

NEPAL

BRIEFING TO THE UN COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

49th session, July 2011

Jointly submitted by Amnesty International,
Kav La'Oved and Pourakhi

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Amnesty International, Kav La'Oved and Pourakhi submit the following information to the Committee on the Elimination of Discrimination against Women (the Committee), in advance of its consideration of Nepal's combined fourth and fifth periodic reports, submitted under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women (the Convention).

This briefing focuses on the organisations' concerns regarding the situation of Nepalese women who seek to pursue opportunities to work in other countries, raising concerns under articles 2, 5, 6, 11, 15 and 16 of the Convention. Specifically:

- The Nepalese government has essentially recognised, correctly, that Nepalese female migrant workers have effectively been trafficked for purposes of exploitation as domestic workers in certain countries. These organisations' research shows that women are affected by such practices more and differently than are men. This point will be developed below in section 1.

- Measures adopted by the Nepalese government in the name of protecting women from the risk of such exploitation have failed. Legislative provisions prohibiting exploitation and regulating the recruitment of migrant labour from Nepal are not effectively implemented. Other measures, such as the ban on female migration, have in fact reflected, and resulted in, further discrimination against women, while failing to effectively prevent those individuals and businesses actually responsible for the trafficking from continuing to engage in such practices. This point will be developed below in section 2.

- Consequently, the trafficking is continuing, while ironically women are even more exposed to risk of exploitation. This is because the traffickers circumvent official regulation systems with impunity, leaving the women in question in a situation of irregularity that deters them from accessing the institutions and services provided by the Nepalese authorities for the protection of migrant workers. This point is developed below in section 3.

1. TRAFFICKING OF WOMEN FOR LABOUR EXPLOITATION: VULNERABLE GROUPS (ARTICLES 6 AND 11)

Many Nepalese women are trafficked into domestic work by brokers or private agents who have direct links with recruitment agencies in the capital of Kathmandu and work on commission.

Brokers often recruit women for domestic work by visiting households “door to door” in rural parts of the country. They offer prospective female migrant workers promises of well-paying jobs, eight-hour work days with light workload, and one rest day per week. Upon arrival in the destination country, however, the women find that their work is considerably different from what was originally promised.

Interviews with domestic workers revealed that, in reality, their working conditions and remuneration were drastically different from what was promised to them by their broker. Contrary to promises, their responsibilities were comprehensive and the workload exhausting, including cooking, cleaning, washing clothes, ironing and taking care of children. Work days ranged between 12 to 21 hours with the great majority not having any rest days. The amount of food given was inadequate and some had to eat “stale” leftovers. Most experienced problems with their salary, including unpaid or withheld wages or a reduction in the amount promised to them by their brokers. Many faced verbal and physical abuse from their employers, while some also experienced sexual harassment or violence.

Domestic workers are also at greater risk of exploitation due to the isolated nature of their work. They are often prevented from using the phone and it is not uncommon for them to be locked up by their employer to prevent them from leaving the house, especially those working in Gulf States. Confiscation of passports and other documents by the local recruitment agency or employing family only exacerbates their lack of freedom of movement.

1.1. INDEBTEDNESS ARISING FROM RECRUITMENT FEES

Despite existing domestic legislation and standards against usury,¹ serious indebtedness is common among female migrant workers.

Recruitment fees for domestic work in Gulf States range from US\$350-700. However, fees for domestic work in countries considered to have better wages and working conditions such as Cyprus are as high as US\$5,000 and for caregiver posts in places such as Israel fees ranged as high as US\$12,000.

As most migrant workers cannot borrow money from banks because they do not own property

¹ According to Nepal's *Muluki Ain* (General Code), rates of interest for loans from private individuals should not be more than 10 per cent. Moreover, article 51(1) of the Bank and Financial Institution Act 2063 (2006) states that “the rates of interest to be paid on deposits and to be charged on credits by the licensed institutions shall be as prescribed by the Rastra Bank [the national bank of Nepal].” Currently, the Rastra Bank has set the rates of interest for bank loans from eight to 14 per cent per annum.

or other forms of collateral, they must resort to getting loans from private individuals who charge annual interest rate from 24 to 36 per cent. However, interviews suggest that private individuals are less willing to loan to female migrants, creating greater hurdles for women to work abroad. Brokers often waive the recruitment fee for domestic workers until they start their job. In some instances, brokers lend them money or facilitate a loan from private individuals at exorbitant rates if the women cannot secure one themselves.

Thus, it is not unusual for female migrant workers to return to Nepal having failed to repay their loans and finding themselves in a debt bondage situation.

1.2. CASE STUDY: THE CASE OF NEPALI FEMALE MIGRANTS WORKING AS CAREGIVERS IN ISRAEL

The plight of female migrants working as caregivers in Israel provides an illustration of the discrimination and exploitation faced more generally by female migrant workers from Nepal. Out of approximately 54,000 caregivers in Israel, 15 per cent are Nepalese. The vast majority of these caregivers are women and the methods for recruiting and employing them from Nepal create a situation where some women are trafficked and/or find themselves in a situation of debt bondage and/or forced labour.

Very high recruitment fees are demanded from Nepalese migrant workers for employment opportunities as caregivers in Israel. On average, individuals paid between US\$6,000-12,000 in fees to recruitment agencies in Nepal² who shared the fees with their partner Israeli agents. This is partly due to relatively high salaries compared with other destination countries.

Workers typically raised this money by loans taken from multiple sources, including borrowing money at high interest rates and mortgaging their or their family's property to raise the money. According to Kav La'Oved, an Israeli organization that works with Nepalese migrant workers, it takes one migrant caregiver an average of one to two years of uninterrupted employment to repay a loan in full.³ Such exorbitant recruitment fees has led to debt bondage and often forced workers to accept labour exploitation.

The high recruitment fees often do not guarantee regular work in Israel. In fact, they seem to provide motivation for exceptional exploitation by recruitment agencies. Numerous workers are victims of the "flying visa" scheme, a practice where:

"[T]he worker pays for a work permit (against a valid employment permit) as required by law. But once the worker arrives in Israel work is not provided. The worker is often never picked up from the airport, or is taken to an employer who quickly dismisses him/her citing various excuses. Workers who come to Israel with a flying visa were left with no employer and were thus eligible for deportation, unless they were able to swiftly find work independently."⁴

² Kav La'Oved, *Comprehensive Review of the Caregiving Field in Israel*, 2010, p35.

³ Kav La'Oved, CEDAW shadow report on female migrant workers in Israel, December 2010, p16, available at: http://www.kavlaoved.org.il/media-view_eng.asp?id=3056.

⁴ Kav La'Oved, *Comprehensive Review of the Caregiving Field in Israel*, 2010, pp51.

In some cases, recruitment agencies in Nepal, together with their Israeli counterpart, do not even bother to arrange work visas. In other cases, workers are dismissed once they demanded their legal rights. Many of these workers then struggle to find employment in order to maintain their legal status. It is not unusual for workers to be deported so quickly that recruiters are able to avoid paying them.

In April 2009, the Israeli government stopped receiving further caregivers from Nepal.⁵ This "closing of the skies" was in response to the growing number of unemployed migrant caregivers, evidence collected on the charging of illegal brokerage fees from Nepalese workers and numerous "flying visa" frauds of Nepalese workers. Although this has prevented recruitment agencies from further exploiting Nepalese caregivers who might want to work in Israel, Kav La'Oved has encountered hundreds of caregivers currently working in Israel who are still struggling with debt repayment. It also reports that caregivers from Nepal are still coming to Israel via India with falsified documents, which has made their labour migration more unsafe and costlier.⁶

Amnesty International has interviewed government officials from Nepal's Ministry of Labour and Department of Foreign Employment who expressed a keen desire to end Israel's "closed sky" policy. This wish was strongly reiterated by recruitment agencies and board members of the Nepal Association of Foreign Employment Agencies (NAFEA). If recruitment of caregivers from Nepal to Israel was resumed without authorities in Israel and Nepal implementing concrete measures to prevent the reoccurrence of "flying visa" schemes and similarly exploitative practices, female migrant workers would remain at risk of trafficking, debt bondage and forced labour.

1.3 CULTURAL BARRIERS AGAINST WOMEN SEEKING WORK ABROAD (ARTICLES 5 AND 11)

Many domestic workers who have returned to Nepal told Amnesty International that they struggled with the negative attitudes of their communities towards women migrating abroad for work. Interviews with domestic workers, as well as brokers and recruitment agencies indicate that it is a general perception among many communities, especially in rural areas, that it is dangerous for women to work abroad and that female migrant workers prefer to migrate "secretly" without making it known to people in their community. There is also a public perception that female migrant workers have "illicit sexual relationships" with men in the destination country. Some interviewees said that their husband had remarried while they were abroad due to this perception.

For these reasons, NGOs, trade unions and government officials told Amnesty International that very few women, compared to men, are willing to migrate for foreign employment. Equally, recruitment agencies revealed that many agencies are not willing to send women abroad for domestic work not only because of the government ban (or their perception of it) but also due to female migration being "culturally unacceptable".

⁵ Kav La'Oved, *Comprehensive Review of the Caregiving Field in Israel*, 2010, p7.

⁶ Amnesty International correspondence with Kav La'Oved on 13 May and 23 June 2011.

2. INADEQUACY OF THE MEASURES TAKEN BY THE NEPALESE GOVERNMENT (ARTICLE 2)

2.1. LEGISLATIVE MEASURES

Article 29(3) of the Interim Constitution of Nepal, 2063 (2007) clearly prohibits human trafficking and forced labour:

“Right against Exploitation:

(1) Every person shall have the right against exploitation.

(2) Exploitation on the basis of custom, tradition and convention or in any manner is prohibited.

(3) Traffic in human beings, slavery or serfdom is prohibited.

(4) Force labour in any form is prohibited.”

The recruitment of migrant labour from Nepal is regulated by the Foreign Employment Act (the Act), 2064 (2007) and its accompanying Foreign Employment Regulation (the Regulation), 2064 (2008). With the implementation of the Act, gender discrimination was prohibited, as specified in Article 8:

“No gender discrimination shall be made while sending workers for foreign employment pursuant to this Act.

Provided that where an employer institution makes a demand for either male or female workers, nothing shall prevent the sending of workers for foreign employment according to that demand.”

To ensure safe migration, the Act specifies that migrant workers depart from the “native airport” (article 22). They should receive an employment contract outlining the terms and conditions of employment and provisions of remuneration (article 25) and carry life insurance (article 26). Finally, recruitment agencies in Nepal are required to ensure that all migrant workers attend orientation training (article 27).

2.2. FAILURE OF THE NEPALESE AUTHORITIES TO IMPLEMENT THE LEGISLATIVE FRAMEWORK (ARTICLE 16)

In reality, many recruiters bypass some or all of these provisions in order to save on time and costs. Interviews with over 130 Nepalese migrant returnees from 15 different districts across the country indicated that many Nepalese, in particular women, worked abroad with the protection of few or none of the aforementioned provisions of the Act.

Overall, Nepalese migrant workers do not attend the required pre-departure orientation training course, with one 2009 survey findings indicating that 77 per cent of returnees had not attended training. The same survey found half of the returnees interviewed did not have their employment contract.⁷ Detailed interviews Amnesty International conducted between

⁷ A survey by the Nepal Institute of Development Studies (NIDS) that questioned about 3,200 households across Nepal. See Jagannath Adhikari and Ganesh Gurung, *Foreign Employment, Remittance and Its Contribution to Economy of Nepal*, Ministry of Labour and Transport Management, and IOM, 2011, p35.

September and December 2010 with 17 female domestic workers from across Nepal, revealed that the situation was worse for women. None had received any orientation training and all but one (who was employed in Cyprus) worked abroad without an employment contract or insurance. In contrast, most of the male interviewees who migrated through official channels were insured.

These findings are consistent with those of other organizations,⁸ which reveal that most female migrant workers are less informed of the migration process than men and simply receive their passport, work visa and flight ticket straight before their departure, often at the airport. At that stage, it is too late for many female migrant workers to turn back, as they have already taken out loans at exorbitant rates and are far away from home, often in another country, as is the case with many domestic workers.

A discriminatory impediment to female migration is that Nepalese women must submit to the Department of Foreign Employment a written consent to leave for working purposes from their husband, parents or other close family members. No similar family consent is required for male migrant workers.

The Department's Director General, Chandra Man Shrestha, told Amnesty International that although this requirement is not specified in the Act, as "it would go against the non-discrimination clause under article 8", in practice, family permission is required "for the sake of the women's security".⁹

Amnesty International research indicates the true purpose of the rule is to control women and restrict their life choices due to prejudicial attitudes based on cultural stereotypes. Even if there is no reason for requiring the permission, its discriminatory nature clearly violates the Act's non-discrimination clause. As such, the Department of Foreign Employment authorities have failed to act in conformity with their obligation to uphold the Act and the Convention.

Under the Act, the Department of Foreign Employment is also obligated to monitor recruitment agencies to ensure compliance. Under Article 48 of the Regulation, recruitment agencies must register all brokers with whom they work at the Department of Foreign Employment. However, Amnesty International's interviews demonstrated that government monitoring of the recruitment sector is extremely poor and that so far only three brokers have been registered with the Department.¹⁰ This is particularly a problem for women because unlike men, they will in most instances deal exclusively with brokers without coming into contact with recruitment agencies.

Additionally, Nepalese authorities have failed to take effective measures to detect and investigate the individuals and organisations that are conducting the trafficking in female

⁸ Pourakhi, organization for migrant returnees, and NIDS.

⁹ Amnesty International meeting with Chandra Man Shrestha, Director General of the Department of Foreign Employment, in Kathmandu, Nepal on 23 May 2011.

¹⁰ Information provided by the Department of Foreign Employment on 18 May 2011.

migrant workers described above, and to stop them from engaging in these practices. Without a monitoring system in place, many recruitment agencies and brokers exploiting migrant workers act with impunity, with little fear of legal enforcement or punishment by the authorities.

The failure to implement measures of due diligence in this regard, while knowing that women continue to seek to migrate for employment and are consequently trafficked by fraud and deception to situations of exploitation, constitutes a failure by Nepal to live up to its obligations under the Convention.

2.3 BAN ON FEMALE MIGRATION (ARTICLES 11 AND 15.4)

From 1997 to 2008, there were official government bans against certain female migration or conditions placed on female migrant workers obtaining approval for their foreign employment.¹¹ The Nepalese authorities adopted such measures to respond to the problems that women, in particular domestic workers in Gulf countries, faced when working abroad.

Although there are currently no official bans in place on women migrating for domestic work, Amnesty International interviews and meetings with recruitment agencies, brokers, non-governmental organizations and migrant workers indicate that many believe there is still an official ban on domestic work in some Gulf countries.

In May 2011, the Department has clarified this situation in a correspondence to Amnesty International by stating that:

*"There is no official ban for Nepalese women to work in any country of the world as per prevailing Nepal law, though, we are trying to set some criteria for safeguarding the Nepalese women working as housemaid or domestic worker in Middle East and other countries because they are more vulnerable to be abused physically, mentally and other ways."*¹²

This indicates that the Nepalese government has indeed imposed conditions, which act like a ban, on migration for domestic work in the Gulf. Also, in the absence of a public and transparent policy, such ad hoc measures fail to protect female migrant workers. In reality, women are at greater risk of exploitation because they are faced with little choice but to migrate through irregular channels.

A broker working in Dhanusa district told Amnesty International in December 2010 that she could no longer send women to Lebanon for domestic work due to a government ban that was imposed a month earlier. The Department's response to this situation was that although the Nepalese government does not impose any ban on domestic workers going to Lebanon, it is "reluctant to issue a labour permission to the female workers" who are going there for the first time "due to inadequate institutional arrangement for safeguarding female workers" in

¹¹ See NIDS, *Nepal Migration Year Book 2009*, September 2010, p64-65.

¹² Correspondence from the Department of Foreign Employment on 18 May 2011.

case they face problems.¹³

Despite assurances of the contrary, the Government's reluctance has the same effect as an official ban, as it prevents women from migrating for domestic work in Lebanon. The consequence of such de facto bans or discouragement by the government is that women face greater obstacles than men when seeking foreign employment through official channels.

¹³ Correspondence from the Department of Foreign Employment on 18 May 2011.

3. NEGATIVE CONSEQUENCES OF THE FAILURE OF NEPALESE AUTHORITIES TO TAKE EFFECTIVE MEASURES AGAINST TRAFFICKING OF FEMALE MIGRANT WORKERS

The number of Nepalese workers migrating abroad through official channels in 2009-10 was nearly 300,000¹⁴ with major destinations being Malaysia and the Gulf States – Qatar, Saudi Arabia and the United Arab Emirates. Officially, only 10,056 or 3 per cent of regular migrant workers are women. However, this figure does not include undocumented workers; estimates of women are believed to account for as much as 30 per cent of the total number of Nepalese migrant workers abroad.¹⁵

A 2010 study commissioned by the Ministry of Labour and Transport Management and the International Organization for Migration (IOM) reported that 40 to 50 per cent of the total number of migrant workers went abroad through irregular channels. However, an estimated 80 per cent of women migrated for foreign employment as undocumented workers. Men normally work in construction, manufacturing, restaurants, gardening, and as drivers and cleaners.¹⁶ Furthermore, a 2006 study conducted by UNIFEM and the Nepal Institute of Development Studies (NIDS) found that 66 per cent of female migrant workers were employed in domestic work with the remaining working in factories, restaurants, offices, and as labourers and caregivers.¹⁷

Due to government bans or unofficial “discouragement” against migration for domestic work in Gulf States (work which, as is the case in many places, is almost exclusively done by women), many women who want to work outside Nepal have little choice but to migrate through irregular channels.

To avoid the setting fees (bribery) and other possible problems with Nepalese immigration authorities,¹⁸ brokers take advantage of the open border between Nepal and India by arranging for female migrant workers to travel overland into India to fly on to their destination

¹⁴ Information provided by the Department of Foreign Employment on 18 May 2011. Nepal's fiscal year commences from mid July 2009 to mid July 2010. This figure excludes migration to India. Due to the open borders between the two countries, the Nepalese government has no statistics on migration to India.

¹⁵ Amnesty International meeting with Nepal Institute of Development Studies (NIDS) in Kathmandu, Nepal on 3 October 2010.

¹⁶ Jagannath Adhikari and Ganesh Gurung, *Foreign Employment, Remittance and Its Contribution to Economy of Nepal*, Ministry of Labour and Transport Management, and IOM, 2011, pp10 and 16-17.

¹⁷ UNIFEM and NIDS, *Nepali Women and Foreign Labour Migration*, UNIFEM and NIDS, June 2006, p138.

¹⁸ Pourakhi, a Nepalese organization that works with migrant returnees, has encountered over one hundred cases where domestic workers who abided by the law by departing from the national airport in Kathmandu, as outlined in article 22 of the Act, were forced to pay a “setting” fee or bribery of about US\$140-850 to immigration officials in order to leave the country.

country. Having to travel for foreign employment via India is a problem largely faced by female migrant workers.

Going through such irregular channels means that although the women are in possession of valid work permits from the countries of destination (but no labour sticker from Nepal documenting their foreign employment status), their undocumented status effectively increases their risk to abuse and exploitation.

Largely due to the ban or restrictions placed on domestic work, a higher percentage of women than men migrate abroad as undocumented workers. Their status of course limits their recourse to assistance and many feel that they are unable to seek assistance with the Nepalese authorities when they find themselves in situations of exploitation. As the majority of domestic workers do not have documented status, most would not have contributed NPR 1,000 (US\$ 14) to the Welfare Fund¹⁹ As such, they are not entitled to seek help at the Foreign Employment Promotion Board.²⁰

Thus although the bans, in law or practice, on women migrating for purposes of employment to certain countries are said to be for the purpose of protecting them from finding themselves in situations of particular risk of exploitation, the bans in fact result in women having lesser protection because women choose to migrate anyway and then are at greater vulnerability of exploitation because they cannot access Nepalese institutions that might help protect them.

Many remain in their exploitative situation because they feel that it is too late to turn back. This may be because they have already incurred large debts and feel a great sense of responsibility to help out their family in Nepal. While in debt, workers have little or no motivation to report any infringements of their rights or to escape even the most exploitive working conditions. In addition, without an employment contract to prove the difference between what they were told and what is happening, they feel unable to seek remedy.

Recourse to justice and compensation is further made difficult because government offices related to foreign employment, as well as recruitment agencies are located in the capital of Kathmandu, while the majority of migrant workers come from rural and remote areas of the country. Interviews with women revealed that most were unaware of any government offices that could assist them to access justice and compensation. Although they faced many of the similar problems with men, women were less likely than men to travel alone, due to cultural barriers, to the capital to seek compensation or file a complaint against their recruiters.

¹⁹ A fund designed to help migrant workers when they face problems abroad or with their contractual agreements.

²⁰ The Board manages the Welfare fund and broadly carries out "acts required to promote the foreign employment business and make this business safe, systematic and decent and protect the rights and interests of workers going for foreign employment and the foreign employment entrepreneurs" (article 38 of the Act). According to the Ministry of Labour, plans are underway for the Ministry to contribute NPR 10 million into the Welfare Fund in order to broaden the scope of the Fund by providing assistance to more migrant workers, including those with undocumented status.

4. CONCLUSION

Amnesty International considers that the authorities in Nepal should:

- strengthen the monitoring of the recruitment process for domestic workers and impose adequate penalties for trafficking and forced labour;
- in the event that migration for employment as caregivers in Israel resumes, strengthen the monitoring of the recruitment process for caregivers and impose adequate penalties for trafficking and forced labour;
- ensure safe migration of domestic workers by removing any prohibitions, and refraining from introducing new prohibitions, whether official or unofficial, that would prevent them from departing from the national airport in Kathmandu so that they may migrate as documented workers;
- ensure that an effective and accessible complaints mechanism is in place in Nepal and in destination countries for all domestic workers and caregivers, regardless of their immigration status;
- provide trafficked individuals with immediate access to assistance and support and all the rights afforded to victims of human rights abuses;
- implement effective measures to eliminate and prevent intentional or de facto discrimination against women in the provision of loans (both in the particular context of prospective migrant workers and more broadly), so that women are not at greater risk of being forced to borrow money at higher interest rates than men, or of being denied loans altogether, on the basis of their sex;
- fully investigate trafficking of domestic workers and caregivers to ensure that perpetrators are brought to justice.

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