**Purpose: To inform the Special Rapporteur’s 2023 thematic report to the HRC**

**Submitted by: Women's Rehabilitation Centre (WOREC)**

**Contribution: Cultural rights and migration**

**Country: Nepal**

**Region: South Asia**

**Background:**

Women's Rehabilitation Centre (WOREC) is a campaign-based organization that functions adopting right based approach with the evidences of women rights and social justice as a prerequisite for peace, social justice, and sustainable development. Since its inception, it has established as a leading national organization working to prevent violence against women, ensure economic, social-cultural well-being of women and other marginalized groups by promoting their access to rights and social justice. Currently, it has been implementing three campaigns: 1. Violence against Women Campaign, 2. Human Rights & Social Justice Campaign and 3. Economic, Social, Cultural and Political Rights Campaign. All the campaigns are meaningful for creating enabling environment for a just society and social transformation to ending discriminatory social structure guided by the deeply rooted multi-layered patriarchal system. To the date, it has been working in the six provinces out of seven provinces in the country. It establishes wide networks from grass roots, national, regional and global arena through vivid alliances and membership. For further details: [www.worecnepal.org](http://www.worecnepal.org)

In Nepal, migration for foreign employment has become a major source of income for many Nepali households. Nearly half of the Nepalese households have at least one member in abroad or having a returnee from foreign employment. The Department of Foreign Employment (DoFE) issued more than 240,000 labour permits for migrant workers only in the year 2021A.D even in the surge of COVID 19 pandemic. Since 2008/09 DOFE had issued more than 5 million labor permits, where women migrants received 286,242 labor permits. In the fiscal year 2021-22, everyday 1745 Nepalis on average left the country for foreign employment, according to the data provided by the Department of Foreign Employment. Nepal has opened officially 111 countries as labor destination countries. The Government of Nepal (GoN) strictly prohibited to join labor migration in the war-torn countries namely Afghanistan, Iraq and Libiya. Further, GoN has bilateral agreements in the following countries, to name them: Qatar, UAE, Saudi Arabia, Japan, South Korea, Israel, Jordan, Malaysia, Mauritius. The migration policy in Nepal is more guided by protection approach rather rights-based approach especially when it comes to the women migrant workers. However, the constitution of Nepal (2015) ensured gender equality through various articles, gender equality policy (2020), commitment to CEDAW and BPFA, the foreign employment policy is discriminatory to women migrant workers. It squeezes the right to mobility of women since the GoN has banned women’s labor migration as a domestic worker including age bar. Consequently, many Nepali women are compelled to join international labor market in undocumented status. Many migrants currently face severe human rights violations in countries of origin, transit and destination[[1]](#footnote-1). The Office of the United Nations High Commissioner for Human Rights (UNHCR) has described economic, social and cultural rights as “those human rights relating to the workplace, social security, family life, participation in cultural life, and access to housing, food, water, health care and education.[[2]](#footnote-2)

**Cultural rights of Migrants in Nepal at a glance:**

The GoN is not a signatory to the UN Refugee Convention and does not have a national asylum law. However, it permits UNCHR to operate in Nepal to facilitate their “safe passage” through Nepal to other countries[[3]](#footnote-3). Since not being party to the convention and not having National Refugee law, there are no specific provisions specifying cultural rights provided to refugees, migrants and asylum seekers. However, following law has mentioned cultural rights to all the people residing in Nepal.

The Constitution of Nepal (2015) Article 32 has mentioned that every person and community shall have the right to use their languages. And sub-article 2 mentions that, "Every person and community shall have the right to participate in the cultural life of their communities." Though the constitution ensures the cultural rights of citizens, there are no specific laws and regulation available in the country. In this background, the cultural rights of migrants are still in shadow. Considering the refugees, asylum seekers residing in Nepal have freedom to enjoy their culture, religious practices and assemble in connection to the religion or beliefs without any interferences from the local communities and the government either.

However, the International Convention on the Protection of the Rights of All Migrant Workers (Art. 12 (1) ensures the right to freedom of thought, conscience and religion to adopt a religion or belief of their choice and freedom either individually or in community with others and in public or private to manifest their religion of belief in worship, observance practice and teaching, the Nepali migrant workers in the Country of Destinations (CoD) have no any kind of cultural services and Institutions that facilitates to enjoyment of their rights. Due to the unavailability of such services, the Nepali migrant workers are denied to right to clothing and religion. One of the women migrant workers in Saudi Arabia strongly expressed that Women migrant workers were forced to wear burqa, cover face and head. The clothing of Nepali women was pointed to be indecent. They also shared their experience of not being allowed to meet anyone while working as domestic workers in the CoD. The migrant workers have heard that Christian are treated relatively good rather Hindus, thus they pretexted for two years being as Christianity. Moreover, some of the recruiting agencies in the country orient to say as a Christian to the migrant workers while departing the country of origin. Similarly, in Qatar, the migrant workers are forced and or lured to change their religion in the name of various facilities given. It is found that many migrant workers have changed their religion. There is a group of Nepali migrants in Qatar who have changed their religion and have been organized and belong to "New Muslim Community" group in Qatar.

"*While working as domestic worker in Saudi Arabia, I could not perform my any cultural and religious activities. I had to act and work as per their instruction*," says Ms. Tara Sunwar (Pseudo name, Dang district. A returnee migrant woman from Saudi Arabia)

In Nepal, the Muluki Criminal Code 2074, Sec. 158 has mentioned that no one shall be compelled to change their religion. The aforementioned cases illustrate violation of ICESCR Art. 11 “Right to clothing” and UDHR Art. 25 as well as Art. 18 guarantee of “Freedom of Religion or Belief” of migrant workers in the host countries. The following cases unveils the ill-treatment of our migrant workers in the host countries.

“*My employer did not allow to perform any cultural acts during my husband’s death and even not allowed to call at home till the first week of his demise. They did not allow me to return Nepal saying that my work contract was not over. Finally, I could make to contact in the Embassy and back to Nepal on my own expenses.” Sita Pariyar (*Pseudo name from Dang district. Returnee migrant from Kuwait).

"*Following our culture, I did not intake salt in my food for couple of days in my father’s demise resulting I could not perform my duties well due to extreme weakness for which my employer scolded me harshly. Similarly, we were not given holidays in our festival. We used to celebrate festival with our friends hiding from others. We were not allowed to wear bangles and tika. We had to behave as per their religion and culture*," says Uma Thara (Pseudo name from Dang district. Returnee migrant from Kuwait)

Hearing such voices of women migrants highlights the clear violation of an individual right to freedom of religion or belief. The host countries are not sensitive to the economic, social and cultural rights of their migrant employees. It is high time to call for paying attention to guarantee of cultural rights of migrant workers in the host countries. After all they are also contributing to boom economy of the host countries leaving their own homelands.

The constitution of Nepal (2015) ensures the right to use their languages, right to participate in the cultural life of their communities (Art. 32) as well as GoN acceded to the ICESCR in 1991, nevertheless the GoN has initiated to neither protect nor facilitate migrants’ economic social and cultural rights in the CoDs. The mandatory two days Pre-departure orientation training (PDOT) is considered one of the most significant provisions of the labor migration process. The aim of PDOT is to give handy information about the labour destination countries, its rules and regulations, traffic rules, labour laws and local culture and traditions are just few examples. Besides, the training also provides information on how to remain safe at the workplace and in the CoDs in general. The training course does not capture the economic, social and cultural rights of migrant workers. It is also accused the PDOT providing institutions have been colluding with recruiting agencies to issue fake certificates to migrant workers without conducting the mandatory training[[4]](#footnote-4).

Few civil society organizations (CSOs) including WOREC have been advocating for promoting and protecting the rights of migrant workers in Nepal. The CSOs are pushing the GoN to treat the labor migration through the lens of Right based approach rather other way round. CSOs have been organizing continuous advocacy for ratification of ILO C189, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990 are organized.

In coordination with ILO and other concerned CSOs, WOREC organized virtual interaction program on ratification of ILO C189 and C190. Similarly, in August 2022, WOREC launched South Asia Regional Campaign on Valuing Women’s Work for Social Transformation demanding the social security of their sweats. The government has been taking positively however the progress is still a far cry.

The vulnerable and marginalized sections of migrants are targeted in various laws formulated by the country. The Constitution of Nepal 2015 forbids human trafficking and provides for the protection of the fundamental rights of women, labor, and children by criminalizing exploitation and torture. The Memoranda of Understanding (MoU) between the Nepalese government and the governments of the receiving countries have also regulated the emigration process. To protect Nepalese employed abroad, the government has promoted policies to regulate recruitment companies, and has established the "free visa, free ticket" system under which employers have to bear visa and air travel expenses for workers who are hired in Golf Cooperation Countries (GCC) Saudi Arabia, Kuwait, United Arab Emirates, Qatar, Oman, Bahrain and Malaysia. The Government of Nepal has also formulated Labor act and Reintegration Program (Operation and Management) Directives for Returnee Migrant Workers, 2079. Nepal has also signed the Global Compact for Migration. The Local Government Operating Directive (2074) directs the all-local government authorities for formulation of reintegration plan but only handful of local governments have made it. Aside to these, no any mechanism, intervention is made to protect and promote the cultural rights of migrant workers.

The GoN has totally failed to advocate the cultural rights along with other rights of its migrant workers in the host countries. No initiatives have been taken to raise the issue to the date despite of more than 5 million population are working in the international labor market. The GoN didn't guide the bilateral agreement by the rights-based approach respecting the cultural rights and ignored the facilities in the destination countries.

As aforementioned the PDOT course is failure to address the migrant worker’s rights in CoDs and GoN’s other migration mechanism. Another crucial challenge of migrant workers is Language barrier. However, language test is mandatory for labor migration in South Korea, in other CoDs’ language are not mandatory. Consequently, a large number of migrants have priority to join Golf and middle east countries’ labor market. Hence, there are serious challenge faced by many migrant workers often create misunderstandings and can make migrants feel isolated and helpless.

"*After 5 days of my arrival in Oman, my father passed away. I had not taken salt in food and it was difficult for me to work. Due to language barrier, I could not say to the employer about death of my father and our culture of not taking salt in food when someone dies. The employer scolded me and I was asked to return back to Nepal as I could not work at that time*," says Ajita K.C (Pseudo name, returnee migrant worker, Dang district).

According to the data obtained from the Foreign Employment Board (FEB), a total of 360 Nepali migrant workers were imprisoned across the Gulf countries in 2021. The highest number of Nepali prisoners are in Saudi Arabia (143), followed by UAE (136), Kuwait (43), Qatar (31), Bahrain (4), and Oman (3). The Welfare, Rehabilitation and Communication Division at the FEB accepts the situation of lower-income workers is especially dire as they are likely to have little or no knowledge about the cultural differences in the CoDs. Language barriers further complicate these situations. Even knowing the facts, the government’s policies regulations are not guided by rights-based approach and don't take immediate actions. It shows, ignorance of the commitment to proper applications of various international conventions on Human Rights.

**Recommendations:**

Flagging all the situations, the following actions are the pressing needs. Reviews of existing foreign employment policies, pre-departure orientation training course, bilateral agreement of Country of Origin and COD and arrange the particular provisions for the protection and promotion of cultural rights are utmost necessary to protect and promote the cultural rights of migrant workers. Mandatory provision of language learning at least basic level (like in the South Korea) resulting the migrant workers day to day communication would be efficient. On top of that, they can express their situation they are suffering with crisis. Bilateral agreements have to expand in almost all labor destination countries. The GoN should follow the commitments and ratification of international conventions that the government has signed with necessary actions. The government should urge to take handful of actions to protect and promote the cultural rights of the outbound migrant workers. After all, Nepalese economy afloat on remittance: the sweat of migrant workers.

1. https://refugeesmigrants.un.org/sites/default/files/issue\_brief\_for\_first\_thematic\_session.pdf [↑](#footnote-ref-1)
2. https://www.ohchr.org/en/human-rights/economic-social-cultural-rights [↑](#footnote-ref-2)
3. Migration in Nepal, A country profile, IOM 2019. [↑](#footnote-ref-3)
4. The Kathmandu Post, Mar 2021 [↑](#footnote-ref-4)