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**Совет по правам человека****Тридцать восьмая сессия**

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**Поощрение и защита всех прав человека,  
гражданских, политических, экономических,  
социальных и культурных прав,  
включая право на развитие**

**Доклад Специального докладчика по вопросу о правах  
человека мигрантов о его миссии в Непал****Записка секретариата**

Секретариат имеет честь препроводить Совету по правам человека доклад Специального докладчика по вопросу о правах человека мигрантов Фелипе Гонсалеса Моралеса о его миссии в Непал в период с 29 января по 5 февраля 2018 года.

В ходе своего визита Специальный докладчик встречался с представителями правительства, Национальной комиссии по правам человека, дипломатического сообщества, членами страновой группы Организации Объединенных Наций, мигрантами и членами их семей, а также представителями организаций гражданского общества, профсоюзов, агентств по трудоустройству, ассоциаций центров подготовки для лиц, работающих в качестве домашней прислуги, ассоциаций по инструктажу перед отъездом, ассоциаций медицинских центров и лиц, обеспечивающих профессиональную подготовку.

Основное внимание в ходе визита было уделено трудовой миграции из Непала, методам найма, помощи, оказываемой непальским мигрантам в странах назначения, а также возвращению и реинтеграции трудовых мигрантов. Непал добился прогресса в обеспечении защиты прав своих граждан, выезжающих в другие страны для работы. Вместе с тем в законодательстве продолжают существовать серьезные пробелы в защите, и сохраняются проблемы с обеспечением соблюдения законов, осуществлением и мониторингом.

Кроме того, Специальный докладчик рассмотрел вопрос о положении мигрантов в Непале. Он отмечает важность предоставления им доступа ко всей системе прав человека и необходимость соответствующего пересмотра законодательства.



# Report of the Special Rapporteur on the human rights of migrants on his mission to Nepal from 29 January to 5 February 2018\*

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\* Circulated in the language of submission only.

## I. Introduction

1. The Special Rapporteur on the human rights of migrants, Felipe González Morales, conducted an official visit to Nepal from 29 January to 5 February 2018 at the invitation of the Government. The main focus of the visit was on labour migration from Nepal, recruitment practices, the assistance provided in destination countries and the return and reintegration of labour migrants. The Special Rapporteur also looked into the situation of migrants in Nepal.
2. During the mission, the Special Rapporteur met with representatives of the Government, including representatives of the Ministry of Foreign Affairs, the Ministry of Labour, Employment and Social Protection, including its Department of Foreign Employment, the Foreign Employment Tribunal and the Foreign Employment Promotion Board, the Ministry for Women, Children and Senior Citizens, the Ministry of Law, Justice and Parliamentary Affairs, the Ministry of Health, the Ministry of Home Affairs and the Human Rights Division of the Nepal Police. He also held meetings with representatives of the National Human Rights Commission, the diplomatic community, members of the United Nations country team, migrants and their families, and representatives of civil society organizations, international non-governmental organizations (NGOs), trade unions, recruitment agencies, associations of training centres for domestic workers, associations of pre-departure orientation centres, associations of medical centres and skills training providers in Kathmandu and Kailali and Morang districts. He also visited the labour village in Kathmandu.
3. The Special Rapporteur expresses his appreciation for the cooperation extended to him by the Government prior to, throughout and after the visit. He also thanks the United Nations country team for their valuable support and assistance.

## II. General background: migration from Nepal

4. With an average of 1,500 Nepalese migrant workers officially leaving Nepal every day for foreign employment, international labour migration forms an important part of the lives of Nepalese citizens.<sup>1</sup> Most Nepalese migrant workers may see themselves compelled to migrate for a variety of reasons: extremely difficult economic circumstances, loss of land or employment, debt, the loss of a spouse, family illness, discrimination and a less than favourable socioeconomic status for women, minorities and low-caste or landless people, or in order to guarantee a better future for their children.
5. Most Nepalese migrant workers go to Malaysia, the countries of the Gulf Cooperation Council and India. Over the years, a large recruitment industry has developed in Nepal. A total of 2,723,587 labour permits were issued by the Department of Labour and Employment between 2008/09 and 2014/15<sup>2</sup> and remittances, which are mainly spent on household consumption, loan repayments, asset acquisition, health and education, have become an important source of economic development and poverty reduction in the country, as they make up more than 30 per cent of gross domestic product.<sup>3</sup> Around 71 per cent of the remittances received in Nepal in 2015 came from the countries of the Gulf Cooperation Council.<sup>4</sup>

<sup>1</sup> See Department of Foreign Employment, monthly reports providing overview of labour permits issued and renewed, available from [www.dofe.gov.np/new/pages/details/34](http://www.dofe.gov.np/new/pages/details/34) (accessed 6 March 2018).

<sup>2</sup> See Ministry of Labour, Employment and Social Protection, "Labour migration for employment. A status report for Nepal: 2014/2015".

<sup>3</sup> See World Bank, remittances data for 2016, available from <https://data.worldbank.org/indicator/BX.TRF.PWKR.DT.GD.ZS>.

<sup>4</sup> Asian Development Bank Institute, Organization for Economic Cooperation and Development and International Labour Organization, *Safeguarding the Rights of Asian Migrant Workers from Home to the Workplace* (2017).

6. Recipients of labour permits over the period from 2008/09 to 2014/15 came from every district in the country, with the top 10 being Dhanusa, Jhapa, Mahottari, Morang, Siraha, Nawalparasi, Sunsari, Saptari, Rupandehi and Sarlahi.<sup>5</sup> In Provinces 6 and 7, migrants leave temporarily, seasonally or permanently to go to India. Foreign employment has also created an imbalance in the local economy, so that migrants, mainly from India, go to the Terai belt in the south of the country, to attend to shortages in the labour supply.

7. Women's participation in foreign employment has increased considerably in the past decade. The last census (2011) shows that a total of 1,921,494 persons were registered as absent population, which may include internal migration, and that of them 87.6 per cent were men and 12.4 per cent were women.<sup>6</sup> Only 4.3 per cent of labour permits were issued to women in 2014/15, as bans and restrictions led to increased migration of women to and through India.<sup>7</sup>

8. Nepal has made significant progress in ensuring protection of the rights of its citizens who migrate for foreign employment, including by amending its legislation and developing corresponding policy measures. While the Special Rapporteur recognizes that there is an increased awareness on the part of the State of the need to address these issues in a comprehensive manner, including through enhanced coordination between different ministries, he notes that important gaps in protection continue to exist in law and challenges remain in enforcement, implementation and monitoring.

### **III. Normative and institutional framework for the protection of the human rights of migrants**

#### **A. International legal framework**

9. Nepal is a party to all the core human rights treaties except the International Convention on the Protection of the Rights of All Migrants Workers and Members of Their Families; the International Convention for the Protection of All Persons from Enforced Disappearance; the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

10. Nepal has ratified seven out of the eight International Labour Organization (ILO) fundamental conventions. However, it has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Migration for Employment Convention (revised), 1949 (No. 97), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), the Private Employment Agencies Convention, 1997 (No. 181) or the Domestic Workers Convention, 2011 (No. 189).

11. Nepal has not ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, or the Protocol against the Smuggling of Migrants by Land, Sea and Air, both supplementing the United Nations Convention against Transnational Organized Crime; neither has it ratified the Convention relating to the Status of Refugees and its 1967 Protocol, the Convention relating to the Status of Stateless Persons or the Convention on the Reduction of Statelessness.

#### **B. Regional consultative processes**

12. Nepal is a member of the Colombo Process, a regional consultative process on the management of overseas employment and contractual labour for countries of origin in Asia. It is also a member of the Abu Dhabi Dialogue. The secretariat of the South Asian

<sup>5</sup> See Ministry of Labour and Employment, "Labour migration for employment. A status report for Nepal: 2014/2015".

<sup>6</sup> See Government of Nepal, *National Population and Housing Census 2011*.

<sup>7</sup> See Ministry of Labour and Employment, "Labour migration for employment".

Association for Regional Cooperation, of which Nepal is a member, was set up in Kathmandu on 17 January 1987.

13. The Special Rapporteur notes the increased engagement of Nepal in international forums, including its role as Chair of the Colombo Process, where it made relevant contributions to the negotiations on the global compact for safe, orderly and regular migration promoting, inter alia, ethical recruitment practices, access to information and remittance cost reductions. He encourages Nepal to continue engaging in the negotiations on the global compact, the Colombo Process, the Abu Dhabi Dialogue and the South Asian Association for Regional Cooperation, supporting the transition to an ethical recruitment system. He notes that its enhanced engagement in regional cooperation with other Asian migrant-sending countries would allow a common agenda to be developed, which should include minimum standards for labour migrants and labour conditions, a collective ban on recruitment fees, the adoption of a standard contract and social protection and insurance provisions, to ensure that concerns about international competitiveness do not impact the transition to an ethical recruitment system.

## **C. National legal and institutional framework**

### **1. National legislation and policies**

14. The 2015 Constitution of Nepal contains two mentions of foreign employment in the section on policies regarding labour and employment under part 4 “Directive Principles, Policies and Obligations of the State”, where it refers to the management and regulation of foreign employment in order to make it safe from exploitation, free and well-managed to guarantee labourers’ rights and employment and refers to the use of the capital, skills, technology and experience gained in foreign employment in the productive sectors of the country. Article 29 of the Constitution also makes reference to exploitation, including forced labour, trafficking, slavery or servitude.

15. The Civil Code (1963) is a combination of a civil and penal code. The recently adopted Criminal Code (2017) and Criminal Procedure Code (2017), which will come into effect in August 2018, include a much wider range of offences.

16. The principal law pertaining to labour migration is the Foreign Employment Act of 2007, supported by the foreign employment rules of 2008. The act is going to be amended. It sets out provisions to regulate labour migration, including through identifying the functions and provisions of various government agencies and private parties. It defines the administrative requirements for recruitment agencies and sets out provisions for an oversight and monitoring system by defining the requirements for licensing recruitment agencies. It provides for a complaints mechanism (sec. 35) and defines the circumstances for the revocation of a licence (sec. 13), crimes under the Foreign Employment Act and the punishments that can be imposed (ch. 9). It further gives the Government the authority to specify the upper limit of the amount an institution can collect from each worker, including a service fee and promotional costs (sec. 24). The Act also includes provisions aimed at better protection of the rights of migrants, including by protecting potential migrant workers from confiscation of their personal documents (sec. 18); from delayed departure; from deception regarding their contracts (secs. 15, 19 and 20); from deception over the jobs in question (sec. 36); against abuse at the hands of an unlicensed agent or agency (secs. 43 and 44); from overcharging for visas, service fees etc. (sec. 53); from lower remuneration or different tasks than those stipulated in the contract (sec. 55); by setting out the right to a contract in Nepali (sec. 25); by granting the right to insurance provided through the recruitment agency (sec. 26); and by granting the right to information through a mandatory pre-departure orientation session (sec. 27). Under the Act, the government is also required to set up a labour desk at the international airport and other places, as necessary (sec. 73) and the deployment of labour attachés to countries where 5,000 or more workers have been sent for foreign employment is defined (sec. 68). In addition, under the foreign employment rules of 2008, the appointment of a women labour attaché in destination countries where 1,000 or more Nepalese migrant women are employed is required.

17. Nepal also passed a Human Trafficking and Transportation (Control) Act in 2007, supported by regulations in 2008. Human trafficking is defined as the act of selling or purchasing a person for any purpose, using someone for the purpose of prostitution, or for the purpose of unlawfully extracting a human organ (sec. 4 (1)). The act of transportation is defined as taking a person out of the country for the purpose of buying and selling (sec. 4 (2) (a)), taking someone from their place or residence, or from the custody of another person, through enticement, inducement, deception, forgery, coercion, abduction or threats, exerting influence and abuse of power, including through threats or coercion of the guardian or custodian of the victim, or take to any place within Nepal or abroad or hand him or her over to somebody else for the purpose of prostitution and exploitation (sec. 4 (2) (b)).

18. The Immigration Act of 1992 and the relevant 1994 rules lay out provisions to regulate and control the entry into, stay in and departure from Nepal of foreign nationals. The Nepal Citizenship Act of 2006 sets out the provisions for acquiring Nepalese citizenship.

19. The Trade Union Act of 1999 amending the Act of 1992 defines requirements for the formation and membership of trade unions and associations. The Labour Act of 2017, replacing the Act of 1992, defines the rights, interests, facilities and safety of workers. The Child Labour (Prohibition and Regulation) Act 2000 prohibits child labour and contains provisions for legal action against those exploiting children.

## **2. National institutions**

20. The provisions in the national legislation and regulations also require the establishment of specific institutions responsible for labour migration. Functioning under the Ministry of Labour, Employment and Social Protection, responsible for policy formulation and planning, they include the Department of Foreign Employment, the Foreign Employment Promotion Board and its welfare fund and the Foreign Employment Tribunal.

21. The creation of the Department of Foreign Employment is an indication of the priority given to labour migration in Nepal. It is responsible for administering and regulating the recruitment industry and for investigating complaints. The Foreign Employment Act established the Foreign Employment Tribunal, which according to international standards, is a semi-judicial body.

22. The Foreign Employment Promotion Board aims to make foreign employment safe, systematic and respectable, and protects the rights and welfare of workers and foreign employment entrepreneurs. The Board has been given the responsibility of determining the curriculum and standards of the mandatory pre-departure orientation programme. Any institution that wants to provide such programmes must apply to the Department of Foreign Employment for a licence.

23. The Foreign Employment Act also provides for the establishment of a foreign employment welfare fund under the Foreign Employment Promotion Board, in order to provide for social security and ensure the welfare of migrant workers and their families.

24. The Foreign Employment Act and its 2008 rules are completed by the 2012 foreign employment policy, whose goal is to make foreign employment safe, organized, respectable and reliable and utilize economic and non-economic benefits to alleviate poverty and maximize the contributions of foreign employment to the country's sustainable economic and social development. At the same time it seeks to overcome the shortcomings of the Act and rules, including by incorporating various provisions of international standards. The Government launched a detailed national strategic action plan for the period 2015–2020, through which it sought to translate the objectives, aims and policy pillars of its foreign employment policy into reality.

25. The National Human Rights Commission was established in 2000. The 2007 Interim Constitution of Nepal made the Commission a constitutional body and the 2015 Constitution retained that provision. The National Human Rights Commission Act was enacted by the Constituent Assembly in 2012 and defines the functions, duties and powers of the Commission, which has been accredited with A status. It has undertaken important work in

relation to the human rights of migrants and the Special Rapporteur urges the Commission to continue to expand its activities.

26. He further commends the Commission for signing a memorandum of understanding with the National Human Rights Committee in Qatar and the National Human Rights Commission of Korea (Republic of Korea), with particular provisions aimed at improving the human rights situation of migrants. He encourages the Commission to continue to monitor and evaluate the implementation of bilateral agreements concluded between Nepal and the various destination countries. He also encourages cooperation between national human rights institutions regarding access to remedies, as defined in the 2008 Seoul Guidelines on the cooperation of national human rights institutions for the promotion and protection of human rights of migrants in Asia.

## **IV. Recruitment process**

### **A. Introduction**

27. The Department of Foreign Employment is the major entity in charge of issuing the labour permits required for Nepalese migrant workers, including registering, licensing and monitoring private institutions that provide services relating to labour migration. As set out in the Foreign Employment Act and the 2008 rules, licensed recruitment agencies are authorized to receive letters from foreign employers looking for migrant workers, recruit and select migrant labourers and send labourers to the countries that the Government has approved for labour migration.

28. The Department will issue a labour permit to a migrant upon presentation of a complete file, which must include the mandatory orientation training certificate and skills orientation training certificate, if needed, a health certificate, an insurance certificate, the contract between the worker and the recruitment agency, the contract between employer and worker, and a receipt for payment of service fees to the recruitment agency. In addition, the labour desk set up at Kathmandu airport will certify that migrant workers leaving for foreign employment have followed the provisions laid out in the Foreign Employment Act. According to the act, licensed agencies are required to send migrant workers leaving for foreign employment through the national airport in Kathmandu.

29. About 80 per cent of migrants leaving for countries other than India use recruitment agencies.<sup>8</sup> Owing to the highly centralized recruitment system, the majority of potential migrants rely on informal labour recruiters for job placements. The risks involved include bogus recruitment agencies, potential migrants being overcharged and using moneylenders, who give loans to migrants at high interest rates.

30. The practice of charging fees to migrant workers for recruitment services renders them more vulnerable to human trafficking and forced labour. Deceptive and coercive recruitment practices increase the vulnerability of migrant workers, as they pay recruitment fees up front. As a result, they are less likely to report violations of the Foreign Employment Act, abuse or exploitation. In many cases, the situation of migrant workers amounts to debt bondage, forced labour or human trafficking.

### **B. Role and regulation of recruitment agencies and sub-agents**

31. The Special Rapporteur observed a very complex recruitment system, with a large number of actors operating in it. The government of Nepal has licensed more than 1,000 private recruitment agencies, which operate at the central level, with only 47 branch offices

<sup>8</sup> See Ministry of Labour and Employment, "Labour migration for employment".

located in the districts and around 700 licensed local sub-agents operating at the district level, which is insufficient to meet demand at the local level.<sup>9</sup>

32. In the absence of a decentralized recruitment system, unlicensed sub-agents get involved in assisting migrants in job placements and the relevant processes, including obtaining visas, the necessary administrative approvals, medical clearances and insurance. The Special Rapporteur heard accounts of potential migrant workers dealing with seven different licensed and informal agents throughout the recruitment process, leading to repeated payment of high fees for unclear purposes.

33. He urges the Government to develop legislation regulating the relationship between recruitment agencies and their agents, their sub-agents or other forms of subcontractors, to establish clear responsibilities and liability in the recruitment chain. Further, he invites the Government to facilitate the opening of additional branch agencies at the district level, to increase the accessibility to licensed recruitment agencies for potential migrant workers.

34. In terms of monitoring, he observes with concern that the same Department that registers and licenses private institutions is tasked with monitoring those institutions. He encourages the Nepalese authorities, as a matter of priority, to establish an independent monitoring mechanism, equipped with the necessary resources to effectively identify abuse and exploitation, including through a system based on complaints from trade unions, the National Human Rights Commission and civil society organizations. That mechanism also needs to ensure better monitoring of labour recruitment chains at district level.

35. He further encourages the Government to ensure that recruiters are effectively licensed. Abuse and exploitation by recruiters need to be investigated and their licences withdrawn if there are violations of legislation. Recruitment agencies should also be monitored in regard to handing out receipts for all payments made by migrants. Inspections of recruitment agencies should take place on a regular basis in that regard.

### C. Recruitment fees

36. The Special Rapporteur recognizes that recruiters facilitate regular opportunities, whereby migrants arrive in countries with a legitimate visa. However, he notes that the sector is in practice very poorly regulated. He heard of accounts from migrants of sometimes paying up to Nrs 180,000 (approximatively \$1,750) in recruitment fees.

37. In 2015, the Government introduced a model whereby ticket and visa costs are born by the employer and which limits the legally permitted service fee charges to Nrs 10,000 (equivalent to \$96) for placement in the seven major destination countries.

38. During his mission, the Special Rapporteur observed that this policy is poorly enforced and no effective monitoring mechanism to address non-compliance is in place. He wishes to draw particular attention to the fact that the policy does not completely eliminate recruitment fees and still allows for some fees to be charged to potential migrant workers for pre-departure services. Legislation to limit the fees improperly legitimizes the concept of charging migrants for their recruitment and creates unnecessary confusion. Recruitment fees are a business-to-business charge and should be banned completely.

39. He observed that potential migrant workers often cannot pay the costs related to their recruitment, as these have to be settled up front. If bank loans are refused, potential migrants may have to sell their land, pawn their jewellery, borrow from friends or relatives, or turn to informal money lenders who charge them high interest rates, sometimes up to 35 per cent. The Special Rapporteur was also informed of situations where agents deducted debt payments directly from the salaries of migrant workers, which ultimately left them with little or no savings when they returned to Nepal.

40. Mandatory pre-departure medical examinations, insurance and the cost of travel to Kathmandu to attend pre-departure training may add to already high recruitment fees. Private actors are involved in providing these services and the Special Rapporteur notes that potential

<sup>9</sup> Ibid.



migrants are often overcharged. He notes the need for better regulation and recommends institutionalizing the system in close collaboration with the countries of destination, for instance by ensuring medical certificates are issued by public hospitals.

41. Recruitment fees and the commonly resulting debt increase the precariousness of migrants' situations and may lead to situations of debt bondage, forced labour and trafficking. The Special Rapporteur urges the authorities as a matter of priority to monitor recruitment agencies more effectively and enforce penalties against those that violate provisions in the legislation, to ensure better protection of migrant workers from situations of debt bondage, forced labour and trafficking.

## **D. Pre-departure training and information**

42. The Government has made progress in enhancing access to information for potential migrants, introducing a mandatory two-day pre-departure orientation course. The Special Rapporteur also recognizes the efforts made by the Government to collaborate with United Nations agencies, international organizations, international donor agencies and NGOs to improve access to information, justice and skills development training, and provide assistance to returnees and the families left behind. In that regard, he welcomes the establishment of migrant resource centres, some of them set up in District Office premises.

43. The Special Rapporteur observes that the mandatory pre-departure training is only available in the capital and a few selected districts, which involves further costs for those taking part. Furthermore, the Special Rapporteur was informed that the content is limited to general information. He observes that they could be enhanced, both in length and content and suggests they include information on migrants' rights and redress mechanisms, on consular assistance and on health and self-care.

44. The Special Rapporteur commends the Government for introducing the 2012 technical and vocational education and training policy, in which it recognized the need for skills-development training programmes. At the same time, the Special Rapporteur received complaints that the skills training was inadequate and that migrant women especially would benefit from enhanced skills training. He was informed that domestic workers were often not familiar with modern domestic appliances and many migrant workers lacked basic language skills. The provision of skills training would render domestic workers less vulnerable to abuse in private households.

45. The Special Rapporteur considers the adoption of the Local Government Operation Act to be a positive step. It obliges local government to provide basic foreign employment services, such as the collection of data, provision of information, provision of skills and financial literacy training and the reintegration of returnees. He encourages the Foreign Employment Promotion Board to work in close collaboration and coordination with local authorities in establishing foreign employment services by setting standards, providing guidance and ensuring cost-sharing.

46. Overall, the Special Rapporteur observed that vocational skills, adequate orientation programmes for employment and awareness of the migration process needed to be improved, in order to ensure that migration decisions are well-informed and that migrants know their rights and how to seek help or lodge a complaint.

## **E. Consular assistance**

47. The Special Rapporteur welcomes the appointment of labour attachés and counsellors in nine Nepalese diplomatic missions. That is an important step for the protection of migrants, as international law recognizes their right to seek consular assistance, the exercise of which must be allowed without any obstacles by destination countries.

48. The Special Rapporteur heard accounts of various violations of the Foreign Employment Act, which rendered migrant workers more vulnerable to exploitation and abuse in the destination country. For instance, terms of employment, remuneration, employing

company or the type of work agreed upon in Nepal were changed upon arrival in the destination country; contracts were substituted; the contract was not translated into a language migrant workers understood and they were not given a copy of the contract; migrant workers, including migrant children, were sent on forged or fake documents; or workers faced non-payment of or deductions in wages. The Special Rapporteur also heard testimonies of migrants who had not received information on how to complain if the contract was not respected. Many lived in overcrowded or substandard conditions and were forced to remain with their employers despite being abused.

49. The Special Rapporteur received accounts that the labour attachés were often not properly trained in labour and human rights and were unaware of the situation of migrants in distress or unwilling to assist and protect them and facilitate their repatriation. In that regard, Nepal needs to strengthen its welfare services and the consular assistance provided to Nepalese migrants, regardless of migratory status. Labour attachés and ambassadors to countries with a significant Nepalese migrant population should not have ties to recruitment agencies, as it makes their willingness to support migrants questionable.

50. He was informed through the authorities that the Foreign Employment Promotion Board makes free legal assistance through the embassies in destination countries available. However, he heard that the embassies often do not provide adequate information and support services to workers who have grievances against their employers and that as a result migrant workers prefer to return to Nepal. He encourages the Board to use its funds not only to facilitate exit permits or assist migrants implicated in criminal cases or being held in detention, but to ensure that migrants, including irregular migrants, can seek redress through the courts in the destination country, with the embassies providing a roster of competent local lawyers.

51. The Special Rapporteur was informed about the worryingly high number of deaths and injuries of migrant workers. In the fiscal years 2008/09–2014/15, a total of 4,211 migrants passed away in Malaysia and the countries of the Gulf Cooperation Council, with cardiac arrests, natural deaths and traffic accidents seemingly the main reasons for death among men, and suicide, natural deaths, traffic accidents and heart attacks being the main reasons for death among women.<sup>10</sup> He observes that among the male population, cardiac arrests and natural deaths are disproportionately high for a population of which 68 per cent are aged between 18 and 36, and he encourages the Government to conduct and validate post mortem examinations on a regular basis. He further encourages Nepalese embassies to ensure that ILO occupational health and safety standard provisions in destination countries are enforced in migrants' workplaces and in their accommodation. Those provisions should be included in all memorandums of understanding and bilateral agreements concluded with destination countries.

52. The Special Rapporteur observes that exploitation and violence, including sexual abuse of women at the hands of their employers, seems to be quite systematic. He notes that in four destination countries, shelters have been set up in embassy premises. Many interlocutors described how they felt so desperate that suicide seemed the only solution to them. The Special Rapporteur observes that support to migrant women, including through having women officers to deal with cases of sexual abuse, the provision of a local 24/7 hotline free of charge and assistance with changing the workplace, seeking redress or facilitating return, needs to be enhanced as a matter of priority.

53. He also notes the need to enhance cooperation with destination States to ensure that the rights of the Nepalese are respected during the whole migration process. The Government of Nepal, in cooperation with the destination country, must ensure that Nepalese migrants' rights in destination countries meet international standards with respect to facilities at work, access to justice, freedom of mobility and access to health, sanitation and freedom of association. The Special Rapporteur encourages the authorities, and especially labour

<sup>10</sup> See Ministry of Labour and Employment, "Labour migration for employment".

attachés and consular services, to collect better data in terms of the complaints received, so that proper policy measures can be taken by the Nepalese authorities.

## **F. Return and reintegration**

54. The Special Rapporteur welcomes the establishment of the welfare fund, providing compensation for those who have sustained injuries or an illness that resulted in disability and/or loss of job and for the deaths of migrant workers. It also provides for the “rescue and repatriation” of migrants. He also welcomes the increase in the welfare schemes from Nrs 300,000 (\$3,000) to Nrs 700,000 (\$7,000).

55. When they return to Nepal, migrants often face the same social and economic challenges that pushed them to migrate in the first place, which ultimately leads to remigration. Women find this particularly challenging, as they face additional social stigma because of their migration.

56. Women who are pregnant because of rape are not able to return to their families, husbands and children, because of the social stigma, which leads to very complicated personal situations and family breakdowns. The Special Rapporteur observes that these are not anecdotal cases but are part of the reality of many migrant women. He welcomes information about the existence of rehabilitation centres for migrant women in 10 districts. He notes the need to increase their number and that psychosocial counselling should be part of the basic services made available in the shelters.

57. The Special Rapporteur was informed that rehabilitation for victims of trafficking and forced labour was often available only in relation to trafficking for sexual exploitation. In addition, reintegration is a major challenge because of the social stigma attached to trafficked victims.

58. The Special Rapporteur strongly encourages the authorities to develop and strengthen migration policies which meet the needs of returnees, facilitate their reintegration into the labour market and recognize their experience and the skills they have acquired abroad.

59. The “safer migration” project is a step in the right direction. Operating in 20 districts under the auspices of the Ministry of Labour, Employment and Social Protection, its migrant resource centres provide skills training, awareness programmes for foreign employment and financial literacy programmes for departing and returning migrants. It also offers psychosocial counselling, access to justice and financial support to start small businesses, and skills development activities for returnees. The Special Rapporteur notes the important work done by civil society organizations and district development offices in implementing such projects.

60. He further welcomes the implementation of a project developed by the Ministry of Industry, Commerce and Supplies, which seeks to link returned migrants to microfinance institutions for the establishment of small businesses. Investing in sustainable returns, including by supporting business initiatives and using the experiences of Nepalese who have migrated, should be a key priority for the Government. Labour migration has the potential to support sustainable development through upskilling of workers who are able to make additional contributions upon their return.

## **G. Access to an effective remedy**

61. According to the accounts the Special Rapporteur heard, many migrants face serious barriers to accessing remedies when they are exploited and abused during or as a result of the recruitment process.

62. Although the offences under the Foreign Employment Act are criminal offences, the Complaints Registration and Investigation Section in the Department of Foreign Employment has the jurisdiction to investigate with the same powers as the police. According to the act, the Department has jurisdiction over administrative issues, but can also investigate cases of fraud, the charging of excessive recruitment fees and deception in regard to contracts.

It has the jurisdiction to decide if an offence has occurred and can impose penalties, including compensation to workers, the imposition of fines, revoking of licences, or imprisonment. However, the Special Rapporteur was informed that there was a serious backlog of up to 8,500 cases.

63. The Foreign Employment Tribunal is mandated to adjudicate cases which the Department is not specifically authorized to deal with or that are referred to it by the Department. The Special Rapporteur notes the efficient rate of case settlement of the Tribunal: since 2010, of a total of 1,424 cases, 1,079 have been settled. Penalties may include compensation to migrants, fines and imprisonment.

64. The Special Rapporteur is deeply concerned at the limited police involvement in investigating cases of deceptive recruitment and forced labour, as it severely limits migrant workers' access to justice. He notes that the Department of Foreign Employment should not retain the judicial rights to ensure access to justice through the competent courts. In that regard, the Rapporteur urges the Government to repeal existing legislation, limiting the adjudicating rights of the Department to administrative matters and determining by law the type of cases in which migrants have to be referred to the Foreign Employment Tribunal and those in which they must be referred to the formal criminal justice system.

65. Despite their gravity, most disputes are settled through informal dispute resolution at the Department of Foreign Employment and not under the civil code or the criminal legislation on trafficking. As a result, they are rarely referred to the district courts.

66. The Special Rapporteur further notes that because of the lack of conceptual clarity, victims' complaints related to the trafficking of women and girls for the purpose of sexual exploitation were almost the only cases to be investigated and tried under the criminal justice system, whereas complaints from victims involving trafficking for labour exploitation, debt bondage or forced labour were referred to the Department. He urges the Government to ensure that all cases involving trafficking, debt bondage and forced labour are properly investigated and tried under the criminal justice system. Criminal investigations could effectively deter unscrupulous recruiters from exploiting migrant workers and compensation should be paid to victims.

67. To enhance understanding of such crimes, capacity-building, including at the local level and with district judges and police, needs to be undertaken. The Special Rapporteur urges the Government to determine by law the types of cases in which migrants have to be referred to the formal judicial system. Strengthening the role of the judiciary helps to build respect generally for the rule of law in relation to labour recruitment.

68. The centralized location of the institutions dealing with violations of provisions in the Foreign Employment Act, such as the Department and the Tribunal, is an additional barrier for victims wishing to lodge a complaint, as they lack the funds for travel to and accommodation in Kathmandu.

69. Appeals against a decision taken by the Department of Foreign Employment have to be lodged with the Ministry of Labour, Employment and Social Protection within a very short time period of 35 days of the date of the decision. The Special Rapporteur urges the Government to ensure that appeals reach a court of second instance, such as is the case for appeals against a decision by the Foreign Employment Tribunal. Despite the possibility to appeal, he was informed that only a limited number of migrants make use of this provision, as they cannot afford to go through a lengthy process and use the compensation received to settle debts incurred in the recruitment process.

## **H. Relationship with destination States**

70. Although Nepal and other countries of origin have a role in preventing the abuse of their own nationals who migrate for work, the destination States are responsible for human rights violations committed against migrants on their territory. The Special Rapporteur heard many reports of abuse in destination States, including horrible stories of ill-treatment, such as migrants being killed or women being raped by their employers. Low-skilled migrants, in particular, are subject to high levels of human rights violations in many countries, including

harassment, abuse and labour rights violations. The Special Rapporteur therefore notes the need to enhance cooperation with destination States to ensure that the rights of Nepalese citizens are respected during the whole migration process.

71. The Government of Nepal has utilized bilateral instruments in the form of labour agreements and memorandums of understanding to protect its citizens in destination countries. Although it has allowed Nepalese migrants to work in 109 foreign countries, bilateral labour agreement or memorandums of understanding have been signed only with Bahrain, Japan, Jordan, Qatar, the Republic of Korea and the United Arab Emirates, while a pilot bilateral agreement has been signed with Israel.

72. Many interlocutors have praised the Government-to-Government agreement with the Republic of Korea, which was often referred to as a model example, as it facilitates migrant worker recruitment without the services of recruitment agencies and commits to providing additional skills during employment or before return. However, high recruitment costs continue to be charged to migrant workers.

73. The recently signed bilateral agreement with Jordan (2017), which provides for a standard contract for domestic workers, stipulates the number of holidays and paid sick days, and defines the minimum wage.

74. The Special Rapporteur urges Nepal to pursue the conclusion of similar agreements. They should include a uniform model contract for all workers, including domestic workers, and should ensure respect for and protection of their human rights. Labour contracts based on such a model should specify the job description, wages and labour conditions. Memorandums of understanding or bilateral agreements should be formulated in a transparent manner, with all key stakeholders involved and should be accessible to the public. In the meantime, the Nepalese authorities should cooperate closely with destination States, ensuring that the contract which is signed in Nepal is shared with the destination State for quick electronic registration, in order to prevent contract substitution.

75. The Government of Nepal, in collaboration with destination countries, should facilitate the legal remittance of earnings to benefit migrants and their families, and discourage the informal transfer of earnings.

76. The Special Rapporteur notes that initiatives from trade unions to collaborate with them should be enhanced. Such initiatives are significant, as they may increase the protection of and assistance to Nepalese migrants in destination countries.

## V. Migrant women

77. In 2015, the Government of Nepal endorsed guidelines regarding Nepalese domestic migrant workers. The guidelines require women migrants to have reached the age of 24 and prohibit women with a child below the age of 2 from taking up domestic work in foreign employment. They also include a provision for the Government to sign bilateral agreements and memorandums of understanding with destination countries to which Nepalese migrants go for domestic work. In early 2017, the parliamentary International Relations and Labour Committee instructed the Government to temporarily stop Nepalese female migrants from going to the countries of the Gulf Cooperation Council for domestic work, as a result of their visit to those countries and observation of the conditions they saw there.

78. The Special Rapporteur observed a lot of stigma around the migration of women, loosely associated with prostitution or trafficking for sex work. As women are often employed in private households, operating outside the formal economy and excluded from labour law protection, he observes that they are left in an extremely precarious situation, heavily dependent upon their employer and without any formal protection mechanism. However, the solution to the problems faced by domestic workers cannot be to discriminate against them through the imposition of bans or other means of violating their right to leave the country.

79. Such provisions only drive migration further underground and a considerable number of Nepalese women use irregular channels through India, often at the hands of unscrupulous recruiters. Others leave through official channels and with a different job description, but find themselves employed as domestic workers in the destination country. The Special Rapporteur heard multiple accounts of women who did not end up with the jobs they had agreed to, had been brought to countries different than the ones they were promised, and sometimes ended up in trafficking rings in third countries.

80. Nepalese women migrant workers need better protection from the Government. The Special Rapporteur strongly urges the Nepalese authorities to develop a human rights-based, holistic and comprehensive policy, aimed at better protection of women migrant workers in destination countries, which should be elaborated through close consultation with all relevant stakeholders, including the relevant ministries, civil society organizations, the National Human Rights Commission and women migrant workers themselves. Assistance from international NGOs and United Nations agencies would be relevant in this regard. The Special Rapporteur further urges the Nepalese authorities to ensure better protection of female domestic workers abroad and to include such provisions in any bilateral agreements or memorandums of understanding concluded with destination States. The Special Rapporteur further believes that Nepal would find it easier to negotiate the legal protection of Nepalese domestic workers abroad if it included domestic work in national labour laws, in line with ILO Convention No. 189.

## VI. Migration to India

81. India remains a major destination country for Nepalese workers, with around 37 per cent of Nepalese migrants.<sup>11</sup> Since migrants are not required to have any official documents to enter and work in India, they are not considered migrants by the Government of Nepal, which is inconsistent with the concept of migration according to international law. While there is only limited data available as to how many Nepalese migrant workers cross the border into India or Indian workers into Nepal, it is estimated that India is the country with the highest number of Nepalese migrants, who leave temporarily or seasonally, or settle there permanently. Men are typically employed as security guards, hotel staff or in the construction sector, while women are engaged in domestic work. Most of them come from Provinces 6 and 7.

82. The Special Rapporteur was also informed that in the Terai belt, there is a sizeable migration to Nepal from India. However, no official records exist on the Nepalese side.

83. The Special Rapporteur was made aware of cases of exploitation, abuse and even deaths of Nepalese migrants at the hands of employers in India. The migrants concerned or their family members were either not aware of any complaints procedure, were afraid of reprisals if they lodged a complaint, or did not think their claim would be successful. In the absence of an agreement defining the rights, needs and interests of migrants, they have very few or no means of seeking redress for violations suffered in India.

84. The Special Rapporteur is further concerned over accounts of migrant children leaving from Nepal to work in India as labour migrants and accounts of the trafficking for sexual exploitation of women and girls. The Special Rapporteur notes the positive development of the deployment of a police liaison officer in India. He also notes the need to increase the number of women police officers at local police stations and at the main border crossings and encourages enhanced training for identification of potential victims of trafficking.

85. The Special Rapporteur encourages the Nepalese authorities to ensure better protection for Nepalese citizens, including by collecting data on the types of violations and abuse incurred, developing relevant policies and opening consulates in those Indian cities where there are significant numbers of Nepalese migrants. That would ensure a communication system for rescuing stranded migrants and repatriating migrant victims of

<sup>11</sup> See Government of Nepal, *National Population and Housing Census 2011*.

trafficking and forced labour. The Government should also ensure that remittances can be transferred through financial institutions.

## **VII. Irregular migration**

86. Despite legislation that prohibits the departure of migrant workers for foreign employment via another country, the Special Rapporteur collected testimonies about large number of Nepalese migrant workers, particularly women, departing via India in order to evade government regulations and the lengthy and expensive recruitment process. They may become victims of unscrupulous agents and recruitment agencies and may find themselves in situations where they are forced to leave on forged or fake documents, or without the necessary papers.

87. Others, who leave on a labour permit, may become irregular if they overstay their visa, travel on a different visa and engage in work in the destination country, are not picked up by the company at the airport, are trafficked to another country than the one for which their labour permit and visa have been issued, or have run away from abusive and exploitative employers. Some renew their contracts in the destination country, which means they lack a valid labour permit from the Nepalese authorities. That irregularity makes them even more vulnerable to abusive treatment. Because of their status, the Nepalese authorities provide only limited support to them.

88. The Government of Nepal must protect and assist irregular Nepalese migrant workers in destination countries and facilitate their return to Nepal, regardless of their migratory status. The focus should be on monitoring recruitment agencies and punishment should be directed at them, rather than at migrants for their irregular status.

89. The Special Rapporteur was informed that irregular migrants find it difficult to access provisions in the Foreign Employment Welfare Fund, which can facilitate the return of injured or sick migrants or compensate their families in case of death. Migrants who have overstayed their visa receive only Nrs 10,000 (about \$96), instead of the Nrs 700,000 (about \$6,700), which is available to migrants in a regular situation. The renewal of labour permits should thus be facilitated at Nepalese embassies.

90. According to information from the Foreign Employment Promotion Board, the fund has accumulated Nrs 4 billion (about \$38 million). The Special Rapporteur notes that of that amount, only Nrs 1 billion (about \$9.5 million) is spent annually. He encourages the authorities to ensure that the fund can contribute to compensation for irregular migrants who have sustained injuries or an illness that has resulted in disability and/or loss of a job or death, or who need repatriating for some other reason.

## **VIII. Cross-cutting concerns**

### **A. Migration to Nepal**

91. While the main focus of his visit was labour migration from Nepal, the Special Rapporteur also looked into issues concerning migration to Nepal and notes that Nepal has historically hosted a large number of refugees, mainly from the Tibetan Autonomous Region in China and from Bhutan. The Special Rapporteur regrets that the 2015 Constitution and the Civil Act (2012) guarantee certain rights, including protection against discrimination, freedom of speech, the right of peaceful assembly, freedom of association and freedom to form and join a trade union, freedom to move and reside in any part of Nepal, and the freedom to practice any profession, only to citizens, in violation of guarantees under key international human rights law. The Special Rapporteur wishes to remind the Government of Nepal that according to international standards and that, with the exception of the right to vote and be elected and the right to enter and stay, migrants, regardless of their status, benefit from the entire human rights framework.

92. The Special Rapporteur was informed that identity documents have not been issued or renewed to Tibetan refugees since 1995, which places the majority of them at risk of financial penalties under the 1994 immigration rules for irregular entry or presence in the State party, detention, deportation or refoulement. The Special Rapporteur encourages the Government to undertake a comprehensive registration exercise of long-staying Tibetans to protect them from statelessness and which guarantees their right to live, work and study in Nepal, and allows them to travel outside Nepal.

93. The Special Rapporteur was assured that of the 111,000 Bhutanese refugees, the majority had been resettled in third countries. In the course of his visit however, he was made aware that 8,500 Bhutanese were still residing in Nepal, with no permanent resolution of their status. He encourages the Government to ensure that their stay can be regularized, either through the provision of refugee documentation or citizenship, in order to protect them from statelessness and guarantee access to all their civil, political, economic, social and cultural rights.

## **B. Access to citizenship**

94. While the Special Rapporteur notes that citizenship certificates are the primary document that gives individuals a legal identity in Nepal, he received information that more than 4 million people in Nepal are at present without citizenship certificates. He notes that citizenship identification is instrumental for day-to-day life: for instance, to apply for a passport, open a bank account, vote, access higher education and government welfare schemes, or simply to buy a SIM card for a mobile telephone. In particular, women, children born out of wedlock, or children of a refugee or naturalized parent, are deprived of part of their rights owing to a lack of citizenship certificates, as a result of limited provisions in previous legislation.

95. The Special Rapporteur notes that restrictions for women in conferring citizenship on their children independently and in the same capacity as men are set out in the new Constitution (see article 11 (5), 11 (6) and 11 (7)). He is concerned that according to these provisions, Nepalese women can only transfer citizenship by descent if the father cannot be traced. If the father is a foreigner, the child can only gain citizenship through naturalization. He notes that these provisions are particularly challenging if the husband has migrated abroad or if the child was born abroad.

96. Despite several Supreme Court decisions affirming gender equality in access to citizenship, the Special Rapporteur was informed that in practice and particularly in areas outside Kathmandu, laws continued to be implemented in a discriminatory manner, particularly against women belonging to a minority. The Special Rapporteur calls on the Government to ensure men and women have equal rights to citizenship, including the right to transfer citizenship to their children. People denied citizenship are at risk of statelessness, which denies them the protection of the State and puts them at heightened risk of violence, poverty, exploitation and other serious human rights violations.

## **C. Internal migration**

97. Owing to poverty and the lack of economic opportunities and because of climate change, a considerable proportion of the population of Nepal moves seasonally or permanently within Nepal. Most internal migrants move from the hills to the southern plains and from rural areas to urban centres.

98. The Special Rapporteur heard of bonded labour, forced labour and the trafficking of internal migrants, including children, in the agricultural, domestic, construction, service and manufacturing sectors. He was informed that several hundred children worked in the brick kiln industry. He encourages the Government to develop policies for early identification of victims, referral mechanisms, protection and assistance to persons trafficked for labour exploitation, and to increase counselling and awareness programmes. He further encourages the Government to consider internal migration for the next census or demographic survey, in order to develop policies which meet the needs of the population of internal migrants.



## IX. Conclusions and recommendations

99. The Special Rapporteur welcomes the efforts undertaken by the Government to regulate labour migration and protect the rights of Nepalese citizens migrating abroad. He notes that a series of adequate legal provisions and policies are in place, which, if implemented effectively, could prevent some of the abuses that migrants currently experience during the migration process. He also notes the need for strong rights-based, enforceable agreements with all destination States.

100. Labour migration, if properly governed, can have a positive impact on the lives of migrants and their families, as well as on the economy as a whole. However, a poorly regulated recruitment industry takes significant resources away from migrants through the charging of recruitment fees and broader economic exploitation, thus effectively disempowering the poorest. That has a negative impact on the economy of the country as a whole. The Special Rapporteur urges the Government of Nepal to develop a holistic, cohesive and human-centred approach to migration, aimed at transition to an ethical recruitment model, involving all relevant stakeholders. Allowing the absentee population to vote, would help develop a migration policy centred on the needs, interests and human rights of those concerned.

101. In order to make migration a choice and not a necessity, the Special Rapporteur invites the Government to conduct a thorough study of the root causes of migration, which are often related to discrimination, domestic violence, poverty and a lack of domestic economic opportunities. The research should also look into the social impact of migration, including its gender dimension, the impact on families and communities, caste and ethnicity, and the types of abuse migrants suffer in destination countries, including the reasons for sickness and disability and the causes of death.

102. More focus could be placed on creating income-generating opportunities in Nepal, especially for women, youth and minorities, including in rural areas. At the same time, Nepalese who wish to migrate have the right to do so; leaving any country including one's own is a human right, which applies equally to men and women.

103. Considering the lack of information and the high costs which migrant workers incur in their recruitment process or upon return to Nepal, the Special Rapporteur encourages decentralization of the management of migrant workers. The decentralization of the institutional mechanisms of foreign employment would render many services and rights more accessible to all migrants. For instance, it would enhance access to information and legal remedies, and ensure more direct contact with recruitment agencies, passport offices, and skills and pre-departure training. Decentralization of recruitment agencies could give migrants direct access to the process, eliminating the chance of being cheated by sub-agents. The process of decentralization would be especially relevant in a context where many migrants come from places other than Kathmandu.

### A. Recommendations to the Government of Nepal

104. In the light of the information received and the concerns expressed, the Special Rapporteur wishes to propose the following recommendations to the Government of Nepal. He urges the Government to consider his recommendations seriously and to implement them in cooperation with all relevant stakeholders, including the United Nations country team and civil society organizations. Technical cooperation for implementation of the recommendations could be sought from ILO.

#### Strengthening the legal and policy framework

105. The Special Rapporteur recommends that the Government:

- (a) Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;

(b) Ratify the following ILO conventions: the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Migration for Employment Convention (revised), 1949 (No. 97), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), the Private Employment Agencies Convention, 1997 (No. 181) and the Decent Work for Domestic Workers Convention, 2011 (No. 189);

(c) Ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime;

(d) Ratify the Convention relating to the Status of Refugees and its 1967 Protocol and the Convention on the Reduction of Statelessness;

(e) Ensure implementation of the 2011 United Nations Guiding Principles on Business and Human Rights implementing the United Nations “Protect, Respect and Remedy” Framework;

(f) Invest in sufficient social protection systems and create more income-generating opportunities to ensure that poverty and discrimination do not force Nepalese nationals into labour migration;

(g) Develop bilateral agreements on labour migration with destination countries that are based on international standards and prioritize the full implementation of the human rights and labour rights of migrants and fully incorporate the voices of both migrants and civil society;

(h) Continue dialogue through the regional consultative processes, ensuring that it is guided by the long-term, holistic thinking that is needed to achieve the wholesale transition to an ethical recruitment system.

#### **Effective regulation, oversight and law enforcement**

106. The Special Rapporteur recommends that the Government:

(a) Undertake all the necessary steps to prevent the exploitation and abuse of migrants and to protect their rights during the recruitment stage, while they are in service in the destination country and upon their return to Nepal;

(b) Transition to an ethical recruitment model by developing country-level and regional policies on tackling exploitative and abusive recruitment practices, which bring together the perspectives of all relevant stakeholders;

(c) Enhance the regulation and monitoring of the recruitment industry, by putting in place a comprehensive recruitment policy with high standards, developing fully robust, transparent and publicly accountable licensing systems for recruitment companies, subject to rigorous human rights and labour law due diligence, regulating irregular sub-agents and the sanctioning of unlicensed agencies, and effectively banning all types of recruitment fees paid by migrants;

(d) Ensure controls are in place to prevent the re-registration of unscrupulous agencies which have had their licence revoked. Develop a rating scheme and a blacklist, in order to assess the conduct of recruitment agencies against human rights and labour standards;

(e) Develop independent monitoring mechanisms, equipped with the necessary resources to effectively identify abuse and exploitation, including through a system based on complaints from trade unions, the National Human Rights Commission and civil society organizations, and revoke the licences of recruitment agencies that charge fees to migrants and/or have abused their human or labour rights;

(f) Ensure sufficient budget is allocated to the Ministry of Labour, Employment and Social Protection for it to effectively carry out its mandate, including by introducing e-government solutions;

(g) Fully take into account the recommendations of the National Human Rights Commission and consult the Commission in its work on migrants;

(h) Standardize contracts for migrant workers within different sectors and at different skill levels. Labour contracts based on such a standardized model should specify the job description, wages and labour conditions.

#### Access to justice

107. The Special Rapporteur recommends that the Government:

(a) Ensure that barriers to accessing justice are removed so that effective access is available to legal remedy for violations of migrant workers' rights in the context of recruitment practices and labour migration, including through decentralization of the system;

(b) Repeal the relevant legislation so that migrant workers are recognized as rights holders, with defined enforceable rights and associated remedies, while granting the police more investigative powers for complaints concerning abuse and exploitation in the recruitment process, and ensure victims have access to the formal judicial system;

(c) Strengthen the capacity of the independent judiciary, including at the local level, to provide access to justice for migrant workers who have been exploited by recruiters and punish perpetrators in a way that creates real and lasting disincentives for the mistreatment of migrants;

(d) Enhance understanding through increased capacity-building, including at the local level, concerning trafficking for labour exploitation. The extension of an invitation for a country visit to the Special Rapporteur on trafficking in persons, especially women and children or the Special Rapporteur on contemporary forms of slavery, including its causes and consequences could be relevant in that regard;

(e) Make all the services necessary for ensuring effective access to justice for all migrant workers in destination countries easily available, such as legal aid, interpretation and translation services, information about their rights and available remedies, and humanitarian visas to return to destination countries to testify and otherwise pursue justice. Bilateral agreements between countries of origin and destination should address the provision of such services.

#### Empowering migrants through information and support

108. The Special Rapporteur recommends that the Government:

(a) Decentralize the institutional mechanisms of foreign employment to ensure access to services and rights for all migrants;

(b) Increase, improve and decentralize pre-departure training and information, including on rights and redress mechanisms, promote informed decision-making and enhance the skill levels of prospective migrants, including language and general skills;

(c) Make the protection of migrants a priority concern for diplomatic missions in destination States and strengthen welfare services and consular assistance, ensuring that diplomatic missions are adequately staffed and that staff are properly trained to deal with all issues faced by migrant workers. Nepalese diplomatic missions in destination States should play a more proactive role in protecting their own nationals against abuse and be properly equipped to provide assistance to those in need. They should have female officers to deal with cases of sexual abuse, provide a local hotline free of charge 24 hours a day 7 days a week, establish a roster of competent local lawyers able to help Nepalese migrants with legal issues, and conduct frequent visits to migrant detention centres, worksites and workers' accommodation;

(d) Facilitate the repatriation of migrants in need, including those who have escaped from abusive employers or have ended up in an irregular situation, in detention

or elsewhere. Funding from the Foreign Employment Welfare Fund should be made available in that regard;

(e) Conduct independent autopsies on the bodies of Nepalese migrant workers who die abroad and consider the deployment of health attachés to major destination countries for that purpose;

(f) Establish a sustainable reintegration policy and enhance the services provided for the reintegration of returned migrants, including psychosocial services and livelihood opportunities, particularly for those who have experienced abuse during their migration process.

#### **Women migrants and domestic workers**

109. The Special Rapporteur recommends that the Government:

(a) Withdraw the discriminatory restrictions and bans imposed on women migrant workers;

(b) Establish a standard contract for domestic workers, to be included in all bilateral agreements, which should include provisions on, inter alia, wages, working hours, working conditions, overtime pay, annual leave and effective remedies, as set out in ILO Convention No. 189;

(c) Establish a reference wage for domestic workers, reflective of skills and experience, which should apply to all workers in all destination States and be included in bilateral agreements;

(d) Enhance pre-departure training for domestic workers, particularly focusing on language skills, skills relevant to their work and information on their rights and how to claim those rights.

#### **Cross-cutting issues**

110. The Special Rapporteur recommends that the Government:

(a) Revise the current citizenship act and civil registration laws to bring them into line with the country's international obligations, removing any discriminatory provisions;

(b) Ensure that all persons, regardless of citizenship or migration status, enjoy the rights provided for in the Constitution without any discrimination, in accordance with international human rights law;

(c) Register all Tibetan and Bhutanese refugees on its territory and provide them with proper identity documents.

### **B. Recommendations to destination States**

111. The Special Rapporteur recommends that destination States:

(a) Extend labour protection in national law to domestic workers, including by formulating provisions related to minimum wages, payment for overtime, working hours, working conditions, days of rest, annual leave, freedom of association and social security protection, including with respect to maternity and pension rights and health insurance, as well as effective recourse and remedies. Ensure that migrants have a written contract in a language they can understand, stating their specific duties, working hours, remuneration, days of rest and other conditions of work. Model contracts should be adopted for this purpose;

(b) Prevent persons who abuse domestic workers from hiring more domestic workers in the future. Labour inspections should be undertaken on a regular basis and unannounced, including in employers' households. States should ensure that migrant domestic workers have access to complaint mechanisms and legal assistance;

- (c) Put in place provisions that decrease the cost of remittances and allow for the portability of social benefits.

## **C. Recommendations to the private sector**

112. The Special Rapporteur recommends that the private sector:

- (a) Lead by example in the development and implementation of human rights due diligence undertaken in relation to government contracts;
  - (b) Prioritize and reward ethical recruitment agencies in the contracting of government work and ensure that the costs of ethical recruitment are factored into the tendering process;
  - (c) Have a zero-tolerance policy on the charging of fees and broader abuses of migrant workers' rights in any part of the government supply chain;
  - (d) Ensure regular and robust independent audits to ensure compliance.
-