

Joint Written Submission to the UN Special Rapporteur on Extreme Poverty & Human Rights

About this submission:

The Asia Pacific Forum on Women, Law and Development (APWLD) –together with its members AWAJ, Bangladesh; Independent Democracy of Informal Economy Association (IDEA), Cambodia; Federation of United Indonesian Workers Unions (FSBPI), Indonesia; National Alliance of Women Human Rights Defenders (NAWHRD), Nepal –is making this joint submission in response to the call for written inputs by the UN Special Rapporteur on Extreme Poverty and Human Rights for the upcoming thematic report titled, “Social Protection: A Reality Check”. Our written submission focuses on the existing social protection programmes, or lack thereof, for women working in informal sectors, and proceeds in two sections. First section provides an overview of the regional trends and significant gaps in existing social protection programmes, along with stories of grassroots women that are documented by our members and partners to shed light on the state of social protection in the region. Second, and final section, provides legal, policy and programmatic recommendations to address the gaps and strengthen existing social protection programmes. Our submission draws evidence from APWLD members’ Feminist Participatory Action Research (FPAR) as well as other existing literature. For any questions related to our submission, please contact Samreen Shahbaz, Programme Officer, Grounding the Global Programme, APWLD (samreen@apwld.org).

Context:

Social protection is a fundamental human right enshrined in Article 22 and 25 of the Universal Declaration of Human Rights. Yet, despite the socio-economic progress of Asia and the Pacific regions, more than half of the population is denied this right.¹ The importance of establishing social protection systems has been recognised by several countries in the region as part of their political commitment to implement the 2030 Agenda for Sustainable Development. But despite the rapid economic growth of many countries in the region, little or no investments have been made to strengthen and expand social protection programmes.

The adverse impacts of lack of comprehensive social protection programmes are becoming more pronounced in Asia and the Pacific where a fairly large population is employed in informal sectors, close to 70 percent of the total labour force. Further, the region is undergoing rapid demographic transitions as well, with ever increasing rural to urban

¹ UNESCAP (2021). *The Protection We Want: Social Outlook for Asia and the Pacific*. Bangkok. Retrieved from: https://www.unescap.org/sites/default/files/publications/RC5_Social_Outlook-Report.pdf

migration and a rapidly ageing population. Social inequality, vast income disparities, structural issues like gender-based violence, climate-induced disasters and ongoing conflicts are pushing people to leave their countries in search for a better future in other countries. Most of these populations fall out of the social protection systems.

Social Protection for Informal Workers: Key Trends in Asia and the Pacific Region

1. Legislative barriers

Discriminatory legislation can explicitly exclude certain groups of workers from contributory social protection schemes due to their contributory capacities.² As a result of these discriminatory legislative frameworks, domestic workers, migrant workers, own-account workers and workers in the agricultural sector as well as temporary workers/workers with shorter contracts and workers employed in digital economies fall outside the purview of social protection schemes and programmes. Two third of informal workers are women and bear the brunt of these discriminatory legislative measures. Criminalisation of sex workers in several countries in the regions also poses a huge structural barrier to access social protection programmes. Further, in countries where inclusive legislation exists, weak implementation restricts individual's access to social security benefits.

2. Limited scope of social protection benefits

While several ASEAN countries are currently providing more than one form of social protection benefits, the scope is often only limited to healthcare, unemployment benefits and pensions for old age. Universal healthcare has not been achieved yet in majority countries in Asia and the Pacific regions, and old-age and unemployment benefits are minimal and barely provide adequate financial support to individuals to cover their living costs.³ Further, migrant workers are often unable to meet the eligibility criteria for accessing certain social security benefits, in particular long-term benefits such as an old-age pension, due to the limited period for which most migrant workers are allowed to work in the destination country.⁴

3. Lack of budgets for social protection programmes

One of the most significant factors contributing to limited social protection programmes is lack of public spending and investment in social protection programmes. Majority of the countries in Asia and the Pacific region are spending less than two percent of their GDP on social protection programmes, compared to

² UNESCAP (2021). *The Protection We Want: Social Outlook for Asia and the Pacific*. Bangkok. Retrieved from:

https://www.unescap.org/sites/default/files/publications/RC5_Social_Outlook-Report.pdf

³ *ibid*

⁴ ILO (2019). *Social Protection for Migrant Workers in ASEAN*. Retrieved from, https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_655176.pdf

global trends of 11 percent of GDP for social protection programmes.

4. Lengthy administrative processes & limited awareness of existing social protection programmes

Other barriers to access include lengthy and complicated administrative procedures which undermine workers' trust in the programmes and their ability to easily access them. In other cases, administrative processes required extensive documentation which was burdensome for workers and restricted them from accessing social protection benefits. Furthermore, there is limited awareness of existing programmes and benefits available, especially among migrant workers. These barriers were particularly exacerbated in the context of COVID-19.⁵

Barriers to Access to Social Protection: Stories of Women Workers

1. Plight of garment factory workers in Bangladesh⁶

The ready-made garment manufacturing sector in Bangladesh relies heavily on contractual workers, while contractual status was reported by a higher proportion of women (35 percent) than men (27 percent)⁷. [Bangladesh's Labour Act](#) does not provide elaborate labour protection provisions and entitlements for contractual workers. Garment factory managers exploit the contractual nature of their employees and keep them employed for a long-term basis without changing the nature of their contracts, and hence essentially depriving them of accessing social security benefits that are only available to formal workers. Furthermore, despite regulation on management of social security of benefits for informal and contractual workers being covered by the [Bangladesh Service Rules 2015](#), implementation remains limited and inconsistent. Further, contractual workers are often recruited by subcontractors and have no direct contact with the factory management. They are often not provided employment identification documents, and in some cases, they do not have access to their contracts and terms of employment. Due to these essential documents being missing, they are unable to hold the management liable for compensations in case of a workplace hazard.

2. Administrative barriers for street vendors in Cambodia⁸

⁵ Sophea, T. (2021, September 16). Retrieved December 20, 2021, from <https://thediplomat.com/2021/09/rethinking-social-protection-programs-cambodian-migrant-workers-deserve-better/>

⁶ AWAJ Foundation, Bangladesh

⁷ Kotikula, Hill, and Raza. (2019). *What Works for Working Women? Understanding Female Labor Force Participation in Urban Bangladesh*. International Bank for Reconstruction and Development / The World Bank. Retrieved from: <https://openknowledge.worldbank.org/bitstream/handle/10986/32535/What-Works-for-Working-Women-Understanding-Female-Labor-Force-Participation-in-Urban-Bangladesh.pdf?sequence=1>

⁸ IDEA, Cambodia

In Cambodia, according to the Independent Democracy of Informal Economy Association (IDEA), as most of the street vendors migrate from rural areas and are often not well-versed in the administrative processes. Therefore, many street vendors do not have access to basic identification documents, including citizen identification documents. Due to lack of identity documents, they are unable to access health equity cards from the government.

During COVID-19 pandemic, 80 percent of street vendors lost their income, but almost half of them were not able to access COVID-19 recovery schemes due to lack of documents and their status as informal workers⁹. According to IDEA, 50 percent of street vendors did not qualify for bank loans disbursements¹⁰.

3. *Lack of access to redress and compensation mechanisms for migrant workers in Nepal*

According to the National Alliance of Women Human Rights Defenders (NAWHRD), Nepal, the majority of internal migrant domestic workers (IMDWs) work without employment contracts, and hence find it difficult to prove the employment relationship when labour disputes exist.

The research finding from NAWHRD shows that more than 90 per cent of the employers requested that IMDWs with occupational injuries continue to work, without providing medical fees or any allowance. Without employment contracts, IMDWs are being excluded from redress and compensation mechanisms.

4. *Exacerbated vulnerabilities for workers in Indonesia during COVID-19 pandemic*

In Indonesia, according to the Federation of United Indonesian Workers Unions (FSBPI), when the pandemic started, many factories refused to provide masks regularly, so workers had to sew them themselves. Factories refused to provide COVID-19 antigen testing kits and workers had to buy them at their own expense as the tests were not covered by public health insurance. Hence they are afraid it will cost them more than they could afford. It is not covered by insurance or national social security.

In Indonesia, the lockdown¹¹ has been applied in the absence of social protection for workers. Labour unions mobilised and tried to provide medicines and vitamins and cooked food for the workers who were in the quarantine, with no support from the employers and/or government.

⁹ IDEA. (2021). *Social and Economic Impacts of the COVID-19 Pandemic on Vulnerable Groups (Tuk-Tuk Drivers, Street Vendors and Domestic Workers) in Phnom Penh City, Cambodia*. Retrieved from <https://www.amrc.org.hk/sites/default/files/IDEA-Summary%20report%20Impact%20of%20Covid-19%20on%20Informal%20Workers-final%20edition%207May21.pdf>

¹⁰ Ibid

¹¹ The Emergency Community Activities Restrictions Enforcement, abbreviated as PPKM Darurat

5. Discriminatory legislative frameworks for sex workers in India

In India, migrant sex workers remain primarily outside of legal, medical and social services structures. Language barrier, undocumented status, limited understanding of laws and regulations as well as the absence of support networks put migrant sex workers outside of the social protection services. According to Aastha Parivaar, majority of the migrant sex workers do not have ration cards and Aadhar Card, a citizen identity document showing eligibility for social services. The situation consequently denies them access to essential services, such as food, housing, social protection, education, welfare and other government benefits. Most migrant sex workers are referred to a private clinic as they do not have the identity document. Aside from that, private clinic is a preferred choice for migrant sex workers because these doctors usually ask fewer questions related to the patient's job, family conditions and migration status. However, the majority of sex workers rely on traditional household remedies for pain relief and other medical conditions because they cannot afford the medical cost. For HIV/AIDS positive sex workers, they usually go to the government hospital for antiretroviral therapy (ART). However, due to the COVID travel restrictions, these workers lost access to ART treatment and medicines from government hospitals. Some sex workers could not afford the transportation cost to the ART clinic. Missing their regular dose of ART will increase their HIV viral load and cause health conditions to become progressively worse.

Recommendations for Legal, Policy and Programmatic Actions

We urge the Special Rapporteur to recommend following legal, policy and programmatic action to member states to ensure inclusive social protection programmes for women informal workers, including migrant workers and sex workers:

1. Broaden the definition of the 'employee' in all social protection laws, regulations and policies. Laws, regulations and policies take into account the evolving nature of informal economies and ensure that eligibility to social protection programmes accommodate various types of employment and not just legal and formal employment.
2. The cost of participation in contributory social protection programmes should be reduced and flexible payment options should be provided to promote the participation of informal workers. Fixed rates can be developed for contributory social protection programmes which should be tailored according to the income range of informal workers. Government should also consider subsidising participation in contributory programmes for informal workers. Furthermore, governments should improve tax laws to ensure equal distribution of wealth in the society and to ensure fundamental social protection is provided to the most vulnerable population groups.
3. Increase public budget allocation for social protection programmes and take on fiscal and economic reform including progressive and redistributive tax policies to

strengthen resource mobilisation towards strengthening and widening the scope of social protection programmes.

4. Expand public, universal social healthcare programmes to ensure they respond to women's sexual and reproductive health and rights needs.
5. Eliminate the barriers for migrant workers, including internal migrants and undocumented migrants to access social protection programmes by establishing firewall, simplifying administrative procedure, providing language and other supportive services.
6. Provide social protection programmes that would address the needs of women throughout their life cycles, including through providing childcare benefits, paid maternity leaves and equitable pension schedules regardless of their employment status (formal-informal).
7. Take all measures to protect the fundamental human rights of migrant workers, particularly informal workers. Limit their exposure to vulnerabilities through flexible policies and bilateral regulations and programmes that would allow them to access social protection benefits from their home country while abroad, or by obtaining access to social protection measures in their country of residence.
8. Invest in evidence generation and data gathering initiatives to collect comprehensive data on the needs and issues of informal workers vis-a-vis their access to social protection programmes to inform relevant laws, policies and programmes.