

# 4

## Abuses and Relevant Human Rights Standards in UN Instruments

The following list of abuses of the rights of Asian women migrant workers is organized to reflect the stages in the migration process, namely the period before departure from the sending country, the period spent in the receiving country, and departure from the receiving country. It also deals with abuses that span the entire migration process, such as contemporary forms of slavery. NGOs can use this list when analyzing cases of human rights violations against women migrant workers.

### A. Abuses Suffered by Asian Women Migrant Workers

#### 1.0.0 Pre-Departure Abuses

1.1.0 *Recruitment*: this section deals with abuses by recruitment and/or placement agencies or agents.

1.1.1 Fees: the fees charged by recruiters are excessive.

1.1.2 Information: the intentional provision of false or misleading information by the recruiter to the worker or by the employer to the recruiter or the worker.

1.1.3 Non-deployment: failure to send the worker abroad as promised.

NB: For other abuses that include forced confinement and other slave like conditions as well as the provision of fraudulent travel documents, refer to 5.0.0 Abuses over the entire migration process.

#### 2.0.0 On-Site Abuses

2.1.0 *Contract Violations*: the terms of the oral or written employment contract are not respected by the employer.

2.1.1 Contract Substitution: the worker is forced to sign a new contract upon arrival in the receiving country. The new terms of the

contract may be unfavourable to the worker. For example, the new contract may involve a different position, employer, number of employers or work of a different nature from that stipulated in the original contract.

- 2.1.2 Additional Tasks: the worker is forced to perform tasks for which she was not recruited and/or which are not stipulated in her employment contract.
- 2.1.3 Hours: the worker has excessive or irregular working hours.
- 2.1.4 Leisure: the worker is given no or insufficient leisure time.
- 2.1.5 Wages: the worker is not paid for work performed or payment is delayed; the worker is underpaid based on wages promised or national minimum wage, where applicable.
- 2.1.6 Deductions: illegal deductions are made from the worker's salary (for e.g., to pay for placement fees or in the form of compulsory savings).
- 2.1.7 Benefits: worker is denied benefits to which she is entitled (for e.g., holidays with pay, sick leave with pay, and maternity leave).
- 2.1.8 Dismissal: worker is dismissed without cause, notice and/or benefits.
- 2.1.9 Other violations: other breaches of the employment contract (e.g. for live-in domestic workers this includes inadequate accommodation, food and other provisions).
- 2.2.0 *Occupational Health & Safety:*** the worker's physical and/or mental health are compromised by her working conditions.
- 2.2.1 Training & Information: the worker is not provided with occupational health and safety information or training in her own language; the information and training provided are inadequate.
- 2.2.2 Inspection: there is a lack of adequate workplace inspection.
- 2.2.3 Exposure to Risks: the worker is exposed to occupational risks which compromise her health and safety; the worker is not provided with protective gear or equipment.
- 2.2.4 Medical Care: medical care is not provided or is inadequate, health care information and services are inaccessible or not responsive to their needs.

### **2.3.0 *Psychological and Physical Abuse***

2.3.1 Psychological: psychological abuse, including verbal abuse and denial of the right to privacy.

2.3.2 Physical: physical abuse, including beatings, and forced drug consumption.

2.3.3 Sexual: sexual abuse and harassment, including rape and forced prostitution.

2.3.4 Mandatory Medical Testing: this includes testing for HIV/AIDS, pregnancy tests required of migrant workers before, upon their entry or on a regular basis during their contract in the receiving country.

**2.4.0 *Discrimination***: particularly, discrimination on the basis of sex and national origin.

2.4.1 Employment: any distinction, exclusion or preference made on the basis of a prohibited ground of discrimination which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation (e.g., inadequate provision for food, clothing and shelter); includes discrimination in the hiring process (e.g., mandatory pregnancy tests for female domestic workers).

2.4.2 Benefits & Services: the worker and/or her family are discriminated against in the provision of social security benefits (e.g., worker's compensation, unemployment benefits, and retirement pensions); worker and/or her family are denied access to social programs, such as education and health care, on the basis of a ground of discrimination prohibited under international law.

2.4.3 Application of National Standards: national standards such as the minimum wage and number of hours of work do not apply to migrant workers and/or their families.

2.4.4 Other: other forms of discrimination, including interference with the worker's religious and cultural practices; and racial profiling by immigration or law enforcement officers.

### **2.5.0 *Family Issues***

2.5.1 Family Responsibilities: the worker's conditions of employment do not take her family responsibilities into account.

- 2.5.2 Reunification: the receiving State disregards the right of the worker and her family members to live in the same State or to visit one another.
- 2.5.3 Status of Children: the legal status of children born in the receiving country and the status of the children accompanying the worker to the receiving country.
- 2.5.4 Children's Rights: general human rights and fundamental freedoms applying to children in international law.
- 2.6.0 *Mobility Rights***: the worker's freedom of movement is infringed.
  - 2.6.1 Forcible Confinement: the worker is physically confined to her place of work or other location.
  - 2.6.2 Restricted Mobility: the worker is not allowed to move about freely (e.g., she is prevented from leaving the country to visit family).
  - 2.6.3 Confiscation of Documents: confiscation and deprivation of the worker's passport and other travel or identity documents.
  - 2.6.4 Choice of Employment: the worker is denied the right to change employer or employment.
  - 2.6.5 Choice of Residence: the worker is denied the right to choose her place of residence.
  - 2.6.6 Authorization of residence: Includes the right of the worker to receive, from the State in which she is working, the authorization of residence for the time that the worker is authorized to work in that State.
- 2.7.0 *Other Abuses***
  - 2.7.1 Freedom of Association: the worker is denied the right to join or form a workers' organization.
  - 2.7.2 Reproductive Rights: the worker's reproductive rights are infringed (e.g., the worker is forced to undergo pregnancy testing, use contraceptives or abort her pregnancy).
  - 2.7.3 Name Change on Documents: the worker's real name is changed on identity, work and/or travel documents so that it is difficult to establish her whereabouts.

- 2.7.4 Freedom of thought, conscience and religion/opinion/ expression: The migrant worker is denied her right to her own religious beliefs and practices, and freedom to seek, receive and impart information and ideas of all kinds, subject to certain limitations, including the respect of public morals and national security.
- 2.7.5 Privacy: The migrant worker is subjected to arbitrary or unlawful interference with her right to privacy, family, home or other communication.
- 2.7.6 Property rights/ earnings/tax issues: The migrant worker is prohibited from transferring earnings and savings; higher taxes are imposed on migrant workers than on nationals; and migrant workers are not exempt from import/export duties and taxes for personal household effects.
- 2.7.7 Cultural identity: The right of the worker to have her cultural identity respected by the State in which she is working.

### **3.0.0 Difficulties in Exercising Legal Rights**

- 3.1.0 *Legal Action*: the worker has difficulty pursuing legal action against her employer or recruiter.
- 3.1.1 Corruption: corrupt judiciary or law enforcement authorities impede the worker from exercising her legal rights.
- 3.1.2 Renewal of Documents: the worker has difficulty renewing visas or work permits. As a result, she may be unable to remain in the host country or support herself while the legal process is underway.
- 3.2.0 *Arrest and Detention*
- 3.2.1 Torture: the worker is subjected to torture and other cruel, inhuman or degrading treatment or punishment.
- 3.2.2 Legal Rights: the worker's legal rights are violated (e.g., her right to due process which includes the right to consult an attorney and to trial before an impartial body).

### **4.0.0 Final Departure**

#### **4.1.0 Repatriation and Reintegration**

- 4.1.1 Expulsion: the worker is forcibly repatriated to her home country; she may be forced to pay the cost of deportation or repatriation back to her home country when she is not legally required to do so.

- 4.1.2 Reintegration: abuses pertaining to the worker's reintegration into her home country.
- 4.1.3 Regularization: In the case of migrant workers and members of their families, the State does not take appropriate measures to ensure that the situation does not persist.
- 4.1.4 Participation in public affairs of state of origin: The migrant workers is denied her right in her state of origin, to participate in public affairs, as well as the right to vote and to be elected to office.

## **5.0.0 Abuses Over The Entire Migration Process**

### **5.1.0 *Contemporary Forms of Slavery***

- 5.1.1 Trafficking – “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.” (Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, art 3(a)).
- 5.1.2 Forced Labour or Debt Bondage: forced labour (also referred to as compulsory labour) refers to all work or service that is exacted from a person under the menace of any penalty and for which the said person has not offered herself voluntarily. Debt bondage occurs when a debtor pledges her services or those of a person under her control to work for a particular employer in order to pay off her debt while the value of the service is not applied to the debt or the length or nature of the service is not defined or limited. (Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, art. 1a).
- 5.1.3 Forced confinement and other slave-like conditions which occur onsite in the country of destination; in the home country while prospective migrant workers await deployment or complete their training; or in other phases of migration.
- 5.2.0 *Smuggling of migrants* is “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the

illegal entry of a person into a State Party of which the person is not a national or a permanent resident.” (Protocol Against the Smuggling of Migrants by Land, Sea and Air, art. 3a).

## **B. List of Relevant UN Treaties and Declarations**

### **UN Treaties**

*MWC*: International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families

*CCPR*: International Covenant on Civil and Political Rights

*CCPR OPI*: International Covenant on Civil and Political Rights First Optional Protocol

*ESCR*: International Covenant on Economic, Social and Cultural Rights

*CERD*: International Convention on the Elimination of All Forms of Racial Discrimination

*CEDAW*: Convention on the Elimination of All Forms of Discrimination Against Women

*CEDAWOP*: Convention on the Elimination of All Forms of Discrimination Against Women – Optional Protocol

*CRC*: Convention on the Rights of the Child

*CAT*: Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

*CSTP*<sup>54</sup>: Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others

*CATOC*: Convention Against Transnational Organized Crime

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<sup>54</sup> The preamble of the *CSTP* states that it is a consolidation of four earlier treaties and a draft 1937 convention. The four earlier treaties were the:

*International Agreement for the Suppression of the White Slave Traffic (1904)*

*International Convention for the Suppression of the White Slave Traffic (1910)*

*International Convention for the Suppression of the Traffic in Women and Children (1921)*

*International Convention for the Suppression of the Traffic in Women of Full Age (1947)*

*PPSPTP*: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (supplementing the United Nations Convention against Transnational Organized Crime)

*PASMLSA*: Protocol against the Smuggling of Migrants by Land, Sea and Air (Supplementing the United Nations Convention against Transnational Organized Crime)

### **UN Declarations**

*UDHR*: Universal Declaration of Human Rights

*DHRNN*: Declaration on the Human Rights of Individuals Who are Not Nationals of the Country in which They Live

**Table 4-1. Abuses & Relevant Human Rights Standards in UN Instruments**

*NB: The numbers under each UN Treaty column, e.g. CCPR, refer to relevant articles in said treaty.*

Instrument		MWC	CCPR	ESCR	CERD	CEDAW	CRC	CSTP	CAT	UDHR	DHRNN	CATOC	PPSPTP	PASMLSA
<b>List of Abuses</b>														
<b>1.0.0 PRE-DEPARTURE ABUSES</b>														
<b>1.1.0</b>	<b>Recruitment</b>													
1.1.1	Fees	37						20						
1.1.2	Information	37, 38, 65						20			3			
1.1.3	Non-deployment													
<b>2.0.0 ON-SITE ABUSES</b>														
<b>2.1.0</b>	<b>Contract Violations</b>													
2.1.1	Contract Substitution	25		2,3,6,7	2,5	11	32			23	8			
2.1.2	Additional Tasks	25		2,3,6,7	2,5	11	32			23,24	8			
2.1.3	Hours	25		2,3,7	2,5	11	32			23,24	8			
2.1.4	Leisure	25		2,3,7	2,5	11	32			23,24	8			
2.1.5	Wages	25		2,3,7	2,5	11	32			23	8			
2.1.6	Deductions	25		2,3,7	2,5	11	32			23	8			
2.1.7	Benefits	25,27,43		2,3,7,9,12	2,5	11	32			21-23,25	8			
2.1.8	Dismissal	25		2,3,7	2,5	11	32			23	8			
2.1.9	Other Violations	20,33, 43, 47, 54	2,3,11	2,3,6,7	2,5	11	32			23	8			
<b>2.2.0</b>	<b>Occupational Health &amp; Safety</b>													
2.2.1	Training & Information	43	2,3,6,7		11,12,14	32	16,20			19	8			
2.2.2	Inspection	25	2,3,7,12		11	32					8			

Instrument		MWC	CCPR	ESCR	CERD	CEDAW	CRC	CSTP	CAT	UDHR	DHRNN	CATOC	PPSPTP	PASMLSA
<b>List of Abuses</b>														
2.2.3	Exposure to Risks	25	2,3,7,10,12	5	11	32				3	6,8			
2.2.4	Medical Care	25,28	2,3,7,12	5	11,12,14	32,39				3,21,25	8			
<b>2.3.0</b>	<b>Psychological Physical &amp; Sexual Abuse</b>													
2.3.1	Psychological	10,16,17	2,3,6,7,9,10,17	2,3,7	5	GC1955	19,36,37,39		All	3,5	5,6		3,6	9,16
2.3.2	Physical	9,10,16,17	2,3,6-9,10,17	2,3,7	4,5	GC19	6,19,36,37,39		All	3,5	5,6		3,6	9,16
2.3.3	Sexual	10,16,17	2,3,6-9,10,17	2,3,7	4,5	6, GC 19	19,34,36,37,39	All	All	3,5	5,6		3,6	16
2.3.4	Medical Testing	10,14,16,25	2,3,7,9,10,17	2,3,7	4,5	11			16	3,12	5,6		3	
<b>2.4.0</b>	<b>Discrimination</b>													
2.4.1	Employment	1,24,25		2,3,7	All	All			1,2,7,23				6	
2.4.2	Benefits & Services	1,25,27,28,43,54		2,3,7,9,11,13	All	All	23,24,26	16,19	1,2,7,22,23,, 25	2,3,8	3,8		6	
2.4.3	Application of Nat'l Standards	18,25,27,43,45,54,55,70		2,3,7	All	All		5	2,7	2,3,4,8				
2.4.4	Other	1,7,12,13,17,18,25,31,33,37,42,54,55	2,3,16,18,19,20,27	2,3,7,13,15	All	All			1-3,7,12,14,16-19,22-28	2-5,7		16		
<b>2.5.0</b>	<b>Family Issues</b>													
2.5.1	Family Responsibilities	4,17,38,42,44,50	2,3,23	2,3,10,11		,11,13,14,16	18			16,25	5,7			

55 GC19 – General Comment 19 for CEDAW.

Instrument		MWC	CCPR	ESCR	CERD	CEDAW	CRC	CSTP	CAT	UDHR	DHRNN	CATOC	PPSPTP	PASMLSA
List of Abuses														
2.5.2	Reunification	44					7-10,20				5			
2.5.3	Status of Children	29	2,3,24	1	5	9,16	8,22	17		15	5			16
2.5.4	Children's Rights	10,11,17,18,30,45	2,3,24	2,3,10-14	5	16	All			3,25,26	5,7		3,6	16
<b>2.6.0</b>	<b>Mobility Rights</b>													
2.6.1	Forcible Confinement	8,16,39	2,3,9,12		5	6,15				3,12,13	5		3	
2.6.2	Restricted Mobility	8,38,39	2,3,9,12		5	6,15				3,12,13	5			
2.6.3	Confiscation of Documents	14,21	2,3,9,12,17		5	15				3,12,13	5			
2.6.4	Choice of Employment	51-53	2,3,12	2,3,6	5	11				23	5			
2.6.5	Choice of Residence	39	2,3,12,17		5	15				12,13	5			
2.6.6	Authorization of Residence	49												
<b>2.7.0</b>	<b>Other Abuses</b>													
2.7.1	Freedom of Association	26,40	2,3,21,22	2,3,8	5	14	15			20,23	5,6,8			
2.7.2	Reproductive Rights	14, 16	2,3,17			12				25	5,8			
2.7.3	Name Change on Documents	14,21	2,3,17				8			6,15	5			
2.7.4	Freedom of thought, conscience and religion/opinion/ expression	12,13	18,19,22	8	5		12-14			18,19	5,8			
2.7.5	Privacy	14					16			12	5		6	
2.7.6	Property rights/ earnings/tax issues	15,32,46-48			5	13,15,16				17	5,9	12-14		
2.7.7	Cultural identity	31,45,64			5	13	30,31			27	5			

Instrument	MWC	CCPR	ESCR	CERD	CEDAW	CRC	CSTP	CAT	UDHR	DHRNN	CATOC	PPSPTP	PASMLSA
<b>List of Abuses</b>													
<b>3.0.0 DIFFICULTIES IN EXERCISING LEGAL RIGHTS</b>													
<b>3.1.0</b>	<b>Legal Action</b>												
3.1.1	Corruption								8-11	5	8,9		
3.1.2	Renewal of Documents											8	
<b>3.2.0</b>	<b>Arrest/Detention</b>												
3.2.1	Torture	9,10,17	2,3,6,7,10		5	37,39		All	3,5,9	5,6			16
3.2.2	Legal Rights	16-19, 20,24,54	2,3,9-11 14-16,26		5,6	15	12,40	5	13,14,15	3,6-11	2,5,7	16,18,23, 24	6,14 2,5,9,14,1 6,19
<b>4.0.0 FINAL DEPARTURE</b>													
<b>4.1.0</b>	<b>Repatriation &amp; Reintegration</b>												
4.1.1	Expulsion	8,20-23, 49,50,56	2,3,12,13					19	3	9, 13-15	7	16	7,8
4.1.2	Reintegration	71, 67			5	8,10,39	18,19			13			18
4.1.3	Regularization	69											
4.1.4	Participation in public affairs of state of origin	41								21			
<b>5.0.0 ABUSES OVER THE ENTIRE MIGRATION PROCESS</b>													
<b>5.1.0</b>	<b>Contemporary Forms of Slavery</b>												
5.1.1	Trafficking	11,16,68	2,3,8		6	11,34,35	1-4,16,17,20			3-5	5,6	All	2,5
5.1.2	Forced Labour or Debt Bondage	11,16	2,3,8	1,7	6	11,34,35,38	2-4			3-5,17	5, 9	All	
5.1.3	Forced Confinement, etc.												
5.2.0	Smuggling												All