation without asking for proof of identity.<sup>96</sup>

Aastha Parivaar also reported that discriminatory policies against undocumented migrants leave many of the children of these migrant women without valid birth certificates. This is a violation of their human rights and denies them access to public services, including schooling.<sup>97</sup> They are reliant on local NGOs for assistance in gaining access.

Though the law is the source of many of the problems facing the participants in the Indian FPAR, for those participating in the FPARs focused on the situations of migrant domestic workers – those by AMKAS and NAWHRD in Nepal, IMWU in Hong Kong, and Tenaganita in Malaysia – it was the lack of law that was the crucial issue. All four FPARs identified the exclusion of these workers from the protection of labour law and social security as one of the main reasons they suffer rights abuses during their employment.

***“The challenges that we face are lack of health and safety protection, long work hours, low or unpaid wages, heavy and unlimited tasks and workload. All of these challenges cause many problems for us. We have no way to***

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<sup>96</sup> In December 2021, the Supreme Court directed the Union and state governments to start issuing Aadhaar cards, ration cards and voter identity cards to sex workers immediately – however, this is for those who are citizens: The Wire staff, 2021. ‘Right to Dignity Irrespective of Vocation’: SC Orders Govts to Issue ID Cards to Sex Workers, *The Wire*, 16 December 2021, Retrieved from <https://thewire.in/law/right-to-dignity-irrespective-of-vocation-sc-orders-govts-to-issue-id-cards-to-sex-workers>

<sup>97</sup> Convention on the Rights of the Child, Article 7

***fight against the violations or demand better protections. We face many other problems too! We do not have social security (SOCSSO), or any other protection, leave, annual leave, no rest day. We do not have all these protections. We do not know where to go to ask for help when facing problems. We can only depend on the good will of employers. In the recent Movement Control Order (MCO) lockdown, we lost jobs and hours of work, and have less income. We speak on behalf of the domestic workers in this country that we need to get protection from the employment laws here. So, we are asking that our rights should be covered in the employment laws. We call upon the labour department, authorities and the Parliament of Malaysia to come up with protection for domestic workers in the labour laws in this country.” Sangeetha, in Tenaganita’s FPAR in Malaysia***

NAWHRD’s FPAR participants overwhelmingly reported (90 per cent) that their employers did not care if they were injured at work or had any worker-related health issues and still asked them to continue the work. Their lack of access to social security became critical during the COVID-19 pandemic when, even though they are citizens of the country, participants reported that their migratory status – meaning their unregistered presence in Kathmandu as they worked in the informal economy where the vast majority of women (over 90 per cent) do not have an employment contract – made them illegible to get any support from the government or social security. The Social Security Act of 2017 is focused on the formal sector and is funded through employee and employer contributions. Domestic work is relegated to the informal sector as it is not considered as work under the Labour Act of 2017, which has the effect of excluding domestic workers from social security as well as labour protections. Where women (internal) migrants lost work due to the pandemic, they faced destitution if unable to make rent, causing considerable psychological distress, and may have been unable to return to their home villages due to lack of

resources or inter-district and provincial travel restrictions. The majority of the migrant women (including internal migrants) were denied access to services and resources. Where they were able to obtain some government relief, women still reported great stress, worried that it would stop:

*Basanti, one FPAR participant, was living in Kathmandu with her two children, mother and grandmother, who earned a very low salary as a domestic worker, not enough to support her and her family. Her husband has migrated to Saudi Arabia for work and could not return due to the pandemic. She worried about him as Saudi Arabia has seen a high number of cases. She has been without work and income since the lockdown began in Nepal on 24 March, 2020, and had to use her few savings to feed her family as her husband has been unable to send money due to the closure of all financial services. The family was surviving on the various charity and relief distributions by local government bodies and local NGOs and she worries that this may stop. (Case study reported by NAWHRD from their FPAR)*

## **RETURN AND NEW DEPARTURE - WHEN THERE IS NO WAY HOME**

Return is part of the migration cycle. It may be the end of women’s migration or merely a pause before another migration. Which it is depends on various factors including how successful the migration was in improving their family’s standard of living, any ongoing effects of the factors that compelled their migration in the first place, and whether they are able to reintegrate into their home community. Migration policies that restrict access to regular and safe migration pathways or deny access to rights – such as those experienced by women in this FPAR – reduce migrants’ prospects for a sustainable reintegration.<sup>98</sup>

<sup>98</sup> Report of the Special Rapporteur on the human rights of



*and I also needed to make alcohol for money to feed my children. But returning as a migrant, I am now able to afford all the expenses for my family including medical fees and educational expenses for my children.”*

*“After returning to Nepal, I bought a small piece of land and built a small house with the money I earned. Now I have a much better life than before. I think we women should be allowed to migrate for foreign employment and government should bring better employment opportunities and bring laws to make migration safer rather than imposing bans.”*

*Reflections from AMKAS FPAR partners, Nepal*

Only a few returnees are economically empowered and able to reintegrate into their society. In their FPAR, AMKAS found that undocumented returnee migrants faced more challenges in reintegrating after their migration where most of them had experienced labour exploitation and did not have sufficient earnings to invest to support their reintegration. Added to this, undocumented migrant workers are denied access to the government’s social and economic reintegration schemes. In contrast, those who went through regular migration returned able to use and apply their skills and experience and invest their earnings. This difference is more than just financial, it goes to the social positioning of the returnee – those who can financially support their family are more welcomed and respected by their families and society, while those who cannot, face difficulties in reintegrating. Six of the 10 migrants interviewed in the AMKAS FPAR shared that they recognised that they returned to Nepal economically empowered and no longer have to depend on others for money:

*“Before going abroad, I had to deal with all the household work like going to the jungle to collect the firewood and sell it in the market,*

As KABAR BUMI’s FPAR demonstrated, recruitment agencies’ practice of holding migrant workers’ personal documents as collateral until all the fees are repaid can have serious consequences for them and their families that can undermine their chances of a successful and sustainable reintegration, especially if the company or broker then loses their papers.

However, earnings are not the only requirement for a successful reintegration post-migration and some migrants may need psychosocial support and legal assistance.<sup>99</sup> For example, the AMKAS FPAR found that more than 90 per cent of the returnee migrants had psychosocial problems and that 15 to 20 per cent experienced severe mental health issues due to the violence and abuse they experienced during their migration. AMKAS reported one case of a migrant woman who had been deeply traumatised by her migration where she had worked without pay and endured physical torture by her employer’s family every day. Her trauma did not end on return. Due to her undocumented status, a result of the gendered migration ban in operation in Nepal, AMKAS could not provide the paralegal support for claiming

<sup>99</sup> See Global Compact for Migration, para.37(h); Committee on the Elimination of Discrimination against Women, General recommendation No. 26 on women migrant workers, CEDAW/C/2009/WP.1/R, 5 December 2008, para. 24(i)

migrants, A/HRC/38/41, 4 May 2018, paras.74-77

the compensation because undocumented migrants are not qualified to receive services or compensation from the related agencies and government. This is a serious protection gap and barrier to justice. For some migrants, there is no access to justice in their country of destination or their country of origin.

The FPARs also revealed challenges for internal as well as cross-border migrants, even though they are moving within their own country. In NAWHRD's FPAR, the internal women migrant workers shared that there is a social stigma against working women and they hide their jobs in front of their community in fear of being judged and looked down on. This can disrupt their ties to their previous social network and undermine their return.<sup>100</sup>

Nepali women who had made international migrations faced stigma associated with prejudices associated with women's sexual autonomy (real or imagined by community members).<sup>101</sup> In their FPAR, AMKAS found that returnee women who were pregnant or had had children while abroad (whether this was from consensual sex or sexual violence), faced difficulty in reintegration into home communities due to stigmatisation, discrimination and false allegations.<sup>102</sup> The stigma causes violations of the rights of the child – AMKAS cited the National Human Rights Commission who advised that “Children born from rape or consensual sex are likely to be rendered stateless as they will be deemed disqualified to acquire Nepali citizenship”, a serious human rights violation that effectively strips their right to have rights.

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<sup>100</sup> Kathleen Newland and Brian Salant, 2018. *Balancing Acts: Policy Frameworks for Migrant Return and Reintegration, Towards a Global Compact for Migration: A Development Perspective, A Series to Inform the Debate, Issue No.6, October 2018, Migration Policy Institute*

<sup>101</sup> Committee on the Elimination of Discrimination against Women, General recommendation No. 26, para.11

<sup>102</sup> Nassim Majidi and Liza Schuster, 2018. *Deportation and forced return*, in Bloch, Alice and Dona, Giorgia (eds) *Forced Migration: Current Issues and Debates*, Routledge, Chapter 6



## RESISTANCE

*“The Covid-19 pandemic has awakened many women migrants from the illusion of migration. At this very point, many women migrants raise questions: what is the long term solution to our problem? What should we do to defend our rights? Reflecting from our concrete experience, the hope of women migrants lies with our movement. No one will give us recognition, rights, dignity, and liberation if we do not fight for them. Thus, we must continue to organise and empower ourselves and express our aspiration through various forms and spaces. We should rely on our own as a collective and organised the struggle of women migrants. After all, the change is in our hands.”* **Stringatin, mentor of IMWU's FPAR**

*“My biggest wish is that there will be no more migrant workers who face injustices like overcharging and other kinds of exploitation, physical abuse, and so on. That is my own dream. For the communities, we need to thrive, move forward, and never quit because no struggle is ever wasted. When we are fighting for our rights, we will achieve our goals even though there are so many challenges. The government will hear us if we continue to fight.”* **Erwiana, the young researcher of IMWU's FPAR**

## LED BY WOMEN MIGRANTS, FOR WOMEN MIGRANTS



Migration is an act of resistance. The women migrants who participated in these FPARs described how migration was a determined response to poor living conditions and prospects and denial of rights arising from factors such as domestic and structural violence. Their migration is a refusal to settle for the intersecting factors of oppression, inequalities and other rights abuses in their lives. Migration is not an easy option and demands initiative and courage.

This does not change in the face of human rights abuses during the migration that too many women experience – prior to departure, through the journey, at the destination, or on return. The women migrants took the opportunity of this FPAR to refuse to accept this and worked together to identify and start to implement strategies for rights-based and feminist alternatives for fair and just migration. Through the FPARs, women migrants were able to lead APWLD’s partner organisations through their search for safety and dignity. The FPAR process enabled them to work together to turn experiences into analyses into action. Growing knowledge and skills, the FPAR set the groundwork to use these for structural

change to improve the situation for and human rights of women at all stages of migration.

*“We immersed ourselves in the communities and conducted programmes based on their conditions and awareness, that we can increase later on.” Karsiwen, in KABAR BUMI’s FPAR*

## CAPACITY BUILDING: STRENGTHENING STRUCTURAL ANALYSIS, FEMINIST ORGANISING AND ADVOCACY

The FPAR strengthened the capacity of partners who will be able to use and share their knowledge and skills with others. For women migrants and their organisations this can be seen in their reports of personal growth and knowledge gained, which is reflected in the deepening of the structural analysis, feminist organising principle and methodology. In addition, the capacity and confidence in advocacy work at national, regional and international levels were enhanced through training and activities organised through the FPAR processes.

The migration FPAR has built a network of trainers who can conduct training on safe migration and related concerns such as, anti-human trafficking and sexual and gender-based violence. Partners learned about and gained skills and experience in different participatory research/data gathering tools such as facilitating focus group discussions and conducting interviews – and adapting those methods with the changes brought by the COVID-19 pandemic. They learned to document human rights abuses and conduct policy reviews.

*“The presentation of research results from documented cases is also an important lesson for the organisation, because so far, the development reports have not been detailed with the document findings.” Karsiwen from KABAR BUMI*

The women who participated in the FPARs generously shared their experiences of migration and their lives before, during and after migration. Some already had knowledge of relevant laws and understood that they are rights-holders but in most of the FPARs, the researcher was able to work with participants to develop a rights-based analysis of their situations to inform their advocacy. This is important to effectively pressure those who hold power. As one of the facilitators noted: *“If we come from a position of strength, they will listen to us.”*

The FPAR training and process deepened partners’ understanding and analysis of migration issues through the Patriarchy-Globalisation-Fundamentalisms-Militarism (PGFM) framework. This learning and analysis has broadened the scope of the grassroots organisations’ advocacy goals and demands, especially by strengthening their approach from issue-based to focused on structural changes. This enables them to develop objectives that are linked to the changes in the structures and systems of oppression that they want to see. The FPAR partners have reflected that the analysis framework was useful in their personal and organisational growth and development:

*“I have been working with the community for long but we are always used to looking at the problems through the lens of a health perspective only. Through FPAR, we learned to use a collective or intersection approach to understand the structural barrier and the root causes. I think it is a personal learning for me, and it is very clear that the community needs to advocate for the change of the root cause ... As an organisation, we understand the importance of collective action especially for migrant sex workers to take lead, and we always believe that collectively we can achieve a lot. The FPAR journey has developed our capacity and skills through various tools and principles that we have learned and we are able to apply and adapt them in our programme.”* Seema from Asaatha Parivaar

Through the FPAR women migrant workers are able to articulate why and how their experiences were abuses of their human and labour rights and through this, demand better conditions and ultimately form an evidence-base for advocacy to demand accountability from the government. For example, KABAR BUMI’s FPAR documented 60 cases of document confiscation through online surveys and setting up a complaint desk. Kabar Bumi has supported 21 of these cases and, so far, six women have been able to retrieve their documents.



The FPAR principles introduced in the training and implemented throughout the research also changed how the grassroots organisations and the young researchers understand their relationship with the community. In the FPAR process, young researchers deeply reflected on the power relationship between NGOs and the community of women migrants, and recognised the agency of women migrants for creating changes. The FPAR training has created a collective space for the young researchers and mentors to engage in deep reflection on their practice, which is crucial for both the activists and their organisations to establish a feminist organising methodology.

*“Despite continuing to focus on changing the laws and lobbying with the politicians, we have also changed our way to create change by empowering the community, so that they (migrant workers) can fight for their rights and confront the government by themselves. I think the problem in Malaysia is that there are many NGOs fighting for the migrant communities but don’t bring it back to the community. In the end, it is more like our fights and issues, and not the community’s issue. So, I think with the FPAR, the community is empowered and they should be the ones who go to the government.”*  
Azura from Tenaganita

This strengthened capacity has already been put into use at the national and international levels. The partners used the knowledge and skills gained through the FPAR to formulate their media advocacy plans. In their advocacy phase, the young researcher and the team showed their capacity on organising media activities to amplify their agenda and the women’s voices through local, national and international media. For example, AMKAS has successfully conducted a media briefing for 21 journalists and media representatives on the FPAR findings about the impacts of the travel ban on Nepali women’s labour migrations. The issues including the discriminatory ban, the ongoing campaign of AMKAS and their demand that

Nepal ratifies ILO C189 were widely covered in newspapers and online media.

*“AMKAS Nepal has been advocating for the ratification of ILO C189 and lifting the discriminatory ban on women migrant workers since a long time ago. This media briefing was successful in highlighting the issues of women migrant workers, and provided the chance to discuss how media and AMKAS can collaborate in the future. We have also received substantive comments and suggestions from the media’s perspective. The relationship between AMKAS and various media is strengthened through the event.”* Amira from AMKAS

The FPAR training on digital advocacy was also crucial in supporting the partners to transform their research findings, evidence and stories into digital stories. Partners also demonstrated their capacity on using social media and digital as a means to distribute, reach and engage with their community and stakeholders to promote action.

Through the capacity building, the women migrants’ communities also showed increased confidence to present their issues and cases in the meeting and dialogue with the authorities. For instance, IMWU Hong Kong shared that the FPAR findings can both contribute as knowledge tools for building the capacity of their community, to understand the issues of overcharging and illegal practices by recruitment agencies. In addition, IMWU members were able to present the findings and cases to authorities in meetings and dialogues, including dialogue with government officials, police and IOM.

FPAR partners also had the opportunity to participate in a consultation with UN human rights mechanisms. In preparation, APWLD organised a two-day capacity building workshop with 10 organisations including the Migration FPAR partners, discussing the UN treaty monitoring bodies, special procedures and some potential engagement opportunities. The discussion and



input of the training helped to build the linkage between partners' national advocacy work and the dialogue with the UN mandate holders (see further below). With the rehearsal, feedback and intensive preparation work, participants were confident to present and discuss the issues during the consultation.

***“I came to know about UN Special Rapporteurs and how they function, [the] overall mechanism and regarding their country visits and how organisations can utilise those visits by advocating women migrants' rights. Also, I learned the importance and essence of sisterhood and solidarity power and we women as a collective contribute to the wellbeing and human rights.”*** Aayushi Bam, one of the young researchers shared what she had learned during the training.

## KNOWLEDGE AND EVIDENCE FROM THE GROUND

The two-year FPAR journey was a fruitful journey that produced tremendous amounts of data, stories, organising work, learnings and reflection. APWLD together with the partners produced a series of podcasts, “A Glimpse into Two Year Journey of Migration FPAR Partners”, to capture the experiences and self-reflection from the perspective of the young women researchers. These showcase the FPAR as a feminist organising tool to advocate for structural changes. They also provide another digital means for the organisations to share their work and message with the community: five of the seven episodes were in local languages which helped the information be widely shared among the communities.

FPAR partners were also able to apply their new knowledge and produce information and educational materials for a range of audiences, such as brochures, flyers, posters, storybooks, video documentaries and information sheets. They had practice in organising events such as protest actions and online discussions. In addition, they created a



range of knowledge tools and resources for the media, including FPAR stories, press releases, and a talk show, strengthening their public speaking and presentation skills, including for online streaming. For example, IMWU has published a policy paper and statement in different languages to address the recent zero placement fee policy in Indonesia. The policy paper is based on the consolidation of FPAR findings and consultation with lawyers, academics, advocates and women migrants. Inputs from people from different backgrounds have sharpened and enriched the analysis, and it also successfully brought different expertise into the campaign.

The COVID-19 pandemic has been particularly hard on women migrants and their communities. APWLD, in collaboration with NAWHRD and AMKAS Nepal, published the Stories of Migrant Women as the first book in the Feminist Storybook series as part of our COVID-19 response.<sup>103</sup> Different stories collected by the grassroots organisations showed how women migrants and their families bear the brunt of the crisis, facing multiple intersecting discriminations, exclusion and violence.

Four partners produced documentary films about their research. NAWHRD produced पहचान

<sup>103</sup> See <https://apwld.org/stories-of-migrant-women/>



## Direct collective impact of the FPAR in numbers:

Built capacity of **288** women in understanding their rights, law and related protection, root causes of migration

Trained **13** researchers, including co-researchers in the community

**13** grassroots leaders and **50** active members who play a crucial role in the organisations

**38** organisers and facilitators, **88** speakers, **69** campaigners gained skills in organising actions, activities, and facilitating discussions with other women migrants

**50** civil society organisations were trained in the FPAR activities

**8** women were active in politics

**3** organisations replicate the FPAR methodology in their organising work

**14** new groups, **2** new branches and **7** new alliances were formed to sustain the migrants' movement after FPAR

This is the immediate reach of the FPAR. As partners share their skills and learning the impact will grow

(*Identity*), a short documentary on internal migrant domestic workers in Kathmandu.<sup>104</sup> Featuring interviews with women who often work multiple domestic work jobs to survive in Nepal's capital, they hide their identity as they describe the feelings of shame attached to doing this work. The vast majority of domestic workers lost their jobs during the pandemic but the women in the film explain the additional challenges of continuing with this work during the lockdown – increased workload and no time off; police harassment on the journey to work, and the loss of pay with no social security safety net if they were sick. They assess that the lack of a written contract together with the lack of social protection and ability to save for their family's future contribute to the perceptions in Nepal that the work lacks respectability.

Tenaganita produced two short, informative videos on the hidden and unregistered nature of domestic work and their efforts to see domestic work formalised with the implementation of labour and social security laws for all domestic workers. They highlight the lack of any form of legal protection as a major barrier to accessing decent work, describing how Malaysia's language of "servant", "maid" or "helper" denies domestic workers' recognition as workers therefore excluding them from labour law, and the brutal consequences this has for domestic workers. From this analysis Tenaganita advocates for a specific law to address domestic work, inclusive of migrant workers, to address the specificities of the sector, and to recognise domestic workers as workers. This would be a first step in guaranteeing decent work and ensuring that domestic workers are treated with dignity and justice.<sup>105</sup>

AMKAS produced a video on safe migration as a fundamental human right. Describing the

<sup>104</sup> Available at <https://www.youtube.com/watch?v=TnN7FUGKVOE>

<sup>105</sup> Available at <https://www.facebook.com/watch/?v=243924991186786> and <https://www.facebook.com/TenaganitaMY/videos/4592664104120475>

importance of remittances to the Nepal economy and limited employment opportunities in the country, AMKAS describe how the figure of more than 1,500 Nepalese workers who migrate everyday masks a greater number who migrate through irregular channels via Nepal's open border with India, despite the ban on women migrating for domestic work. The ban pushes women into migrating outside of official channels, facing greater risks to their human rights and difficulties when they want to return due to the lack of documentation. Noting that "going abroad is not an interest but an obligation", AMKAS use testimony from women who have been affected by the ban, travelling these clandestine routes and experiencing rights abuses by brokers and employers, and some local government officials to argue that the Nepal government needs to actively facilitate regular migration, with adequate training, bilateral labour agreements with destination countries.

Kabar Bumi produced a detailed short film about their research into the mandatory document confiscation by the placement or recruitment agencies or brokers and the consequences for Indonesian women of having their migrations mediated by these profit-driven intermediaries. Drawing on the testimony of affected women migrants and Kabar Bumi's expertise on the issue, the film describes how this can trap women migrants in abusive working situations, but also have harmful consequences that go beyond the migration.

The documentary film produced by IMWU not only served as important evidence to demonstrate how recruitment agencies manipulated migrant domestic workers, but the process of interviewing the women migrants also enhanced their confidence to speak out the truth.

***"The victims of [recruitment fee] overcharging who shared their testimonies in the video***

***documentary felt more confident and encouraged to fight for their rights against their recruitment agencies. They felt the need to express their grievances to the Indonesian government that they have been cheated and trapped into debt bondage involving their families and it is unfair for them."*** Erwiana, the young researcher from IMWU

The Regional Overview and Recommendations on Human Rights Situation of Women Migrants and Their Communities for the UN Mandate Holders is a record of the capacity building preparatory workshop for the meeting with representatives of some of the UN human rights mechanisms (see further, below).<sup>106</sup> This document describes the collective concerns about the human rights situation of women migrants in Asia and the Pacific. The concerns and issues of the FPAR partners are diverse, but the document draws out the commonalities and the shared concern among the groups, and develops legal and policy recommendations based on the common issues identified. The document has been presented and shared with the UN mandate holders who have attended the consultation.

## **ADVOCACY SPACE: WOMEN DEMANDING CHANGE, BEING CHANGE MAKERS**

***"When we mobilised the women migrants to speak in front of the media and stand in the protest, we need to let them realise that they are not the victims, but they are the change makers for the unjust system."*** Ka Mei, APWLD Programme Officer reflecting on the FPAR

The FPAR methodology is not for a one-off research project. Making structural change takes time. Sustaining these efforts to see and maintain momentum for real change is at the heart of the FPAR method. It is an act of solidarity. FPAR is owned by the community. This means working with

<sup>106</sup> See, <https://apwld.org/consultation-with-un-mandate-holders-on-human-rights-situation-of-women-migrants/>

respect, showing commitment and building trust. This can be challenging, especially when working with women whose rights have been abused, who are from minority groups or marginalised communities, or who have experienced past interventions by law enforcement or civil society that have also abused their rights. For example, KABAR BUMI shared that the biggest challenge they faced was the difficulty in convincing migrant women who had had their documents confiscated by recruitment agencies to report cases and fight for their rights. In this case, this is because the perpetrators – those responsible for collecting migrant women’s documents – were in some cases relatives or neighbours. In Aastha Parivar’s FPAR, they were building trust with marginalised communities – migrant sex workers, who work in a criminalised sector and also experience harmful interventions from anti-trafficking NGOs who work to end sex work.

The FPAR started with mentoring a young researcher and centring women migrant workers – engaging them to sustain the movement. It builds out from there to grow the movement. Just as FPAR as a method shifts power in the traditional researcher-subject relationship, it also recognises women migrant workers that they have power – and can use it to help others. This is how change happens. Some examples –

- *In Indonesia, KABAR BUMI’s FPAR has led to 17 women becoming counsellors who are now able to handle cases of document confiscation.*
- *As a result of AMKAS’ capacity strengthening work in Nepal, five of the women who participated are engaging in politics, with three working as local government-elected ward members.*

The FPAR partners integrated their research evidence into their advocacy work at local, national, regional and international levels. At the



national level, partners and their communities are advocating for migrants’ rights at higher levels of government, such as ministers’ offices. Advocacy strategies include monitoring, campaigning, writing letters, petitions, conducting workshops and roundtables for stakeholders. Various advocacy events were organised such as the International Migrants Days event, action at the consulate office, online action, speaking at regional and international conferences, etc. More importantly, the advocacy events are actively engaged and involved by the community. The FPAR advocacy has so far yielded several gains including providing relief packages for domestic workers in Nepal, obtaining social security for migrant workers and the creation of a draft bill on protection of the rights of domestic workers in Malaysia that can be used for advocacy.

In Indonesia and Hong Kong, there has been progress on addressing the recruitment abuses researched in the FPAR – in Indonesia there has been resolution on several cases of document retrieval and settlement, and in Hong Kong, partners report that the Indonesian Consulate,

such a crucial actor in supporting migrants' rights, has become more welcoming to them bringing cases of complaints of overcharging of recruitment fees and have reached settlements in some cases. IMWU also gained recognition from the Indonesian Consulate in Hong Kong as the representative of the women migrant workers when they are in the mediation with recruitment agencies.

In India, the National Human Rights Commission has also begun to recognise sex workers as informal workers. Public interest litigation filed in Nepal on the discriminatory ban on women's migration resulted in the easing of the ban by the Chairperson of the Labour Committee in the Parliament.<sup>107</sup>

In Nepal, AMKAS presented their research findings on the impacts of the discriminatory travel bans and on women domestic workers at a roundtable meeting with 31 participants from CSOs and different governmental departments. The objective of the roundtable was to pressure the government to recognise the urgent need to ratify the ILO Domestic Workers Convention, 2011 (No. 189) and develop action plans to address the human rights abuses faced by domestic workers. Though there is work to be done, the response from some participating government members was positive:

***“I encountered many cases of human trafficking and labour exploitation every day, but through AMKAS’s presentation I became clearer about why the ratification of ILO C189 is important. I want to see the Government of Nepal ratify the convention very soon. For that, AMKAS always has my support.” Durga Singh, Senior Superintendent of Police( SSP), Nepal Police showed her full support for the ratification of C189 after hearing AMKAS’s presentation***

Advocacy is not just about pressuring the government to take action. Change should

<sup>107</sup> Filed by AMKAS and the People Forum for Human Rights

include the change of culture and the attitude. In Kyrgyzstan, DANKO demonstrated how to make use of the knowledge tools and actions to change the attitude of the government officials and the culture of patriarchy within the household effectively.

***“The women said that they would not participate in our journey because they do not want others to know about their experiences of being sexually harassed. As a solution, we suggested that we do podcasts and articles without disclosing their identity. Later, we shared our podcast with the District radio station, and after listening to the podcast, the district government called us that they are ready to give help. It would be very nice to work at all the district scales and not only in the city. Another thing is that the husbands of participants were against the women because they had to leave their kids at home to join our training and activities for more than hours. Our mentor has been talking to the husbands with them. Now they are supporting and when women come to our office, their husbands are the ones who are staying at home with their children and doing some house chores.”***  
*Manata, the young researcher from DANKO, Kyrgyzstan*

Prior to the COVID-19 outbreak, many women migrants in the region were already living in unsafe and unsanitary conditions, with poor access to healthcare. Their health and safety risks were exacerbated in the pandemic, as most of them were in living and working conditions that constituted high risk situations for transmission of the virus, but at the same time were excluded from labour protection and health services. In this critical condition, FPAR partners in India and Nepal used the data and evidence to advocate and safeguard the vaccines for the undocumented sex workers and also the internal migrants.

***“FPAR data and evidence have been used in successfully advocating the free COVID-19 vaccination access for 2,400 sex workers by***

*pushing local authorities. We continue to collaborate with All India Network of Sex Workers to bring up the issue of health rights at the national level.” Seema from Aastha Parivaar, India*

*“We utilise FPAR story to advocate the vaccination access for the [internal migrant domestic workers] by collaborating with the ILO and other networks at different levels. As a result, we were able to secure the vaccine for more than 80 internal migrant domestic workers, especially those who don’t have citizen cards to register for the vaccination.”*  
NAWHRD

In Nepal, NAWHRD shared their FPAR story and findings with the mayors and government representatives at provincial and local levels through workshops and informal discussions. They have succeeded in getting commitment from the authorities in Bagmati province to register all internal migrants working as domestic workers as workers at the local labour department. The registration allows them to have their identity card both at local and provincial levels.

*“The mayors of municipalities are mostly men. They only have to work outside [the home] in the office. But mostly the deputy mayors of the municipalities are women and because we are women, we come to face a double burden of work and pressure. Because the household chores are considered to be the chores of women, we have to work outside in an equal manner as men and while returning home, we get no help from our husbands as there is this patriarchal culture and belief of making kitchen work as women’s work. This is the main reason why most of the works like domestic works and domestic workers are not recognised and not respected because that work is taken as service and women’s work.” Deputy Mayor of Bhimdatta municipality, Nepal*

The FPAR provides a way to continue to bring in women migrants’ voices in the international human

rights policy discussion. For example, the research by Astha Parivaar on migrant sex workers’ right to access health care and NAWHRD’s data related to internal migrant domestic workers in Nepal were included in a joint written submission to the UN Special Rapporteur on extreme poverty and human rights for his upcoming thematic report titled “Social Protection: A Reality Check”.<sup>108</sup> Speaking at the intergovernmental forum of the 8th Asia Pacific Forum on Sustainable Development (APFSD) 2021, another FPAR partner, Sringatin from IMWU-Hong Kong, drew on the FPAR to describe the structural problems that often drive migration leading to rights abuses against women migrant workers. She also emphasised solutions: the need to ensure protection of migrant workers from exploitative recruitment practices such as the excessive placement fee and resulting debt bondage, and to guarantee the rights of migrant workers to join and form trade unions.

## **FROM THE GRASSROOTS TO THE UN - FPAR INFLUENCING MIGRATION POLICY**

Through the FPAR, participating organisations were also able to present their main research findings and engage with three UN human rights mechanisms.<sup>109</sup> Dr. Heisoo Shin, Member of the Committee on Economic, Social and Cultural Rights; Ms. Dorothy Estrada, the Vice-Chair of the UN Working Group on discrimination against women and girls, and Mr. Felipe González Morales, UN Special Rapporteur on the human rights of migrants. Participants emphasised the need to ground legal and policy recommendations in women migrants’ realities to ensure that their needs and issues are addressed fully and

<sup>108</sup> Retrieved from [https://owncloud.unog.ch/s/eSm6trp9djBr140?path=%2F2\)%20Civil%20society%20organizations#pdfviewer](https://owncloud.unog.ch/s/eSm6trp9djBr140?path=%2F2)%20Civil%20society%20organizations#pdfviewer)

<sup>109</sup> The international human rights mechanisms are a set of State-led processes or independent experts monitoring mechanisms in the United Nations system, providing expertise and support by theme or by country, see OHCHR, Human Rights Bodies, at <https://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>

effectively.<sup>110</sup> Partners shared their analysis on the situation of women migrants in the region and the UN experts shared some potential upcoming engagement opportunities and guidance on concrete follow up.

***“Our purpose to participate in the virtual consultation was to submit [our findings], [make] aware and urge the mandate holders and use their power and responsibility to pressurise our government and also the government of the destination country to work together for protection of our migrant workers for a safer and dignified migration. Receiving the open interaction and very insightful country information from the mandate holders in the consultation on our presentation shows that our purpose has been fulfilled and hope they will be able to put enough pressure on our target stakeholders on our recommendations.”***

*Bijaya Rai Shrestha from AMKAS, Nepal*

In addition, KABAR BUMI has submitted a shadow report based on their FPAR to the UN Committee that monitors State implementation of the CEDAW, in which they inform the UN experts about some of the realities of Indonesian women’s migration and is another avenue through which to engage with their government.

This year, 2022, sees the first International Migration Review Forum (IMRF).<sup>111</sup> This new intergovernmental space – a Member State-led

<sup>110</sup> APWLD, 2021. “Workers Not Slave”: Human Rights Situation of Women Migrants: Consultation with the UN Mandate Holders by APWLD, its Members and Partners, 2 December 2021, Retrieved from <https://apwld.org/consultation-with-un-mandate-holders-on-human-rights-situation-of-women-migrants/> and APWLD, 2021. Human Rights Situation of Women Migrants and Their Communities: Regional Overview and Recommendations for the UN Mandate Holders, Retrieved from <https://apwld.org/wp-content/uploads/2021/12/Human-Rights-of-Women-Migrant-Regional-Message-Prepared-by-APWLD-and-Partners1.pdf>

<sup>111</sup> United Nations Network on Migration, International Migration Review Forum 2022, <https://migrationnetwork.un.org/international-migration-review-forum-2022>. For background information on the IMRF, including on participation that centres migrant expertise and experience, see, Quaker United Nations Office, Delivering on the promise of the GCM: Migration Justice Briefing Paper Series, December 2021, Retrieved from <https://quano.org/resource/2021/12/delivering-promise-gcm-migration-justice-briefing-paper-series>

forum with the participation of stakeholders – is mandated to review progress on the implementation of the GCM, including as it relates to the 2030 Agenda for Sustainable Development. FPAR partners see the potential of this event to ensure that women’s experiences of migration are taken into consideration in the assessment of the GCM. Crucially, FPAR partners are identifying work at the national level that can inform their governments’ work at the IMRF, for example, discussing organising national petitions and public forums to engage with the government. Other plans include submitting the FPAR reports to their government and building on that with actions on the national and regional level as follow-up, such as holding a post-IMRF reporting forum in their countries to share what took place during the IMRF.

## **BUILDING THE MOVEMENT: MAKING CONNECTIONS**

Situating experience in the social, political and economic dimensions is essential in devising effective strategies but deepening knowledge in this way is also essential if this mobilisation is going to become a movement and sustain itself. FPAR partners were able to facilitate training and group discussions on various subjects such as migration issues and human rights (particularly on migration and labour). For example, IMWU



provides education on the history of women's struggle in Indonesia beginning from the colonial period. They make the connection between the issues that migrants are facing and the structural issues driving those migrations, positioning their work as part of the challenge to the patriarchal system and government.

As well as making these conceptual connections, partners collaborated with various civil society stakeholders such as migrant organisations, trade unions, sex worker networks, women's organisations, lawyers and academics. For example, IMWU, situated in a country of destination, builds and maintains connections with groups in countries of origin, recognising that the challenges of international migration cannot be addressed from only one country. IMWU in Hong Kong and KABAR BUMI in Indonesia reported an alliance between their organisations.

The FPARs enabled participating organisations to grow their connections and reach within the country and make connections regionally. The FPAR has resulted in the establishment of new women migrant organisations/chapters in various countries such as Malaysia, Hong Kong, Indonesia, Nepal and India. For example:

- KABAR BUMI were able to establish a new branch, build and strengthen relationships with various stakeholders including lawyers'/legal aid organisations, academics, and other migrant women's organisations.
- NAWHRD formed a provincial-level network of women human rights defenders to advocate and work for the rights of migrant domestic workers.
- Asthaa Parivaar were able to support the formation of seven groups of migrant sex workers in the locality to mobilise others and build support for their human rights, and campaign against violence, discrimination

and harassment. Such movement building is especially important for such marginalised workers, to build solidarity and confidence among them.

- MWU were able to form a new branch in Hong Kong. They also received support from lawyers, academics and other migrant organisations.
- KABAR BUMI also reported new alliances with organisations in other destination countries (in Taiwan, Singapore and Malaysia).

It is vital to build feminist solidarity across women in all their diversity. The FPAR partners realised the importance of building solidarity among women from different backgrounds. NAWHRD has put their effort to bring in women from different sectors into their campaign. They invited women from a range of informal labour sectors – domestic workers, sex workers and entertainment workers – to join the advocacy workshop. In the beginning, some domestic workers believed that sex work was unethical and there were no common concerns and issues between them. However, after long discussions and sharing, they realised that women workers in both sectors share similar concerns and hopes, and they started to recognise they can advocate for women workers' rights together.

*“I am a sex worker but previously I have worked as a domestic worker and as an entertainment sector worker. I can happily advocate and fight for domestic workers and sex workers but I cannot happily say that I am a sex worker because of the stigma people have about the work. I believe in the near future there will be an environment where all the jobs of women can be celebrated and appreciated.”* One participant in NAWHRD's advocacy workshop

This lesson in solidarity is a crucial one for advancing women's human rights and the rights of women in migration: we can only succeed together.



## OVERCOMING UNEXPECTED CHALLENGES - A WORLD CHANGED BY COVID-19 PANDEMIC

*“When we started the migration FPAR, we had never thought that the [COVID-19] pandemic would be the biggest challenge for us, it impacted our FPAR activity plans extremely hard. Even during that hard time we made new plans or methodology and applied it to overcome the challenges.” AMKAS reflection*

Researchers from all of the FPARs had to adapt their plans as the world faced its worst pandemic to date. COVID-19 and the pandemic response measures changed migration and also made it difficult for researchers and migrant partners to come together for the predetermined activity plans. The organisations had a clear security plan in their FPAR, especially during the time of the pandemic, with collective care mechanisms to address mental health issues.

As so much of our world moved online, some of the FPARs had to cope with the digital divide. AMKAS reflected that the FPAR partners not having smartphones was one of the biggest challenges they faced during the research, especially during the lockdown. As they could not work during the lockdown, the participants in the Asthaa Parivaar FPAR in India were struggling to buy essentials such as food, never mind the internet. This did not just affect the research, but their children did not have access to computers, smartphones and internet as their schools moved online.

Yet, the FPAR partners found opportunities amid these restrictions. IMWU shared that with the limitation in mobility in Hong Kong due to pandemic response measures, they changed their advocacy strategy to online platforms and expanded their partnership with other Indonesian groups in Taiwan and Singapore. In the Asthaa Parivaar FPAR in India, the COVID-19 pandemic created an opportunity to progress the rights of



migrant sex workers. Asthaa Parivvar together with sex workers' networks, NGOs, and media continue to advocate for migrant sex workers' rights and welfare. As a result, the Indian Supreme Court issued a decision to provide ration cards for claiming food items and groceries, and the provision of INR 5,000 (USD 66) cash aid per person per month, with an additional cash transfer of INR 2,500 (USD 32.6) for those with school-going children<sup>112</sup>.

Partners also worked directly on the pandemic response. As a result of their advocacy efforts, NAWHRD was able to secure vaccinations for internal migrant domestic workers in Nepal. In Kyrgyzstan, some of the partners took the initiative and asked Danko to provide sewing machines for them to produce protective masks: they made more than 1,000 protective masks that were distributed to people in need. Other women

<sup>112</sup> India Legal (2020) Supreme Court orders states to provide dry ration to sex workers Retrieved from <https://www.indialegalive.com/constitutional-law-news/courts-news/supreme-court-orders-states-to-provide-dry-ration-to-sex-workers/>

prepared food and sent it to the hospitals.

The pandemic was not the only major change during the FPAR that partners had to deal with. In Hong Kong, IMWU faced the challenges of the pandemic and changing COVID regulations alongside growing difficulties in organising that they were facing due to the political protests taking place. Although IMWU is recognised by the government, with Hong Kong's national security law, it is necessary to reassess how to continue the activism in a safe way.

*the interviews with each of the participants, it was difficult for me to hold back tears and I was shaking with anger and injustice in this world. Thanks to this journey, I understood what I want to do with my remaining life. I will do everything to protect the rights of every girl, every woman, not only in Kyrgyzstan, but all over the world."*

## A LIFE CHANGING EXPERIENCE

FPAR seeks to change lives – to build knowledge, capacity and advocacy to work towards structural changes to improve women's lives. It also changes the lives of those involved in the research – researchers as well as the migrant partners.

*"This has been an inspiring and life-changing experience for me. Life-changing might be something huge for someone. But for me, yes it is! ... I was able to closely observe the process from which I learnt the power of evidence-based advocacy and how it has the ability to bring about changes in individuals, communities and in a country. With positivity and working in solidarity with like-minded people, I believe change is possible, at the personal and policy levels. For me FPAR means to create an environment of empowerment for women by women." Aayushi, the young researcher from NAWHRD*

*"It brought the theory alive for me. What you do is very inspiring. It's a great privilege..." Ka Mei, APWLD programme officer*

The researcher from the Danko FPAR in Kyrgyzstan reflected:

*"It turns out I was not ready to hear the real stories of women survivors of violence. During*





## RECOMMENDATIONS AND THE WAY FORWARD

The FPAR partners identified a range of measures that will address some of the most pressing concerns facing women migrants. Not one of these recommendations will resolve all the challenges or address all the human rights abuses that women face throughout their migrations. But these are key recommendations to address the issues that migrant women themselves identify as most pertinent to their experiences of migration. Realising any of them would benefit women migrants and implementing them together would make a substantive improvement.

## To States –



### **Address the root causes and structural factors that force women's migration:**

Eliminate all adverse drivers and structural factors that force women to leave their country of origin. This encompasses, for example, guaranteeing adequate opportunities for women to obtain decent work with a living wage in their country of origin; working to eradicate poverty by ensuring access to services and meaningful participation of women living in poverty in the design and implementation of policies that affect them; providing quality educational opportunities including access to lifelong learning opportunities. It means making a long-term investment in ending intersectional discriminations and realising human rights, including to live free from violence and coercion, including women's right to bodily autonomy and sexual and reproductive health and rights. It means working to end the ongoing and emerging conflicts and political instability in the region that force people to leave their own livelihood, communities and country, and ensuring the respect, protection and fulfilment of human rights and respect for the rule of law. Increasingly, it means paying specific attention to address climate-induced migration, in order to reduce impacts experienced by displaced communities, and to ensure that efforts to address loss and damage uphold and respect women's human rights and fundamental freedoms.



### **Ensure a rights-based recruitment process for migrant workers:**

Adopt and implement a zero recruitment and administrative fee policy for all migrant workers, in line with existing international labour standards and migration governance. Labour recruiters and recruitment agencies must be effectively prohibited, in law and in practice, from

charging or shifting recruitment fees or related costs to migrant workers, in order to prevent debt bondage, exploitation and forced labour.

Establish effective independent mechanisms to monitor and regulate the practices of recruitment agencies. Until a zero-fee policy is in place, labour recruiters and recruitment agencies who are found to be involved in overcharging, as well as those committing document forgery and confiscation, and other coercive or illegal practices are promptly, independently and effectively investigated and prosecuted.

Establish complaint and redress mechanisms for migrant workers who become victims of malpractice and human rights abuses by recruiters. These need to include explicit and binding firewalls enabling migrants to report such abuses without fear of retribution for them and their families from the recruiter or, for those in irregular status, from immigration enforcement. States should publicise the recruitment monitoring mechanisms to ensure that women migrants and their communities are aware of their existence and how to access them.

Provide prospective migrant workers with quality, free, rights-based training on relevant skills, as well as on applicable legal issues and on human and labour rights. These should be delivered by bodies independent of the recruitment agencies, in order to avoid any conflict of interest and to ensure that migrants learn about fair, just and ethical recruitment and decent work norms.



### **Provide equality of access to safe migration pathways:**

Increase the availability and flexibility of pathways for regular migration that uphold the principle of equality and non-discrimination and promote and protect women's human rights. Ensure that regular pathways do not discriminate against women, for example by limiting them to visa schemes for

male-dominated occupations or labour sectors. Eliminate sex-specific bans and discriminatory migration policies and travel restrictions on women based on gender and occupation, including those instituted in the name of protecting women. Recognise and respect women's agency and autonomy in making decisions about their migrations.



### **Ensure access to decent work and living wage:**

Guarantee equal access for women migrant workers to decent work, living wage and employment opportunities. Recognise work performed by women as work under the protection of labour and other relevant laws.

Ensure that recruitment and employment conditions and policies respect, protect and fulfil the human and labour rights of women migrant workers. In particular, all women migrant workers must be guaranteed their right to living wage, holidays/rest days, social protection, 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.

All migrant workers, including the internal migrants, should not be deprived of any human rights based on their migration or employment status.



### **Protect migrants from sexual and gender-based violence:**

Develop and implement gender-responsive and trauma-informed policies to prevent and respond to violence against migrant women, including domestic violence and intimate partner violence, sexual and gender-based violence, harmful practices, violence in the workplace, racial, ethnic

and religious violence, xenophobic violence and other forms of violence.

Allocate adequate and sustainable resources to accessible and confidential services for migrants who are survivors of violence and provide shelters, hotlines, assistance, health care, including sexual and reproductive health services, essential medicines, and mental health care, counselling, information in a language the migrant understands and in accessible formats, as well as legal advice on access to justice and effective remedies.

Ensure a rights-based law and policy response to migrants who have been trafficked or victimised through recruitment malpractices that delivers an effective, gender-responsive and human rights-based approach to addressing their needs, including identification and referral.

Ensure access to universal healthcare for migrants: Ensure that all migrant workers, regardless of their migration or employment status, are able to exercise their right to health, including access to public healthcare services on a non-discriminatory basis. 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.

Establish, implement and publicise binding and effective firewalls between public health service providers and immigration enforcement authorities.



### **Enable access to justice and legal redress for migrants:**

Adopt legislative, policy and other measures to remove the obstacles for women migrants to access justice and effective remedies, including

language and information barriers. Provide and publicise firewalls enabling all migrants to report crimes and participate in criminal justice proceedings without fear that they will be arrested, detained or deported because of their migration status.

Provide sufficient and adequate services to facilitate migrants' access to legal complaint mechanisms to seek legal redress.

Ensure that migrants can report abuses, access justice and effective remedy and reparation regardless of whether or not they remain under the jurisdiction of the State.



#### **International standards:**

Ratify and implement the core international human rights instruments and international labour standards, in particular the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), the ILO Violence and Harassment Convention, 2019 (No. 190) and the associated recommendation (No. 206) and the ILO Domestic Workers Convention, 2011 (No. 189) and the associated recommendation (No. 201) and facilitate the gender-responsive implementation of the Global Compact for Safe, Orderly and Regular Migration.

Issue standing invitations to the Special Rapporteur on the human rights of migrants and other relevant mandates to assess the human rights of women migrants in the country when country visits become feasible again.

## **TO THE UN TREATY BODIES AND SPECIAL PROCEDURES -**

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.

Develop best practices materials/guidelines to guide UN Member States on legal and policy reform to protect the human rights of women migrants.

Provide capacity building for grassroots women migrants and their organisations and facilitate them in utilising the existing international mechanisms to advance human rights of women migrants.











### **About APWLD**

The Asia Pacific Forum on Women, Law and Development (APWLD) is the region's leading network of feminist organisations and individual activists. For 35 years, we have been carrying out advocacy, activism and movement building to advance women's human rights and Development Justice. This FPAR is part of APWLD's Migration Programme. APWLD worked with and supported seven partner organisations from six countries to conduct Migration FPAR in Asia and the Pacific between 2019 and 2021.

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