

Research-Report on The Situation of the Rights of Migrant Workers

Recruitment Practices and Access to Justice of
Migrant Workers



National Human Rights Commission

Harihar Bhawan, Lalitpur, Nepal

November, 2019



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Statement/Remarks

Migration is a regular process taking place in the world. It has created situations of both opportunities and challenges while its management is a major challenge for the States in today's context. Various standards have been developed at the international level to utilize the opportunities and address the challenges, while different policies, legislation and standards are found to have been established in order to face and address the challenges within the States. The problem of migrant workers is not only the problem of a particular State but stands as a problem and challenge of the origin country, transit country and the destination country. Bilateral labour agreement, monitoring, understanding among various countries, dialogue and talks are some of the pertinent examples of practices oriented towards resolving the problem. In this regard, the labour agreement by Nepal with various countries can also be taken as an example.

Not only bilateral but multi-lateral (regional) efforts are also being made towards resolving the problems being faced by the migrant workers. In this context, multi-lateral deliberations like the Colombo process, Abu Dhabi dialogue, Bali process are taking place for meaningful dialogue to address the problem. International instruments of human rights including the Convention on the Protection of the rights of Migrant Workers and their families, 1990 and International Labour Convention (ILO) Conventions related to the migration have also established provisions for the protection of the rights of the migrant workers. As a multilateral effort, the Sustainable Development Goals (SDGs) (2015-2030) has also accorded priority to migration. It comprises a goal to protect labour rights and promote safe working environment. As a result, recognizing the fact that migration is not the problem of any particular country but a problem of the entire world, the Global Compact on Safe, Orderly and Regular Migration under the leadership of the United Nations covers all dimensions of international migration through the identification of twenty-three objectives. These twenty-three objectives were endorsed by the United Nations General Assembly on 19 December 2018.

If we are to look at the efforts of the national human rights institutions (NHRIs) in the protection of the human rights of migrant workers, they are found to have



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begun working since 2004 through conclusions and agreements of various international conferences of the NHRIs. The contributions made by the NHRIs include policy recommendations, monitoring, receiving complaints/grievances, and bilateral understandings for protection. In this regard, the National Human Rights Commission of Nepal had signed a memorandum of understanding with the National Human Rights Commission of Republic of Korea. Currently, a MoU is being signed with the National Human Rights Committee of Qatar while efforts are being made to sign a MoU with national human rights institutions of other destination countries. The NHRC has also been carrying out works related to monitoring, study and research.

The facts outlined in this research-report through research on recruitment practices and access to justice of the migrant workers show that the agents have a major role in connecting those willing to go for foreign employment with the recruitment companies and in the fraud that takes place during the recruitment process, including making false promises. The fraud, false promises and incitement that take place during the recruitment process of the migrant workers are found to have created obstacles in their access to justice.

Hence, the Government of Nepal needs to take legal measures to address the aforementioned problems while developing an atmosphere for fair recruitment process along with enhancement of the human resource and institutional capacity of the judicial bodies, regulatory bodies and the authorities assigned to provide compensation and privileges. Likewise, the private companies need to operate their business by maintaining good conduct within the parameters of the acts and regulations.

Finally, I would heartily thank the group of experts and employees including honourable member Sudip Pathak for playing a leading role in conducting this research.

A. R. Sharma
Anup Raj Sharma
Chairperson



Foreword

Migration is a regular process taking place globally. It has been a problem for the destination countries to address the problems seen in migration for foreign employment while fair recruitment process is more challenging. Both origin and destination countries are taking concrete steps to address this challenge. However, the challenges have not been addressed as much as expected. The number of people going to look for better work in foreign employment is increasing as the destination countries continue to demand for migrant workers for their nation's prosperity while employment opportunities are not enough in the home country, coupled by the need to provide financial support to the household and families. It is basically due to these reasons that migrant Nepali workers go to the destination countries for foreign employment.

Despite efforts made by the Government of Nepal to protect the rights of those going for foreign employment through the formulation and enforcement of legislation, regulation, procedures, directives and standards, it is a bitter truth that the Nepalis going for foreign employment continue to face many problems. Taking these problems into consideration, the National Human Rights Commission (NHRC) has concluded this research with a priority for addressing the problem with facts and data. In course of the study, the NHRC held consultation and discussion with all sides concerned, collected information and data, and carried out an on-field research based on a questionnaire with the victims and those wishing to go for foreign employment. It is expected that the facts and conclusions from this study would help protect and promote the human rights of the returnee migrant workers, of those going for foreign employment and their families.

The Foreign Employment Act, 2064 mandates the Department of Foreign Employment to monitor the private companies sending workers for foreign employment. However, very little monitoring has been done, and is limited to monitoring only with no numbers to count on the actions taken. The Constitution of Nepal guarantees adult franchise but the Nepali citizens going for foreign employment are deprived of their right to vote. To ensure



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this right, the Supreme Court has already issued a mandamus order and hence there is an urgent need for the Election Commission to take immediate steps towards implementing the order and guaranteeing the right. It is also the major duty of the Government of Nepal to remove the age-limit imposed on women going for foreign employment and instead create an atmosphere where they can go in a safe and secured manner. Furthermore, all concerned agencies need to seriously work towards implementing their programmes in a planned manner to resolve the problems. This study has shown that there is lack of information about where can the victims of foreign employment go for filing complaints and seeking justice in an easy and efficient manner. As a result, a provision needs to be made through the local authorities to provide the official information towards that end. Despite legal provisions, problems have been seen in seeking justice in an easy and efficient manner.

This is the second effort of the NHRC to carry out a study for the protection of the rights of the migrant workers. Though this study has not covered all the issues and problems of the migrant workers, research has been done on recruitment practices and access to justice, which remains as the major problem for them. In this regard, this study also points out the need for further detail study/research on this matter. Though comprehensive coverage was not possible due to various limitations in course of the study, this study has made an effort to clearly outline the problems and the solution measures. I believe that this study report would prove to be an official document for the government, non-government organisations, international development partners and the private sector. The suggestions as well as trust, encouragement and support received from the National Planning Commission, various agencies of the Government of Nepal, non-government organizations, Nepalis working in the field of migration, International non-government organisations, UN agencies has motivated the NHRC to continue carrying out such study-research, along with protection of human rights in the future.

I would like to express my heartfelt gratitude to representatives of Government of Nepal, the development partners, non-government organisations and of the private sector organisations who accepted our invitation for meetings and consultation and provided their inputs in person. I also thank Consultant



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Expert Rameshwar Nepal who performed his task with sincere dedication to bring the study-research to its current form, and to Deputy Director Swarnima Bhandari for her advice and inputs, Kamal Thapa Kshetri for coordinating the study as a member of the research team, Ravi Lal Nepali, Assistant Prof. Bijaya Dahal and to the Commission's Provincial Officers and support staff, and to Yadav Paudel for his support during the field mission.

Likewise, I would heartily thank Paurakhi Nepal, Kathmandu and Sindhupalchowk, Safe Migration Project Kathmandu and Dhanusa, and all those who provided their support to the study and research work in Achham, Dailekh, East Nawalparasi and West Nawalparasi, Sunsari and Morang districts. Finally, I look forward to receiving creative inputs to any shortcomings found in this study and am confident that it will become more refined in the next research.

Sudip Pathak

Member

Overseeing Migrant Workers' Issue

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List of Abbreviations

CDO: Chief District Officer

CIAA: Commission for Investigation of Abuse of Authority

CIB: Central Investigation Bureau

EPS: Employment Permit System

DoFE : Department of Foreign Employment

EPAN: Ethics Practitioners Association of Nepal

FEPB : Foreign Employment Promotion Board

FGD: Focused Group Discussion

HIV: Human Immunodeficiency Virus

IDI: In-Depth Interview

GCM: Global Compact of Migration

GDP: Gross Domestic Product

GoN : Government of Nepal

ILO: International Labour Organization

IOM: International Organisation of Migration

MoLESS: Ministry of Labour, Employment and Social Security

NAFEA : Nepal Association of Foreign Employment Agencies

NHRC: National Human Rights Commission

SaMi: Safer Migration Project

SDG: Sustainable Development Goals

UDHR: Universal Declaration of Human Rights

Chapter-One

Introduction

'We were told that the work would be that of a driver with 1800 Qatari Riyal as monthly salary, but I found labour permit stating my job type as labourer with monthly salary of 900. They took 105,000 from me but gave me a receipt of only 10,000. They instructed me to say, "I paid only 10,000 rupees" and video recorded it. The documents were provided on the day of the flight, outside the airport terminal. I came to know that I had been cheated only after reaching Qatar.

The employer company put me to work for 16-17 hours a day of load, unload and heavy work. If I had known that it would be such work, then I would not have gone. I could not do the work at all. My family sent me the ticket from Nepal by paying 22,500 rupees, and I returned home in one month and five days I had left for Qatar. Luckily, the Company Manager was a kind soul and allowed me to return home with 300 Qatari Riyal as Visa expenses. I lost such huge amount of money taken as a loan with 36% interest per annum and neither got a job. I did not have any information about where to file a complaint upon facing such problem and about how can I get my money back.'

- *Ramsharan (name changed), a returnee migrant worker from Qatar¹*

Ramsharan, 51, of Chitwan district, who had gone to Qatar in January 2019 Magha told National Human Rights Commission that he was very badly cheated by recruiting company, as a result of which he lost a big amount that he had taken as a loan in high interest rate. He returned back to Nepal in one month five days after reaching Qatar, because the recruitment company in Nepal had sent him after getting labour permit for a work and salary, which was different than what he was promised. Though he did not know where to file a complaint in such case, he had gone to a media thinking if a news report was filed then it would exert some pressure on the recruitment company. The media house however advised him to go to the Department of Foreign Employment, where he filed a complaint. Even though he had lost more than 140,000 rupees including the recruitment fee paid to the agency, medical examination cost, Visa fee charged by the employer in Qatar and the return ticket from Qatar, the agency returned him only 60,000 rupees.

¹ Interview with Ramsharan in Kathmandu by NHRC Research Team on 12 April 2019

According to Foreign Employment Act, 2007², even though such act is a punishable offense, the agency recruiting him with false information and the local agent who linked him to the agency were not punished.

Everyday hundreds of Nepalis like Ramsharan leave for foreign employment. Though some of them are able to make some income and run their family expenses or make some savings, the research by NHRC showed that many people face problems like Ramsharan or worse than his.

Around 500,000 Nepalis join the Nepali labour market every year.³ Even though the Constitution of Nepal recognizes right to employment and labour as fundamental rights⁴, of those joining the labour market every year only few thousand get employed inside the country. As a result, hundreds of thousand Nepalis are compelled to make foreign employment as an alternative.

1. Number of People who have Migrated for Foreign Employment

In the fiscal year 1993/94, a total of 3,605 people are found to have migrated for foreign employment and 20 years after in the fiscal year 2013/14, the number of people acquiring labour permit for foreign employment had reached 519,638.⁵ Including the number of people acquiring re-permit and those migrating for foreign employment through informal channel takes the number to more than 750,000 annually. As the records of those migrating for employment in India is not maintained, this number would become higher if the number of those going to India is also added to it.

People in Nepal go for foreign employment from almost all the parts of the country. According to a World Bank study, almost half of the households have a family member abroad or has returned from abroad.⁶ And of those going abroad, majority have gone for employment.

According to the DoFE, as of mid-June 2019, a total of 4,599,567 people have migrated for foreign employment (except India) after acquiring labour permit.⁷ Of them, 218,276 are women and 4,381,294 are men.

2 *According to Foreign Employment Act, 2007*

3 *Economic Survey, 2018/19: Government of Nepal, Ministry of Finance, p. 61.*

4 *Constitution of Nepal, Article 33 and 34 respectively.*

5 *Labour migration for foreign employment, Status report of Nepal 2015/16 – 2016/17: GoN, MoLESS, April 2019, p.7*

6 *World Bank, 2011. Large-Scale Migration and Remittance in Nepal : Issues, Challenges, and Opportunities. World Bank Poverty Reduction and Economic Management Sector Unit: South Asia Region, p.26*

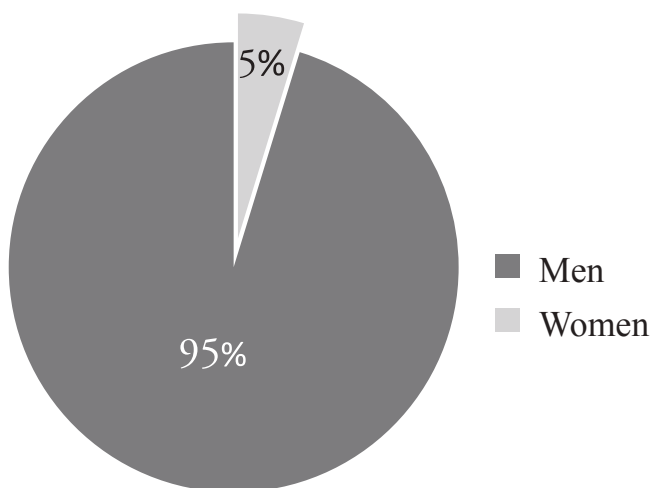
7 *Includes data calculated by adding figures of F/Y 2018/19 up to mid-June 2019 and the aggregated data up to mid-July 2018 as published by Nepal government.*

Table 1.1
People who have gone for foreign employment after acquiring labour permit

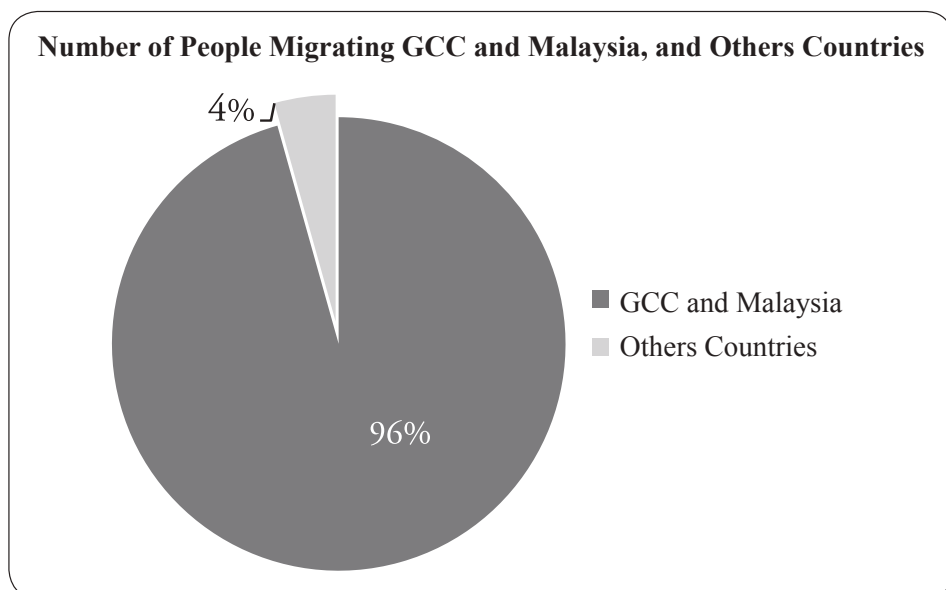
S. No.	Country	As of mid-June 2019		
		Women	Men	Total
1.	Qatar	19,254	1,248,491	1,267,745
2.	Malaysia	30,065	1,290,924	1,320,989
3.	Saudi Arabia	8,321	913,938	922,259
4.	United Arab Emirates	59,126	569,795	628,921
5.	Kuwait	42,677	113,585	156,262
6.	Bahrain	4,445	51,666	56,111
7.	Oman	5,717	31,989	37,706
8.	South Korea	3,711	58,593	62,304
9.	Lebanon	11,542	1,231	12,773
10.	Israel	4,492	2,323	6,815
11.	Afghanistan	52	13,583	13,638
12.	Japan	1,006	18,272	19,278
13.	Others	27,865	66,901	94,766
	Total	218,276	4,381,294	4,599,567

Source: Department of Foreign Employment, June 2019

Those going for foreign employment with labour permit



Amongst the Nepali Migrating abroad so far for employment 43,89,993 have migrated to six Gulf Cooperation Council (GCC) Countries. (Qatar, Saudi Arabia, United Arab Emirates, Kuwait, Bahrain and Oman) and Malaysia which is 95.44% of the total.



2. Countries Approved for Employment

The Government of Nepal has opened 110 countries (see Annex-1) to go for employment in an institutional manner (i.e. through recruiting agencies). Of them, currently 3 countries⁸ have been halted and hence labour permit is provided institutionally to 107 countries. Likewise, labour permit is issued to go for employment in 172 countries individually.

3. Labour Sector where Nepali Workers go

Majority of the people going for foreign employment from Nepal go to work in the construction, production sectors and for domestic work, of which most are recruited and sent for work without sufficient skills or technical knowledge about the related work. According to data maintained by the DoFE, as of Fiscal Year 2013/14, of those going for foreign employment 74 % are unskilled, 12 % are semi-skilled, 14 % are skilled and 1 % are highly skilled or professional.⁹

⁸ *Iraq, Afghanistan Red Zone and Libya.* Source: DoFE website, <http://DoFE.gov.np/recognized.aspx>, accessed on 8 May 2019

⁹ *Labour migration for foreign employment, Status report of Nepal 2015/16 – 2016/17: GoN, MoLESS, April 2019, p.52*

4. Contribution of Labour Migration in Economic Sector

In the present situation where employment is not generated inside the country for the Nepalis who enter the labour market of Nepal every year, foreign employment is the only significant measure to resolve the problem of unemployment at the moment. The people going for foreign employment having been making notable contribution to the country's economy. In the first 10 months of the current fiscal year 2018/19, Nepal received remittance worth 7 billion 25.3 million rupees¹⁰ sent by the migrant workers. According to Nepal Rastra Bank this amount is worth 25.1% of the gross domestic product or GDP¹¹.

A total of 55.8 per cent of the households in Nepal receive remittance¹². According to a study of the World Bank, Nepal stands in the third position among countries receiving the highest amount of remittance.¹³ For many Nepali family's remittance has had an important contribution to meet their daily needs or maintain one's future (for example, spending in children's education, buying land, construction house or investment in small businesses). Due to foreign employment, it has not only provided those seeking to address unemployment or alternative employment a kind of alternative but also brought into Nepal skills and expertise from abroad.

5. Ways of Migrating for Foreign Employment

People go or are taken for foreign employment in basically five ways:

- a. Third world countries with institutional labour permit: Majority of the Nepalis wishing to go for foreign employment are recruited by foreign employment agencies based on the demand received from abroad. 90 % of the workers going with labor permit are recruited by such agencies and the remaining are found to go on the basis of individual labour permit.¹⁴
- b. Third world countries with individual labour permit: Those going with individual labour permit find work on their own or through their

10 Nepal Rastra Bank Website, https://www.nrb.org.np/ofg/current_macro-economic/CMEs%20Ten%20Months%20Nepali%202075-76-Final.pdf, accessed latest 21 June 2019.

11 According to details provided by Nepal Rastra Bank, Research Department Deputy Director Khageswar Bhandari to NHRC research team on 21 May 2019.

12 Central Bureau of Statistics, Nepal Living Standards Survey 2010/11, Statistical Report volume Two, November 2011, p.78. <https://cbs.gov.np/>

13 World Bank, Migration and Development Brief No. 23, 2014

14 According to GoN, Ministry of Labour and Employment's "Labour Migration for Foreign Employment, Nepal's status report 2015/16-2016/17" p.19, 92.44 per cent of those who went to foreign employment in F/Y 2016/17 and 90.89 per cent in 2015/16 were recruited by foreign employment agencies.

relatives and go after acquiring labour permit from the DoFE. The number of those going with individual labour permit are found to be less than 10 per cent of the total number of people going formally.¹⁵

- c. Through government: Migrant workers are recruited by the Nepal government to send them to the country with whom Nepal government has done G to G agreement. (G to G agreement is to recruit workers from governmental level)
- d. India using the porous border: Due to traditional relations between Nepal and India, and due to the open border, Nepalis go to India for employment. Nepalis do not need to acquire labour permit in order to go to work in India, and it is regarded to be legal.
- e. Third world countries unofficially (going/taken without the labour permit procedure): Some people who go to the third world countries for employment go or are taken by agents via the open border with India or on a Visit VISA or through other means. Though going unofficially is term 'illegal', if those who have returned to Nepal after working for some time in this manner want to go back to the same black for work then the work is legalized by providing labour permit.

6. Importance of Service of Recruitment Business

The professional service of the foreign employment agencies and agents are found to be useful for those choosing the option to go for foreign employment. Due to their professional service, linking hundreds of thousands of Nepalis to foreign employment has been easy and efficient. There are many successful examples of people going for employment accordingly and supporting themselves and their families financially or making some savings for the future. The professional service of the agencies and their agents has played an important role in addressing for the moment the huge problems of unemployment in Nepal. Specially, the agencies recruiting aspirant workers wishing to go for foreign employment are working to promote the market in various destination countries and also taking the business risk to thereby create opportunities for foreign employment to hundreds of thousands of people.

7. Rights of the Migrant Workers

Despite leaving one's country of origin and going to a foreign land for employment, the migrants have the right to enjoy all the rights established

¹⁵ For example, of the labour permit issued for 469,739 people in 11 months (as of mid-June 2019) of F/Y 2018/19, 25,525 or 5.4% was individual labour permit.

in the Universal Declaration of Human Rights and International human rights law, as well as in the Constitution and other related legislations of Nepal. As other individuals, the migrants workers are also entitled to the right to life; freedom from torture and other cruel, inhumane or degrading treatment or punishment; freedom from slavery or servitude; right to a status of an individual before law; freedom of expression, faith and religion; individual confidentiality; protection from arbitrary arrest; attainment of possible best standards for mental and physical health; non-discriminatory access to education, health and housing; right to movement and proper accommodation; sufficient and appropriate water and food; right to work and workplace safety; protection from trafficking and related excesses; right to association; freedom of expression; right to fair trial; right to use and safe transfer of personal property etc.

8. Agencies Regulating Foreign Labour Migration

Nepal has enforced a separate law to protect the rights of the migrant workers and make foreign employment safe, dignified and regulated, and a separate department (Department of Foreign Employment) has been set up for management of works related to foreign employment. In addition to this, the Foreign Employment Board has been established as a separate agency that deals with providing useful information related to foreign employment and provide relief to those who have suffered injuries and losses, and to the families of the people who die during foreign employment. Labour attaché' have been established in countries with large number of Nepali migrant workers. There is also a Foreign Employment Tribunal to hear cases related to foreign employment.

9. Obligations of Government of Nepal

It is the responsibility of the Government of Nepal to take appropriate measures to protect those wishing to go for foreign employment from possible violations and excesses. The Government of Nepal has, with the introduction of the Foreign Employment Act, 2007, accepted the needs to protect the right of the Nepali workers going abroad for foreign employment and to monitor and regulate the process of recruitment of workers going to foreign employment. It is the obligation of the Government of Nepal as a State Party to international instruments and as per its commitment expressed in the international forum to provide protection to the workers.

The Foreign Employment Act, 2007, authorizes the DoFE to impose fine or recover compensation from the foreign employment agencies that send workers for a different work and low salary and facilities than mentioned

in the employment contract or charging recruitment fee that is higher than fixed by the government. Likewise, the Act also provides for a labour attaché to help resolve any dispute between the worker and employer organisations or among the recruiting agencies.

It is also the duty of the Government of Nepal to ensure that the foreign employment companies full all the responsibilities under the Act. Under the Act, concerned agencies are authorized to cancel the license or imposing other punishment on the companies that fail to fulfill their responsibilities. It is also clear that the responsible destination governments have the duty to stop excesses like seizing of passport or identity documents of migrant workers, depriving them of essential documents, imposing restriction on their movement and exercising physical violence against the migrants. However, Nepal needs to take appropriate measures to stop the problems that workers face in the destination countries from originating during the recruitment process in Nepal.

Chapter Two

Methodology

Though foreign employment has played an important role in the income generation and development of skills and expertise of numerous people, daily increase in the number of people going abroad for work routine-wise systemic and comprehensive excesses are taking place every day against workers to leave their country of origin in hundreds of thousands in the search for employment. The workers do not only face general problems but have also been subjected to exploitation, forced labour and human trafficking, which are clearly a violation of human rights. In this regard, the NHRC has carried out this research considering the need to play an effective role, as a constitutional body, for prevention of such incidents of violation of human rights by carrying out a facts-based research and making recommendations to the government.

1. Rationale of the Research

The Constitution of Nepal (2015) states that it is the duty of the National Human Rights Commission to ensure respect, protection and promotion of human rights, and its effective enforcement.¹⁶ As many people who go for foreign employment face violations prior to departure and in course of the employment, carrying out research on this matter falls under the mandate of the NHRC.

Prior to this, various agencies of the state, Non-government organisations and International human rights organisations as well as International Labour Organization (ILO) and the International Organisation of Migration (IOM) and other UN agencies have carried out various research and study on the situation of rights of the Nepali migrant workers. The NHRC recognizes the importance of those studies and research. However, since the research carried out by the NHRC and the recommendations it makes based on the research have separate importance, it is relevant to carry out research from the NHRC.

The Commission had also received suggestions from various agencies in order to research the state of the rights of workers going for foreign employment from Nepal. During a visit to Nepal in 2074 Magha (February 2018), the UN Special Rapporteur on the Human Rights of Migrants Felipe Gonzales Morales had met and requested the NHRC Chair and

16 *Constitution of Nepal, Article 249*

member Sudip Pathak to carry out a research on this matter. This is the first comprehensive research carried out by the NHRC on migrant workers' rights.

2. Research Team

This research was led by NHRC member Sudip Pathak. Mr Rameshwar Nepal, who carries long experience in the field of research on the rights of migrant workers, was appointed as an expert for overall responsibility of field study, interview, desk research, situational analysis and report writing. Kamal Thapa Kshetri, the Focal person of the NHRC Central Office was involved in the preparation of the framework of the research to the actual research work. The Research Team comprised:

1. Honourable Sudip Pathak, Member, National Human Rights Commission
2. Swarnima Bhandari, Deputy Director, National Human Rights Commission
3. Rameshwar Nepal, Consultant (Lead Researcher)
4. Kamal Thapa Kshetri, Focal Officer, National Human Rights Commission
5. Ravi Lal Nepali, Officer, National Human Rights Commission

The following staffers of the NHRC Central Office and Provincial Offices were involved in carrying out interviews during the field research:

- a. Chiranjibi Koirala, Human Rights Officer, Province no. 1 Office, Biratnagar (field research in Morang and Sunsari)
- b. Rekha Dutta, Human Rights Officer, Province no. 2 Office, Janakpur (field research in Dhanusa)
- c. Anish Poudel, Human Rights Officer, Province no. 5 Office, Butwal (field research in Nawalparasi)
- d. Madhu Sunam, Human Rights Officer, Central Office (field research in Dailekh, Achham and Dhanusa)
- e. Rupashree Niroula, Human Rights Officer, Central Office (field research in Sindhupalchowk)
- f. Maya Gaire, Assistant First, Central Office (field research in Sindhupalchowk, Dailekh and Achham)

3. Objectives

The research has three major objectives:

- a. To study the recruitment practices of the workers going for foreign employment,

- b. To analysis the challenges in attainment of justice of the migrant workers and their families who have faced exploitation and excesses during foreign employment, and
- c. To make recommendations to the Government of Nepal for effective protection of the rights of migrant workers.

4. Research Focus

In this research two issues were accorded major priority:

- a. Recruitment Practices of migrant workers
- b. Situation of access to justice of the migrant workers and their families.

The foreign employment agencies have the major role in the recruitment process of workers while the individual agents have notable involvement in it. The practice of agents sending people willing to go for foreign employment directly on their own through unofficial channel is also widespread. As a result, the practices especially of the agencies and agents in the recruitment process of workers were studied.

In addition to this, some analysis was also made on the activities and efforts of the concerned government agencies and judicial bodies who are responsible for management, regulation and execution of justice in this sector in workers recruitment and foreign labour migration cycle.

5. Research Methodology

In this research, primary and second research methodology have been used. Though this research is basically based on qualitative facts, the data received from the interviews carried out by the NHRC or from the concerned agencies of Government of Nepal and other reliable sources have also been used and analysed.

a. Interview with Migrants and their Families:

Location selection

The NHRC research team visited all the seven provinces of the country and documented case studies through interview with people who had faced violation and accesses in foreign employment after departure or before departure or with their families, and collected date on the efforts made by the government agencies for the protection of the rights of the victims, and about the state of information knowledge about safe foreign employment and migrant workers' rights among the victims.

Table 2.1**Province and districts where interviews took place**

S. No.	Province	District	Date
1.	Province no. 1	Sunsari and Morang	January 2019
2.	Province no. 2	Dhanusa	May 2019
3.	Province no. 3	Sindhupalchowk	April 2019
4.	Gandaki province	East Nawalparasi	June 2018
5.	Province no. 5	West Nawalparasi	June 2018
6.	Karnali province	Dailekh	July 2019
7.	Sudur Paschim province	Achham	July 2019
8.	Various	Those who had come to Kathmandu seeking justice	April to June 2019

Sunsari, Morang, Dhanusa, Sindhupalchowk, Nawalparasi (both), Dailekh and Achham were selected for the field research. Efforts were made during the selection of the locations to include all the provinces and maintain a balance of Tarai-Hill, East-West and remote districts. Of them, Dhanusa that records the highest number of people going to third world countries for employment and Dailekh/Achham were large number of people go to India for employment were selected. The district(Sindhupalchowk) with majority of janajati population and large number of women in foreign employment was also included.

Number of migrants and their families interviewed

The NHRC research team interviewed a total of 524 (257 female and 267 male) persons during the period from June 2018 to June 2019. In addition to the aforementioned districts of field study, the research team also interviewed people who have come to Kathmandu to register complaints at the DoFE.

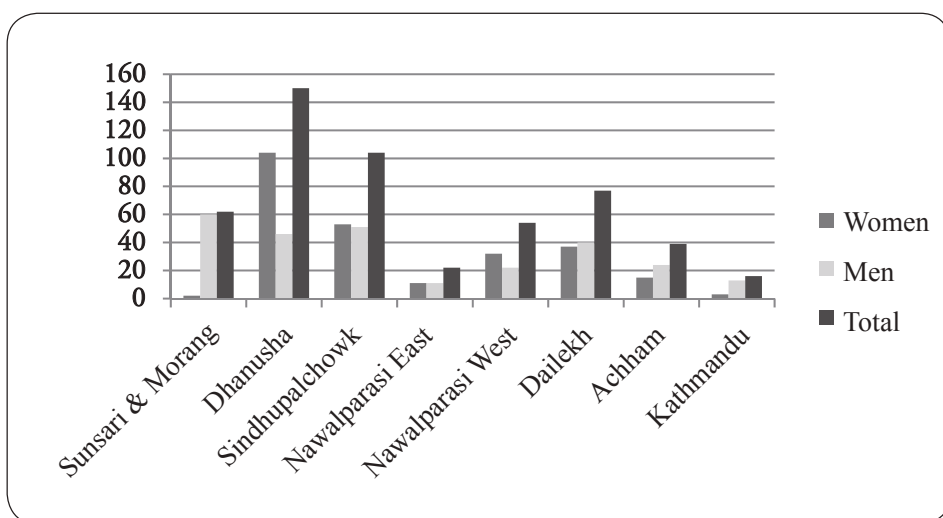


Table 2.2
Interviewed migrants and their families

S. No.	Province, District	Women	Men	Total
1.	Province no. 1: Sunsari and Morang	2	60	62
2.	Province no. 2: Dhanusa	104	46	150
3.	Province no. 3: Sindhupalchowk	53	51	104
4.	Gandaki province: East Nawalparasi	11	11	22
5.	Province no.5: West Nawalparasi	32	22	54
6.	Karnali province : Dailekh	37	40	77
7.	Sudur Paschim province: Achham	15	24	39
8.	Kathmandu	3	13	16
	Total	257	267	524

Interview was held with 3 kinds of persons:

1. Returnee migrant workers
2. Workers preparing to migrate for foreign employment, and
3. Family members of migrant workers

The number of people interviewed based on destination country (India or third world country)

The NHRC interviewed in all the districts workers who had gone for foreign employment in third world countries (except India), returnee migrant worker or their families, while in Karnali and Sudur Paschim province (Dailekh and Achham respectively) interview with those who had returned from employment in India and their families was prioritized.

Table 2.3**Migrants and their families interviewed on the basis of destination
(India and third world)**

Interviewed Province, district	India	Third world	Total
Province no. 1: Sunsari and Morang	0	62	62
Province no. 2: Dhanusa	0	150	150
Province no. 3: Sindhupalchowk	0	104	104
Gandaki province: East Nawalparasi	0	22	22
Province no.5 : West Nawalparasi	0	54	54
Karnali province: Dailekh	70	7	77
Sudur Paschim province: Achham	36	3	39
Kathmandu	0	16	16
Total	106	418	524

Of the total 524 interviewed, 106 were those who had returned from employment in India or members of families who had gone to India, and 418 those who had gone, preparing to go to the third world countries and members of their families.

Table 2.4**Returnee migrant workers, those preparing to migrate for foreign employment and
family members of migrant workers**

Province, district	Returnees			Preparing to migrate			Family members			Total		
	Women	Men	Total	Women	Men	Total	Women	Men	Total	Men	Women	Total
Province 1: Sunsari and Morang	2	29	31	0	30	30	0	1	1	2	60	62
Province 2: Dhanusa	0	16	16	0	13	13	104	17	121	104	46	150
Province 3 :Sindhupalchowk	52	49	101	0	0	0	1	2	3	53	51	104
Gandaki province: Eastern Nawalparasi	3	10	13	0	0	0	8	1	9	11	11	22
Province No. 5: West Nawalparasi	10	12	22	1	7	8	21	3	24	32	22	54
Karnali province: Dailekh	0	39	39	0	0	0	37	1	38	37	40	77
Sudur Paschim Province: Achham	0	23	23	0	0	0	15	1	16	15	24	39
Kathmandu	0	13	13	0	0	0	3	0	3	3	13	16
Total	67	191	258	1	50	51	189	26	215	257	267	524

Of the total 524 persons (257 women, 267 men) interviewed by the NHRC investigation team, 258 (67 women and 191 men) were those who had returned from foreign employment and 51 preparing to go (1 woman and 50 men) and 215 (189 women and 26 men) were members of the migrant workers' families.

Ethnic/community representation of the interviewees

The NHRC interviewed people with various socio-economic backgrounds. Of them, some had no formal education while some were educated. In terms of ethnicity there was comprehensive representation, including Brahmin/Chettri, Dalit, Janajati, Madhesi, Tharu and Muslim. The migrants and their families who were interviewed said that they had gone for foreign employment or willing to go because they were poor and would not easily get a job in Nepal.

Returnees from India with HIV infection and their infected families

Of the total number of HIV infected population in Dailekh and Achham districts, it was reported that majority of them were those who had returned from India after employment. Based on this information, such HIV infected person and the women who were infected by their infected husbands were also interviewed for the research.

The NHRC investigation team interviewed a total of 26 persons including 3 men who had returned after being infected with HIV during employment in India and 23 women who were infected by their migrant returnee husbands. Likewise, of those interviewed, 12 including 9 women and 3 men were from Dailekh district and 14 women from Achham district.

Under-age migrant workers

Based on the tendency of under-age (below 18 years) Nepalis also going to India for employment, people who had gone to work in India when they were under-age were also interviewed during the field study in Karnali and Sudur Paschim Province.

People who had developed their citizenship certificate and passport by increasing their age to go for foreign employment were also found in Sindupalchowk, Sunsari and Dhanusa districts. However, the number of under-age people going to work in India from Dailekh and Achham were found to be proportionately high. Of the 106 people who had gone to India for employment and interviewed by NHRC, 40 (28 from Dailekh and 12 from Achham) were below 18 when they went to work in India.

Coordination

The NHRC was supported by the local non-government organisations and projects during the interview carried out in the districts where the field research took place. The NHRC also coordinated with these organisations in identifying the people who had faced problems after going for foreign employment or in the process of going, and their family members.

The NHRC field research was supported by the Safe Migration (SaMI) Project in Sunsari/Morang and Dhanusa, Paurakhi Nepal in Sindhupalchowk, Social Service Centre (SoSeC) and the Social Awareness Centre (SAC) in Dailekh and by Sama Bikas Nepal in Achham. Likewise, the Help Desk set up by Paurakhi Nepal and the Legal Aid Centre set up by People Forum for Human Rights at the DoFE helped the interview with migrants or their family members who had come to Kathmandu to file complaints at the DoFE against the problems they faced during foreign employment. The following individuals had special support during the field research:

1. Sita Ghimire, Safe Migration (SaMI) Project
2. Manju Gurung, Paurakhi Nepal
3. Sudip Devkota and Krishna Neupane, People Forum for Human Rights
4. Kopila Dahal, Safe Migration (SaMI) Project, Sunsari
5. Dev Narayan Mandal, Safe Migration (SaMI) Project, Dhanusa
6. Dipak Aryal, Paurakhi Nepal, Sindhupalchowk
7. Uma Poudel, Safe Migration (SaMI) Project, Nawalparasi
8. Hira Singh Thapa, Social Service Centre (SoSeC), Dailekh
9. Bharat Adhikari, Social Awareness Centre (SAC), Dailekh
10. Pashupati Kunwar, Samabikas Nepal Achham

Interview Methodology

The interview with the migrant workers or their families was held through In-Depth Interview (IDI) and Focus group Discussion (FGD) method. Of the total 524, 252 were interviewed using the FGD while IDI was used in the interview with the remaining 272 persons.

Language

The interviews were conducted in Nepali language. The interviewees with mother tongue other than Nepali language were provided translators in

Sunsari, Dhanusa, East Nawalparasi and West Nawalparasi.

Questionnaire

Structured questionnaire was developed and used for all the interviews. The questions were basically focused on the recruitment process, problems faced by migrants in the destination countries, and the challenges they faced in seeking justice and compensation. But depending on the circumstance, additional or limited questions were asked in every interview.

Confidentiality

Special attention was paid to maintain confidentiality of the interviewee during the interview. Except for Focused Group Discussion, the IDI were conducted individually. In some interviews the family members accompanied the interviewee.

Confidentiality of Identity

Pseudonyms have been used in order to protect the identity of the migrant worker and their families in this report. Likewise, the names of the agents involved in the recruitment process of workers, health examination or orientation service providing agencies, and their office-bearers have not been mentioned in the report.

Verification of interviewers note or quotations

The quotations or statements noted down in the interviewers note or the report from the interviews with some of the Key Informants were verified by typing it out and sending it to the concerned persons to confirm it is the view that they expressed or whether it is how they said during the interview. Only then the sections of the interview or quotations were included in the report.

b. Interview with Key Informant

The NHRC Team collected facts by carrying out 166 interviews with the key informants of at least 47 organisations/agencies including government, non-government, parliamentary and judicial bodies, entrepreneurs and local and provincial governments with a role related to foreign employment. Among the interviews, some included repeated interviews held with the same individual of any organisation/agency and also interviews with more than one person of the same organisation/agency.

Interview with key informants in the districts

During the field research, the NHRC team also acquired information

about the state of affairs in the districts through meetings and discussion with government agencies, civil society, law enforcement agencies, local government and other stakeholders in the district concerned. During the process, information was gathered especially from the District Administration Office, District Police Office and Community-based organisations. In addition to this, information about the status of enforcement of the provisions related to foreign employment in the Local Government Operation Act, 2074 (2017) was gathered from the local level representatives.

c. Onsite observation

The NHRC research team made an Onsite observation of the services provided to the migrant workers in the Department of Foreign Employment, Foreign Employment Kathmandu Office, Tribhuvan International Airport and Foreign Employment Board, Foreign Employment Agencies and the organisations providing health examination and orientation and training.

d. Analysis of data and information received from various sources

The NHRC made a written request to the DoFE, FEB, the Consular Services Department, Foreign Employment Tribunal, Office of the Auditor General and the Central Investigation Bureau (CIB) of Nepal Police requesting for related data, information and documents. In course of the research, information received from these organisations were studied and analysed to be included in the report.

e. Desk research

The NHRC research team carried out a study of Nepal's foreign employment policy and regulations, research reports of various organisations/agencies, decisions of parliamentary committees and Government of Nepal, verdicts of Foreign Employment Tribunal and Courts, reports of committees formed by the government and news reports published/disseminated by the media, and international instruments, guidelines and declarations related to human rights and migrant workers' rights.

f. Consultation meetings

In the preliminary phase of the research, the NHRC held six different interactions with stakeholder agencies and experts in this sector to collect their feedback and suggestions. Consultations were also held as required with national and international organisations, agencies and projects working in the field of migrant workers' rights and safe migration, and with subject matter experts.

6. Foundations for Situation Analysis

The information garnered through the research of the NHRC was the main basis for situational analysis of the two major subjects of this research—recruitment process of migrant workers and their access to justice. International instruments and laws relating to human rights and migrant workers' rights, related legislations of Nepal, United Nations Directive Principles and Guidelines, reports and recommendations, reports of constitutional and parliamentary bodies, and reports and decision of government agencies were also grounds for the analysis.

7. Limitations of the Research

There were some limitations of the research. Some limitations were related to the scope determined for this research and some that surfaced during the course of the investigation. Apart from some general limitations, the major limitations were as follows:

a. Nepal-Centered Research

Migrant workers face violations and excesses not only in the country of origin but also in the destination countries. Due to limitation of the jurisdiction of the NHRC, this research is focused only on Nepal. However, data was collected from returnee migrant workers about what are the problems that they faced while working abroad.

b. Insufficiency of government data and information

During the research, the NHRC requested foreign employment regulating, management, justice execution and policy making bodies for various data and information related to migrant workers. But, many data and information essential for this research could not be received.

c. Due to the widespread nature of the issues covered by this research, in-depth analysis could not be made on areas like women migration or access to justice. As a result, they could be a matter of issue-focused research in the future.

d. The report covers only the situation that was seen in the course of the research carried out by the NHRC. This does not mean that the concerned subject did not have any other complexities or that the situation was not different.

8. Duration

This research was completed in 19 months. The work of research that began in October 2017 took speed as much as expected in the initial phase but some time was consumed for the important task to be carried out by the NHRC due to the work of observation of the 2074 elections and various other reasons. Especially, the work of going to the provinces to carry out interview of the migrant and their families could not be completed in the fiscal year 2017/18. The research was completed after accomplishing the remaining task of the previous year in F/Y 2018/19.

9. Organisation of the Report

The Report has been divided into seven chapters. The first is background, second research methodology, third is migrant workers' rights, fourth management of labour migration and recruitment process, the fifth is violations and excesses against migrant workers, access to justice in the sixth and conclusion and recommendations in the seventh.

Chapter-Three

Rights of Migrant Workers

Migrant workers who have gone or are preparing to go to work in any country are entitled to various rights mentioned in different international human rights and labour rights instruments and legislation. The Universal Declaration of Human Rights (UDHR)¹⁷ that defines human rights states that 'All human beings are born free and equal in dignity and rights'. The Declaration also states that no one shall be held in slavery or servitude; Everyone has the right to leave and to return to his country; Everyone has the right to work, to free choice of employment, and has the right to equal pay for equal work etc. Likewise, various international instruments have been developed in relation to human rights and labour rights. Some international instruments are targeted towards the migrant workers while rights established in other laws also apply in situation of migration for employment.

In this section, some human rights laws and International Labour Organization (ILO) Conventions related to rights of migrant workers; the Constitution of Nepal and related legislations ; reports and recommendations of UN agencies on migrant worker's rights; and Nepal's international and regional commitments and obligations have been discussed.

1. International Instruments Related to Human Rights and Workers' Rights

a. International Human Rights Law

(i) The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990

This Convention is a special Convention designed for the protection of the migrant workers introduced in 1990 considering the vulnerabilities of migrant workers and their families. The

Convention also brings together human rights provisions established in various other international human rights instruments and that apply

17 The UDHR was endorsed by the UN General Assembly on 10 December 1948, which describes human rights in 30 different articles. Article 2 of the UDHR reads, "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty."

in the situation of labour migration.

The Convention defines a migrant worker as 'a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not national'.¹⁸ This definition is regarded as the official global definition of a migrant worker.

The Convention has also established the migrant workers right to live (Article 9); protection against mandatory or forced labour (Article 11 (2)); protection against slavery (Article 11(1)); protection and support from the nation's diplomatic agency (Article 23) ; right to join trade union and migrants organisations (Article 25) and right to return to state of origin (Article 8) and other rights. Nepal is yet to ratify this Convention.

(ii) International Covenant on Civil and Political Rights (ICCPR), 1966

The UN Covenant on Civil and Political Rights establishes provision related to the individual freedom and rights of the citizens. It commits the states to protect and respect the civil and political rights of individuals. This Covenant prohibits forced labour against any individual (Article 8) and establishes every individual's right to return to the State of origin (Article 12 (2) and (4)). Nepal ratified the ICCPR on 14 May 1991.

(iii) International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966

This Covenant has established that men and women have equal right to the enjoyment of all economic, social and cultural rights (Article 3). The convention also provides for Right to Employment (Article 6), Right to right of everyone to the enjoyment of just and favourable conditions of work (Article 7), the right to form trade unions and join the trade union (Article 8 (1a), right of everyone to social security (9), and right to protection from economic and social exploitation (Article 10 (3)). Nepal ratified the ICESCR on 14 May 1991.

(iv) Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979

This Convention prohibits all kinds of discrimination against women on the virtue of being a woman (Article 1). It also calls States Parties to take all appropriate measures, including legislation, to suppress

¹⁸ Article 2(1) of the Convention

all forms of traffic in women and exploitation of women (Article 6). Nepal ratified the CEDAW on 22 April 1991.

(v) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, (CAT) 1984

This convention prohibits torture, cruel, inhuman or degrading treatment against any individual and establishes the need for states to protect their citizens from such treatment. (Article 1, 2). Nepal ratified this convention on 14 May 1991.

(vi) Child Rights Convention (CRC), 1989

The Child Rights Convention has established the right of every child to birth registration, a name and nationality (Article 8 and 9). It also recognizes the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development (Article 32).

(vii) Protocol to Prevent, Suppress and Punish Trafficking in Persons, 2000

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime describes human trafficking as an organised crime, and defines Trafficking. Also known as Palermo protocol, it defines human trafficking in Article 3 (a) as 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.

In the case of children, it establishes a broader definition of trafficking. According to Article 3 (c) of the Protocol, the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons".

The protocol also provides that trafficking needs to be establish as

criminal offences (Article 5), domestic legal or administrative system should contain measures that provide to victims of trafficking (Article 6 (2), and effective measures should be taken to prevent and combat trafficking (Article 9) and information should be dissemination public awareness raised to minimize the vulnerability to trafficking. Nepal has not ratified this protocol.

b. ILO Conventions

The ILO Declaration of Philadelphia¹⁹ that came in 1944 with the statement that 'Labour is not a commodity' established the notion that workers should not be treated as a commodity or means of production but be treated humanely and their dignity should be respected. Taking this notion into consideration the International Labour Organisation (ILO) has introduced various international conventions related to rights of workers. Many provisions of some Conventions are applicable during migration for employment as well. In addition to this, the ILO has also endorsed separate principles and conventions with a focus on the migrant workers.

(i) Convention Concerning Forced or Compulsory Labour, 1930 (No.29)

The Convention Concerning Forced or Compulsory Labour defines force or compulsory labour and prohibits such labour. Article 1) 2) of the Convention describes ***forced or compulsory labour*** as all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

The Convention states that 'The competent authority shall not impose or permit the imposition of forced or compulsory labour for the benefit of private individuals, companies or associations, and if it happens then the Member shall completely suppress such forced or compulsory labour' (Article 4).

Likewise, the Convention also states that " The illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation of State party to this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced (Article 25). Nepal ratified this Convention on 3 January 2002.

¹⁹ Available at <https://www.ilo.org/legacy/english/inwork/cb-policy-guide/declarationofPhiladelphia1944.pdf>

(ii) Migration for Employment Convention, 1949, no. 97

The Migration for Employment (amended)²⁰ Convention, 1949 (no. 97) describes the rights of those migrating for work. This Convention outlines the various measures to be adopted by the (source and destination) countries for the protection of the rights of those migrating for work. The Convention states that adequate and free service should be provided to assist migrants for employment and in particular provide them with accurate information (Article 2), destination should provide treatment no less favourable than that which it applies to its own nationals in respect of social security (article 6) and provide the migrants membership of trade unions and enjoyment of the benefits of collective bargaining (article 6 a ii). Nepal has not ratified this Convention.

(iii) Convention concerning Decent Work for Domestic Workers, 2011 (No. 189)

The Convention Concerning Decent Work for Domestic Workers has provided for the protection of the rights of the domestic workers. This Convention provides various effective measures that the state needs to adopt in order to protect the domestic workers from various possible risks.

Article 1 (b) defines domestic worker as 'any person engaged in domestic work within an employment relationship'. The conventions provides that domestic workers must be informed of their terms and conditions of employment in an easily understandable manner(Article 7), freedom to reach agreement with their employers or potential employers on whether or not to reside in the household, and choose to work for more than one employer (Article 9), equal to at least minimum wage for domestic workers (women and men) (Article 11), workers to be allowed to keep their remuneration, passport, agreement letter with themselves, (Article 9 c); and state to take all necessary measures to protect domestic workers from all kinds of excesses, abuse and incidents of violence (Article 5). Nepal has not ratified this Convention.

20 This Convention is an amended form of the Migration for Employment Convention, 1939 (no. 66).

(iv) Freedom of Association and Protection of the Right to Organise Convention, 1948, No. 87

The ILO Convention on freedom of association and protection of the right to organize Convention describes the rights of the worker and employers' association to freely associate and organize. The convention provides the Workers' and employers' the right to join association of one's choice but without any conditions to both (Article 1); the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes (article 3); workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority (Article 4). Nepal has not ratified this Convention.

(v) Migrant workers (supplementary provisions) Convention, 1975 (no. 143)

The migrant workers convention has provided for protection of the rights of the migrant workers in a vulnerable position.

This convention provides that the basic human rights of all migrant workers shall be protection (article1; the state should systematically seek to determine whether there are illegally employed migrant workers on its territory (article2) ; and that the state should work to stop clandestine movements of migrants for employment and illegal employment of migrants. (Article 3). This Convention has not been ratified by Nepal.

(vi) Private Employment Agencies Convention, 1997 (no. 141)

The ILO Convention no. 141, the Private Employment agencies Convention provides for the duty of the private employment agencies to protect the rights of the workers who work for them.

The Convention talks about the measures to taken to ensure that the workers recruited by private employment agencies are not denied the right to freedom of association and the right to bargain collectively (article 4), not charge directly or indirectly any fees or costs to workers (Article 7, 1) and ensuring that child labour is not used or supplied by private employment agencies (Article 9).

2. Nepal's Responsibility to follow International Law

It is the legal obligation of Nepal to follow the international instruments ratified by the country. Specially, the Nepal Treaty Act, 2047 (1990)

mentions about such obligation. According to Clause 9(1) of the Act, "... In case of the provisions of a treaty, to which Nepal is a party to, is inconsistent with the provisions of prevailing laws, the provision of the law shall be void for the purpose of that treaty, and the provisions of the treaty shall be enforceable as good as Nepalese laws. Likewise, Clause 9 (2) states that in case legal arrangements need to be made enforcement for any international law, then action shall be taken as soon as possible to enact such laws.

In addition to this, as a member of the United Nations and ILO, it shall be the duty of Nepal to respect, protect and fulfill the aforementioned rights mentioned in the convention even though Nepal has not ratified them.

3. Provisions made in Nepal's Constitution and Laws

The Constitution of Nepal, 2015 mentions about the rights of the migrant workers and the Foreign Employment Act, 2064 (2007) and its regulations, 2064 (2008) have made detailed provisions for management of the foreign employment sector. In addition to this, the Labour Act, 2074 (2018) defines bonded labourer and prohibits employing anyone in such kind of labour. Some provisions of the Constitution of Nepal and other laws that are concerned with the research are as follows:

a. Constitution of Nepal, 2015

(i) Labour and Employment Policy

The Constitution of Nepal, under Article 51-policies of the state, mentions about the 'labour and employment policy' in Sub-article (i). And the policy includes to regulate and manage the sector in order to make foreign employment free from exploitation, safe and systematic and to guarantee employment and rights of the labourers, and to encourage to mobilize the capital, skills, technology and experience gained from foreign employment in productive sectors in the country²¹.

(ii) Right to employment

Article 33 of the Constitution provides that every citizen shall have the right to employment and the right to choose employment as fundamental rights.

Rights of workers

Article 34 provides that every labourer shall have the right to practice appropriate labour, the right to appropriate remuneration, facilities

21 *Constitution of Nepal, 2015, Article 51 (j) (5) and (6)*

and contributory social security as well as the right to form and join trade unions and to engage in collective bargaining, in accordance with law.

(iii) Right against exploitation

Article 29 provides that every person shall have the right against Exploitation, no person shall be exploited in any manner on the grounds of religion, custom, tradition, usage, practice or on any other grounds, no one shall be subjected to trafficking nor shall one be held in and slavery or servitude, and no one shall be forced to work against his or her will. It also states that violation of the provisions shall be punishable by law and the victim shall have the right to obtain compensation from the perpetrator in accordance with law.

b. Foreign Employment Act, 2064 (2007)

The Foreign Employment Act, 2064 (2007) and Foreign Employment Regulations, 2064 (2008) are the major laws that manage and regulate foreign employment. The Act defines foreign employment and migrant workers, and makes various provisions relating to foreign employment management. As per Clause 2(a) of the Act "foreign employment" means employment which a worker gets abroad and in Clause 2(b) "worker" means a citizen of Nepal who gets in foreign employment.

The Act provides for the procedure of acquiring labour permit for foreign employment and the workers recruitment as well as the foreign employment welfare fund, monitoring and inquiry (investigation; complaint and investigation; punishment to those committing excesses against the workers and compensation to the survivors etc. Likewise, according to the Act:

- Any minor who has not completed eighteen years of age shall not be sent for foreign employment (Clause 7);
- No gender discrimination shall be made while sending workers for foreign employment pursuant to this Act (Clause 8);
- No one shall carry on the foreign employment business without obtaining a license pursuant to this Act (Clause 10);
- If a licensee works in violation of the rule the Department may revoke the license obtained by the licensee (Clause 13, e);
- If any person can go abroad for foreign employment on personal basis (Clause 21);

- While sending workers for foreign employment, the licensee shall so send them that they use native airport (Clause 22);
- The Government of Nepal may specify the upper limit of amount, including the service fee and promotional costs (Clause 24);
- Licensee shall give a receipt of payment to the worker (Clause 24 (3));
- A foreign employment welfare fund shall be established for the social security and welfare of the workers (Clause 32);
- Monitoring and inspection of the office of the licensee (Clause 34);
- Department may give an order to the licensee to provide compensation for all expenses incurred in going for foreign employment if the works provided is not as per the terms of the contract (Clause 36);
- The Department may suspend the license of licensee for violating the contract (Clause 61 (7));
- Various penalty for various offenses (clause 44 to 55)

The Act has also provided for an emergency rescue, insurance and welfare fund. It also provides for the appointment of a labour attaché in a country with more than 5 thousand workers in order to help them in the destination countries.

For the enforcement of the Act, the foreign employment regulations, 2064 (2007) and various guidelines have been introduced.

c. Human trafficking and Transportation (Control) Act 2064

This Act has provided definition of some certain nature of human trafficking and mentioned the penalty for such crimes. The Act described human trafficking as 'to sell or purchase a person for any purpose.'²² Likewise, to take a person out of the country for the purpose of buying and selling' ...and "taking anyone from his /her home, place of residence or from a person by any means such as enticement, inducement, misinformation, forgery, tricks, coercion, abduction, hostage, allurement, influence, threat, abuse of power and by means of inducement, fear, threat or co-ercion to the guardian or custodian and keep him/her into ones custody or take to any place within Nepal or abroad or handover him/her to somebody else for the purpose of prostitution and exploitation" has been defined

²² *Human trafficking and transportation (control) Act, 2064, Clause 4(1) (a)*

separately as human transportation.²³

In this Act, there is also a provision for punishment for those involved in human trafficking and transportation. According to Clause 15, an individual shall be sentenced to twenty years imprisonment and a fine of Two Hundred Thousand Rupees for selling or buying a human being, and Ten years to fifteen years imprisonment and a fine of Fifty Thousand Rupees to One Hundred Thousand Rupees for forcing into prostitution.

The demand for amendment to the Act is growing as the definition of human trafficking does not clearly establish trafficking that takes place in the course of foreign employment as an offense. However, cases of human trafficking related with foreign employment have been filed at the district courts and decisions have come in favour of the survivors.

d. Labour Act, 2074 (2017)

The labour act of Nepal defines the state of forced or compulsory labour. The Act has also prohibited keeping anyone in 'bonded labour directly or indirectly. The defines "bonded labour" as "the act of employing any worker against his/her will to any work or service at the force of fear of any kind of economic, physical or mental action if that work or service is not done."²⁴

4. Directive Principles and Guidelines

The United Nations and the ILO have issued directive principles or guidelines for the protection of the rights of migrant workers. Some of the directive principles and guidelines relevant for this research are as follows:

a. UN Guiding Principle on Business and Human Rights

The UN Guiding Principles on Business and Human Rights²⁵ describes what principles of human rights needs to be followed when any business house runs its business. Divided into three parts, these guiding principles comprises provisions on (1) Duty of State, (2) Duty of Businesses in protection of human rights and (3) access to remedy including justice and compensation. Human rights due diligence:(a) Should cover adverse human rights impacts that the business enterprise

23 *Human trafficking and transportation (control) Act, 2064, Clause 4(2) (a) and (b)*

24 *Labour Act, 2017, clause 4 (1)*

25 *This guiding principles developed by the special representative of the UN General Secretary on Human rights and transnational corporation and other business enterprises was endorsed by the UN Human Rights Council on 16 June 2011*

may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships; Human rights due diligence should be initiated as early as possible in the development of a new activity or relationship, given that human rights risks can be increased or mitigated already at the stage of structuring contracts or other agreements, and may be inherited through mergers or acquisitions.

Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes:

- 1- States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.
- 2- The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise's adverse human rights impact

General Principles and Operational Guidelines for Fair Recruitment, 2016

Considering the fact that many people have faced excesses as the workers recruitment process is not fair, this Guidelines²⁶ developed by the ILO mentions about the principles and procedures to be followed by the government, businesses and recruiting agencies in the workers recruitment process. It specially notes that during the workers recruitment their rights needs to be respect and fair recruitment practices should be enforced in order to protect them from exploitation and forced labour.

Recruitment should take place in a way that respects, protects and fulfills internationally recognized human rights, including those expressed in international labour standards, and in particular the right

26 *The tripartite technical meeting of experts to develop guidance on fair recruitment developed the General Principles and Operational Guidelines for Fair Recruitment on 7 September 2016. For the guidelines see, https://www.ilo.org/global/topics/labour-migration/projects/WCMS_536263/lang--en/index.htm*

to freedom of association and collective bargaining, and prevention and elimination of forced labour, child labour and discrimination in respect of employment and occupation

No recruitment fees or related costs should be charged to, or otherwise borne by, workers or jobseekers.

Freedom of workers to move within a country or to leave a country should be respected. Workers' identity documents and contracts should not be confiscated, destroyed or retained.

Guidelines

Responsibilities of government

Governments should protect workers against human rights abuses in the recruitment process by employers, labour recruiters and other enterprises, effectively enforce relevant laws and regulations, and require all relevant actors in the recruitment process to operate in accordance with the law, take measures to eliminate the charging of recruitment fees and related costs to workers and jobseekers, take steps to ensure that workers have access to grievance and other dispute resolution mechanisms, to address alleged abuses and fraudulent practices in recruitment, without fear of retaliatory measures including blacklisting, detention or deportation, irrespective of their presence or legal status in the State, and to appropriate and effective remedies where abuses have occurred.

Furthermore, the governments should raise awareness of the need for fair recruitment in both the public and private sectors and ensure workers have access to free, comprehensive and accurate information regarding their rights and the conditions of their recruitment and employment, should ensure that bilateral and/or multilateral agreements on labour migration include mechanisms for oversight of recruitment of migrant workers, are consistent with internationally recognized human rights, including fundamental principles and rights at work, and other relevant international labour standards, are concluded between countries of origin, transit and destination, as relevant, and are implemented effectively, and should take steps to protect against recruitment abuses within their own workforces and supply chains, and in enterprises that are owned or controlled by the Government, or that receive substantial support and contracts from government agencies.

Responsibilities of employers

Employers should respect human rights when recruiting workers, no recruitment fees or related costs should be charged to workers and jobseekers, should not retain passports, contracts or other identity documents of workers, should ensure that written contracts of employment are concluded, and that they are transparent and are understood by the worker, ensure that the right to freedom of association and collective bargaining of recruited workers and should not resort to labour recruiters or to temporary work agencies to replace workers who are on strike.

Responsibilities of recruiting agencies

Recruiting agencies should respect the rights of workers during the recruitment process and adopt necessary measures to ensure that they are provided with services and facilities as promised during the recruitment.

c. International Recruitment Integrity System (IRIS)

The International Recruitment Integrity System (IRIS)²⁷ is a system developed at the initiative of the UN International Organisation of Migration (IOM) with the notion that ethical recruitment benefits the workers, the recruiting agencies and the employers. This Multi-stakeholder Certification system is developed based on international law and standards, ILO Convention and guidelines and existing best practices in the workers' recruiting business. This helps end exploitation that takes place in the recruitment process and provide protection and strength to the migrant workers while also helps the recruiting agencies to establish themselves in the market as a fair, transparent and responsible recruiter.

The principles adopted by this system are: Prohibition of Recruitment Fees and Related Costs to Migrant Workers (Principle 1); Respect for Freedom of Movement (Principle 2); Respect for Transparency of Terms and Conditions of Employment (Principle 3); Respect for Confidentiality and Data Protection (Principle 4); and Respect for Access to Remedy (Principle 5).

5. Recommendations by UN Agencies

Various issues about the situation of the migrant's workers have been raised in the reports of the UN Committee or Special Procedures. Some of the Reports and Recommendations relevant to this research are as follows:

²⁷ For information see, <https://iris.iom.int/iris-standard>

1. General Recommendation 26 of CEDAW Committee

Women, men or third gender all have been facing various challenges in labour migration. As the challenges and problems that women face are of special nature, they also need to be addressed in a special way. Considering this fact, the UN Committee on Elimination of all kinds of discrimination against women has in the General recommendation No. 26 on women migrant workers²⁸ noted that migrant women should not be discriminated at any cost. In the recommendation, the Committee has also stressed that discrimination restrictions should not imposed on women migrants, special awareness or sensitization should be raised in regard to women migration, monitoring and evaluation mechanism should be developed, health services should be guaranteed, the workers should be allowed to keep control of passport and other important documents, access to legal and administrative support, security of income, freedom to return to country of origin, and ensuring diplomatic protection, among others.

2. Reports and recommendations related to Nepal in the UN Committees

a. Human Rights Committee

In the UN human rights committee meeting held in November 19-20, 2014, the committee has made separate recommendations in its concluding observation on the third periodic report submitted by the Nepal on the state of enforcement of the Covenant on Economic, Social and Cultural Rights.²⁹ Of them some of the recommendations are related to migrant workers (especially women migrant workers).

Related to women migrant workers

Expressing concern that women migrating from Nepal in search of work are subject to unfair working conditions and to violence and abuse in some host countries the Committee recommended Nepal to provide adequate information to women migrant workers on procedures for access to, and enjoyment of, their economic, social and cultural rights; and to continue to sign bilateral agreements with host countries and monitor their enforcement in order to better protect the rights of women migrant workers.

28 https://www2.ohchr.org/english/bodies/cedaw/docs/GR_26_on_women_migrant_workers_en.pdf

29 Report is available at : https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E/C.12/NPL/CO/3

Related to Human Trafficking

The Committee expressed concern at the high number of children who are trafficked for labour and sexual exploitation, as well as for begging, forced marriages and slavery, including in neighbouring countries. The Committee urged Nepal to effectively enforce the current legislation, by Investigating trafficking cases, prosecuting and sanctioning the traffickers and providing rehabilitation and reparation to victims; Sensitizing the population to measures taken to combat trafficking, such as the child search rescue centre in Kathmandu; and further developing its cooperation with neighbouring countries in order to prevent and combat trafficking across borders; and bringing its legislation into full compliance with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

b. Committee on Elimination of discrimination against women

The UN Committee on Elimination of discrimination against women (CEDAW) has made recommendations in its concluding observation on the 6th periodic report Nepal submitted before the Committee.³⁰ Of them some recommendations are related to women migrant workers.

Protection of rights of women migrant workers

Though Nepal has reached labour agreement for the protection of the rights of the Nepali migrant workers, the Committee expressed concerned over the restriction imposed on foreign employment to the women domestic workers. Likewise, the Committee pointed out that due to restriction in mobility the women faced discrimination, there was shortcomings in pre-departure orientation, and that women workers were vulnerable to physical abuse, sexual exploitation, as well as forced labour and unequal wage.

Considering goal no. 8.8, the Committee has recommended Nepal to ensure equal access to all women to employment in Nepal and abroad, and remove the discriminatory restrictions imposed on women from going to foreign employment

Shortcomings in Data Collection and Analysis

Drawing attention towards the shortcomings of Nepal in collection

³⁰ Report is available at: https://www2.ohchr.org/english/bodies/cedaw/docs/GR_26_on_women_migrant_workers_en.pdf

and analysis of necessary data on the state of violence against women, trafficking, and sexual and labour exploitation, the Committee has suggested Nepal to organize the records and documentation of such data.

Trafficking and Sexual Exploitation

The Committee lauded Nepal for setting up funds at all districts for rehabilitation of trafficked women and for training the judicial and law enforcement agencies. However, the Committee has noted that the restrictions imposed on women from going for foreign employment, especially for domestic work has pushed them to the risk of unofficial labour migration, which increases their vulnerability to trafficking.

3. Report and Recommendation of the UN Special Rapporteur on Human Rights of Migrants

In the report³¹ that UN Special Rapporteur on human rights of migrant Felipe Gonzales Morales presented at the UN Human Rights Council following his Jan-Feb 2018 official visit to Nepal it is stated that Nepal has made progress by implementing relevant laws and policies for the protection of the rights of its citizens going for foreign employment, challenges continued to remain in the adherence of the law, its implementation and monitoring.

The report points out that the private recruiting agencies and unregulated agents were committing ill-intended practices; migrant workers were being pushed to forced labour, debt-induced bonded labour, trafficking, exploitation and abusive situation due to lack of implementation and monitoring of laws and policies; workers were having to pay high sum as the policies to reduce the recruitment and service fee were not being implemented; workers were vulnerable to exploitation and abuse due to high interest loan; there was lack of information about access to justice; women workers were more vulnerable to abuse and exploitation and the rules enforced for their protection were discriminatory; a policy was adopted to stop domestic workers from going abroad rather than seeking measures to provide them effective protection; and prohibition leading to use of unofficial channels were pushing them to further risk of more exploitation and abuse.

6. Nepal's International/Regional Commitments and Obligation

Nepal has made various commitments at the international and regional forum for the protection of the rights of migrant workers. Nepal also participated in the development and adoption of some important

31 The report is available at, <https://undocs.org/A/HRC/38/41/Add.1>

international and regional instruments aimed at securing the migrant workers and protecting their rights. Some of the instruments relevant for this research are as follows:

a. Global Compact of Migration (GCM)

The Global Compact for Safe, Orderly and Regular Migration³² adopted by the UN General Assembly on 19 December 2018³³ by integrating all dimensions of international migration establishes various provisions about the rights of migrant workers and the obligations of the state, employer and recruiting agencies in the protection of those rights. Some of the objectives among the 23 objectives of the GCM are as follows:

- Provide accurate and timely information at all stages of migration (Objective 3)
- Ensure that all migrants have proof of legal identity and adequate documentation (Objective 4)
- Facilitate fair and ethical recruitment and safeguard conditions that ensure decent work (Objective 6)
- Strengthen the transnational response to smuggling of migrant's work (Objective 9)
- Prevent, combat and eradicate trafficking in persons in the context of international migration work (Objective 10)
- Enhance consular protection, assistance and cooperation throughout the migration cycle work (Objective 14)

Though the GCM is not a binding document the provisions that it has made are in par with the human rights and international laws related to workers' rights, it does have a legal meaning in an indirect manner. Nepal was involved in the development of the GCM since its beginning and Nepal had voted in favour of adoption of this document.

b. Sustainable Development Goals (SDG)

The United Nations Sustainable Development Goals (SDG)³⁴ are globally agreed common goals of development for the planet, human and their prosperity. It covers the greater parameter of sustainable development based on human rights.

32 For more information see, https://refugeesmigrants.un.org/sites/default/files/180713_agreed_outcome_global_compact_for_migration.pdf

33 For more information see, <https://news.un.org/en/story/2018/12/1028941>

34 For more information see, <https://sustainabledevelopment.un.org/>

The 2030 Agenda for Sustainable Development³⁵ determined to achieve 17 goals of sustainable development by 2030 also includes an action plan for the protection of the migrant workers. Though some action plans have been developed that are also relevant to the migrant workers, migration has been specially pointed out in Goals no. 8.7, 8.8 and 10.7.

Goal 8.7 Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms

Goal 8.8 Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment

Goal 10.7 Facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies

Nepal has accorded special priority to implementation of the sustainable development goals and also developed a specific road map³⁶ for it.

c. South Asian Association for Regional Cooperation (SAARC) Declaration

Nepal is a founding member of the South Asian Association for Regional Cooperation (SAARC)³⁷ established with the objective of uplifting the living standard of the south Asian citizens and helping them live a dignified life and the Declaration³⁸ of the 18th SAARC Summit notes about the strategy on security of migrant workers. The point no. 21 of the Declaration reads, " We agreed to collaborate and cooperate on safe, orderly and responsible management of labour migration from South Asia to ensure safety, security and wellbeing of their migrant workers in the destination countries outside the region".

35 For more information see, https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E

36 For more information see, https://www.npc.gov.np/images/category/sdg_final.pdf

37 For more information see, <https://mofa.gov.np/nepal-and-saarc/>

38 For more information see, http://saarc-sec.org/press_release/details/18th-saarc-summit-declaration

d. Abu Dhabi Dialogue (ADD)

Abu Dhabi Dialogue³⁹, a forum for dialogue and cooperation between Asian countries of labour origin and destination has prioritized 4 thematic focus areas⁴⁰ for policy debate in relation to labour migration between the member countries:

1. Developing and sharing knowledge on labour market trends, skills profiles, workers and remittances policies and flows, and the relationship to development;
2. Building capacity for more effective matching of labour supply and demand;
3. Preventing irregular recruitment and promoting welfare and protection measures for contractual workers; and
4. Developing a framework for a comprehensive approach to managing the entire cycle of temporary contractual work that fosters the mutual interest of countries of origin and destination.

Nepal is a member of this Dialogue and has been participating continuously in its procedures.

e. Colombo Process-CP

A Regional Consultative Process on the management of overseas employment and contractual labour for countries of origins in Asia, the Colombo Process (CP)⁴¹ has determined 4 major priorities⁴² for management of foreign employment:

1. Share experiences, lessons learned and best practices on overseas employment;
2. Consult on issues faced by overseas workers, labour sending and receiving states, and propose practical solutions for the wellbeing of overseas workers;
3. Optimize development benefits from organized overseas employment and enhance dialogue with countries of destination;
4. Review and monitor the implementation of recommendations and identify further steps for action.

Nepal is a member of the Colombo Process and is the chair of the

39 For more information see, <http://abudhabidialogue.org.ae/about-abu-dhabi-dialogue>

40 <http://www.iom.int/abu-dhabi-dialogue>

41 For more information see, <https://www.colomboprocess.org/>

42 For more information see, <https://www.colomboprocess.org/about-the-colombo-process/objectives>

Process since 2017. Nepal has been participating in its activities regularly.

e. Dhaka Principles

The Dhaka Principles⁴³ for migration with dignity are based on the UN Guiding Principles on Business and Human Rights and international human rights standards and provide a roadmap that traces the worker from recruitment, through employment, to the end of contract and provides key principles that employers and migrant recruiters should respect at each stage in the process to ensure migration with dignity.

The Dhaka Principles comprise 10 principles for the responsible recruitment and employment of migrant workers including:

1. The employer should bear the full costs of recruitment and placement.
2. All migrant worker contracts are clear and transparent.
3. Policies and procedures are inclusive.
4. No migrant workers' passports or identity documents are retained.
5. Wages are paid regularly, directly and on time.
6. The right to worker representation is respected.
7. Working conditions are safe and decent.
8. Living conditions are safe and decent.
9. Access to remedy is provided.
10. Freedom to change employment is respected, and safe, timely return is guaranteed

f. National Human Rights Commission (NHRC)

The National Human Rights Commission (NHRC) has an important role in protection and fulfillment of the human rights of the workers going for foreign employment. The NHRC receives complaints about the violation of the rights of migrant workers and work to ensure justice to them, as well as carry out monitoring, research and promotional activities in this regard.

Not only in Nepal, but the national human rights institutes of every country are found to have been mandated constitutional and legal powers to work as a national system for the protection and promotion of human rights.

National human rights institutions around the world are found to have

⁴³ For more information see, <https://www.ohchr.org/Documents/Issues/SRMigrants/ConsultationRecruitment/DhakaPrinciples.pdf>

been playing various roles for the protection of the rights of rights of the migrant workers. Their work basically is carried out through submission of reports in various procedures of the UN, exchanging information and cooperation with human rights institutions of the destination countries, making efforts for protection of the rights of the migrant workers through formal exchange of information based on a memorandum of understanding, designating migration focal point, holding discussion on solution of problems in global and regional networks, reviewing national laws and recommending the government for reforms, and monitor the services provided by the government agencies to the victims.

The involvement of national human rights institutions in the protection of human rights of migrant workers would be centered around the following major areas:

- Working for reforms in policy, legislation and practices,
- Monitoring and investigation of violation of human rights,
- Working for the protection of the migrant workers in custody and jail,
- Make public/national inquiry of the organised, regular and systematic violation of human rights,
- Education, training, study and research,
- Contributing systematically to the international and regional processes of human rights,
- Cooperation and coordination through exchange of information among the national human rights institutions,
- Research and status report publication.

The National Human Rights Commission has been granted various rights for protection and promotion of human rights by Article 249 of the Constitution of Nepal, 2015 and by the National Human Rights Commission Act, 2068. The six-year strategic plan (2015-2020) of the National Human Rights Commission has also given priority to protection of the human rights of the migrant workers and carrying out programmes and activities accordingly. In carrying out its responsibilities, the NHRC has also been coordination with Nepal government agencies, national and international development partners and private companies related with foreign employment.

The tasks carried out so far by the NHRC for making foreign

employment safe and dignified include monitoring, interaction, consultation, discussion with experts, provincial assemblies, national consultation seminar, monitoring at the transit points in the Nepal-India border, monitoring of the Department of Immigration, Department of Foreign Employment, Immigration room and labour desk of the Tribhuvan International Airport, direct meetings with victims and on the basis of all this making policy and procedural recommendations⁴⁴ to the Government of Nepal.

The National Human Rights Commission has also been working for the protection of the human rights of migrant Nepali workers by signing bilateral memorandum of understanding with the National Human Rights Commission of Republic of Korea in 2010 and with the National Human Rights Committee of Qatar in 2015.

⁴⁴ For more information see, http://nhrcnepal.org/nhrc_new/doc/newsletter/Book%20on%20Migrant%20Worker%20Rights_.pdf

Chapter Four

Management of Foreign Employment Sector and Workers' Recruitment Processes

Along with the increase in the number of people going for foreign employment, essential policy, legislation and framework have been developed for the management and regulation of this sector. The foreign employment sector has been managed and regulated basically on the basis of the Foreign Employment Act, 2064 (2007) and subsequent regulations and guidelines.

In this chapter, the major procedures of management and regulation of the foreign employment sector and workers' recruitment have been discussed.

Management of Foreign Employment Sector

1. Agencies responsible for Foreign Employment Management

The Government of Nepal has established policy making, implementation and justice execution agencies for the management of the foreign employment. The Ministry and to some extent the DoFE have a role in policy making while the DoFE and the Foreign Employment Office play a role⁴⁵ in management and regulation.

a. Ministry

Developing necessary policies related to foreign employment, monitoring the work and activities of the subordinate bodies and international labour diplomacy fall under the responsibility of the Ministry of Labour, Employment and Social Security. Of the various responsibilities of the Ministry, some responsibilities are related with foreign employment. These include foreign employment policy, regulations, standards, management and regulation, employment related data, study and research, and works concerning the labour attaché.

b. Department of Foreign Employment

The Department of Foreign Employment (DoFE) was established on 2065 Poush 16 as a separate entity to look into foreign employment affairs as provided in the Foreign Employment Act, 2064 (2007).⁴⁶ The major tasks of the DoFE are as follows:

⁴⁵ GoN work division regulations, 2074

⁴⁶ <http://DoFE.gov.np/Introduction.aspx>, accessed on 3 June 2019

Functions related to regulating

Issuing license for operation of foreign employment business, renewal, punishment and annulment; providing permission and regulating the institutions providing foreign employment orientation training; registration, renewal and regulation of institutions providing training to domestic workers; and other tasks related to monitoring and inspection.

Investigation and Prosecution

Investigation of complaints related to foreign employment; filing of case at the Foreign Employment Tribunal based on the investigation; performing as a quasi-judicial body on departmental action in foreign employment offense; coordinating the work of providing relief and compensation to the workers; suspending the transaction of the entrepreneurs and blacklisting the employer companies; working to check fraud in foreign employment; managing grievances related to foreign employment; providing information to workers at the airport through the labour desk; and rescuing workers and supporting advocacy on behalf of the workers in destination countries.

Promotional and research-oriented works (in coordination with foreign employment board)

Disseminating awareness-oriented information; support and collaboration in relation to safe migration; identification of possible destinations; and identify sectors of demand of employment market.

The central office of the DoFE is based in Kathmandu. All works until mid-December 2018 used to carry out by the Department and the DoFE office in Kathmandu. However, with the decision⁴⁷ dated 16 December 2018 to expand the services provided by the DoFE up to the provinces, other six Provincial Offices⁴⁸ except for Kathmandu (province no. 3) have been established. The Offices have been delegated the authority to issue re-permit, monitor the activities of the branch offices of the foreign employment agencies, and whether advertisements have been published. The 6 provincial offices in Biratnagar, Janakpur, Pokhara, Butwal, Birendranagar and Dhangadi have been issuing re-permit to those who have returned home after completing their contract period and wish to go back again.

⁴⁷ Information available at <http://rajpatra.dop.gov.np/welcome/book?ref=23563>

⁴⁸ http://www.DoFE.gov.np/DetailPage.aspx/id/31/lan/ne-NP?fbclid=IwAR3CnvjKdKC7e_hkKD4Caegj4Uzo-pOWfirvX4XEmoJ0ReQXL7ZyJEx5mc6c

Likewise, the DoFE has a Kathmandu Office and under the Office are Malaysia, Saudi Arabia and Qatar branches. Hence, the Malaysia branch office grants the permit to those going to Malaysia, the Qatar office to those going to Qatar and Saudi Arabia office to those going to Saudi Arabia. Under the Employment Permit System (EPS), the workers going to Korea are provided the labour permit from the EPS Korea branch office at the government's level. Apart from the aforementioned 4 countries, the Kathmandu Office under the DoFE also provides labour permit to other countries as well.

Labour Desk

The Government of Nepal has established a Labour Desk at the Tribhuvan International Airport in order to check whether the pre-departure procedures have been fulfilled by the worker going for foreign employment.⁴⁹ The labour desk examines whether the worker is carrying the labour permit, the orientation certificate, receipt or voucher of payment of various fees (welfare fund, recruitment and service fee).

c. Foreign Employment Board

There is a Foreign Employment Board (FEB) to make the foreign employment business safe, organized and dignified and to carry out necessary works for the protection of the rights and well-being of the workers going for foreign employment and foreign employment entrepreneurs.⁵⁰ There is a FEB Secretariat for regular functioning of the Board. The FEB chaired by the Minister for Labour and Employment comprises high-ranking government officials, foreign employment entrepreneurs, trade union, foreign employment expert and representatives of organisations working in this sector. Currently, the FEB has 25 members including the Chair.

The major tasks carried out by the FEB so far include providing financial relief to the families of the deceased, medical expenses to the sick and injured migrant workers, providing support to bring back the bodies of migrant workers stranded abroad, rescue workers who are left stranded due to internal conflict, economic recession in the employer countries, run public awareness raising programmes, and running safe homes abroad. There is a provision of a welfare fund to run these activities. The Fund is basically made up of the

⁴⁹ As per Foreign Employment Act, 2007, Clause 73

⁵⁰ <http://fepb.gov.np/about#about>

cash deposited as per the prevalent law by workers going for foreign employment.

According to the Foreign Employment Act, 2007, Foreign Employment Regulations, 2064 (2008), the Board shall execute the tasks as per the decision and guidelines of the Department. As per Clause 30 of the Act, the function, duties and rights of the FEB are as follows:

- Collect, process and disseminate information for promotion of foreign employment (Clause 39, b),
- Mobilize the Foreign Employment Welfare Fund (Clause 39, c),
- Determine the eligibility for registration of the foreign employment orientation training provider institutions (Clause 39, g),
- Formulate and endorse the curriculum of the foreign employment orientation training (Clause 39, h),
- Carry out overall study of the state of enforcement of the Foreign Employment Act and make recommendation to the Government of Nepal (Clause 39, i),
- Provide consultation to the Government of Nepal in determination of service fee and promotional expenses (Clause 39, k),
- Write to the concerned agency for necessary action if anyone is found to have acted in violation of foreign employment laws (Clause 39, l),
- Monitor the agencies licensed to run foreign employment business (Clause 39, m),
- Monitor/cause to monitor the organisations that has the license or permit to run orientation training and skills-oriented training (Clause 39, n).

The Office of the Board is based in Kathmandu only.

A foreign employment welfare fund has been established to remain under the Foreign Employment Board for the social security and welfare of the workers who have gone for foreign employment and have returned from foreign employment, and their families.⁵¹

If any worker, who has gone foreign employment with a labour permit, dies due to any reason during the contract period or within one year of the end of the contract period, or is dismembered or taken seriously ill, then in case of death the next of kin will be provided with 700,000

51 Established as per Clause 32 of Foreign Employment Act, 2064 (2007)

rupees and in case of the dismembered or seriously ill workers will received up to 700,000 rupees upon filing of an application within one year of the return to the country of origin.⁵² In addition to this, the fund can also be used to support the academic development of the families of the workers who have gone for foreign employment or of the returnees, support the medical treatment of the families of workers who have gone for foreign employment; to establish and run baby care centres for the proper protection of the children of the women workers who have gone for foreign employment; run safe homes to provide shelter to workers who have lost their jobs and are left stranded after rescuing them; reintegrated and rehabilitate those who have been left stranded due to accident or sickness or any other reason; provide legal aid to those who have faced legal action or changes in the destination country, pay the remuneration of the staffers appointed in the destination countries and to run the daily function of the Board.⁵³

Every worker going for foreign employment needs to make a contribution to the Fund prior to leaving for foreign employment. Since July 2017, the workers with a contract period of up to three years has to contribute 1,500 rupees, and those above three years have to contribute 2,500 rupees.⁵⁴ Prior to this, the workers had to contribute 1000 rupees to the Fund. As of mid-June 2019, the fund has a deposit of 5 billion 199.53 million rupees.⁵⁵

d. Department of Immigration and Immigration Office

The records of those going abroad via Nepal's immigration and those returning from abroad is maintained by the Immigration Officer under the Department of Immigration. In this regard, the Office also maintains the record of those going for and returning from foreign employment.

It is the duty of the Immigration Office to complete the process of Immigration Clearance by verifying whether the VISA and employment related documents of the migrant workers going through Nepal's immigration is right.

e. Diplomatic Mission and Labour attaché

The Foreign Employment Act, 2064 (2007) provides that a labour attaché will be appointed in the country where 5,000 or more workers

52 *Foreign Employment Regulations, 2064 (2008), Rule 28*

53 *Foreign Employment Regulations, 2064 (2008), Rule 26*

54 *Foreign Employment Regulations, 2064 (2008), Rule 24*

55 *As informed by the FEB to the NHRC research team on 2076 Jetha 31*

have been sent for foreign employment.⁵⁶ Likewise, it is also provided in the regulations that a women labour attaché may be appointed in a country where 1,000 or more women migrant workers have been sent.⁵⁷ The function, duties and rights of the labour attaché is as follows:

- Apprise the Government of Nepal of the situation of labour and employment in the country with Nepali workers, fact-based information about immigration and the measures taken by that country for the protection of labour and international human rights and well-being of the workers,
- Help resolve the problem if any between the workers, employer agency and licensee (foreign employment agency),
- Make necessary arrangement to return home through the concerned agency the workers who have been left stranded in course of foreign employment;
- Take initiative to bring back to Nepal the body of the worker who has died due to natural disaster or any other reason abroad, with support of the concerned country or employer agency.

f. Department of Consular Services

The rescue, repatriation and bringing back the bodies of the migrant workers who die of any reason abroad is carried out through the Department of Consular Services under the Ministry of Foreign Affairs. The Department works in coordination with the Nepali diplomatic missions in the destination countries. The major tasks of the department are as follows:⁵⁸

- Coordinate with the Nepali mission abroad to execute tasks including legal aid necessary for Nepali citizens involved in various businesses in a foreign land; the procedure to provide to the legal heir the compensation and insurance money; rescue of the Nepali who have stranded, bringing back the bodies of the deceased etc.,
- The act of consular certification of the documents issued by the government agencies to Nepali citizens for the purpose of submission abroad.

⁵⁶ *Foreign Employment Act 2064 (2007), Clause 68*

⁵⁷ *Foreign Employment Regulations, 2064 (2008), Rule 43 (1)*

⁵⁸ *Accessed from Department website, <http://fepb.gov.np/about#about>*

g. Provincial Government

The Constitution of Nepal, 2015 has provided that the provincial assembly shall formulate various laws and the Provincial government shall implement them. In the province, there are Social Security Ministries as well. The Ministry can implement special policy for the protection of the citizens going for foreign employment.

Some initiatives have been taken at the provincial level for the protection of migrant workers. For example, the Bill drafted by the Province no. 2 government for the social security of those going for foreign employment has been tabled before the Provincial Assembly by the Provincial Social Security Minister.⁵⁹ In addition to this, a legal officer has been provided at all the 8 districts of Province no. 2 for free legal aid and the five-priority task of the officer includes foreign employment as well, according to information shared to the NHRC by chief attorney of Province no. 2.

h. Local Government

The Local Government Operation Act, 2074 (2017) has granted some rights to the local level to collect the data of the foreign employment sector. According to the Act- it is the responsibility of the local government to collect and manage information and data of safe foreign employment and labour force in foreign employment; manage and operate the employment information centre; run financial literacy and skills-oriented training to the labour force going for foreign employment; and work for social reintegrated of the returnee migrant workers and utilization of the knowledge, skills and entrepreneurship gained from foreign employment.⁶⁰

The Employment Information Centre has started working after the government managed essential staffers as of end of 2075 for the management and operation of the Centre, according to the Ministry of Labour, Employment and Social Security.⁶¹

2. Complaint/Grievance Mechanism

Complaints against foreign employment related offense can be registered before the DoFE at the central level and before the Chief District Officer at the district level. Whereas, complaints against crime such as human trafficking or transportation held under the cover of foreign employment

⁵⁹ Interview with Chief Attorney of Province 2 Dipendra Jha on 19 May 2019

⁶⁰ Local Government Operation Act, 2074 (2017), Clause 11 (2) (l)

⁶¹ Interview with MoLESS Under Secretary Deepak Dhakal on 19 May 2019

can be filed before Police. If one has to return after being disqualified due to health reasons, he/she can file an application at the Ministry seeking return of the expenses incurred while going to and returning from foreign employment.

a. Department of Foreign Employment and/or Chief District Officer

Complaint against any offense related to foreign employment can be registered at the DoFE or the Chief District Officer.⁶² Until March 2019, all complaints related to foreign employment could be registered only at the DoFE. But with the amendment in March 2019 in the Foreign Employment Act, a provision has been made whereby 'in matters where complaint can be filed at the Department, the complaint can also be registered before the Chief District Officer in the concerned district.'⁶³

The complaints filed against the foreign employment agencies before the CDO has to be sent to the Department within seven days. In case it is found following examination over a complaint against at the district against any individual that the worker or his/her representative needs to be compensation then the Chief District Officer can reconcile between the two sides through discussion and providing the compensation. (Clause 21a, (4)). In case reconciliation does not take place or if the nature of complaint does not allow reconciliation, then such complaints needs to forwarded to the Department.

If the employer agency does not provide employment as per the terms set in the agreement or if the licensee fails to take necessary and appropriate action to fulfill the terms and condition mentioned in the contract, and a complaint is registered in this regard by a worker, then the DoFE shall carry out necessary examination and provide compensation to the victim and punishment to the guilty.⁶⁴ In addition to this, the DoFE can file a case at the Foreign Employment Tribunal for various offenses related to foreign employment.⁶⁵

Appeal: The sides not satisfied with the decision of the DoFE may file an appeal before the Government of Nepal thirty-five days from the decision taken.⁶⁶

62 *Foreign Employment Act, 2007, Clause 21a*

63 *Bill designed to amend some Nepal Act certified on 3 March 2019, Clause 21a*

64 *Foreign Employment Act, 2007, Clause 36*

65 *Foreign Employment Act, 2007, Clause 43 to 47*

66 *Foreign Employment Act, 2007, Clause 66(1)*

b. Ministry of Labour, Employment and Social Security (expert committee):

Upon reaching the destination country after carrying out medical test from a health examination institute designated by the Government of Nepal, if any worker is returned back after showing some problem in the medical test in the destination country, then there is a provision where the worker can file an application at the Ministry within thirty-five days of return for recovery of the expenses incurred while going for foreign employment and returning back.⁶⁷

c. Nepal Police:

Complaints related to human trafficking or transportation carried out in the course of foreign employment can be filed before Nepal Police. In such complaints, the Police filed a case in the concerned Court through criminal investigation process.

3. Judicial Mechanism (Foreign Employment Tribunal)

A three-member foreign employment tribunal has been established in order to carry out the initial hearing and execution of any case related to foreign employment other than invites punishment from the DoFE. Chaired by an Appellate Court Judge, it comprises the officer overseeing labour court cases and first class officer of judicial service recommended by the Judicial Service Commission.⁶⁸

After the complaint is filed by the victim who has suffered excessed in course of foreign employment, the DoFE investigation officer carries out the investigation. The conclusion and recommendations from it are sent to the Office of the Public Attorney, where considering the nature of the crime it is decided whether it should be presented before the Foreign Employment Tribunal. The complaints that need not be sent to the Tribunal are dealt with by the DoFE while the complaints sent to the Tribunal are addressed by the Tribunal.

- Case procedure: The prosecution and execution of the case to be registered at the Tribunal is held as per the Brief Procedures Act, 2028.⁶⁹
- Responsibility of enforcement of order or verdict: from the District Court⁷⁰

67 *Foreign Employment Regulations, 2008, Rule 46b(1)*

68 *Foreign Employment Act, 2007, Clause 64*

69 *Foreign Employment Act, 2007, Clause 65*

70 *Foreign Employment Tribunal Regulations 2008, Rule 40*

- Appeal: The party not satisfied with the decision of the Tribunal can file an appeal at the Supreme Court within thirty-five days of the decision taken.⁷¹
- To be a government case: The government of Nepal is petitioner in a case related to foreign employment.⁷²

4. Policy, Law and Plans

a. Foreign employment policy, 2068

The Foreign Employment Policy, 2068 has been introduced in order to make foreign employment safe, dignified and systematic. The policy speaks of an objective of developing the country's human resource as an efficient, capable and competitive labour force by providing them knowledge and skills as per the demand of the international market and thereby make their entry in foreign employment safe, organized and dignified; identify and promote employment opportunities in the international labour market; maximize the benefit of foreign employment through the development of skilled human resource with competitive ability; make the overall process of foreign employment efficient, transparent, reliable, organized and safe; address the concerns of women workers in the labour market to ensure their rights in the overall foreign employment migration cycle; ensure good governance in foreign employment management; promote collaboration through enhancement of regional partnership by mobilizing local, national and international resources in foreign employment management.

b. Related legislation

Legal provisions as follows have been established for the management and regulation of foreign employment:

- Related with foreign employment service delivery and execution of justice : Foreign Employment Act, 2064 (2007), Foreign Employment Regulations, 2064 (2008), Foreign Employment Tribunal Regulations, 2068 (2011).
- Human Trafficking and Transportation (Control) Act, 2064 (2007) to address the human trafficking and transportation that takes place under the cover of foreign employment.

In addition to this, the Civil Code, 2074 (2017)⁷³ and other Nepal law

⁷¹ Foreign Employment Act, 2007, Clause 66 (1)

⁷² Foreign Employment Act, 2007, Clause 63

⁷³ According to Civil Code, 2017, Clause 478 (2) lender cannot charge more than 10 per

provisions come into effect in relation to the interest rate that a person can charge while giving loan to another person.

c. National Plan

The concept paper of the fifteenth five-year plan⁷⁴ has also determined strategy and some working policies to make foreign employment safe, dignified and organized. The plan has adopted a strategy to "make phases foreign employment safe, free of exploitation, dignified and maximum result-oriented" while the working policy includes reaching labour agreement with major destination countries; linking those going to India for employment with registration, identity card and insurance/welfare fund; making foreign employment safe, dignified and organized by maintaining prior records of foreign employment, and combating strictly all kinds of anomalies.

5. Foreign Employment Business

a. Recruitment Agencies (licensee)

The Foreign Employment Act, 2064 (2007) has provided that the institutions that wish to run foreign employment business may run such business by acquiring license from the Department of Foreign Employment.⁷⁵ The prerequisites for getting a license includes certification of organisation registration at the Company Registrar's Office, Permanent Accounts Number (PAN) certificate, and a testimony of the proprietor's at least two years of experience of working as a proprietor or manager in a foreign employment related organisation or financial, professional, trade or industrial institution running continuously for the past five years.⁷⁶

The licensee organisation needs to make a deposit as surety as prescribed by the government. Prior to the amendment to the Foreign Employment Act in 2019, the surety was 3 million rupees in cash or 700,000 rupees in cash and 2.3 million rupees worth of bank guarantee. However, with the 2075 Falgun amendment⁷⁷ to the Act, the organisation seeking a license with a target to send up to 3,000 workers annually needs to deposit surety including 5 million rupees in cash and 15 million worth of bank guarantee; seeking license with a

cent annual interest rate.

74 https://www.npc.gov.np/images/category/15th_Plan_Approach_Paper2.pdf

75 *Foreign Employment Act, 2007, Clause 11*

76 *Foreign Employment Regulations, 2008 Rule 6(1) section (f)*

77 *Some provisions of Foreign Employment Act, 2007 were amended through the Bill Designed to amend Some Nepal Acts certified on 3 March 2019*

target to send more than 3,000 and up to 5,000 workers annually needs to deposit as surety 10 million rupees in cash and 30 million worth of bank guarantee, and those seeking license with a target to send more than 5,000 workers annually needs to deposit as surety 20 million rupees in cash and 40 million rupees worth of bank guarantee.⁷⁸

According to the Foreign Employment Act, 2064 (2007), the licensed agencies are required to take permit (Clause 15) before recruiting workers, after acquiring the permit need to publish an advertisement for recruitment of workers by including the details as prescribed (clause 16), need to sign a contract with the workers (clause 25), and need to give a copy of the contract by translating it into Nepali language (clause 25(2)), and need to give a receipt or voucher against the fee charge on the worker (clause 24(3)).

The DoFE carries out monitoring⁷⁹ and investigation⁸⁰ to see whether the works of the foreign employment agencies are in accordance with the concerned law. If found to have committed any offense related to foreign employment, the DoFE and the Foreign Employment Tribunal determine the penalty and punishment⁸¹ while punishment as per the concerned law would be applicable in case of other offenses (like human trafficking or transportation) is carried in the name of foreign employment.

Presently, there are 1437 agencies that have acquired license from the DoFE to run the foreign employment business, of which 1,121 are active, 112 are inactive and 204 have been blocked.⁸²

b. Individual agents

The individual agents are working to link foreign employment aspirants to the employment of the destination countries. Such agents provide aspirants workers to the foreign employment agencies and get paid in commission from the agency concerned after the recruitment process is completed. The 2075 Falgun amendment to the prevalent Foreign Employment Act however has dissolved the exiting provision of agents.⁸³ Nevertheless, they continue to work unabated. According

78 *Foreign Employment Act, 2064 (2007), Clause 11 (a) (2)*

79 *Foreign Employment Act, 2064 (2007), Clause 34*

80 *Foreign Employment Act, 2064 (2007), Clause 35*

81 *Foreign Employment Act, 2064 (2007), Clause 113 (2) that provides for various penalty from Clause 43 to 55*

82 <http://DoFE.gov.np/Recruting-Agences.aspx>

83 *The provision of agents removed with the amendment in Clause 74(2) of Foreign Employment Act, 2007 through the Bill Designed to amend Some Nepal Acts certified on*

to Foreign Employment Agents Association, there are at least 60,000 agents still active in this sector.⁸⁴

Based at the community level the agents are usually people from the neighborhood, known or related, and hence the migrant workers and their families trust the agents very easily. Such is the level of trust that even if any well-wisher or government officials alert them about the possibility of fraud from the agents in the migration process, they do not trust the people who have been raising caution but more on that the agents say.

Agents usually operate at four to five layers of the recruitment process.⁸⁵ There are three layers outside Kathmandu including the remote region, district headquarters, province or regional urban centres. In Kathmandu too, there is another level of agents that work as a bridge between the agents outside Kathmandu valley and the agency recruiting the workers. The workers' first point of contact is usually the agents based at the local level.

The agents work to provide the foreign employment aspirations the basic information (nature of work, remuneration, cost etc.) about the work, facilitate the labour permit process through the foreign employment agencies, medical test or orientation training and insurance coverage etc.

c. Orientation institutions

The workers going for foreign employment must undergo orientation training prior to departure.⁸⁶ There are orientation organisations that provide the training. Such organisations receive permit from the DoFE on the recommendation of the Foreign Employment Promotion Board on the basis of infrastructure, human resources and sufficiency of other resources.⁸⁷ For the permit, the organisations need to deposit a surety amount of one hundred thousand rupees and 10,000 rupees as fee for permit certificate.⁸⁸

3 March 2019

84 Interview with President of Foreign Employment Agents Association Khadga Bahadur Shrestha dated 27 April 2018

85 Interview with President of Foreign Employment Agents Association Khadga Bahadur Shrestha dated 27 April 2018 and with office-bearers of Sunsari Foreign Employment Agencies Association on 7 January 2019

86 Foreign Employment Act, 2064 (2007), Clause 27

87 Foreign Employment Act, 2064 (2007), Clause 28

88 Foreign Employment Regulations, 2064 (2008), Rule 22

The DoFE develops the curriculum for the training and the training should be based on the curriculum. Both the Board and the DoFE have the mandate to monitor whether the training is being held as prescribed. The DoFE may suspend or cancel the license of the orientation organisations that act against the Foreign Employment Act and regulations.⁸⁹

Presently there are altogether 160 training provider institutions including 157 active and 3 inactive institutions inside and outside Kathmandu valley, which are listed at the DoFE.⁹⁰

d. Medical test providers

Every worker going for foreign employment are eligible for foreign employment only after being certificate as medically fit following a medical test. Prior to leaving for foreign employment, it is mandatory to carry out medical examination from a health institute recognized by the Government of Nepal.⁹¹ Such institutions providing medical test facility needs to be enlisted in the Ministry.⁹² If any worker, who has gone for foreign employment after undergoing the prescribed medical test, is returned home due to the wrong medical examination report issued intentionally or negligently or with mal-intention then the expenses incurred by the worker while going for foreign employment and returning home will have to be borne by the medical institute involved in such fake medical examination.⁹³

There is a provision of an expert committee to decide whether the wrong medical test report was issued.⁹⁴ The committee is chaired by a gazetted first class medical doctor designated by the Ministry of Health and Population with a doctor designated by the Nepal Medical Council, the legal officer of the Ministry, the Director of the Foreign Employment Board, Chair or representative of Nepal Health Entrepreneurs Federation, and an individual designated by the Ministry from among the returnee migrant workers, and the Chairperson of the official trade union or a representative designated by him/her as its members. The Law Division of the Ministry serves at the Committee Secretariat.

89 *Foreign Employment Regulations, 2064 (2008), Rule 23*

90 <http://DoFE.gov.np/Orientation-Center.aspx>

91 *Foreign Employment Act, 2064 (2007), Clause 71(1)*

92 *Foreign Employment Regulations, 2064 (2008), Rule 45 a (5)*

93 *Foreign Employment Act, 2064 (2007), Clause 72(2)*

94 *Foreign Employment Regulations, 2064 (2008), Rule 23*

Presently, a total of 234 health institutions inside and outside Kathmandu valley have been enlisted for the purpose.⁹⁵

e. Insurance Companies

Every individual going for foreign employment with a labour permit from the DoFE must have an insurance coverage. Every individual going for foreign employment will have a life insurance of one million rupees and medical insurance worth 500,000 rupees for severe diseases.⁹⁶ Those going in institutional labour permit has to have an insurance coverage from the recognized insurance company through the concerned recruitment agency.⁹⁷

If the premium and liability related to insurance of any worker encounters a deviation for employing the worker in a different company or work than contracted by the licensee then the deviation needs to be borne by the licensee.⁹⁸

According to the DoFE there are 4 insurance companies recognized for the purpose.⁹⁹

f. Creditors

It has been found that those going for foreign employment institutionally have to pay a big amount as recruitment fee. To pay the recruitment fee, the aspirants usually take loan from local money lenders. The law of Nepal provides that the interest rate of loan taken by an individual from another individual should not be more than 10 %.¹⁰⁰

Recruitment Processes

Nepalis go to different countries for employment. Labour permit from the Government of Nepal is essential in order to go for foreign employment officially. The labour permit basically are of three kinds:

1. Individual: Any individual going for foreign employment after seeking employment on his/her own and reaching an employment contract with the employer abroad, and
2. Institutional: Sending for foreign employment after being

95 DoFE Webiste <http://DoFE.gov.np/Medical-Centre.aspx>

96 http://www.bsib.org.np/documents/FEPLP_08.04.2018.pdf

97 Foreign Employment Regulations, 2064 (2008), Rule 19 (1)

98 Foreign Employment Regulations, 2064 (2008), Rule 19 (3)

99 <http://DoFE.gov.np/Insurance-Company.aspx>

100 Civil Code, 2074, Clause 478 (2)

recruited by the Foreign Employment Agency.

3. Through government: Migrant workers are recruited by the Nepal government to send them to the country with whom Nepal government has done G to G agreement. (G to G agreement is to recruit workers from governmental level)

Any individual who wishes to go for foreign employment individually can acquire the labour permit after fulfilling the prescribed procedures.¹⁰¹ Those wishing to go for foreign employment institutionally get their permit through the agency licensed to recruit workers after completing the procedures from Clause 15 to 19 of the Act.

Nepal has opened 110 countries for institutional labour permit and 172 countries for individual labour permit. (The list of countries open for institutional labour permit is given in Annex 1).

Labour permit is not required to go for employment in Indian. The 1950 treaty between Nepal and India provides that the citizens of both countries can freely travel to one another's territory, run trade and business, purchase and sell property and reside¹⁰². As a result, the Nepalis can easily go to India for employment. Using the porous border, hundreds of thousands of Nepali go to India for work from various parts of the country and this number is highest from western Nepal.

According to the foreign employment law of Nepal, anyone going for employment in the third country needs to acquire labour permit and depart from Nepal's airport. But apart from people going formally with a labour permit and going to India, workers are also taken for employment in the third country informally as well. Taking this into consideration, there are specially 5 ways in which people go/taken for foreign employment from Nepal.

1. Third country with institutional labour permit: Based on the demand received from the foreign-based employer, the foreign employment agency recruiting and sending workers institutionally with labour permit to the third country,
2. Third country with individual labour permit: The individual going for foreign employment going to the third country with individual labour permit after finding job on his/her own or

101 *Foreign Employment Act, 2064 (2007), Clause 21*

102 *Peace and Friendship Treaty reached between Nepal and India, available at <https://mea.gov.in/bilateral-documents.htm?dtl/6295/Treaty+of+Peace+and+Friendship>*

through relatives,

3. Third country according to G to G agreement: Nepal government has been doing agreement with the government of destinations countries in which both country agree to send and receive Nepali migrant workers from government level. Hence, in G to G agreement it is agreed that the governments will take responsibility of recruiting workers from their end. Example can be Nepal government's agreement with South Korean government in which Nepal government itself recruits the Nepali workers based on the labour demand of South Korean government.
4. India using porous border: Going to India using the porous Nepal-India border. Nepalis do not need labour permit to go for employment in India and such employment is regarded as official.
5. Third country informally (going/sending without the process of labour permit): Going to third country or sent by agents through informal channel using the open border with India or on a Visit VISA or by adopting other means with the objective of employment.

Though Nepali authorities described going for foreign employment through informal channel as "illegal", if those who have returned to Nepal after working for some time accordingly and wish to return to work at the same location then the labour permit is granted to legalize the work.

In this section, especially the institutional labour permit procedures and phases, legal provisions and institutional structures of management and regulation of recruiting agencies are discussed.

1. Recruitment process (institutional) and phases

The licensed agencies need to follow the following phases and procedures to send workers for foreign employment.

Before sending any worker for foreign employment, the licensed foreign employment company needs to fulfill the various phases and procedures prescribed for them. The Foreign Employment Act, 2064 (2007) and its regulations provide for the procedures to be followed while recruiting workers.

1. Seeking demand for workers in destination country and receiving the demand
2. Certifying the demand from the Nepali Diplomatic Mission
3. Acquire permit from the DoFE to begin the process of recruitment of workers
4. Published advertisement for workers' recruitment
5. Fulfill the worker selection process
6. Carry out medical test of the selected workers
7. Fulfill the VISA procedures
8. Sign contract with the workers
9. Organise pre-departure orientation training
10. Carrying out insurance and payment of contribution to the welfare fund
11. Taking final labour permit
12. Handing over passport and labour permit papers to the workers
13. Sending for foreign employment

2. Individual Labour Permit

Apart from going through the licensed recruiting agencies, the concerned individual can also go for foreign employment on the basis of individual labour permit. The Foreign Employment Act, 2064 (2007) Clause 27 provides for labour permit to go for foreign employment on an individual basis. For this details about (a) the destination country for employment (b) the nature of work to be done abroad, (c) the approval granted by the employer agency (d) contract with clear details of the terms and condition of the employment (e) testimony of taken orientation training (f) medically fit certificate, (g) evidence of insurance coverage etc. should be submitted.

3. Other regulations, procedures and provisions related to workers' recruitment

In addition to the aforementioned phases, the law has also provided for other procedures to be followed in foreign employment and workers recruitment process under institutional labour permit.

a. Cost and recruitment fee: The Act provides that the Government

of Nepal can determine the maximum ceiling that recruitment agencies can charge as service fee and promotional expenses per work for any particular country or company.¹⁰³ As per this regulation, the Government has fixed the maximum ceiling of the service fee and promotional expenses that recruiting agencies can take from the workers.

Since the 'Free VISA, Free Ticket' came into force from 6 July 2015 in 7 destination countries¹⁰⁴, the foreign employer needs to bear the cost of air ticket and VISA fee for Nepali workers during their recruitment, and the recruiting agency cannot take any fee from the worker. But if the fee of the agency is not borne by the employer than in case of submission of letter in writing of whether such promotional expenses and service fee is provided, there is a provision to charge a maximum of 10,000 rupees from the workers.

For other countries, the prescribed amount includes 90,000 for Libya, 19,900 of Mauritius, 118,000 for Algeria, 50,000 for Japan (except ticket), 80,000 for Russia, 80,400 for Poland and 65,000 for Portugal, according to the DoFE Kathmandu Office.¹⁰⁵ As per the agreement reached between Nepali and Korean governments under the Employment Permit System, 815.59 US dollars¹⁰⁶ has been designated to send workers to Korea from the government level.

- b. Receipt of service fee to be provided:** The recruiting agency must give a receipt or voucher against the amount received from the worker to the concerned individual.¹⁰⁷
- c. Minimum remuneration:** The Government of Nepal can determine the minimum remuneration for workers going for foreign employment by publishing a notice in the Nepal Gazette.¹⁰⁸ Accordingly, the government had determined the minimum wage for various destination countries. Such remuneration is different based on the nature of the work.

103 *Foreign Employment Act, 2007, Clause 24*

104 *Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, United Arab Emirates and Malaysia*

105 *Interview with Director of Foreign Employment Kathmandu Office Devendra Karki on 21 May 2019*

106 *Information provided by DoFE, EPS Office on 21 June 2019*

107 *Foreign Employment Act, 2007, Clause 24 (3)*

108 *Foreign Employment Act, 2007, Clause 23*

- d. **Use of country's airport :** The recruiting agency must use the airport of the home country in order to send workers for foreign employment. But approval of the DoFE must be taken if workers are to be sent using foreign airports due to reasons like not available of air ticket to send workers from domestic airport.¹⁰⁹
- e. **Prohibition of minors in employment:** A minor who has not completed 18 years should not be sent to foreign employment.¹¹⁰
- f. **Prohibition of gender-based discrimination:** The Foreign Employment Act prohibits gender-based discrimination¹¹¹ while sending workers for foreign employment.
- g. **Prohibition in running of foreign employment business without license:** Nobody shall be allowed to operate foreign employment business without acquiring the license.¹¹²
- h. **Licensee not allowed to recruit workers individually:** Any licensee cannot send workers for foreign employment on an individual basis.¹¹³
- i. **Existing provision of agent has been removed:** Any kind of activity carried out by the local agents in relation to foreign employment shall be illegal with the annulment of the provision of agents in the prevalent Foreign Employment Act.¹¹⁴
- j. **Monitoring to be carried out:** It is the responsibility of the DoFE to carry out monitoring and inspection of the licensee offices from time to time in order to see whether the foreign employment laws and directives issued under the law have been followed.¹¹⁵
- k. **Department to investigate:** In case of a complaint received from any worker in regarded to the employer agency not fulfilling the liabilities of the contract or the licensee not taking necessary and appropriate measures to fulfill the terms of the contract, the DoFE shall carry out necessary inquiry and investigation into the matter.¹¹⁶

¹⁰⁹ *Foreign Employment Act, 2007, Clause 22 (1) and (2)*

¹¹⁰ *Foreign Employment Act, 2007, Clause 7*

¹¹¹ *Foreign Employment Act, 2007, Clause 8*

¹¹² *Foreign Employment Act, 2007, Clause 10*

¹¹³ *Foreign Employment Act, 2007, Clause 21(3)*

¹¹⁴ *The provision of agents removed with the amendment in Clause 74(2) of Foreign Employment Act, 2007 through the Bill Designed to amend Some Nepal Acts certified on 3 March 2019*

¹¹⁵ *Foreign Employment Act, 2007, Clause 34(1)*

¹¹⁶ *Foreign Employment Act, 2007, Clause 35(1)*

- l. Complaint to be filed for compensation:** The worker or his/her representative can register a complaint along with evidence before the DoFE or Chief District Officer if the employer agency does not provide employment as per the terms mentioned in the contract and if the complaint is deemed to be justified upon investigation over the complaint then the DoFE may direct the recruiting agency to compensate all expenses incurred while going for foreign employment.¹¹⁷
- m. Directives to be issued:** The Government of Nepal may, from time to time, issue necessary directives to the licensee in relation to foreign employment, and it shall be the duty of the concerned licensee to follow such directives.¹¹⁸
- n. Duty of workers:** It shall be the duty of the person going for foreign employment to follow the contract reached with the employer agency and the laws of the concerned country.¹¹⁹
- o. To return home upon end of VISA period:** The workers who have gone for foreign employment needs to return home upon completion of the term of the VISA of the concerned country.¹²⁰

¹¹⁷ *Foreign Employment Act, 2007, Clause 37(1) and (2)*

¹¹⁸ *Foreign Employment Regulations, 2008, Rule 49a*

¹¹⁹ *Foreign Employment Regulations, 2008, Rule 49 (a)*

¹²⁰ *Foreign Employment Act, 2007, Clause 76(1)*

Chapter Five

Abuses Against Migrant Workers During Recruitment Process

‘Though I was told that it would be the work of a cleaner with 1,500 monthly salary, my labour permit said that the work would be that of a labourer with monthly salary of 900 Qatari Riyal. I had paid two hundred thousand rupees but was given receipt of only 10,000. Though it was not written in the employment contract, I was asked to work as an assistant to an Air Conditioner technician in another company. Then I was asked to work in another place after six months. Some months I was paid 500, some months 800 was sent to my bank account. But after the first five months, that pay was also not regular. After my salary for four months was put on hold, I informed the agent and agency. But after hearing to my problem once or twice, both of them stopped answering to my calls. Giving up my salary for four months, I returned home after purchasing air ticket for 739 Riyal. I have not been able to pay back my loan, and now I am going to Malaysia.’

- *Devendra (name changed), a returnee migrant worker who returned from Qatar in July 2018¹²¹*

Thirty-four-year-old Devendra of Dailekh district, who returned after working for some years in Malaysia, met with an agent who used to come sometimes from Bardia to Dailekh in Asar 2074. At a time when he had not found any effective alternative to employment in the village itself following return from Malaysia, the agent told him that there was demand for cleaning work from Qatar, and the total earning would be at least 1,800 Riyal including a salary of 1,500 and overtime. Hence, he decided to go to work in Malaysia. The agent told him that it would cost him 220,000 rupees and in response he mentioned that he had heard about free VISA and free ticket. In reply, the agent said, “brother, you don’t understand, where has that rule been implemented?” and just laughed at him. Finally, the deal was set for two hundred thousand rupees.

The agent asked Devendra to send 150,000 rupees in July 2017. When Devendra said that he would deposit the amount in the agent’s bank account, he asked him to instead send it through IME (money transfer) in the name of a woman, who he said was his wife. Devendra sent the amount through IME in the name of the same woman.

¹²¹ NHRC research team interviewed Devendra on 1 May 2019

After few days, the agent gave him the name of a health institution saying, “your VISA has arrived, now go to Nepalgunj for a medical examination.” Few days after the medical test at Nepalgunj, the agent summoned Devendra to Kathmandu and took 50,000 rupees from him for air ticket and VISA fee. When Devendra asked for a receipt of the amount, the agent said, “I would give a receipt only if I was taking this amount, this is for the payment I made for purchasing your ticket and as VISA fee, so what would I give you a receipt for. If you don’t trust me then you could decide not to go after bearing all the costs so far.” After this, Devendra said he did not insist much, and then left for Qatar on September 2017.

Upon reaching Qatar, Devendra was taken to a different place rather than to the employer mentioned in the labour permit and employment contract. Though he was promised work of a cleaner, he was asked to work as a helper for an Air Condition technician. After completion of first 6 months, he was taken to work in a different place. Though not as much as the Agent said, the employment contract said that the monthly salary would be 900 Riyal. But the employer used to deposit sometimes 500 and sometimes 800 only in Devendra’s bank account. Though he was told that he would be paid 300 Riyal for food, neither the amount was given nor did the company arranged for food.

Five months after going to Qatar as he was not even provided the salary, he informed the agent and his recruiting company to which they said, “keep working, you will eventually get paid, if not then we will pay you.” But after some time, both of them stopped even picking up Devendra’s phone. Frustrated, he considered returning home, but the employer said, ‘I got you here for 2 years and if you want to return in one year, then you have to pay for your return ticket.’ Hence, giving up his four months’ salary, he returned home after purchasing the return ticket for 730 Riyal.

When NHRC asked him if he filed a complaint seeking recovery of the amount from the agent and agency upon return to Nepal, he said, “I did not know where to report, and if I could get my money back after filing a complaint, and also more money would be spent on filing the complaints and following the due procedures, hence I did not do so.” Since he has not been able to pay back the loan he took to go to Qatar, he is now considering to go to Malaysia.

Basically, due to poverty and unemployment, hundreds of thousands of Nepalis like Devendra go for foreign employment. Though the Constitution has established Right to Employment and Labour as every Nepali’s fundamental right, only few of the 500,000¹²² that join the labour market annually get a job in the country and the remaining are forced to choose the option of foreign

122 *Economic Survey 2018/19: GoN, Ministry of Finance, p.61*<https://mof.gov.np/uploads/document/file/economic-survey.pdf>, last accessed on 3 June 2019.

employment. The major destination of those going abroad for work include the gulf countries and Malaysia, where they work in the construction, production sectors and as domestic workers.

More than 90 % of those going for foreign employment with labour permit are found to be recruited by the foreign employment agencies.¹²³ Likewise, apart from a limited number of people all those who go with institutional labour permit are linked to the foreign employment agencies by the local agents, who pay the role of a middle-person for it. Of the 418 people who had gone or were preparing to go to the third world countries and whose case studies were collected for this research of the NHRC, 395 of them (or 94.5%) were mediated by the local agents or the agents had made an arrangement to reach them to the destination country informally.

The service of the foreign employment agency and agent have proved to be useful for those who choose foreign employment considering that there is no easy and alternative means of income generation in the country. Due to the professional service of the agent and agencies, hundreds of thousands of Nepalis have found it easier to be linked with foreign employment. With this, they have been able to make some income and run their family expenses or make some savings for the future. Hence, the foreign employment entrepreneurs have an important role in addressing momentarily the severe problem of unemployment in Nepal.

In the past one and a half decade, foreign employment has stood as a lucrative business in the country. Though all the entrepreneurs involved in this sector are not indulged in fraudulent practices, there have been incidents where the migrant workers are recruited with false promises and are not only exploited and cheated but are also illegally transported or trafficked for forced labour and exploitation. Of those who had gone through agent and/or foreign employment agency and interviewed for this research 76.74 % (253 of 344) said that they had face one or all the problems as mentioned below:

1. Payment: Not paid as promised, not provided with food expenses or for additional
2. work, not paid at all, not paid on time, pay deducted or withheld etc.
3. Nature of work: Not given work as promised,
4. Working hours: Forced to work for more working hours than the labour standard,
5. Not paid for overtime work.

¹²³ GoN, MoLESS, “Labour Migration for foreign employment, Nepal’s status report 2015/16-2016/17(p.19) states that of the 92.44% who went for foreign employment in 2015/16, 90.89% in 2014/15 and 89/86% in 2014/15 had gone with institutional labour permit.

Even though government mechanism and special legal provisions are in place to stop the excesses taking place against those going for foreign employment and to regulate and manage the overall foreign employment sector, their role has not been found to be effective in protecting the rights of the Nepali workers and in stopping such excesses carried out by the entrepreneurs. Various limitations and obstruction were found in the access to justice of those who have suffered exploitation and excesses.

The nature of the problem of those going to India for employment is different. Using the porous border, hundreds of thousands of Nepalis, especially from the western region of the country go to India for work. Apart from the work in construction, industry, security, domestic work and hotel sectors, Nepalis also go to India for seasonal work (planting and harvesting). Those going to India for employment don't require labour permit. No records are also maintained about them. Neither is any data available anywhere about the real number of people working in India. Millions of Nepalis are said to be working in India. In case they face any exploitation, fraud or other excesses during employment in India, the Nepali legislation cannot provide them any protection.

Those going with individual labour permit are also found to have faced problems during foreign employment. However, since the proportion and vulnerability of those going with institutional labour permit (through agencies) is higher compared to those with individual labour permit, an analysis has been made in this section about the excesses that people who have gone or are preparing to go through agents and agencies to the third world countries. Also, the vulnerabilities of those going to India have also been discussed.

1. Fraudulent Practices of the Foreign Employment Entrepreneurs

Foreign employment agencies and the individual agents playing the role of a middle person are working professionally with the objective of recruiting workers wishing to go for foreign employment. In addition to this, health institutions recognized to carry out health examination and organisations recognized to provide pre-departure orientation to those selected to go for foreign employment are also working in this sector. Though the service of these service providers have been useful for many migrant workers, fraudulent practices of some of these institutions and agents have pushing many people into trouble and excesses every day.

a. Recruitment Agency

The foreign employment agencies make tall and attractive promises to the workers before recruitment about the work and remuneration and charge

them exorbitant and illegal fees. But many don't get the work, remuneration and facilities as promised earlier, and in addition to that they also face forced labour and other kinds of exploitation.

Deception in remuneration and facilities

The common problem that many migrant workers face is the fraud in remuneration and facilities. Though a certain amount had been promised during the recruitment, they are forced to sign a contract either for a lesser amount or they are not provided the said amount upon reaching the destination country.

Salary rate is the major information shared by the entrepreneur and sought by the worker during recruitment. The individual agent or agency proprietor, staff usually tell that the salary would be attractive. In some situation, the information about food and over time is also shared along with the information about the salary, as a result of which the aspirant assumes to make a good income. But after reaching the destination country, they get less than what they were promised earlier.

'I was told that I would get 900 as salary, 300 food allowance and also overtime, and the work would be inside the building. In the first month, I was paid 534 Riyal for 23 days of work, then for the next months, I was paid 877 per month. The duty used to be for 12 hours, another 2.5 hours was spent to travel to work and back. The payment for the overtime work worth 100 hours a month was nowhere, neither did I get the allowance for food. Furthermore, from the third month I was not paid at all, they used to say that they are deducting the expenses that was incurred while taking us there.'

- *Ramesh (name changed), a migrant worker who returned after nine months in Qatar*¹²⁴

The National Human Rights Commission research team interviewed Ramesh (named changed) in Morang district on 4 January 2019, and also looked at his employment contract and labour permit, as well as the payment slip of three months. Though his labour permit papers mentioned that the monthly remuneration would be 900 Riyal, his pay slip showed that he was paid 534 Riyal (for 23 days of work) and 877 Riyal (for 26 days of work).

Among the people that the NHRC research team interviewed those who had returned after going for employment in a third world country institutionally,

124 NHRC research team interview with Ramesh in Morang on 4 January 2019.

those who said that they were not provided salary, food expenses or remuneration for additional work, or not paid salary, not paid on time, or had their salary deducted or withheld were 55.63 % (79 among 142).

Salary deduction and withholding

The employers were found to have been holding the salary of the workers, as a result of which they were forced to work in order to get that payment.

‘I was paid regularly for 2 months upon reaching Qatar. Then it started getting delayed, and in nine months, the salary of three months was due. The salary of September was paid only in December. And of January in October. Then even if I wanted to return after leaving the work, then I could leave the hard-earned money just like that. So, even one among the four of us who had come together returned, we three continued to work. They have said that all the salary on hold will be paid at the end of the contract period, let’s see what happens.’

- *Keshav (name changed), a migrant worker of Morang district based in Qatar*¹²⁵

The NHRC investigation team also interviewed those who had faced the problem of not receiving salary regularly, not being paid, and holding of salary for long by the employer. It was learnt from those interviewed that they were told that deductions were made in the salary for drinking water, power or food. Even though the workers were not informed during the recruitment process that the employer would make such deductions, they faced deduction after reaching in the destination country for work.

Mangali (named changed) of Sindhupalchowk said, **“The job was easy but what to do, in terms of salary it was really painful”**. She shared that even though she was recruited with a monthly salary of 900 Ringgit, the company paid her 250 Ringgit for the first month and then 600 Ringgit after that. Even in that amount they used to deduct 50 to 80 Ringgit for drinking water and power. **“When we asked why we were being paid less, the Company replied that they had to pay the agency that recruited us. When the agency recruited us, they had charged us such high amount, now the company too is deducting from our salary,”** she said.¹²⁶

Among those interviewed by the NHRC research team, especially those going to Malaysia said that the employer used to deduct a monthly levy

125 *Telephone interview with Keshav based in Qatar and with his mother in Morang district by NHRC research team on 4 January 2019.*

126 *Interview by NHRC research team with Mangali in Sindhupalchowk on 4 April 2019.*

while those going to the gulf countries shared that the employer used to not pay them for some months, and hold the salary of some months. Those who said that they were not paid for two or three months shared that when they asked for the reason behind it with the employers, they said that they have been deducting from their salary as commission for the agencies in Nepal. The reason behind holding the salary could be to stop the worker from returning home or a measure to stop the worker from going to another Company.

Difference in the nature of work

Having to do a work upon reaching the destination country which is different to what the agency in Nepal had said or what is mentioned in the labour permit and contract is another major problem. The aspirants, who are not aware about what is the demand for and how is the company, are usually told only attractive things. For example, if they are to be recruited as labourers, a practice was found to describe it as cleaner or that the demand is for even easier work. It would be agency officials involved in exaggerating things, and even if the local agents don't know the reality, examples were found of them also exaggerating a little bit.

‘I carry a heavy drivers’ license of GCC countries and have already gone twice to the gulf to work as a heavy vehicle driver. This time, since they said it would be the work of a driver with monthly salary of 1800 Riyal, I paid 125,000 rupees. But they got me labour permit of a labourer, and the salary is mentioned in the contract as 900 Riyal. The company put me to work as a labourer. Then I was asked to work for 15 to 16 hours, and not paid for overtime. So, I bought the air ticket on my own and returned to Nepal.

- *Badri (name changed), a returnee migrant worker from Qatar*¹²⁷

During the recruitment, it is usually told that the work would be indoors. As it is unbearably hot in the gulf countries, people would not want to go for work that is to be done outdoors. Hence, even if people are being recruited for outdoor work, the truth is hidden, and it is described as ‘indoor work’.

Among those interviews by the NHRC for this research, who had gone with institutional labour permit, 36.7 % (52 among 142) shared that they had asked to do a work by the employer in the destination country that was different to what they had been told during the recruitment or was different than mentioned in the contract paper.

¹²⁷ Interview by NHRC research team with Badri of Jhapa district in Kathmandu on 12 April 2019.

Different Employer

Workers were also found to have been sent to an employer that was different to what was told before or changed the employer in between. It was also found that the labour permit was taken in the name of one employer and sent to another employer upon reaching the destination country. In such circumstances when one had to work for a different employer, the work and remuneration (usually difficult work and less salary) are different.

The documents of Suraj Kumar (page 94 and 96), Ramesh (page 69), Dharmendra (page 93), Keshav (page 70) mentioned in this report were studied by the Commission. The documents included the labour permit, employment contract and VISA issued in the name of one company and daily attendance card or pay slip to prove that they had been asked to work for a different employer in the destination country.

The demands brought by the Nepali agencies were found to be not directly of the employer but of the Supplier Company. It came to be known from the interviewees that such suppliers who supply workers as per the number demanded by various employers ask the workers to do work that is different than promised during recruitment and the salary and facilities are also lower than what was told earlier. If such companies are unable to provide work any day then they don't pay for that day, and also not make the residential card or health card on time, the interviewees said.

‘I was put to work for a company that was different than the employer named in my employment contract and labour permit. I was told the work was indoors, but I had to work on the drainage in the streets. The employment contract said that the salary would be 800 Saud Riyal, the company would provide food, the working hours would be eight hours daily and overtime paid as per the rule, but I was given only 730 including salary and food and was asked to work 12 hours a day. Though it was said that the work was for a company, I came to know that it was not an employer company but a supplier company.’

- *Mansullah (name change), a returnee migrant worker from Saudi Arabia*¹²⁸

No payment for overtime work

Migrant workers usually like a work that would allow them to work overtime to earn more than the salary. So, the entrepreneurs who understand their psychology tell them during the recruitment that they can work overtime or

¹²⁸ Interview by NHRC research team with Mansullah in West Nawalparasi on 4 June 2018.

get additional payment. However, among them, some get paid separately for overtime work while some are not paid for such work.

‘The agency that recruited me told that my monthly salary would be 1,000 Saudi Riyal, would get separate expenses for food, would get 4 hours of overtime duty in a day, and showed newspaper advertisement saying they don’t lie like others. I trusted them and was ready to pay 150,000 rupees to go.

I was told that it would be the work of cleaning in an office or super market, but I was asked to do street cleaning work. I had to work for 13 to 14 hours a day. I was given only 1000 Riyal as monthly salary, overtime and food expenses. I talked to the Company and shared what my recruitment agency had said, but the company said the remuneration is 1000 including 12 hours of duty, food and monthly salary. Overtime duty is compulsory for all those who work for our Company and hence, monthly salary constitutes overtime work as well, they said. I shared this with my recruiting agency, and requested them to provide me the pay that was promised, but they said, ‘many are working for 800 Riyal, and you are getting 1000 but still saying it is not enough?’”

- *Sunil (name changed), a migrant worker from Dhanusa district who returned after working for 2 years in Saudi Arabia¹²⁹*

Many people whom the NHRC interviewed said that they were asked to work overtime without pay while others said though they were paid for overtime work they were put to work for many hours more than the designated labour standard. Like Sunil (mentioned above), who was told that he would get 1000 monthly salary and separate pay for overtime work but was paid only 1000 including overtime work, the NHRC found the same with many others as well. Among those who returned after going with institutional labour permit, 56.39 % said that they were asked to work overtime but was not paid for it.

Provision of food or food expenses and accommodation

Many employers in the destination countries have either arranged food for the workers or paid them food expenses. But some neither provide the food allowance nor provide food for them. As a result, the workers have to manage food on their own expense. This will increase their expenses on the one hand while on the other they will be spending more time in purchasing food items, cooking and working in the kitchen. As a result,

¹²⁹ Interview by NHRC research team with Sunil in Dhanusa on 25 May 2019.

they will not have sufficient time for leisure and rest.

Before flying to Saudi Arabia to work as a driver Biswa (name changed) of West Nawalparasi was told by a recruiting agency in Kathmandu in Falgun 2066 that he would be paid a monthly salary of 1000 Riyal, 300 for food and another 300 worth of overtime work. The employment contract of Biswa and the advertisement published by the Agency also said Salary 1000, work of driving, food and accommodation 'Yes' and overtime 'as per Company rule'. Thinking that he would make a good income, Biswa took loan with 36 per cent annual interest and paid 120,000 rupees for the work. But upon reaching the destination country, he had to arrange for the food on his own and the employer company only paid him 800 Riyal a month. And when he sought food expenses from the Company as per his contract, the response was, "that is what we are supposed to give, we don't know what your agency told you, you can talk to you agency about it."¹³⁰

Majority of the migrant workers are provided accommodation facilities by the employer. Most of the workers interviewed by the NHRC shared that many workers are put together in one room; power supply is not regular; there are not sufficient toilets; and there is lack of cleanliness and sanitation in the kitchen, housing and toilets. Those going to Malaysia shared that a levy was deducted for food, accommodation, power and drinking water.

Fraud in Employment Contract

Every individual going for foreign employment with institutional labour permit should have a contact paper that clearly mentions the work that the person is supposed to do, salary, provision of food and accommodation and medical treatment facility etc. The employment contract should be provided before departure and a copy of it should be handed over to the concerned worker.¹³¹ But it was found that the information that was shared before about work and remuneration would be different when mentioned as the terms and condition of service including remuneration in the contract paper.

Among those interviewed by the NHRC research team, who had gone with institutional labour permit and returned, 62.68 % (89 among 142) said that information shared earlier related to salary, work, overtime, food or one or the other terms and condition of the contract was different.

The 56th report of the Auditor General also mentioned that an examination of the documents and records show that the workers recruited for foreign

¹³⁰ Interview by NHRC research team with Biswa in West Nawalparasi on 3 June 2018.

¹³¹ Foreign Employment Act, 2007, Clase 25 (1) and (2).

employment were charged high fees or given different job and less salary. The report reads, “It would found while reviewing the records of the complaints during the auditing that the workers going for foreign employment were charged fee higher than prescribed, were given job different to that mentioned in the contract, given remuneration lower than mentioned in the contract, deduction was made from salary for food and accommodation despite provision for the same in the contract etc.”¹³²

The entrepreneurs however have a different view in this regard. President of the Nepal Association of Foreign Employment Agencies Rohan Gurung says, “One ‘group of company’ may have more than one services, but the employer is the same. He may have to employ a worker recruited for one location to another location and the nature of work may be different there. When the work and income is better, have anyone said that I have been asked to do a different job, I have been paid more than before, it's different to what my contract says, so I won't take more than my contract? And if people are employed in a different location with the same terms and condition then it cannot be described as exploitation. There are some practical issues as well.”

Multiple or fake contract

Another factor that pushes workers to forced labour is dual or fake contract. The entrepreneurs are also found giving more than one contract. There is a trend of giving two contracts in Nepal itself or the employer asking to sign another contract in the destination country.

The law of Nepal has prohibited preparation of dual contract or fake contract paper but it is still practiced by the entrepreneurs. There is a practice of giving two contract papers and asking the workers to ‘show one at the Kathmandu Airport and then tear it off later, and then keep the second one with yourself.’ Upon reaching the destination country, the employer representative that comes to receive workers at the airport seizes the original contract paper and the passport.

‘I was given two employment contracts. One was in the file with other documents, another was given in an envelope. I was asked to show all the papers in the file at the Kathmandu airport, and keep the envelope separately and not open it. Even though I had opened it, I would not have read the paper written in English or Arabic. I find difficulty even

132 Office of the Auditor General, Babarmahal, Kathmandu, Functional and Special Audit Report related with the 56th annual report of the Auditor General, 2018/19, p. 246, <https://oagnep.gov.np/wp-content/uploads/2018/04/OAG-Performance-Annual-Report-1.pdf>, accessed latest on 7 June 2019

reading Nepali.

The employer company representative that came to receive me at Doha airport seized all documents and passport soon after meeting me. Later only after my friends told me I came to know that the envelope that I was asked not to open was the fake contract. It was made as a testimony to prove that the remuneration and facilities have been provided as promised during recruitment in Nepal in case the Labour Department or Police carries out a raid or if the Labour Inspector examines whether the remuneration and facilities are in par with the contract.'

- *Prabesh (name changed), a migrant worker who returned after three months in Qatar*¹³³

The entrepreneurs also accept the fact of giving dual contract or that the worker may get salary in the destination country that is different to what has been mention in the labour permit papers signed in Nepal. But they put the blame of this on the government's policy. According to them, *the Government of Nepal has fixed the minimum wage for workers going to different countries. Any employment contract that is submitted with a wage below it will not get labour permit from the DoL, while the employers of the destination countries do not accept the minimum wage/salary fixed by the Government of Nepal. Hence, the minimum requirement essential for getting the labour permit is written down in the contract. In fact, the salary that the workers would get may be different.*¹³⁴

According to a report¹³⁵ of April 2017 of the Sub-committee constituted by the International Relations and Labour Committee of the Legislature-Parliament, "more than 90 per cent of the workers who reach the gulf countries are forced to sign dual labour contract". The report reads, "The tendency of signing a contract paper with high remuneration and facilities in Nepal and after sending the workers based on the contract, reaching another contract in the destination with less salary and more contract period than the previous contract was found to be widely practiced."

Charging of Exorbitant and illegal Fee

Charging of Illegal and exorbitant fees is possible another major problem.

133 Interview with Prabesh by NHRC research team in Dhanusa on 25 May 2019.

134 152 Interview conducted by NHRC research team with office-bearers and member of the Sunsari Foreign Employment Agencies Association on 7 January 2019.

135 Report developed by the Legislature-Parliament, International Relations and Labour Committee based on the evidence collected during an onsite visit to four gulf countries- Saudi Arabia, Kuwait, Qatar and United Arab Emirates) from 18-19 March, 2017.

As per the policy of Free VISA Free Ticket in the case of 6 countries in the gulf and Malaysia, a maximum of 10 thousand rupees can be charged while different amount have been prescribed for other countries. However, the entrepreneurs were found to violate that and charge the workers excessively.

'They took 105,000 rupees from me but gave me a receipt for only 10,000. They also asked me to tell 'I paid only 10 thousand rupees' and video recorded it. I had to return back in one month five days for not being provide with work and remuneration as promised. To apply for compensation, I have only the receipt for 10,000, as a result I have no other evidence to recover the money that I lost.'

- *Ram Sharan (name changed), returnee migrant worker from Qatar*¹³⁶

Exorbitant fees are also found to have been charged to people going to countries other than where the Free VISA Free Ticket has been enforced. Before the Free VISA Free Ticket came into force on 6 July 2015, the maximum amount that could be charged as fees for the 7 countries was 70,000 rupees for the gulf countries and 80,000 for Malaysia. Still people were being charged more than that.

'An agent told me that 'there is demand for work as a cleaner in Turkey, the monthly salary is 500 USD, and overtime and other facilities would make it between 8 to 900 USD, others are being charged 400,000 each but since you are from my village I will send you for 350,000.' When I came to know that 3 others from Dailekh too were ready to go by paying the same amount, I thought I should not leave this opportunity to make a good income and was ready to go by paying 350,000 rupees.'

We submitted our documents and 350,000 each at a manpower company in Kathmandu, the labour permit was issued in the name of a different manpower company. Upon reaching Turkey, we were taken to work in a company different than what was mentioned in our contract. We were asked to work for 13-14 hours a day, and not paid for overtime, neither was the salary like promised before. I had gone by paying such a huge amount, so I had no option than to do what the employer asked me to do.'

- *Khagendra (name changed), a migrant worker from Dailkeh district who returned after five months in Turkey*¹³⁷

¹³⁶ Interview with Ramsharan by NHRC research team in Kathmandu on 12 April 2019.

¹³⁷ Interview with Khagendra by NHRC research team in Dailekh on 1 May 2019.

Of those interviewed by the NHRC research team, 77 % (268 of 344) of whom had gone with institutional labour permit or informally by the agent said that they had to pay more fee than prescribed. Likewise, when the NHRC research team asked 173 returnee migrant workers (and their family members) who had gone to the aforementioned 7 countries with institutional labour permit after the Free VISA free Ticket came into force on 6 July 2019 what they paid, they replied that they had paid between 70 thousand to 210,000 rupees.

Most of the people have to take credit in high interest rate to pay the recruitment fees and since the credit amount is huge for them, they will have not many options than to be forced to accept the work they are asked to do and remuneration given, even though it is not what they had been promised. As a result, exorbitant and illegal fees were found to be one of the major factors that push migrants to forced labour.

Not providing receipt or receipt of full amount

The workers are entitled to a receipt of the amount they pay.¹³⁸ But in practice it is not implemented. When the workers' pay, the entrepreneurs either don't give a receipt or if they give don't give it against the full amount paid. After the enforcement of the "Free VISA. Free ticket" policy, the entrepreneurs charge the workers huge amount but give receipt for only the prescribed amount saying "we cannot issue a receipt of more than 10 thousand." Of the 173 people including returnee migrants (who had gone after implementation of this policy) or their family members that the NHRC interviewed 67.63% (117) of them said that they received receipt for only 10 thousand, 18.50 % (32) said they did not receive a receipt and the remaining 13.87% (24) said they were not sure if they received a receipt or what the amount was in it. All those who said they were not aware if a receipt was given or for what amount were migrant family members.

The biggest problem of workers being cheated by the entrepreneurs seems to have originated due to lack of evidence of having paid the recruitment fee. Due to lack of evidence of the amount paid, they may be forced to do a work and accept remuneration that is not equal to what had been agreed earlier. Because they are lack evidence to show what they had paid in order to file a complaint for compensation against fraud, they are forced to agree to any circumstance.

The NHRC research team observed for 4 days from Baisakh to April to June 2019 the discussion held at the DoFE between those who had filed

¹³⁸ *Foreign Employment Act, 2007, Clause 24 (3)*

application charging of fraud by the agent and/or agency and seeking compensation of the amount they paid as recruitment fee and agents and the representatives of the agencies. The biggest complexity that was seen in the process was lack of evidence with the workers of what they had paid to the entrepreneurs. Many would not have any evidence of payment and those who had would be only of the maximum amount prescribed by the government (only 10 thousand rupees with those going to country where free ticket is enforced). At the end, no matter how much they had paid, they would have to accept any amount the entrepreneurs would give them in return.

After being told that there is a demand for the work of security guard in the United Arab Emirates (UAE) with a monthly salary of 2700 Dirham, Nabin (name changed) paid 350,000 rupees to a foreign employment agency. But the agency did not give him any receipt. Upon reaching UAE he came to know that the salary was mentioned as only 1200 in the labour permit. Company put him to work for 13 to 14 hours a day, and the remuneration was also not paid in full. Even five months after arrival, he was not provided with a residency card nor a bank card. And when Nabin tried to return home, the Company asked him to pay 2000 Dirham and he paid that amount and also 700 Dirham for air ticket and returned home after six months.

Soon after arriving Nepal, he filed a complaint at the DoFE seeking return of the 350,000 he paid to the agency. But he did not have any documents to prove that he had paid the amount. The recruiting agency knew very well that Nabin did not have any receipt or voucher to prove that he had paid the amount. At the end, the agency paid Nabin 10 thousand rupees (the maximum amount of service fee fixed by the government for UAE) and the DoFE closed his case after noting that he had been compensated.¹³⁹

The practice of entrepreneurs not giving receipt against payment was found to be systematic and widespread. When the entrepreneurs charge illegal and exorbitant fees they do it without leaving any evidence. For example, the entrepreneurs don't give a receipt or receipt of the total amount that they have taken but also not receive the payment via bank transfer or remittance and take it in cash. Sunsari Foreign Employment Association members said, "we have not right of financial transaction, but the proprietors of foreign employment agencies in Kathmandu ask us to raise money from the workers. So, we take cash from the workers and send

¹³⁹ Details found in the complaint file of Nabin of Khotang district and the records of the DoFE during the course of study of the complaints filed at the DoFE and the progress made by the DoFE on the matter.

the payment to Kathmandu in cash or remit it in the name of the person that the agency has asked. Usually, the agencies do not appear in the scene in course of financial transaction. If some agencies accept the cash, then they don't give receipt for the whole amount."¹⁴⁰

Problem starts from demand letter

The workers demand letter that the agencies of Nepal bring from destination countries is found to be different than reality. Due to problems that originate from such demand letter, hundreds of workers have to suffer.

The government has enforced free VISA, free ticket provision in the 6 gulf countries and Malaysia, which are the destination countries of 95% Nepali workers. But according to the entrepreneurs, all the employers of these countries reject taking workers by paying the recruitment fee themselves.

Until unless the demand letter does not mention that the employer shall bear the cost of VISA and air ticket, the Nepali Embassy does not certify it and without it labour permit is not granted. As a result, the entrepreneurs tell the employers 'write that you will bear the VISA and ticket expenses, but we will raise the expenses from the workers itself' and prepare the demand letter accordingly. And on this basis the labour permit is issued, according to information shared by entrepreneurs in Kathmandu and Sunsari to the NHRC research team. And finally, the fee of ticket and VISA is not paid by the employer but by the workers themselves.

Even when the employer has covered the cost of ticket and VISA, there is a tendency to put the load of the cost on the workers during the recruitment process. The report¹⁴¹ of the Legislature-Parliament International Relations and Labour Committee reads, "Nepali workers who reached the gulf after enforcement of this provision were found to have gone for foreign employment paying at least 50,000 to 900,000 rupees. The managers of the ... company we (parliamentary team) visited told us that they had provided the manpower companies free VISA, free ticket and even service charge to bring the workers, but when we inquired with the workers working there, they were charged heavily by the manpower company that sent them."

Nepal has determined the minimum remuneration for some destination countries. According to the entrepreneurs, the rate fixed without dialogue and understanding with the concerned destination countries would not be enforced by the country concerned. But since the demand letter would not

140 Interview conducted by NHRC research team with office-bearers and member of the Sunsari Foreign Employment Agencies Association on 7 January 2019.

141 Legislature-Parliament, International Relations and Labour Committee Report, 2017

be certified and labour permit not issued without mentioning the salary prescribed by the Government of Nepal, even though a salary rate would be mentioned in the demand letter and employment contract, the workers would not be paid according to it in the destination countries.

In the past, the demand letter certified by the Chamber of Commerce or Notary Public of the destination country was also recognized but stating that there was 'flood of fake demand letters', the government introduced the "Foreign Employment Demand Letter Examination Guidelines, 2075"¹⁴² to establish that all demand letters have to be certified by the Nepali diplomatic mission in the destination country. The mission should certify the demand letter by reviewing the minimum remuneration and facilities to be provided to the Nepali workers; validity of the employer; the document related to approval given by the government of the labour destination country to the employer to receive Nepali workers and other necessary details, while also carrying out field visits as required. But still the tendency to certify one demand letter and implement another has not stopped. This shows that the mission has also not been able to properly probe the genuineness of the demand letter submitted before it.

Workers sent to supplier companies more vulnerable: Notable number of demands received by Nepal are those from the supplier companies. More than 45 persons interviewed by the NHRC said that they had been sent to a supplier company by describing it as an employer company.

In an interview with the NHRC research team, representatives of the Sunsari Foreign Employment Agencies Association said, "Majority of the demands brought by the recruiting agencies of Nepal are not directly of the employer but the supplier company that supply workers to the employers."

The suppliers receive demand from various employers and send workers as required to one place a day and another place another day. Many such supplier companies don't issue residential identity cards, seize passport and other documents, not pay remuneration as agreed or not pay at all.

The entrepreneurs interviewed by the NHRC said, "The Nepali entrepreneurs promise kickback to the middlemen in the destination countries or human resource manager of the employer company in order to receive the demand letter." But the burden of that kickback falls on the workers.

142 Endorsed by the GoN, Council of Ministers on 7 May 2018. *The Foreign Employment Demand Letter Examination Guidelines, 2075 (2018)* published in Section 68, Part 5, Nepal Gazette dated 14 May 2018, accessed from <http://rajpatra.dop.gov.np/welcome/book?ref=23328>.

Recruiting workers through unregistered agents

The people wishing to go for foreign employment are linked to the agencies by the local individual agents and the agency recruit them after completing the labour permit process. There are reportedly more than 60 thousands such agents in the country.

The interview conducted by NHRC with entrepreneurs and those who had gone for foreign employment or preparing to go showed that more than 90 % were facilitated by individual agents. The foreign employment aspirants trust the agents more than other, as a result of which they don't contact the agency office directly but go through the agents and follow what the agent says. Saroj Kumar Pokharel, General Secretary of Nepal Association of Foreign Employment Agencies says, "Not matter how convincing you are, the aspirant do not want to hand over their passport to us, the proprietors of the manpower companies but trust the agents whatever they say and hand them their passports."¹⁴³

As of March 2019 the agencies could mobilize agents in the workers recruitment process as mediators only those that were registered. But then more than 60,000 agents were working to link the aspirants with the foreign employment agencies, whereas the number of registered agents were only around a thousand. After the provision of agent was dissolved in March 2019, all the works of the agents have now become "illegal". However, it was found that the agencies continue to recruit workers through such unauthorized agents. This was also seen in the interview that the NHRC conducted with agency proprietors in May 2019 when they said, "more than 90% of the clients come through the local agents, and only around 10 % come to our contact directly" and in the field research carried out by the NHRC in 3 districts for two months.

The agencies are working with such unauthorized agents at a time when maintaining validity and accountability of their work including what they tell the aspirations and the financial transaction they make stands as a big challenge. Though such agents raise the recruitment fee as directed by the agencies and make tall promises to the aspirants about the work and remuneration, the involvement of the agencies in such work is not found. There were some incidents where the agent had taken illegal fee from the aspirant and given the individual a receipt, but the agency had mentioned only the legally prescribed amount in the cash voucher. As a result of this, the agent was penalized for foreign employment fraud. According to Hem

143 Views expressed at a discussion organized by the People Forum for Human Rights, in also the presence of the NHRC researcher, on 21 June 2019.

Nath Sharma, Section Officer at the Foreign Employment Tribunal, some agents that provide aspirants to many agencies are facing dozens of causes related to fraud, but the concerned foreign employment agency have not been found to be involved in it in any way.¹⁴⁴

b. Agent

The first point of contact for almost all those who go on institutional labour permit and through informal channel (without labour permit or through the porous border with India) for foreign employment to third country are the local agents. Among those interviewed by the NHRC who had gone to or preparing to go to third country, 93.67% (370 of 395) had gone or were preparing to go through the intermediation of the local agents.

The agents based at the community level are usually people from the neighbourhood, known or related by family and hence the aspirants going to third country for employment and their families have great trust over the agents. In the case of some people, there are examples where the local agents have linked them to foreign employment leading to good income and notable progress. But that has not been the case for many others.

The agents were found to 'win the heart' of the aspirants by sharing them attractive things about foreign employment in the initial meetings but ultimately send them for work or remuneration that is not what has been promised earlier. Likewise, the agents were also found sending the foreign employment aspirants through informal channel (without labour permit, using the porous border with India or on a visit or tourist VISA) to third country for work.

Fraud

Benefiting from the trust and reliance of the foreign employment aspirants towards oneself, the agents were found to have been recruiting them for work that is different and salary that is less than what had been agreed earlier. The local agents were found telling mostly wrong information about the work and facilities in order to win the trust of the people eager to go for foreign employment. Even though some agents do not know what kind of demand has been received, what is the work to be done and the remuneration, they were found telling the aspirants various attractive things. For example, 26-year-old Bharat (name changed) of Dailekh district had paid 105,000 to agent who had promised to send him to Turkey for the cost of 500,000 rupees. But when at the request and presence of Bharat, the NHRC team telephoned him on 1 May 2019 and asked him which

¹⁴⁴ Interview by NHRC research team with Section Officer Sharma on 21 June 2019.

company was Bharat being sent to and what is the remuneration and which newspaper was the advertisement published in and what is the lot number of pre-approval, the agent replied "I don't know anything about that, but the agency had said that it was a good job so I wanted to send Bharat who is from my own village. But I came to know it is not Turkey but will send him to Malaysia or Qatar instead."

Of those preparing to go for foreign employment and interviewed by the NHRC, 96.09 % (49 of 51) said that they did not have information about their to-be employer while 52.94 % (27 of 51) did not even know which country they were going to. The agents had only told them that the salary and facilities would be attractive.

The aspirants would have already made up their mind in a way after trusting what the agents told them in the first instance and the agents make every possible effort to maintain that trust. As a result, the workers eager to go for foreign employment continue to trust them and by the time they come to know that they have been cheated it's usually too late.

Mangali (name changed) of Sindhupalchowk is now 21 years old. In 2014, when she was 15 years old, a local agent, who was her distant relative, told her that there was demand for a good job in a gloves producing factory in Malaysia with a salary between 40 to 50,000 a month, and that he was going to send his daughter as well. And he would send her as well if she wanted to go. Mangali was not aware about the eligibility for developing a passport or going for foreign employment. "He had someone he knew at the district headquarters, he had also taken some money from my father for required expenses, and he made my citizenship certificate and passport," Mangali said.

Mangali who went with an institutional labour permit could not tell the name of her recruiting agency even when the NHRC investigation team interviewed her. She only remembers the agent telling her that the office of the agency was based in Gaushala of Kathmandu. Mangali's father gave the agent 80 thousand rupees by taking a loan with 24 per cent interest rate, but the agent did not give any receipt against it.

Upon reaching Malaysia, Mangali did not get a job in a gloves factory but was asked to work joining wires in the mobile and television charge at an electronic company. She was also not paid as promised.¹⁴⁵

Exorbitant and illegal fees

¹⁴⁵ Interview by NHRC research team with Mangali in Sindhupalchowk on 4 April 2019.

The foreign employment agencies are of course responsible in the charging of exorbitant and illegal fees to the workers but the involvement of the agents is also equally deep in the act. Though the government has determined the service fee and cost that can be charged as per the destination country, the fees taken by the agent and the agencies are many times more than that. It is the agents that tell the foreign employment aspirants about how much they need to pay at the agency and they also receive the amount on behalf of the agency. But the agent does not give any receipt or voucher against such payment made by the workers.

Twenty years old Iqbal (named changed) of Sunsari and his two relatives were promised by a local agent for the job of a mason in a construction company in Dubai of UAE with a salary of 1200 Dirham, along with food and accommodation on behalf of the company. Stating that there will be overtime as well, he asked them to get ready if they wished to go for it. Trusting the agent, who was from the same village, the three handovers over their passport in December 2018 expressing their interest in the job. The agent who had said that the flight would take off in around 15 days came back after around one month asking for payment of the cost, and on 31 January 2018, all the three paid him 125,000 each. They were not aware about the free VISA, free ticket scheme and of them the father of Iqbal had kept his land as collateral to take credit at 48% interest rate. Since the other two did not have anything to keep as collateral they had taken loan from local money lenders at 60% interest rate annually. But the agents did not given them a receipt against the payment.

Eleven months since handing over the passport and cash, they had not yet got their labour permit when the NHRC research team interviewed them on 4 January 2019. In between, the agent had asked them to undergo medical test for three times and were summoned to Kathmandu six times. The agents did not inform them the name of the company through which they would be getting their labour permit. And few months ago when they told the agent "either return our passport and money or send us abroad by getting us our labour permit", he replied that "what is the evidence that says I took passport and money from you, do what you can do!"¹⁴⁶

There is reportedly a practice where the local agents are paid between 5,000 to 10,000 rupees for linking foreign employment aspirants to any agency and completing the process of recruitment. In this process, the agent and agency will have worked out a 'rate' to charge as fee per person.

¹⁴⁶ Interview by NHRC research team with Iqbal's father and with the relatives of both Dubai aspiration in Sunsari on 4 January 2019.

But the agents try to collect more than the rate that is finalized with the agency. The agents also collect the majority of the sum of the rate that has been fixed before the completion of the recruitment process and take the remaining amount at the end. But they do not give any receipt against any such payment. The people eager to go for foreign employment trust the agents and pay them without a receipt. On the other hand, the agencies are more concerned about whether they would be paid the amount as per the 'rate' fixed with the agent, rather than how much amount are the workers paying altogether. This put the workers in heavy financial burden.

During a conversation that the NHRC research team had with office-bearers of the Sunsari Foreign Employment Agencies Association, they said, "No matter what rate the government determines, we have to raise money as per the rate fixed by the agencies in Kathmandu. We only keep 10 to 15,000 for ourselves and send the remaining cash to Kathmandu."¹⁴⁷

The agents and agencies blame one another on the issue of charging of service fee from the workers. In an interview with the NHRC, agent Laxman (named changed) said, "I job is only to reach those interest in going abroad to the concerned agency. Then how much the agency charged the worker I would not know. And if the person that we facilitated is flown away by the manpower company then what we get is only five to seven thousand. Some manpower company promise us but not give us anything."¹⁴⁸

Another agent Raghu (name changed) says, "we are caught in the middle, Nepal government has said its free VISA, the manpower asked us to demand 125,000 to 150,000 for those going to work as labourer, we have to share that with our client, but client question us, why are you asking for so much money? they scold us saying its free VISA, which we have to bear and when the manpower gives receipt for only 10,000 rupees, the client get very angry at us. Later if the client encounters a problem, the manpower say that this is what we took by showing the receipt for 10 thousand and put the blame on the agent for taking the remaining amount, which makes us difficult to survive in the village."¹⁴⁹ Many agents follow the agency directives and collect the service fee from the workers or sometimes receive money transfer in their name and handover cash to the agencies. Later if the worker faces any problem and files a complaint at DoFE, it

¹⁴⁷ Interview with Sunsari Foreign Employment Agencies Association office-bearers by NHRC research team including NHRC member Sudip Pathak on 7 January 2019.

¹⁴⁸ Interview with foreign employment agent Madhav (named changed) by NHRC researcher in Kathmandu on 23 April 2019.

¹⁴⁹ Interview with foreign employment agent Raghu (named changed) by NHRC researcher in Kathmandu on 25 April 2019.

will the agent facing legal action based on the receipt or money transfer. Hemnath Sharma, Section Officer at the Foreign Employment Tribunal shared an example where nearly two dozen such cases of fraud had been registered against one agent of Dhankuta district.

Agency proprietors however do not accept this. "We tell the agents to collect only this amount. But if we have asked them to collect 80 thousand, they start bargaining from 150,000. Even though they keep such high margin for themselves, they would be putting the blame on the manpower companies, as the one actually receiving it."¹⁵⁰

No matter what the truth is behind the dispute between the agent and agencies, what is clear is that the workers are not only suffering from charging of exorbitant and illegal fees but the tendency of entrepreneurs not providing them receipt put them in a risk of losing a huge sum in case they come across any problem during foreign employment.

Sending abroad informally

The agents were found to be sending significant number of workers to third countries through informal channel. Some are assured of being sent through Kathmandu with labour permit and sent to third country on a visit or tourist VISA, whereas especially for women with low skills related to employment, they are told 'currently you cannot go via Kathmandu airport' and taken to the gulf countries and Iraq through India. Likewise, incidents were also reported of people being charge huge sum with the promise of sending them to Europe and USA but leaving them stranded in the middle.

As per the law of Nepal, one should not go for foreign employment without acquiring a labour permit. There is a requirement to use the airport of Nepal to go for employment in the third country. Those without the license cannot send people for foreign employment and if they do so will be liable to a criminal offense and face jail sentence.

The NHRC collected case studies of 35 people (19 women and 16 men) who had been taken to a third country informally (without labour permit) or left stranded in the middle on the way to a third country by a local agent with the involvement of various other persons and of 6 persons (4 male and 2 female) who were promised to be sent but not sent.

¹⁵⁰ Interview with foreign employment agency proprietor Surya Lal (named changed) by NHRC researcher in Kathmandu on 22 April 2019.

Table 5.1
Details of those sent or to be sent to third countries through agent

District	Female	Male	Total	Countries sent or told to be sent
Sunsari Morang	1	8	9	Kuwait, Canada
Sindhupalchowk	15	0	15	Iraq, Kuwait, Lebanon, UAE, Oman
Eastern Nawalparasi	0	3	3	Russia
Western Nawalparasi	7	4	11	Singapore
Dailekh	0	3	3	New Zealand, Poland and Turkey
Total	23	18	41	

Out of them, those taken to the Gulf countries and Iraq for domestic work told that they arrived at the destination via India and passing through Sri Lanka and Dubai. 17 told that they were kept in Indian cities like Mumbai and Delhi for a few weeks or months before reaching the destination. Those who were taken to India first told that hundreds would be “gathered” there and the agent would “organize” their travel to the third country in smaller groups.

They told that after arriving at the destination country, they would be gathered at one location by the agent there and the employers would come and “choose” from that group. Some of these returnees shared that their employers were nice, gave salaries regularly, provided food and resting time, and sent them back with proper farewell after the contract period was over. However, majority of the respondents said that they could only wish for such things. They shared that their employers used to verbally and physically abuse (beat) them, did not pay the salaries, made them work daily 17-18 hours, sent them to work elsewhere (their relative’s homes) as well, did not allow to leave the employer’s house and did not allow to contact their family members. When faced with such situations, they contacted the sending agent and supplier agent in destination country, who were either not very helpful or would pressurize them to work even in such situation. Some even shared that they were compelled to continue working when escaping such situations was futile and eventually had to return home empty handed.

Jamuna’s Case

“The agent from my own village said that he will send me with labour approval. While other women in the village were paying 50-60 thousand

rupees to leave, the agent was asking only 45 thousand rupees from me. I wanted to earn some money and build a house after returning. But things did not turn out like I thought, the agent cheated me. Luckily, my second employer was a nice person, and I was able to return home intact.”

- *Jamuna (name changed), a returnee migrant worker from Western Nawalparasi who returned from Kuwait after 3 years.*¹⁵¹

When an agent promised Jamuna, who had no other breadwinner in the family and was economically poor, that she will be sent to Kuwait for domestic work with institutional work permit, she borrowed 45 thousand rupees with a local lender in 48% interest and gave that money and her passport to that agent. Even after 6 months of submitting the passport, the agent neither sent her abroad nor did he return her passport and money. Rather, he said “It is difficult to go via Kathmandu now, therefore I could not send you timely. You need to leave via India since others are leaving too.” She left for Gorakhpur of India with 3 others and via Delhi, travelled to Kuwait in 2071 BS (2014). Jamuna said that before she was sent to Kuwait, she had to stay in Delhi for 43 days, where dozens of women were gathered in transit to different countries.

She was received by an Indian citizen from “collection centre” and was taken to that centre. There were dozens of women from different countries and the employers would come to pick them up. Jamuna was picked up by an employer on the 8th day of arriving in Kuwait. Aged workers were paid around 800 but her employer paid 1 thousand 2 hundred KDs. The first employer was not good. The employer did not feed her properly, made her work for 18-19 hours, used to get angry most of the time and scolded her. But the employer did not let her go. The agent had told her that her salary will be 100 KD, but she was paid only 55 by the employer. After spending 9 months in that house, one day, she talked to the collection centre and somehow got employed in another house.

The second employer was a nice woman. She was caring. She paid 80 KD as salary. She paid for Jamuna’s return ticket to Nepal and she was able to come back. There were many, who were stranded there by the agents.

169 Interview with Jamuna by NHRC’s research team on 2075 Jestha 19 at West Nawalparasi.

Regulating the Agents Challenging

It was evident that the agents are involved in lying about the jobs and salaries to the aspiring migrant workers, taking huge and illicit fees

¹⁵¹ Interview with Jamuna by NHRC research team in West Nawalparasi on 2 June 2018.

without providing receipts and sending them abroad informally. With the amendment in Foreign Employment Act in March 2016, although the existing provision of agents has been revoked, the agents are still practicing their work and the foreign employment agencies are still recruiting workers through them.

Even when agents were allowed to work after getting legally registered¹⁵², there were negligible number of agents (around one thousand) who were working after getting themselves registered. The rest were working without registration. Some agents were working in districts by opening their office and collecting recruitment fees, making people believe that they are themselves recruitment agencies, all the while without getting any type of permit. During their field visit, the research team of NHRC witnessed such situations in a place called “Manpower Bazar” in Itahari of Sunsari.¹⁵³

It is undeniable that the agents play a central role in the recruitment process of hundreds of thousands of aspiring migrant workers, although the law has already revoked the provision of agents. But it is not easy to uphold that they are working without registration/permit or to make them accountable. Regulating agents has become more challenging when the past provision of being able to work only with the permit has been revoked. It seems that the involvement of agents in the recruitment process will not stop for a long time, because such a huge number of aspiring migrant workers still heavily rely on them and these agents are present everywhere. In the context where the agents are recruiting workers, involved in financial transactions and human trafficking, regulating them would be appropriate rather than abolishing the legal provision of agents.

2. Practice of the Recruitment Agencies: Cause of Human Rights Abuse

The practice of agents and agencies as mentioned in Section (1) and the problems faced by the workers are clearly the issue of human rights abuse. There are clearly at least three types of human rights abuse due to the practice of recruiting agents.

a. Exploitation

It was found that the recruiters and agents don't tell the truth about basic things about migrant workers' work and employment contract

¹⁵² As per the erstwhile provision of the Foreign Employment Act, 2007, Clause 74(2), the recruiting agency was allowed to appoint an agent only after approval from the DoFE.

¹⁵³ The NHRC research team including NHRC member Sudip Pathak made an onsite visit on 7 January 2019

benefits, like salary rate, type of work, working hours, overtime and leave. The research of NHRC also showed that the recruiters and agents have been collecting more than government approved fees in an illegal and organized manner. These practices are exploitations of the workers and exploitation is human rights abuse.

b. Forced Labour:

Many Nepalis in foreign employment borrow big amounts as loan due to false information provided by recruiters and agents in the beginning about their work abroad and to pay for a huge fee and illegal recruitment fee charged by the agencies. Sometimes, even after knowing that they are being offered another job with different salary and benefits than told before, they have no choice than to accept the work because they are at risk of losing the entire recruitment fee which they paid by borrowing high interest loan, thus carrying a big burden of loan.

Some workers are unaware of the lies until they reach the destination country, because they might be told something and there might be something else mentioned in the contract paper. Documents like contract papers are not provided on time and are often made available only a day before or a few hours before departure. In such a situation, they are in no position to change their decision even when they become aware of being cheated. On the other hand, it is not easy for those willing to change their decision as well. The recruiters often tell them that “the paid amount will not be returned if the worker refuses to go” or “only the remaining amount after deducting airfare and expenses incurred will be returned”. Although there is a body for filing complaint against non-return of paid fees, the workers often don’t possess any evidence of payment because the recruiters either don’t provide receipt or don’t mention full amount in the receipt. Therefore, with insufficient or no evidence, there is almost no hope of getting back the money paid to the recruiters. Additionally, the process of filing complaint is also not easy, and the workers are usually not in a situation to spend additional time and money in the process.

After they become aware of different work or salary in destination country than they were told in Nepal, even if they want to return home, that is also not easy. The passport and other personal documents are mostly in possession of the employer and because of that the workers cannot return home easily. In some countries, due to immigration rules

like the *Kafala*¹⁵⁴ system, the workers cannot return home unless their employers give permission. The situation becomes more complex for domestic workers. Eventually, they are caught in the situation of forced labour.

Thus, putting a person in a situation from where he or she cannot escape the work or cannot return home voluntarily, when that person had agreed to go for a different job or salary, is actually forced labour. Forced labour is human rights abuse and it is against the ILO Convention 1930 (No. 29)¹⁵⁵ on forced or compulsory labour ratified by Nepal and Nepal's Labour Act¹⁵⁶. Article 29 of ILO Convention No. 29 states that "any act of exacting forced or compulsory labour is a punishable crime and it is the responsibility of the State ratifying this convention to ensure that such punishments are realistic and sufficient".

The NHRC had interviewed collected the case details of those individuals and their family members who said that they were forced to work abroad, although they wanted to leave the work and return home after knowing about different work or salary than they were promised.

I was told that the work is Mason Helper, salary will be 900, food allowance will be 300 and overtime will be paid separately. I was told that the worksite is inside the building. But I was made to work outdoors in road construction. Neither was I paid for overtime work, nor for food allowance. I was not paid even the salary that I was told, and although I was made to work overtime, I was not paid for that. The company did not make my ID card as well.

154 *According to this system, the stay and employment of the migrant worker is under control of the employer in the destination country, due to which the worker cannot change work or return home without the employer's permission. This system exists in Bahrain, Kuwait, Qatar, Saudi Arabia, UAE and Oman in the Gulf. Although Qatar announced revocation of this system recently, there are still news of workers being stranded for months because the employers did not allow them to return easily.*

155 *All work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily is forced or compulsory labour.*

-ILO Convention on Forced or Compulsory Labour, 1930 (No. 29), Article 2 (1)

156 *"Bonded Labour" has been defined as "an act of exacting work or service against the will of any person under the menace of any financial, physical or mental action if the said worker does not work or provide service".*

-Labour Act 2017, Article 4 (1)

Of late, I am not paid my salary regularly. My 3 months' salary is still due. When we demand our salary, we are threatened that they will call the police and get us arrested. So, I am working unwillingly to pay back the loan I had borrowed to pay the recruitment fee to come here. When I asked the agent why we were sent to work in such a place, we were told "my job was to send you, which I did. For other things, talk to the manpower agency". The manpower agency says, "don't talk to me, talk to the agent". Poor people like us are like toys for them.

– Dharmendra (name changed), a migrant worker from Morang district working in Qatar¹⁵⁷

c. Human Trafficking

It was found that the recruitment agencies and local agents recruit workers by giving false information about the fundamental aspects (work, employer, salary, working hours or benefits) of work. Since the workers thus recruited are made to pay excessive or illegal fees and are exploited in terms or type of work and remuneration, these acts fall under human trafficking as per the definitions in International Human Rights Law and Nepal's Human Trafficking (Control) Act, 2007. Incidents of human trafficking were found in the NHRC research.

(Refer to the footnotes on pages 22,28 and 100 for definitions as per the International Law on Human Trafficking and Nepal's law)

"I was made to work in a different company than what was mentioned as the name of the employer in my labour permit, employment contract and visa. Although I had been told that I will have to work as a mason helper inside the building, I was made to work outdoors in heat in road construction work. I had been told that my salary will be 900 Qatari Riyal, food allowance will be 300 Riyal, daily work hours will be 8 hours and overtime payments will be made as per the rules. But after arriving in Qatar, the employer company informed that I will be paid only 800 as salary and food allowance and I will have to work 12 hours daily. I was not paid my salary after working for a month and when I asked the reason, I was told that they will not pay me for three months to recover the cost they had incurred for brining me to Qatar. The company did not make my residency card and the work they made me do was beyond my capacity. So, I borrowed money from

157 NHRC Research team's interview with Dharmendra on telephone and with his mother in Morang on 4 January 2019.

others and bought the air ticket of 730 Riyals and returned home. I had borrowed loan from a moneylender at 36 percent interest rate with my land as mortgage. The payable interest is increasing day by day. If I cannot repay the loan within two years, the land will belong to the moneylender and I will be left with nothing.”

- *Surajkumar (name changed), a migrant worker who returned from Qatar in April 2018 after two and half months of leaving*¹⁵⁸

26 years old Surajkumar of Sunsari had no other option to provide for his family of five members. They had a small piece of land, but the harvest was not enough to feed the family throughout the year. They also had loans to pay. He had been looking for work within his village but was not able to find any work which could earn enough to provide for the family. So, he borrowed loan with his land in mortgage in order to pay the agent 110 thousand rupees to go to Qatar. But when he was made to work for a different employer than that was mentioned in the labour permit and since the company did not make his residency card and did not pay his salary, he had to pay for his own return to Nepal within one and a half months. (Please refer to the box below for Surajkumar’s case details).

Surajkumar’s Case (name changed)

When a local agent of his village told Surajkumar that there is a demand for a job in Qatar, which requires working inside a building and does not require any particular skill or hard labour and will pay 14-15 hundred Riyals including overtime, he decided to take the job offer.

When the agent told him that the recruitment fee cannot be less than 110 thousand rupees, and if he is unable to pay that amount, the agent will send someone else for that job, the desperate Surajkumar promised to pay the amount to the agent. His father borrowed 125 thousand rupees from a local moneylender at the interest rate of 36 percent. Since they had nothing else to mortgage, they mortgaged their land to the moneylender. When he asked for receipt of payment, the agent said, “if you don’t trust me, then go through whomever you trust. Otherwise, why do you need receipt, when your wish is to go abroad, and I will be sending you?”. After that he did not ask for receipt again and the agent never gave him the receipt of payment.

The agent made Surajkumar go through a medical test in a health

¹⁵⁸ Interview with Surajkumar on 4 January 2019 in Sunsari by NHRC Research team.

institution in Itahari. For this, he had paid 5 thousand rupees, for which too, he did not get a receipt. He then left for Kathmandu for orientation. “They did not tell much in the orientation. One sir came and told us to cross the roads carefully, not to fight, not to drink alcohol and not to support if someone starts a protest”. He said that the organization providing orientation told them, “we don’t need to tell you, you all look sincere, so if you need to do some shopping, you can go now and arrive back for evening rollcall”.

Only on the day of departure, the agent told him the name of agency through which he was being sent. Before this, whenever Suraj asked the agent, he was always told “you will know later”. On the day of his flight, one staff of the agency handed him his passport, one file and one sealed envelope. He was instructed to take the envelope with him and to hand it over to the person receiving him at Qatar airport, and to show the documents in the file at Kathmandu immigration. They told Suraj that in case someone asks him how much he paid; he should say 10 thousand rupees only, otherwise he might face problem. Suraj did not pay much attention as to why they must have said that.

After arriving at Qatar, the person receiving him at the airport took the envelope and took him to another company than what was mentioned in the labour permit. That was the labour supplier company. Rather than helper’s work inside the building, he was made to work in intense heat in road construction. He had to carry big pipes and heavy loads. He had to work 12 hours daily and apart from that he had to spend another 3 hours in commuting.

Although it was not the work that he wanted, he had to work. After one month of working, he was not paid his salary. When he asked the reason, he was told that his three months’ salary will be deducted to recover the cost incurred to bring him to Qatar. Suraj recounted NHRC, “I asked them, when I paid so much money to come here, why are you deducting my salary? The Mudir (manager) told me not to talk to him about that, but to talk with the recruiting agency in Nepal.

There is a Nepali embassy in Qatar, and I thought of informing there. But other Nepalis working in the same company told me, “what can the embassy do?”, because many of them told me that they had informed the embassy seeking help but did not receive it.

There were other workers who had not received their salary of three months and when they informed the embassy, they had not received any help. They also said that the embassy phone is not answered". In the meantime, his family members started asking him to return home anyhow, no matter what consequence they might have to face. Suraj started asking the company to send him back, since he was not able to do the work anyway. But when he was told that if he wants to return, then he should pay for his ticket himself, he borrowed some money from a friend working in Qatar and paid 730 Qatari Riyal for airfare to return home after one and half months.

While in Qatar, when Suraj called the agent to share his problem, the agent told him that his job was only to send Suraj to Qatar and told him to talk about other things with the agency. He talked twice with the agency and it promised him to send in a better job after some time. Since he did not know the owner and staff of the agency well, he had no idea whom he should be talking to, if he had to find a solution to his problem. The agency told Suraj to talk to the agent who had sent him there.

Suraj says that he has been talking to the agent after returning to Nepal. In the beginning, the agent used to say that he would send Suraj to another country in less fee, but now he is saying, "you returned when I was telling you to wait for some time. Now I cannot do anything". Lately, the agent is not picking up his phone. Suraj did not know where to file a complaint related to foreign employment. He said that his relative told him about one organization in Inaruwa (headquarter of Sunsari district), which helps the people facing such problems and thus he went there. He was in a dilemma, since he had to go to Kathmandu to file the complaint, and it was not certain if that process will take time and whether he will get back his money. "I cannot think straight what to do, the interest on loan is ever increasing and time is passing, but I have not been able to repay the loan. Apart from the past loan, now if I cannot repay this new loan within 2 years, the moneylender will take over our land and we will be left with nothing", he said.

The agents and agencies, both are involved in lying during the recruitment process and charging excessive illegal fees. Similarly, the agents are also actively involved in sending workers irregularly in countries for which the Nepal government does not issue labour permit, thus putting the workers in grave risk.

Santoshi Tamang's (name changed) Case

"I was told that there is a good job in Dubai, for a small family, where I will be paid 35-40 thousand per month. Initially, when I was told that we must use the Indian route, I denied, because when we talked at home, I had heard that it is "bad" to use that route. When I was told that there is no cost for using Indian route, but if I choose to use Nepal's airport, I will have to pay 25 thousand rupees for the "setting". I agreed to pay that sum.

I was handed my passport and ticket outside the airport. I was told that I am being sent with a valid labour permit. I had also been taken to one manpower agency's office located in Kathmandu's Basundhara. They trained me as well. But I was not given any labour permit documents with my passport. The visa on my passport was for Kuwait. A paper-visa for Dubai was given separately and I was told – "We got ticket with transit to Kuwait, so we bought that ticket and got the visa for Kuwait as well. Show the visa to Kuwait at the airport here, after which its use is over. After reaching the airport in Kuwait, show the Dubai visa. If you can, while sitting inside the plane, remove this Kuwait visa sticker softly with your hand and tear it off. They might ask you various questions in Kuwait airport when they see this visa and you might not be able to answer properly and might face problems. In Kathmandu airport, you will not face any problem as we have set up everything."

After that, one police personnel helped me inside the terminal. He was helping right from outside the terminal building, who escorted me to immigration. After reaching there, he pointed from afar and said, "go to that sir's table, who is wearing a Dhaka topi" and he stayed back. I did as I was told and moved forward from there. At Kuwait airport, I showed the paper-visa for Dubai and arrived at Dubai. There was a "collection centre" at Dubai. There were Nepali agents as well. I was not received by anyone for a month. There were other 15-16 Nepalis like me, we used to stay together and eat together. Some were enjoying while some used to cry the whole day. I was worried too. I was a good dancer, so sometimes others would ask me to dance.

After a month, one Nepali agent told me that since I was not getting work here, I should go to Oman because there was a job of a child carer. I find looking after babies difficult, so I refused to go, but when he asked me repeatedly, I went. That employer in Oman

spoke English, but neither spoke English nor Arabic. After 23 days, the employer gave me 75 Riyals and left me at a collection centre in Oman. Later I came to know, that she had paid 1 thousand 2 hundred dollars when she took me with her.

After staying for a few days in collection centre of Oman, another employer came and took me. He had paid 1 thousand 3 hundred dollars. I was told that my monthly salary will be 130 Riyals, but there too, I was paid only 100. After working for 6 months in that household, the initial agent from Dubai had arranged for me work in another household. I worked in the third household for 14 months. My third employer did not pay my salary for 3 months and instead said, “I paid 1 thousand 5 hundred dollars to bring you. Apart from that, I had to pay 3 months’ salary to your agent in Dubai. So, I cannot give you your salary for those three months”. This employer did not even buy my return ticket. I bought my own ticket and returned to Nepal on 1 Asoj 2075.

- *Santoshi Tamang (name changed) of Sindhupalchowk who returned home after 21 months, who had gone to Dubai through a local agent in Mangsir 2073¹⁵⁹*

The recruitment agencies and local agents give false information about the fundamental aspects of work (like work type, employer, salary, working hours and benefits) during recruitment and are made to pay excessive illegal fees, and are exploited in terms of type of work and pay, which are human trafficking as per the definitions under International Human Rights Law¹⁶⁰ and Nepal’s Human Trafficking (Controls) Act, 2007¹⁶¹ and these acts are clearly human rights abuses. Others like Suraj, who was recruited by agency and Santoshi, who

¹⁵⁹ Interview with Santoshi on 4 April 2019 in Sindhupalchowk by NHRC Research team

¹⁶⁰ "Trafficking in persons" shall mean 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.

- Definition in Article 3 (a) of Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000, 2237 UNTS 319 (enforced from 25 December 2003).

¹⁶¹ Human trafficking has been defined as “taking a person abroad with the objective of selling or buying” according to Sub-Article 2 (a), Article 4 of Human Trafficking (Controls) Act 2064, as “taking a person from one place to another within Nepal or abroad... by deception, fraud, coercion... for the purpose of exploitation.” according to Sub Article 2 (b).

was sent informally by an agent, also told the NHRC research team about similar types of problems that they had faced.

The report of the UN Special Rapporteur on Human Rights of Migrant Workers¹⁶² has expressed worry that the practice of recruitment agencies and non-regularized agents are “ill intentioned”; migrant workers are put into situations of forced or compulsory labour, indebted bonded labour, situations of abuse and exploitation including human trafficking due to lack of implementation and monitoring of laws and policies; the migrant workers are forced to pay excessive recruitment fees as the policies that has reduced the recruitment and service fees have not been implemented; they are forced to borrow loan in high interest rates to pay such fees; the workers are at higher risk of abuse and exploitation due to their loans.

The Convention of Elimination of All Forms of Discrimination Against Women (CEDAW) Committee has mentioned that, “the ban on women’s foreign employment, especially on domestic work has pushed them towards informal labour migration, which further puts them at risk of trafficking”¹⁶³. Similarly, the Committee has recommended Nepal to properly document the facts on violence, trafficking, sexual and labour abuse against women stating that its attention was drawn by Nepal’s weakness in documentation and analysis of such facts.

3. Lack of Effectiveness of Orientation Training

There is a provision that, before their departure, the migrant workers must attend orientation training provided by institutions licensed by DoFE¹⁶⁴. These trainings follow the curricula approved by the Foreign Employment Board. In this research of NHRC, some shortcomings were found both in training and curriculum.

a. Topics on human rights not included in curriculum

The curriculum determined by the Board was studied by the NHRC research team. From some travel related logistical information to traffic rules and information on geographical and cultural aspects of concerned country are helpful for the worker’s travel plan. However,

162 *Report of UN Special Rapporteur on Human Rights of Migrant Workers, Phillip Gongales Morales, presented to the UN Human Rights Council after his official visit to Nepal in February 2017, available at <https://undocs.org/A/HRC/38/41/Add.1>*

163 *The CEDAW committee report on 23 October 2018, available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/NPL/CO/6&Lang=En*

164 *Foreign Employment Act, 2007, Clause 27*

there are no information in the curriculum on basic rights like right to receive timely and appropriate salary, right to rest, right to health, right to proper accommodation and food, right to keep one's passport and documents with oneself, right to movement, right to return home.

b. Carelessness and Negligence in Training Conduction

There are plenty of room for questioning the effectiveness of training conduction. Many of the migrant workers interviewed by NHRC told that “trainings are conducted only for formality and they just take attendance”.

26 years old Surajkumar (name changed) of Sunsari, who returned after one and half months in Qatar since he did not get the work and salary as promised by the agent, told that “the agent sent me to one organization in Itahari for orientation. They did not tell us much, one sir told us to cross the roads carefully, not to fight, not to drink alcohol and not to support protests, and then they took my fingerprint for attending the training”. He also told that the organization told them, “we don't need to tell you much. You all look sincere. You don't need to sit here the whole day. If you want to do some shopping, you can go for that and come back in the evening for attendance”.

24 years old Ramesh (name changed) of Sunsari, who returned after seven months in foreign employment also told that the agent had sent him to an organization in Itahari for orientation. He told that they were shown just two movies there. He said, “Two movies were shown, ‘Desh Pardesh’ and ‘Muglan’”. When one of the participant asked ‘Sir, aren't you going to teach us ?’, the trainer used abusive words and scolded by saying, ‘if you could learn, you wouldn't be going to the Gulf to work’. Then they were made to ‘sign in’ and after showing two movies, they were again made to ‘sign out’ and were sent home.

c. Effect on Quality

The recruiters said that there is unhealthy competition among the institutions providing orientation training. The Federation of Foreign Employment Orientation Institutions told NHRC that there is unhealthy and unfair competition as are many training providers¹⁶⁵. The Chair of the Federation told, “Because of this, there is practice of not fulfilling the set standards, and there is unhealthy competition on rather than charging the fee determined by the government,

¹⁶⁵ Interview with the Chair or the Federation Rajaram Gautam on 17 May 2019 by NHRC research team.

the trainings are conducted by charging the fees as decided by the recruitment agencies which has led to the haphazardness in training quality”.

The training institution owners and trainers told the NHRC research team that the unhealthy competition in this sector started after the Department issued license in huge numbers to the agents and recruitment agencies a few years ago. “We established the institution with such a huge investment. Then, influenced by the recruiters and agents, the government suddenly gave license to so many training institutions opened by the agents and recruiters themselves. After that, the long-standing training institutions established with huge investments are compelled to accept whatever fees are provided by the recruiters and to obey them. Now, you tell me, what kind of quality do you expect from the orientation centres that are run by the agents and recruiters themselves?”¹⁶⁶

d. No information provided on complaint mechanism, recruitment fee

The orientation institutions and the trainers told that no information is provided on topics like destination country-wise recruitment fee limits or where to file complaint if the workers face any problem during their employment¹⁶⁷. “The recruiters tell us not to inform about complaint mechanism or recruitment fee if possible, therefore many training institutions don’t give this information fearing they might lose business if they give this information.”

The fifty sixth report of the Auditor General also mentions about problems in information given in orientation training¹⁶⁸. The report states, “Provision of providing information on topics like cheating and complaint mechanism, compensation and fines, relief and financial support are not seen”.

e. Lack of Monitoring

It was found that there is no monitoring of orientation training providing institutions and the programs run by them by the Department and Board. During the field observation conducted by the NHRC research team, in 3 of the institutions, it was evident from the furniture and

¹⁶⁶ Interview by NHRC research team on 15 May 2019.

¹⁶⁷ Interview by NHRC research team on 15 May 2019.

¹⁶⁸ Office of Auditor General, Babarmahal, Kathmandu; *Performance and Special Audit Report related to fifty sixth annual report of the Auditor General*, page 249, last retrieved on 7 June 2019, from <https://oagnep.gov.np/wp-content/uploads/2018/04/OAG-Performance-Annual-Report-1.pdf>

training rooms, that no training has been conducted there since a long time. The furniture was piled up in a corner or were covered in dust.

The Chair of the Federation of Foreign Employment Orientation Providers also confirmed that there is no monitoring from government agencies. The Chair said, “When Sthaneshor Devkota was the Executive Director, there used to be surprise monitoring visits from the staff of the Board and Department along with the members of this Federation and journalists, but in recent times, there is no monitoring at all”¹⁶⁹. Ineffective monitoring has also been mentioned in the memoranda submitted to the Minister of Nepal Government and Director General of DOFE in different dates¹⁷⁰.

The Foreign Employment Promotion Board also told NHRC that there has not been monitoring of orientation training providing institutions and that there are weaknesses in the orientation training. The Executive Director of the Board told the NHRC research team that “we have not been able to monitor those institutions because we are occupied in developing the guideline and orientation curriculum”.¹⁷¹

4. Problems Related to Medical Test

All migrant workers need to have a medical test, and if they are certified to be healthy and fit, only then are they qualified for foreign employment. The NHRC research team had meetings with individuals who were ‘fit’ as per the medical test in Nepal but were declared ‘unfit’ in medical test conducted in destination country, whereby they lost huge amounts when they had to return home.

There is a legal provision that if a person returns home when declared ‘unfit’ in destination country, the concerned Health Institution must bear the cost of travel to and from the destination country. But, although the recruiting agencies charge excessively huge amount with the migrant workers, they either don’t provide them the receipt or mention only a small amount in the receipt, due to which the workers receive compensation only according to the amount mentioned in the receipt and lose very huge amounts.

169 Interview with the Chair of the Federation Rajaram Gautam on 17 May 2019 by NHRC research team.

170 For example, it is mentioned in the “foreign employment orientation training procedure 2076 amendment proposal” along with the memorandum submitted to the Minister of Labour, Employment and Social Security on 27 April 2019 and to the DOFE on 6 April 2019.

171 Interview with the Executive Director of FEB on 2 March 2019 and 12 June 2019 by NHRC research team.

Sharada from Morang district and Sita from Dhankuta district (both names changed) had left for Qatar in Jestha 2075 after paying 80 thousand rupees per person to the recruitment agency. There was no problem seen when they went through the medical test in Nepal before their departure, but they had to return when they were found to be ‘unfit’ when the employer conducted their medical test after two months of their arrival in the destination country.

After their return, they submitted a joint application in DOFE seeking recovery of total 160 thousand rupees, as they had paid 80 thousand rupees per person as recruitment fee. But since neither of them had been provided receipt by the agency against payment of fees, there was no evidence to prove that they had actually paid 80 thousand rupees each. In the absence of any proof, DOFE could only initiate for the recovery of 10 thousand rupees each, which is the prescribed maximum fee for Qatar, by the government. When the recruiter agreed to pay them 25 thousand rupees, after that payment, DOFE closed their file stating ‘compensated’¹⁷².

This research found that the workers face difficulties because of the rule of going through medical tests in Nepal and after arriving in destination country. There is a provision in Foreign Employment Regulation, 2007, Rule 46b, Sub-Rule 2a, that the medical test in destination country should be conducted within 90 days of medical test in Nepal. But the dates for medical tests are decided by the recruiting agency (in Nepal) or the employer company (in destination country), rather than the migrant worker deciding it. Due to this new provision in the Regulation made on 16 Shrawan 2074, if a worker’s medical test in the destination country is conducted by the employer after 90 days of medical test in Nepal, and if the worker is declared ‘unfit’ in that test, in one hand, he/she must return leaving the work and on the other hand, they face the situation where they cannot get any compensation as per the rule of Nepal.

Lakpa (name changed) of Bhojpur had to pay 90 thousand rupees to the recruitment agency, but the agency gave the receipt for only 10 thousand rupees. His agency sent him for medical test in an approved health institution in Kathmandu on 18 December 2018. The report of medical test declared him as ‘fit’. But the agency initiated for his

172 Details as seen in the study of complaint files of Sharada from Morang district and Sita from Dhankuta district and records of DOFE in the course of research by NHRC research team regarding complaints filed in DOFE and the progress status in addressing those complaints.

labour permit on 30 January 2019 only and sent him to Qatar only on 8 February 2019.

The employer in Qatar conducted his medical test only on 27 March 2019. But he was seen ‘unfit’ in that test. Although Lakpa was unfit, the company continued to make him work and only after one and half months of his medical test, on the first week of Mat 2019, the company told him, “you are ‘unfit’ according to your medical test, so arrange your return ticket and go back”. No matter how much he pleaded, the company refused to pay for his ticket and did not pay salary for the work he had done in March and April as well. Eventually, Lakpa paid 7 hundred and 20 Qatari Riyal for his air ticket and returned to Nepal on 9 May 2019.

After coming to Nepal, he shared his story with the health institution which had carried out his medical test and his recruitment agency. But both of them told Lakpa that since his medical test in destination country was conducted after 90 days of his medical test in Nepal, they cannot do anything, as shared by Lakpa with NHRC research team¹⁷³.

In this case, although Lakpa did not make any mistake, he had to lose a huge amount he paid as recruitment fee and the outstanding salary in the destination country. On the other hand, he lost his job and had to return to Nepal.

There is a provision of an expert committee to determine whether there was any mistake in the medical test report¹⁷⁴. Those who think that there is a mistake in the report provided by health institution can file an application at the secretariat of the expert committee and the committee’s secretariat is in the Ministry of Labour, Employment and Social Security inside the premises of Singha Darbar, where common people do not have easy access.

The NHRC research team had tried to get information from concerned official in the Ministry about the number of complaints received in the past and their redressal status. A member of the expert committee and the Under-Secretary of Law and Decision Implementation Section of the Ministry, Resham Sigdel, told that although no such record was found in the committee’s secretariat, no delays are made in addressing any of the applications filed in the Ministry and there is no remaining application that needs redress¹⁷⁵.

173 Interview with Lakpa on 15 May 2019 by NHRC research team in the premises of DOFE.

174 Foreign Employment Regulation 2008, Rule 46 (1)

175 Conversation with Under-Secretary Mr. Sigdel on 19 June 2019 by NHRC research team.

5. Avoiding Infringement of the Human Rights of Others by Businesses

The UN Guiding Principles on Business and Human Rights¹⁷⁶ has provisions on what principles of human rights the businesses should follow while operating. The Guiding Principles mention that in order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence and ensure that their business do not infringe any individual's or community's rights (principles 17-19), where business enterprises have caused or contributed to adverse impacts, they should provide remedy, relief or compensation (principle 22), states must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises by taking appropriate steps to prevent, investigate, punish and redress such abuses (principle 1). This responsibility applies to all enterprises regardless of their size, sector, and structure (principle 14).

Nepal's Company Act 2063 also mentions that no business enterprise should cause adverse effect to others. The recruitment agencies are initially registered at the Company Registrar's office as private companies. The performance and works of companies thus registered are regularized by the DOFE. But the company operation aspects are regularized as per the Company Act. According to the Company Act 2063, companies are prohibited from carrying out any fraudulent or illegal activities or activities that are against public interest, and there is a provision of deployment of inspectors by Company Registrar's Office if a company is involved or is suspected of involvement in such activities. Apart from this, the responsibilities of recruitment agencies for migrant workers have clearly been mentioned in the Foreign Employment Act, made especially to regularize the performance of these agencies, and other related laws, which the recruiters should always follow.

There is a Code of Conduct of the recruitment agencies themselves¹⁷⁷. The Code of Conduct states that no activity should be carried out that infringes the dignity of any person, the migrant workers and their family members should be treated respectfully, no person should be sent abroad without employment contract, transparency should be maintained in service fee, agency promotion costs and other accounts, no unethical activities and unhealthy competition for position and money, clarify the migrant workers

176 This guiding principle prepared by the UN Secretary General's Special Representative on human rights and transnational corporations and other business enterprises has been approved by UNHRC on 16 June 2011.

177 Company Act, 2063, Article 121, Sub-Article 2 (a)

on service charge, airfare and promotional cost, no worker will be sent for works that will have adverse effect on their health, that are discriminatory, humiliating or oppressive.

The NAFEA also has its own Code of Conduct¹⁷⁸. If any recruiter violates this Code of Conduct, complaint against that recruiter can be filed in NAFEA and the Disciplinary Committee under the Federation can demand the documents and details for investigation if required. There are provisions of various disciplinary actions if found to have violated the Code of Conduct. The disciplinary actions include verbal or written warning, suspension from membership of the Federation for up to a year, informing DOFE or diplomatic mission or extracting compensation if the recruiter has caused any harm.

6. Failure in Implementation of “Free Visa Free Ticket”

The government enforced “Free Visa Free Ticket” policy from 6 July 2015¹⁷⁹. According to the policy for the seven major destinations¹⁸⁰ for Nepal migrant workers, the employer in destination country should pay for the airfare and visa fees and the recruitment agencies cannot charge these amounts to the worker. But, in case the employer has provided a written notice that it will not pay the agency’s promotional cost and service fees, the recruitment agencies can charge a maximum of 10 thousand rupees from the worker.

This initiative of Nepal Government is commendable, in the light of universally growing principle of Employer Pays Principle, and that the worker should not be charged any fees as mentioned in ILO and UN agencies’ guidelines and declarations. This “Free Visa Free Ticket” policy could had been helpful in providing relief to the workers from their financial burden and indebtedness and to prevent illegal collection from the recruiters. If this policy could be implemented effectively, it could play an important role in reducing the situations where due to indebtedness, the workers are forced into accepting less paying work than previously promised and in minimizing the other risks that the workers face. But the government failed to implement this policy and the recruiters continued to collect money illegally.

Of those interviewed by NHRC, 173 including returnee migrant workers and their family members told that, although they acquired valid labour

178 *Code of Conduct of NAFEA, November 2005, <http://www.nafea.org.np/code-of-conduct>, last retrieved on 24 June 2019.*

179 *As per the (ministerial level) decision of the MOLE on 9 June 2015 and 21 June 2015.*

180 *Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, UAE and Malaysia.*

permit, they had paid from 70 thousand to 210 thousand rupees even after the implementation of “Free Visa Free Ticket” policy. Only one person, who is preparing for departure, said that he is being sent in “Free Visa Free Ticket”.

The respondents told NHRC research team that although the recruiters charge more than 10 thousand rupees, they do not provide receipt and even if they do, they mention only 10 thousand rupees in the receipt. Out of 173 people interviewed by the NHRC research team, 67.63% were given the receipt of only 10 thousand rupees, 18.50% were not given the receipt at all and the rest 13.87% (family member of the worker) were not aware whether the receipt was provided.

I had heard about Free Visa Free Ticket. But when I mentioned this to the agent, I was told, “In which world are you living? If people could go in free visa, why would everyone be paying such large amounts? If you want to go, you will have to pay 80 thousand rupees, otherwise I will send someone else for that job”. I had to go anyhow and fearing that I might lose the opportunity, I paid 80 thousand rupees. But the receipt mentioned only 10 thousand and I was told, “Nepal government has made a rule that doesn’t allow issuance of receipt for more than 10 thousand”. I found it surprising that they can collect such a huge amount, but why they cannot mention it in the receipt. Why did the government make that rule?¹⁸¹

The recruitment agencies have been openly expressing that they cannot implement this policy and they cannot abide by this ceiling of 10 thousand rupees. The recruiters opine that deciding in Nepal unilaterally to implement this policy does not work and for this, the employers in the destination country should also abide by this decision of our government. NAFEA Chair Rohan Gurung says, “When recruiting workers from other source countries, (the employers) don’t have to pay anything, and when recruiting from our country, they have to bear everything. In such a scenario, why would they want workers from our country?” He argues, “We also don’t want poor Nepalis to spend huge amounts for foreign employment. But the employers are not going to bear all the costs for the worker and therefore it is impossible for the recruiters to work for 10 thousand rupees”. The recruitment agencies have been demanding that they should be entitled

181 Interview by NHRC research team in Sunsari on 3 January 2019 with Karim, who went to Qatar in September 2018 and instead of sending him as electrician to the employer company, he was sent to a labour supplier company and instead of work as electrician he was placed in a gas plant. He did not have any experience of working in a gas plant and fearing the risk, returned to Nepal on his own expense after three months.

to charge equivalent to the worker's one-month salary, since 10 thousand rupees is insufficient to cover their cost of market promotion activities in destination countries and office operation costs. "If there is a provision of charging equivalent to a month's salary, the receipts can be issued for actual amount collected and the problem of charging excessive fee will also be solved", Gurung said¹⁸².

The recruitment agencies in Nepal have been preparing demand letters from employers mentioning 'the ticket and visa will be borne by the employer' and using those letters only for acquiring labour permit and in reality, they have been collecting that amount from the workers. One recruiter in Kathmandu and recruiters in Sunsari interviewed by NHRC told, "We work so hard for market promotion and create demand. While the employers don't need to pay anything to bring the workers from other countries and if we tell them that they will have to bear all the expenses of the worker, we will certainly not get any demand. So, we are compelled to request them to mention in the letter that the visa and ticket cost will be borne by the employer, but in fact they do not have to pay those expenses". They further said, "Suppose one agency stands firm and says that the employer has to bear all the expenses, but some other Nepali agency will go to that employer and will tell them, 'give that demand to me, you won't have to cover the expenses' and will thus steal the deal. They will then recover all the expenses from the workers, and the government cannot do anything. So other agencies are also forced to make the workers bear the costs". Actually, it has been mentioned that, during demand certification, the Nepali Embassy should ensure that the ticket and visa costs are borne by the employer and if required, it should visit the concerned company¹⁸³. But still there is a continued practice of mentioning only in the demand letter that all expenses will be borne by the employer and in reality, such expenses are extracted from the worker.

The report of International Relations and Labour Committee of the Legislative Parliament¹⁸⁴ had stated that "Free Visa Free Ticket" policy implantation is a 'total failure' and due to this, there is 'rampant cheating and looting' in the sector of foreign employment. The report says, "This

182 Interview with NAFEA Chair Gurung on 17 April 2019 by NHRC research team.

183 Directive on Foreign Employment Demand Letter, 2075, endorsed by Nepali Council of Ministers on 2075/01/24 and published in Nepal Gazette, Section 68, Part 5, dated 2075/01/31, retrieved from <http://rajpatra/dop/gov/np/welcome/book?ref=23328>

184 Report 2074 of 'Sub-Committee on Field Monitoring and Inspection of Gulf Countries' formed as per the decision made on 2073 Mangsir 8 by Legislative Parliament, International Relations and Labour Committee.

provision, which was made to avail Nepali workers in foreign employment at a low cost has been a total failure. After this policy came into effect, the Nepali workers currently working in the Gulf had paid a minimum of 50 thousand to 900 thousand rupees for their migration. The managers of ... companies visited by us (parliamentarian committee) told that they had paid for the visa and ticket of the workers and service charge to the recruitment (manpower) agencies, but the workers in those companies told that the recruitment agencies had charged them a hefty amount to send there.”

In the Performance and Special Audit carried out by the Office of Auditor General¹⁸⁵, had also examined with 88 returnee migrant workers, how much they had to pay for going to the countries where Free Visa Free Ticket is implemented. Only 4.55% (or 4 out of 88) had paid government prescribed 10 thousand rupees, while 34.09% (30 out of 88) had paid 60 to 100 thousand rupees and 35.23% (or 31 out of 88) had paid more than 100 thousand rupees. The report says, “Although there is a maximum cost prescribed, it is not implemented.”

The recruiters can charge only the prescribed service charge as per the rule. If they are found collecting more than the prescribed fee or more than actual cost, they should be penalized¹⁸⁶. But when the NHRC research team asked DOFE how many agencies were penalized as per this provision of the Act, for charging more than the prescribed amount in the past three years, DOFE had no information of any such penalty.

The policy implementation level officials are also well aware that this policy is not implemented, and the recruiters are collecting more than 10 thousand rupees from the workers. However, the government has not been successful in implementing this policy. Not only that, there are numerous examples on how the non-implementation of this worker-friendly policy has adversely impacted on the exploitation of workers. Since the recruiters mention only 10 thousand rupees in the receipt provided to the workers although they charge much more than that, when the workers face other problems related to foreign employment and seek compensation, as they only have the receipt of 10 thousand rupees as evidence, they are entitled

185 Office of Auditor General, Babarmahal, Kathmandu; Performance and Special Audit Report related to fifty sixth annual report of the Auditor General, page 249, last retrieved on 24 Jestha 2076, from <https://oagnep.gov.np/wp-content/uploads/2018/04/OAG-Performance-Annual-Report-1.pdf>

186 As per the Foreign Employment Act, 2064, Article 53, if a license-holder collects more than prescribed amount or more than actual cost, DOFE will make such license-holders to return that fee or cost and can fine them up to one hundred thousand rupees.

to only that amount. Because of this, the workers must lose huge amounts which they borrow on very high interest rates. So, it is unfortunate that the policy, which was formulated to relieve the workers, is itself causing adverse effect on them.

7. Challenges in Women's Migration

Number of women in foreign employment used to be negligible in the past years, but the number has increased recently. According to the DOFE records, until July 2019 of current fiscal year, out of a total of 469 thousand 739 migrant workers, the number of women is 29 thousand 305 (or 6.24 percent). Although male migrant workers also face various problems, female migrant workers face additional risks.

Although the Foreign Employment Act, 2007 states that there will be no gender-based discrimination in foreign employment (Article 8), Nepal government has been imposing 'ban' and 'age limit' for women time and again. In August 2012, the government has imposed ban on women under the age of 30 as domestic workers in Saudi Arabia, Qatar, Kuwait and UAE. In May 2016, a provision was made through issuance of "Directive on Sending Migrant Workers as Domestic Workers, 2072" that limited the age to 24 years and applied to women going to Saudi Arabia, Qatar, Kuwait, UAE, Oman, Bahrain, Lebanon and Malaysia¹⁸⁷. Lately, there is a ban on sending domestic workers in Gulf countries from 2073 Chaitra 3¹⁸⁸. Although both men and women go as domestic workers, since it is mainly women going as domestic worker in the Gulf, it is clear that this decision is targeted towards women. This kind of trend of imposing and lifting the ban or setting age limits has been going on for the past two decades.

It is told that the decisions of 'ban' or age limits are made with the mindset that preventing women from foreign migration will keep them safe. But these decisions have not stopped those, who are involved in sending women to these countries. This decision could not stop more than three dozen women who were interviewed by NHRC including Jamuna (page 89), Kalpana (page 139), Santoshi (pages 97 and 98) whose cases have been mentioned in this report. Moreover, those using informal route or migrating without labour approval process are more at risk of forced labour and trafficking along with being in unfavourable position regarding taking any decision related to their own foreign employment.

Even those who leave formally face different types of exploitations, but

187 Directive on Sending Migrant Workers as Domestic Workers, 2016, Article 3, Sub-Article 2

188 Directive on Sending Migrant Workers as Domestic Workers, 2016, third amendment.

those leaving informally are at greater risk. Not only will the workers leaving informally like this cannot receive any financial support from the welfare fund or insurance, in case there is an accident or death, they are not documented in the government records.

Involvement of Nepal government's officials in sending migrant workers unofficially, is also a much talked about. There were bases for verifying this fact also in the interviews conducted by NHRC with the women including Santoshi Tamang (case details on page 97-98). In this topic, the report of International Relations and Labour Committee states, *"Since 60% of domestic workers who were sent to Gulf countries informally were sent using Nepal's airport in visit visa or through 'setting', there is direct involvement of immigration staff and security personnel at the airport, airline staff and brokers, while 40% were sent using different cities of India, Sri Lanka, China and other African countries and sold in the Gulf countries"*¹⁸⁹.

The former Prime Minister Pushpa Kamal Dahal had also indicated in a formal program about the involvement of immigration officials in human trafficking. During the program declaration on reform in foreign employment sector on 24 January 2017¹⁹⁰, he had indicated by saying, *"The cause of Nepalis in many countries facing problem are the shortcomings of our own Nepali bureaucracy, immigration department and manpower (recruitment) agencies, therefore we need to improve them"*.

A study conducted by Nepali Embassy in Saudi Arabia showed that there are 70 thousand women who have reached there through informal channels¹⁹¹. Similarly, one ILO study showed that the decision of imposing age limit on women migrant workers has not stopped their migration, it has rather given continuation to discrimination and violence against women migrant workers¹⁹².

Nepali migrant workers have expressed serious concern over unfair working conditions in some of the destination countries and the violence and abuse

189 Legislature- Parliament, International Relations and Labour Committee, *"Sub-Committee Report of Monitoring and Inspection Field Visit of Gulf Countries-2074"*, Pages 18-19

190 Speech of Prime Minister Pushpa Kamal Dahal on 24 January 2017 declaring reform program of foreign employment sector; retrieved on 9 June 2019 from <https://www.youtube.com/watch?v=Y1F6PBImC9E>

191 Nepali Embassy, Riyadh, Saudi Arabia, *"Problems of Nepali Workers in Saudi Arabia and their Solutions"*, September 2012, Page 25.

192 ILO, 2015. *NO EASY EXIT: Migration Bans Effecting Women from Nepal*. International Labour Organization, Migration Branch and Fundamental Principles and Rights at Work Branchm, Page IX, available at http://www.ilo.org/wcmsp5/groups/public/---ef_norm/--declaration/documents/publication/wcms_428686.pdf

that they face. This concern has been expressed in various conclusions¹⁹³ on the third report of Nepal on the situation of implementation of Convention on Economic, Social and Cultural Rights, during the UN Human Rights Committee meeting held on 19 and 20 November 2014.

CEDAW Committee's conclusion¹⁹⁴ on Nepal's sixth report mentions that the ban on Nepali women migrant workers, especially as domestic workers, has pushed them further at risk and this has increased the risk of them being trafficked. The Committee has expressed concern over the restriction imposed on Nepali women in accessing foreign employment as domestic workers, pointing that the restriction on movement is discrimination against women and this has put them at risk of forced labour and unequal pay including physical exploitation and sexual abuse. The Committee has recommended provisions to create equal access to employment for women in and outside Nepal, in line with SDG No. 8.8 and to lift the discriminatory ban restricting women to access foreign employment.

The report of UN Special Rapporteur on Human Rights of Migrant Workers, Phillip Gonzales Morales, to the UNHRC after his visit¹⁹⁵ mentions that women workers are more at risk of abuse and exploitation and the rule imposed for their protection is discriminatory; rather than finding effective solutions to protect domestic workers, a policy restricting them to work abroad has been adopted; use of irregular routes of migration due to restrictions has put workers at more risk of abuse and exploitation.

The ban and age-limit for women are clearly discriminatory as per the provisions in ILO Convention and Nepal's Foreign Employment Law and International Human Rights Law. Just imposing ban or age-limit do not make women safe, so instead measures should have been taken towards making them safe. But the government agencies don't seem to be focusing on finding different ways of making women migrant workers safe. The fifty-sixth report of the Auditor General also mentions that "the trend of women leaving for foreign employment has increased by 14 percent in the last 5 years, which has increased the challenges like violence against

193 *Report of UN Human Rights Committee meeting held on 19 and 20 November 2014 available on https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=R/C.12/NPL/CO/3*

194 *CEDAW Committee's report of 23 October 2018, available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/NPL/BO/6&Lang=En*

195 *Report of UN Special Rapporteur on Human Rights of Migrant Workers, Phillip Gonzales Morales, presented to the UN Human Rights Council after his official visit to Nepal in February 2017, available at <https://undocs.org/A/HRC/38/41/Add.1>*

women, but necessary safety strategies are not in place”¹⁹⁶.

8. Death and Physical Injury

Many workers die in the course of foreign employment. The death of Nepali migrant workers in destination country is a topic that is discussed at international level. Some die due to workload, some due to negligence in operating machines and equipment and other occupational hazards at workplace, while some die due to climate and road accidents.

According to the records of Foreign Employment Board, in the past 10 years alone, at least 7 thousand 38 workers have lost their lives.

Table 5.2
Deaths in Destination Country during Foreign Employment

Fiscal Year	Number		
	Women	Men	Total
2008/09	3	87	90
2009/10	19	399	418
2010/11	8	541	549
2011/12	14	632	646
2012/13	11	716	727
2013/14	24	864	888
2014/15	6	1000	1006
2015/16	24	789	813
2016/17	18	737	755
2017/18	21	800	821
2018/19 (until Mid May 2019)	Numbers not available	Numbers not available	625
Total			7038

Source: Foreign Employment Board, May 2019.

Hundreds more have lost their lives than recorded in Foreign Employment Board. The Board maintains records of only those workers, who had valid labour permit and their family received financial support from the Board after their death within a year’s period of completing their contract. The record of other workers is not maintained. When we add the number of houses who migrated informally or those who had acquired labour permit but died after the validity or those who are eligible for financial support but

¹⁹⁶ Office of Auditor General, Babarmahal, Kathmandu; Performance and Special Audit Report related to fifty sixth annual report of the Auditor General, page 243, <https://oagnep.gov.np/wp-content/uploads/2018/04/OAG-Performance-Annual-Report-1.pdf> last retrieved on 9 June 2019

did not approach the Board, this number will increase significantly.

A report of Nepal Government, Labour and Employment Ministry has also mentioned¹⁹⁷ that the number of deaths of migrant workers is more than recorded in Foreign Employment Board. According to the report, from 2007 to 2017, the number of Nepali workers who died in UAE is 274 according to Foreign Employment Promotion Board, while according to the Nepal Government's Consular Service Department, the number is 317. Similarly, 189 in Kuwait according to the Board and 331 according to Consular Service Department, 77 in Bahrain according to the Board and 111 according to Consular Service Department, and 47 in Oman according to the Board and 74 according to Consular Service Department.

The cause of deaths for many remain unknown. The documents that are sent with the dead body do not mention the cause. According to a report of Nepal Government, from 2065 BS to 2072 BS, the cause of death of 795 workers were unknown¹⁹⁸. Advocate Barun Ghimire, who is representing the writ applicants in Supreme Court who filed a public interest writ that the government should take effective steps in finding the cause of Nepali workers' death and the proper management of their dead bodies, says, "In many cases of death of workers, the cause of death is mentioned as 'unknown', which makes it impossible to be certain of the cause of death of these workers"¹⁹⁹.

Although the Supreme Court has issued a directive order to Nepal Government on 16 November 2017²⁰⁰ to adopt five different measures including compulsory post-mortem to know the cause of death of workers who die in destination countries, there is no concrete effort from the government to implement them.

There is a significant number of workers who suffer physical injuries. There are dozens of Nepalis still in coma in hospitals of destination countries after meeting accidents. According to Foreign Employment Board, in these 10 years after establishment of the Board (until Mid October 2018), 1,252 workers²⁰¹ and until the end of Baishakh of fiscal year 2018/19, 246

197 *Nepal Government, Ministry of Labour and Employment, Labour Migration for Foreign Employment, Nepal's Situation Report 2015/16-2016/17, Page 28.*

198 *Nepal Government, Ministry of Labour and Employment, Labour Migration for Foreign Employment, Nepal's Situation Report 2015/16-2016/17, Page 32.*

199 *Interview with Barun Ghimire on 7 June 2019 by NHRC research team.*

200 *Directive Order of the court issued on 16 November 2017 on public interest writ (No. 073-WO-0916) filed by Forum for Law and Policy for Social Justice and Pourakhi Nepal*

201 *Nepal Government, Ministry of Labour, Employment and Social Security, Secretariat of Foreign Employment Board, Kathmandu, "One Decade of Foreign Employment Promotion Board: Shmarika", December 2018, page 11*

workers²⁰² who suffered physical injury and returned home have already received financial support from the welfare fund under the Board.

a. Obstacle in providing financial relief in death within contract period due to legal unclarity

A total of 247 family members of workers have not been able to receive financial support from the welfare fund, 144 of whom had left formally and died (within their contract period) in Nepal while under treatment after returning with serious illness, and 103 of whom died due to various reasons (road accident, physical assault, suicide) while in Nepal on leave within their contract period. The Executive Director of the Board shared that although the family members of those 247 workers who died between Mid July 2015 to Mid July 2019 have submitted application for financial support, due to unclarity in the rules and guidelines²⁰³, the Board Secretariat has not been able to make payments to these family members and it is in the process of being approved from the Board meeting²⁰⁴.

b. No financial support for those who die after one year of completion of contract period

If a worker who had acquired labour permit and had deposited their contribution to the Welfare Fund before their formal departure dies in the destination country after a year of completing his/her contract period, the family members cannot receive any financial support from the welfare fund. Also, their children cannot receive scholarship and the family members cannot receive any medical treatment support.

Some workers might have been in situations where they could not return home after the completion of their contract, even if they had wanted to. In some workers' case, the control of decision about when that worker returns home lies with the employer rather than with the worker. If the employer does not give permission or does not hand over personal documents including passport, the worker might not be able to return home even if they want to. But if a worker dies after a year of completing the contract period, the family is not entitled

202 Ministry of Labour, Employment and Social Security, Foreign Employment Board, Progress Report until Mid May 2019.

203 Foreign Employment Board's Director Rajan Prasad Shrestha says that there is legal unclarity as Foreign Employment Regulation, 2008 Rule 28, Sub-Rule (1) mentions that 'the dead body is received in Nepal' after the death of the worker has been verified.

204 Interview with the Executive Director of Foreign Employment Board, on 12 June 2019 by NHRC research team.

for relief support even though the worker had paid the contribution amount in the Fund before leaving.

NHRC had met with some of such families, whose family member had not been allowed to return home even after the contract period was over and was made to work there, when they died. The family members of such victims neither get any financial support from the Welfare Fund, nor any relief from elsewhere.

The company did not let him return home even after completion of one year of contract period being over. When we talked, he used to say that the company is not letting him leave and is saying that they will let him leave after a few days or if he wants to continue working there, they will renew his ID. But in the meanwhile, he died in duty due to an accident. Since his contract period had completed one year three months ago, we neither received any financial support from the Welfare Fund, nor any insurance money.

– *Wife of a migrant worker who died in Saudi Arabia after a year of contract period being over*²⁰⁵

9. Lack of Information

a. Information about safe migration:

Whenever a migrant worker faces problem, almost everyone says the same thing, that is -‘you should have left well informed’. But there were no systems in place in the past for those who wanted to leave informed, and although a few systems have been started recently, they are insufficient.

The government agencies are broadcasting appeals in the media like ‘don’t opt foreign employment if possible and if you have to go, then go informed’. But apart from this one-way method of information dissemination, there were no other way of two-way (direct) communication before the recent establishment of “Call Centre”²⁰⁶ for those who want safe migration. Foreign Employment Office also expressed²⁰⁷ that apart from some projects run by some NGOs

²⁰⁵ Interview by NHRC research team in East Nawalparasi on 31 May 2018.

²⁰⁶ The Call Centre established on 1 April 2019, can be accessed by dialling 1141 from phone or via Viber, Emo for receiving information and filing complaints.

²⁰⁷ As shared by the Director of Foreign Employment Office, Tahachal on 21 May 2019 with NHRC research team, “the SaMi project of Helvetas used to provide information in some districts and in Kathmandu about safe migration. The first separate initiative from the government until now is the Call Centre.”

and Nepal's development partners, be it in Kathmandu's DOFE and offices under it or at district level, there are no such systems.

Lately, although the government is preparing to establish employment information centres at local level and to expand Safer Migration Project (SaMi) in 39 districts, since there is no mechanism whereby an aspiring migrant worker can receive information, the government launched the concept of Call Centre so that anyone requiring information on safe foreign employment can easily ask questions or access information through telephone or social media.

Call Centre seems a useful measure of information dissemination on foreign employment. But the Call Centre service is also out of reach of many. The Supervisor of Call Centre, Sarina Maharjan told NHRC research team²⁰⁸, "We used to receive 4 hundred to 4 hundred 50 calls daily in the initial days of establishment of this Call Centre. Sometimes, even up to 600 calls. But now, the number has decreased to 80 – 100. On an average, there are 200 calls received daily". She said that even out of these, many calls are just 'prank calls'.

The record of the Call Centre, established on 1 April 2019, shows that it received a total of 1,222 calls related to foreign employment in two months' period (until 31 May 2019)²⁰⁹. Since there is a provision of filing complaints through telephone, out of the above-mentioned calls, 118 were complaints filed²¹⁰. 1 thousand 104 calls were seeking information related to foreign employment. On an average, the number of these kinds of calls are received daily is less than 20.

When more than 1 thousand people are leaving for foreign employment daily, only 20 people per day accessing the information mechanism for safe migration shows that a huge number of people still lack access to information on safe migration. This means that they are compelled to depend on whatever the recruiter tells them, which does not minimize the possibilities of them facing abuse and exploitation.

b. Welfare Fund

A contribution of 1500 rupees or 2500 rupees is collected for the Welfare Fund, from every person who leaves on foreign employment

208 Interview with Call Centre Supervisor Sarina Maharjan on 12 June 2019 by NHRC research team.

209 Details provided by Call Centre to the NHRC research team on 19 June 2019.

210 Information provided by Section Officer of DOFE to NHRC research team on 19 June 2019.

and this Fund is managed by Foreign Employment Board. But it was found that the returnee migrant workers, those who are preparing to leave as migrant workers, or their family members do not know about this Fund. Out of 344 people interviewed by NHRC, including returnee migrant workers who had left with institutional labour permit and their family members, only 3 (0.87%) reported that they had information about the Welfare Fund or what kind of support can be received if they contributed in the Fund. Most of the returnee migrant workers who had left with personal labour permit knew about the Fund and none of the 51 people, who were preparing for foreign employment know about the Fund.

I had left with an institutional labour permit in 2011 for domestic work. After one and half year in Kuwait, when I was looking after a baby one day, I was hit by a car and I broke my leg. I had to go through a treatment in hospital for two months. Although I did not have to bear the cost of the hospital, I was told that I will get the insurance money, which I didn't.

Even after two months of being discharged from the hospital, my leg did not recover. So, my employer decided to hire someone else and to send me back. My employer paid for my ticket and I returned. When I arrived here, I could not walk and used a wheelchair. The steel implants on my thigh and calf have not been removed yet.

Although I went through a manpower (recruitment) agency, I don't know the name of that agency, nor was I ever taken to the office of that agency. I did not have the pre-departure orientation. My agent was my relative and had done all the paper-works for me. I did not have to pay anything for the Welfare Fund and did not know until today that people like us who become physically injured can get financial support. So, I have not applied at the Welfare Fund.

- *Sabitri Tamang (name changed) of Sindhupalchowk, who had left with institutional labour permit to Kuwait and returned after being injured within the contract period²¹¹*

The money in the Fund comes from the pockets of the workers, and

²¹¹ *Sabitri Tamang's response on 4 April 2019 at Sindhupalchowk to the question of NHRC research team whether she applied for the Welfare Fund since she had returned with physical injury within her contract period.*

if they die or are injured, the migrant worker or their family members can receive financial support from the Fund. But many migrant workers and their family members do not know about the Fund.

The NHRC team has identified some reasons why people are unaware of Welfare Fund. The main reason is that the recruiters deposit the contribution amount in the Fund from the amount that they collect from the workers, but do not inform them about it. Additionally, they do not provide the receipt of contribution to the Fund, when they give the passport, labour permit and employment contract to the workers. When asked by NHRC team to the recruiters, what types of documents they provide the migrant workers along with the passport before their departure, they replied that they provide contract paper, letter of labour permit, insurance papers, receipt of service fee, etc. When asked by the team whether they provide the receipt of Welfare Fund contribution, they replied that they don't provide it. Many recruiters and agents call it 'tax payment'. The orientation training providers and trainers themselves shared that the information on Welfare Fund is not provided in many orientations. An orientation training provider and a trainer in Kathmandu told NHRC research team that "we tell them, but many don't tell about the Fund."²¹²

Complaint Mechanism:

There are mechanisms for filing complaints against exploitations in foreign employment and for providing financial support. But there is a significant lack of information among many migrant workers and their family members about where to file the complaint about the problems they are facing. During this research, the NHRC interviewed 418 migrant workers (returnee and preparing to leave) and their family members if they knew in which government body they should be complaining if faced with some problem, and 25.84% (108) said that it's the embassy in the concerned country and 16.98 (71) said 'the office which issues labour permit' (DOFE). The rest, 57.18% (239) did not know where to complain.

Different reports also mention that there is a significant lack of access to information for the workers. The report of the Auditor General says, "Since the migrant workers do not know about the provisions in Acts, law and guidelines and what the government has prescribed, the recruiters, brokers, online service providers have been cheating

212 Interview by NHRC team on 15 May 2019.

them by extracting excessive amount than what has been prescribed and there is no provision of sharing information to prevent these in the office”.²¹³

10. Less Priority to Topics Related to Rights

Foreign Employment Law: The Foreign Employment Act 2007, which was made especially to organize and regulate the foreign employment mentions about the complaint process and the roles and responsibilities of the recruiters and agents. Most of the other parts contains topics like business registration, recruitment process, dos and don'ts for the recruiters. There is no mention about the topics on rights like, right to keep one's identification documents with oneself, not having to tolerate torture or abuse, right to movement, work-place safety, non-discrimination, right to rest and leave, appropriate salary for the work performed, right to change the employer and right to return back to one's country.

The NHRC research team had reviewed dozens of contracts between the recruitment agencies and workers, and between employers and workers. They mentioned lists of topics like name of the worker, name of the employer, passport number, name of the destination country, monthly salary rate, working hours, food provision, provision of payment for over-time work. Although these things being equally important, there was however no mention of aspects like whether the worker can leave the work if a situation arises before the completion of the contract, right to return back to one's country, exercise of various freedoms, right to keep the passport and other personal documents with oneself, etc.

11. Recruiters are also Worried About the Problem

The recruiters are also worried about the problems seen in the foreign employment sector. Rohan Gurung, Chair of NAFEA says, “We also don't claim that all the recruiters are good and there are no malpractices. We also want that the workers should not bear the burden of expenses or they face any problems”. He however argues that due to many impractical policies, the workers are bearing a high cost and are facing problems.

Kumud Khanal, who was the former General Secretary of NAFEA has established Ethics Practitioners Association of Nepal (EPAN) for ethical practice in labour recruitment. Khanal says, “Problems started in this

213 *Office of Auditor General, Babarmahal, Kathmandu; Performance and Special Audit Report related to fifty sixth annual report of the Auditor General, page 243, <https://oagnep.gov.np/wp-content/uploads/2018/04/OAG-Performance-Annual-Report-1.pdf> last retrieved on 7 June 2019.*

sector, because of which the workers faced problems and the recruiters also became infamous. So, this is an initiative that the problems arising from the recruiters should be addressed by the recruiters themselves. We adopted the policy of not charging fee from the workers and making the recruitment process transparent. But we are not getting demands so much. When demanding workers from other agencies the employers don't need to pay the recruitment fee for the worker, but they need to pay the recruitment fee as well as the service charge of the agency if they demand through EPAN. Maybe that is the reason that they don't send us demands. Sometimes I feel that not only did I invited misfortune to myself but also to my friends. It is not enough if only the recruitment agency wants to be ethical, the employer should also cooperate with the ethical recruiter. The government also needs to create conducive environment to those who want to work ethically".²¹⁴

The recruiters interviewed by NHRC research team in Sunsari said that, "Sometimes we feel guilty. On the one hand, the government is saying Free Visa Free Ticket, on the other hand the workers are paying the expenses by selling their wife's jewellery. Even if we want, we cannot give the receipt for the total amount we collected. If that person faces any problem, he/she is doomed".

Along with the recruitment agencies, the NAFEA and Foreign Employment Agents Association also told that they have been submitted their opinion for reform in foreign employment sector.

12. Weak Monitoring

The Foreign Employment Act has clearly authorized DOFE and Foreign Employment Board regularly monitor the performance of recruiters and to to intervene in order to ensure the justice of migrant workers if the recruiters are cheating or exploiting them. Apart from this, different bodies like the Company Registrar's Office, Inland Revenue Administration also have the authority to check the performance and truth about the details they submit. Even with these provisions, the monitoring of recruiters was not found to be effective.

a. Weakness in Policy

It was found that there is no specific criteria that anyone willing to start the recruitment agency needs to meet. Apart from depositing a

²¹⁴ Interview with the Chair of ethics Practitioners Association of Nepal (EPAN) Kumud Khanal on 23 May 2019 by NHRC research team.

security amount for starting the business²¹⁵ and submitting a certificate showing at least two years of experience as a proprietor or manager of any foreign employment related organization or in a financial, commercial, business or industrial organization²¹⁶, there is no other criteria.

It was found that there was no due diligence carried out to analyse the possible impacts on an individual or a society of a business enterprise before starting that business, and if there is any adverse impact, how to address them. The UN Guiding Principles on Business and Human Rights²¹⁷ says that the business of any size should avoid infringing on the human rights of others and should establish provisions to address such impacts when they occur. But no such preparations or accountability were seen for fulfilling these standards by Nepali businesses (recruiters).

b. Weakness in monitoring by DoFE

The Foreign Employment Act 2007 has authorized DOFE to monitor the performance of recruitment agencies. Similarly, it is the responsibility of DOFE to investigate if “any complaint is filed or it comes to the knowledge of DOFE directly or indirectly about a wrongdoing that has taken place or is about to take place” from anyone who is licensed or not licensed²¹⁸.

Article 34 of Foreign Employment Act 2007 provides that DOFE should monitor and inspect the offices of license-holder from time to time and can inspect the related papers and records maintained by the license-holders. The fifty sixth report of the Auditor General²¹⁹ states that the practice of monitoring by DOFE by including all the foreign employment related businesses by preparing an action plan was not seen and there is only complaint-focused monitoring. The report also says that DOFE carried out only 12 monitoring and inspection (only around 1% of total number of businesses) in 2017/18 BS.

If there is a complaint filed against any agency or agent, then the

215 *Foreign Employment Act, 2007 Article 11 (a) (2) has a provision of security deposit for agency.*

216 *Foreign Employment Regulation, 2008, Rule 6, Sub-Rule (1) Part (f)*

217 *This Guiding Principle was endorsed on 15 June 2011 by UNHRC*

218 *Foreign Employment Act 2007, Article 61 (1)*

219 *Office of Auditor General, Babarmahal, Kathmandu; Performance and Special Audit Report related to fifty sixth annual report of the Auditor General, page 243, <https://oagnep.gov.np/wp-content/uploads/2018/04/OAG-Performance-Annual-Report-1.pdf> last retrieved on 7 June 2019*

practice shows that rather than punishing the defaulter as per the law, DOFE makes effort to retrieve some amount as compensation for the victim and no action is taken against the agency as prescribed in the law. The nature of complaints filed in DOFE are not only seeking financial compensation or mediation, but many also seem that requires action against the guilty. For example, from 8 August 2018 to 15 February 2019, out of 638 institutional complaints filed in DOFE, until 23 Jestha 2076, 247 cases have been addressed where the complainants have indicated ‘mutual agreement’ in the records and in the rest of 209 cases, DOFE has indicated as having ‘compensated the victim’. The nature of the cases showed that the concerned agencies could be punished according to Articles 47, 53 or 55 of Foreign Employment Act 2007. But in all those 247 cases, which were addressed, NHRC did not receive information on any case where the agency was punished (more detail on this is available in pages 156 and 157).

Foreign Employment Board: The Foreign Employment Act 2007 authorizes Foreign Employment Board to monitor, regularize and action (recommendation) of foreign employment related business enterprises. For example, according to Section 39, Sub-section (o) of the Act Foreign Employment Board has the responsibility of monitoring the licensed business enterprises, Sub-section (n) of informing concerned government body for taking necessary action if anyone is found to have acted against the Foreign Employment Law and Sub-section (j) of conducting holistic study on implementation of Foreign Employment Act. But NHRC did not receive any information on the monitoring carried out by the Board or recommending necessary action against anyone. Likewise, Article 29 (c) of the Act has given the responsibility of monitoring the licenced or approved institutions for providing orientation and skills training to the Board. But no information was received on any monitoring of orientation providing institutions that carried out by the Board.

c. Company Registrar’s Office

The recruitment agencies are registered as private companies in Company Registrar’s office in the beginning and only then acquire license from DOFE for recruitment of migrant workers. Even if the monitoring of foreign employment related activities falls under the responsibility of DOFE, the Company Registrar’s Office can deploy inspectors for checking, if such businesses are involved or are suspected of involvement in fraudulent, illegal activities or any

activity that is against the public interest²²⁰. The inspector can ‘inspect related documents or can seize or take control of any matter or thing or can ask some concerned person to submit such document or things or can take control of such documents for inspection and can check or get checked the accounts of the company’.²²¹

Even when malpractices in foreign employment sector are coming into light every day, in the past 3 years, the Company Registrar’s Office has not investigated the performance of even a single recruitment agency. In this regard, the Company Registrar’s Office said that there is lack of competent human resource, especially financial auditor and no legal clarity on what aspects the Company Registrar’s Office should be monitoring.²²²

d. Inland Revenue Administration (IRA):

According to the Income Tax Act 2002, it is the responsibility of Inland Revenue Administration (IRA) to check whether the financial details presented by any business enterprise is reliable or not. There are news of raids and accounts check by IRA from time to time. In the context where it is well known by all that the recruitment agencies are collecting excessive and illegal amounts from the workers and providing receipts for a very small amount, NHRC collected facts from and IRA office in Kathmandu and one in Sunsari to find out what is IRA doing to monitor the businesses of recruitment agencies regarding tax evasion. Although these offices have monitored and investigated other different types of businesses, they informed NHRC that there has been no investigations on accounts for financial transactions of recruitment agencies in past three years.²²³

Since the recruitment agencies have been collecting huge amounts from the workers and not been providing receipts or providing receipts with a very small amount mentioned in them, there is a possibility that they are not paying actual tax that is due as per their income. In this regard, the IRA does not seem to have made any efforts to regularize or monitor the recruitment agencies and business enterprises.

220 *Company Act 2006, Article 121, Sub-Article 2 (a).*

221 *Company Act 2006, Article 121, Sub-Article 2 (b) and (c).*

222 *Interview with Company Registrar Gitakumari Humagain on 27 February 2018 by NHRC research team.*

223 *Information collected by NHRC research team on 26 February 2018 and 8 January 2019 respectively from Kathmandu’s Tax Service Office in Lazimpat and Inland Revenue Office in Dharan of Sunsari district.*

The fifty sixth report of the Auditor General has raised the issue of tax evasion by recruiters. The Auditor General had analysed the income and expenditures of 8 agencies. The report mentions that those 8 agencies have shown expense of 53 million 625 hundred thousand rupees as ticket purchase, but the income for the same is not shown anywhere.²²⁴ The Auditor General's Office has directed the IRA to determine a tax of 1.3 million 27 hundred thousand rupees as tax for that amount alone, for which there is expense (ticket purchase) and income.

e. Financial greed of officials in regulatory bodies:

Another complex problem lies in financial indiscipline of officials in the ministry, which is the policy level body, and in DOFE and offices under it and in immigration office, which are the managing and regulating bodies. Many cases have been made public where the Minister and DOFE Director General to other high-level officials were involved in corruption and the officials were caught red-handed accepting bribes.²²⁵

The high-level officials have told themselves that there is corruption inside the labour ministry and government bodies regularizing foreign employment.²²⁶ Not only that, in spite of intervention from constitutional bodies like Commission for Investigation of Abuse of Authority (CIAA) time and again, the corruption continues to take place.

Immigration officials collaborating with recruiters for earning money and being involved in 'airport setting' is also much talked about

²²⁴ Office of Auditor General, Babarmahal, Kathmandu, Fifty sixth annual report, 2075, page 93

²²⁵ - The video of former Labour Minister Kumar Belbase was made public on 2 Kartik 2069 on TV channels where he was 'dealing' (the news on this published on Kantipur Daily is available on <https://ceslam.org/index.php?pageName=newsDetail&nid=2806>

- The Director General of DOFE Bishworaj Pandey was arrested by CIAA on 29 Kartik 2074 for investigation related to his involvement in bribery case. News related to this can be accessed on <http://kantipur.ekantipur.com/printedition/news/2017-11-16/20171116063359.html>

- The CIAA told on 10 Mangsir 2072 that foreign employment is the core place for human trafficking, there is setting in airport and there are irregularities in DOFE, for which CIAA had recommended reforms since long time, but it is not happening. The CIAA told these things in a press conference held in the presence of officials from DOFE, FEPB, Labour Ministry and Ministry of Foreign Affairs. The news is available on <http://archive.setopati.com/samaj/36953>

²²⁶ The then Labour Minister had told in an interview to Kantipur Daily, "Labour Ministry is also known as Corrupt Ministry". The interview published on 6 Mangsir 2073 is available on <http://kantipur.ekantipur.com/news/2016-11-21/20161121152717.html>

issue. The report of International Relations and Labour Committee of Legislative Parliament²²⁷ has mentioned that there is a direct involvement of immigration officials and security personnel working at the airport, airlines staff and brokers in human trafficking by ‘airport setting’. ‘Airport setting’ is a problem which has been continuing for a long time. The government is also aware that this is a huge problem and there were few high-level efforts to present this. For example, after incidents of ‘airport setting’ in immigration office of Tribhuvan International Airport, double contracting, false documents, incidents of fraud/cheating became organized and rampant, a seven-member ‘Rapid Action Taskforce’ was formed in coordination of Shankar Koirala, the Joint-Secretary of Ministry of Home Affairs on 8 Bhadra 2069, for surprise monitoring and actions.²²⁸

The UN Special Rapporteur on Human Rights of Migrant Workers said that “Nepal had progressed in developing relevant laws and adopting policies to ensure the protection of its citizens leaving for foreign employment, however challenges continue to remain in their adherence, implementation and monitoring”.²²⁹ The report states that there are ‘ill-intentioned practices’ from privately run recruitment agencies and non-regularized agents; migrant workers being forced into compulsory labour, indebted bonded labour, abusive and exploitative situations like trafficking due to lack of implementation and monitoring of laws and policies; workers having to pay excessive amounts due to lack of implementation of policies reducing recruitment and service fees; workers facing risks of abuse and exploitation due to indebtedness; women migrant workers facing more risk of abuse and exploitation and the policy which is said to have been developed for their protection is discriminatory; rather than finding ways to protect domestic workers effectively, policy to restrict them from going in foreign employment has been adopted; workers being exposed to higher risks of abuse and exploitation when they use irregular routes of migration due to restriction.

227 Report of ‘Sub-Committee for field monitoring and inspection of Gulf countries’ formed according to the decision of Legislative Parliament, International Relations and Labour Committee on 8 Mangsir 2073.

228 More news on this available at <https://ceslam.org/index.php?pageName=newsDetail&id=2466> and on <http://nepalikorea.com/news-zoom.asp?sno=18090>

229 Report of UN Special Rapporteur on Human Rights of Migrant Workers, Phillip Gonzales Morales, presented to the UN Human Rights Council after his official visit to Nepal in February 2017, available at <https://undocs.org/A/HRC/38/41/Add.1>

13. Low Priority of Local Government

Local Government Operation Act, 2017 authorizes local level on few areas like data collection on foreign employment sector. Although the Act has given the responsibilities like safe foreign employment and collection and management of information on migrant workers working abroad, management and operation of Employment Information Centres, financial literacy and skills training for labour force leaving in foreign employment, social reintegration of returnee migrant workers, and use of knowledge, skill and entrepreneurship acquired by foreign employment to the local government, none of the 18 local level governments in Sunsari, Dhanusha, Kathmandu, Sindhupalchok and Dailekh interviewed by NHRC have initiated any work as per the provision of this Act. The representatives of these local governments told that there is lack of resources and tools and could not include this topic in planning as there are other work priorities.

14. Republic of Korea Employment Permit System:

Since 2008, Nepal government has been recruiting workers and sending them to Korea from the government level. From those who have passed the Korean language training, Nepal government recruits workers for employment and from 2008 to 2019, 62 thousand 2 hundred and 27 workers have already been sent to Korea.

Table 5.3
Number of workers who passed the language test and left for employment to South Korea

Year	Appeared in Exam	Passed			Employed		
		Women	Men	Total	Women	Men	Total
2008	31,525	380	6406	6786	81	2733	2814
2009					64	1847	1911
2010	36203	446	3734	4180	422	1917	2339
2011	50043	1598	14080	15678	137	3846	3983
2012					395	5937	6332
2013	44122	715	7336	8051	183	4863	5046
2014	58746	200	3563	3663	441	5587	6028
2015	43459	701	7789	8490	406	5460	5866
2016	57120	334	3183	3517	578	7501	8079
2017	68383	1198	10910	12108	376	7424	7800
2018	74863	994	7042	8036	404	8107	8511
2019					223	3295	3518
Total	4,64,463	6,566	63,943	70,509	3,710	58,517	62,227

Source: Foreign Employment EPS Office, Kathmandu, June 2019.

The EPS Office in DOFE told that the workers being sent in agriculture and production sectors are earning a minimum of 1.7 million 34 thousand South Korean Won (approximately 180 thousand rupees) and their contract period is 4 years 10 months.²³⁰ The office also informed that in case the employer cannot provide the job to the worker due to some reason, the South Korean government arranges another job for that worker.

The EPS Section Office Shovakar Bhandari told NHRC that although workers in South Korea face job stress and there was information on some even committing suicide, in the past four years no complaint has been filed regarding exploitation from the employer.

Although recruitment of workers to South Korea is done from the government level, there are fees under different headings and currently this fee amounts to 815.59 USD. The government adopted Free Visa Free Ticket concept for Gulf countries but is collecting fee from the workers while sending them through government level itself. Many reports have claimed that the fee charged by the government is excessive. The report on Registrar's audit of fiscal year 2017/18, the Auditor General's Office has said, "there is a balance of 194 million 849 thousand rupees in the fund, the basis for service fees collected from the workers is unclear, and the savings from the collected service fee from the workers remaining in different service providing agencies show that the fees collected from the workers are excessive".

15. India-Bound Workers

'I was working at the site. The dozer was operating on the upper part. A rock came rolling and hit my head. I became unconscious. I was in a hospital when I gained consciousness. I could not speak. Now, I can speak a little but cannot walk.'

– 16 year old Dambar from Dailakh (name changed)²³¹

He went to India for employment at the age of 14, with other 15/16 people from the village in December 2017. When his father's seasonal income from India became insufficient to provide for the family of seven, Dambar requested the labour contractor who was collecting people of Dambar's age and a little older to work in India's Srinagar in road construction. That is how Dambar had left for India.

230 Conversation with EPS Section Officer Shovakar Bhandari on 21 June 2019 by NHRC research team

231 Interview with Dambar and his parents in Dailekh on 2 May 2019 by NHRC research team.

He never saw the office of the road construction company. The employer had arranged for their accommodation under the tents at the work site itself. The company would arrange for their cooking utensils and the workers would cook themselves. They had no toilets and used open jungle. Although he was told that the daily wage will be 300 rupees, he was not paid anything for the past 6 months since he arrived there, from December 2017 to July 2018. The company had not provided Dambar or other workers any employment contract nor were they provided daily attendance card or identity card. Dambar told NHRC research team that they were not provided any helmet, boots or gloves for their safety.

In July 2018, while working on a sloping land, a rock hit him on the head and he became unconscious. They had to spend almost 2 hundred thousand rupees for his treatment and since the company did not pay that expense, according to Dambar's father, they borrowed loan at 36 percent annual interest rate to pay for the treatment expenses. After returning to Nepal as well, they spent another 2 hundred thousand rupees in his treatment.

The company sent Dambar home with some of his fellow villagers after a month's treatment at a local hospital. He cannot move both of his legs now. "When he was brought to Nepal, he could not speak, could not move at all, he was carried like a dead body. After some treatment, although he became a little better, speaks although not legible, but what to do, we could not get him a proper treatment" says Dambar's father. Dambar's father told NHRC research team that they had taken him to Nepalgunj twice for his treatment, but due to lack of money for travel and treatment, they have not been able to continue Dambar's treatment for the past six months.

Like Dambar, hundreds of thousands of Nepalis go to India for employment from different parts of Nepal, using the open border. The number of people going like this is more in western Nepal. The 1950 Treaty between Nepal and India made provisions for the citizens of both the countries to openly move between the borders, do business, buy and sell properties and reside in any of the two countries,²³² because of which Nepalis can go to India for employment easily. Although no exact figure is available, it is estimated that tens of thousands of Nepalis are working in India. They are working in the sectors of construction, industry, security, domestic work and hotels and also in seasonal works (planting and harvesting).

232 Treaty of Peace and Friendship between Nepal and India, 1950, Article 7, available at <https://mea.gov.in/bilateral-documents.htm?dtl/6295/Treaty+of+Peace+and+Friendship>

a. Trend of going to India

Nepalis can go to India for work from any part of Nepal due to open border, yet people from western Nepal go to work there in large numbers on seasonal basis and for longer periods as well. The NHRC research team had interviewed those who go to India for 2/3 months during the period between planting and harvesting of crops in their own fields for some extra income, and those who go to India with the purpose of working for a longer period. Those who go to India are mostly go for working in hotels/restaurants, construction sector or as security guard.

People from many households in Karnali and far west go in foreign employment. A journalist from Dailekh, Bishal Sunar said, “Although we don’t have exact data, but at least one person per household in 50/60 percent households in eastern Dailekh and up to 80 percent households in western Dailekh have gone to India for employment.” He further said, “People have been going to India from this part for generations. The grandfathers went, then the fathers and now the grand children are also going. Going to India is nothing new here”.

NHRC had conducted a focus group discussion with the local people of Ali, Ward No. 5 of Panchadewal Binayak Rural Municipality of Achham. 20 people from the village were present in the interaction held in two groups. According to them, out of total 54 households in that village on the banks of Karnali river, at least one person from each household has gone to India for employment.

Although so many people leave home for employment, the trend of going to third country for employment was very low in that area. For example, the people from the above-mentioned village, Ali, said that only one person from that village had gone to Malaysia in 2069 BS and no one else has gone to the third country for employment before or after that. The Chief District Officer (CDO) of Achham also verified this. He said, “There is almost no family in this area, whose member has not gone to India for employment. If we count those who go for seasonal agriculture work, then that will leave no household. But those who go for a longer period (at least a year), even then it will be more than 90 percent.”²³³ It is mainly men who go for work like this and there is no practice of women going for work. The CDO said, “It is different when some women accompany their husband or family

233 Interview with CDO of Achham Krishna Prasad Acharya on 3 May 2019 by NHRC research team.

members and work there, but otherwise we do not find only women going to India for work.”

b. The contractor ‘Met’ taking people for employment in India

There are people actively involved in gathering workers willing to work in India as a group or individually. They are called ‘Met’ in local language who are requested by employers in India to bring workers and therefore they gather the aspiring workers for taking them to India for employment. These Mets are also mostly working in India and in return of taking the workers, the Mets either may not need to work or get salary from the employer for supervising the workers only. Almost all the respondents said that these Mets don’t collect money from the workers, like the agents who help the workers in recruitment for employment in third country. According to them, some might offer some ‘gift’ willingly or if the Met is also travelling together, then the workers might bear his travel cost.

28 years old Bishnudatta (name changed), who went to Bombay in India when he was 12 and returned home only last year, says that he had gone with the Met. There were 12-13 others in the same group. “The older men jointly paid for the Met’s travel cost (tickets and food), but three of us who were smaller, did not have to pay anything, maybe because we were younger”.²³⁴ Bishnudatta also told that he did not know of Mets collecting money from the workers like the agents sending workers in third country do.

c. Leaving at an early age

Those going to India were found to be leaving at an early age. Although Nepal’s Constitution and laws related to children, Foreign Employment Act and International Laws where Nepal is a party prohibit child labour, these laws have not been helpful for many in this part of the country. Out of 106 people including workers who returned from India or family members of workers still in India, who were interviewed by NHRC in Dailekh and Achham, 26 of the workers had left for India for employment when they are below 18 years old.

d. Main reasons for going to India

Almost all interviewed by NHRC had the same reasons for going to India. They were: 1. Poverty and deprivation, 2. Lack of employment opportunity, 3. Easy access to India, 4. Seasonal, short-term and long-

²³⁴ Interview with Bishnudatta on 4 May 2019 in Achham by NHRC research team.

term employments available, 5. Relatives or neighbours are also there.

NHRC had asked the respondents why they choose India and why not any third country, because the government has now adopted the Free Visa Free Ticket for major destinations of Nepali workers. Their response was, “There is almost no expense for going to India. No matter what they say about it being free, one must pay at least 1 hundred thousand rupees to go to a third country. Where will we get that money?” They also said that one of the demotivating factor for them to go to a third country is having to go to Kathmandu for acquiring labour permit process.

e. Salary

The workers interviewed by NHRC told that they earn from 6-7 thousand Indian rupees per month while some of them said that they earn up to 32 thousand rupees. Some working as security guard said, “If we clean the employer’s car or give them other services as well, then we can earn some extra”.

f. Not covered by Foreign Employment Law

Nepal’s foreign employment related laws don’t cover those who go to India for employment. Therefore, no government agency keeps any record of them nor are any exact data available about them. They are not covered by the Foreign Employment Welfare Fund and are not required to get insurance or orientation before departure like for those going to third countries.

g. Government’s declaration of 11 Magh 2073

On 24 January 2017, the government had declared that it will provide labour permit for those going for employment in India and from 12 February 2017, “they will be provided relief and compensation of 5 hundred thousand rupees for fatal illness, 750 thousand rupees for life insurance and up to 150 thousand rupees from the Board like other citizens going in foreign employment in other countries”.²³⁵ Although it was declared that the provision will be applicable from 12 February 2017, it has not been implemented until now. It was also told that the workers going to India must take permit from the concerned CDO office or the CDO office of district bordering India, and the CDO office will make a mandatory participation of such workers in

235 Former Prime Minister Pushpa Kamal Dahal’s declaration <http://cmprachanda.com/2017/01/6641>, last retrieved on 13 June 2019. The video of this declaration is available at <https://www.youtube.com/watch?v=Y1F6BlmC9E>

insurance and Welfare Fund before issuance of permit, and a separate working procedure will be developed for this and applied within a month. However, that process has not started yet.

h. Main Problems faced by workers going to India

Lack of Identity and Protection

Nepal's foreign employment related laws don't cover the workers going to India for employment. There is very low or negligible possibility of them getting government support if they face any problem or abuse. No matter whether the workers go for formal sector (like company, hotel) or informal sector (like domestic work or agriculture), the employers don't provide them with any identity card or contract, which causes a huge problem related to identity. All of those interviewed by NHRC (100%) said that their employer provided neither identity card nor any contract. According to them, this causes a big challenge for them to remit their income to Nepal or to access health services.

Risk of HIV to migrant workers to India and their family members

Many people who go to India for employment were found to be HIV infected due to lack of necessary information before departure and not taking precaution while in India. A trend was seen where the wives were also infected by HIV when their husbands return with infection and as a result, HIV infected children are born. For example, in Dailekh district alone, out of 54 men who have been taking ART since 2066, 60 had returned with infection while in employment in India. The remaining 4 did not want to disclose using their right to maintain confidentiality, but it has been guessed that they also got infected while in employment in India.²³⁶ Similarly, out of 86 men getting ART service from Achham District Hospital, 80 were infected while they were in India for employment.²³⁷

80 women and 22 children in Dailekh were HIV infected due to HIV infection that came along from India due to employment there. Similarly, 110 women and 23 children in Achham were found to be infected.

The NHRC research team had interviewed 26 men and women who are HIV infected. Although they seem satisfied with the service provided

²³⁶ Details provided by Dailekh District Hospital on 3 May 2019 to NHRC research team.

²³⁷ Details provided by Achham District Hospital on 5 May 2019 to NHRC research team.

by district hospital and local ART Centre, new infection cases still coming and infecting their family members continues, which shows that the government needs to adopt an effective measure to prevent people from this risk.

Problem in remitting income to Nepal

In order to remit money to Nepal from a remittance company or bank in India, one needs Adhar-card provided by Indian government or any other identity card. But seasonal migrant workers from Nepal and other workers don't possess such cards of any other identity card, because of which they cannot remit their income through formal channel. So, they have no other option than to carry their income in cash when they return. The respondents of NHRC interview told that they keep the money in their pocket after they receive their monthly salary and keep in under their pillow when they sleep. Money of so many workers are stolen or looted because of this which might lead to returning home empty-handed.

Unsafe Border

They said that another problem that they face is the unsafe Nepal-India borders. They said that they are harassed at both sides by the security forces deployed there (mainly Indian side), and a lot of times the security personnel confiscate the clothes and goods that they bring for their family members.

16. Indebtedness

According to Nepal's law, the interest of a loan borrowed from an individual should not exceed 10 percent.²³⁸ Many of the migrant workers do not have enough property for collateral and therefore cannot borrow loan from banks and they borrow from individuals. Different studies have shown that the interest rates of such loans are 36 percent on an average and some even pay as high as 60 percent or more, which are illegal interest rates.

Loans on high interest rate put the workers in situations of compulsory labour. Even when they want to refuse the work if the type of work or salary is not what they wanted, then too they are compelled work in different job with less salary and different terms and conditions that they were promised

²³⁸ Article 478, Sub-Article 2 of National Civil Code 2017, enforced from 15 August 2017. Before this Code, the Muluki Ain (Country Code) Chapter 17, No. 6 provided that individual loans from another individual should not exceed 10 percent.

before, because the burden of loan is usually so heavy that they cannot afford to refuse or negotiate.

17. Inadequate Resources and Capacity of Management and Regulating Agencies

Although the remittance received from migrant workers contribute to almost one third of Nepal's annual GDP, the government and judicial agencies established for their management and protection lack resources. The budget allocation for these agencies is less than one percent of annual national budget.

The Nepal government allocates less than 0.5 percent of its annual budget to the Ministry of Labour, Employment and Social Security, which has the responsibility to manage, monitor and regularize the foreign employment sector along with the national employment sector and social security as well. For example, out of total national budget of 1 trillion 315 billion 161 million and 700 thousand rupees in the fiscal year 2018/19, MOLESS was allocated only 4 billion 293 million and 900 thousand rupees (0.326 percent)²³⁹ and out of total budget of 1 trillion 532 billion 967 million and 100 thousand rupees in the fiscal year 2018/19, MOLESS is allocated only 7 billion 140 million rupees (0.465 percent of total budget).²⁴⁰

The Labour Consular and Labour Attaché in Nepali embassies in major destination countries for Nepali workers complain that there is insufficient human and other resources in their office. NHRC research team had collected information about insufficient resources in Foreign Employment Tribunal. The Tribunal said that there are not enough computers in the Tribunal, and it has also not been able to develop its own website to disseminate information to the common people until now.

Despite a large sum remaining as a balance in Welfare Fund deposited as contribution by migrant workers, the FEPD also is facing lack of resources. The Board informed that the Nepal government had allocated 10 million 557 thousand 700 rupees in the fiscal year 2016/17, 11 million 570 thousand rupees in the fiscal year 2017/18, 10 million 700 thousand rupees in the fiscal year 2018/19 for FEPD. The Spokesperson of FEPD, Dinbandhu Subedi told that this amount is barely enough for expenses like staff salary, utilities, fuel, furniture and therefore the office has not been able to develop necessary software or is facing difficulty in conducting

239 *Budget speech of 2018/19* https://mof.gov.np/uploads/news/file/Budget%20Speech%202075%20for%20Website%20Final_20180529012628.pdf retrieved on 30 May 2019)

240 *Budget speech of 2019/20* https://mof.gov.np/uploads/news/file/Budget%20Speech%202076_20190529114454.pdf retrieved on 30 May 2019)

research and studies.²⁴¹

The pressure of work seemed to be excessive in DOFE. The official in DOFE said that the investigation officers have lots of work pressure due to complaints/grievances received daily in the Department. It was found that there is no adequate training (including refresher training) on investigation or labour rights and human rights to the staff working in the department responsible for managing workers' migration. This means that the work of the Department might not be effective and worker friendly.

18. Labour Diplomacy

To organize cross-border migrations, labour agreements are done between the source and destination countries. Although Nepal provided institutional labour permit for employment in 110 countries and individual labour permit for 172 countries, it has agreement with only 9 countries.

There are mainly two types of agreement with the source and destination countries: Bilateral Labour Agreement (BLA) and Memorandum of Understanding (MoU). Apart from these, Letter of Exchange is also practiced. BLA is considered legally stronger document. Until now, Nepal has BLA with 2 countries and with the 7 remaining countries, it has MoU.

Table 5.4

Labour Agreement of Nepal with Destination Countries

S. No.	Country	Year	Type of Agreement
1	Qatar	2005	BLA
2	UAE	2007	MoU
3	South Korea	2007	MoU
4	Bahrain	2008	MoU
5	Israel	2015	MoU
6	Jordan	2017	BLA
7	Malaysia	2018	MoU
8	Japan	2019	MoU
9	Mauritius	2019	MoU

241 Interview with FEPD Spokesperson Dinbandhu Subedi on 12 June 2019 by NHRC research team.

19. Difficulty in Resolving Problems while Abroad

Whenever a migrant worker faces any work-related problem, first of all they contact the agent and/or recruitment agency which had sent him in employment. But they rarely receive support from the agent or recruitment agencies. Despite the problems arising in destination country, it becomes the duty of Nepal government to intervene as per need and provide solution or support. But except for a handful of workers, hundreds of workers who are facing simple to serious problems do not receive any sincere support either by their recruitment agencies or by any government mechanisms.

38-year-old Ambika (name changed) from Sindhupalchok went to Kuwait in January 2014 with a labour permit. Ambika's sister-in-law, Sirjana (name changed) told NHRC that Ambika was in contact with the family for some time after her departure but used to say that her employer is not a nice person and wouldn't let her return and treated her badly. "She used to call once in four or five months. When we used to ask her which place she is in, she used to say, 'Neither do I know the name of this place nor can I escape from here'. But now she is not in contact since a long time", Sirjana said.

Sirjana told NHRC that they had submitted the complaints in government agencies including the Consular Service Department two years ago and despite regular follow up, they have not been able to know the whereabouts of Ambika. Her family members are running here and there hoping to find her, while Ambika's two sons are suffering a lot by not getting any news of their mother.²⁴²

According to the report of International Relations and Labour Committee of the Legislative Parliament²⁴³, *"there is a grave situation where the manpower (recruitment) companies behave as if they have no responsibility towards the workers once they are sent abroad and DOFE and MOLESS not taking any concrete steps to make the related manpower companies responsible towards the workers they sent"*.

The workers told that when they contact Nepali embassy when they face problem, the embassy also does not play any intervening role. Since Nepal's labour diplomacy is weak, the problems of Nepali workers remain as it is, and the workers also lose hope that they can get any support from the embassy. Similarly, there are grievances expressed that the officials or

242 Interview with Ambika's sister-in-law Sirjana (name changed) on 21 June 2019 by NHRC research team

243 Legislative Parliament, International relations and Labour Committee's 'Sub-Committee for Field Monitoring and Inspection of Gulf Countries' report 2074.

staff in the embassy are also not workers friendly.

In comparison to the number of workers and pressure of problems that exist in the destination country, the provision of staff and other resources are insufficient, due to which the embassies cannot support the workers in resolving their problems even if they want to. The responsible officials themselves accept that the embassies are not able to fight with the access and influence that the recruitment agencies have.²⁴⁴

Having no labour agreement with the destination countries is also creating problem in protection of workers. There is labour agreement with only 9 countries²⁴⁵ out of all the countries that have been opened for labour migration. Had there been labour agreements with the destination countries clearly specifying the protection of rights of the workers and if they were implemented, there would be hope that their exploitation in destination country would be reduced.

20. Deprivation from Other Rights

a. Deprived of voting rights

Article 84 (5) of Nepal's Constitution 2015 states, "Every Nepali citizen who has completed eighteen years have the right to vote in any one election area as per the Federal Law". But there is no provision for Nepalis abroad to vote in national and local elections. Two years ago, the Election Commission had done some homework for 'absentee voting' and had proposed amendment in the Act. But the proposal of amendment was not approved, and the provision could not be implemented. This has deprived hundreds of thousands of adult Nepalis from exercising their right to choose their representatives.

The Supreme Court has issued a mandamus order to "take necessary steps to organize and make necessary arrangements for ensuring voting rights of all the Nepalis who are abroad for different purposes".²⁴⁶ But preparation works as per this mandamus order are yet to be done.

244 For example, in the field investigative news titled 'Nepali Workers being cheated in Malaysia' published in Kantipur daily of 17 September 2017, Nepali Ambassador to Malaysia Nirajan Man Singh Basnyat has been quoted, "the Embassy is unable to fight with the brokers anymore. We are ourselves caught in the trap of agents, hard to deal", available at <http://kantipur.ekantipur.com/news/2017-09-17/20170916203959.html> and <https://ceslam.org/index.php?pageName=newsDetail&nid=8339>

245 Israel, Bahrain, Qatar, Jordan, South Korea, Japan, UAE, Mauritius

246 Mandamus order made by the Supreme Court on 21 March 2018 (Decision No. 10031-Mandamus Order) after hearing on the writ (073-WO-1141) filed on behalf of Forum for Social Justice for Law and Policy

b. Problem in Birth Registration of Child born after Pregnancy of Women Migrant Worker Abroad

Problem of Women who return pregnant or after giving birth

When a child is born either in Nepal or abroad after the migrant woman got pregnant after sexual abuse from the employer or someone else or after consensual sex, the women face challenges in birth registration of such children.

My daughter's birth registration was denied without the father's name and address. I have not been able to enrol her in school. I don't know her father's name and address. I have never been in contact with him after I returned from Kuwait. I might not recognize him now even if I encounter him on street.

– 28-year-old Kalpana from Sunsari (name changed)²⁴⁷

Kalpana was taken to Mumbai in India using open Indian border by an agent from her own village in 2065 BS and after keeping her there for a month, an agent from Mumbai had sent her to Kuwait. She used to work in a Kuwaiti citizen's house. In 2070 BS, when she had physical relation with a Nepali person working in the neighbourhood, she got pregnant and her employer sent her back to Nepal.

Kalpana had become a become mentally a little unstable and she gave birth to a daughter after some time of her return. She says that she does not know anything about the name and address of the person who go her pregnant, "I think I will not recognize him even if I come face to face with him on street".

Kalpana's daughter is now 4 years old. Kalpana and her family tried to register the daughter's birth for enrolling her to school. But the details of father were asked for her birth registration. Kalpana says, "Local school has allowed her to sit in the classroom and study, but they are saying that without the birth registration certificate they cannot enrol her".

Not only Kalpana, other women who returned after getting pregnant

²⁴⁷ Interview with Kalpana in Sunsari on 6 January 2019 by NHRC research team.

After interviewing her, the research team had raised her case with the Mayor and CAO of Barahchetra Municipality. The CAO said that without entering the details of father including his name in the online form for birth registration, the data processing cannot happen. The Mayor said that he will get the birth registered.

have also faced this problem. Women who return pregnant or after giving birth are looked down upon by the society and family. Manju Gurung, Chair of Pourakhi, an organization working for the returnee migrant women, says, “It is a huge problem to get the right to identity of nationality for the children who are born in Nepal or abroad after the migrant women get pregnant. They face problem in child’s birth registration since the father’s identity is not unknown and at the same time the women face discrimination from family and society for having relationship with another man. If the citizenship was provided in the name of the mother as the constitutional provision, at least it would have solved the problem of becoming ‘non-citizen’.”

Bijaya Rai Shrestha, Chair of Amkas, an organization working for the migrant women workers says that pregnant women do not have anywhere else to go and find themselves in a situation to stay in shelter homes. She says, “Not only pregnant women, some women are abandoned by their husband or family just because she returned from foreign employment and that is the reason that they are staying in shelter. They face legal and procedural obstacles in establishing their rights.”

The research of NHRC showed that there are human rights exploitation of migrant workers in their recruitment and employment. These exploitations are done by Nepali agencies recruiting workers for employers abroad and by the employers in destination countries. Looking at the nature of these exploitations, they are financial and labour exploitation against the workers, forced labour and human trafficking. These are against the laws including ILO Convention, Convention against Forced or Compulsory Labour, Nepal’s Constitution, Human Trafficking (Control) Act and Foreign Employment Act 2007.

The following human rights exploitations during the recruitment and employment were seen which are against the International Human Rights Law and Nepal’s Constitution and laws as mentioned in the Chapter three of this report:

- Trafficking for Labour Exploitation
- Made to work against the will in a different job than previously promised
- Low salary than told before, holding the salary or non-payment of salary, fine or deduction from salary
- Collecting more than prescribed amount or excessive amount

- More than one or fake agreement
- Confiscation of passport or other related documents by the employer
- Not giving exit permit
- Not making resident permit and health card for the worker
- Physical torture
- Non-payment of overtime work
- Getting arrested or threatening or in some cases putting the workers in problem by false accusation
- Deprivation from medical treatment
- No rest or holiday
- Unhealthy accommodation
- Unsafe work site
- Not allowing to return/restricting movement
- Workers have to borrow loan from moneylenders on high interest rate and to pay back the loan money they are compelled to work in any situation
- Inhuman behaviour towards the workers
- Not listening to the grievances

According to the UN Guiding Principles on Business and Human Rights, it is the responsibility of the recruitment agency to ensure that the workers whom they recruited do not suffer any type of exploitation, forced labour, abuse, confiscation of passport and documents, not allowed to return home. Likewise, it should ensure that the agents who bring the aspiring migrant workers in their contact, are not cheating or exploiting the worker or their family members.

It is the State responsibility to prevent any exploitation that may occur during the recruitment of migrant workers and during their employment and to ensure relief, reparation or justice in the cases of exploitation. It is the duty of the government to investigate effectively on the cases of exploitation and to punish those involved in such activities. But the NHRC research found that the role of government agencies was not effective in conducting effective investigation in the cases of exploitation, ensuring justice to the victim including compensation and punishing those who are involved in exploitation. As a result, the workers suffering exploitation and cheating are in extremely painful state and disappointment towards the State in its inability to protect them when they face difficulties.

Chapter Six

Access to Justice

We had asked the police, they said, “we don’t look after this kind of case. You have to go to Kathmandu”. But we don’t know where we need to go and what we need to do. Also, we don’t know if that lost money will be returned if we go to Kathmandu. So, we haven’t gone anywhere.

- *Ramesh (name changed), who had returned from Qatar after nine months there*²⁴⁸

Many migrant workers face various problems daily. Some are in problem even before they leave, while others face problems while they are working abroad. Especially those, who are facing the problems related to their work, salary and excessive recruitment fee are either don’t have access to justice or are struggling with the challenges for getting justice or compensation through complaint mechanism.

All Nepali workers who returned with undecided complaints/grievances could had been entitled to compensation as per the Nepali law. Most of the grievances/complaints are about different work than what was told during recruitment, less pay, overtime work without pay, non-payment or delay in salary payment. These are violation of Foreign Employment Act for which the recruitment company is accountable.

There are laws and complaint mechanism for protecting the migrant workers from abuse and exploitation. In this chapter, those laws, complaint mechanisms and the victim’s access to them are discussed. The existing challenges in accessing justice have also been analysed.

Access to Justice

The State has the obligation to make provision of effective laws and provisions so that no one experiences injustice. Even after that, if anyone experiences exploitation, then remedy should be provided by developing a simple and accessible system to address them. It is the right of the victim to get easy access to a competent and effective mechanism against the exploitation he/she suffered. Access to justice might be defined differently for different context. According to the definition provided by Access to Justice Bc, access to justice can be defined as “enabling people to avoid, manage, and resolve civil and

²⁴⁸ Interview with Ramesh at Morang on 4 January 2019 by NHRC research team

family legal problems and disputes.”²⁴⁹

There are some criteria which are used to determine whether access to justice is easy or not. These criteria are²⁵⁰:

1. Legal Provision: How effective are the legal provisions for protection of the concerned person and how well developed are the mechanisms for implementation of these provisions,
2. Information: How well informed is the concerned individual about the law and legal provisions,
3. Trend of Seeking Legal Aid: How much the concerned individuals seek and use the existing legal support,
4. Access to Justice: How easy is it to access the justice and judicial institutions and how simple and accessible are the processes,
5. Fairness: Are there any restrictions or obstacles that a victim has to face in accessing these mechanisms, what is the rate of dispute resolution and how impartial and transparent are they.

1. Legal Provisions

a. Foreign Employment Act 2007:

The main law that has been formulated to provide justice and compensation to the victims of foreign employment related misconducts and crimes are the Foreign Employment Act 2007 and the Regulation 2007 under it. The Act provides that if the employing institution does not provide job as mentioned in the agreement, then complaint can be filed at DOFE or CDO.²⁵¹

b. Human Trafficking (Control) Act 2007

This Act has defined some specific natures of human trafficking and has made provisions for punishment for the same. Crimes and misconducts related to human trafficking in the name of foreign employment can be complained to Police according to this law.

2. Complaint Mechanism

a. Department of Foreign Employment (DOFE) and/or Chief District Officer (CDO): Any malpractice or crime related to foreign employment can be complained to DOFE or CDO.²⁵² While DOFE

²⁴⁹ Retrieved from the website of Access to Justice Bc <https://accesstojusticebc.ca/about/what-is-access-to-justice/> on 8 June 2019.

²⁵⁰ American Bar Association, Rule of Law Initiative, “Access to Justice Assessment Tool”, 2012

²⁵¹ Foreign Employment Act 2007, Article 36 (1) and (2)

²⁵² Foreign Employment Act 2007, Article 21a

investigates on all types of complaints, the CDO looks after the cases that can be mediated or a mutual agreement can be reached and the remaining should be referred to the Complaint Department.

- b. Ministry of Labour, Employment and Social Security:** If a worker had gone through a medical test from the Nepal Government approved health institution before his/her departure and is returned showing the reason of medical problem after medical test conducted at destination country, an application can be filed within 35 days of return at the Ministry requesting the retrieval of two way travel cost incurred for foreign employment.²⁵³
- c. Nepal Police:** Human trafficking in the course of foreign employment can be complained at Police. In such cases, the Police conducts criminal investigation and the case hearing is done at the District Court.

3. Judicial Mechanism (Foreign Employment Tribunal)

Apart from punishment from DOFE, there is Foreign Employment Tribunal to look after the case initiation and finalization for cases related to foreign employment.²⁵⁴

The complaints filed at the DOFE are investigated by it, after which the conclusions and recommendations are sent to the office of Special Public Attorney, where decisions are made on whether the case needs to be referred to the Tribunal or not. For the cases that do not need referral to the Tribunal are taken forward by DOFE and the hearing of cases referred to the Tribunal are done by the Tribunal.

The cases related to foreign employment are State cases²⁵⁵, the cases filed at Tribunal are proceeded as per the Summary Procedural Act 2028 BS²⁵⁶ and the order or decision is made by the District Court.²⁵⁷

4. Provisions Related to Crime and Punishment

The Foreign Employment Act 2007 has provisions for different punishments for different types of exploitations against the migrant workers. Some of the major ones are as follows:

253 *Foreign Employment Regulation, 2007 Rule 46 B, Sub-Rule (1)*

254 *Foreign Employment Act 2007, Article 64*

255 *Foreign Employment Act 2007, Article 63*

256 *Foreign Employment Act 2007, Article 65*

257 *Foreign Employment Tribunal Regulation 2007, Rule 40*

Crime	Punishment	Fine/Compensation	Time Limit for Complaint
The worker or his/her representative can complain to DOFE seeking compensation if the employing institution does not give work as mentioned in the agreement (Article 36, Sub-Article 1)		DOFE can issue an order to the license-holder to compensate the total expense incurred for travel related to foreign employment	No time-limit
If someone runs foreign employment recruitment business without license or if someone collects money by falsely assuring or promising foreign employment or sends abroad	Fine from 3-5 hundred thousand rupees and 3-7 years of imprisonment. If the worker is not yet sent abroad, then the punishment will be half.	The collected amount and 50 percent of that amount and the return travel cost for the concerned worker that was spent.	No time-limit
If a license-holder sends worker in foreign employment without acquiring approval from DOFE or if any license-holder collects money by falsely assuring or promising foreign employment and does not send them (Article 44)	Fine from 3-5 hundred thousand rupees and 3-7 years of imprisonment and cancellation of license. If the worker is not yet sent abroad, then the punishment will be half. License will be cancelled	The collected amount and 50 percent of that amount	No time-limit
If a minor is sent in foreign employment (Article 45)	Fine from 3-5 hundred thousand rupees and 3-7 years of imprisonment and cancellation of license.		No time-limit
If a license-holder sends workers to countries that have not been opened by Nepal government or gets visa for open country and sends worker to unopened country (Article 46)	Fine from 3-5 hundred thousand rupees and 3-7 years of imprisonment. If the worker is not yet sent abroad, then the punishment will be half.		No time-limit

If a license-holder hides or manipulates any record or reports or makes fake documents or gets them made	Fine of 1-4 hundred thousand rupees and imprisonment from 6 months to 1 year. If the same crime is repeated, the punishment will be double than the first time and the license will be cancelled.		No time-limit.
Opening Branch office without approval of DOFE (Article 48)	Fine at the rate of 2 hundred thousand rupees per branch and closure of branch office.		Within 1 year
If advertisement is not published as prescribed in Article 16 of the Act before recruitment of workers or if advertisement is published without DOFE approval (Article 49)	Fine of 50 thousand rupees and cancellation of advertisement.		Within 1 year
If the list of selected workers are not published as prescribed in Article 17 of the Act or published but not informed DOFE (Article 50)	Fine of 50 thousand rupees and order may be given to republish the list		Within 1 year
If denied in paying the amount that needs to be returned or compensated to the worker (Article 51)	Fine of 1 hundred thousand rupees and license can be cancelled	Use the license-holder's security deposit at DOFE for payment of return money or compensation. If the security deposit is insufficient for payment of return or compensation, give order to pay the remaining amount within 60 days and if not, then it will be collected from the property.	Within 1 year For migrant worker, within 1 year of returning

If a license-holder sends worker at individual level (Article 52)	Fine of 1-3 hundred thousand rupees or cancellation of license or both		Within 1 year For migrant worker, within 1 year of returning
If excess is collected for visa fee, service fee and promotion cost (Article 53)	Fine of 1 hundred thousand rupees	Get the excess fee or cost returned to the concerned person	Within 1 year For migrant worker, within 1 year of returning
Non-adherence to order or direction (Article 54)	Giving warning for the first time, 50 thousand rupees fine in the second time and if same crime is repeated third time, then 1 hundred thousand rupees fine, and license can be cancelled.		Within 1 year
If a contract is done with a worker for a job in one company and is made to work in less pay and benefits or in different nature of work or is employed in another work in foreign employment than what was promised or is employed in work that pays less with less benefits than previously promised (Article 55)	Fine of 1 hundred thousand rupees	DOFE makes the license-holder compensate the remaining amount of salary and benefit that what was promised	Within 1 year For migrant worker, within 1 year of returning
Punishment to accomplice (Article 56)	Half of the punishment than the crime	Depending on the nature of crime	Depending on the nature of crime

Punishment to the person working as Chief (Article 57)	If a firm, company, institution or license-holder commits a crime as defined by this Act, then the personnel or staff involved will be punished or if that personnel or staff is not identified, then the person who was the Chief of that firm, company, institution or license-holder at the time of crime, will be punished	Depending on the nature of crime	Depending on the nature of crime
If a migrant worker departing after medical test is intentionally or negligently or knowingly given a false report of medical test (Article 72)		If the worker must rerun back due to false medical report, the two-way travel cost incurred for foreign employment should be borne by the health institution which conducted the medical test.	Within 35 days of returning from abroad

5. Complaints Received by DOFE and Resolution

Of the complaints filed by the migrant workers who faced problem or by their family members against individuals or recruitment agencies, DOFE refers the cases to Foreign Employment Tribunal if they are of the nature that requires punishment, and in rest of the cases, it investigates itself.

From fiscal year 2012/13 BS to 2018/19 Jestha end, out of total 16,032 complaints received (6,457 individual and 9,575 institutional), 4,593 (1,026 individual and 3,567 institutional) complaints or 28.65 percent have been resolved and now a total of 11,439 (5,431 individual and 6,008 institutional) complaints remain to be resolved.

Table 6.1

Complaints received at DOFE and their status of resolution

Remaining	Resolved Complaints	Number of Complaints		
1,043	202	1,245	Individual	2012/13
710	350	1,060	Institution	
823	151	974	Individual	2013/14
1,274	303	1,577	Institution	
699	74	773	Individual	2014/15
1,317	589	1,906	Institution	
610	94	704	Individual	2015/16
1,042	426	1,468	Institution	
772	159	931	Individual	2016/17
765	687	1,452	Institution	
918	191	1,109	Individual	2017/18
188	832	1,020	Institution	
566	155	721	Individual	2018/19 (until Mid June 2019)
712	380	1,092	Institution	
5,431	1,026	6,457	Individual	Total
6,008	3,567	9,575	Institution	
11,439	4,593	16,032	Total	

Source: DOFE, Asar 2076.

6. Cases Filed at the Tribunal

Out of the cases received by DOFE, the cases where there is a possibility of imprisonment are registered at the Foreign Employment Tribunal by the DOFE after consultation with the Special Public Attorney. The Tribunal decides on the case after hearing the case following the process prescribed by Summary Procedural Act, 2028 BS. If unsatisfied by the decision, the party can appeal in the Supreme Court.

After the establishment of the Tribunal, the cases registered and decided until 18 June 2019 are as follows:

Table 6.2

Details of Cases Filed and Decided by the Foreign Employment Tribunal

	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	Total
No. of complaints	158	119	164	178	151	213	230	311	285	552	2361
Resolved complaints	16	78	124	163	134	175	185	204	325	340	1744
Remaining	142	41	40	15	17	38	45	107	-40	212	617

Source: Foreign Employment Tribunal, June 2019

The rate of case resolution is higher in the Tribunal than in DOFE. Since the establishment of Tribunal in fiscal year 2009/10 until 18 June 2019, a total of 2 thousand 3 hundred and 61 complaints have been filed. Out of these, 1,744 cases or 73.87 percent of cases have been decided and 617 cases or 26.13 percent are remaining.

7. Challenges to Access to Justice

It is not easy to go through the process of getting compensation from foreign employment company and achieving success in it. On one hand, it takes a long time to resolve the complaints filed in DOFE and on the other hand, the trend of non-implementation of the decisions has resulted in workers have not been able to experience justice from this mechanism as such. Therefore, the rate at which the incidents of workers facing problems come into light, very few who are involved in those crimes are punished in that comparison. The following challenges in access to justice were seen from the NHRC research:

a. Lack of Information

Most of the migrant workers and their family members lack information on which government agency should they file the complaint or grievance about the problem they face. During this research, when asked with the migrant workers (returnees and preparing to depart) and their family members whether they knew which the complaint-filing agency is, 57.18% did not know about it and 25.84% said it is the embassy in the concerned country.

Different reports have also mentioned that the workers significantly lack access to information. According to the report of Auditor General, “Since the migrant workers do not have information on provisions made in Acts, laws, guidelines or determined by the government, resulting in the recruitment agencies, online service providing institutions and brokers cheating them by collecting excess fee than prescribed, for prevention of which the office has no provisions to give information on these things.”²⁵⁸

The UN Special Rapporteur on Human Rights of Migrant Workers has also mentioned that Nepali workers lack information on access to justice.²⁵⁹

b. Mechanisms are Kathmandu-Centred

The complaint mechanisms are in Kathmandu, due to which the abused worker must bear extra expenses for complaint process. The amendment in Foreign Employment Act 2007 through a bill prepared to amend some Nepali Acts on 3 May 2019 has made provisions of filing the complaint to CDO as well.²⁶⁰ Despite this, the victim or their family member do not know that they can file the complaint in concerned district and even in the districts where there are exploitations in huge numbers, not even a single complaint was filed in 3-4 months of amendment in the Act.²⁶¹ After three and half months

258 Office of Auditor General, Babarmahal, Kathmandu; *Performance and Special Audit Report related to fifty sixth annual report of the Auditor General*, page 243, <https://oagnep.gov.np/wp-content/uploads/2018/04/OAG-Performance-Annual-Report-1.pdf> last retrieved on 7 June 2019.

259 Report of UN Special Rapporteur on Human Rights of Migrant Workers, Phillip Gonzales Morales, presented to the UN Human Rights Council after his official visit to Nepal in February 2017, available at <https://undocs.org/A/HRC/38/41/Add.1>

260 Amendment of Foreign Employment Act 2007 on 3 March 2019

261 During its field study, when NHRC research team asked the CDOs in Dailekh, Achham and Dhanusha whether any complaints were filed in District Administration Office after the amendment in Foreign Employment Act, it was found that no complaints had been

of amendment in the Act, only one complaint has been received in DOFE through district. According to DOFE, the first complaint it received from district was from Syanjha district on 5 June 2019.²⁶²

The judicial mechanism of foreign employment, the office of Foreign Employment Tribunal is also in Kathmandu. The provision in Foreign Employment Act 2007 that the office of this Tribunal will be in Kathmandu and the benches of this tribunal not expanded outside Kathmandu is also posing difficulties to the victims from outside Kathmandu to access this agency.

c. Lengthy Time and Added Financial Burden

The victims usually do not want to initiate the process of legal battle or they accept whatever compensation that is offered or quit or revoke the case because the complaint redressal process takes long time and the complaint hearing offices are in Kathmandu, which adds to their financial burden. Even if the decision is in favour of the victim, the legal provision requires that the victim has to find out the property of the defendant and has to submit an application within 3 years for implementation of decision; adding the burden of running around and spending own money even after the decision of the case, which is an obstacle in getting justice and compensation by the victim.

d. Lack of Evidence with the Victim

There are many obstacles in getting justice through existing government agencies in the problems related to abuse and fraud in foreign employment. Lack of evidence with the victims for filing their complaint or case is a significantly high. According to SaMi Project Coordinator of Dhanusha, Ram Kumar Karna, 90 percent of migrant workers and their family members who come to file the case of fraud or exploitation do not have evidence of proof.²⁶³

Those who come to register the complaint of fraud and request the return of amount they had paid to the recruitment agency or agents don't have receipt of payment they had made. This problem has arisen mainly because there is no practice of the agents or recruitment agencies providing receipts after collecting money and ineffectiveness of government mechanisms in preventing or stopping this practice.

filed.

262 Information provided by Director of DOFE, Rajeshwor Aryal to NHRC research team on 6 June 2019.

263 Information provided by SaMi Project Coordinator of Dhanusha, Ram Kumar Karna, to NHRC research team on 24 May 2019.

e. Grievance on Lack of Victim-Friendly Behaviour

The workers facing problems related to foreign employment are disappointed by the insensitiveness and worker-unfriendly staff in the government agencies which are supposed to be working for the protection of workers. Out of the visits conducted by NHRC research team to DOFE, on the sixth visit it had talked with the victims who had come to file complaint. The team also listened to the conversation between the investigation officers and the victims and defendants. The behaviour of the officials seemed victim friendly then. The NHRC research team observed how the officials had made the victims understand what can be done and what the victims need to do for that in a nice way. But other victims whom we met in the premises of DOFE said, “maybe they behaved well seeing you coming from NHRC, otherwise they wouldn’t talk to us properly and talk rudely”.

In front of DOFE office, on 12 April 2019, the NHRC research team had met 23 years old Dhruba (name changed) and his two friends, who had come there to complain against the agent who had collected money with them promising them to send for foreign employment and was neither sending them nor returning their money now. A local agent had told them, “your visa has arrived, now I need money to buy air tickets. Give me 60 thousand each for now and the remaining, you can give later”, after which they had handed him the money (in cash) as told. But the agent neither sent them nor has he returned their passport and money.

After hearing their story, a local journalist informed them that they could complain in DOFE, but their complain could not be registered due to lack of necessary evidence. When they asked whether there is any other way even if the complaint cannot be registered, the official in DOFE said, “you gave money to the agent without receipt and without knowing anything properly and now you are coming here asking us to get the money back from him, how is that possible for us?” Dhruba told NHRC research team.²⁶⁴

f. Lack of Resources in Complaint Mechanism and Justice Executing Body

The government bodies that have been established to manage foreign employment and to protect the workers are provide minimum resources. These agencies lack human and other resources to handle

²⁶⁴ Interview with Dhruba outside DOFE office on 12 April 2019 by NHRC research team.

and address the number of service seekers that flock there. For example, the NHRC research team was told that the hearing room of the Foreign Employment Tribunal is not appropriate for the purpose and there is no provision of power backup and necessary furniture in that office.

g. Investigation from DOFE Weak

The investigations carried out by DOFE were also weak. The NHRC research team has studied the files of 7 cases that were registered through DOFE in Foreign Employment Tribunal. In two of the prosecution letters, only the names of the defendants were mentioned and their address or details of past three generations were not mentioned. The other important information related to the case were also not clearly mentioned.

h. Remedy for Serious Case also same as General Case

Some of the crimes related to foreign employment seemed to be of serious nature. There were many crimes which were related to forced labour and human trafficking as defined in the Nepali laws and international laws to which Nepal is a party. Such crimes cannot be proceeded by considering as a simple fraud in foreign employment or giving immunity to the accused after they make compensation to the victim.

During this research of NHRC, many cases were found where the agents and recruitment agencies had recruited workers intentionally lying them to exploit them. Although some of the victims did not possess any evidence to verify their case, but NHRC interviewed some victims who had the evidence. Lying with the purpose of extracting more or illegal fee and sending the worker abroad after recruitment but later forcing them to work in less salary or type of work than what was promised, could be treated as crime under Human Trafficking (Control) Act. There are cases of similar nature, where the crime of human trafficking was established by the court and decisions were made accordingly. In the case of Nepal Government vs Sitaram Thing, the Bench of Judge Tek Narayan Kunwar in Makwanpur District Court had sentenced the accused of punishment for human trafficking saying, “although the victim was taken abroad with his/her consent for foreign employment, the injustices on him/her abroad consisted of elements of human trafficking, such as recruitment, transportation, transfer, harbouring, receipt of person and exploitation”. But studies

have shown that, similar cases have been treated by DOFE as general case of fraud where the accused is not punished after they pay the compensation amount to the victim.²⁶⁵

i. Immunity from Punishment to the Accused

The nature of complaints filed in the DOFE are not only ones that require financial compensation or mediation, but also requires punishment to the perpetrator after payment of compensation to the victim. But rather than punishing the perpetrator, it was observed that DOFE has been practicing closure of files after making the accused pay compensation to the victim. In the hearing of such cases, although the victim is provided with partial or full financial compensation, no action is taken against the recruitment agencies as per the law.

638 cases, which were registered between 8 August 2018 to 15 February 2019 were made available to NHRC by DOFE on 23 Jestha 2076 BS, were studied. Out of them, DOFE had resolved 247 cases. The demands made on those 247 cases were as follows:

Table 6.3
Claim of Complainant in Cases Resolved by DOFE Registered
between 23 Shrawan to 3 Falgun 2075 BS

Claim of Complainant	Number of Complaints
Money and compensation with action against the guilty	114
Compensation	53
Return of money and compensation	50
Return of money and passport with action against the guilty	6
Return of passport	6
Return of passport with action against the guilty	4
Return of money and passport	4
Rescue	2

²⁶⁵ For example, USAID, The Asia Foundation, FWLD, “Analysis of Judicial Decisions on Migrant Workers: Inter-relation with Human Trafficking and Transfer” 2016, available at <http://fwld.org/wp-content/uploads/2016/07/Analysis-of-Judicial-Decisions-Migrant-Workers.pdf>

Rescue with action against the guilty	1
Compensation and return of passport with action against the guilty	1
Return of money with action against the guilty	1
Return of salary with action against the guilty	1
Difference in salary than mentioned in the agreement	1
Return of money	1
Settlement	1
Attempt to extract more money than the cost	1
Total	247

After the complaint is registered in DOFE, it has been recorded that a total of 38 complainants have done mutual agreement with the agency after discussions, and the remaining 209 are recorded as compensated the victim. However, the record does not show how much the victim received after reaching mutual agreement and what was the amount compensated.

On the other hand, in most or all the 247 cases except for passport return or attempt to extract more money, it could be criminalized according to the Foreign Employment Act. As per the Articles 47, 53 or 55, those recruitment agencies could have been fined or/and punished. But when the NHRC research team asked different officials of DOFE about the number of agencies that were fined or punished according to the Act, the team did not get any information of such punishment.

The NHRC research team had studied 20 cases out of those 247 cases with the help of People's Forum, which were registered in DOFE through that organization. In all the sample cases studied, "return of money and compensation with action against the guilty" had been claimed. The research team had done a comparative study of the claims made by the complainants and the actions taken by the DOFE, which was as follows:

Table 6.4
Sample Complaints Resolved by DOFE out of 247 Cases

Complainant	Claimed Amount	Status	Compensation retrieved through DOFE	Punishment or fine to the agency
Victim 1	2,20,000	compensated	80,000	no
Victim 2	50,000	compensated	50,000	no
Victim 3	2,52,892	compensated	2,50,000	no
Victim 4	2,70,000	compensated	3,15,000	no
Victim 5	2,07,850	compensated	70,000	no
Victim 6	1,11,000	compensated	1,11,000	no
Victim 7	11,70,000	compensated	1,81,000	no
Victim 8	79,000	Mutual agreement	0	no
Victim 9	3,00,000	compensated	1,20,000	no
Victim 10	85,000	compensated	60,000	no
Victim 11	1,30,000	compensated	40,000	no
Victim 12	1,60,000	compensated	25,000	no
Victim 13	1,10,000	compensated	25,000	no
Victim 14	1,00,000	compensated	1,00,000	no
Victim 15	1,80,000	compensated	1,20,000	no
Victim 16	50,000	compensated	50,000	no
Victim 17	3,66,000	compensated	30,000	no
Victim 18	1,35,000	compensated	1,35,000	no
Victim 19	3,50,000	compensated	10,000	no
Victim 20	2,15,000	M u t u a l agreement	1,20,000	no
Total	45,41,742		18,92,250	

Analysing the conclusions of DOFE in these 20 cases, while 45,41,742 has been claimed as damage, the victims have received 40.34 percent of it or only 18,32,250, and none of the agency involved in the crime were fined or punished according to the Act.

The nature of the cases shows that after compensating the victim as

per Articles 47,53 and 55 or other Articles, the concerned recruitment agency should have been fined and punished. But none of the agencies studied in the sample cases by NHRC were found to have been punished or fined.

Not punishing the agencies involved in exploiting the workers like this encourages impunity resulting in the increased danger of these agencies continuing exploitation of the workers in an organized manner. Of the different reasons for this happening, one reason could be the access and influence these recruiters have, which results in inability of government agencies to play any interfering role. When asked about the reasons for inability to control and punish the guilty in malpractices carried out by recruiters, the statement of officials in regulating bodies also confirms this, when they replied, “it is difficult to regulate them due to the political and financial access the recruiters have”.²⁶⁶

j. Poor Implementation of Decisions

The implementation of decisions made by Foreign Employment Tribunal is done from District Court. The NHRC research team had attempted to find out the status of implementation of decisions made by the Tribunal. The Tribunal informed that they don't have any records on how many decisions have been implemented and how many are remaining to be implemented, and informed that Decision Implementation Directorate might have the records²⁶⁷. The NHRC research team contacted the Decision Implementation Directorate. The Directorate told that these kinds of information are not available there, but being the topic of foreign employment, the MoLESS (Law and Decision Implementation Section under it) should have the information.²⁶⁸ The team then contacted Law and Decision Implementation Section of MoLESS, where the team was told that this type of records are not kept in the Ministry but could be available at DOFE²⁶⁹ and when the team contacted there, the Director of DOFE

266 During an interview with DOFE Information Officer at the time, Mohan Adhikari on News 24 Television program 'Sidha Kura Janatasanga', broadcasted on 25 November 2017, Part 151, watched on <https://www.youtube.com/watch?v=KGGU1ooqEEQ> on 8 June 2019.

267 Interview with the Registrar of Foreign Employment Tribunal Bhojraj Regmi on 19 April 2019 by NHRC research team.

268 Conversation with Section Officer at Decision Implementation Directorate Manju Kumari Ojha on 21 May 2019 by NHRC research team

269 Conversation with Under Secretary of Law and Decision Implementation Section at MoLESS on 12 June 2019 by NHRC research team

informed that no such records are available there.²⁷⁰ In the attempt to find the status of implementation of all the decisions, all of the above-mentioned agencies told that the concerned District Courts should be contacted one by one for that. But the District Courts also don't keep the records in segregated according to topics, in terms of how many decisions were received from different court/tribunal and how many of them have been implemented but keep record only of the total number. Therefore, it was told that a huge effort will be required to get the details as sought by NHRC research team.

Meanwhile, the NHRC research team received “a study on status of implementation of decisions made by foreign employment tribunal: an investigative study 2074” (yet to be published by FEPD). This joint study of FEPD, People Forum and Foreign Employment Tribunal had analysed the status of 74 decisions sent to 8 District Courts for implementation. After sending the decisions to concerned District Court for implementation, the complainant must submit an application to the District Court requesting “execution of compensation and damage payment by the guilty and punishment of the guilty as per the decision of the Tribunal”. But the study shows that out of 74 complainant victims in the cases sent to District Courts for implementation, only 19 (25.67%) have submitted the application for implementation of decision.

According to the same study, out of complainants who applied for implementation of decisions, 8 had applied after getting stay order for the property of the guilty and retrieved compensation and damage after sale of such property. So, out of 4 cases, 8 (or 10.81%) were found to have been implemented. The report mentions that apart from the cases where the applications have been filed with the stay order for the property of the guilty, in applications where the property of guilty could not be identified are in pending.

k. Difficulty in getting Justice and Relief even after filing Complaint:

Those who know and have filed complain when they have been cheated as per the employment criteria, the rate of their case resolution seems low. More than 71 percent of cases filed at DOFE (11,439 out of 16,032 cases) still need to be concluded. Similarly, more than one fourth of the cases referred to Tribunal (617 out of 2,361 or 26.13%) needs to be decided. Out of the cases that have been decided by the

²⁷⁰ conversation with Director of DOFE Rajeshwor Aryal on 19 June 2019 by NHRC research team

Tribunal only 10 percent have been implemented.

The number of complaints filed and resolved at DOFE and the Tribunal shows that complaints filed years ago have also not been resolved. Although the resolution of cases in the Tribunal do not as slow as in DOFE, some of the cases there are also being carried forward from one year to another.

There were numerous cases where the victims had filed the cases but their cases have not been resolved, additional cost and long wait for the victim or the victim has not received any compensation or justice. In the cases resolved by DOFE, although the victims have been compensated financially, NHRC did not see where the agency or agents violating Foreign Employment Act were punished. This also clearly shows that even after complaining, the complainants have not been able to get justice and there is a danger that the victims might lose trust that they will get justice after complaining. On the other hand, this also shows the picture of the agents and agencies involved in cheating and exploiting these workers benefiting from the practice of impunity.

I. Additional Effort and Cost for Decision Implementation but Possibility of Not Getting Compensation:

Since the legal provision is that the victim must make additional effort to get the decisions made by Foreign Employment Tribunal implemented, after which also the victim might not receive the compensation and justice although the decision was made in his/her favour. The decision implementation related provision under Criminal Procedure Code 2017, Article 165, the procedure for private compensation says that if an individual does not pay the compensation or damage due to the victim, the victim has to apply showing the property owned/entitled by the guilty. Senior Advocate Balchandra Acharya says, if the victim is not able to apply by showing the property of the guilty within 3 years of decision, the victim will not be able to receive the compensation acquired from sale of property of the guilty, even though the decision had been made in the favour of the victim. Acharya says, “this means, suppose a person from Taplejung was cheated by a person from Darchula in foreign employment. The Tribunal makes a decision in favour of the victim decaling it a case of fraud, but if the guilty did not pay the compensation money, then only if the victim submits an application before the court after finding out

about the property of the guilty like which plot in Darchula the guilty owns or how much balance the guilty has in which bank under what account number, and requesting the court to execute the compensation payment, then only the court takes forward the process by issuing stay order to the property and compensating the victim by that property”.

This legal provision is not easy practically. Maybe due to this provision, many victims have not been able to receive compensation even after Tribunal’s decision was in their favour. For example, according to “a study on status of implementation of decisions made by foreign employment tribunal: an investigative study 2074” (yet to be published by FEPD), a joint study of FEPD, People Forum and Foreign Employment Tribunal, out of 74 decisions sent to 8 District Courts for their implementation, only 25.67% (19 out of 74) had applied for decision implementation. The rest seemed ‘not to invite another hassle for implementation’ although they won the case.

Chapter –Seven

Conclusion and Recommendations

Conclusion

Globalization and the demand for workers from the destination countries at one hand and lack of easy opportunities for employment at home on the other are reasons behind hundreds of thousands of Nepalis leaving home for foreign employment. They go to foreign land seeking a prosperous future for themselves and their families.

The majority of the Nepalis who go for foreign employment are facilitated to get a job by the Foreign Employment Agencies and their agents. There are many positive examples of the professional service provided by the foreign employment entrepreneurs to find employment abroad leading to good income for the migrant workers, thereby easy their own livelihood and that of their families. But bad and wrong practices in this sector have not only invited exploitation and fraud against the migrants but also pushed them to violations like forced labour and human trafficking.

The Government of Nepal has formulated separate laws and developed institutional mechanism for the protection of the Nepalis going for foreign employment. In addition to this, it has also made international commitments and taken measures accordingly to protect the rights of the migrant workers. But still hundreds of people going for foreign employment face numerous problems every day.

The foreign employment entrepreneurs were found recruiting migrants by giving them false information about lucrative job, facilities and remuneration; charging exorbitant fees and not providing receipt for the same or providing it by mentioning only a low amount, which deprives them of evidence to file complaint against fraud; taking passport or other documents under control; and including misleading terms in the contract paper. Due to such conduct of the entrepreneurs, numerous Nepalis have been suffering from human rights violations including exploitation, forced labour, human trafficking or transportation.

1. Low Priority to Issues Related to Rights

The major law formulated to manage and regulate foreign employment, Foreign Employment Act, 2064 (2007) talks about the complaint procedure,

the duties of recruiting agencies and agents, and the dos and don'ts for entrepreneurs in the recruitment procedure of those going for foreign employment. However, this legislation does not include rights related issues like the right of workers to keep their identity papers to themselves, protection against torture or abuse, right to movement or travel, workplace safety, non-discrimination, right to leisure or leave, proper and timely remuneration for work, right to change employer and to return to country of origin.

2. Wrong Practices of Entrepreneurs

Those going for foreign employment were found to be denied work, remuneration and facilities as promised earlier and charging exorbitant or illegal service fee. However, the regulating bodies have not been able to minimize such wrong practices. The support and complaint as well as judicial mechanism established for the victims are not easily accessible while there are challenges in getting compensation and justice from them.

Recruitment Agency

More than 90% of the workers going for foreign employment were found to be going through employment agencies. Though not all conduct of all entrepreneurs are bad, the entrepreneurs were found recruiting workers by misleading them about the fundamental terms of the employment that leads them to not only exploitation but also forced labour and human trafficking for labour exploitation.

Though the workers are promised attractive work, remuneration and facilities during the recruitment, that was not translated into reality. Among those who had gone through agent and/or foreign employment agency and interviewed by NHRC for this research, 76.74 % were found to have suffered one or other kind of problem related to employment, which was basically a result of the wrong practices of the agent or agency.

The entrepreneurs were found indulging in practices like charging exorbitant and illegal recruitment fee, not providing receipt or providing receipt for very less amount than charged, giving dual or fake contract agreement and recruiting workers through unregistered agents.

Agent

A large number of workers going for employment in third countries are facilitated by the agents. Of the 418 persons whose case study were collected for this research and who had gone or were preparing to go for foreign employment through agents, 395 (other 94.50%) had gone through

the agents. Some agents were found sharing fake information about the work and facilities in order to win the trust of those eager to go for foreign employment. The workers build a trust over the agents based on their first conversation but agents take undue advantage of that and give them false information about work and remuneration, while some were found indulged in recruiting workers and charging fees illegally. Some agents were also found involved in sending workers abroad through informal channel.

3. Lack of Effectiveness of Orientation Training

The curriculum of the pre-departure orientation training was found to include sufficient matter related to human rights issues but due to negligence of the training providers in imparting the training, operation of quality training was not found. It was also found that the training did not cover issues like complaint mechanism or welfare fund, recruitment or cost fee.

4. Problem of Medical Test

Due to existing provision where the concerned health institute would bear the cost only if any problem is seen during medical test in the destination country within ninety days of the medical test carried out in the health institute of Nepal, the workers are likely to lose a huge amount if they are returned for not fulfilling the health standard in the medical test carried out by the employer of the destination country after the ninety days. It is not under the control of the worker but under the employer to decide when the medical test in the destination country is carried out, hence the provision of ninety days in the law does not seem appropriate.

There is also a provision for those who have suffered medical test related problem to come to Kathmandu for registering their complaint. Furthermore, the presence of the complaint mechanism at the Ministry of Labour, Employment and Social Security located inside the Singha Durbar premises may limit the access of the workers who have faced a problem, as the Singha Durbar is not easily accessible to the ordinary people.

5. Major Human Rights Abuses that take Place Against those going for Foreign Employment

Workers face various kinds of human rights excesses due to the wrong practices carried out by the entrepreneurs against those going for foreign employment. The workers are found to fall under the risk of exploitation, forced labour and trafficking and transportation due to the wrong practices

seen in course of the recruitment in Nepal of those going for foreign employment.

a. Exploitation

The foreign employment agency and agents are found telling migrant workers not the facts but different information about the major contents of their contract (agreement) such as remuneration, nature of work, working hours, overtime or leave facilities etc. Likewise, they are found to charge exorbitant or illegal fees, higher than that determined by the government to be collected from the workers. Such practices of the entrepreneurs not only invite exploitation but also increase the vulnerability of workers falling into forced labour.

b. Forced labour

Despite knowing that the workers would not return home due to the loan that they have taken to pay the exorbitant or illegal fee charged by the entrepreneurs or of the employer does not return documents including passport or permission, the people ready to go for foreign employment are pushed to a situation where they are work in remuneration and facilities lower than agreed before. Such situation is defined as forced labour by the Force Labour Convention ratified by Nepal and the Labour Act of Nepal. The NHRC research showed incidents where workers were pushed to the situation of forced labour.

c. Human trafficking/smuggling

The foreign employment agency and the local agents were found recruiting workers by misleading them about the major aspects of the work (nature of work, employer, remuneration, working hours or facilities). As workers recruited in this manner face exploitation including in the charging of exorbitant or illegal fees, nature of work, remuneration etc, the act falls under human trafficking and transportation as per the definition of the International human rights law and Nepal's human trafficking and transportation (control) Act, 2064 (2008). The research by the NHRC showed incidents of workers being trafficked or transported.

6. Failure in Implementation of 'Free VISA, free Ticket'

The government failed to enforce the 'Sending for foreign employment with lowest possible sum' regulations known as 'Free VISA, free ticket' with the objective of minimizing the financial burden on those going for foreign employment or to stop the situation of forced labour originating

due to financial burden. Among those interviewed by the NHRC not a single worker who had gone to destination country as prescribed by the rule and after the enforcement of the rule was found to have gone paying the minimum cost (other maximum of Rs. 10 thousand only). Not only that but failure to implement this worker-friendly policy has instead pushed workers to more exploitation, and there are numerous examples of it.

As the entrepreneurs charge heavy fee and not give receipt or give receipt with only 10,000 mentioned in it, there will be no evidence left to certify the amount that one paid in reality while filing complaint for compensation of expenses in case any problem is faced during foreign employment. This shows that the workers will have to lose a big amount taken as loan with high interest rate. As a result, this worker-friendly policy has been found to be counter-productive for them.

7. Lack of Information about Safe Migration and Government Assistance

Many of them lack the information about what support can be received from which agency/body. During the NHRC research, when asked which the mechanism is to file complaint in case of any problem, the number of people citing the DoFE were less than 20 % while those who said they were familiar about the welfare fund was less than 1%.

As the complaint and support mechanism are based in Kathmandu it was found that it would add during the complaint process more burden of money, time and hassles to the workers who have faced exploitation. Due to geographical distance and additional economic burden, many were found pleading before the concerned agent or agency in order to return their lost money or bring home their loved ones who is in a difficult situation, rather than filing complaint against excesses or exploitation. Though the government expanded the complaint mechanism up to the district level by delegating the right to register complaints to the Chief District Officer since Falgun 2075, due to lack of information about the possibility of filing complaints at the district no complaints were found to have been registered in the district.

8. Women Migration

Women migrant workers were found to be suffering from special kinds of problems. Though the international human rights law that Nepal is a state party, the Constitution of Nepal, and the Foreign Employment Act have prohibited discrimination against women, women migrants going for foreign employment were found to have faced various obstructions.

Discriminatory limitations like the 'ban' or the age bar imposed in the name of women's security were found to have pushed them to more risks as it has increased the tendency of women going or being taken for foreign employment without fulfilling the prescribed procedures. The NHRC investigation showed that despite the government ban, women were being taken especially to the gulf countries or Iraq using the porous border with India or in visit or tourism VISA through the Tribhuvan International Airport in cahoots with immigration officials. In informal or undocumented situation, in case they face violations it would be difficult to access support or justice.

Difficulty in the birth registration of children born abroad following pregnancy during foreign employment or children born upon return to Nepal showed that the civil rights of such children would be violated.

9. Workers going to India

The foreign employment law of Nepal does not cover those going to India for employment. As a result, neither any agency maintains a record of them nor is any certain data available about those going for work to India. Nepalis who go to work in India whether it is in the formal sector (like company, hotel) or informal sector (like domestic work or agriculture sector), they are not given a contract or identity card by the employers there, which make identity or identification a big problem. All the 100 per cent whom the NHRC interviewed and who had returned from employment India were not provided any identity card or labour contract by the employers. Due to lack of it they faced challenges in sending their income to Nepal or access health services. While going to or living in India, in case they face exploitation, fraud or any other excesses then the Nepali law cannot provide them protection.

Those going to India are not covered by the service of the Foreign Employment Welfare Fund and they are also not required to have an insurance coverage like those going to third country. In the declaration made on 2073 Magh 11 by the government for reforms in the foreign employment sector, issuing of labour permit and providing insurance and welfare fund service to those going for India was included but the declaration is yet to be implemented.

Due to lack of sufficient information before going to India for work or failing to adopt caution during the stay in India, those going to India for work were found infected with HIV. Those coming infected from India were found to have infected their spouse and in turn giving birth to infected

children. The government programme were not found to have played any effective role in combating or minimizing the trend of people returning from India with HIV infection, transferring the infection to their spouse or children being born with infection.

10. Death, dismemberment

A significant number of death of workers was found in course of foreign employment. In many instances the reason behind the death is not known and in this regard even though the Supreme Court directed the Government of Nepal to follow five different measures including to find the reason of death of those who die outside the country but that was not found to have been enforced effectively.

The provision of providing relief support from the welfare fund under the Foreign Employment Board to the families of those who die or are dismembered during the foreign employment was found to have provided some economic relief to the families who lost their loved ones or were in a trouble with dismemberment. However, due to lack of clarity of the regulations and guidelines, examples were seen where financial relief could not be provided through the fund in case of death during the contract period when in Nepal. Furthermore, despite having contribution to the welfare fund the provision that one is not entitled to support from the fund in case of death or dismemberment following one year since the end of the contract period was found to have put their families in great trouble. The timing of return to country of origin always depends on the employer and not the workers. If the employer does not permit or does not return the passport and other documents then he/she cannot return even if he/she wants. But in case the worker dies in such a situation then despite having contributed to the fund while going abroad, the family would be deprived of relief support due to end of the contract period, which shows that the fund has not been able to provide much relief.

Majority of the workers and their families were found unaware about the welfare fund and the support that could be received from it. Among those who returned from foreign employment, preparing to go and their families that the NHRC interviewed less one per cent had information about this fund.

11. Weak monitoring

The Foreign Employment Act grants the DoFE and the Foreign Employment Board clear powers to regularly monitor the activities of the entrepreneurs

and play various intervening role to ensure justice to the workers who face fraud or excesses. In addition to this, the Company Registrar' Office, Inland Revenue Administration and other agencies also have the authority to examine the activities of the foreign employment agencies and the truthiness of the details they submit. Despite this, effectiveness was found lacking in the monitoring of the activities of the entrepreneurs.

Due diligence was not found to have been fulfilled in analyzing what would be the possible impact on the human rights of any individual or community from any business before the start of the business, how to minimize it, and if the rights of anyone is affected then how to address it. The government was also not found to be successful in enforcing various principles like the UN Guiding Principles on Business and Human Rights or Colombo Process, Dhaka Principles, Global Compact on Migration.

12. Regulatory Body Officials Falling to Financial Enticement

Financial indiscipline of the officers associated with the foreign employment related policy body, the Ministry and the DoFE responsible for management and regulations and its subordinate offices, and immigration office staffers remains as another complex problem in this sector. Numerous incidents have come to light of Ministers to the Director General of DoFE and high-ranking government officials of being indulged in corruption with officials being caught red handed making financial transaction.

These have been verified by the investigation of the Commission for Investigation of Abuse of Authority or parliamentary committees as well while the Prime Minister and high-ranking government officials have expressed their concerned in public about the involvement of immigration officials and other government officers working in the foreign employment sector and the middlemen in human traffic for financial gain.

13. Lack of Resources in the Management and Regulating Bodies

Even though the remittance received from migrant workers constitute nearly one-third of the annual gross domestic production (GDP) of Nepal's economy insufficiency of resources was seen in the government and judicial bodies established for the management and protection of their migration. It was found that less than one per cent of the total annual national budget is allocated to those agencies.

The labour councilor and labour attaché in the embassies of the major destination countries of the workers have complained of insufficiency of staffers and other resources. Likewise, the NHRC research team took note

of the insufficiency of resources at the foreign employment tribunal. Even though a huge amount has been deposited with the contribution of those going for foreign employment, the foreign employment board too lacks financial resources, as reported by the concerned officials.

The DoFE was also found to be overburdened with work. According to the DoFE officials there is maximum pressure on the investigation officers to investigate the complaints registered at the Department every day. Information could not be received of sufficient trainings (including refreshers) on research or labour rights and human rights being provided to the DoFE officials that have the responsibility of management of the workers migration. As a result, there is a risk of the DoFE services not being effective and workers-friendly.

14. Difficulty in Access to Justice

There are mechanisms to provide support and receive complaints against excesses that take place during foreign employment. Due to these mechanisms some of those who faced violations were found to have received support and justice. But various challenges were seen in accessing financial support and justice from these mechanisms.

a. Lack of evidence

Lack of evidence with the workers and their families while registering complaints was found to be very serious matter. Specially, those who come to file complaints seeking recovery of the funds that has been swindled lack the evidence of receipt or voucher of the payment made to the agent or foreign employment agency. This problem is basically due to the tendency of the agent and agency not giving receipt against the payment received and due to the failure of the government instruments in checking such practice.

b. Low execution and implementation despite complaints

The rate of executing the complaints that has been filed by people who come to know that a complaint can be filed in case of cheating in the terms and condition of employment was found to be very low. More than 71 per cent of the complaints (11,439 of 16,032) registered at the DoFE are yet to be resolved. Likewise, of the cases filed before the tribunal, verdict is yet to be given on more than one-fourth (617 of the 2,361 complaints or 26.13 %) of the cases. As a result, this has led to disenchantment among the complainants.

The state of enforcement of the decisions of the foreign employment

tribunal was found to be disappointing. Studies have shown that only around 10 % of the decisions have been enforced.

c. Additional effort and expenses required for enforcement of verdict, and difficulty in getting compensation

Even if complaints are registered, they would not be executed, and if executed long time and additional expenses would be required. On the other hand, even if the decision comes in one's favour the legal provision demanded additional effort to get it enforced, which seemed to be very impractical. Furthermore, as per the verdict implementation provision under the Criminal Procedures Code, 2074, the procedures that cover private surety or compensation says that if any person deemed to pay compensation or any other amount to the victim or his/her heir does not pay it then the concerned person has to file an application within three years at the District Court showing the property or asset of the defendant. So even if the verdict is in one's favour, if an application cannot be filed showing the defendants assets then the compensation amount cannot be received, which showed the bitter truth where many people have not been able to get compensation despite the verdict of the tribunal on the same.

Studies show that only around one-fourth of the victims file application seeking enforcement of the verdict of the tribunal. A study by the foreign employment tribunal, FEB and people's forum for human rights showed that the number of people filing application seeking enforcement of the verdict in their favour was 25.67 % (19 of 74). The remaining were found to have not 'gone through another hassle for implementation' of the case that they had won.

d. Emphasis more on closing the file of the complaint than penalizing the defendant

In the complaints that were executed though the victims got partial financial compensation, the defendant violating the foreign employment act was not found to have been penalized as per the Act. As of June 2018 even though the DoFE provided partial compensation to the victims in 247 complaints that attracted penalty as per Clause 53, 55 of the Act, not a single person was found to have been punished as per the Act for involvement in the concerned offense. This creates impunity for those who exploit the workers.

e. Remedy of minor offense even in serious crimes

Many offenses committed against the workers going for foreign employment were found to be of serious nature. These included many offenses as defined by the laws of Nepal relating to forced labour and human trafficking and transportation, and international law that Nepal is party to. In such offenses too, the DoFE was found to have prosecuted the cash as a minor foreign employment fraud case or freed the defendant by providing relief support to the victims.

It is the duty of the Government of Nepal to protect the migrant workers as per the laws of Nepal and as per international human rights law, ILO Convention, UN principles and other commitments as Nepal state party. But there is weakness on part of the government agencies in enforcement of law and policy. On the other hand, government monitoring and regulation has become weak due to failure of the government mechanism to pay an effective and intervening role. As a result, the companies involved in exploiting those going for foreign employment are also working without any obstruction and committing excesses against more people. Whereas the situation of those who have gone or are preparing to go aboard by taking loan in high interest rate, for not finding any other option to lift oneself from poverty and unemployment, has become more severe.

There is an urgent need for the Government of Nepal to take effective measures towards addressing effective the exploitation and human rights excesses that have been carried out against those going for foreign employment.

Based on the facts received from this study/research, the federal government, provincial government and local government need to effectively enforce the following recommendations in order to make foreign employment safe and respectful, ensure healthy recruitment practices and create an atmosphere where the victims can get justice in an easy and efficient manner.

Recommendations

- Carry out effective monitoring of the activities of the foreign employment agencies and bring the wrong practices of the entrepreneurs before justice.
- Control effectively the illegal activities of the agents, as the provision of agent has been removed from the law.
- Make the amount charged by the foreign employment agencies transparent and establish a provision to provide the receipt or voucher to those going for foreign employment.
- Make arrangement to provide sufficient training on the area that has received more demand in foreign employment and send workers for foreign employment after making them skilled.
- Enforce, cause to enforce effectively the 'Free VISA, free ticket' scheme.
- Provide information to the target groups through extensive publicity about safe and dignified foreign employment, through the foreign employment board, and through the local bodies about the services provided by the Government of Nepal.
- Lift the age limit and ban imposed on women for foreign employment and manage the work of sending them for foreign employment in a safe and dignified way.
- Local bodies to make arrangement for birth registration of children who are born out of unwanted pregnancies incurred due to sexual exploitation and other such acts during foreign employment.
- Take effective steps towards controlling financial indiscipline seen from time to time in the foreign employment related DoFE and Immigration Department.
- Establish mechanism and systems, reach bilateral labour agreement, understanding to control labour exploitation, forced labour, human trafficking and transportation carried out against those going for foreign employment. Includes the issue of guaranteeing the protection of human rights in the bilateral labour agreement and understandings.
- Effectively enforce the recommendation made by the report prepared following the Nepal visit by the UN Special Rapporteur, and the recommendation to Nepal from the treaty bodies.
- Make provision to provide on behalf of the Government of Nepal protection and support to those who have been dismembered during foreign employment and make the procedures for the same easy and efficient.
- Make widespread publicity through the local bodies about the foreign

employment board, welfare fund and the services provided by them.

- As execution of cases initiated by the DoFE is found to be low, ignorance in investigation and lack of effective investigation, manage skilled human resources to investigate on time and provide justice to the victims.
- Take bilateral diplomatic steps to ensure protection and identification of the Nepalis going to India for employment and the provision for them to send money to Nepal safely. Enforce the announcement made by the Government of Nepal on 24 January 2017¹¹ to include those going to India for work under the welfare fund and insurance coverage.
- Take bilateral diplomatic steps and measure to resolve the problems faced the Nepali returning home after employment in India at the Nepal and India transit points.

Countries\territories opened by the Government of Nepal for institutional foreign employment*

S.N.	Country	S.N.	Country	S.N.	Country
1	Afghanistan*	38	Guana	75	Nigeria
2	Albenia	39	Holysee	76	Norway
3	Algeria	40	Hongkong	77	Oman
4	Argentina	41	Hungary	78	Pakistan
5	Armenia	42	Iceland	79	Panama
6	Australia	43	Indonesia	80	Peru
7	Austria	44	Iran	81	Poland
8	Azerbaijan	45	Iraq*	82	Portugal
9	Bahrain	46	Ireland	83	Qatar
10	Bangladesh	47	Israel	84	Republic of Korea
11	Belarus	48	Italy	85	Republic of Slovak
12	Belgiam	49	Japan	86	Rumenia
13	Bolevia	50	Jordan	87	Russia
14	Bosnia Herz	51	Kazakhstan	88	Saipan
15	Brazil	52	Kenya	89	Saudi Arabia
16	Brunei	53	Kosovo	90	Singapore
17	Bulgaria	54	Kuwait	91	Slovenia
18	Canada	55	Laos PDR	92	South Africa
19	Chile	56	Latvia	93	Spain
20	China	57	Lebanon	94	Sri Lanka
21	Columbia	58	Libya*	95	Sweden
22	Combodia	59	Luxzburg	96	Switzerland
23	Congo	60	Macau	97	Sychelese
24	Costarica	61	Malaysia	98	Tanzania
25	Crotia	62	Maldives	99	Thailand
26	Cuba	63	Malta	100	The Philippines

27	Cyprus	64	Macedonia	101	Tunisia
28	Czech Republic	65	Mexico	102	Turkey
29	Denmark	66	Moldova	103	Uganda
30	Egypt	67	Mongolia	104	Ukraine
31	Estonia	68	Morocco	105	United Arab Emirates
32	Fiji	69	Morocco	106	United States of America
33	Finland	70	Mozambique	107	Uzbekistan
34	France	71	Myanmar	108	Venezuela
35	Germany	72	Netherlands	109	Vietnam
36	Great Britain	73	New Zealand	110	Zambia
37	Greece	74	Nicaragua		

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National Human Rights Commission

Hariharbhawan, Lalitpur, Nepal

