**Report on Trafficking in Women and Girls in the context of global migration**

**Submission of People Forum For Human Rights (People Forum)**

Like so many citizens in countries facing shrinking economic opportunities at home, many Nepalis have sought employment abroad, and international labor migration has become an accepted avenue for economic growth, both for the individual and for the nation. The number of international migrants, persons living in a country other than where they were born, reached 244 million in 2015 for the world as a whole, a 41 per cent increase compared to 2000, according to new data presented by the United Nations today. This figure includes almost 20 million refugees.[[1]](#footnote-1) The rise in the number of international migrants reflects the increasing importance of international migration, which has become an integral part of our economies and societies. Well-managed migration brings important benefits to countries of origin and destination, as well as to migrants and their families.

Migrant workers report experiencing severe abuse, exploitation, debt bondage and forced labor while abroad every year. In some cases, where abuses are linked to coercion, fraud or abuses of power in the pre-departure phase of migration, these migrant workers could be considered victims of trafficking. The victims of trafficking as a result of labour migration includes both boys and Girls. As per 2018 Global Report on Trafficking in Persons produced by the UN Office of Drugs and Crime (UNODC) 49% of detected victims of trafficking for sexual exploitation are Women, Girls account for 23% of all trafficking victims detected globally whereas Boys account for 7% of reported trafficking victims.[[2]](#footnote-2) The trafficked girls are typically victims of sexual exploitation, while boys are more often exploited for forced labor. According to National Human Rights Commission (NHRC), The number of trafficking cases registered in Nepal Police increased from 185 in FY 2013/14 to 305 in FY 2017/18. According to the Report of Armed Police Force (SasatraSima Bal) of India, Nepal's girls trafficked into India for the purpose of sexual exploitation increased very remarkably in between 2012 and 2017. According to the Nepal Police records from FY 2012/13to 2017/18, 78 percents of trafficking victims were female.[[3]](#footnote-3)

At present, however, persons trafficked in the course of labor migration are falling through the cracks in Nepal’s law and its implementation the foreign employment framework targets lower level abuses and the human trafficking framework is focused mainly on sexual exploitation and prostitution. So, the victims of trafficking in migration is in dilemma whether to suit a Foreign employment case or trafficking. Such action is in total violations of Article 6 of CEDAW obliges states parties to "take all appropriate measures, including legislation, to suppress all forms of trafficking in women and exploitation of prostitution of women.

In case of Nepal, Reform of the legal framework and its implementation is needed to better protect these vulnerable workers and to ensure their ability to access compensation and services as victims of trafficking, and to hold perpetrators accountable. Trafficking in persons violates several principles of international law and the fundamental rights guaranteed to individuals by global human rights conventions.

The very first obligation placed upon the state by the U.N. Protocol is that the state must recognize trafficking as a specific and serious crime. In order to fulfill this obligation, the first step that the state must undertake is to define what actions constitute trafficking. Article 3 of the U.N. Protocol adopts a broad definition, an extensive view of what is recognized as "trafficking in persons. "Trafficking in persons" shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion ,abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. The obligation of state of origin, transit and Destination have been affirmed in General Recommendation 26 some of them are mentioned below and also the International Convention on the Protection of the Rights of All Migrant Workers and Members of their families apply to all stages of migration, including the transit stage.

**Responsibilities of Country of Origin**

The ban imposed by the Government of Nepal on foreign employment in time and again aiming to ‘protect’ women from trafficking, violence and exploitation like long-working hours, gender-based violence, physical abuse and exploitation, economic exploitation, trafficking, etc. but this policy has been widely criticized as it violates the principle of equality for men and women. Article 24 of General Recommendation 26[[4]](#footnote-4), also protects the human rights of women

Generally, the workers protection is considered to be the responsibility of the State where the work is carried out, often being the same as the employer’s State. However, one should not overlook the existence of a certain amount of responsibility on the part of the workers’ native country which, through the legislation it enacts, has the task of protecting not only the employees working on its territory, but also those working abroad.

The first way to protect the workers carrying out activities in other countries is identified by the authorities as the obligation to offer them information about the specific conditions of working abroad. As such, the Labour Code stipulates that if the employee or the person selected to be employed is about to leave to work abroad, the employer has the obligation to offer him/her in due time the general information contained in any employment contract, as well as inform

a) the duration of the work to be carried out abroad;

b) the currency in which the wages are to be paid, as well as the manner of payment;

c) the compensations related to the activity carried out abroad;

d) the climate;

The Department of Foreign Employment (DoFE) maintains data of the foreign labor migrants who go abroad by taking the labor permit from Nepal which is termed as documented migrants. There is no mechanism of maintaining records of those who go via India without taking labor permit. Such migrants are labeled as undocumented migrants. There are no authentic sources to estimate the extent of undocumented migrants. Irregular migrants are obviously most at risk of being subjected to forced labor, exploitation and trafficking, but regular migrants are also routinely denied both their human and labor rights.

States parties should develop an appropriate education and awareness-raising programme in close consultation with concerned non-governmental organizations, gender and migration specialists, women workers with migration and trafficking experience and reliable recruiting agencies.

Trafficking has become an offshoot of foreign employment in case of Nepal. The nexus between foreign labor migration and trafficking in persons has not been fully recognized in Nepal, either in law or in practice. So people Forum calls upon Government to take special measures to punish wrongdoers of trafficking resulting from labour migration. Thus, States parties should ensure the availability of legal assistance in connection with migration and Trafficking

States parties should Deliver or facilitate free or affordable gender and rights based pre-departure information and training programmes about the potential exploitation including: recommended contents of labour contracts, legal rights and entitlements in countries of employment, information on general and reproductive health, including HIV/AIDS prevention. Such training programmes should be targeted to women who are prospective migrant workers through an effective outreach programme and held in decentralized training venues so that they are accessible to women which is also mentioned in General Recommendation 26.

Require recruitment agencies to participate in awareness-raising and training programmes and sensitize them on the rights of women migrant workers, the forms of sex- and gender-based discrimination, the exploitation women could experience and responsibilities of agencies towards the women;

Encourage the media, information and communication sectors to contribute to awareness-raising on migration issues, including on the contributions women migrant workers make to the economy, women’s vulnerability to exploitation and discrimination and possibilities of trafficking at various stage of migration and the various sites at which such exploitation occurs.

States parties should adopt regulations and design monitoring systems to ensure that recruiting agents and employment agencies respect the rights of all women migrant workers. States parties should include in their legislation a comprehensive definition of irregular recruitment along with a provision on legal sanctions for breaches of the law by recruitment agencies.

States parties should ensure the provision of standardized and authentic health certificates if required by countries of destination and require prospective employers to purchase medical insurance for women migrant workers. All required pre-departure HIV/AIDS testing or pre-departure health examinations must be respectful of the human rights of women migrants. Special attention should be paid to voluntariness, the provision of free or affordable services and to the problems of stigmatization.

States parties should ensure that women who wish to return to their countries of origin are able to do so free of coercion and abuse and provide socio-economic, psychological and legal services aimed at facilitating the reintegration of women who have returned. They should monitor service providers to ensure that they do not take advantage of the vulnerable position of women returning from work abroad, and should have complaint mechanisms to protect the women against reprisals by recruiters, employers or former spouses.

State party should allocate proper fund to rescue trafficked victims and stranded migrant workers.

**Responsibilities of Transit**

Women migrant workers may face different human rights violations when transiting through foreign countries. While travelling with an agent or escort, women migrants may be abandoned if the agent encounters problems in transit or upon arrival in the country of destination. Women are also vulnerable to sexual and physical abuse by agents and escorts when travelling in countries of transit.

As per article 25 of General Recommendation 26 States parties through which migrant women travel should take all appropriate steps to ensure that their territories are not used to facilitate the violation of the rights of women migrant workers. Measures that may be required include, but are not limited to, the following:

(a) Training, monitoring and supervision of Government agents: States parties should ensure that their border police and immigration officials are adequately trained, supervised and monitored for gender-sensitivity and non-discriminatory practices when dealing with women migrants.

(b) Protection against violations of migrant women workers’ rights that take place under their jurisdiction: States parties should take active measures to prevent, prosecute and punish all migration-related human rights violations that occur under their jurisdiction, whether perpetrated by public authorities or private actors. States parties should provide or facilitate services and assistance in situations where women travelling with an agent or escort have been abandoned, make all attempts to trace perpetrators and take legal action against them .

**Responsibilities of Destination Countries**

*"States parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity."* Article 9 of Palermo Protocol CEDAW, Palermo and UNHCR’s Principles all call upon countries to address prevention by taking into account such factors. Thus, there is an alignment between the strategies of prevention on behalf of potential victims and protection of actual victims. States need to strengthen the linkages between their policies in each area so that they are developed harmoniously.

To prevent recruitment, governments need to promote education, access to property and a better standard of living within the country of origin. Information campaigns and programmes to strengthen women’s rights in society should be supported which focus on the long-term development of women’s rights. It is possible where rule of law is re-established, economic prosperity achieved and discriminatory social frameworks dissolved. A shorter time frame is needed for victims of trafficking, whose prevention needs are immediate and lie in the country of destination rather than country of origin.

UNHCHR’s Principles states that trafficked persons shall not be given protection only on condition of their capacity or willingness to cooperate in legal proceedings. The Principles suggest that the only criteria determining a victim’s return should be the risks facing her or her family upon return to her state of origin. Principle 11 states that victims should be offered legal alternatives to repatriation where there would be a significant security risk to their safety or that of their families.

Protection approaches for victims of trafficking require a solution with a human rights labour law perspective. Trafficked women lack the choice in employment has violated their human rights, because a woman can never be considered to have consented to debt bondage or slavery. Indeed, Palermo reiterates that the consent of the victim is irrelevant, given the situation of exploitation. In order to restore freedom of choice of employment, the state should offer as for other classes of migrants, access to vocational training or retraining programmes as well as information on employment possibilities.

Article 20 of General Recommendation 26 states that, women migrant workers are more vulnerable to sexual abuse, sexual harassment and physical violence, especially in sectors where women predominate. Domestic workers are particularly vulnerable to physical and sexual assault, food and sleep deprivation and cruelty by their employers. Sexual harassment of women migrant workers in other work environments, such as on farms or in the industrial sector, is a problem worldwide.

Other provision enshrined in General Recommendation 26 includes following provision.

States parties should ensure that constitutional and civil law and labour codes provide to women migrant workers the same rights and protection that are extended to all workers in the country, including the right to organize and freely associate. In particular, they should ensure that occupations dominated by women migrant workers, such as domestic work and some forms of entertainment, are protected by labour laws, including wage and hour regulations, health and safety codes and holiday and vacation leave regulations.

Access to remedies: States parties should ensure that women migrant workers and victims of trafficking have the ability to access remedies when their rights are violated. Specific measures include, but are not limited to, the following.

1. Promulgate and enforce laws and regulations that include adequate definition of labour trafficking, legal remedies and complaints mechanisms, and put in place easily accessible dispute resolution mechanisms, protecting both documented and undocumented women migrant workers from discrimination or sex-based exploitation and abuse;
2. Repeal or amend laws that prevent women migrant workers from using the courts and other systems of redress.
3. Ensure that women migrant workers have access to legal assistance and to the courts and regulatory systems charged with enforcing labour and employment laws, including through free legal aid;
4. States parties should provide mandatory awareness-raising programmes concerning the rights of migrant women workers and victims of trafficking and gender sensitivity training for relevant public and private recruitment agencies and employers and relevant State employees, such as criminal justice officers, border police, immigration authorities, border police and social service and health-care providers.
5. Monitoring systems: States parties should adopt regulations and design monitoring systems to ensure that recruiting agents and employers respect the rights of all women migrant workers. States parties should closely monitor recruiting agencies and prosecute them for acts of violence, coercion, deception or exploitation.
6. Access to services: States parties should ensure that linguistically and culturally appropriate gender-sensitive services for women migrant workers are available, including language and skills training programmes, emergency shelters, health-care services, police services, recreational programmes and programmes designed especially for isolated women migrant workers, such as domestic workers and others secluded in the home, in addition to victims of domestic violence. Victims of abuse must be provided with relevant emergency and social services, regardless of their immigration.
7. The rights of women migrant workers in detention, whether they are documented or undocumented: States parties should ensure that women migrant workers who are in detention do not suffer discrimination or gender-based violence, and that pregnant and breastfeeding mothers as well as women in ill health have access to appropriate services. They should review, eliminate or reform laws, regulations, or policies that result in a disproportionate number of women migrant workers being detained for migration-related reasons.
8. Social inclusion of women migrant workers: States parties should adopt policies and programmes with the aim of enabling women migrant workers and trafficked women to integrate into the new society. Such efforts should be respectful of the cultural identity of women migrant workers, trafficked victim and protective of their human rights, in compliance with the Convention
9. Protection of undocumented women migrant workers: the situation of undocumented women needs specific attention. Regardless of the lack of immigration status of undocumented women migrant workers, States parties have an obligation to protect their basic human rights. Undocumented women migrant workers must have access to legal remedies and justice in cases of risk to life and of cruel and degrading treatment, or if they are coerced into forced labour, face deprivation of fulfilment of basic needs, including in times of health emergencies or pregnancy and maternity, or if they are abused physically or sexually by employers or others.
10. If they are arrested or detained, the States parties must ensure that undocumented women migrant workers receive humane treatment and have access to due process of the law, including through free legal aid. In that regard, States parties should repeal or amend laws and practices that prevent undocumented women migrant workers from using the courts and other systems of redress. If deportation cannot be avoided, States parties need to treat each case individually, with due consideration to the gender-related circumstances and risks of human rights violations in the country of origin.
11. A number of victims of labour migration faced the problems of different work and facilities thus became vulnerable to trafficking. Destination countries need to respond creatively to such findings.

People Forum for Human Rights (People Forum)

Kathmandu, Nepal

Website: www.peopleforum.org.np

People Forum For Human Rights, a Non- Governmental Organization (NGO) has been working for the protection of human rights and rule of law specially in the field of migration providing legal aid service to the victims of Foreign employment, advocacy and lobbying for policy reformation and generating awareness at the community level through training, workshops and interaction programs since 15 years. Our submission focuses specifically on the responsibilities of Country of Origin, Transit and Destinations. It further focuses on addressing Labour Trafficking, Punishing perpetrators and Improving of regional convention (SAARC).

People Forum for Human Rights(People Forum)

Kathmandu, Nepal

Website: www.peopleforum.org.np

1. https://www.un.org/sustainabledevelopment/blog/2016/01/244-million-international-migrants-living-abroad-worldwide-new-un-statistics-reveal/ [↑](#footnote-ref-1)
2. https://edition.cnn.com/2019/01/07/world/un-2018-global-report-on-trafficking-in-persons/index.html [↑](#footnote-ref-2)
3. Trafficking in Person in Nepal, national report, available at http://www.nhrcnepal.org/nhrc\_new/doc/newsletter/NHRC\_National\_Report\_TIP\_in\_Nepal\_September\_2018.pdf [↑](#footnote-ref-3)
4. Countries of origin must respect and protect the human rights of their female nationals who migrate for purposes of work. [↑](#footnote-ref-4)