

Report on the Human Rights Situation of Migrant Workers



**National Human Rights Commission of Nepal
Hariharbhawan, Lalitpur
December 2022**

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Members

Hon. Dr. Surya Prasad Sharma Dhungel

Hon. Mihir Thakur

Hon. Manoj Duwady

Hon. Lily Thapa

Acting Secretary

Murari Prasad Kharel

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राष्ट्रिय मानव अधिकार आयोग

National Human Rights Commission of Nepal

केन्द्रीय कार्यालय (Central Office)
पुल्चोक, ललितपुर, नेपाल (Pulchowk, Lalitpur, Nepal)



Foreword

Migration is a global phenomenon which supports the economic development of countries of origin, and destination. In Nepal, foreign labour migration has contributed to reduce poverty level and income gap among migrants and non-migrants. The International Organization of Migration estimates 281 million population migrated in 2020; this number equates 3.6 percent of global population. In the context of foreign labor migration, the documented migrant workers seem 1.2 percent in 2021 of the total population of Nepal. Foreign labour migration can be seen as an opportunity if the migration governance of the countries of origin and destination is properly handled if not several challenges are there. The government of Nepal has made the policy efforts to better the migration governance on foreign labor though there is a need for effective implementation of the policy.

The problem occurs since the very beginning process of foreign labor migration and does not end at the post return phase. The migrant workers need to be capacitated as demanded by the employers of destination countries. Similarly, they have to know the laws, culture, weather, and access to justice mechanisms of the destination country. This report suggests for reforming the recruitment system and effective justice mechanisms. Similarly, the government of Nepal should strengthen the overall capacity: such as human rights friendly service delivery system including the Nepalese diplomatic mission of major destination countries. The government acknowledges the efforts made to increase the remittance by the Nepalese migrant workers; therefore, the Government should prioritize the protection of the migrant workers' rights.

This report reveals the fact that a large number of migrant workers have been severely injured, get chronically ill and suffer from long-life disability condition. This happens because of lack of safe working environment, lack of access to occupational safety measures at workplace, working in dangerous places like height, under the surface or working and living around the petroleum oil processing factories. Migrant workers are also prone to be exposed to some communicable diseases like AIDS, tuberculosis and malaria. It also attempts to assess the rights situation of Nepalese migrant workers and examine the findings with the SDGs and selected objectives of the GCM to reflect to the wider implications of the rights of the migrant workers.

The gender perspective of foreign labour migration issues are critical. Especially women are more vulnerable during the entire cycle of migration due to the different restriction and pre condition rules imposed by the government of Nepal. The evidence shows that women victims are reluctant to connect with justice system of Nepal. Right to life and health issues are more critical issues of Nepalese migrant workers. The data and evidence of death are on increasing trends. The occupational health and safety in destination countries and critical health conditions of returnee migrant workers is less priority of the government system. With rising barriers to cross-border labour mobility, the growth of irregular migration and the trafficking and smuggling of human beings constitute major challenges for the protection of human and labour rights of Nepali workers.



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NHRCN is seriously engaged in enhancing the rights of migrant workers in many ways like complaint handling, monitoring, investigation, human rights education and policy review. Cross Country National Human Rights Institutions collaboration on the case referral, monitoring and research studies is a pivotal function. NHRCN believes on strengthening the meaningful partnership, collaboration and communication to enhance the rights of Nepalese migrant workers.

Finally I believe, this report will be useful as a reference to the policy makers, ministries, departments, government officials, development partners, civil society organizations other concerned agencies and personals. I would like to thank the Ministry of Labor, Employment and Social Security, Ministry of Foreign Affairs, Department of Consular, Nepalese diplomatic missions in different countries, Department of Foreign Employment, Foreign Employment Board, Development Partners, Civil Societies, and individual experts for providing the information, feedbacks and suggestion to finalize this report. I would like to thank the Commissioner Lily Thapa, Acting Secretary Mr. Murari Prasad Kharel, Joint Secretary Mr. Nava Raj Sapkota, Migrant and Refugee Focal Officer Mr. Kamsal Thapa Kshetri of the NHRCN. Similarly I would like to thank Mr. Govind Subedi consultant and Advocate Som Prasad Luitel who gave this report a final shape in coordination and support by the team of the Commission on this theme.

Top Bahadur Magar

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Chairperson



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Preface

It is with deep pleasure that I write this foreword to the report of the Human Rights Situation of Migrant Workers. National Human Rights Commission of Nepal (NHRCN) is proud to share this comprehensive report on the most emergent and significant issue of the present day. Crossing national borders to work is one of the key motivations of Nepali youths behind international migration, whether driven by economic inequalities, seeking employment, or both. The impact of economic, political and environmental crises contributes to rising foreign labour migration.

This report assesses the situation of rights of migrant workers and draws attention for the protection, promotion and fulfillment of rights of migrant workers to the concerned governmental agencies and other relevant actors. It also considers the trends and patterns of migration for foreign employment, and irregularities involved in the recruitment process, barriers for access to justice, restriction for women migration and impact of international migration on children. The report is also exposes the situation of migration governance in Nepal.

As per the preliminary report of the 2021 census published by Central Bureau of Statistics, 2.1 million Nepalese are abroad. While the Department of Foreign Employment (DoFE) has so far approved 110 countries as labor migration destinations for Nepalese, it is estimated that Nepalese work in as many as 172 countries. However, Nepal's foreign employment is focused on the countries such as India, Qatar, Malaysia, United Arab Emirates (UAE), Saudi Arabia and Kuwait. South East and East Asian countries like Malaysia, South Korea and Japan are also the attracting countries for Nepali workers from the past two decades. But this report does not concentrate of the India migration. NHRCN has consulted with different government agencies of federal, provincial and local level, human rights activists, researchers, academics and professionals, and experts in human rights and migration from all over the country while writing this report.

This report assesses the "Free Visa Free Ticket" policy introduced by the government of Nepal in June 2015, which made the employer in the destination countries liable to pay all the recruitment expenses, airfares, visa fees and medical examination fees of migrant workers. Foreign labour migration has the potential to serve as an engine of growth and development for all parties involved destination countries, origin countries and migrant workers themselves. In destination countries, migration has rejuvenated workforces, rendered many traditional sectors like agriculture and services economically viable, promoted entrepreneurship, supported social security and welfare schemes, and satisfied the demand for skills in emerging high-tech industries. In the developing regions from which most migrants come, the positive contributions of migration are reflected in high remittance flows and the transfer of investment, technology and critical skills through return migration and connections with transnational communities or Diasporas.



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The receipt of remittance is often cited as the biggest positive impact of migration from Nepal. Remittance inflow directly affects both the micro and macro-economic circumstances of a country. At the household level, remittance directly enters the income stream and improves the standard of living by lifting budget constraints and increasing consumption. Studies on the impact of remittance in Nepal show that remittance has contributed to a decline in poverty levels. Therefore, the report somehow makes assessment of the economic, social, cultural, and structural and gender dimension of foreign labour migration.

Moreover, Nepal should also work on expediting Government-to-Government (G2G) labor agreements with new destination countries in order to ensure fair treatment of migrant workers along with adequate remuneration and benefits. Nepal currently only has labor agreements under the G2G model with South Korea. Likewise, the Government of Nepal also should focus on making sure that Nepali migrant workers receive the required skills and knowledge before going for foreign employment, to ensure higher paying jobs that match the skills.

Finally, I would like to especially thank the dozens of governmental agencies who provide information to prepare this report. I would also like to acknowledge the role of the returnee migrant workers, participants of the consultation programs, informants from the different organizations and individuals in their personal capacity. This report is prepared by a team consisting of Dr. Govinda Subedi (National consultant), Mr. Nava Raj Sapkota (Joint Secretary), Mr. Sun Prasad Luitel (Advocate), Mr. Kamal Thapa Kshetri Human Rights Officer, and Provincial Office Focal Officers Mr. Khimlal Subedi, Subodh Pokhrel, Ganesh Joshi and others for their contributions for this report.


Lily Thapa
Member

Acronyms

ATM	Automated Teller Machine
BLA	Bilateral Labor Agreement
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CESLAM	Center for the Study of Labor and Mobility
CTEVT	Council for Technical Educational and Vocational Training
DAO	District Administration Office
DG	Director General
DOFE	Department of Foreign Employment
EPS	Employment Permit System
FCHV	Female Community Health Volunteers
FEA	Foreign Employment Act
FEB	Foreign Employment Board
FEIMS	Foreign Employment Information and Management System
FET	Foreign Employment Tribunal
GFMD	Global Forum on Migration and Development
FY	Fiscal Year
GCC	Gulf Cooperation Council
GCM	Global Compact for Safe, Orderly and Regular Migration
GDP	Gross Domestic Product
GON	Government of Nepal
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome
I/NGO	International Non-Governmental Organization
IEC	Information, Education and Communication
ILO	International Labor Organization
IOM	International Organization for Migration
JWT	Justice for Wage Theft
MOU	Memorandum of Understanding
MOFA	Ministry of Foreign Affairs, Government of Nepal
MOF	Ministry of Finance, Government of Nepal
MFA	Migration Forum in Asia
MOHP	Ministry of Health and Population, Government of Nepal
MOLESS	Ministry of Labor, Employment and Social Security, Government of Nepal

MRCs	Migration Resource Centers
MWs	Migrant workers
NDHS	Nepal Demographic and Health Survey
NGOs	Non-government organizations
NHRC	National Human Rights Commission, Nepal
NHRIs	National Human Rights Institutions
NLFS	Nepal Labor Force Survey
NLSS	Nepal Living Standards Survey
NPC	National Planning Commission, Government of Nepal
NRNA	Non-Residence Nepali Association
OHCHR	Office of the United Nations High Commissioner for Human Rights
PCR	Polymerase Chain Reaction
PNCC	Pravashi Nepali Coordination Committee
PSA	Planning and Statistical Authority, Government of Qatar
QR	Qatari Riyal
RA	Rapid Assessment
SAARC	South Asian Association for Regional Cooperation
SDGs	Sustainable Development Goals
STI	Sexually Transmitted Infection
TIA	Tribhuvan International Airport
TIP	Trafficking in Persons
UAE	United Arab Emirates
UNFPA	United Nations Population Fund
USD	United States Dollar
WBGT	Wet-Bulb Global Temperature
WHO	World Health Organization
WHR	Women for Human Rights
WMWs	Women migrant workers

Table of Contents

Executive Summary	I
Chapter 1	1
Introduction	1
1.1 Setting the Context	1
1.2 Objectives	4
1.3 Operationalization of the Terms and Words	4
1.4 Methodology	5
1.4.1 Primary Sources	5
1.4.2 Secondary Sources	8
1.4.3 Triangulation of Data and Analysis	9
1.4.4 Inclusion and Exclusion Criteria	9
1.4.5 Reference Period of this Report	10
1.5 Organization of Report	10
Chapter 2	11
Overview of Migration for Foreign Employment in Nepal	11
2.1 Number Matters	11
2.2 Assessing the Irregularities in Recruitment Process	15
2.3 Nexus between Migration for Foreign Employment, Migrant Smuggling and Trafficking	21
2.4 Nature of Jobs, Skill Levels and Skill Learnt	24
2.5 Working Hours, Minimum Wages/Salary against Actual Salary Received	26
Chapter 3	30
Access to Justice	30
3.1 Legal Framework	30
3.2 Law Enforcement and Trail and Settlement of Cases	32
3.2.1 Chief District Officer (CDO)	32
3.2.2 Department of Foreign Employment (DOFE)	32
3.2.3 Foreign Employment Tribunal	32
3.3 Handling of Complaints and Compensation Provided to the Victims	33
3.3.1 Complaints Handled by Chief District Officer (CDO)	33
3.3.2 Complaints Handling and Settlement by Department of Foreign Employment	36
3.4 Case Trails and Settlement, and Appeal	39

3.4.1	Foreign Employment Tribunal	39
3.4.2	The Supreme Court of Nepal	41
3.5	Free Legal Defense Support Provided to the Nepali Workers Inmates at Abroad	42
3.6	Records Compiled to the Grievances of Distress Migrant Workers	46
3.6.1	Data of PNCC and People Forum	46
3.6.2	Records Collected by Selected Nepalese Embassies at Abroad	48
3.6.3	Complaints Filing Status from the Lens of Returnee Migrant Workers	53
3.7	Some Key Supreme Court Verdicts in Relation to Foreign Employment	54
3.8	Justice for Wage Theft Campaign: The Context of COVID-19 Pandemic	56

Chapter 4 **59**

Rescue, Return and Sustainable Reintegration **59**

4.1	Rescue Process	59
4.1.1	Government Order, Guidelines and Policies	59
4.1.2	Estimates of Citizens/Workers to be rescued during the First Wave of COVID-19	63
4.1.3	Duration of Stranded in the Destination Countries	64
4.1.4	Rescue Efforts by Diplomatic Missions	66
4.1.5	Rescue and Relief Initiatives by NRNA	71
4.2	Return Process	73
4.2.1	Number of Arrivals in FY 2020/21	73
4.2.2	Returns before Ending the Contract Period	75
4.2.3	Management of Returns: Lack of Adequate Quarantine Facilities and Security	76
4.3	Processes of Sustainable Reintegration	77
4.3.1	Measures to Reintegrate the Returnee Migrant Workers	77
4.3.2	Remittance Inflows to Nepal from Major Destination Countries	79
4.3.3	Cost of Sending Remittance of USD 200	82
4.3.4	Has the PM Employment Program Supported the Sustainable Reintegration?	83
4.3.5	Emerging Concerns of Dignified Returns and Sustainable Reintegration	84

Chapter 5 **86**

Women Migration and Children in the Context of International Migration **86**

5.1	Legal Framework for Women's Migration	86
5.1.1	Conditional Women Migration to Domestic Work to GCC Countries	86
5.1.2	Some Examples of Debate to Uplift of Conditions of Bans for Domestic Work	88
5.2	Magnitude of Domestic Workers in GCC and Other Countries	89
5.3	Narratives of Returnee Women Migrants: Exploitation, Unintended Pregnancy and Child Birth	90

5.4	Assessing the Effectiveness of Measures of Promotion and Protection of Women Domestic Workers	92
5.4.1	Basic Training on Domestic Work and Skill Deficits	92
5.4.2	The Directive to Sending Domestic Workers in Foreign Employment	94
5.4.3	Protection Measures of Women Domestic Workers in Major Destination Countries: A Critical Review	96
5.5	Children of Migrant Workers	98
5.5.1	Limited Integration of Children Affected by International Migration in Migration and Child Protection Frameworks	98
5.5.2	Education Support to the Children of Deceased or Critically Injured Migrant Workers	100
5.5.3	Impact on Children of Migrant Workers	101

Chapter 6 **103**

Rights to Health of Migrant Workers **103**

6.1	Working and Living Conditions	103
6.2	Major Health Concerns of Migrant Workers	105
6.3	Consequence of Health Rights Violation	106
6.3.1	Injury and Disability	106
6.3.2	Deaths of Migrant Workers	108
6.3.3	Migrant Workers in Critical Health Conditions at Aboard	113
6.3.4	Investigation and Certification of Causes of Deaths: Not Meeting the International Standards	114
6.3.5	Delay on Repatriation of Dead Body and Remains	117
6.3.6	Denial of Receiving Compensation from the Government of Destination Countries and Employers	119
6.4	Initiatives to Uphold the Rights to Health of Migrant Workers	119
6.4.1	Legal and Protection Measures in Destination Countries: The Case of Qatar State	119
6.4.2	Judicial Responses	121
6.4.3	Government Responses	122
6.4.4	Social Security Scheme for Foreign Workers (SOCSO): The Case of Malaysia	126

Chapter 7 **128**

Rights to Information, Data Collection, and Migration Governance **128**

7.1	Rights to Information	128
7.1.1	Tools and Resources to Deliver Information on Foreign Employment	129
7.1.2	Perspective of MWs and Information Seeking Practices	131
7.2	Data Collection and Protection	133

7.2.1	Legal Provision of Data Protection	133
7.2.2	Household Level: Migrant Workers Data in Nepal	134
7.3	Monitoring and Accountability	136
7.4	Migration Governance and Cooperation	140
7.4.1	MOU and BLA: How Far they contributed to safeguard the rights of migrant workers?	141
7.4.2	Role and Effectiveness of Labor Attaché and Consular (Labor)	149
7.4.3	Role of Human Trafficking and Investigation Bureau, Nepal Police	151
7.4.4	Efficiency of Nepali Diplomatic Mission: Initiative of MWs Targeted Programs	151
7.4.5	Activities Carried Out by Department of Consular Service	155
7.4.6	Issues of migrant workers in Malasiya	156
7.4.7	National Human Rights Commission: Activities on Migrant Workers Rights	158
7.4.8	Local Levels: Foreign Employment Related Activities	161
7.4.9	Government Spending on Migration Governance	164
7.4.10	Assessing the Migration Governance: the Case of Bahrain State	166
Chapter 8		169
Conclusion and Recommendations		169
8.1	Summary of Findings	169
8.2	Conclusion	175
8.3	Recommendations	183
References		191
Annexes		197

Executive Summary

This report is about rights of migrant workers. It is about understanding the most emergent and widely known spheres of violation of rights of migrant workers to foreign employment. The report assesses the situation of rights of migrant workers and draws an attention for the protection, promotion and fulfillment of rights of migrant workers to the concerned actors. And, the report is about measuring the levels, trends and patterns of migration for foreign employment, and understanding any irregularities involved in the recruitment process, barriers for access to justice, restriction for women migration and impact of international migration on children. The report is also about assessing the migration governance in Nepal. Drawing on the primary and secondary data from different sources, the report covers the period of FY 2019/20, 2020/21 and 2021/22 and while it is indispensable, the report anchors past data, events, narratives, decisions and laws and policies as well.

Overview of Migration for Foreign Employment in Nepal

Number matters - Migration for foreign employment in Nepal has become a human rights agenda because of accelerating number of Nepali youths migrating to wide range of destination countries for employment. The migration initiated especially from the early 1990s when the country entered into the liberal economic policy. The annual number of migrant workers increased in the decade of 2000s and early 2010s and it steadily declined. In FY 2019/20 and 2020/21, there was a sharp decline in migrant workers due to the effect of COVID-19. Because of COVID-19 pandemic and its consequential lock-down in Nepal and many destination countries, the flow of migration was almost stopped during March and September 2020.

In FY 2021/22, the number of migrant workers reached to 347,504 from about 220,000 in FY 2008/09. This accounted for 1.2 percent of the population of Nepal in 2021. By examining the sex of the migrant workers, migration for foreign employment has been sex selective phenomenon in Nepal in favor of males although the share of women migrant workers (WMWs) has almost increased by three-folds from merely 4 percent in 2008/09 to 11 percent in 2021/22. Numerically, the annual flow of WMWs reached to about 33,000 in FY 2021/22 from merely less than 9,000 in FY 2008/09 and male migration increased from 211,371 in FY 2008/09 to 314,548 in FY 2021/22.

The average annual stock of migrant workers (new labor approval permit plus re-labor approvals permit) during the last five-years (FY 2017/18-2021/22) comes out to be slightly more than 457,000. However, the total annual stock of migrant workers was very low in FY 2020/21 (just 166,698) – the year mostly affected by the COVID-19 and while comparable figure was 628,503 in FY 2021/22 – suggesting a revival of situation after the COVID-19. Of the total annual stock of migrant workers, on the average, 52.5 percent received the new labor permits while the rest 47.5 percent received the re-labor permits. Two-thirds of WMWs received the new labor permit against just 52 percent for the male migrant workers.

Considering the scale of annual stock of migrant workers (new labor permit plus re-labor approval permit), the top-10 countries of destination comprises of Saudi Arabia, Qatar, UAE, Kuwait, Bahrain, Oman, Romania, Croatia, Malaysia and Japan. Nonetheless nearly 80 percent of the migrant workers have bound to only in three Gulf countries, namely, Saudi Arabia, Qatar and United Arab Emirates (UAE). South Korea is one of the attractive countries of destination of Nepali migrant workers in terms of income and benefits of the workers. The number of total migrant workers bound to South Korea was 5,556 in 2022. The Nepali workers sending agreement was conducted with the Government of Israel on 30 September 2020 and the initial demand was 1,000 Nepali workers. A total of 297 workers had already been sent while 835 were said to be in the process of going to Israel by June 2022.

Assessing the irregularities in recruitment processes – In Nepal, the private sector has been permitted to run the foreign employment business while the Government basically regulates the business. The key private actors include: recruiting agencies, orientation centers, training institutes, medical institutes, insurance companies, financial institutes and travel agencies and each of these actors has a role to play to make safe, orderly and exploitation free foreign employment. Excluding Government-to-Government Employment Permit System (EPS) to South Korea, workers for foreign employment in other destination countries can go through two procedures: i) through recruiting agency and ii) through individual basis¹. Several legal pre-requisites have been stipulated in *Foreign Employment Act 2007*, *Foreign Employment Regulations 2008* and other directives and guidelines including minors under 18 years of age are not permitting to send for foreign employment; free visa free ticket to go for six countries of Co-operation Council for the Arab States of Gulf (GCC), namely, Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and UAE, and Malaysia – the seven major destination countries of Nepali migrant workers; a three-day mandatory pre-departure orientation training; a 30 day skill development training to WMWs for domestic work; mandatory contribution to the Foreign Employment Fund of Rupees (Rs.) 1500 for a 3-year term and Rs. 2500 for exceeding 3-year term; and compulsory health check-up and insurance.

Despite these legal provisions of regulation of foreign employment business, studies show that there has been irregularities involved in the business. Although the Government has imposed the free visa and free ticket system, the recruiting agencies were found to have charged at least Rs. 20,000 to Rs. 40,000 per worker (ILO, 2017). The Government of Nepal has outlawed the broker system but this practice has still been reported in operation clandestinely. Recently, the Ministry of Labor Employment and Social Security (MOLESS) has made provision of mandatory digital attendance of trainees for pre-departure orientation but it is said that the agents submit the fake signatures of the trainees without real attendance in the training. Further, many orientation institutions have not been equipped with closed-circuit television (CCTV), power back-up and widely spread of the institutions all make it difficult them to closely monitor by the MOLESS (Bhattarai, 2075 BS). Further, anomalies have been found in the payment process, giving to the receipt, receive of employment contract paper and waiting time to go aboard. In the study by Blitz Media Private Limited and Humanity United (2022) of 4046 returnee migrant workers, they found that the average expenses for processing for

1 The share of those going abroad via recruiting agency has been persistently high (more than 88%) over the years though the share of migrant workers going abroad on the individual basis has been increasing (13%).

foreign employment was 126,400 per migrant worker to go to a GCC country or Malaysia. Similarly, three fourth of the returnee migrant workers did not receive any payment receipts and nearly half reported that they have received the employment contract paper only 1-2 hours before their flights to abroad. The waiting time to fly to a country for foreign employment after handover the passport and cash to a recruiting agency was at least 1 to 6 months for 64 percent of migrant workers.

Nexus between foreign employment phenomena, migrant smuggling and trafficking -

Nepal Police data suggests the emerging nature of trafficking and human smuggling in the context of foreign employment. At least 13 countries have been reported as the destination countries of migrant smuggling. The destination countries include mainly to European countries, North America and Australia. Migrant smuggling has been reported to be even in low-earning countries like Kuwait, Libya and African countries. Main routes to reach the destination country have been not the direct ones but the smuggler uses different indirect and dangerous routes from the land and from the sea. There are cases of looting, abduction, making captive to the migrant workers while they are transported from one country to another and one city to another. The migrant smuggling economic appears to be very profitable and network of smugglers is also very strong in each country from where the victims are transported. Analyzing the narrative of a victim reported by Nepal Police it was found that the victim spent about Rs. 5.5 million for the payment of smugglers and his own expenditure on routes to set foot on United States of America (USA). It took him to reach to USA 18 months; unfortunately, he was deported to Nepal from the US Immigration Department. Police data reveal that least 12 countries have been used as the land, air and sea routes to reach the migrant to USA and 11 countries to reach to Canada for another victim. While inquired about the types of complaints received in the Human Trafficking and Investigation Bureau of Nepal Police, the Bureau reported that trafficking of the victims to different countries including those countries which have not been opened legally for foreign employment is on raise.

Nature of jobs, skill levels, working hours and salary - Looking at the available data of migrant workers bound to foreign employment for the last five or six years from the MOLESS, it is found that an overwhelmingly majority of Nepalese migrant workers are still engaged in low skills, general laborers jobs. Data demonstrates that the percentage of Nepali male migrant workers engaging in jobs of skill levels 1 or 2 ranges as high as 85 percent in Malaysia, 76 percent in Saudi Arabia, 71 percent in UAE, 73 percent in Oman and 67 percent in Qatar to as low as 43 percent in Kuwait. The comparable figure of WMWs engaged in jobs of skill levels 1 or 2 is very high in every country exceeding to 95 percent except in Bahrain (59%) and Kuwait (70%). Another study also confirms the fact that of 4046 returnee migrant workers interviewed; nearly 88 percent reported that they did not have any skills while rest 12 percent had some skills like services and sales, construction, electrical and mechanical, technician and driver and machine operators. Long working hours, low salary and non-payment have been widely reported. Data reveal that the total working hours (basic plus overtime) ranges from as low as 11 hours/day to as high as 14.5 hours in GCC countries and Malaysia. And, when it comes to monthly salary, the total minimum salary for the laborers ranges from United States Dollar (USD) 315 to 330 in GCC countries while it is less than USD 270 in Malaysia. Besides, the actual monthly salary in GCC countries and Malaysia is at least lower by one-fourth of the Governments' prescribed salary (Blitz Media Private Limited and Humanity United, 2022).

Access to Justice

Legal framework - The Constitution of Nepal is the overriding principle to deliver access to justice to all including to migrant workers and their families. *Foreign Employment Act 2007* and *Foreign Employment Regulation 2008* are the laws that create the liabilities of the state to provide access to justice to the migrant workers at abroad as well as in the country. Based on the nature of offenses, the cases can be undertaken either by the Foreign Employment Tribunal (FET) or by the Department of Foreign Employment (DOFE) as the initial competent authority. There is provision of appeal to the Supreme Court in case of the verdict of the Tribunal is not satisfied to any party within the 35 days from the date of such decision. The fifth amendment of *Foreign Employment Regulation 2008* has made very important provisions of rights to information to the rights holders and liability of the Nepali Diplomatic Missions at abroad in forwarding complaints to the DOFE. The *Guideline for the Legal Defense of the Workers in Foreign Employment 2018* aims to provide free legal defense support to a migrant worker convicted for a criminal offence in the destination country and currently is in prison. The cost of legal defense is incurred from the Welfare Fund of the Foreign Employment Board.

Complaints handled by District Administration Offices (DAO) – National Human Rights Commission (NHRC) through the Province Offices requested information from District Administration Offices (DAO) about the handling of the foreign employment cases. Altogether 22 DAOs have responded from Bagmati Province, Province No. 1, Gandaki Province and Sudurpaschim Province. Of them, only 7 DAOs stated that they have registered at least one case related to foreign employment since the provision to register the case in DAO was made. Data show that a few DAOs have received the complaints related to foreign employment even after three years of the amendment in the Regulation means that either there is lack of information to the distress migrant workers about the provision of complaint handling mechanism as DAO or they are reluctant to reach to the DAO thinking that their cases would not be resolved timely.

Complaints handling and settlement by Department of Foreign Employment (DOFE) - DOFE handles two types of complaints: complaints against individual and complaints against institutions involved in foreign employment business. The five-yearly (FY 2016/17-2021/22) average number of complaints comes out to be 1,830. The settlement rate was 39 percent. The settlement rate was fairly low in case of individual complaints (17% to 24% in these years) while it is unusually high in case of institutional complaints (82% in FY 2017/18 and 85% in 2018/19, respectively). Data reveal that the percentage of compensation provided by the DOFE was very low in the 2020/21. It was just 16 percentage of the claimed amount of about Rs. 131.5 million while it was 48 percent in the FY 2021/22. According to the interaction with the Director General (DG) of DOFE and based on his press brief in 15 July 2022, the Department has undertaken monitoring in 8 licensee recruiting agencies and 16 pre-departure orientation institutions in the FY 2021/22. According to the press brief by the Director General of DOFE, some of the key challenges for the effective investigation and inquiry and adjudication by DOFE include lack of skills for investigation and inquiry, no institutionalization of such skills, lack of evidence of the proof, and emergent problem of phenomenon of fake victims coming to file the cases in the Department.

Case trails, settlement, appeal and verdict - the clearance rates of the cases related to foreign employment by FET was 37 percent in FY 2019/20 and it was 56 percent in FY 2020/21 – revealing better rates of settlement compared to the extremely low rates of 10 to 25 percent in previous years. However, there is no disaggregated data available to assess how many of the settled cases were in favor of the migrant workers, and how many victims received compensation. The Annual Report of Foreign Employment Tribunal 2021 has not provided such information, either. One earlier research report by People Forum (2017) indicated that only 10 percent of the victims got compensation amount ordered by the FET. For those who are not satisfied by the verdict of the Tribunal can file the appeal to the Supreme Court, which has the mandate to review appeal on the judgment of FET. Data reveal that the clearance rate of cases in the Supreme Court is very low in each of the fiscal years (2018/19 -2020/21). In FY 2018/19, there were 663 number cases registered in the Supreme Court, of which only 13 percent were decided. In FY 2019/20, of 670 cases, 24 percent were decided. Besides the settlement of cases related to foreign employment by the Supreme Court, the Court has provided landmark verdicts to protect the rights of migrant workers in response to the cases filed by different migrant rights' activists and civil society organizations for the last 10-15 years. Some important ones are related to appointment of Labor Attaché and establishment of the safe houses for the WMWs at abroad; monitoring of the standards of medical institutions; decentralization of work of the DOFE; sending of workers only after the Bilateral Labor Agreement (BLA) and establishment of rapid rescue mechanism; reducing the judicial power of the DOFE; granting the voting rights of the Nepali in foreign employment; effective implementation of the government policy of free visa and free ticket including rescue of migrant workers during the Covid-19 pandemic period.

Nepali workers in prisons, free legal defense and death penalty – Relaying on the Nepali Diplomatic Missions' data, the number of Nepali migrant workers in prison or in police custody has increased considerably for the last 6 or 7 years. In 2016, an estimated 800 Nepali migrant workers were reported in prisons abroad while it was 1,030 in 2021. The highest number of Nepali workers in prisons were reported in UAE (260), followed by Malaysia (223), Kuwait (168), Saudi Arabia (153) and Hong Kong (88). Data reveal that among the 1030 Nepali migrant workers in prison reported by the 27 Embassies of Nepal, only 7.2 percent were provided legal defense support by the different Nepali Embassies at abroad. The Embassy reporting the support of free legal defense to the Nepali workers in prisons were Embassy of Nepal to Saudi Arabia (67 victims supported), Israel (1 victim), UK (3 victim) and Russia each (3 victim) and Malaysia (8 victims). It is, however, not known that why such as a large number of inmates, that is, 93 percent did not receive the free legal defense support. Our interaction with the personnel of People Forum – the lawyer organization, divulged some possible reasons as lack of budget, lack of clear guideline how to spend the money and lack of capacity of the Missions. In Malaysia, the per capita spending for free legal defense comes out to be 1,080 USD among the affected persons.

Besides the scenario of a tiny fraction of the Nepali migrant workers inmates getting free legal defense support at abroad, it is reported that 17 death penalties of Nepali migrant workers could have been prevented from execution in Saudi Arabia by 2016 if there had been payment of 'blood money' as determined by the court. And, most frightening fact is that there are records that migrant workers are facing death penalty in countries where death penalty has still been retained and not

abolished as the capital punishment. Number (n) of migrant workers facing death penalty has been reported Saudi Arabia (n=24), Malaysia (n=14), UAE (n=2) and Qatar (n=1).

Grievances of distress migrant workers' chronicles compiled by NGOs – During the 15 months 15-months (January 2020-March 2021), Pravashi Nepali Coordination Committee (PNCC), a leading NGO working in rescue and relief of migrant workers, hoarded 2,569 complaints where there were 4,821 males and 173 females victims. In that year, the average monthly number of victims recorded was 321 males and 12 females. Nearly six in 10 cases registered in PNCC was related to 'no work and salary according to the employment contract' and complaints related to missing migrant workers were also noticeable (6%). Majority of missing migrants' complaints have been registered from Malaysia. Another lawyer organization, People Forum, has provided free legal aid services to 22,635 distress and destitute migrant workers and their families within 10 months (September - July 2021). It has facilitated the acquisition of verdicts and compensation of Rs.66.3 million to victims through its free legal aid services. Nearly three-fifths of the migrant workers filed complaints against recruiting agencies and registered agents while the rest two-fifths was against the individuals (illegal agents). Although the nature of the complaints varied by case, majority was related to fraud involved in the process of sending the migrant worker to abroad (43%).

Complaints filed in Nepali Diplomatic Missions at abroad - Complaints and grievances of the migrant workers have also been filed in the Nepali Diplomatic Mission at overseas. Accordingly, the total number of complaints registered in Kuwait, Saudi Arabia, Malaysia, UAE, Qatar and Oman was 24,952 in FY 2020/21. The main nature of complaints include the following: no arrangement for return to Nepal, no salary provided, forced to work long hours, no medical treatment provided, physical and psychological abuse and scolding. In State of Kuwait, the Nepali Embassy reported that within three months (June - October 2020), 6183 migrant workers returned to Nepal with the facilitation of the Embassy. In Saudi Arabia, it is known from an interaction with PNCC personnel that Nepali workers face a number of problems. First, there is practice of recruitment of workers through a labor supplying company and the suppliers cannot meet the demand of jobs on time. As a result, workers have to wait even months to get job. Second, some supplying companies and agents recruit the workers in a Red Zone company – blacklisted by the Government, and if the workers get injured or die, they are not liable to get the compensation and other benefits in this case. Finally, workers are not paid their full remuneration on time or not paid at all. In Malaysia, in the FY 2020/21, the top-two complaints filed were related to 'not allowing the workers to return to Nepal' and 'not provided the salary as per the employment contract and no salary paid on time'. Interaction with the personnel of PNCC, it is learnt that in Malaysia, there are many Nepali migrant working as illegally and they are not able to receive the medical treatment if they become sick, and many die because of not getting proper medical treatment and timely health check-up.

In UAE, more than 3,500 complaints of Nepali migrant workers have been recorded in the Embassy in the FY 2020/21. During the COVID-19 contagion, many companies were closed down and the UAE Government sent back the migrant workers to home. Some of the workers' visa was cancelled while others were employed by reducing the salary and their working hours. In the interaction with the personnel of PNCC, it is known that six out of 10 migrant workers have been flying to UAE in

visit visa for the last three or four years. In this case, they have to pay the fine for over-stay, their passport is taken away by the Company and visa period may not be extended on time. In Oman, 633 complaints have been registered in the Embassy for the last four years (FY 2017/18-2020/21). During the first wave of COVID-19 pandemic, the Oman Government adopted the policy to either to layoff the workers or to employ for few hours or send them on leave. In Cyprus many migrant workers have lost their jobs due to the closure of hotels/restaurants. According to the Section 17 'C' (2) of the *Foreign Employment Regulation 2008*, Nepali Diplomatic Mission at abroad are required to forward the foreign employment related complaints filed in the Mission to the DOFE. This is their legal mandate. However, the Diplomatic Missions did not provide information about how many such complaints they have successfully resolved/reconciled and how many of them have forwarded to DOFE for investigation and inquiry.

Complaints filing status from the lens of returnee migrant workers – Evidence shows that the practice of filing the complaints by the distress migrant workers has been still low vis-à-vis the number of migrant workers believed to have suffered from deception, fraud or non-payment or ending up in violence in the destination countries. In the survey of 4,046 returnee migrant workers by Blitz Media Private Limited and Humanity United (2022), it was found that only 16 percent have filed complaints, 23 percent did not file the complaints and large majority (61%) said that that it was not needed. Further, those who have not filed the complaints anywhere, majority (54%) did so because 'they did not know where to file the complaints' and another 23 percent reported that 'they did not feel that a report would be beneficial'. In addition, there are 20 percent of returnee migrants who did not file the cases due to fear of deportation and fired from the job. A small proportion (5%) also reported it as the language barrier.

Rescue, Return and Sustainable Reintegration

Rescue Process

Delay in policy response to rescue the migrant workers- While the COVID-19 pandemic identified first in Wuhan, China in November 2019 and quickly got spread to Europe, Middle East, North America and East Asia by January and February 2020, the contagious was rapidly proliferated in South Asia from March onwards. In Nepal, the Government of Nepal adopted the policy of 'stay in the place where you are living' to contain the virus. This means that the Government did not show its willingness to rescue its citizens from across the globe. It is only in 25 May 2020, the Council of Minister adopted order to facilitate the Nepali citizens abroad to come to Nepal. The Order makes different provisions of entry border points from the land and from air, management of holding and quarantine centers, repatriation of dead body and provision of spending. The Order instructed the local governments to establish and manage the holding centers and Federal Government would allocate Rs. 175 per person/day for food and water to those persons in quarantine centers for 14 days. In the meantime, the Supreme Court played a lead role to compel the Government to rescue the Nepali citizens/workers from abroad during the pandemic. In the case of Advocate Som Prasad Luitel v Prime Minister and Council of Minister Office, the Court offered the Government of Nepal to prepare the list of Nepali workers affected by COVID-19; increase diplomatic relations to ensure that Nepali workers affected by the virus get medical treatment without discrimination; protect the

individual rights of citizens to return to the country while ensuring the larger public health interest and manage the required administrative, financial and other arrangement to facilitate the process of return of Nepali citizens to the country. As a result, in 20 July 2020, the MOLESS brought the *Guideline for the Rescue of Nepali Workers in Foreign Employment Affected by COVID-19*. The Guideline establishes standard criteria and priority for rescue, rescue process, management of expenditure and role of Nepali Diplomatic Missions and licensees at abroad. As per the provision, expenditure for rescuing the migrant workers can be incurred from Foreign Employment Welfare Fund in case of the regular migrant workers. Despite the encouraging aspects of the Guideline such as granting the privacy of the workers and bringing the licensee agencies on board for the rescue of the workers, the application process outlined by the Guideline is very lengthy in the event humanitarian crisis. Our review suggests that National Planning Commission (NPC) has also showed its concern to response to the impact of the COVID-19 in relation to migrant workers. It prescribed strategies into three stages: immediate rescue and relief, the survival and recovery strategy (3 to 12 months) and the rebound and revival strategy (1-3 years). However, many of the strategies have not been implemented. Even during the COVID-19, for example, MOLESS failed to issue a white paper regularly stating the situation of migrant workers abroad.

Estimates of size of rescue, stranded and impact of COVID-19- There was no precise data on the migrant workers affected by the COVID-19 and migrant workers to be immediately evacuated from the destination countries. Yet NPC (2020) estimates 3.2 million stock of migrant workers as a rough indication of the size of the rescue required. India occupied the largest share of Nepali emigrants with about one million. This is followed by Qatar (360,000), Malaysia (325,000), Saudi Arabia (320,000) and UAE (275,000). ILO and CESLAM (2020) rapid assessment (RA) reveals that on the average, every day 1,500 Nepali migrant workers' visa would be expired due to the end of their employment contract period and it was estimated that that number reached about 125,000 within three weeks of the lockdown (between 22 March and 12 June of 2020). Of those whose labor permits had already expired, nearly 81 percent was estimated to be in GCC countries, 13 percent in Malaysia and rest 6 percent in other countries. Bhattarai et al. (2022) revealed that nearly one-fourth of migrant workers had to wait for more than six months in the destination countries – being as high as 46 percent in Malaysia. The same study revealed that in addition to the danger of infection, there has been greater economic impact of the COVID-19 pandemic on the migrant workers such as loss of job (41%), unsafe working environment (33%), non-payment of salary (26%), expiration of labor permit/visa (24%) and health problem (23%).

Number rescued by Nepali Diplomatic Missions at Aboard- Altogether 28 Nepali Diplomatic Missions provided information about their rescue efforts during the first and second waves of COVID-19 to NHRC through Department of Consular Service. In FY 2019/20, of the 28 Diplomatic Missions responded about the status of rescue and repatriation, only 11 reported that they have undertaken rescue and repatriation to 1753 migrant workers while the rest 17 Diplomatic Missions reported that they did not receive any applications for a rescue. In FY 2020/21, 13 Diplomatic Missions have reported that they have at least one rescue and repatriation of the MWs – accounting to 1278 migrant workers. In FY 2020/21, among those Diplomatic Missions reporting the rescue and repatriation, the highest number was from Malaysia (674), followed by Kuwait (331) and

Bahrain (96). Nepali Embassy, Kuwait reported that one Safe House has been in operation since 2010. There is also provision of food, accommodation in the Safe House. Nepali Embassy, Berlin, reported that three Nepalese citizens were rescued while the United Kingdom, the Nepali Embassy assisted to rescue and provide legal defense to three victims. Nepali Embassy, Vienna reported that in FY 2019/20, with the coordination and request of International Organization for Migration (IOM), rescued 3 females and 13 males from Greece. Nepali Embassy, Kuala Lumpur rescued migrant workers from prison, missing migrants, from detention centers and those at abandoned state. In Myanmar, 2 cases of rescued was reported.

From Sri Lanka, 41 cases of rescue including 40 women were rescued in FY 2020/21 and from South Korea, there were no cases of rescue in the FY 2020/21. The Nepali Embassy, Thailand reported 35 and 12 migrant workers rescued in FY 2019/20 and 2020/21, respectively. In Japan, the application for rescue of 11 missing migrant workers was received in the Embassy. It is reported that in Japan, the rights of individual privacy is very strong and the individual information is not even given to the Embassy. In this context, it was not easy to identify the missing persons on time. In China, marriage migration to young Nepalese women has been reported and the marriage migration ultimately ended in trafficking. In FY 2019/20, the Embassy rescued two young women marriage trafficked victims from China. The Lhasa Consulates General of Nepal reported that there were no cases of rescue in FY 2020/21. Nepali Embassy, Pakistan reported that it has rescued 35 and 32 Nepalese in FY 2019/20 and 2020/21, respectively. In FY 2019/20, among the 35 rescued migrant workers as reported by Nepali Embassy to Pakistan, 23 and 12 were rescued from Turkey and Iran, respectively. Similarly, in FY 2020/21, of the 31 rescued, 15 were from Turkey, 11 from Iran and 5 were from Pakistan. Nepali Embassy, Pretoria, South Africa reported that there are 18 countries accreditation under the Embassy including South Africa. The Embassy reported that it has written to all its accreditation countries for the number of rescue and search. It has not received information from these countries when it reported to NHRC. However, the Embassy also reported that there were 12 and 19 migrant workers who were rescued and repatriated from South Africa to Nepal in FY 2019 and 2020/2, respectively.

Rescue and relief initiatives by Non-Resident Nepali Association (NRNA) - During the first wave of COVID-19, NRNA provided relief and rescue services to 15,384 Nepali migrant workers within the six months from 25 March 2021 to September 2020 in destination countries. Altogether, migrant workers were covered from nine countries but the majority were mainly from Gulf countries as Qatar (22%), Saudi Arabia (21%), UAE (18%) and Malaysia (21%). The affected migrant workers were provided multiple relief services such as psychosocial counseling services, support to prepare documentation to return to Nepal, immediate food and shelter, local transport cost in Nepal, support to get re-employment in the destination country, PRC (polymerase chain reaction) test, partial airfare support and legal support.

Return Process

Influxes, returns before ending the contract, failure to respect the returnees - Drawing upon the raw dataset obtained from Foreign Employment Information Management System (FEIMS), it is known that overall, 183,868 migrant workers arrived in Nepal though air from different destination

countries from last week of September 2020 to second week of July 2021. The monthly arrivals was very considerable in October 2020 with more than 25,000 and in February, March and April 2021 – picking to nearly 36,000 in April 2021. Migrant workers' arrivals were recorded from 139 countries being the top-10 countries of six GCC countries, Malaysia, Japan and Portugal. At the individual country level, the highest percent of arrivals was from UAE (30%), followed by Qatar (26%), Saudi Arabia (20.5%) and Malaysia (12%). More than 1,000 migrant workers arrived from Afghanistan. Note that the Taliban, the insurgent armed group, took control over Afghanistan in 15 August 2021 and a huge evacuation of foreigners was operated from Kabul. It was reported that more than 1,500 Nepali workers were to be evacuated immediately. Data also reveal that not all migrant workers arrived from the countries in which they have had the latest labor approvals, but rather they also arrived from countries in which they did not have labor approvals – illustrating the possible phenomena of trafficking. Of the total migrant workers arrivals, more than 5 percent arrived from the countries in which they did not have the labor approvals. Further, the survey by Blitz Media Private Limited and Humanity United (2022, op. cit.) revealed that at least one-fourth of the 4046 returnees interviewed returned to Nepal before the end of their employment contract period. Core divers of returns before the end of the employment contract period were not the push factors, but rather they were pull factors such as not matching the work/salary, feeling sick, closing down the company, transfer to another company, termination from the work, scolding, workplace accident and supervisor not good. Another study showed that there has been denial of respect the rights of protection of returnee migrant workers (IOM, 2020). They were deprived of getting the adequate quarantine facilities with clean drinking water, food and PCR test and medicine, toilet facilities, separate beds, 24-hours ambulance services and emergency medical equipment. In their sample of 730 Local Levels by IOM, 32 percent reported that there was some forms of stigma and discrimination against returnee migrants.

Reintegration Process

Reintegration measures less effective - The MOLESS has brought reintegration measures such as socialization programs, programs related to involvement in employment and promotion of entrepreneurship by issuing the *Directive for the Reintegration of Returnees from Foreign Employment (Operation and Management), 2079 (2021)*. Some key features of the Directive are that it opens up the foreign countries and International non-Governmental organizations (INGOs) for the investment for reintegration programs and also makes provisions for the implementation of the programs from all layered of Governments – the Federal, the Province and the Local Levels. In addition, the Ministry's has already been implementing loan facilitation schemes for the returnees, establishing safe houses in case of need of providing the temporary shelter, financial literacy to migrant workers and their family members, provision of national honor and awards including the welfare programs as mandatory liabilities of Foreign Employment Board (FEB) (please refer to discussion in welfare program in Chapter 6 and 7). The returnees shall be provided up to Rs. 1 million soft loan through a bank/financial institution for at most 5-years. According to the *Annual Report of Foreign Employment Board 2075/76 (2018/19)*, there were 18,767 returnee migrants listed in the Board. However, there is no information about how many of them have received the soft loan for establishing the business. The MOLESS has brought the *Reintegration Program Implementation Directive 2019* but no information was available to assess its implementation status. MOLESS has

issued the *Guideline for the Management of National Honor and Award to the Returnees from Foreign Employment Engaged as Entrepreneur, 2019*. It aims at encouraging returnee migrant workers to establish enterprises in the country and use the skills, knowledge and capital learnt abroad to promote entrepreneurship in the country. Data of the award, however, has not been available from the MOLESS.

Remittance inflows, debate on use of remittance in productive sector – Our analysis demonstrates that both size and percentage share of remittance to Gross Domestic Product (GDP) have persistently increased over the last two decades in Nepal. The size of remittance increased to Rs. 986.2 billion in FY 2021/22 from merely Rs. 47.2 billion in 2000/01. The share of remittance to GDP enlarged from 10.7 percent in 2000/01 to 29.5 percent in 2015/16 and then it declined to 24.5 percent in 2021/22. Although the share of remittance to GDP declined from FY 2015/16 onwards, the size of the remittance has continuously increased in the following years except in FY 2018/19 and FY 2019/20. Some foreign employment experts like Dr. Ganesh Gurung argued that the share of remittance to GDP may go up to 35 percent if one counts all the remittances coming to Nepal including all the formal and informal channels. Another issue related to remittance income is that there has been high degree of inequality in size of remittance inflows to Nepal vis-à-vis the number of migrant workers in the destination countries. In 2017, Nepal received an estimated 7.087 billion USD remittance from GCC countries, Malaysia and South Korea together. At the same time, there were an estimated 893,649 migrant workers in these countries in that year. Among the countries, Saudi Arabia accounted for more than one-half workers while the share of remittance from there was about 25.4 percent. Similarly, the migrant workers' share in Malaysia was 23 percent while its share in remittance comes out to be merely 2.68 percent. Countries like South Korea, UAE and Qatar, on the other hand, remit the greater share in respect to the number of migrant workers there.

In an interaction program held by the Kantipur Media Group in 29 December 2021, one of the key thematic areas related to foreign employment was how to manage the remittance inflows to Nepal. The Federation of Nepalese Chambers of Commerce and Industry (FNCCI) vice-chairperson – Mr. Chandra Prasad Dhakal argued that a strong leadership is needed to drive the remittance through the legal channels. He also argued that currently the remittance amount is about Rs. 900 billion and the per capita monthly remittance is no more than USD 200-300, and this amount is very small to divert to the productive sector. Another speaker, Mrs. Kalpana Khanal in the interaction program emphasized the need of diverting the remittance for the infrastructure development from the consumption one. The Governor of the Nepal Rastra Bank –Mr. Maha Prasad Adhikari - claimed that the remittance inflows to Nepal has not been misused and it has been greatly contributing to reduce the poverty and maintain the foreign currency in the country. However, he did not specially outline how the returnee migrant workers have been or would be benefited from the influx of the remittance at the micro level.

High cost of sending remittance to Nepal- Drawing data from World Bank of the first quarter of 2021, the cost for sending remittance of USD 200 from UAE to Nepal accounted for 4.31 percent. This cost is much higher than that of cost of sending remittance from UAE to Bangladesh (2.51%), to India (2.91%), and to Sri Lank (2.80%) and it is only below cost of sending remittance from UAE

to Pakistan (5.51%). In case of sending remittance from Qatar to Nepal, it is 3.98% for USD 200 and this proportion is higher than that of the cost for sending remittances to Bangladesh, India and Pakistan and Sri Lanka.

Prime Minister (PM) Employment Program: Not contributing the sustainable reintegration of migrant workers

– Our data analysis indicates that the PM Employment Program has not contributed substantially for sustainable reintegration of the returnee migrants because of three reasons. First, the program does not explicitly target the returnee migrants. Second, even if it has provided the employment for the returnee migrants, the employment days it has generated is very low for the subsistence of a family. This Program generated 2.21 million and 1.64 million total employed days in FY 2018/19 and FY 2019/20, respectively. The average number of employment per person was 13 days and 16 days in the corresponding fiscal years against 100 days minimum employment requirement in a year as the minimum employment security.

Women Migration and Children in the Context of International Migration

Legal framework, bans on women domestic work - Nepal has ratified several human rights treaties including United Nations Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) 1979 that specifically call for the state party that migrant women should not be discriminated against in any sphere of their life. In Nepal, the current prevailing law related to foreign employment, the *Foreign Employment Act 2007*, has been formulated adopting the principle of non-discrimination on the basis of sex in foreign employment. Yet the Government of Nepal has been ineffective in implementation of this provision, for it has repeatedly imposed bans and lifting on women migration to domestic work since 1998. There have been about 24 such bans and lifting since then. In August 2017, the Parliamentary International Relations Committee recommended a total ban for all domestic women workers including men in Gulf countries before conduction of BLA with these countries. In February 2020, the Parliamentary Committee on Commerce, Labor and Consumer and Welfare visited the three major destination countries, namely, Oman, Saudi Arabia and UAE and in December 2020, it recommended to uplift the ban of women domestic workers bound to Gulf countries provided some conditions have been met. These conditions comprise of i) the domestic workers receiving country must have a separate law granting services, terms and conditions for the domestic workers; ii) the Government of Nepal must sign a BLA with the domestic workers receiving country; iii) the BLA must contain the provision of establishing a strong and effective bilateral mechanism to tackle the problems faced by the domestic workers; iv) before sending the domestic workers to the destination country, they should be provided with basic training on domestic work, language, skills; v) ensuring that no discrimination between the Nepali domestic workers and workers of the concerned destination country with regard to services, security, work environment and benefits shall be granted and vi) the domestic workers receiving country should have a law that the sponsors, employers, masters, or family members of the masters who have committed physical, mental and sexual violence against the domestic workers shall be punished stringently.

Debate to uplift the conditions of bans for domestic work - A number of scholarly and popular sources divulged the fact that bans and restrictions to WMWs and/or migrant domestic workers for foreign employment from Nepal have failed to protect women from violence and exploitation (ILO, 2017; NHRC, 2020). In the Kantipur Media Group Dialogue held on 29 December 2021, some returnee women migrant workers shared their experiences of the extreme form of exploitation in their migration processes and work at aboard. In the same program, a journalist (Mr. Hom Karki) who often reports from Gulf countries viewed that there are large number of woman migrant workers in Gulf countries who entered illegally. He argued that some woman migrant workers compel to run away from the employer because of not bearing the sexual and labor exploitation. However, they are not able to return to the country, and even they do not have access to the Nepali Embassy to support them to safely return to the country and legal remedy, and they finally commit the suicide. In another interaction program among the members of Parliamentary Committee, AMKAS Nepal and NHRC Commissioners and personnel held in 7 January 2022 in NHRC office revealed the mixed-reaction about conditions for women's migration for domestic work imposed by the Parliamentary Committee in the September 2020. Some have argued that the ban has not ensured the security of women, but rather it has increased the risk of trafficking of women, and hence any bans should not be imposed while other argued in favor the conditions.

Half-truth of gaging the number of domestic workers in GCC and other countries - There are no data available to assess the number of domestic workers overseas and the data available from DOFE would only tell us the half-truth of the number of women migrant workers. This is because it is reported that majority of domestic women workers are believed to be undocumented migrants in GCC countries due to several bans imposed to women migration from Nepal and transported via India and Bangladesh. Studies conducted in destination countries show that there are several interacting factors contributing to the high demand for household paid care and women domestic work in GCC countries (Tayah and Asaf, 2021). In case of Nepalese WMWs, based on the Report of the Parliamentary Visit to Gulf Countries in 2020, it can be argued that more than three-fourths of women migrants to GCC countries constitute for domestic workers. With respect to regular migrants or those going taking labor permit from Nepal, the number of women migrant workers was recoded as 48,975 in FY 2021/22. Data reveal that the top-10 countries of destination for Nepali women migrants are mainly of GCC countries like UAE, Qatar and Kuwait that they alone accounted for more than two-thirds of women migrant workers. Countries like Maldives, Croatia, Jordan and Romania also emerge in the scene.

Pathetic narratives of returnee women migrants - Reviewing the data from the Safe Houses and Shelter Homes in Nepal of the returnee women migrant workers, it is evident that a sizable number of women are forced to return to the country with forced, unintended pregnancy and having with the child without the father's identification. This has posed the challenge of both integration of the returnee with her family as well as establishing the rights of the child for nationality and identification. One such example can be taken from AMKAS Nepal data. It provided shelter services to 1514 returnees during the last five years (2017-2021). More than three-fourth of them travelled in undocumented status, without having knowledge on safe migration, language of the destination country and domestic work skills. Further, 90 percent returnees came in the AMKAS Nepal shelter

with some psychosocial problem, and 15 percent to 20 percent had developed severe mental health problem, and there were 19 cases of pregnancy, six returnee with babies born in prison and were persons with physical disability. Nearly one-fifth of them could not be reintegrated with their families and societies mainly due to 'coming back with empty hands, unwanted pregnancy, and severe mental health problem and with baby'.

Limited effectiveness of promotional and protection measures of women domestic workers

- Drawing on the finding of the studied conducted in destination countries, it can be assumed that there are many gaps in skills training as promotional measure provided to the domestic workers in Nepal and the skills required in the destination countries for domestic work. In their study of domestic workers, Tayah and Assaf (2021, op. cit.) showed how the domestic workers themselves view skill-deficits relating to the use of household appliances, detergents, cooking, child care, elderly care and pets care. As a protection measure, the MOLESS has brought the *Directive of the Sending of Domestic Workers in Foreign Employment, 2072 (2015)*. The Directive contains a number of obligations and responsibilities to the Governments and employers of the destination country in relation to recruitment and employment. It establishes safe return and rescue conditions. According to the Directive, the employer has to sign a terms and conditions to bring the domestic workers from Nepal with the Embassy of Nepal. The terms and conditions of Qatar, for example, ensures some key rights entitlements of workers like employment contract period, communication to the Embassy and to the family, provision of free visa, free tickets, accommodations and paid leave, prohibiting the employer selling the domestic worker to any third party. It also incorporates some gender-friendly provisions for housemaids like ensuring the sanitary pads during menstruation, access to first aid box and orientation to be provided to the use of household appliances. However, the terms and conditions still incorporates some discriminatory provisions between men and women domestic workers; it has not included the workload, working hours, day work, nights work have not been not included; no mention is made about the provision for respecting labor, not abusing scolding, and physical punishment.

Drawing on the study of ITUC (2017) as cited in ILO (2017), it is known that the Governments of GCC countries have attempted to revise their domestic labor laws, immigration laws, and they are marching towards more progressive labor rights entitlements than they have before 10-15 years. Despite this, studies show that in all these countries **Kafala** system in de-facto manner still exist, and there is no effective enforcement mechanism and workplace inspection, either. Further, there are several barriers to access to justice to migrant women and domestic workers.

Children of Migrant Workers

Legal and policy gaps - *The Joint General Comment No. 3 (2017) of the Committee of the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of Children on the general principles regarding the human rights of children in the context of international migration* identifies three categories of children: i) migrant children themselves; ii) children born to migrant parents in the countries of destination and iii) children remain in their country of origin while one or both parents have migrated to another country.

And, it calls the state party to incorporate these affected children in the migration frameworks and policies and child protection framework and policies. In the context of Nepal, *Foreign Employment Act 2007* prohibits a child for foreign employment. However, *Act Relating to Children 2075 (2018)* has failed to specify the children in the context of international migration as a special category and Foreign Employment Policy 2012 also has not incorporated about the migrant children and children affected by the international migration process.

Impact, school support - Children of the workers of foreign employment have been greatly affected. According to a study of Foreign Employment Board (2019a) of 113 males and 160 females of 5 districts of Nepal, they found that greater number of negative impacts on children's lives than that of the positive impacts. In their sample, 99 percent children would like to see their father and mother together. Evidence suggests that children of those parents who are at problem situation at abroad have had poor school achievement, and high rate of irregularity in schools and drop-outs. In another study (Prasai, 2078 BS) conducted for the MOLESS among the 100 family members of the migrants surveyed in four districts showed that an overwhelmingly majority of respondents (85%) viewed that they have money for rearing and caring of children, and nearly one-third of the respondents believed that remittance money contributed to enhance their children's physical health. MOLESS has brought the *Foreign Employment Scholarship Operation Directive 2071 (2014)*. According to the Directive, children of those migrant workers who have gone abroad by taking labor permit from DOFE and those migrant workers who have already been provided compensation by the Government are eligible for application of the school support scheme. According to the Report of Foreign Employment Board, from 2015 to 2017, this school support program was reached to 34 districts and annually around Rs. 30 million has been allocated for this scholarship provision. In FY 2018/19, Foreign Employment Board has distributed scholarship to 1,438 affected migrant families' children across the country, with 98 percent for those children whose either father or mother had died and 1 percent for children whose father or mother were severely injured or become sickness.

It is, however, not known that whether the school support scheme covers all the children of the victims across the country and to what extent the school support scheme has increased the school participation rates of the victims' children and whether the annual amount supported per student is sufficient to continue the education in the context of the absence of the breadwinner of the children, the breadwinner either died or physically ended as disabled. Further research is needed in this area.

Rights of Health of Migrant Workers

Miserable working and living conditions - Nepali workers' living condition appears to be very miserable in GCC countries and Malaysia. A few examples of such conditions can be reflected considering the average number of people resides in a room and average number of people sharing a 100 square feet room as indicators. In their survey of 4,046 returnee migrant workers (Blitz Media Private Limited and Humanity United, 2022, op. cit.), only 3 percent reported that they stayed alone in the room while 38 percent reported that there were 2-5 people in the room, 40 percent stayed in a room where there were 6-10 people and 19 percent stayed in a room where there were more than 10 people. In terms of average number of people sharing a 100 square feet room, the number

ranges from 3 people in Bahrain, 4 in Kuwait, Qatar, Saudi Arabia and Oman each to 5 people in Malaysia.

Major health concerns of migrant workers – Major health concerns of the migrant workers have been revealed by several studies. Paudyal et al. (2020) systematically reviewed 33 studies related to health status of Nepali workers in foreign employment and their review suggests the following areas of health concerns: occupational health and hazardous, sexual health, mental health problems, infectious diseases problems, other health issues such as workplace abuse, torture or maltreatment and physical harm in their workplace including kidney diseases. It is found that these health concerns persist not only to those working abroad but also among the returnees – requiring long term health treatment, and more private and public health financing.

Consequence of Health Rights Violation

Disability – Over the last 12 years (from 2008/09 to 2020/21) overall 1,656 cases of disability have been reported in FEB for the claim of compensation. Majority of disability cases were reported from GCC countries and Malaysia. Note that disability and injury cases have also been reported to Nepali migrant workers in so called much attractive destination countries like South Korea, Macau, Jordan, Israel, Turkey, Cyprus, Seychelles, Afghanistan and Romania. Examining the reported causes of injury and disability for the year of FY 2017/18 and 2018/19, more than half of the total 695 cases was reported to have occurred due to 'workplace accident'. Other causes of disability and injury were reported to be 'disease' (36%), 'fighting' (8%) and 'traffic accident' (5%). Such a higher proportion of disability due to 'workplace accident' reflects the fact that occupational safety measures have rarely been provided to the migrant workers.

Unusually high death toll of migrant workers – The death rate of the migrant workers is unusually high in the event that youths having only good health conditions are permitted to go aboard for employment. It can be inferred that main cause of death is not the chronic diseases that the workers bring with them, but rather it is the poor living conditions, occupational hazardous and lack of safety measures and poor working environment at the destination countries that contribute to the high number of death of the Nepali migrant workers. Assuming the number of death's compensation provided by the FEB during the 12 years (FY 2008/09 to 2020/21), the total number of migrant deaths calculated as 9,363 (9148 males and 215 females). Nevertheless, this number might go up because the death compensation provided by the FEB covers only regular migrant workers not the irregular ones (those went abroad without labor permit or those contract period expired when the death occurred). The recorded number of deaths of the migrant workers in FEB constantly increased over the years with some exceptional cases. For instance, in 2008/09, only 90 deaths were recorded which increased to 1006 in FY 2014/15 and it declined to 661 in FY 2019/20 and again raised to 1242 in FY 2020/21. The deaths of 1,242 in the FY 2020/21 implies that on the average, every day, there were more than three deaths of Nepali migrant workers in foreign employment. Examining the four-year (2017/18-2020/21) data of the deaths of the migrant workers by country of destination, it is found that almost 93 percent of the deaths occurred in either in Malaysia or in GCC countries while the rest 7 percent occurred outside of these countries. In terms of the origin districts of the death

toll in FY 2020/21, they spread across 66 out of 77 districts of Nepal in the FY 2020/21 - the top-five districts having deaths of migrant workers were Morang, Dhanusa, Siraha, Mahottari and Jhapa – in these districts, the deaths occurred in the range of 50-60.

Deaths of migrant workers, data from Nepali Diplomatic Missions Abroad – Nepali Diplomatic Missions abroad provided data of the death of migrant workers to NHRC in FY 2020/21. Altogether nine Nepali Diplomatic Missions (Oman, UAE, Saudi Arabia, Israel, Egypt, Kuwait, Malaysia, South Africa and Qatar) reported about the death status of migrant workers and the total number of death of migrant workers reported was 1003 in FY 2020/21 – being highest in Malaysia (311), followed by Saudi Arabia (249), UAE (181), Qatar (162) and Kuwait (74). Similarly, all of these Diplomatic Missions reported at least one migrant worker death due to COVID-19 in the destination countries – having total death of 217.

Migrant workers in critical health conditions at aboard - Embassies of Saudi Arabia, Kuwait, and UAE reported a few Nepali (18 altogether) in quoma and have been hospitalized for a long time. However, there is no information provided about health financing, rearing of these sick persons and communication status with the family members in Nepal.

Investigation and certification of causes of deaths, denial of receiving the compensation from the destination country - Analyzing the causes of 4,385 death toll of the migrant workers for the five years (FY 2016/17- 2020/21), it is found that in more than one-half of the total death toll, the causes of deaths have not been stated as any pathological or biological causes but rather simply as natural cause, cardiac arrest and unidentified cause. Amnesty International (2021) study also raised questions of accuracy of investigation and certification process of causes of deaths of Nepali migrant workers. It argued that such practices might have been knowingly conducted in order to escape from the state's and employers' liabilities of compensations to the deceased families. Further, it is reported that majority of the deceased families are denied to receive the compensation from the government and employers of the destination country due to the false classification of causes of death as 'natural' or 'cardiac arrest'. In PNCC (2017) study of 305 death cases, an overwhelmingly majority (70%) of the deceased's families did not receive any compensation from the employer/company of the destination country while only 29 percent reported to be in the process of getting compensation and only less than 1 percent received the compensation. Further, it was found that 17 percent of the deceased were in undocumented status in Nepal and 6 percent in the destination country. The undocumented status at the time of death means that the family members of the deceased are not entitled to claim for compensation and insurance. In another study conducted by Amnesty International (2021, op. cit.) among the 18 families of deceased migrant workers of Bangladesh and Nepal, it found that none of them has received any compensation from Qatar Government, and any money they received was either from their own insurance policies or from their Governments.

Heat stroke, preventable death - Pradhan et al. (2019) studied taking the sample of death of Nepali migrant workers in Qatar and showed that Nepalese migrant worker's deaths as cause of

cardiovascular disease tends to increase from 22 percent in the cold months to 58 percent during the hot months. The study finding implies that on the average 35 percent of the Nepalese worker's deaths from cardiovascular disease in Qatar during the period of 2009-2017 could have been prevented had there been appropriate heat protection measures in the workplace and at accommodation.

Delay on repatriation of dead body and remains – Although 770 dead bodies of Nepali migrant workers were repatriated in FY 2020/21, data reveal that repatriation of the death body took much longer time to reach to Nepal and to the grievance families. It is only 44 percent of the deceased bodies were repatriated within one-week of the death, while another 13 percent in 2-3 weeks and for the rest of deceased bodies it took more than four weeks. Media has widely reported that COVID-19 pandemic spread across the major destination countries of Nepali migrant workers has resulted to delay in repatriation of dead bodies mainly from Malaysia and GCC countries. On 30 June 2021, the Kantipur Daily writes, '42 deaths abandoned in Malaysia'.

Initiatives to Uphold the Rights to Health of Migrant Workers

Legal and protection measures in destination countries - In order to mitigate the problem of heat stress on migrant workers, the Qatar Government introduced a ban on work in 2007 from 11:30 to 15:00 from 15 June to 31 August each year. In May 2021, Qatar Government again revised and adopted several measures to protect workers from heat stress. First, it extended a ban on work between 10:00 to 15:30 from 1 June to 15 September every year. Second, it has also adopted the wet-bulb global temperature (WBGT) heat stress index to access the level of occupational heat stress and stop work if the index rises above 31.1 c. Third, it provided workers with the right to stop working and lodge a complaint to the ministry provided that there is reasonable belief that heat stress is a threat to their safety or health. Finally, employers are required to mitigate the risk of workers from the harsh climate in Qatar by regularly updating heat stress risk assessments. Although these measures offer workers greater protection from climate risk, heat stroke experts argue that a balance of work and rest period are critically important to protect workers from heat stroke. Qatar Government has promised additional measures for the greater protection of workers such as adoption of national heat stress guidelines, cooling jackets and an increased number of labor inspectors to ensure the compliance with the summer working ban.

Judicial responses - The Supreme Court in case of Law and Policy Forum for Social Justice (LAPSOJ) and Paurakhi Nepal v Government of Nepal dated 16 November 2017 in 073-WO-0916 offered a verdict to make mandatory provision to conduct autopsy/post-partum of those migrant workers who were certified as 'natural' and 'sudden death', making pre-departure medical examination of workers effective, making repatriation of dead body easy and simple. Popular media like Kantipur Daily and Annapurna Post in September and October 2021 filled with news that the victims' families did not get any respect and even place to wait for their beloved deceased persons at Tribhuvan International Airport (TIA). It was reported that there is no separate waiting room or place in TIA to the victim's family members. Further, as the death body is landed in the TIA, no Government high echelon responsible for the regulation of foreign employment including Parliamentarians, Ministers

or other elected persons appear in the TIA to mourn with the victim's family and provide them sympathy and assurance to facilitate timely compensation to the victim's family members. After the media reporting and Supreme Court verdict, it is reported that the Government has made reforms in TIA to arrange a separate waiting room for the victim's families, however.

Limited Government responses – Although the Government of Nepal has initiated to deal with the health issues of migrant workers and their families, the implementation aspect is very poor when it comes to promote the health rights of migrant workers. The Ministry of Health and Population (MOHP, 2018) has drafted the *National Migrants Health Policy 2076* in 2018 but it has not yet been approved by the Cabinet and here is no specific migrant workers focus policy in Nepal. The current provision of death-benefits of maximum of Rs. 1.5 million and severely injury of the workers benefits of Rs. 1 million appears to be low compared to the increasing cost in transportation, medical expenditure.

Social Security Scheme for Foreign Workers (SOCSO), Malaysia - The Government of Malaysia introduced SOCSO from January 2019. This scheme is also applicable for Nepali workers in Malaysia. According to the scheme provision, employers are required to register their foreign workers with the social Security Organization, called PERKESO, to receive protection under the Employees Social Security Act 1969 (Act 4) of Malaysia. The foreign workers are required to contribute to 1.25 percent of the insured wages which to be paid monthly by the employer only. According to PERKESO, Nepal ranks third in terms of number of workers in Malaysia registered in SOCSO and 311,374 Nepali workers have already been registered by 22 March 2022 and 5,915 workers have already benefited from the scheme.

Rights to Information, Data Collection, and Migration Governance

Rights to Information

Legal framework - Findings of this study show that there has been little work in linking the rights to information with the safe migration and foreign employment in Nepal. Foreign employment expert like Joshi (2075 BS) argued that there has been no practice of linking the rights to seek information with foreign employment in Nepal. But if the rights to seek information has been guaranteed to those goers, those working at abroad and returnees, this would increase the safe migration and reduce the risks of human smuggling, trafficking, deception, exploitation and support for rescue, return, and reunion processes. On the other hand, the Constitution of Nepal guarantees the right to seek information to every citizen concerning the matters of his/her or the public (Article 27). The *Right to Information Act 2007* outlines the rights to information and provision regarding the flow of information (section 3) that 'every citizen shall have the right to information subject to this Act', and 'every citizen shall have access to information held in public bodies'.

Tools and resources to deliver information on foreign employment - There are different tools and resources developed by the Government and even by the NGOs/Private sector to disseminate

the information related to foreign employment. The key tools include FEIMS, Mobile Apps *Baideshik Rojagari*, Information Desk of DOFE and migration resource centers (MRCs), websites of MOLESS, DOFE and FEB. At abroad, the websites of the Nepalese Embassies also provide information about safe migration and others. Apart from the Government sources, there are number of International/ National Non-Governmental Organizations (I /NGOs), United Nations (UNs) agencies that provides safe migration information in the country. The aim of the FEIMS is to monitor and keep the records of outbound and returnee migrant workers, and thereby reducing the role of intermediaries and maintaining the transparency and accountability to all stakeholders. The FEIMS can be accessed by the ordinary users. Mobile Apps *Baideshik Rojagari* provides the information related to labor approval, license agencies and agencies providing orientation training, medical test services, insurance companies and banks linked to FEIMS. In addition, information desks, Radio Nepal, Nepal Television, Kantipur and other Television Channels also provide safe migration information regularly from the central and local levels.

Perspective of migrant workers and information seeking practices - Despite the several efforts and investment being done to increase access to information on safe migration in the country, a recent study conducted by Blitz Media Private Limited and Humanity United (2022. op. cit.) revealed that main source of information for foreign employment was their family and relatives (45%), and friends already working, and agents (53%). On the other hand, there were less than 1 percent of the returnee migrants interviewed saying sources of information about foreign employment as the Government, civil society organizations or political activists. Further, producing information is one thing but how the receivers receive the information is another thing. There are few studies conducted how the receivers or here migrant workers and their family members receive such information and how they have been benefited from information provided from different Government channels and civil society organizations. In Nepal, information seeking practice related to foreign employment appears to be almost non-existence when one examines the data of number of appeals registered in the National Information Commission. For example, in the FY 2020/21, the total number of appeals seeking of information registered was 753 in the Commission. But none of the appeals was related to foreign employment, human smuggling and trafficking and exploitation.

Data Collection and Protection

Legal provision of data protection - There is no separate legal provision to protect the data/ information of migrant workers bound for foreign employment. But migrant workers have to provide their personal and sensitive data to a range of foreign employment business actors and regularity bodies including medical check-up, finger thump biometric information. Our review suggests that no specific studies have been conducted so far in this direction either by the MOLESS, or Ministry of Communication, Information and Technology (MOCIT) – the line Ministry of data protection in the country. Nonetheless, the Government of Nepal has adopted *Individual Privacy Act* (2018) and *Individual Privacy Regulation* (2020) to protect the individual privacy. These legal measures can be applicable for data protection of migrant workers.

Household level: migrant workers data in Nepal – There is no migration specific household survey conducted in Nepal. Yet population census and household surveys also provide some data on migrant workers. The twelfth decadal population Census of Nepal 2021 includes the questions regarding the absentee population and foreign migrants, which is useful for identifying the total magnitude of foreign employment by country of destination and origin of the migrant workers such as at the Province, districts and Local Levels including other characteristics of migrants. Household Surveys such as Nepal Living Standards Survey (NLSS) 2010/11, Nepal Labor Force Survey (NLFS) 2018 and Nepal Demographic and Health Survey (NDHS) 2016 also provide some data of international migrants. However, these surveys, have been conducted for different purposes, rather than understanding the situation of the rights of migrant workers and hence they do not provide adequate information on assessing the situation of rights of migrant workers and their families.

Monitoring and Accountability

Recently DOFE has brought some reforms in its service delivery mechanism to increase its accountability towards the rights holders. It has brought all labor approval systems (re-approval, new approval and individual) fully under the online system; established Rapid Response Team (RRT); introduced the automatic token system from all offices; linked the online system of labor approval to the biometric description system; introduced FEFO in online service delivery; established Foreign Employment Management Branch at Bhairahawa; integrated e-passport with the FEMIS; initiated to update the profile of licensee agencies and orientation institutions; and removed the provision that the migrant workers have to pass through a separate departure gate in TIA

In addition, the MOLESS has also brought the Guideline for operation of call centers and mobilization of monitoring team to increase the accountability of its staff. Altogether 8,764 calls have been received by the Call Center in the 4 months of 15 March and 15 July 2019. In the FY 2020/21, the call center received 8,410 calls. An overwhelmingly majority of calls (93%) were related to getting information about foreign employment and they were resolved by the Call Center itself. Conversely, only 7 percent of calls have been forwarded to different offices and departments for resolution. The Ministry has also brought the *Guideline for the mobilization of monitoring team, 2076* (2019) which establishes Code of Conduct of the monitoring team, subjects to be considered during monitoring of foreign employment related business or individuals or education consultancy indirectly engaged in foreign employment business and others.

Migration Governance and Cooperation

Policy, Budget–The Government of Nepal has included the foreign employment in its annual policy and budget as well. The MOLESS has reported that it has been revising the *Foreign Employment Policy 2012* with due consideration of COVID-19 and the 5th Amendment of the *Foreign Employment Regulation 2008* was concluded. Some important amendments include increase in security deposit

of recruitment agencies; merging of two or more recruiting agency; revoking the appointment of agent; authorization of CDO as the complaints handling authority; provision to review renew labor approvals upon two times from the Foreign Mission; and making mandatory of verification of the Labor Demand from the Foreign Mission of Nepal. Examining the budget speeches of the Minister of Finance (MOF) of the Government for the FY of 2020/21, 2021/22 and 2022/23 (MOF, 2020, 2021 and 2022), it appears that the Government has given priority in tackling the foreign employment issues, especially upholding the rights of migrant workers. The budget speech of FY 2020/21 focused on addressing the impact of COVID-19 and made commitment for the utilization of Foreign Employment Fund in the employment rehabilitation programs. The budget speech of FY 2022/23 includes a details about making the safe, systematic and dignified foreign employment.

International cooperation, BLA, MOU - The Government has expanded its international cooperation to address the migrant workers' rights, that the Ministry has involved in different global, regional forums particularly of the Global Compact for Safe, Orderly and Regular Migration (GCM); Colombo Process; Abu Dhabi Dialogue; Global Forum on Migration and Development (FMD); South Asian Association for Regional Cooperation (SAARC) and Bali Process.

Nepal has been claimed as championship in the implementation of *objective 6* [facilitate fair and ethnical recruitment and safeguard conditions that ensure decent work] of the GCM along with other 23 countries in 2018. In order to effectively implement the GCM, the MOLESS has formed two high level committees: the Instruction Committee and Strategy Draft Preparation Committee. In relation to MOU and BLA, by September 2021, the Government of Nepal has already concluded MOU and BLA with 10 countries including the recent most MOU with British Government for the recruitment of Nepali health care workers. The MOU with British Government makes it provision that the Nepali health workers shall be treated as equal to the British health workers in their employment terms and conditions.

And, according to the letter received from Nepali Embassies at abroad to NHRC in June 2021, labor agreements with Oman, Saudi Arabia, Kuwait, Egypt, and Cyprus are under the review process and being finalized. The Ministry has conducted the joint meeting between i) Nepal and Malaysia, between ii) Nepal and UAE and iii) between Nepal and Mauritius in FY 2019/20. By reviewing these three MOUs, it is can be argued that some of the landmark provisions have been incorporated in these MOUs especially related to granting the basic labor rights, non-discrimination, free recruitment, bringing the contractual parties into the scope of legal action, security and safety of workers including the female workers and provision of mechanism of access to justice in the destination countries. Despite these achievements, these MOU still lack important provisions embodied in the Nepal's commitment with the GCM and other human rights instruments for the protection of rights of migrant workers.

While the Labor Attaché has important role to protect the rights of migrant workers at the destination country, the Government of Nepal has failed to appoint the Labor Attaché in several countries where there are more than 5,000 Nepali workers currently working and where there are more than 1,000

women migrant workers. In addition to the few appointments of the Labor Attaché, the capacity, competency and commitment of the Labor Attaché are said to be low in each of the Missions where Labor Attaché have been appointed.

Role of Human Trafficking and Investigation Bureau, Nepal Police- The Bureau has been actively engaged in providing services related to rescue, repatriation and security to victims of international and cross-border trafficking and smuggling. For this, it has established Toll free number 1177 to help and coordinate the victims and their families. The Bureau provides necessary security to the victims during their rescue on the route and other places; conducts necessary coordination with different organizations on route, in the airport and in collection of information, writing of application (*Jahere*) and legal advice to the victims. Further, the Bureau coordinates the local police to make contact of the victims to their family members and coordinates the relevant stakeholders to provide the health services to the victims if it is needed. The Bureau has established the coordination particularly to NGOs like Maiti Nepal, Shakti Samuha, People's Forum and other NGOs for rescue and rehabilitation services to the trafficking and smuggling victims.

Nepali Diplomatic Mission, migrant programs, budget – Some Nepali Embassies at abroad have responded to NHRC regarding their programs/activities related to protection and promotion of rights of migrant workers. In Saudi Arabia, the Embassy reported that in FY 2020/21, it carried out 72 awareness programs while Oman Embassy reported that it facilitated the visit of Parliamentary group including NHRC official in 2020. The Embassy of Nepal to UAE has developed the online services in areas of visa pre- arrival, visa conversion, entry visa, visa online arrival, visa application track, check visa, non-visa arrival and visa extension. The Embassy of Nepal to Israel has developed the collaboration with Human rights institutions of Israel. The Embassy of Nepal to State of Kuwait launched targeted activities such awareness programs, orientation programs about acts, duty, rights, Kuwait Labor and immigration laws targeting to workers. The Embassy of Nepal to Qatar has been carrying out the awareness programs to the Nepali workers in Qatar, and it has also developed the online complaint handling system. The Embassy of Nepal to Malaysia has been extending its coordination and collaborative work through regular visits and meetings to Malaysian Police, Immigration Department and other Government Offices. The annual budget allocated to each of these countries are extremely low against the problems and complaints recorded in these Embassies from the migrant workers. The annual amount allocated is merely Rs.1.5 million.

Extent of visits of Embassy by the migrant workers - Visit of Embassy by the migrant workers can be taken as an indicator to measure the effectiveness of Nepali Mission abroad in addressing the migrant issues abroad. In the survey of returnee migrants by Blitz Media Private Limited and Humanity United (2022), it was found that among the 4021 returnee migrants interviewed from six countries (Malaysia, UAE, Saudi Arabia, Qatar, Kuwait and Bahrain), 83 percent reported that they have never visited the Embassy. Among those who visited the Embassy, nearly one-third (32%) visited for renew of passport/extend visa, 27 percent for managing the return, 23 percent accompanying someone, 11.5 percent for dispute resolution with the employer and another 9.5 percent to report on the payment and work not provided as mentioned in the Contract paper.

National Human Rights Commission, activities on migrant worker rights - The Strategic Plan 2021-2026 of NHRC has given the priority in dealing with migrant workers. As an institutional mechanism, at the central level, NHRC has the Migration Focal officer at central level and the Province level, NHRC Offices are mandated to monitor and observe the situation of migrant workers. It is evident that NHRC has showed concerns over different migrant workers' issues such as monitoring, data concerns, ensuring the health rights and vaccination against COVID-19 and conducted cross country NHRIS MOU for the promotion of rights of migrant workers. On 10 March 2018, NHRC provided a 16 point recommendations to the Government of Nepal for the effective realization of the rights of migrant workers.

Local Levels, foreign employment related activities - The *Local Government Operation Act 2074* (2017) makes responsible the Local Government to maintain data of domestic and foreign laborers. The Act also calls for conduction of financial literacy, skills training for the labor force going in foreign employment and integration of returnee migrant workers in Local Development agendas. NHRC compiled data from 11 Local Levels. Among the 11 Local Levels, only one responded that it has formulated the policy on foreign employment while 10 responded that they have not done so. In case of incorporation of the foreign employment in their regular annual program, 4 Local Levels responded that they have done so while rest 7 responded that they have not yet started. With respect to the question of data collect, nine out of 11 Local Levels responded that they have initiated data collection of foreign labor migrants.

Government spending on migration governance, welfare of migrant workers - Government spending on migration governance especially for the welfare of the migrant workers and their family members is extremely low vis-à-vis their contribution in the remittance income in Nepal. While the total budget allocated under the different Departments/Sections/Centers of MOLESS was Rs. 814.7 Million in FY 2019/20, the remittance income sent by the migrant workers from abroad in the same FY was Rs. 879,271.3 Million. Thus, the budget for Ministry to deal with the migrant and their family members comes out to be less than 0.1 percent of the total remittance that the workers sent to the country. On the basis of MOLESS spending in programs related to foreign employment of FY 2019/20, the performance of Skill Development Training Center can be said to be very low and unsatisfactory. Only one-fifth of the current expenditure and less than one-third of the capital expenditure was spent – implying that the Skill Development Training Center has largely failed to provide the skill based training to a large number of targeted potential migrant workers. According the Annual Progress Report of Foreign Employment Board, the Department had Rs. 129 million annual budget in FY 2018/19 as welfare program (as the mandatory liability). However, only about 5 percent of the total budget of the welfare program was allocated to headings directly relevant to migrant workers and their families' health. Only 29 percent of the Rs. 5000 thousand budget approved for medical treatment support to migrant workers have been spent. In 2020/21, the total budget allocated to FEB was Rs. 188.4 million. Of which, 46 percent is allocated for welfare program (mandatory liabilities), nearly 40 percent in rescue, repatriation of the abandoned migrant workers due to COVID-19 for buying of ticket and nearly 8 percent for reintegration and rehabilitation programs while 2.4 percent budget has been allocated for legal defense of the migrant workers convicted for a criminal case and are in the prison.

The Report concludes that many of the SDGs targets related to migration are unlikely to be met if the migrant workers have not been targeted specially. Similarly, the achievement in many of the objectives of the GCM cannot be said to be satisfactory. Based on the findings, this Report draws the recommendations especially in areas of recruitment process, access to justice, ensuring the rights to life and right to health, ensuring the speedy rescue, dignified return and sustainable reintegration, uplifting the ban on domestic workers and incorporation of children of migrant families into child acts and foreign labor policies, and ensuring the rights of information, and maintaining effective governance.

Chapter 1

Introduction

National Human Rights Commission (NHRC) is a constitutional body of Nepal that is mandated to monitor the situation of rights of migrant workers and recommend the Government of Nepal to protect and promote the rights of migrant workers and their families.

1.1 Setting the Context

Migration for foreign employment has become an increasingly common phenomenon in Nepal but it has also brought the challenges to safeguard the human rights of migrant workers. Today, migrant workers originate across the social groups, across the districts, both in rural and urban areas of Nepal (Ministry of Labor, Employment and Social Security, MOLESS, 2020). In the past male migration was a dominant phenomenon for employment at abroad, now women are also tremendously entering into the international labor market (Subedi, 2020). Migration of disadvantaged and marginalized groups such as of Dalit, Janjati, Madeshi and Muslim all is of considerable. Remittance income has not only become the main livelihoods of many poverty stricken families and only the single means to escape from enduring poverty and misery, but it has also contributed to increase investment in human capital formation, enhancing the self-esteem of many hereto disempowered groups including of women by having independent sources of income and creating greater outside world exposure to these groups (Kantipur Media Group Dialogue, 2021). There has also been greater expansion in opportunity of international labor market for the Nepali workers especially after 1990s when Nepal entered into the new liberal economic policy. The two great disasters of the first quarter of this twenty-first century- the Gorkha earthquake of April 2015 and the spread of COVID-19 global pandemic in 2019 and 2020 – interrupted the migration process for a while but it has resumed when the global pandemic showed a decline by late 2021 in many destination countries. Now, Nepal has been linked to the world market through supplying of laborers. By mid-2021, the Government of Nepal permitted labor approvals to 110 countries for those going through institutional basis and 178 countries for going individual basis (Ministry of Finance, MOF, 2021a) – thus a wide range of international labor market expanded, making it challenges to monitor the situation of human rights of migrant workers.

Meanwhile, it is reported that there has been widespread anomalies involved in the recruitment processes, poor living and working conditions at aboard, lack of establishing coordination and collaboration. All these increased threats and challenges to respect, safeguard and promote the rights of Nepali migrant workers including their family members left beyond in Nepal. The Constitution of Nepal is the overriding legal framework for the protection and promotion of all citizens including migrant workers. In its Article 51 i (5) of Constitution of Nepal states **‘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 labors’**, and Article 51 i (6) states that there is indispensable **‘to encourage to mobilize the capital, skills, technology and experience gained from foreign employment in productive sectors in the country’**.

The rationale to produce a fact-based research work dealing with situation of rights of migrant workers becomes highly obvious in the current context of emerging threats to uphold the rights of migrant workers for all cycles of migration processes. Also, this is equally important to achieve the Sustainable Development Goals (SDGs) of Nepal related to migration issues. In SDGs, migration enters as development itself agenda. Several Goals especially Goal 5 (Gender Equality); Goal 8 (Decent Work); Goal 16 (Peaceful Societies) and Goal 17 (Partnership) are directly relevant in the context of migration for foreign employment. The Goal 5 states that the migrant women and girls are especially vulnerable to human trafficking and gender based violence and need to protect them. The Goal 8 states that importance of migrants in global economy continues to grow and thus ensuring the ethical recruitment, humane working conditions, and safe migration is vital to achieve this goal. The Goal 16 focuses on prevention of trafficking in persons and sustainable reintegration supports to eliminate all forms of violence against women and girls and the Goal 17 states having specific and current data pertaining to a group's specific needs help increase the capacity to deliver migration services (National Planning Commission, NPC, 2021).

Besides the meeting of the SDGs, Nepal has the international commitment to safeguard the rights of migrant workers, as Nepal is a state party of the United Nations Global Compact for Safe, Orderly and Regular Migration (GCM, 2018). The Global Compact considers people-centered, international cooperation, national sovereignty, rule of law and due process, sustainable development, human rights, gender-responsive, child-sensitive, whole-of-government approach and whole-of-society approach as the cross cutting and independent guidelines. The Global Compact is framed in 23 objectives for safe, orderly and regular migration, and achieving each of the objectives of the GCM becomes the responsibility of the Government of Nepal.

Further, Office of the United Nations High Commissioner for Human Rights (OHCHR) and Global Migration Group (GMG)'s *Principles and Guidelines, supported by practical guidance, on the human rights protection of migrant workers in vulnerable situation* outlines 20 principles and several corresponding guidelines. This Guideline is directly relevant in the context of Nepali migrant workers for foreign employment as it focuses on the protection of migrant workers in vulnerable condition. The Guideline defines, 'migrants in vulnerable situation as those persons who are unable effectively to enjoy their human rights, are at increased risk of violations and abuse and who, accordingly, are entitled to call on a duty bearer's heightened duty of care'. 'But migrant are not inherently vulnerable, nor do they lack resilience and agency'. But vulnerability may arise from situational (before pre-departure, during journey and at the destination) and individual conditions or circumstances or person's identity. The primary of human rights, non-discrimination, access to justice, rescue and dignified returns, migrant women and children of migrants, rights to health, right to information, monitoring and accountability and migration governance all originate from the OHCHR and GMG's Principles and Guidelines.

Another recent Report which analyzes the situation of human rights of migrants in Nepal is the Report submitted to the Human Rights Council in the 38th session in 18 June-6 July 2018 by the Special Rapporteur Felipe Gonzalez Morales (Human Rights Council, 2018). The Report raises a number of human rights violation aspects of migrant workers such as the following:

- First, it raises the concerns of involvement of multi-layered agents, unusually high recruitment fee and overcharged by the private actors, centralized pre-departure training and inadequacy of training and how migrant women are increasingly using informal channel due to their restriction;
- Second, the Report raises the issues of unusually high death of migrant workers in destination countries, failure of workplace inspection for the occupational and health hazardous and Nepal's not adopting independent auto-biopsies of the deceased to validate the cause of cases of deaths.
- Third, it raises the concerns of inadequacy of support to WMWs in destination countries such as hotline services, accesses to justice including inadequacy of Counselor and Labor Attaché assistance.
- Fourth, the Report raises the concern of barriers to accessing justice due to the limited Nepal police involvement in investigating cases of deceptive recruitment and forced labor, settling the most serious disputes through informal dispute resolution channel and low conviction rate of the foreign employment cases.
- Fifth, there is also inadequacy of services provided to the victims of WMWs especially focusing on the victims of forced pregnancy, victims of trafficking and forced labor and extending the rehabilitation centers for proper psychosocial counseling.
- Sixth, the Report raises the concern of Nepali migration to India and Nepal's Government failure to address the issues of the Nepali migrants to India.
- Finally, the Report raises the concern of Nepal's not able to establishing good relationship with destination countries in order to prevent the abuses and horrific narratives of migrants being killed or women being raped by their employers.

Another study by ILO (2021) on Nepali migrant workers and migrant domestic workers also confirmed the similar areas of violation of human rights and labor rights as raised by the Special Rapporteur of Migration. It basically outlined i) violation related to poor working and living conditions- low wages, unsafe working environment, absence of social protection, a denial of freedom of association, and often worker's rights discrimination; ii) violation related to pre-departure exploitation and misrepresentation of the nature and terms of work available, excessive recruitment fee, the delay or cancellation of departure, failure to provide correct pre-departure document; iii) violation related to forced labor, human trafficking and human smuggling under the pretext of foreign employment and iv) violation related to adverse health conditions- resulting to larger scale of deaths of migrant workers abroad. Further, NHRC (2021) documented how largely migrant workers have been affected by the COVID-19 pandemic and areas of human rights violation.

Besides, the MOLESS publishes annual report regarding the migration for foreign employment and examining its recent most Report 2020 (MOLESS, 2020), it is learnt that the MOLESS has basically focused on analyzing the trends of migration, characteristics of labor migrants, labor migration governance, and some thematic issues like compensation, labor diplomacy, remittance income and occupational profile of the workers. While focusing on these issues, the Report lacks focused on

human rights situation of migration. Likewise, the Annual Progress Report of FY 2077/78 (2020/21) of Department of Foreign Employment and Annual Progress Report of FY 2077/78 (2020/21) of Foreign Employment Board and Annual Progress Report of 2077/78 (2020/21) of Foreign Employment Tribunal all reveal their annual targets, achievements but they are not framed for analyzing the human rights of migrant workers, either. Because of being the NHRC as an oversight human rights entity, NHRC needs a fact-based analysis of situation of rights of migrant workers to make compliance the Government of Nepal and other concerned bodies to implement its recommendations and also collaborate with the National Human Rights Institutions (NHRIs) to protect the rights of migrant workers as aboard. In this context, the central research questions of this Report are: what are the emergent facets of human rights violation to migrant workers in Nepal? How human rights violation can be addressed?

1.2 Objectives

The overall objective of this Report is to evaluate the situation of rights of Nepali migrant workers for foreign employment.

The specific objectives include the following:

1. To analyze the migration by exploring the scale of migration, recruitment processes, the rescue, return and reintegration processes especially in the context COVID-19 pandemic.
2. To evaluate the access to justice, and also discuss on bans on women migration and impact on children.
3. To explain the rights of health of migrant workers and also describe the rights to information, data sources and protection and migration governance in Nepal.
4. To provide the recommendations to the Government of Nepal to protect, promote and respect the rights of migrant workers.

1.3 Operationalization of the Terms and Words

Migrant Workers - this Report has consistently used the terms 'migrant workers', rather than foreign labor migration or foreign employment. Article 2 (1) of the *UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990*, 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 a national.

However, the definition shall not apply to persons employed by a state outside of its territory to perform official functions or persons employed by international organizations/agencies; persons employed by a state in a development program; persons as investors in foreign land; refugees and stateless persons and students and trainees (Article 3).

Foreign employment – it is defined as 'employment which a worker gets abroad' (*Foreign Employment Act 2007*).

Legal or documented migrant workers – they are defined as the workers who went abroad by taking labor permit from Government of Nepal and are in the legal status in the destination country (whose visa period has not been expired or removed).

Irregular or undocumented migrant workers – they are defined as those who went abroad for work without taking labor permit, using illegal channels or they are in the state of illegal status in the destination country due to the expiry of their visa period.

Nepali Diplomatic Missions at aboard – they are defined as the Nepali Embassies and Consulate General Offices. One Mission may be entitled to look after more than one country of destination.

Local Levels – In this Report, Local Levels have been interchangeably used with the Local Government. Local Levels comprises of both the Rural Municipality and Municipality.

1.4 Methodology

The Report has been prepared by generating information/data from the different sources and using different tools of information/data collection. Information was triangulated from different sources.

1.4.1 Primary Sources

1. **Consultation meetings** - A series of consultation meetings were held in NHRC office with the concerned Government Officials and civil society organizations during the years of 2020 and 2021. The Government stakeholders to which consultation meetings conducted were officials from Ministry of Labor, Employment, Social Security (MOLESS), Department of Foreign Employment (DOFE), Foreign Employment Board (FEB), Foreign Employment Tribunal (FET), Ministry of Foreign Affairs (MOFA), Department of Consular Service, Nepal Police and Department of Immigration. Separate consultation meetings were also held among the migration network NGOs, especially with development partner organizations like ILO, IOM, UNFIM and UNDP.
2. **Research team attendance in virtual meeting and interaction program** - The Report writing team has also participated in the different virtual meetings conducted by different NGOs and migration forums during 2020 and 2021.
3. **Questionnaire administration** – NHRC has administered questionnaire to
 - i. *District Administration Offices (DAO)* – questions related to foreign employment according to the 5th amendment of *Foreign Employment Regulation 2008* such as number of complaint handled, reconciliation, compensation and cases forwarded to DOFE were asked.
 - ii. *Local Levels* – questions related to data management, migrant welfare policy and program according to the provisions of *Local Government Operation Act 2018* were asked.
 - iii. *Nepali Diplomatic Missions at Aboard* (through Ministry of Foreign Affairs) – questions related to rescue, repatriation, operation of safe houses, migrant workers in prison or

policy custody, missing, free legal defense including the Mission's migrant workers' rights and welfare programs and budget were asked

- iv. *Nepal Police* – questions related to number of complaints handled, migrant smuggling cases, trafficking cases and linkage between foreign employment and smuggling were asked
- v. *Ministry of Labor, Employment, Social Security (MOLESS)* – questions related to policy, legal reforms, international cooperation and conduction of BLA, MOU including about the women domestic workers and appointment of Labor Attaché, Consular (Labor) during this Report writing reference periods (FY 2019/20-2021/22) was asked.

Note that NHRC sent the questions in a letter head of the NHRC and they were followed-up frequently. For data from CDO and Local Levels, Province Offices of NHRC collected information and they forwarded to the Central Office of NHRC. While for collection of data from Nepal Police, MOLESS, Diplomatic Mission Abroad, NHRC central office made directly correspondence to them. Data were requested from *Palika* of Sudurpaschim Province, Gandaki Province, Bagmati Province and Province 1.

Overall 22 DAOs responded the questions. There were 9 from Gandaki Province, one from Sudurpaschim Province, 7 from Province 1 and 5 from Bagmati Province. In terms of the number of CDOs, the sample size, which is nearly 29 percent of the total CDOs in Nepal, appears to be sufficient to identify the extent of foreign employment related cases handled by the CDOs in Nepal. Nevertheless, this Report could not generate data handled by CDOs of districts with high magnitude of foreign employment such as mainly from Madesh Pradesh and Lumbini Pradesh, and we make a caution to readers of generalization of cases handled by CDOs based on this sample size.

In our sample, altogether 11 Local Levels (7 from Gandaki Province and 4 from Province 1) have been covered. Thus, in terms of number, this sample size is very low, as there are total 753 Local Levels in Nepal. However, the responses by these 11 Local Levels may be taken as indication of how the Local Levels in Nepal have internalized the agenda of rights of migrant workers and how they are responding the situation. Note that it is reported that in every Local Level, they have established a separate Labor Information Center.

Altogether 28 Nepali Diplomatic Missions⁴ responded to National Human Rights Commission regarding the questions of activities that they have carried out for the protection and promotion of rights of migrant workers including information about the death, injury, imprisonment of migrant workers. In terms of the sample size of the Missions, it is sufficient to understand how our Missions at abroad has been responding the situation. The sample also covers the some major destination countries of Nepali workers, namely Saudi Arabia (Jeddah), Qatar, Kuwait, Malaysia and South Korea including many emerging countries of destination in Africa, East Asia and Europe. Despite this, this sample did not cover data from other major destination countries such as UAE, Oman and Bahrain in Gulf countries and information may not be generalized widely.

Box 1.1 summarizes the number of Diplomatic Missions, number of CDOs and number Local Levels from which information was obtained.

1 Department of Consular Service, Ministry of Foreign Affairs (MOFA) compiled data from these Missions and sent collectively to NHRC.

Box 1.1 Name list of Nepali Diplomatic Missions, Chief District Offices (CDOs) and Local Levels from which data/information obtained, 2021

Nepali Diplomatic Missions	CDO offices	Local Levels
1. Nepali Embassy, Brasilia, Brazil	1. Sunsari	1. Damak Municipality, Jhapa
2. Nepali Consulate General, New York	2. Illam	2. Gauradaha Municipality, Jhapa
3. Nepali Embassy, Manama, Bahrain	3. Panchathar	3. Jahada Rural Municipality, Morang
4. Nepali Embassy, Yangon, Myanmar	4. Sankhuwasava	4. Dhaknuta Municipality, Dhaknuta
5. Nepali Embassy, Copenhagen, Denmark	5. Taplejung	5. Vimad Municipality, Tanahu
6. Nepali Embassy, Colombo, Sri Lanka	6. Okhaldhunga	6. Sundar Bazar Municipality, Lamjung
7. Nepali Embassy, Seoul, South Korea	7. Khotang	7. Malika Rural Municipality, Myagdi
8. Nepali Embassy, Bangkok, Thailand	8. Dolakha	8. Chapakot Municipality, Syanja
9. Nepali Consulate General, Jeddah, Saudi Arabia	9. Makwanpur	9. Paiyau Rural Municipality, Parbat
10. Nepali Embassy, Tokyo, Japan	10. Kathmandu	10. Mangala Rural Municipality, Myagdi
11. Nepali Embassy, Canberra, Australia	11. Nuwakot	11. Aadhikhola Rural Municipality, Syanja
12. Nepali Embassy, Beijing, China	12. Lalitapur	
13. Nepali Embassy, Doha, Qatar	13. Syanja	
14. Nepali Embassy, Berlin, Germany	14. Tanahu	
15. Nepali Embassy, Geneva, Switzerland	15. Gorkha	
16. Nepali Embassy, London, UK	16. Lamjung	
17. Nepali Embassy, Kula Lumpur, Malaysia	17. Mustang	
18. Nepali Embassy, Paris, France	18. Parbat	
19. Nepali Embassy, Masco, Russia	19. Myagdi	
20. Nepali Consulate General, Hong Kong	20. Nawalparasi (East)	
21. Nepali Consulate General, Lhasa, Tibet-China	21. Kaski	
22. Nepali Embassy, Islamabad, Pakistan	22. Baitadi	
23. Nepali Embassy, Ottawa, Canada		
24. Nepali Embassy, Vienna, Austria		
25. Nepali Embassy, Kuwait City, Kuwait		
26. Nepali Embassy, Belgium		
27. Nepali Embassy, Washington DC, USA		
28. Nepali Embassy, Pretoria, South Africa		

- 4. Field visits and interview with selected stakeholders** - The Report preparation Team visited the Department of Employment, Foreign Employment Board, Ministry of Labor, Employment and Social Security and interviewed with the relevant officials in July 2022 and the updated information of FY 2021/22 have been obtained. In addition, the Team visited the two NGOs, namely, People Forum and PNCC and conducted the interaction with the staff in these NGOs and obtained information about how they are working with the migrant workers and how they perceive about the situation of the rights of migrant workers in Nepal. Altogether there were 21 participants in the interaction. Note that the interview was taken place separately in each office mentioned here (Please refer to the name list of the research participants, Annex 1.1).

1.4.2 Secondary Sources

- 1. Use of Annual Reports** – Annual Progress Reports of MOLESS, DOFE, FEB and FET for the last three fiscal years have been reviewed and data have been extracted. Moreover, Annual Reports of Supreme Court has been reviewed for adjudication cases related to foreign employment.
- 2. Review of policies and legal measures** – Legal measures and recent amendment in Acts related to regulation of foreign employment, rights to information, data protection including several Directives and Guidelines for rescue, repatriation and reintegration of the migrant workers brought by the MOLESS has been critically reviewed and an attempt has been made to examine their effectiveness in promotion of the rights of migrant workers.
- 3. Use of scholarly work** – Both scholarly work by the Nepali scholars and foreigners have been reviewed. Attention has been given to review of recent work not exceeding 10 years back to understand the current situation. The scholarly work reviewed mainly comprised of peer reviewed journal articles and research reports. Attention has been paid to incorporate the recent work conducted by the core migrant rights organizations such as ILO, IOM, Amnesty International, GCM body and research based organizations in Nepal. Further, this Report has extensively used the data and findings from Blitz Media Private Limited and Humanity United (2022) Report. They have conducted a scientific survey among 4,046 returnee migrants from all 7 provinces covering 21 districts of Nepal. From each Province districts were selected based on the magnitude of foreign employment (high labor migration, medium Labor migrants and low migration). The eligible criteria of the respondents were that they should first go to Gulf countries and Malaysia for employment and returned to Nepal for at least 18 months ago, the first foreign labor migration should happen within 10 years. The study only included to those who had gone via institutional basis. The field work was conducted in between February and April, 2021. In their sample, there were 1699 returnee migrants from Malaysia, 961 from Qatar, 708 from Saudi Arabia, 456 from the UAE, 165 from Kuwait, 32 from Bahrain and 25 from Oman.
- 4. Use of NHRC information** – NHRC past research, press release reports and recommendations provided to Government of Nepal have been reviewed.

5. **Use of raw data from NGOs/GOs of victims and distress migrant workers** – Data of the distress migrant workers and victims compiled by some leading NGOs like AMKAS Nepal, PNCC, People Forum have been obtained for the last three fiscal years (FY 2018/19-2021/22) and they were analyzed in the relevant place in the Report. Further, dataset were obtained from FEMIS about the number of Nepali workers arrivals in FY 2020/21.
6. **Use of websites** - Several websites of Nepali Diplomatic Missions at aboard, MOLESS, DOFE, FEB, MOFA, NPC, UN agencies including the civil society organizations working migrant rights have been widely reviewed and used.
7. **Use of popular sources** –While preparing this Report, news, views related to migrant workers including the narratives of migrant workers as reported by journalists in the leading daily newspapers during 2019-2021 have been used. These newspapers reviewed include Kantipur Daily, Annapurna Post, Rajdhani, Naya Patrika, the Kathmandu Post and Himalaya Times including some social media. The report writing team also closely watched the debate conducted on foreign employment by Kantipur Media Group on 29 December 2021 to reflect on the expert ideas and views on the emerging issues on foreign employment in Nepal.

1.4.3 Triangulation of Data and Analysis

An attempt has been made to use the standards sources of data – whether it is scholarly or popular sources. Triangulation of data has been done whenever it is essential – both secondary and primary sources of data has been simultaneously used in the Report. Quantitative data obtained from different research Reports, Annual Progress Reports or from raw data has been analyzed by using simple percentage distribution and displayed in graphs as well. An attempt has been made to analyze the data for at least 3 to 5 years so that any fluctuations can be normalized when generalizing the data. While writing the Report, an attempt has been made to avoid the bias and discriminatory expressions. Further, to maintain the privacy of the victims, the name and in some cases the locations of the victims have not been mentioned in this Report.

1.4.4 Inclusion and Exclusion Criteria

This Report excludes the international migrants such as those DV/PR migrants, dependent migrants, student migrants. It includes only the Nepali migrant workers beyond India. Note that the labor migrants to India has not been included in this Report because NHRC has been studying separately about the human rights situation of Nepali laborers to India, and the Report of this study is expected to public by the end of December 2022.

1.4.5 Reference Period of this Report

This Report mainly covers the migrant workers' rights issues emerged during the Fiscal Year 2019/20, 2020/21 and 2021/22. However, when it is necessary to substantiate the evidences, the Report has built on the previous experiences and findings as well.

1.5 Organization of Report

This Report is structured in Eight Chapters. **Chapter 1** sets the context, objective, rationale and methodology adopted to prepare this Report. **Chapter 2** provides an overview of migration for foreign employment focusing on size, patterns and processes. **Chapter 3** summarizes the access to justice to migrant workers with special reference to prevailing practices of complaint handling mechanism, number of complaints cases and cases decided by the courts and barriers to justice. **Chapter 4** reviews the rescue, immediate response after the COVID-19 crisis and return process and assesses how far the rights of the migrant workers have been ensured in these processes. This chapter also discusses remittance inflow to Nepal and share of remittances inflowing to Nepal from the major destination countries, aiming to show how far the return process can be sustainable to the migrant workers. **Chapter 5** assesses status of migrant women and children of migration. The aim here is to analyze the migration from gender perspective. **Chapter 6** evaluates the status of rights of health of migrant workers including the analysis of death cases and government spending in health of migrant workers. **Chapter 7** assesses the rights of information, database system and research and monitoring and migration governance. The **Final Chapter** draws the conclusions and recommendations.

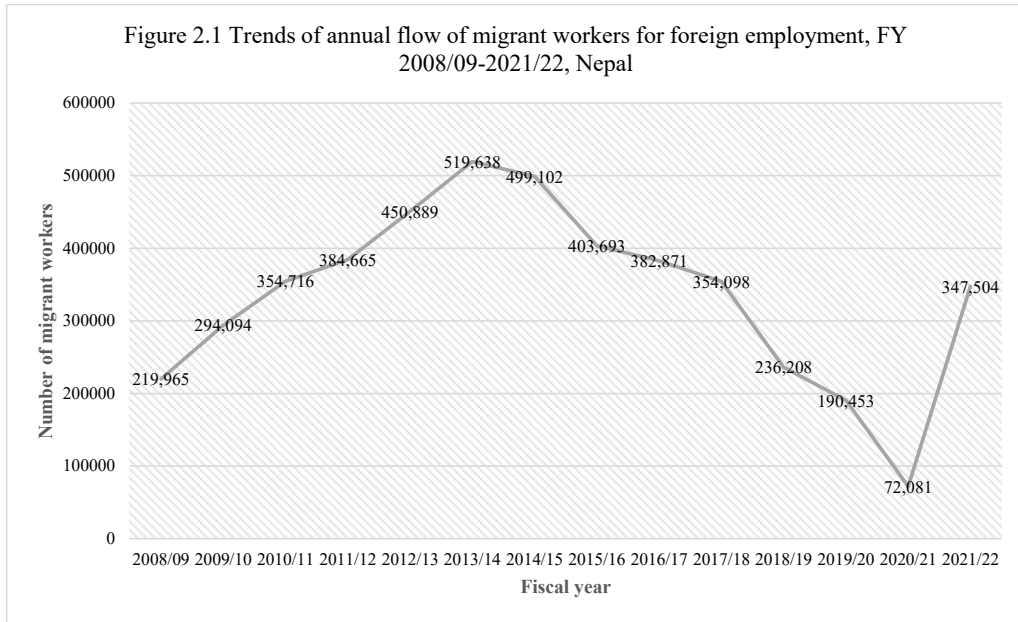
Chapter 2

Overview of Migration for Foreign Employment in Nepal

This Chapter analyzes migration for foreign employment especially focusing on the last 10 years and also discusses the recruitment processes how far they have become fair and ethical ones that addresses the issues of deception, fraud, smuggling, trafficking and exploitation in relation to migration for foreign employment.

2.1 Number Matters

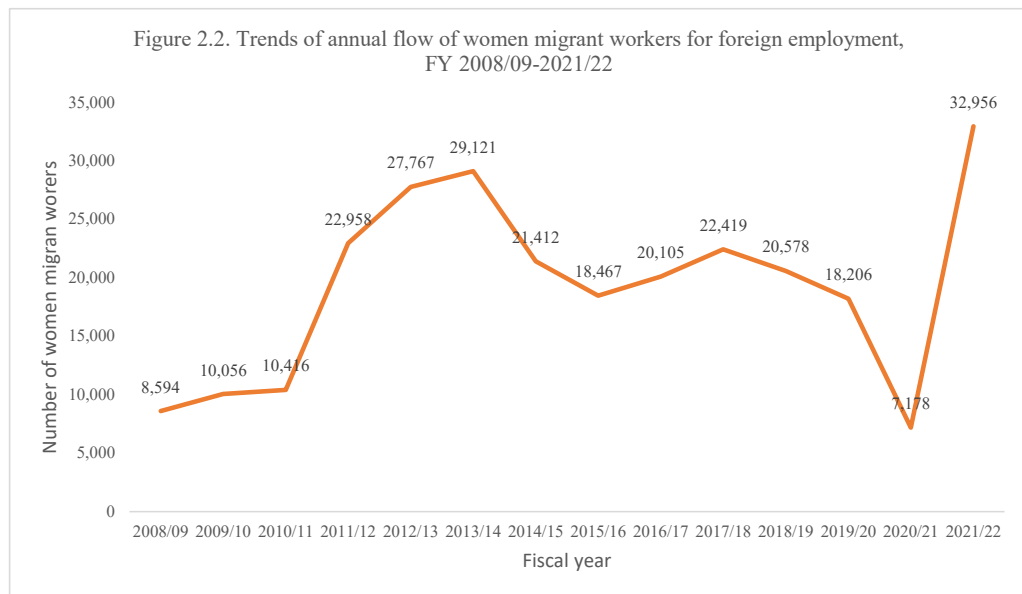
Migration for foreign employment in Nepal has become a human rights agenda because of accelerating migration of Nepali youths to wide range of destination countries. The migration initiated especially from the early 1990s when the country entered into the liberal economic policy. As we have summarized in Figure 2.1 that the annual number of migrant workers increased in the decade of 2000s and early 2010s and it steadily declined. In the year of 2019/20 and 2020/21, there was a sharp decline in migrant workers due to the effect of COVID-19. When one compares the number of migrant workers vis-à-vis to total population of Nepal and of economically active population, the share of migrant workers reached to nearly 2 percent in FY 2013/14 and nearly 3.5 percent of the economically active population (15-64 years). In FY 2021/22, the number of migrant workers reached to 347,504 – which accounted for 1.2 percent of the population of Nepal in 2021.



Source: MOLESS (2020) and DOFE (Power point presentation in 15 July 2022 by Director General (DG) of DOFE).

Because of COVID-19 pandemic and its consequential lock-down in Nepal and many destination countries, the flow of migration was almost stopped during March and September 2020. At beginning of 2021, COVID-19 resurged in Nepal and many destination countries again stopped the migration. Once the COVID-19 infection declined in the destination countries by June or July 2021, many destination countries again resumed recruiting of migrant workers and gave permission to return to those who were on leave. The permission was given with the mandatory provisions of 14 days quarantine, compulsory vaccination and PCR test certificates. These all provisions made migrant workers as costly, difficult to manage because of not availability of COVID-19 vaccination, many potential migrant workers could not manage to go for employment. The details of the COVID-19 effects on migrant workers has been discussed in Chapter 4.

By eyeing the migrant workers by sex, migration for foreign employment has been sex selective phenomenon in Nepal although the share of women migrant workers has almost increased by three times from 4 percent in 2008/09 to 11 percent in 2021/22. Numerically, women migrant workers have increased to more than 29,000 in FY 2013/14 from merely less than 9,000 in FY 2008/09 and it declined to as low as 7178 in 2020/21 and again increased to 32,956 in FY 2021/22 (Figure 2.2). While the male migration has been the ten-folds of women migration over the years. The male migration increased from 211,371 in FY 2008/09 to 314,548 in FY 2021/22 (not shown in Figure).



Source: MOLESS (2020) and DOFE (2022) (Power point presentation in 15 July 2022 by DG of DOFE).

Annual Stock of Migrant Workers

In addition to the annual flow by taking the new labor permits, migrant workers also receive the re-labor permit each year. The labor re-permits can be provided by the concerned Nepali Embassy at abroad and by the Department of Foreign Employment in Nepal if the workers have come to Nepal on leave. By adding the new labor permits and re-approval permits one can have an annual stock

of Nepali migrant workers in different destination countries. As presented in Table 2.1, during the last five-years (FY 2017/18-2021/22), the average annual stock of migrant workers comes out to be 457,029. However, the total annual stock of migrant workers was very low in FY 2020/21 – that is, just 166,698 – the year mostly affected by the COVID-19 while comparable figure was 628,503 in FY 2021/22. Of the total annual stock of migrant workers, on the average, 52.5 percent received the new labor permits while rest 47.5 percent have received the re-labor permits. By considering the sex of the migrant workers, it is found that two-thirds of women migrant workers received the new labor permit against about 52 percent for the male migrant workers.

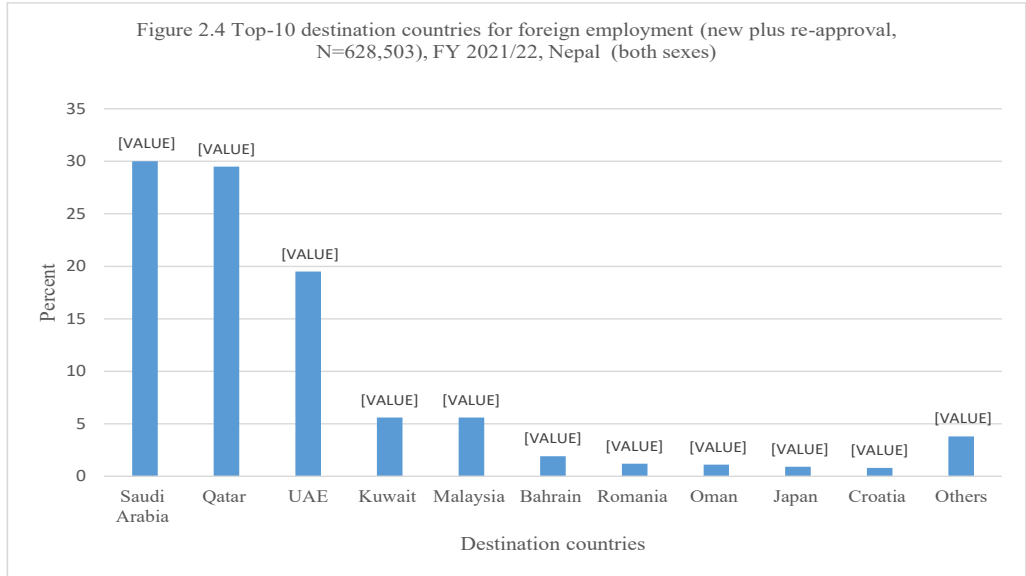
Table 2.1 Distribution of migrant workers for foreign employment by types of labor permits, FY 2017-18-2021/22

FY	New labor approvals			Re-labor approvals			Total labor permits		
	Male	Female	Total	Male	Female	Total	Male	Female	Total
2017/18	331,665	22,417	354,082	248,056	10,547	258,603	579,721	32,964	612,685
2018/19	215,633	20,578	236,211	261,072	11,545	272,617	476,705	32,123	508,828
2019/20	172,247	18,206	190,453	167,753	10,227	177,980	340,000	28,433	368,433
2020/21	64,903	7,178	72,089	90,339	4,278	94,609	155,242	11,456	166,698
2021/22	314,548	32,956	347,504	264,980	16,019	280,999	579,528	48,975	628,503
Five-yearly average	219,799	20,267	240,068	206,440	10,523	216,962	426,239	30,790	457,029
Percent									
2017/18	57.2	68.0	57.8	42.8	32.0	42.2	100.0	100.0	100.0
2018/19	45.2	64.1	46.4	54.8	35.9	53.6	100.0	100.0	100.0
2019/20	50.7	64.0	51.7	49.3	36.0	48.3	100.0	100.0	100.0
2020/21	41.8	62.7	43.2	58.2	37.3	56.8	100.0	100.0	100.0
2021/22	54.3	67.3	55.3	45.7	32.7	44.7	100.0	100.0	100.0
Five-yearly average	51.6	65.8	52.5	48.4	34.2	47.5	100.0	100.0	100.0

Source: DOFE (2022) (Power point presentation in 15 July 2022 by DG of DOFE).

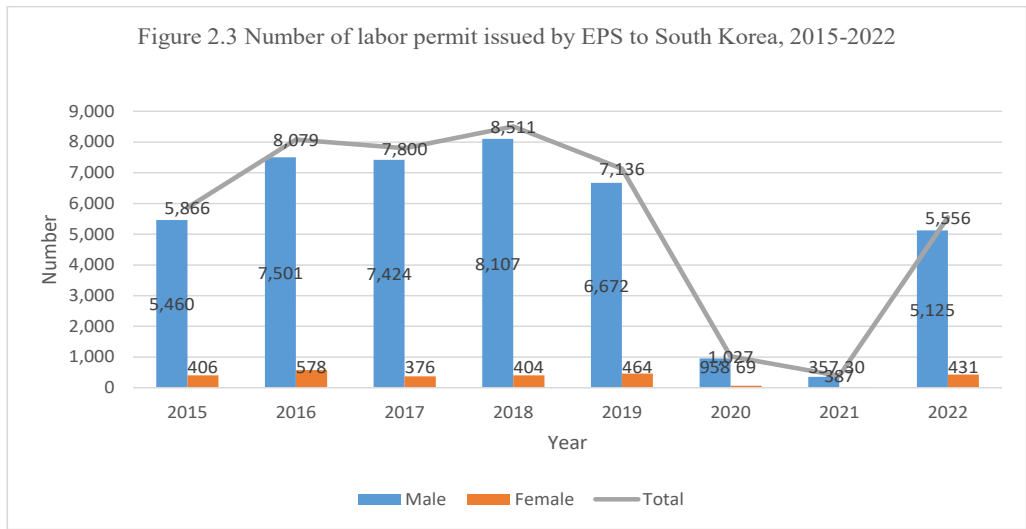
Top-10 Destination Countries

Considering all migrant workers (new plus re-approvals), the top-10 countries mainly comprises of six GCC countries (Saudi Arabia, Qatar, UAE, Kuwait, Bahrain and Oman), two Europe countries (Romania and Croatia) and two Asian countries (Malaysia and Japan). Data reveal that nearly 80 percent of the migrant workers have bound to only in three countries: Saudi Arabia, Qatar and UAE. The proportion of migrant workers destined outside of the GCC countries and in relatively in high paid countries such as Japan is only 1 percent (Figure 2.4).



Source: DOFE (2022) (Power point presentation in 15 July 2022 by DG of DOFE).

South Korea is one of the attractive countries of destination of Nepali migrant workers in term of income and benefit of the workers. Unlike in GCC and Malaysia, Nepali citizens have been recruiting in South Korea through Employment Permit System (EPS) since 2004. Nepal initiated sending workers to South Korea since 1994 but for simplicity, we have here shown data since 2015. As figure 2.3 shows that the number of total migrant workers has increased from 5866 in 2015 to 8511 in 2018 and it again declined as low as 387 in 2021 and it again raised to 5556 in 2022. Among those getting labor permit to South Korea, female share is very insignificant – there are only 5 to 8 females per 100 males in each year considered here.



Source: MOLESS (2020) and DOFE (2022) and data for the 2022 refers to till July.

Israel Employment

The Nepali workers sending agreement was done between Government of Nepal and Government of Israel on 30 September 2020². The initial demand was 1,000 Nepali workers. A notice was published to recruit the workers on 17 July 2021 and a total of 9,699 applications were received in the DOFE and 1,600 were selected for the interviews (1120 females and 480 males). However, after the health check-up, only 1,147 were selected. By June 2022, 297 workers have been sent to Israel while 835 are said to be in the process of going to Israel.

2.2 Assessing the Irregularities in Recruitment Process

Recruitment process involves preparation of a range of travel documents including passport, labor approval letter from the Foreign Employment Office, agreement/contract letter between company and worker and between recruiting agency and worker, air-ticket, receipt of money paid, medical test certificate from the authorized medical facilities, education and skill development certificate from the authorized training institution, certificate of orientation training and mandatory pre-departure two-days training, police report, visa and insurance document. For preparation of these documents require much efforts, much exposure to outward world and resources and time. The more the potential migrant worker fails to understand the recruitment process, the more he/she is likely to be deceived and cheated and they are also likely to be trafficked or smuggled. In addition, the Government involves other formal recruitment practices such as how to send the worker, age-ban, recruitment cost, pre-departure training and other mandatory training for which a potential migrant worker must be aware on them for the safe migration process.

Excluding EPS to South Korea, workers for foreign employment in other destination countries can go through two procedures: i) through recruiting agency and ii) through individual basis. The former refers that workers are recruited by recruiting agencies licensed by the Government of Nepal while the latter refers to the fact that an individual can go by submitting the required documents to the Department of Foreign Employment.

By mid-March 2021, the Government of Nepal has opened 110 countries for foreign employment on institutional basis and 178 countries in personal initiatives. Table 2.2 summarizes the share of workers going for foreign employment by recruiting agency and individual basis for the five-year period (2015/16-2019/20). The share of those going abroad via recruiting agency is persistently high over the years though the share of migrant workers going abroad on the individual basis has been increasing. For example, the share of migrant workers going abroad has remained more than 87% in FY 2019/20 and it is 13% in case of those going via individual basis. The increasing share of migrant workers going through individual basis may suggest that there has been an increase in migration network, that is, family members or relatives may work as the migration network. In addition, in the present context of emergent of Internet and digital technology, an individual can have access to job across the globe and can apply individually. This is also confirmed by the fact that the Internet penetration has widely increased in Nepal for the last half a decade. In January 2021,

2 Department of Foreign Employment (Power-point presentation in 15 July 2022 by the DG of the Department).

10.78 million out of nearly 30 million population or more than one-thirds of Nepalese population has access to Internet facility in Nepal (<https://datareportal.com/reports/digital-2021-nepal>, accessed on 11 December, 2021).

Table 2.2 Mode of obtaining labor approval, FY 2015/16-2019/20 (in % of total)

Year	Recruiting agency	Individual	Number of MWs
2015/16	90.9	9.1	403,693
2016/17	92.4	7.6	382,871
2017/18	91.5	8.5	354,098
2018/19	88.2	11.8	236,208
2019/20	87.4	12.6	190,453

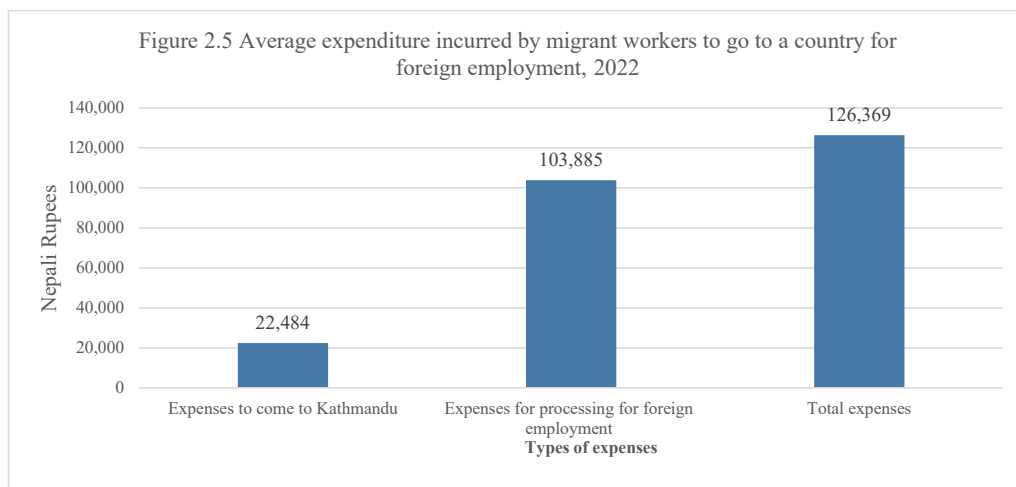
Source: MOLESS (2020).

Age criteria for recruitment – According to the *Foreign Employment Act 2064* (2007), minors under 18 years of age are not allowed to send for foreign employment. And, *the Directive of Domestic Workers for Foreign Employment 2072* (2015) prohibits women who has not attained 24 years migrating to GCC countries for domestic work.

Recruitment cost and average expenditure for foreign employment– Nepal introduced 'free visa' and 'free ticket' policy in 2015. This provision has been implemented for seven major destination countries of workers: Saudi Arabia, Kuwait, UAE, Qatar, Oman, Bahrain and Malaysia. This provision implies that the employers are required to bear the cost of the visa and air ticket. Currently, the government has fixed the minimum cost as Rs. 10,000 for going to GCC countries and Malaysia. The aim of the policy was to shift the financial cost associated with recruitment from the workers to the employers – the Employer Pay Principle. However, studies like NHRC (2020) including Gulf Visit Report of Parliamentary Committee and NHRC in 2020 showed that there was gross shortcoming in the implementation of the policy. Migrants are forced to pay a huge amount of money to the recruitment agencies and they are not given the receipt of the money they have paid more than Rs. 10,000. This is because it is illegal act. When dispute arises between the migrant workers and the recruitment agency to which they have paid the money, the workers are not able to show the receipt of the money they have actually paid to the recruitment agency and thereby the case becomes weak.

Despite the employer pay principle for recruitment cost of workers, a recent survey of the returnee migrant workers revealed that the average expenses for processing for foreign employment is at least 10 times higher of the Government prescribed minimum Rs. 10,000. In Blitz Media Private Limited and Humanity United (2022) survey of 3,708 returnee migrant workers, the average expenses for processing for foreign employment was estimated to be Rs. 103,885 and the average expenses to come to Kathmandu was Rs. 22,484 – thus, altogether a migrant worker had spent altogether Rs. 126,369 to go to a Gulf nation or Malaysia for foreign employment (Figure 2.5). The total expenditure, however, vary significantly by Province of Nepal. It is the migrant workers from the Sudurpaschim and Karnali Provinces – the Provinces that are relatively far from the capital

city of Nepal and relatively in remote area that they had incur far higher expenses than that of the national average. Migrant workers from Sudurpaschim Province and Karnali Province, for example, spent money by 23.5 percent and 17 percent higher than that of the national average for preparation and departure of a foreign country. Thus, at least at the Province level, it can be inferred that the cost for foreign employment is much higher among those already in poverty situation or those who are residing inaccessible areas of Nepal.



Source: Blitz Media Private Limited and Humanity United (2022).

Pre-departure orientation training – this is the mandatory orientation training of 10 hours for men and 11 hours for women before departure to foreign employment as per the *Foreign Employment Orientation Training Guideline 2001*. The major contents of training comprise of foreign employment laws, the geography, culture, and language of the destination country, immigration laws, occupational health and safety, easy and safe travel, security of the workers and sending of the remittance safely. At the beginning, there were eight orientation institutions registered while by mid-2022, there were 116 licensed orientation institutions (42 are located out the Kathmandu valley). Recently, the MOLESS has made provision of mandatory digital attendance of trainees of 4 times in 2 days of training. Nevertheless, there have been irregularities that submitting the fake signature of the trainees without real attendance, not all orientation institutions equipping with CCTV and having power back-up and spread of orientation institutions making it difficult to closely monitor by the MOLESS. Bhattarai (2075 BS) argued there is a need of revision in pre-departure training module considering the emergent issues such as human trafficking and smuggling and health problems. The module should include field visits, and practical sessions including use of Internet, email, digital-social media like Viber, Messengers. The orientation class can be conducted separately for every destination country or clustering the country of destination.

Payment process, receive of contract paper and waiting time - Studies reveal that workers are deceived during the process of sending them to foreign employment. The survey of returnee migrant workers by Blitz Media Private Limited and Humanity United (2022) indicated that three fourth of the returnee migrant workers did not receive any payment receipts (Table 2.4). Workers are

more likely to be deceived due to the fact that they cannot receive the contract paper long before they go to a country. They cannot verify their contract paper with their friends or knowledgeable persons whether they have gotten the work, remuneration and other benefits as orally said by the recruiting agencies/agents in Nepal. Nearly half (47%) of the returnee migrants reported that they have received the contract paper 1-2 hours before their departure to a foreign country, 15 percent received at the airport and 10.5 percent in the destination country, and it is only 1.5 percent of the returnee migrants who reported that they had received the contract paper one day before their departure.

Table 2.4 Payment process, receive of contract paper, waiting time to fly for foreign employment in a Gulf nation or Malaysia

Whether received the payment receipt?	Number	Percent
Yes	982	25.0
No	3064	75.0
When did you receive the contract?		
During the process	1048	26.3
1-2 hours before the departure	1857	46.6
At the airport	605	15.2
In the destination country	419	10.5
One day before the departure	58	1.5
Waiting time to fly for foreign employment after handing the passport to recruiting agency		
<1 month	951	23.5
1-6 months	2606	64.4
7-12 months	358	8.8
>year	131	3.2
Total	4046	100.0

Source: Blitz Media Private Limited and Humanity United (2022).

Data reveal that the waiting time to fly to a country for foreign employment after handover the passport and cash to a recruiting agency appears to be unusually high in Nepal given the today's context of rapid communication and online registration of job application and verification of labor demand for employment introduced by the Foreign Employment Department. There are only 23.5 percent of the returnee migrants who reported that it was less than one month and majority (64%) had to wait one to six months to fly for foreign employment. Further, 12 percent of the returnee migrants reported that they had to wait for more than six months. Note that the longer the waiting time to fly for foreign employment after the handing of passport and cash as recruitment fee to a recruiting agency, the more the workers would be psychologically distress and obviously the more expenditure they would have to incur as accommodation, food and travel cost in coming to Kathmandu or staying in Kathmandu.

Domestic worker orientation skill development – Women migrating to GCC countries, Malaysia for domestic work have to take 30 day skill development training. This is the mandatory provision for women going for domestic work (this is dealt in detail in Chapter 5).

Migrant Worker's contribution to the Foreign Employment Welfare Fund and Insurance

– Each worker going to abroad for work is required to contribute to Rs. 1500 for a 3-year term and Rs. 2500 for exceeding 3-year term to the Foreign Employment Welfare Fund. The purpose of establishing the Fund is to provide the social security and welfare of the migrant workers, returnee migrant workers and families of migrant workers. If a migrant worker dies during the contract period, the Fund may provide compensation of Rs. 700,000 to the heirs of the deceased and if the worker becomes seriously ill, the Fund may provide up to Rs. 700,000 for treatment (Please refer to Chapter 7 for implementation status of the insurance scheme).

Recruiting agencies and competition – As of mid-March 2021, 858 recruiting agencies have received license to send workers in 110 countries for foreign employment. Of these licensed agencies, it was reported that 818 were active while 40 were inactive (Ministry of Finance, 2021). High competition among the recruiting agencies to send the workers in some countries while it is not the case in other countries. For example, there is high competition to send the workers especially to GCC countries as there are 747 recruiting agencies to send workers in Qatar; 497 in UAE; 432 in Saudi Arabia; 310 in Malaysia; 180 in Bahrain; 178 in Kuwait; 95 in Oman. On the other hand, there is one recruiting agency for each country in case of sending workers to China, Sri Lanka, Lebanon, Brunei, Czech Republic, Hong Kong and Israel. There are 2-5 recruiting agencies for sending workers in Panama, Algeria, Afghanistan, Russia, Mauritius, Maldives and Macau (ILO, 2017).

Recruiting agencies and irregularities – One ILO (2017) study exposed the fact that there are irregularities involved in the recruitment process of migrant workers in Nepal³. According to the finding of the study, the recruiting agencies in Nepal generate profit from mainly three sources: I) recruitment fees charged to their recruits for placement of at least Rs. 20,000 to Rs. 40,000 per worker and even more depending on destination country; ii) commission paid by employers and placement agencies to recruit the per worker and iii) through operation of associated business such as travel agencies, pre-departure training centers and medical centers.

On the other hand, the former Chairperson of Foreign Employment Professional Organization, Mr. Roshan Gurung in an interaction program held by Kantipur Media Group on 29 December 2021 argued that

Recruiting agencies must not be viewed as agencies of human smuggling or cheaters to the migrant workers, but rather they must be viewed as employment generating agencies in the country. In the context where there are few jobs available within the country, the recruiting agencies have worked hard to search job across the global, contact the employers abroad and create the demand of Nepalese workers. He claimed that the recruiting agencies/professionals have not involved in any irregularities and migrant smuggling although there may be some wrongdoings due to high competition. He challenged that one can monitor the situation.

3 The ILO study analyzes the recruitment practices in Nepal, Paraguay and Kenya in comparative perspective. In case of Nepal, the study generated information by interviewing 30 recruiters (owners and registered agents), 6 migrant workers and 7 government, trade unions and civil society stakeholders.

The Director General of DOFE – Mr. Deepak Kafle informed in the same program that the Department has been introducing QR code of migrant workers and the 'free visa and free ticket' provision is being re-evaluated – whether it to be continued or discontinued. In the same program, the former Ambassador of Malaysia, Mr. Udaya Raj Pandey suggested charging of recruitment fee equivalent to one-month salary to migrant worker. This provision, according to him, would reduce the exploitation of workers and unnecessary extraction of money from the workers by the recruiting agencies without giving them any evidence of receipt of money.

Involvement of brokers – The Government of Nepal outlawed the broker system through the amendment of *Foreign Employment Act 2064* (2007) in 2018. However, this practice is still practiced clandestinely. Before the amendment, the brokers used to receive income from two main sources: I) recruitment fees charged to migrants; and ii) commissions from recruitment agencies based in Kathmandu. In the study of ILO study (2017), the broker could earn from Rs. 30,000 to Rs. 50,000 and some even earn between Rs. 100,000 and Rs. 150,000 monthly.

In an interaction program held in NHRC office on 23 February 2020, the then Director General of Department of Foreign Employment (Mr. Deepak Kafle) viewed that at least 20 to 25 percent of workers are forced to work in different jobs than they are originally agreed on in Nepal. He says,

The Government is taking foreign employment services by outsourcing to the private sectors. There are six types of such sectors: the recruiting agencies, the insurance companies, the medical facilities, the financial institutions, the orientation centers and the skill development centers all have to bring under the monitoring given the records that they tend to exploit the migrant workers in one way and another way. The free visa and free ticket system in which the recruiting agencies can only legally take up to Rs. 10,000 per worker has been 99% failure because workers are forced to pay up to Rs. 95,000 to go to GCC countries.

Remove the Provision of Renew of a Recruiting Agency – During the first wave of COVID-19, the MOLESS removed the provision that any recruiting agency not sending at least 100 workers annually abroad shall not be renewed. This provision was introduced in the late 2018 assuming that the agencies sending workers in a small number are liable to overcharge the aspiring migrant workers, for they cannot survive on the legitimate fees. According to the notice by the MOLESS published in the *Rajpatra* (Gazette), this provision was adopted in the event of COVID-19 crisis where recruiting agencies have not been able to run their business due to lock- down and banning of the flights. Some rights activists suspect that the removal of this provision may increase the irregularities of cheating the migrant workers and the newly appointed Minister of MOLESS, who joined the Government in November 2020, has been accused of working in favor of recruiting agencies rather than to the workers⁴.

4 Online Khabar, <https://english.onlinekhabar.com/govt-prepares-to-amend-foreign-employment-law-favouring-recruitment-agents.html> (accessed on 1 July 2021).

2.3 Nexus between Migration for Foreign Employment, Migrant Smuggling and Trafficking

Migration, migrant smuggling and trafficking are not the overlapping concepts. In case of migration for foreign employment, there must be voluntarily movement of people for work at abroad. While it is not the case for migrant smuggling and trafficking. Drawing on the Nepal's Police data of migrant smuggling and trafficking, it can be said that there is nexus between foreign employment and migrant smuggling and trafficking. Although Nepal's Police data⁵ do not allow one to examine purpose of trafficking such as sexual exploitation, labor exploitation, organ trafficking and others and it also does not specify the destination location/country of trafficking, majority of the cross-border trafficking cases can be said to have occurred due to deception of the victims for a good employment. Nepal's Police data shows that in the FY 2019/20, a total of 136 trafficking cases have been filed in Nepal Police while this number was only 14 in FY 2020/21 (Table 2.5). Given the past trends of the trafficking cases filed in the Nepal Police, the number of trafficking cases registered in FY 2020/21 was unusually low and if the data are true, one can reasonably infer the low cases due to COVID-19 pandemic and lock-down in the country. Overall, there were 478 trafficking victims recorded in fiscal years of 2019/20 and 2020/21. Among the victims, cross-border trafficking victims constitute 46 percent while the rest 54 percent were the internal trafficking victims. Both males and females were victims of trafficking yet nearly 96 percent were of females against only 4 percent for males. Similarly, child trafficking is also considerable given the fact that nearly 4 in 10 trafficking victims recorded in Nepal Police were children under 18 years.

Table 2.5 Number of trafficking cases and victims in the FY 2019/20 and 2020/21, Nepal

Fiscal year	Where?	Number of cases	Number of victims				Total
			Males	Females	Child	Adult	
2019/20	Cross-border	136	14	191	75	61	205 (42.9)
	Internal	NA	05	116	35	86	121 (25.3)
2020/21	Cross-border	14	1	15	7	8	16 (3.3)
	Internal	NA	1	135	58	78	136 (28.5)
	Total		21	457	175	233	478
	Row %		(4.4)	(95.6)	(36.6)	(48.7)	(100.0)

Note: NA refers to not maintained and figures in parentheses refers to the percentage of the total victims.

Source: Letter sent by Nepal Police Head Quarter to NHRC, 2021.

An inquiry was also made about the number of trafficking cases during the lock down period in Nepal due to the spread of COVID-19 pandemic and data have been summarized in Table 2.6 for the first four months of the first wave of the pandemic. Note that the Government of Nepal has imposed the countrywide lock-down to contain the corona virus from 24 March 2020 to 17 June 2020. During these nearly three months, 20 cases of trafficking were filed in Nepal Police and there were 29

⁵ On 1 September 2021, NHRC sent a letter to Nepal Police Headquarter, Human Trafficking and Investigation Bureau requesting to provide data on the human trafficking cases registered in Nepal Police. Nepal Police responded on 15 September, 2021 by providing disaggregated information about the human trafficking cases: number of cases, number of victims by sex, types of trafficking – cross border or internal, Province, caste ethnic groups and age groups of the victims.

victims in these cases. Data reveal that there were few cases field in the first month of lock-down and generally, the number of cases increased with the month passes by.

Table 2.6 Number of trafficking cases and victims during the first wave of COVID-19 and lockdown period, Nepal (March 24, 2020 – June 17, 2020)

Nepali calendar month	Number of cases	Number of victims				
		Male	Female	Child	Adult	Total
Chaitra, 2076	2	0	3	0	3	3
Baisaka, 2077	3	0	5	4	1	5
Jestha, 2077	4	0	8	5	3	8
Ashad, 2077	11	1	12	6	7	13
Total	20	1	28	15	14	29

Source: Letter sent by Nepal Police HQ to NHRC, 2021.

Nepal's Police data also suggests the emerging nature of trafficking and human smuggling in the context of foreign employment. There has been lot of changes in the mode of trafficking in persons (TIP) and human smuggling. Before few years back, the destination for TIP was mainly to India and it is mainly for the purpose of 'prostitution' while the nature of TIP has changed a lot now a days. Now not only women are victims but also men; not only to India as the destination of trafficking, but also across the several countries in the world and it is not only for the purpose of 'prostitution' but also for labor exploitation.

On the basis of the smuggling cases dealt by Human Trafficking and Investigation Bureau of Nepal Police in FY 2019/20 and FY 2020/21, the human smugglers use different routes to smuggle the migrants to different countries in the World. At least 13 countries have been reported as the destination countries of smuggling. The dichotomy of so called developed and developing countries or rich or poor countries almost vanishes in the phenomenon of migrant smuggling from Nepal. Migrant smuggling destination countries include not only to Europe, North America and Australia but also to Middle-East, Asia and Africa countries. Main routes to reach the destination country have been not the direct one but smuggler uses different indirect routes. For example, in one case, it was found that at least 12 countries were used by the smuggler to transport a migrant to USA and 11 countries in case of transporting to Canada. It is reported that the migrant smuggling is very risky travel as well as costly to the migrants. Migrant are made captive on the routes, and they are looted by the hooligans and they also risk of dying while being transported by a vehicle, crossing the dense forest or crossing the water, ocean using a small boat. It is also costly because some of the migrants smuggled to USA who were inquired by Police in Nepal reported that they have spent more than Rs. 5.5 million (equivalent to USD 45,800) to reach to USA.

Box 2.1 Main routes of trafficking and smuggling

	Destination country/city	Main routes used
1	Kuwait	Kathmandu-Kakarvitta-Silghuri-New Delhi- Colombo of Sri Lanka (victims abandoned)
2	Kurdistan Iraq	Nepal-Dubai- and different places of Iraq
3	Azerbaijan	Kathmandu-Dubai- Azerbaijan
4	Libya	Kathmandu-Dubai-Libya
5	America	Kathmandu-Dubai-Mesco-Italy-Boliviya-Peru-Equidor-Colombia-Panama-Costarica-Nikaraguwa-Hondorus-Mexcio- USA
6	Russia	Kathmandu-Dubai-Masco-Russia
7	Canada	Nepal-New Delhi-Singapore-Philippines-Papua New Guinea-Solomon Islands- Vanuatu-Solomon Islands- Fiji-Singapore-Dubai-Deportation in Nepal
8	Poland	Kathmandu-Malaysia-Cambodia-till Laos
9	Italy	Kathmandu-Dubai-Jordan-till Libya
10	Japan	Birgunj-New Delhi-Turkey- till Greece
11	Norway	Kathmandu-New Delhi-Mozambique-till South Africa
12	Australia	Kathmandu-Malaysia-till Indonesia
13	Portugal	Nepal-New Delhi-Malaysia-Morocco-Nigeria-till Niger

Source: Letter sent by Nepal Police HQ to NHRC, 2021.

Media⁶ reported that in 9 July 2018, seven Nepali people were missing in a boat crashed near Niccoli, a small town about 800 KM from the Colombian capital Bogota. According to the news, there were eight Nepali and 11 Bangladeshi in the boat – they were being illegally transported from Colombia to USA. Among the eight Nepali victims, Mr. Praksah of Myagdi district had returned to Nepal after undergoing treatment at a hospital in Colombia. These Nepali were transported by three agents and they had already spent at least Rs. 3 million. When enquired about the incident to the DSP of Anti-Human Trafficking Bureau, Mrs. Anjana Shrestha, she said that after few months of the boat crash, the man who returned to Nepal again reached to USA. She said that victims are reluctant to file the case against the smugglers and they do not come to Police to report the case. The DSP also suggested that there was need of Police Labor Attaché in each major destination countries of Nepali workers. This is because it is only the Police authority who can easily establish the relations to another country's Police authority because of their similar nature of jobs, and because of they are also linked through networks of Facebook, twitter and other social media. Whereas in Nepali Embassy to India, the SSP post has been created as a Police Attaché but nowhere in other countries, this provision has been introduced. She viewed that there must be Police Labor Attaché at least in the major transit routes such as Turkey and Dubai to immediately rescue the victims and bring the perpetrator into justice.

6 <https://english.nepalpage.com/2021/07/boat-accident-in-caribbean-sea-7-nepalis-missing/> (accessed on 21 August 2022).

According to the records maintained by the Human Trafficking and Investigation Bureau of Nepal Police, it is known that the major destination countries of trafficking are both the countries legally opened as well as those not opened ones. Other types of complaints include: i) trafficking to cities of India like New Delhi, Mumbai, for 'prostitution' by deceiving the women and children that they would be provided good employment; ii) internal trafficking related cases – trafficking to victims including under age children in entertainment industry of Kathmandu such as in dance bars, cabin, guest houses, restaurants and forced to involve them in 'prostitution' even by taking private flat or house rent and iii) complaints related to trafficking of persons for kidney removal – and brining the victims (male and female) to different cities of India by promising of sound money for kidney removed but they have not been paid the money originally agreed on in Nepal.

In an interaction program held in NHRC office on 23 February 2020, the In-Charge of Human Trafficking and Investigation Bureau of Nepal Police – Superintendent Police (SP) – said,

It is difficult to identify the truth from the victims; neither is it easy to separate the perpetrator from the victim. In one case, one woman was rescued from Kuwait that she had been reported the victim of trafficking. But when she landed in Nepal, she refused to file a complaint against the agent, but she responded that she came to Nepal because of feeling of love to her son. There are cases in which women are forced to remain in India for 6 to 12 months before they are sent to third country by the agents. And there is likelihood that they can be sexually exploited. Last year, five pregnant migrant women were rescued that they were sexually exploited.

In the same meeting, the Director General of Department of Foreign Employment said,

Nepalese youths have spread across the globe may be more than 110 countries and even in countries poorer than Nepal like Ghana, Malawi and others and there is tendency to go for foreign employment even by selling of land and paying the huge amount to the agent. When 'no objection letter' was required to fly from India to overseas to Nepali workers, the route to migrant smuggling has shifted to Bangladesh, North-East India and Myanmar. It is more paradox that the same person who has been deceived several times by the agents/smugglers has been found to be the victim of migrant smugglers.

2.4 Nature of Jobs, Skill Levels and Skill Learnt

Looking at the available data of migrant workers bound to foreign employment for the last five or six years, it is claimed that an overwhelmingly majority of Nepalese migrant workers are still engaged in low skills, general laborers jobs. Following the *ILO International Standards of Classification of Occupation (ISCO-08)* guideline (ILO, 2012), we have categorized the occupations of MWs by skill levels⁷ in Annex 2.1 drawing data from MOLESS Migration Report 2020. Examining the nature of

7 ILO has classified occupations into four skill levels. Skill Level 1 refers to the jobs that require simple and routine physical or manual work. Occupations in this skill levels are office cleaners, general laborers and domestic workers. Skill Level 2 refers to tasks such as operating and/or maintenance of machinery and electronic equipment. Some examples of

jobs in the data, almost all jobs can be classified under skill level 1 in every country. So we have categorized workers with skill levels 1 or 2 and workers skill level 3 or 4. Data demonstrates that the percentage of Nepali male MWs engaging in skill level 1 or 2 jobs ranges as high as 85 percent in Malaysia, 76 percent in Saudi Arabia, 71 percent in UAE, 73 percent in Oman and 67 percent in Qatar to as low as 43 percent in Kuwait. The comparable figure of WMWs in skill level 1 or 2 is very high in every country exceeding to 95 percent except in Bahrain (59%) and Kuwait (70%). Conversely, there are few MWs in higher skill levels jobs in destination countries. Although this holds true for both males and females, the share of females in higher skill levels, that is skills levels 3 or 4, is disproportionately lower vis-à-vis male workers across all the destination countries considered in Table 2.7.

Table 2.7 Percentage of Nepali MWs by occupation with skills levels, FY 2016/17

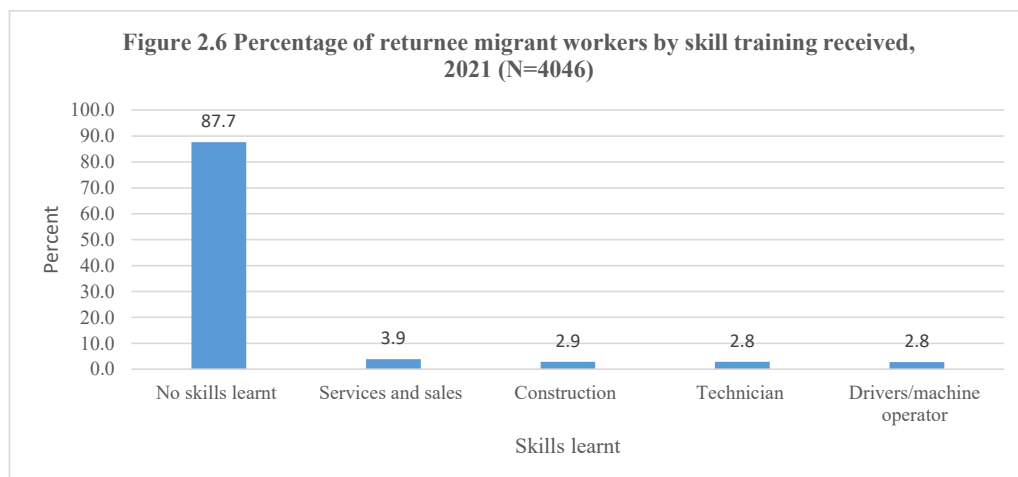
Country of destination	Males		Females	
	Skill Level 1 or 2	Other than Skill Level 3 or 4	Skill Level 1 or 2	Other than Skill Level 3 or 4
Malaysia	84.7	15.3	99.6	0.4
Qatar	67.1	32.8	95.1	4.9
Saudi Arabia	75.7	24.3	99.9	0.1
UAE	71.1	29.9	85.2	14.8
Kuwait	47.8	52.2	70.2	29.8
Bahrain	43.0	53.0	59.2	31.8
Oman	73.3	32.7	95.1	4.9

Source: Annex 2.1.

In term of occupations at the individual country, majority of workers in Malaysia (61%) were engaged as factory workers in production and manufacturing including glob making. Glob making industry has been reported to be exploitative and there also involves forced labor, low wages, not timely payment, no workplace security and abuse and violence as well. In Qatar, 68 percent workers were engaged in general labor (unspecified) and cleaning labor. In Saudi Arabia, majority of workers were in general labor and cleaning labor (67%) while rest in driver, restaurant and hotel worker construction sector, factory labor, mason, electrician and carpenter. In UAE, majority were in general cleaning labor and general labor (73%) and security guard (10.5%) while a few were in restaurant and hotel worker, scaffold, carpenter and shop worker. In Kuwait, majority were engaged in general labor (48.5%) and others in civil technician labor and scaffold, restaurant and hotel worker, carpenter, security guard and welder. In Bahrain, majority were of general labor (32%) while other were in security guard, drivers and maintenance clerk. In Oman, 56 percent were in general cleaning labor.

jobs under this skill included are drivers, hotel and restaurant workers and salespersons. Skill level 3 involves complex technical and practical tasks and some examples of jobs under this skill level are shop managers, medical laboratory technician, commercial sales representatives. Skill level 4 involves carrying out tasks that require complex problem solving, decision making and creativity. Sales and marketing managers, engineers and nurse are some example of jobs under this category.

Despite the efforts of MOLESS⁸ to provide the skills development training to the potential migrant workers, there has been a large share of Nepalese youth migrating without skills. This is also confirmed from the survey of returnee migrant workers by Blitz Media Private Limited and Humanity United (2022). This study showed that of the 4046 returnee migrant workers interviewed, nearly 88 percent reported that they did not have any skills while rest 12 percent had some skills like services and sales, construction, electrical and mechanical, technician and driver and machine operators (Figure 2.6).



Source: Blitz Media Private Limited and Humanity United (2022).

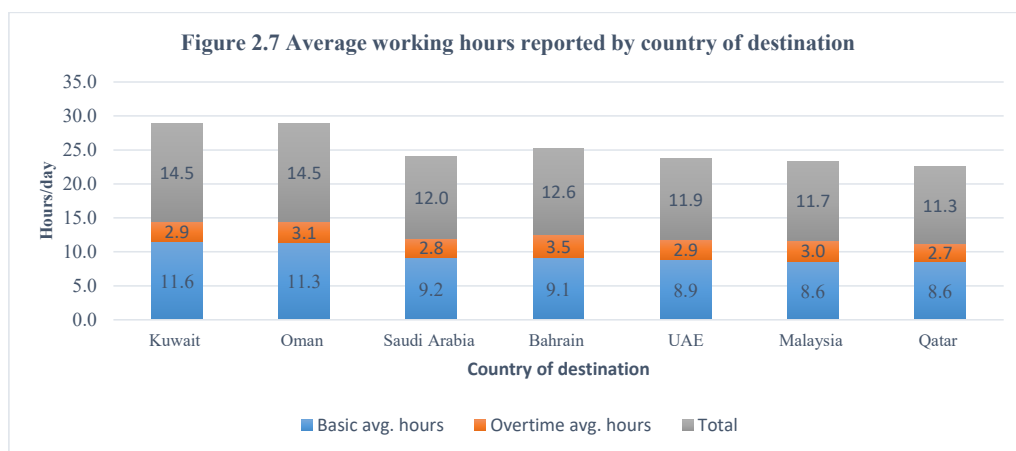
Therefore, evidence suggests that the Ministry's policy interventions in providing skills training to potential MWs have not been effectively implemented. Further, another study conducted by ILO (2017) confirm the fact that the skills development training does not match with the demand of the international labor market, and even if they are matched they are not accredited by the destination countries' employers and companies. There are also the cases that many workers have to change their jobs because they do not get the jobs in which they have had training certificates. In the absence of the studies, it is, however, difficult to determine how many of the migrant workers really engaged in the jobs in which they have received skill training before going to abroad. Much research is needed in this matter.

2.5 Working Hours, Minimum Wages/Salary against Actual Salary Received

Working Hours - There has been reports of the long working hours among the Nepali workers in most destination countries. According to the returnee migrant workers in the survey Blitz Media

8 To provide the skill development training to potential MWs, it the MOLESS has brought various guidelines for the last 7 years: Foreign Employment Related Skill Development Training Work Operation Directive, 2074 (2017); Workplace Based Apprenticeship Training Operation Guideline, 2076 (2019) and Vocational and Skill Development Training Operation Guideline, 2077 (2020).

Private Limited and Humanity United conducted in 2021, it was found that only 1 percent reported their basic working hours as less than 8 hours while 73 percent reported it was 8 hours. On the other hand, the rest or more than 25 percent returnee migrants reported that they had to work more than 8 hours – the maximum of 16 hours. In reality, the total working hours ranges from as low as 11 hours/day to as high as 14.5 hours in Gulf nations and Malaysia (Figure 2.7). Assuming that the overtime work is paid to all workers and that is voluntarily, there may not be problem of overtime work, but if the overtime is involuntarily and low or non-payment, it is exploitative and forced labor situation. The issue here is of the basic working hours in all countries that it is more than 8 hours. Numerically, the basic working hours is nearly one hour higher in Qatar, Malaysia and UAE each, 1-2 hours higher in Bahrain and Saudi Arabia and 3-4 hours higher in Kuwait and Oman against the ILO prescribed decent working hours/day, that is, 8 hours.

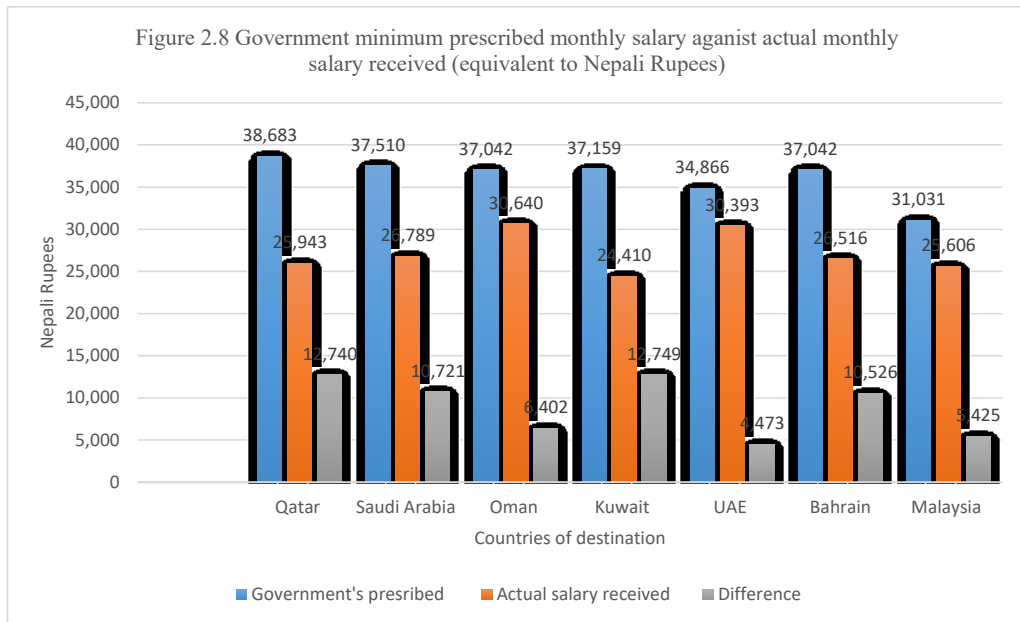


Source: Blitz Media Private Limited and Humanity United (2022).

Minimum Wages v Actual Salary- Major two issues have emerged when analyzing the data of monthly salary of migrant workers. First, it appears that the Government of Nepal has not yet determined the minimum salary following the ILO recommendations of identifying the needs of workers, considering the economic factors of the country of origin and destination, considering the skills and nature of work and carefully reviewing of the in-kinds payments. As our data reveal that considering the basic monthly salary plus food allowance together, the total minimum salary for the unskilled workers ranges from USD 315 to 330 in GCC countries while it is less than USD 270 in Malaysia. It is only in South Korea, the minimum monthly salary for the unskilled workers is about USD 1300. In Qatar, for the semi-skilled workers, on the average, the minimum salary prescribed ranges USD 385 to about USD 500; for the skilled workers, it is from as low as USD 500 to USD 1070 and for the professional workers, it ranges from USD 1200 to USD 3100. For other countries, the patterns of prescribed minimum salary for the semi-skilled, skilled and professional workers are almost the same for other GCC countries as of Qatar (Annex 2.2). Given the persistently high values of consumer price index (CPI)⁹ in Nepal, which increased from 92.2 in January 2014 to 139.14 in January 2021, the minimum salary determined for the Nepalese workers in these GCC countries and Malaysia can be argued as fairly low.

9 CPI measures the changes in the cost of a basket of goods and services consumed by the average urban households.

The second issue in relation to the salary is that even if the minimum salary is prescribed by the Government, the actual salary received by the workers comes to be lower than that of the minimum prescribed monthly salary in all the major destination countries. Figure 2.8 compares the Government of Nepal's prescribed minimum monthly salary with the actual reported monthly salary for the seven countries. As data show that on the average, the actual monthly salary reported to have received by the returnee migrant workers from these countries is at least lower by one-fourth of the Governments' prescribed salary. On the average, the minimum prescribed salary for seven countries comes out to be Rs. 36,190 while the actual salary received was Rs. 27,185 – a lower by Rs. 9,005 per month. At the individual country level, the difference is between Rs. 10,000 to Rs. 13,000 in three countries, namely, in Qatar, Kuwait and Saudi Arabia and the difference is at least Rs. 4,500 to Rs. 6,000 in countries of UAE, Malaysia and Oman.



Note that the minimum salary prescribed here includes i) minimum salary and ii) food allowances. Equivalent to Rs. exchange rate USD 1=117.22 in May 15, 2021.

Source: data for the Government prescribed salary from CESLM (2019, 2019a, 2019b, 2019c, 2019d, 2019e, 2019f, 2019g,) and data for the actual salary from Blitz Media Private Limited and Humanity United (2022).

Having analyzed the migrant data, literature review, and experts' opinion, currently the labor-migration streams can be theorized as evolving in four directions, which, in turn, is linked to the class structure of the society:

- One, the poorest people from the poorest region tend to migrant India where salary and wages levels are also lowest ones, and the cost of migration is also low. Labor-migration to India is seasonal and temporary ones (this is discussed in a separate Report by NHRC).
- Two, the poor or non-poor both youths tend to migrant to Gulf countries and Malaysia – and this is the major outflows for foreign employment in Nepal now. Labor-migration to these countries is temporary and individual migration, and hence migrants are subject to return to

the country after termination of their 3 to 5 year employment contract period. At the same time, the stream of labor-migration to Gulf countries, Malaysia tend to generate a huge returns or circular migration which will be discussed in Chapter Four.

- Three, people with relatively better-off economic condition attempt to migrate to some destination countries like South Korea, Japan and Israel where wages and benefits are relatively high and attractive. Labor-migration to these countries is temporary and individual migration as well.
- Fourth, the better off, educated, urban youths dream to move to Western countries – the North America, Europe and Australia and they are less likely to return to the country immediately. And, labor-migration to Western countries tend to be permanent and involves family migration. Many of the cases of smuggling have been reported in this category of migrant workers.

Some Foreign Employment Experts have raised the concerns that the main challenges to protect the rights of migrant workers remain in the pre-departure system in Nepal. Dr. Ganesh Gurung – an eminent foreign employment expert - in his address to the Kantipur Media Group in Wednesday 29 December 2021 viewed that there is need of re-scrutiny in the entire system of foreign employment business. He argued the follow:

First, there is problem in pre-departure system; the problem is in Nepal, not in transit and not in return. There is problem in policies and monitoring system in orientation, training and recruitment. Second, problem relates to the governance of foreign employment business and obviously corruption is involved in recruitment and transportation of the workers. Third problem lie in government's failure to focus on labor diplomacy as a foreign policy rather than focusing on the broader issue of economic diplomacy. Fourth, the migration to India has not been viewed as foreign employment and it has not come under the legal framework. Even in the EPG group [Eminent Persons' Group on Nepal-India relations], the India delegates claim that India has been providing employment to 6 or 7 million Nepalese in India while during the Covid-19 pandemic period, it was evident that there were approximately one million Nepali working in India in reality.

This Chapter mainly has focused on the stock and flow of out-migration for foreign employment and shed light on how migration is linked to migrant smuggling and trafficking. It also critically reviewed the irregularities involved in foreign employment business. Now, in the following Chapter, we turn to examine how and to what extent access to justice to the migrant workers has been institutionalized, and made effective, efficient and transparent both in Nepal and abroad in order to protect migrant workers from violence, abuse, exploitation and grant the legal remedy timely.

Chapter 3 Access to Justice

This Chapter evaluates how far the migrant workers are entitled to access to justice by interpreting the legal framework, efficiency of law enforcement agencies, complaint handling mechanism and judicial responses to foreign employment including the state of free legal defense of the convicted migrant workers at abroad.

3.1 Legal Framework

The Constitution of Nepal is the overriding principle to deliver access to justice to all including to migrant workers and their families. Access to justice enters as the fundamental rights of Nepali citizens. Foreign Employment Act 2007 and Foreign Employment Regulation 2008 are the laws that create the liabilities of the state to provide access to justice to the migrant workers at abroad as well as in the country. In addition to the Government's law enforcement agencies and special judicial response mechanism, there are development partners, NGOs and civil society organizations including Diplomatic Missions at abroad for facilitation of handling of complaints of the distress migrant workers and referral services to the concerned Government agencies for the required action.

Foreign Employment Act 2007 - Sections 43 to 59 of this Act define the various nature of offenses, punishment and competent authority in handling of the cases. Based on the nature of offenses, the cases have been undertaken either by the Foreign Employment Tribunal or by the Department of Foreign Employment as the initial complaint handling competent authority (Box 3.1).

Box 3.1 Competent authority handling the offenses by types of offenses related to foreign employment

Foreign Employment Tribunal	Department of Foreign Tribunal
<ul style="list-style-type: none"> • Cases related to the offenses of carrying on foreign employment business without license (Section 43) • Sending workers without obtaining permission (Section 44) • Sending minors for foreign employment (Section 45) • Sending workers in a country not opened by the Government of Nepal (Section 46) • Misusing or altering the travel or visa related documents (Section 47) 	<ul style="list-style-type: none"> • Opening of a branch office without permission (Section 48) • Not publishing the advertisement (Section 49) • Not publishing the selection list (Section 50), • In the event of refusal of return amount or provide compensation (Section 51) • Sending workers by licensee on personal basis (Section 52) • In the event of collecting visa fees, service charges and promotional cost in excess (Section 53) • In the event of failure to observe or direction from the Department (Section 54) • Carrying out or caused to carry out the act contrary to the Act (Section 55)

Source: Foreign Employment Act 2007.

There is provision of appeal to the Supreme Court in case of the verdict of the Tribunal is not satisfied to any party within the 35 days from the date of such decision (Section 66.2). According to the Act, ' a party who is not satisfied with a decision made by the Department pursuant to this Act may make an appeal to the Government of Nepal within thirty-five days from the date of such decision' (Section 66.1).

Except for the offenses punishable under the Sections of 44, 45, 46 and 47, other offenses shall be filed within one year of the event otherwise they shall be not entertained. Drawing on the work of People Forum (2017), we have summarized some key requirements for handling of the complaints: where to file a complaint, time limitation of the complaint, eligible applicants and required documents to file the complaints (Annex 3.1). For example, offences related to foreign employment have to be filed in Foreign Employment Department or CDO at any time by the victims themselves or their relatives by producing receipt of money paid, passport, labor permit, and contract of employment, visa and air –ticket. For complaints related to rescue, one has to succumb the application to the Department of Consular immediately after knowing the situation of the victim at abroad. Complaints related to medical fail has to be field at medical expert committee, Kathmandu within 90 days of the return of the country by the victim himself/herself by producing the required documents.

Foreign Employment Regulation 2008- The fifth amendment of Regulation has made very important provisions of rights to information to the rights holders and liability of the Diplomatic Mission in sending of complaints to the DOFE. According to (Section 17, *gas*) of the Regulation, the CDO, who has received the cases against the licensees and therein relevant documents and forwarded them to the DOFE, has to inform to the applicants. And, the Diplomatic Missions have to send the complaints and grievances to DOFE (section 19, *gha.2*).

Guideline for the Legal Defense of the Workers in Foreign Employment 2018 - This aimed at providing free legal defense support to a migrant worker convicted for a criminal offence in the destination country. The Government supports the cost for legal defense and management of hearing procedure to only a regular migrant worker convicted for a criminal offence in the destination country and the crime committed within the contract period. Thus, according to the Guideline, the following categories of migrant workers have not been covered in this provision:

- If a migrant worker's contract period has already terminated before the charge of the crime case registered.
- If the worker has gone abroad without taking permit from the DOFE.
- If any individuals, agencies, organizations have already been providing support of legal defense or hearing to the accused.

The cost of legal dense is incurred from the Welfare Fund of the Foreign Employment Board. The Guideline outlines the liabilities of Diplomatic Mission that it has to maintain the records of the workers convicted for the criminal offence; take information about the status of legal defense; take advice from the destination country's government agency/free legal workers and collect the information about how Government can lower fee for legal defense. The Guideline has been implemented since 2018 and it has time to evaluate the impact of the provisions. This is, however,

no aggregate information about how many of the workers convicted in a criminal case have been provided legal defense support by the Government. Data obtained about the free legal support by the respective Embassy will be dealt in the following section.

3.2 Law Enforcement and Trail and Settlement of Cases

Law enforcement agencies in relation to foreign employment cases are the Chief District Officer (CDO) and Department of Foreign Employment (DOFE) while the Foreign Employment Tribunal has been established as a specific Tribunal to trail and settle cases related to foreign employment.

3.2.1 Chief District Officer (CDO)

The fifth amendment of the *Foreign Employment Act 2007* through the addition of *Some Nepal Amendment Act 2075* (2018) has authorized handling of foreign employment cases by CDOs. The Act has made provision of sending of complaints through the post-office or electronic means and such complaints received by the DOFE are to be registered. According to the Section 21 Ka (2) of the Act, complaints which are to be filed to the DOFE can also be filed to CDO but complaints related to licensees are to be referred to the DOFE within 7 days (Section 21 Ka.3). Section 21 Ka. 4) authorizes the CDO for reconciliation of individual cases by providing the compensation to the victims/representatives and send such information to the DOFE. And Section 21 (Ka.5) makes it provision that the CDO has to forward the cases that could not be reconciled or the cases that are not to be reconciled to the DOFE.

3.2.2 Department of Foreign Employment (DOFE)

In complaints related to foreign employment under the Act of Foreign Employment, the investigative and inquiry power is mainly vested on DOFE. The DOFE can authorize at least one-third class graduate officer as the investigative officer. While investigating the cases in relation to foreign employment, as mentioned in Section 61.2 of the Foreign Employment Act 2007, the investigation officer of the DOFE exercises the power as the Police have in the prevailing laws, that is, power to arrest, search any places, take custody of documents or things and record the dispositions and executive recognizance deeds. The investigation officer can make the accused disposition, get the accused to appear in the given time in the DOFE, demand the bail from the accused or detain him/her (Section 61.3 of the Act). Doing this all investigation and inquiry process, the investigation officer may take the necessary assistance from the special attorney office (Section 61.4 of the Act). The investigative officer submits the report to the Department for further proceeding of the case (Section 61.5 of the Act).

3.2.3 Foreign Employment Tribunal

According to Section 63 of the Foreign Employment Act 2007, cases related to foreign employment are the state-cases. The Act in Section 64 makes it provision for the establishing of Foreign

Employment Tribunal (FET). It is a three-member Tribunal, under the chair of the judge of the High Court, and the member from the case trying authority of Labor Court appointed by the Chairperson of the Labor Court and First Class Officer of the judicial service recommended by the Judicial Commission. All three-judges exercise the power to resolve the case collectively but a case trial can be done in a single bench judge (*ijlas*) and two judges can deliver a verdict the case under this Act. The provisions relating to trial and settlement of cases have been cited here from the *Foreign Employment Act 2007*:

According to the Act, cases related to foreign employment shall be state cases, and the procedure for case will be based on *Summary Procedures Act 1972*. The concerned district court is authorized to act and take actions to implement the verdict of the FET, and there is provision of appeal to the Supreme Court in case the verdict of Tribunal is not satisfied to any party within the 35 days from the date of such decision.

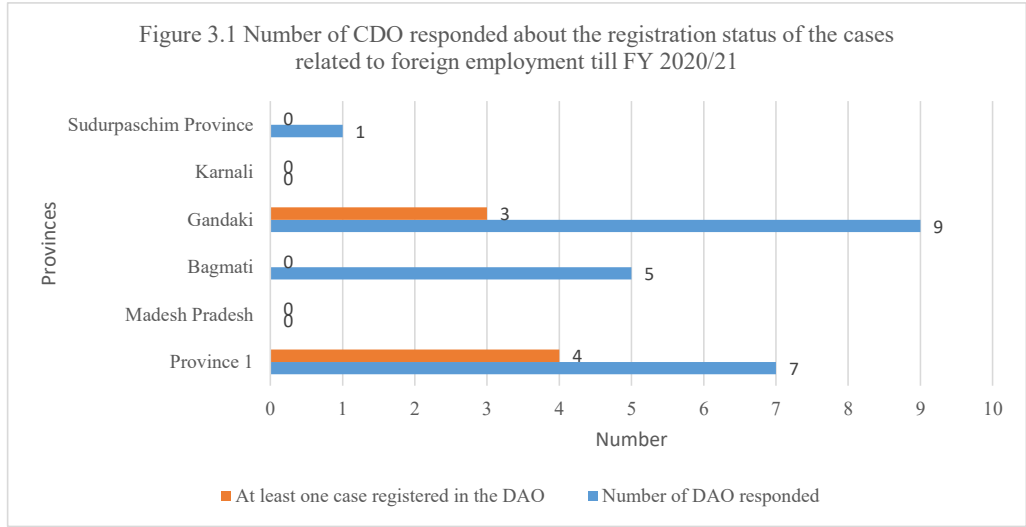
3.3 Handling of Complaints and Compensation Provided to the Victims

3.3.1 Complaints Handled by Chief District Officer (CDO)

As discussed the amendment of the Act was done aiming to decentralize the foreign employment services and reach out the access to justice to the victims' doors. How far the access to justice has been decentralized? In order to evaluate these questions, NHRC through the Province Offices requested information from Chief District Officers about the handling of the foreign employment cases. Three questions were asked to them:

1. What is the number of cases registered in CDO according to the Section 21 Ka (2) (number complaints against individuals)? Please provide data disaggregated by nature of the cases, age and sex of the affected persons?
2. What is the number of cases forwarded to the Department of Foreign Employment according to the Section 21 Ka (3) of the Act (number of complaints against the license holders)? Please provide data disaggregated by nature of the cases, age and sex of the affected persons and accused?
3. What is the number of cases in which reconciliation and compensation has been provided to the victim according to the Section 21 Ka (4) of the Act? Please provide data disaggregated by nature of the cases, age and sex of the affected persons?

A total of 22 CDO have responded and out of them, there were only 7 CDO stating that at least one case related to foreign employment has been registered in the office since the provision to register the case in CDO made by the Act till the FY 2020/21. No CDO from Madesh Pradesh and Karnali Province responded (Figure 3.1 and Annex 3.2).



Source: Source: Letters of Concerned CDO to NHRC, 2021.

Data show that a few CDO have received the complaints related to foreign employment even after three years of the amendment in the *Foreign Employment Act 2007*. This means that either there is lack of information to the distress migrant workers about the provision of complaint handling mechanism as CDO or they are reluctant to reach to the CDO thinking that their cases would not be resolved timely.

Province 1

From Province I, seven CDOs, namely, Sunsari, Illam, Panchathar, Sankhuwasava, Taplejung, Okhaldhunga and Khotang provided information about the case handling status of foreign employment. **Sunsari** CDO reported three fiscal years data. Accordingly, in FY 2018/19, 18 cases were filed with 17 men and one woman as the victims. All of these cases were reconciled by the CDO. In the FY 2019/20 and FY 2020/21, there were 12 and 11 cases respectively and all of these cases have been forwarded to Department of Foreign Employment for further action. **In Illam** CDO, 14 cases have been filed in the FY 2020/21 with the 10 accused and 14 victims. Of these cases, 13 cases were related to cheating money by the agent while one case was related to need of rescue of worker from abroad who was in prison. Among the total cases field, four cases were forwarded to Department of Foreign Employment and 8 cases have been resolved by the CDO itself by offering the compensation.

Panchathar CDO reported that during the FY 2020/21, two cases related to foreign employment were field. The victims in these cases were two women: one woman was 23 year-old and another was 25 years old. In both cases, the defendants were males. The CDO has not resolved any cases in the FY 2020/21. The CDO reported that they have not maintained any database of the Nepali working to India for work. **Sankhuwasava** CDO reported that there has not been filed any cases related to foreign employment in the district till the end of FY 2020/21. In case of record of the

migrant workers going to India, there is no record maintained by the district and it is also reported that there are few people going to India from this district.

Taplejung CDO reported that by now there has not been any cases related to foreign employment field in CDO and hence no cases have been forwarded to Department of Foreign Employment and no reconciliation was necessary. The CDO reported that several challenges to manage the border during the COVID-19 pandemic such as no access to health services in the border area and inadequacy of the skilled health workers in the border points; difficult geographical terrain in the district; low public awareness on COVID-19 among people residing in the rural areas and not adequate financial and human resource for the appropriate management in the border area. No cases related to foreign employment were field in **Okhaldhunga** CDO by the end of 2021. **Khotang** CDO reported that in FY 2021, only 4 cases related to cheating in foreign employment was filed in the CDO Khotang. There were 4 male victims in all these cases. All of these cases have been forwarded to DOFE for further investigation.

In Bagmati Province

Only 5 CDO s responded to NHRC about registration status of cases in relation to foreign employment. These CDO s include Dolakha, Makwanpur, Kathmandu, Nuwakot and Lalitapur. All of these CDO s reported that there were no cases related to any fraud or deception involved in foreign employment by the end of 2021.

Gandaki Province

From the Gandaki Province, nine CDO s have responded about handling status of the cases of foreign employment till mid-2021. Among the nine districts, Syanja, Tanahu and Gorkha have responded that they have handled the cases while the rest six districts namely, Lamjung, Mustang, Parbat, Myagdi, Nawalparasi (East of Bardaghat) and Kaski have not handled the cases. While the foreign labor migration is very substantial from some of these districts and even if more than three-years has passed that the CDO is authorized to handle the foreign employment case, no cases related to foreign employment has been filed in these districts. This reflects the fact that either the victims are not aware on the new complaint handling mechanism established in the country or the victims are reluctant to file a complaint in the CDO office. This is due to the perception that the CDO would take much longer time to resolve the case because of the bureaucratic process.

Mustang CDO office reported that during the COVID-19 period (March-September, 2020), the border between Nepal and Tibet-China was closed and there was no business and people's movement to Tibet-China and Nepal. According to **Syanja** CDO, one case was registered in the CDO, requesting to return the money taken by the middle person. There were two victims in that case they were both men in their early 30. The case was in the final process of decision by the CDO.

Tanahu CDO provided a disaggregated data of cases registered. Altogether 8 types of complaints were registered in the CDO. They include cheating, death of the migrant worker, absconding of

the agent, imprisonment, withheld of passports, rescue, accident and injury and others (visit visa, problems of accommodation and food due to COVID-19). The cases of cheating were related to that the victims have paid the money to the recruiting agency and passport has also been given. However, the recruiting agency has neither sent the worker at aboard nor has returned the money and the passport. In FY 2020/21, 105 victims (10 females and 95 males) filed the complaints in the CDO. The total compensation amount claimed by the applicants was Rs. 10,490,828, of which, the CDO succeeded to provide the compensation of Rs. 67,000. And, the CDO also facilitated to receive the financial support to the 10 deceased family members of amount to Rs. 9,200,828 from the Foreign Employment Board.

Gorkha CDO reported that it has received one case of the 4 victims that they claimed that the agent ran away by taking Rs. 900,000 from them and the case was forwarded DOFE.

Parbat CDO reported that there have no cases related to foreign employed filed in CDO until the end of FY 2020/21. However, CDO has provided some information regarding how the CDO managed the border of the district during the Covid-19 lockdown period. The south border of the district is closed to the Waling of Syangja district from where many people go to India for work, medical treatment, trade and business and people also have linked in Terai. Because of this, there was problem of effectively maintaining the quarantine. During the lock-down, some Local Levels that is Modi Rural Municipality, Jaljala Rural Municipality and Kusma Municipality have made provision of food for the people crossing the district on foot during the lock-down period.

Nawalparasi (East) CDO reported that there was no cases related to foreign employment filed in the CDO till the end of FY 2020/21. The CDO reported that people who come to inquiry about the foreign employment have been suggested to go to the SaMi migration resource center (MRC) for reconciliation and those cases related to cheating have been referred to the District Police Office for necessary action.

Sudurpaschim Province

Baitadi CDO – The CDO Baitadi reported that there were no cases filed under the *Foreign Employment Act 2007*. However, it is reported that in the district, Jhulaghat border security force has maintained daily commuter's data who cross the border and enter into the country. It reported that there was no problem of border management generally but during COVID-19 pandemic, there was a need to adequately manage people who had tested COVID-19 positive.

3.3.2 Complaints Handling and Settlement by Department of Foreign Employment

As discussed in Section 3.2, the DOFE is authorized to handle the complaints related to foreign employment. It receives two types of complaints: complaints against individual and complaints against institutions involved in foreign employment business. Table 3.1 summarizes the number of complaints registered in the DOFE over the last five-year (FY 2016/17-2021/22). The five-yearly

average number of complaints comes out to be 1830 with the 39 percentage of settlement rate. The percentage of settlement is fairly low in case of individual complaints (17% to 24%) while it is unusually high in case of institutional complaints (47% in FY 2016/17 and 82% and 85% in FY 2017/18 and 2018/19, respectively). This suggests the fact that many of those who complaints against an individual have been denied timely justice by the Department, for 'delay in justice is the denial of justice'. While inquired about the reasons for low settlement of the individual cases by the DOFE, the staff of People Forum viewed that it may be due to lack of collaboration between DOFE and Nepal Police and also no mandate of DOFE to handle individual cases (Section 43). Application of arrest warrant is sent to Nepal Police, but sometimes there is no timely response from Nepal Police to handle the case.

Table 3.1 Number of complaints recorded and settled at DOFE, FY 2014/15-2021/22

	Number of cases	Number of cases settled	Percent settled
Total			
2016/17	2383	846	35.5
2017/18	2129	1023	48.1
2018/19	2118	1281	60.5
2020/21*	780	-	0.0
2021/22*	1742	415	23.8
Five-yearly average (2016/17-2021/22)	1830	713	39.0
Individual			
2016/17	931	159	17.1
2017/18	1109	191	17.2
2018/19	855	209	24.4
Institutional			
2016/17	1452	687	47.3
2017/18	1020	832	81.6
2018/19	1263	1072	84.9

Note: no disaggregated available for the FY 2020/21 and 2021/22 and hence, data on Table shows only the total cases of these Fiscal years.

Source: summarized from MOLESS (2018) and MOLESS (2020) and * DOFE (2022) (Power point presentation in 15 July 2022 by DG of the DOFE).

Compensation - Table 3.2 demonstrates the total number of complaints (both individual and institutional) filed at the DOFE, amount claimed, number of cases filed in the Foreign Employment Tribunal (FET) and compensation provided to the victims in the FY 2020/21 and 2021/22. Data reveal that the percentage of compensation provided by the DOFE was very low in the 2020/21. It was just 16 percentage of the claimed amount of about Rs. 131.5 million. While the compensation percentage

was 48 in the FY 2021/22. It was not clear why there was so low percentage of compensation in the FY 2020/21. One reason may be that the year was much affected by the COVID-19 and accused may not have been tracked easily. As the DOFE does not have mandate to provide the compensation to very serious cases with imprisonment and compensation, DOFE has to file the charge Sheet in FET (People Forum, 2017). Here, data reveal that out of the total 1742 complaints in the FY 2021/22, 87 cases have been filed to the FET while 415 complaints have been reconciled by DOFE.

Table 3.2 Claimed and compensation amount at Department of Foreign Employment, FY 2020/21 and FY 2021/22

	2020/21	2021/22
Number of complaints registered	780	1,742
Claimed amount (in Million Rs.)	131.5	65.7
Number of cases filed in the FET	-	87
Claimed amount in the FET (in Million Rs.)	17.9	22.7
Number of reconcile complaints	-	415
Total compensation provided (in Million Rs.)	21.1	31.8
Compensation %	16.0	48.4

Source: DOFE (2022) (Power point presentation in 15 July 2022 by DG of the DOFE).

Adjudication - According to the DOFE (2022), the DOFE has adjudicated the licensee institutions found as committing the offenses pursuant to the Foreign Employment Act. They are said to have been summoned in the Department and taken the statements and given the punishment, cancellation of the licensees and imposed the fine as well. However, there is no data available about how many of such adjudication cases undertaken by the Department in the last three fiscal years (2018/19 to 2021/22). It is reported that monitoring has also been taking place from the District Administration Office and other competent offices in the districts. Looking at the incidental monitoring by the Department in the FY 2021/22, it is known that the Department has undertaken monitoring in 8 licensee recruiting agencies and 16 pre-departure orientation institutions in the FY 2021/22. The main offenses included were sending of workers to a destination country but workers not getting the job, complaints that the recruiting agency demanded much higher recruitment fee, undertaking of interview of workers by a recruiting agency without taking pre-approval and labor demand verification. In case of monitoring of the pre-departure orientation institutions, majority of monitoring was incidental. In a few cases, the DOFE has adjudicated the closer of pre-departure orientation institutions and recruiting agencies and also imposed fines.

Some of the key challenges for the effective investigation and inquiry and adjudication as reported by the DOFE (2022) are: lack of skills for investigation and inquiry and no institutionalization of such skills, lack of evidence of the proof, and emergent problem of phenomenon of fake victims coming to file the cases in the Department. Fake victims here refer to those who attempt to file complaints against individuals aimed at taking personal revenge, submitting the fake receipts and making a claim that other offenses as the offenses under the Foreign Employment Act. While taking

the interview of the DG of DOFE, it was known that there is no separate posts for the Police created and there is no separate custody in the Department.

3.4 Case Trails and Settlement, and Appeal

3.4.1 Foreign Employment Tribunal

As summarized in **Table 3.3**, the clearance rates of the cases related to foreign employment were extremely low from 2009/10 to 2013/14. The clearance rate was as low as 10 percent in the FY 2009/10 which steadily increased to 38 percent by FY 2013/14, and reached to the highest nearly 65 percent in FY 2018/19 and again declined to 37 percent in FY 2019/20 and 56 percent in 2020/21. The low clearance rate in FY 2019/20 was mainly due to the effect of COVID-19 pandemic and lock-down in the country. Note that according to the provision of *Foreign Employment Act 2007*, the cases settled by the Tribunal are to be forwarded to the concerned district courts for their enforcement. There is no data available from the Annual Report of DOFE and even in the FEIMS system about the enforcement status, however.

Table 3.3 Number of cases registered and settled by FET, 2009/10 – 2020/21

Fiscal year	Total cases (new and carried over)	Cases cleared	Cases pending	Cases clearance percentage
2009/10	158	16	142	10.1
2010/11	262	78	184	29.8
2011/12	370	142	246	38.4
2012/13	424	163	261	38.4
2013/14	395	151	244	38.2
2014/15	419	213	206	50.8
2015/16	436	185	251	42.4
2016/17	562	204	358	36.3
2017/18	643	325	318	50.5
2018/19	577	374	206	64.8
2019/20	441	163	278	37.0
2020/21	458	257	201	56.1

Source: Foreign Employment Tribunal (FET), 2021.

Table 3.4 summarizes the number of cases registered, resolved and pending in the FET in FY 2019/20 by duration of registration and resolved cases. Accordingly, the overall, the resolved case is 39 percent and the percentage of settlement of the cases varies by duration of the registration and it is generally much higher for the cases that were transferred more than 1 years ago. Despite this, data also reveal that not all cases are settled even after two years of case transferred to the Tribunal.

However, there is no disaggregated data available to assess how many of the settled cases were in favor of the migrant workers, and how many have victims received compensation. The Annual Report of FET 2021 has not provided such information. For detail analysis, a further research is needed to study the each decision of the Tribunal and tabulate data. One earlier research report by People Forum (2074)¹⁰ indicated that only 10.81 percent of the victims got compensation on adjudicated case by FET. The study was carried out with 78 cases, among them in 10 cases petitioner has claimed the compensation with demand the freeze of defendant property. And also in 8 cases petitioner claim to implement the compensation and damage with showing the property of defendant. Rest of the cases are pending due to lack of identification defendant property. This fact established more challenging to implement the decision of FET.

Table 3.4 Number of cases related to foreign employment registered, resolved and remain in FET, FY 2019/20, Nepal

Duration of transfer responsibility	Registered cases	Resolved cases	Remaining cases	% resolved
In between 6 months	141	62	84	44.0
6 – 12 months	33	61	110	184.8
12-18 months	14	28	65	200.0
18-24 months	9	11	16	122.2
More than 24 months	6	15	7	250.0
Sub total	203	177	282	87.2
New cases	256			
Total	459	177	282	38.6

Source: Supreme Court, 2020. *Annual Report of the Supreme Court 2076/77 (2019/20)*.

There are several challenges to resolve the cases within the 90 days as viewed by FET (Box 3.2).

10 Study on Implementation Status of Foreign Employment Tribunal Decision Report 2074 (2017), People Forum, FET and FEB

Box 3.2 Challenges viewed by FET to resolve the cases within 90 days

1. One of the members of the judges of the Tribunal has the double workload;
2. It is compulsory that the date to attend in the Tribunal for taking the statements from the applicants should be fixed in a day which is suitable to all the plaintiffs who might come from across the country because of the Tribunal's jurisdiction to cover the country;
3. The Tribunal has to depend upon the concerned district courts to issue the summons or process to the defendants;
4. In many cases, the defendants do not cooperate to present their witnesses on time, as a result, the Tribunal has to issue the summons by itself according to the Section 112 of the Criminal Code Procedure of 2075 (2018);
5. It is difficult to settle the summons or process on time because in many cases, there is no clear address mentioned to the plaintiffs and defendants;
6. There is no timely response by the concerned agencies about the required documentary evidences;
7. There is no adequate human resources in the Tribunal; and
8. Covid-19 has also affected the services of the Tribunal

Source: Annual Report of Foreign Employment Tribunal 2019/20.

3.4.2 The Supreme Court of Nepal

The Supreme Court of Nepal has the mandate to review appeal on the judgment of Foreign Employment Tribunal. Table 3.5 demonstrates the number of cases registered, decided, pending and percentage of decision of the foreign employment cases by the Supreme Court of Nepal for the last three fiscal years (FY 2018/19-2020/21). Data reveal that the settlement of cases in the Supreme Court is very low in each of the fiscal year considered here. For example, in FY 2018/19, there were 663 number cases registered in the Supreme Court, of which only 13 percent were decided while 87 percent were pending. In FY 2019/20, of 670 cases, 24 percent were decided while 76 percent were pending and in FY 2020/21, there were 675 cases, of which 17 percent were decided and rest 84 percent was pending. The three-yearly average pending rate comes out to be very high, that is 84 percent.

Table 3.5 Foreign employment related cases at the Supreme Court of Nepal, FY 2018/19-2020/19

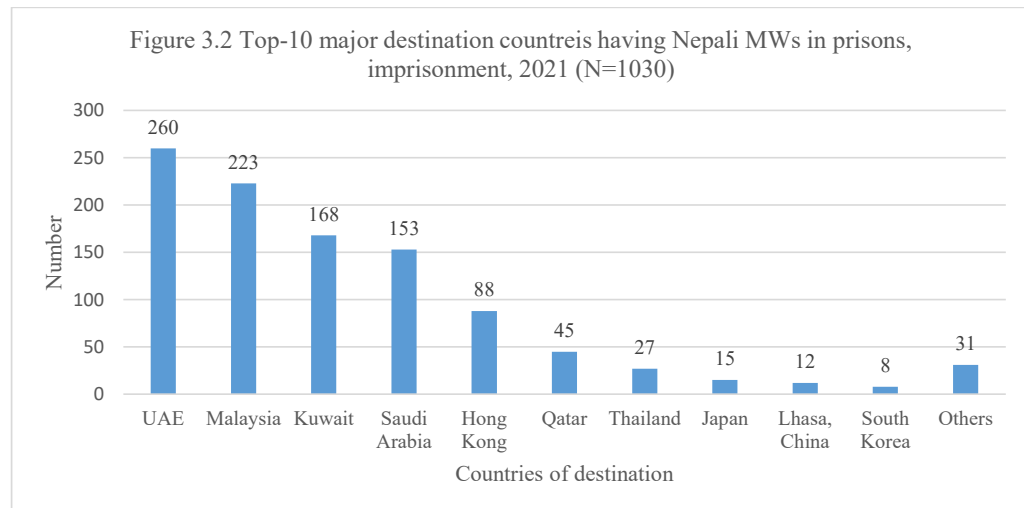
FY	Number of cases	Number decided	Number pending	Percent decided	Percent pending
2018/19	663	84	571	12.7	87.3
2019/20	670	158	512	23.6	76.4
2020/21	675	106	569	15.7	84.3
Three-yearly average	669	116	551	17.3	82.7

Source: Supreme Court Annual Report of 2018/19, Supreme Court Annual Report of 2019/20 and Supreme Court Annual Report of 2020/21.

3.5 Free Legal Defense Support Provided to the Nepali Workers Inmates at Abroad

Before examining the extent of free legal dense support provided to the Nepali migrant worker inmates at abroad, let's discuss the magnitude of the inmates in different destination countries. Data reveal that number of Nepali migrant workers in prison or police custody appears to have increased for the last 5 or 6 years. In 2016, the MOFA, and MOLESS jointly presented the details of the report in front of the then Prime Minister Mr. Puspa Kamal Dahal that there were more than 800 Nepali migrant workers in prisons abroad. Majority of them were reported in Saudi Arabia (427), followed by Malaysia (217), UAE (100), Qatar (44), Kuwait (26), Bahrain (3) and Oman (1). While accepting the joint report, the Prime Minister instructed to the concern authorities to make necessary reforms in *Foreign Employment Act 2007* for the rapid response and also attempted to reduce the number by effective coordination with the destination countries.

In 2021, among the 36 Nepalese Embassies responding the status of the Nepali citizens in prisons or police custody, 27 Embassies reported that there is at least one Nepali citizen in prison in the areas under the Embassies. Numerically, altogether 1030 Nepali citizens or migrant workers were found to be in prison across the countries listed in Annex 3.3. These countries comprised of Asia, North America, Europe, Africa and Australia. Figure 3.2 summarizes the top-10 destination countries having Nepali migrant workers in prisons. Accordingly, the highest number of Nepali workers in prisons were reported in UAE (260), followed by Malaysia (223), Kuwait (168), Saudi Arabia (153), Hong Kong (88).



Source: Source: Letters sent to NHRC by the corresponding Embassies, 2021 and also see Annex 3.4 for details.

In UAE, the number of migrant workers in Prison was reported to be 100 in 2016 while it was 260 in 2021. Embassy reported that as per the need, it coordinates with the concerned Government agencies to deal with the concerned Nepali migrant workers in imprisonment. The Embassy also helped to contact the family members of the accused in prison; arranged the travel documents

and air ticket to those who have completed the prison sentence period and released by the prison authority. It is reported that the Hon'ble Ambassador of Nepal to UAE usually visits to prison to assess the situation of accused in the prison. With respect to the legal defense support to the victims, the Embassy claimed that it provides legal defense services from the side of Nepali migrant workers who is charged on criminal offence. The Embassy has also provision of public contact officer who is responsible for the facilitation and coordination of the concerned agencies including lawyers, courts of the destination country to provide timely and effective legal/support defend to the Nepal migrant workers.

In Malaysia, there were 223 Nepali workers in police custody, prison or detention center in FY 2020/21. Among them, 46 were in Policy custody; 101 were in prisons under the case to be finalized¹¹; and 69 were convicted by the court and were imprisoned in different prisons and 7 had already completed their prison period. They were residing in Detention Center for their return to Nepal. All the affected migrant workers were males. Different criminal charges were filed against the migrant workers majority being charged of violation of criminal laws (89), followed by the charge related to violation of immigration rules (59), charges related to MCO (28), charge related to drug use (23), charge related to murder (15), charge of abduction (2) and other charges (7).

In State of Kuwait, the number of Nepali in Kuwait prisons increased from 26 in 2016 to 168 in 2021. The Embassy reported that there were 51, 83 and 34 number of Nepali migrant workers in prison, in deportation centers and in the police custody, respectively in 2021. Among total (168), there were 43 females and rest were males.

In Saudi Arabia, there were 153 Nepali migrant workers in different prisons including 3 faced with death penalty (data includes both data sent by the Embassy of Nepal in Riyadh and Jeddah Consulate General). In the FY 2020/21, the Embassy provided legal support to 67 accused Nepali workers in Saudi Arabia. The Embassy however did not provide information about in what charges the three Nepali migrant workers faced the death penalty and what legal support has been offered by the Embassy for the amnesty from the death penalty. The Embassy needs to bring such stringent cases to the Government of Nepal to deal with the high authorities of Saudi Arabia Government.

In Qatar, the Embassy reported that there were 45 Nepali migrant workers (all males) in Police custody and prisons. The Embassy reported that there is no budget allocated for the legal defense for the victims.

Nepali Embassy, Thailand reported that in FY 2019/20, there were 27 Nepalese migrant workers including 3 females who were charged with drug trafficking and other crime in Thailand (n=20) and in Singapore (n=7). Victims who are brought to Thailand, Cambodia, Laos and Viet Name by promising good job and salary by the agents, victims often do not possess adequate documents to make complaint.

In Israel, one woman (Jamuna from Sunsari district) who was working as a caregiver has been accused of beating her employer and now she is in prison. The Israel Embassy has contacted her, and also attended in local court and provided guardianship to her.

11 Among those whose cases were in the courts (101), 91 victims' cases were in the Magistrate/Session, 5 victims' cases in high court, 2 victims' cases in court of Appeal, and 3 victims' cases were in the federal court.

Nepali Embassies to **China and to Pakistan** reported that they did not have information about Nepalese citizens in prisons or in police custody. The main reason for lacking of data is reported that there is no corresponding Governments' mechanism to inform the Nepalese Embassy, and even vastness of the countries themselves. But **Lhasa, China Consulate General** reported 12 Nepali in different prisons in Tibet.

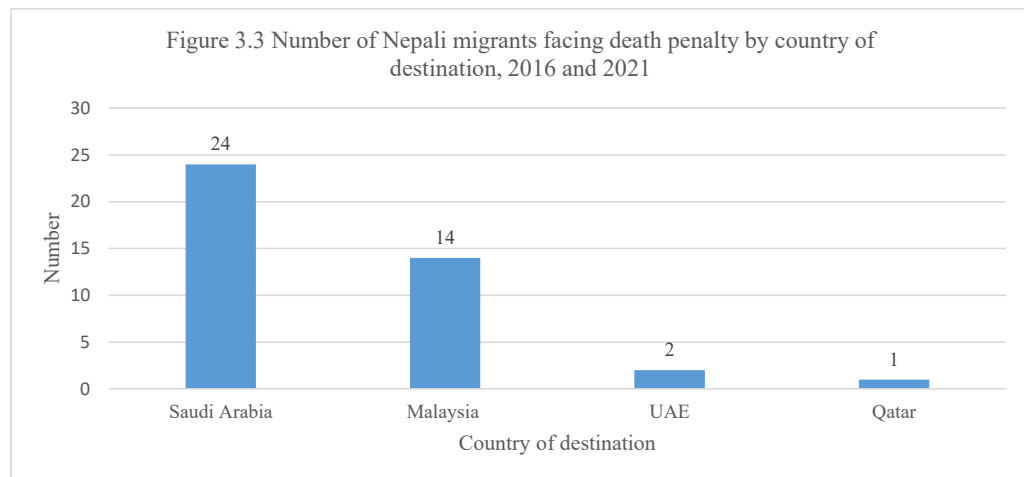
North America - Nepali Embassies Canada, USA and Brazil reported that there is no records of Nepali citizens in prison in these countries till mid-2021.

Europe – Nepali Embassies to UK, Russia, Denmark, Australia and Germany reported at least one to three migrant workers in prison till mid-2021 in these countries while Nepali Embassies to Switzerland, France and Belgium reported that they did not have such cases.

In South Africa, one Nepali migrant man is reported to be in detention center. The Embassy of Republic of South Africa reported that there are no records of legal defense provided to the accused of Nepali workers in South Africa. The Embassy also reported that it has yet to collect the data of Nepalese in imprisonment in its 18 accreditation countries of Africa.

Facing death penalty

Most frightening fact is that there are records that some Nepalese migrant workers are facing death penalty in countries where death penalty has still been retained and not abolished as capital punishment.



Note that data for Malaysia refers to 2021 while data for Saudi Arabia, UAE and Qatar refer to the year of 2016.

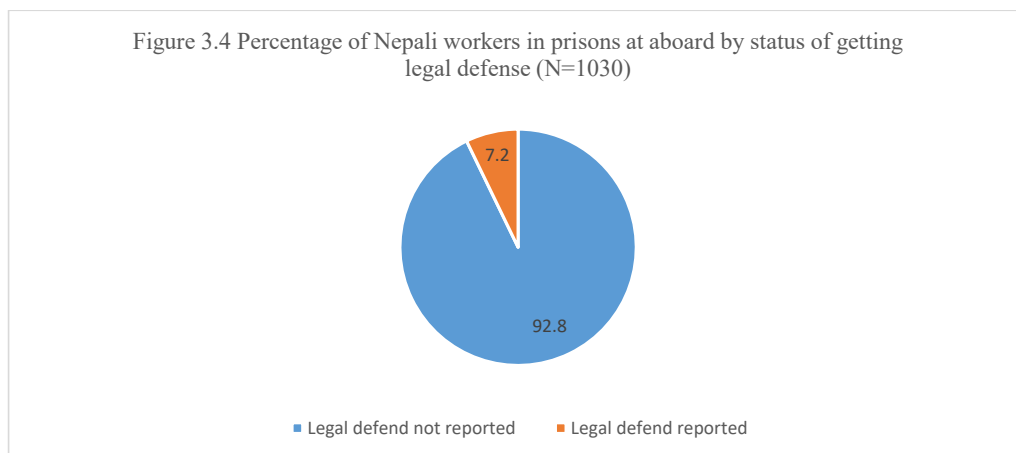
Source: data compiled from letters sent by Nepali Embassies to NHRC, 2021.

Drawing data from the different Embassies, number of Nepali migrant workers facing death penalty have been reported from Saudi Arabia (n=24), Malaysia (n=14), UAE (n=2) and Qatar (n=1) (Figure 3.3). In Saudi Arabia, of 24 Nepalese migrant workers who were facing death penalty in 2016, it is reported

that 17 could have been prevented from execution if there had been payment of 'blood money' as determined by the court. The blood money refers to the compensation amount determined by the court to be paid by the convicted person or his/her family to the victim's kin. Capital punishment is still retained in 57 countries around the world while we have cited here some major destination countries of Nepali migrant workers such as Bahrain, Jordan, Kuwait, Saudi Arabia, Malaysia, Qatar, and UAE (Annex 3.4). In all of these countries, data reveal that they have carried out execution for the last two or three years. Although the methods of execution – such as hanging, firing squad, shooting, decapitation and offences for the death penalties differ from country to country, the common crimes in which death penalties are used include: predetermined murder, aggravated murder, rape, sexual abuse, homosexuality, adultery, sexual misconduct, blasphemy, sodomy, aggravated robbery, drug trafficking, kidnapping, illegal possession of arms, terrorism, human trafficking, apostasy, acts of indecent assault resulting in death (UAE) and witchcraft (Saudi Arabia).

A Few Free Legal Defense Provided

Data reveal that a very few Nepali migrant workers in prison at abroad have been provided legal defense (Figure 3.4). In 2021, among the 1030 Nepali migrant workers in prison reported by the 27 Embassies of Nepal, only 74 or 7.2 percent were provided legal defense support by the different Nepali Embassies at abroad. The Embassy reporting the support of free legal defend to the Nepali workers in prisons were Embassy of Nepal to Saudi Arabia (67 accused supported), Israel (1 victim), UK (3 accused) and Russia each (3 accused) and Malaysia (8 accused). It is, however, not known that why such as a large number of inmates, that is, 93 percent did not receive the free legal support. Some Embassies blankly just reported that they did not have adequate budget while other did not report about it.



Source: data compiled from letters sent by Nepali Embassies to NHRC, 2021.

Nepali Embassy to Malaysia reported that free legal defense support was provided from the Foreign Welfare Fund and from the Embassy itself. Accordingly, the Government of Nepal provided free legal defend support to 8 migrant workers spending of total 35,983 Malaysian Ringgit. Comparing the number of affected migrant workers of 223 in Malaysia in the FY 2020/21, the free legal

support provided to 8 affected migrant workers is too low, and the Embassy has not provided any information why so large number of affected migrant workers did not get any fee legal support from the Government's budget or from the Embassy's budget. The per capita spending for free legal defense comes out to be 4,498 Malaysian Ringgit or equivalent to 1,080 US Dollar. The Embassy also reported that it has provided free legal defense support to 41 affected migrant workers but it has not provided the budget spent for such support (Table 3.6).

Table 3.6 An overview of legal defense provided by the Embassy of Nepal to Malaysia, FY 2020/21

Types of charges	Number of accused migrant workers supported under the Government Fund	Government of Nepal's spending (in Malaysia Ringgit)	Number of migrant workers supported from the lead role of Embassy
Charge related to murder	3	22,500	6
Charge related to breaching of criminal laws	4	10,483	25
Charge related to drug abuse	1	3,000	10
Total	8	35,983	41
Per capita spending (among the affected persons)		4,498 (USD 1,080)	

Note: 1 USD = 4.16 Malaysia Ringgit in November 15, 2021.

Source: Letter of Nepali Embassy to Malaysia to NHRC.

3.6 Records Compiled to the Grievances of Distress Migrant Workers

3.6.1 Data of PNCC and People Forum

One of the leading NGOs working in rescue and repatriation of stranded distress migrant workers and providing humanitarian assistance is the Pravasi Nepali Coordination Committee (PNCC). It is one of the partner organizations of Safer Migration Project (SaMi) under the Government of Nepal. PNCC compiles the complaints of distress migrant workers from within the country and overseas. Total number of complaints registered was 2,569 during the 15-months (January 2020-March 2021) and total number of victims recoded were 4,994 (4,821 males and 173 females). The average monthly number of victims recorded in PNCC dataset was 333 (321 males and 12 females). Among the total number of complaints of 2,569 recorded in PNCC during the 15 months, 58 percent of the cases were related to no work and salary according to the contract, 16 percent related to death of the migrant worker, 9 percent related to health problem, 7 percent related to migrant workers in prison. The other problems reported were related to trafficking, missing, accident, pre-departure related cheating and fraud, family quarrelling and undocumented status in the destination countries.

Altogether, complaints were recorded from 58 out of 77 districts of the country. The highest number of complaints comes out to be from Province 2 (22%), followed by Lumbini (18%), Bagmati (17%), Province 1 (16%), Gandaki Province (9%). There were a few complaints from Karnali and Sudurpaschim Provinces. According to the destination countries, complaints were recorded from 31 countries globally. However, more than two-thirds of the complaints recorded were from GCC countries and another 30.5% were from South and South East Asia, especially from Malaysia. There were also 9 complaints from Europe and USA, 6 cases from African countries and 1 complaint from South America.

Table 3.7 Distribution of the complaints recorded in PNCC in relation to foreign employment from Jan 2020-March 2021

	Number	%
Nature of complaints		
Contract related	1498	58.3
Death	411	16.0
Health related	229	8.9
Prisoned	181	7.0
Missing	157	6.1
Trafficking	9	0.4
Accident	18	0.7
Pre-departure cheating related	15	0.6
Family related	8	0.3
Undocumented	40	1.6
Students	3	0.1
Countries of destination		
GCC countries	1735	67.5
South and South East Asia	784	30.5
Middle East and Central Asia	34	1.3
Europe and USA	9	0.4
Africa	6	0.2
South America	1	0.0
Total	2569	100.0

Source: compiled from PNCC monthly e-bulletins from January 2020 to March 2021.

Missing Aboard - Among the complaints received in PNCC, the complaints related to missing migrant workers is also much considerable of the total of migrant workers to which complaints have been registered in PNCC. Majority of missing migrants complaints have been registered from Malaysia. According to the PNCC staff, missing can happen because of i) personal cause of migrants themselves, ii) ending in forced labor or iii) arrest or prison. The first case refers to the situation in

which a migrant worker may not come to contact with his/her family members because of debt, dispute with the family or spouse and other reasons while in the second case, the migrant worker is forced to engage in force labor and they are not allowed to contact their family members.

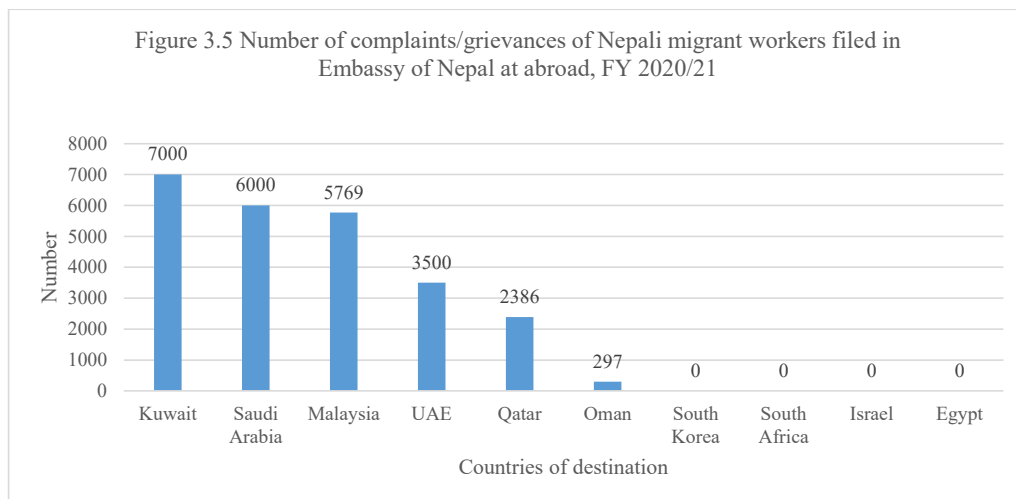
People Forum's Free Legal Aid Services - People Forum is a leading lawyers organization engaged in free legal support to distress of migrant workers and it is one of the partner organizations of Safer Migration Project (SaMi). According to the People Forum's Annual Report 2019, from September 2011 till July 2021, it has provided free legal aid services to 22,635 distress and destitute migrant workers and their families and has facilitated the acquisition of verdicts providing compensation of Rs.66.3 million to victims through free legal aid services. In between November 2016 and October 2017, People Forum provided free legal aids to 1466 migrant workers and their families (89% males and 11% females). Nearly three-fifths of the migrant workers filed complaints against recruiting agencies and registered agents while the rest two-fifths was against the individuals (illegal agents). Although the nature of the complaints varied by case, majority was related to fraud involved in the process of sending the migrant worker to abroad (43%). Other nature of complaints were related to demand of compensation (32%), rescue request (16.5%), passport uphold (4%), medical unfit (3%) and financial support and repatriation of dead body (each about 1%) (People Forum for Human Rights, 2020). Further, in between July 2018 and July 2019, People Forum provided free legal aids to 2,115 victims of migrant workers and their families. There were 89% males and 11% females' complaints. Overall, 7 in 10 complaints were related to against the institutions. In relation to nature of complaints, nearly half was related to 'money taken but not sent in the foreign employment'. Other complaints include 'rescue' (13%), 'different work and different salary' (7%), 'passport taken but not sent to abroad' (7%).

After providing the free legal aids to the distress migrant workers, if it is required, People Forum refer the cases to the concerned agencies such as DOFE, FET, MRC, Nepal Police, the Anti-Trafficking Investigation Bureau Nepal, NGOs, INGOs and Development partners and paralegals while these agencies also refer the cases to People Forum for legal aid. In FY 2019/20, programs related to access to justice of migrant workers carried out by People Forum were coordinated meetings, victims hearing program, legal training for officials, justice actors and lawyers, advocacy for rights based amendment of Foreign Employment Act 2007, awareness raising and media mobilization.

3.6.2 Records Collected by Selected Nepalese Embassies at Abroad

Embassy of Nepal in destination countries has mandate to refer complaint related to foreign employment offences Embassy and Labour Attaché also responsible to facilitate Nepalese migrant workers cases and grievances in destination countries. Under their mandate and jurisdiction complaints and grievances of the workers have also been filed in the Nepali Embassies abroad. Here, we have described the number of complaints facilitating status by the 10 selected Embassies that responded the letter to NHRC (Figure 3.5). The total number of complaints registered in Kuwait, Saudi Arabia, Malaysia, UAE, Qatar and Oman was 24,952 while the Nepali Embassies of South Korea, South Africa, Israel and Egypt did not report that they have registered the complaints of MWs in FY 2020/21.

Note that the NHRC requested to the Embassies to provide data for last four fiscal years (2017/18 to 2020/21), only Nepali Embassy to Oman provided data for these years while other Embassies only provided data for the FY 2020/21 and only a few Embassies responded that they have handled the complaints in the FY 2020/21.



Source: Letters sent to NHRC by the corresponding Embassies, 2021.

Different types of complaints have been field in these embassies as summarized in Box 3.3. These complaints relate to no arrangement for return to Nepal, no salary provided, forced to work long hours, no medical treatment provided, physical and psychological abuse and scolding.

In State of Kuwait, complaints have been recorded through different means like telephone, hotline, email and face-book. In FY 2020/21, more than 7000 Nepalese workers made complaints to the Embassy. Main complaints related to loss of job due to closure of the company; forced to work long hours, not able to return to the country and not providing salary/benefits and not managing the air-ticket for return to the country. According to the Nepali Embassy in the State of Kuwait, in the context of long-term closure of flights between Kuwait City and Kathmandu due to COVID-19 Pandemic and lockdown, the Embassy led to manage the Chartered flights in collaboration with Government of Nepal, Kuwait Government and concerned companies and returned the workers in Nepal. A total of 3,042 Nepali migrant workers participated in Kuwait Government's announcement of amnesty and returned to Nepal. Within three months (25 June 2020 to 2 October 2020), 6183 migrant workers returned to Nepal from Kuwait and from 1 October 2020, the regular flights between Kuwait and Nepal resumed and many Nepalese returned. In addition, the Embassy in collaboration with NGOs like Human Rights Organization and NRNA Kuwait Chapter managed temporary shelter and food for those Nepalese migrant workers who contacted the Embassy. The Embassy played a leading role to rescue and safe return the women domestic workers who came in contact with the Embassy with different problems. They were temporarily provided shelter and food. In FY 2020/21, a total of 75 women domestic workers was rescued and provided safe return services by the Embassy.

In Saudi Arabia, more than 6000 complaints have been field in FY 2020/21 and the key nature of

complaints reported were not paid salary on time, no salary and benefits provided, not making the temporary residence letter (*Iqama*) or not renew of *Iqama* on time, no permission of leave of home even during the crisis and forced to work long hours. In an interaction one leading NGO personal share the information on the basis of outreach activities the problem of migrant workers faced in company which has been called Red Zone. First there is practice of recruitment of workers through a labor supplying company and supplier cannot meet the demand of jobs on time. As a result, workers have to wait even months to get job even after landing in Saudi Arabia. Second, some supplying companies and agents recruit the workers in a Red Zone company. The Government may declare an employment company as Red Zone when it violates the rules of the Government, labor laws and not paying of the tax. Workers are not entitled to claim compensation of injury or death if they are working in such companies.

Last year 2021, 56 Nepali workers were found stranded in Saudi Arabia, they were sent by Rose Manpower from Nepal to Time Demand Company, which had been declared as Red Zone Company. Out of 56 workers, the Saudi Immigration office sent 7 workers at the deportation Center while the rest 29 had to pay 1,000 Saudi Riyal per person to receive their exit visa. They had to pay back fine by themselves.

Third, workers are not paid their full remuneration on time or not paid at all. As a workers cannot afford buying of food and water. Some even are found as begging and drinking water from toilet. Fourth, women migrant workers (WMW) have been transported from Kuwait to UAE or Saudi Arabia. Once they reach to Saudi Arabia, the workers do not know the names of location where they are staying and if they are tortured by an employer, they are less likely to be contacted from Nepal. If workers run away from the employer's house, they are often charged with theft, running away by taking of cash, not cooking the hygiene food or mixing of poison in the food, or not maintaining the personal hygiene.

Box 3.3 Nature of complaints of migrant workers by country destination as reported by Nepali Embassies, FY 2020/21

State of Kuwait	Saudi Arabia	Malaysia	UAE	Oman
<ul style="list-style-type: none"> • Not renewing the residence visa on time; • Charging money for the renewal of residence visa; • Not providing pay leave and no leave has been granted even in the emergency situation; • Not providing medical treatment cost, and adequate rest time; • Not providing money for accommodation and food according to the contract and the worker • Withhold the ATM cards of workers • Withhold the passports 	<ul style="list-style-type: none"> • Not paid salary on time; • No salary and benefits provided according to the contract; • Not making the temporary residence letter (<i>Iqama</i>) or not renew of <i>Iqama</i> on time or renew of the <i>Iqama</i> only after ending the contract period without the consent of the workers. • No permission of leave of home even during the crisis • Forced to work long hours 	<ul style="list-style-type: none"> • Not allowing to return to Nepal • Not provided the salary as per the contract • No salary paid on time • Problems related to accommodation, • Not preparing the document on time and making workers illegal • Not providing timely medical care, • Physical and metal exploitation • Changes of the employer, • Police arrest • Forced to work more than 12 hours • Abandonment when the company gets bankrupted 	<ul style="list-style-type: none"> • Not arranging for the return to Nepal, • Not managing the air ticket and flights; • Lack of accommodation and food • No timely payment; • no support by the company and employer during the crisis period; • forced to pay the fine due to the expiry of visa but not getting flights to go back to Nepal due to lock-down. 	<ul style="list-style-type: none"> • Sending the workers to the deportation center blaming that they have run away from the company; • Not paying salary as per the contract; • Not paying the full salary during the Covid-19; • Mental, physical and sexual violence to the WMWs; • Not sending to home even after termination of the contract period and • Abuse and scolding by company authorities

In Malaysia, in the FY 2020/21, of 5,769 complaints of the Nepalese migrant workers, the top-two complaints are related to 'not allowing the workers to return to Nepal' and 'not provided the salary as per the contract and no salary paid on time'. Migrant workers become illegal because of running away from company to which they had employment contract and work in another Company. In this case, if they become sick they are not able to receive the medical treatment and there are many cases of deaths because of not getting proper medical treatment and timely check-up. As result of run away from the company, they are likely to be arrested and prisoned. Once they are put in the prison, they do not give the details of home address. If the victim is missing or die, it is difficult to identify their family members in Nepal.

In UAE, more than 3500 complaints Nepali migrant workers have been recorded in the Embassy in the FY 2020/21. It is reported that during the Covid-19 pandemic, many companies were closed down and the UAE Government sent back the migrant workers to home. Some of the workers' visa was cancelled while others were employed by reducing the salary and working hours. Those workers who were sent back to home by cancelation of visa period did not receive additional benefits as per the contract. The Foreign Diplomatic Mission has continuously heard the complaints from the workers and attempted to coordinate with the employees and companies to address the complaints. According to the Embassy of Nepal to UAE, it has facilitated to grant the amnesty to some migrant workers whose visa period was expired due to lock down, and not able to return to the country. The representatives of the Embassy frequently visited the field and requested the concerned UAE authorities not to charge with the fine to Nepalese migrant workers whose visa could not be renewed due to lock-down.

In Oman, a total of 633 complaints has been registered in the Embassy for the last four years (FY 2017/18-2020/21). In FY 2020/21, a total of 297 complaints/grievances registered and main nature of complaints were sending the workers to the deportation centers, not paying salary as per the contract agreement, not paying the full salary during the Covid-19, mental, physical and sexual violence to the WMWs, not paying salary on time, not sending to home even after termination of the contract period (12%) and abuse and scolding by company authorities. During the first wave of Covid-19 pandemic, Oman Government adopted the policy to either to layoff the workers; or to employ for few hours or send them on leave.

According to the Embassy of Nepal to **Israel**, during the Covid-19 pandemic, many Nepalese migrant workers in Cyprus have lost their job due to closure of hotels/restaurants. And the owners of the hotels/restaurants did not support the workers to renew their visa. As a result, some Nepalese migrant workers visa has expired. They were arrested by Cyprus Police in change of illegal migration and they were kept in detention centers. The Embassy was in contact with them to facilitate them to release from the detention centers.

As discussed earlier, according to the Section 17 *gas* (2) of the Foreign Employment Regulation 2008, Diplomatic Mission at aboard are required to forward the foreign employment related complaints filed in the Mission to the DOFE. This is their legal mandate to do so. Despite this, the Diplomatic Mission did not provide information about how many of such complaints were successfully addressed or reconciled by the Missions themselves and how many of them were referred to the DOFE. Much research is, thus, needed in this direction.

3.6.3 Complaints Filing Status from the Lens of Returnee Migrant Workers

One of the crude indicators for the assessment of the access to justice to the migrant workers is to look at the rate of complaints filed to the competent authority in case of workers did not receive salary, benefits or jobs as mentioned in their employment contract. In the survey of 4046 returnee migrant workers by Blitz Media Private Limited and Humanity United (2022), it was found that only 16 percent have filed complaints, 23 percent did not file the complaints and large majority (61%) said that that it was not needed (Table 3.8). Looking at the data, it appears that a few of the victims of migrants reach to the competent authority such as Nepalese Embassy at abroad, Foreign Employment Department or Government institutions in the destination countries but rather, majority of complaints were reported to have filed in the recruiting agency, supervisors and employers. These are the organizations providing the employment to the workers as per the contract paper, and not the organizations of complaint handling.

Table 3.8 Distribution of returnee migrants by status of filing a complaint in case of not receiving salary, benefits or jobs as cited in their Contract, 2022

Complaints	Number	Percent
Filed complaints	591	16.2
Did not file	827	22.7
Thought it was not needed	2628	61.1
Total	4046	100.0
Place of filing a complaint (N=591)		
Manpower/agent in Nepal	386	65.3
Supervisor of the company	220	37.2
The Embassy in destination country	88	14.9
The employer	45	7.6
Co-migrant workers	15	2.5
Workers' association	13	2.2
Government institution in the destination country	7	1.2
Reasons for not filing (N=827)		
Did not know where to file a complaint	444	53.7
Did not feel a complaint thinking it would not be beneficial	188	22.7
Fear of being deported after filing a complaint	85	10.3
Fear of being fired	81	9.8
Did not report due to language barrier	38	4.6

Note: Figures of place of filing a complaint and reasons for not filing the complaints are of multiple responses and may not add up to 100.

Source: Blitz Media Private Limited and Humanity United (2022).

Further, those who have not filed the complaints anywhere even in the case of not receiving the salary, benefits as stated in the employment contract, majority (54%) did do so because 'they did not know where to file the complaints' and another 23 percent reported that 'they did not feel that a report would be beneficial'. On top of this, there are 20 percent of returnee migrants who did not file the cases due to fear of deportation and fired from the job. A small proportion (5%) also reported it as the language barrier.

3.7 Some Key Supreme Court Verdicts in Relation to Foreign Employment

The Supreme Court of Nepal has provided landmark verdicts to protect the rights of migrant workers (People Forum, 2076 BS). Some important ones are the following:

1. *Appointment of Labor Attaché and establishment of the safe houses for the women migrant workers at abroad* (People Forum v Government of Nepal, Wirt No. 065, verdict date: 22 October, 2010 (2067/07/05); Justices offered the verdict – Hon'ble Justice Top Bahadur Magar and Hon'ble Justice Tahir Ali Ansari). The Court ordered that the Government should appoint the Labor Attaché in countries where there are 5000 or more workers or there are at least 1,000 WMWs and also establish the safe houses.
2. *Related to monitoring of the standards of medical institutions that conduct medical test to the migrant workers* (Arun Medical Center, Kathmandu v Government of Nepal, Writ No. 9301; order date: 28 August, 2014 (2071/5/12); Justices offered the verdict: Hon'ble Justice Kalyan Shrestha, Hon'ble Justice Baidhya Nath Upadhyaya and Hon'ble Justice Govind Kumar Upadhyaya). The Court rejected petition that the MOLESS cannot determine the standards for monitoring the medical institutions that provide medical test of the migrant workers without the consultation of the concerned medical institutions. This verdict brings all the medical institutions under the scope of legal liabilities while providing the medical services to the migrant workers. This decision has the importance in the context that medical test is mandatory to migrant workers and in the context that many migrant workers had to return to the country after medical fail in the destination country and wasting of time and money.
3. *Decentralization of function of the Department of Foreign Employment* (People's Forum v Government of Nepal, Writ No. 071-WO-0109; order date: 15 March, 2017 (2073/12/02); Justices offered the verdict: Hon'ble Justice Om Prakash Mishra and Hon'ble Justice Ananda Mohan Bhattarai). The Court ordered that the Government of Nepal should attempt to decentralize the complaint handling mechanism to access the justice to the migrant workers. In the context of federal structure of the country, the Government can arrange at least one complaint handling and hearing unit in each Province of the country. This can be done by mobilization of the Province level judicial staff and human resources. This order can have far reaching consequence in access to justice because those who could not come to Kathmandu for petition can file their case from their own Province capital, and may be benefited from the justice system.

4. *Sending of workers only after the bilateral labor agreement and establishment of rapid rescue mechanism* (People Forum v Government of Nepal; Writ No. 0163; order date: 14 September, 2017 (2074/05/29); Justice offered the verdict: Hon'ble Justice Deepak Kumar Karki and Hon'ble Justice Anil Kumar Mishra). In this case, the Court has ordered the following. One, carry out the evidence-based study about the labor market situation of a country before opening up the country for labor market and give priority to conduct the BLA to the new country including countries in which Nepali migrant workers have already been working; ii) appoint the Labor Attaché in countries where there are more than the Nepali workers as stipulated in the prevailing law of the country; iii) establish the rapid response mechanism to immediately response the problems faced by the Nepali workers abroad and manage immediate rescue and health treatment as well and iv) monitor the insurance system of the migrant workers abroad and ensure the economic security of the workers by managing the safe remit of workers' income through the formal channel.

5. *Request to reduce the judicial power of the Department of Foreign Employment* (People Forum v Government of Nepal, Writ No. 072/WO/0162; order date: 24 January, 2018 (2074/10/14); Justices offered the verdict: Hon'ble Justice Ananda Mohan Bhattarai and Hon'ble Justice Anil Kumar Shinha). The Court ordered that revise the provision of sections 48 to 55 of *Foreign Employment Act 2007* and empower the FET to revoke the license that are have been found as guilty and end the situation that victims are denied of timely justice from the Department of Foreign Employment. This order has the importance to avoid the delay in case settlement and provide the compensation to the victim on time.

6. *Granting the franchise rights of the Nepali in foreign employment* (Law and Policy Forum for Social Justice vs Government of Nepal; Writ No. 073/WO/1149; order date: 16 March, 2018 (2074/12/02); Justices offered the verdict: Hon'ble Justice Sapana Pradhan Malla and Hon'ble Justice Purusottam Bhandari). In this case, the Court has the following verdicts. First, according to the voting rights of migrant workers as well as other citizens residing abroad as fundamental rights of citizens of Nepal as an *external voting*. Ensuring the rights of voting to migrant workers, but not to other citizens living abroad is tantamount to discrimination. Second, the Supreme Court also stipulates the eligibility of voters as follow: Nepalese citizens living abroad but not abandoned the Nepalese citizenship and not received the citizenship of other countries, eligible age for the voting rights, holding of an election identity card and who have been listed in voting list by the Foreign Mission. Third, organize the appropriate voting method like voting by establishing a polling booth in the foreign Mission, sending of the vote through a post office and electronic voting in consultation with the political parties as well as assessing the capacity of the Government to manage the voting method. Fourth, ensure that the host countries may have their own rules and laws whether or not to permit the political voting rights of non-nationals from their land and if needed consult the major host countries of Nepali migrant workers and employers and companies abroad in this regard. Fifth, the court ordered that the Council of Minister to ensure that the law for the voting right to be formulated from the Parliament. Finally, initiate the preparation of registration of Nepali citizen living abroad eligible for voting and create the circumstance for election participation from the coming election.

7. *For the effective implementation of the government policy of free visa and free ticket* (Law and Policy Forum for Social Justice vs Government of Nepal; Writ No. 074/WO/111; order date: 31 December, 2018 (2075/09/16); Justices offered the verdict: Hon'ble Justice Kedar Prasad Chalise and Hon'ble Justice Ananda Mohan Bhattarai). The Court ordered that there is no doubt that the Government has made the free visa and free ticket system by realizing the importance of the remittance for the country's development. The Government authorities working in foreign employment services must ensure the effective implementation of the legal provision of the free visa and free ticket system and ensure that no migrant workers are cheated in the process of recruitment.

3.8 Justice for Wage Theft Campaign: The Context of COVID-19 Pandemic

The wage theft has been widely reported during and aftermath of COVID-19 pandemic in many major destination countries of Nepali migrant workers. Wage theft is defined as total or partial non-payment, payment of salaries less than the minimum wages, non-payment of overtime, non-payment of contractually owned benefits, and non-negotiated reduction of salaries. To address the wage theft phenomenon, the Migrant Forum in Asia, MFA (2021)¹² initiated building a coalition among the civil society organizations and trade unions in June 2020.

The Coalition has released four appeals focusing on the need to take actions by UN policies, Government and business sectors. The first appeal was related to need of basic initiatives to be taken to safe the migrant workers from wage theft phenomenon. The second appeal was related to establishing the concrete access to justice mechanism such as International Claims Commission, Commission Fund and reforms in national policies. The third appeal was related to the possible initiatives to be taken by the business and employers. The fourth appeal applauded actions of certain States in recognizing the need for migrant worker protection and the fifth appeal focused upon recommendations specialized for countries of origin and destination. With the establishment of website for Justice for Wage Theft (JWT) campaign, MAF members and partners have been documenting the cases of wage theft in the destination countries of migrant workers and assisting them.

12 Established in 1994, MFA is a network of grassroots organizations, trade unions, faith-based groups, migrants and their families and individual advocates in Asia working together for social justice for migrant workers and members of their families. By January 2021, it had 206 member organizations (Migrant Forum in Asia, 2021).

Table 3.9 Distribution of cases filed in relation to wage theft in some selected countries, 2021

Country	No. of cases registered			% of total cases		
	Total	Documented MWs	Undocumented MWs	Total	Documented MWs	Undocumented MWs
India	620	184	436	55.7	70.3	29.7
Indonesia	200	84	116	18.0	58.0	42.0
Nepal	116	77	39	19.4	33.6	66.4
Bangladesh	115	99	16	10.3	13.9	86.1
Philippines	62	57	5	5.6	8.1	91.9
Total	1113	501	612	100.0	55.0	45.0

Source: Migrant Forum in Asia, 2021b.

During the period of January-May 2021, a total of 1,115 new cases were filed on the JWT-Uwazi platform. A majority of Nepal's cases were registered in GCC countries with Bahrain accounting for 43 of the 116 cases, followed by Qatar 28 cases, Saudi Arabia 20 cases and 14 cases from Malaysia. Data reveal that both documented and undocumented migrant workers filed the case to JWT for support. Of the 1113 cases, 55% were registered by the undocumented migrant workers while the rest 45% was registered by the documented workers. In case of Nepal, one-thirds of the total cases of wage theft registered in the JWT website were by the undocumented migrant workers while the rest thirds were of documented migrant workers (Table 3.9).

Wage theft cases have been reported from across the occupation sectors such as construction, manufacturing, domestic workers, retail shops, fishing, hospitality, sanitation, office workers and transport. Numerically, three-fifths of the cases were from construction sector, 13 percent from manufacturing and 10 percent from fishing. In case of Nepali migrant workers, there were 29 cases of construction sector, 36 cases from retail shops, 5 manufacturing and 2 domestic workers. The following is the extract that reveals how Nepali workers who went to Saudi Arabia after the first wave of Covid-19 faced problem of wage theft by the employer and how they were often become the victim of violence:

Group of 20 (Nepalese) went to Saudi Arabia in January 2020. They all went through Fazal Int. Pvt. Ltd to work with Sharq Transport Est. in driving. After they reached Saudi Arabia, the company did not provide them with a driving license. They were given old vehicles, which broke down often on the road. They were caught and beaten up by police and locals during such incidents. Before lockdown, they were paid SAR 200 as petrol charge but after the lockdown, it only provided SAR 90, which is not enough. Their contract had SAR 1800 for 8 hours duty however, they were only receiving SAR 1300 and also for 12 hours duty. They further face language barriers at the workplace. Their families complained to the recruitment agency but to no response.

Source: MFA (2021a) Report on Wage Theft against Migrant Workers during COVID-19.

This Chapter briefly reviewed the legal framework, law enforcement and judicial response mechanisms specific to foreign employment in Nepal including the distress migrant workers perspective on access to justice. Key findings suggest that Nepal has achieved a lot in legal reforms and judicial responses to foreign employment while it comes to implementation of provisions and courts' verdicts, it is feeble and insignificant to deliver the full and timely legal remedy to the distress and victims and their family members. The provision of free legal defense to effectively facilitate legal representation of accused migrant workers at abroad; provision to refer the complaints filed by the victims in Diplomatic Missions to DOFE for further investigation and legal remedy; rate of complaint handling, reconciliation and providing compensation by CDO; complaints handling, investigation and compensation by DOFE all have been poorly implemented vis-à-vis the problems encountered. The enormity of distress migrant workers as reflected by NGOs and Government data, the scale of convicted migrant workers as reported by Diplomatic Missions and the extent of fraud and deception cases filed in DOFE and in several NGOs all reflect insufficient access to justice to the victims. Given this circumstance what about the protection (rescue, relief, repatriation, return and reintegration) mechanism evolved for migrant workers especially during the humanitarian crisis like pandemic, war and disasters? We shall discuss this issue in the following Chapter.

Chapter 4

Rescue, Return and Sustainable Reintegration

This Chapter describes the rescue, return and reintegration processes by reviewing Government Order, Guideline and policies especially focusing on the event of COVID-19 pandemic. Further, it interprets how far return process has become dignified, and how far the reintegration process can be sustainable given the context of reintegration measures used.

Here, we have used to refer to the first wave of COVID-19 pandemic period from 24 March to 1 September 2020 and the second wave period from 29 April to 1 September 2021. In these periods, there was partial or complete lock-down in Nepal and many of the destination countries because of restriction of flights, and mobility.

4.1 Rescue Process

The *Foreign Employment Act 2007* states the following in relation to rescue of workers in case of crisis circumstances:

Where Nepalese workers have to be immediately brought back to Nepal due to a war, epidemic, natural calamity in the country where such workers are engaged in employment, the Government of Nepal shall make arrangements for repatriating such workers through the diplomatic mission or Labor Attaché (Section 75.2).

4.1.1 Government Order, Guidelines and Policies

On 25 May 2020, the Council of Minister adopted the Order¹³ to facilitate the Nepali citizens abroad to come to Nepal during the period of restriction of travel due to the effect of the COVID-19 pandemic. The Order makes different provisions of entry border points from the land and from air, management of holding centers and quarantine centers, repatriation of dead body and provision of spending for rescue and relief packages. The following 18 border entry points were opened for those Nepalese citizens coming to Nepal via on land from India:

1	Pasupatinagar (Illam)	10	Birgunj (Parsa)
2	Kakarbhitta (Jhapa)	11	Maheshpur (Nawalparasi west)
3	Rani (Morang)	12	Belhiya (Rupandehi)
4	Kunauli (Saptari)	13	Taulihawa (Kapilbastu)
5	Thadi (Siraha)	14	Kirishnagar (Kapilbastu)
6	Madar (Siraha)	15	Jamunah (Banke)
7	Vittamod (Mahottari)	16	Gauriphanta (Kailali)
8	Malangania (Sarlahi)	17	Jhaulaghat (Baitadi)
9	Gaur (Rautahat)	18	Darchula (Darchula)

13 This order adopted by government in response of Supreme Court Interim order Writ no 076-FN-0558/076-wo-0940 Advocate Som Luitel v Nepal government.

In case of Nepalese citizens returning from overseas expect from India, they were made provision of return on basis of following priority:

1. Those granted amnesty from the punishment;
2. Those in detention centers permitted to come to Nepal;
3. Those with the exit visa of any reason;
4. Those whose relatives died and have to come to Nepal for the performance death rituals;
5. Those whose labor contract period has ended and lost the job;
6. Those with serious health situation expect COVID-19;
7. Pregnant and lactating women;
8. Children, senior citizens and persons with disabilities;
9. Those government staff went for the study and training;
10. Students whose study completed;
11. Students on study but need to come to Nepal;
12. Those went for family reunion;
13. Those in employment in a company and leave granted;
14. Those working international organizations; and
15. Those having tourist and business visa.

The Order instructed the local governments to establish the holding centers closed to the border points for those who come from India. Holding centers were made in public schools, community buildings, sports halls, party' palaces and even in open places. Those coming from International Airport of Kathmandu were placed in the holding centers established around the Ring-Road of Kathmandu valley and the responsibility of management of holding centers was given to the Nepal Army. In case of management of quarantine centers, local governments were made responsible and they have to manage logistic and safe drinking water. People have to maintain the standard and safety measures while in the quarantine centers according to the protocol of MOHP.

According to the Order, the Federal Government would allocate Rs. 175 per person/day for food and water to those persons in quarantine centers for 14 days to the concerned local government. The rent of holding centers would be paid by the Federal Government, and the Federal Government expenditure was managed from i) Central District Disaster Management Fund, ii) Corona Infection Prevention Control and Treatment Fund and iii) Foreign Employment Welfare Fund. The MOFA and MOLESS were to make arrangement to bring the dead body and remains of Nepali citizens who died at abroad and who could not be brought timely due to non-flights as a result of COVID-19 global pandemic.

Guideline for the Rescue of Nepali Workers in Foreign Employment Affected by COVID-19

– On 20 July 2020, the MOLESS brought the Guideline¹⁴ to rescue the migrant workers from abroad who had been stranded due to COVID-19 pandemic. The Guideline establishes standard criteria and priority for rescue, rescue process, management of expenditure and role of Foreign Mission

14 The Guideline has been published in *Nepal Rajpatra* (Section 10, No. 14) on 20 July, 2020. This guideline was adopted by MOLESS in response of supreme court order 076-wo-0940 Advocate Som Luitel v Nepal Government

and licensees at abroad. As per the provision, expenditure for rescuing the migrant workers can be incurred from Foreign Employment Welfare Fund in case the migrant workers who went abroad by taking labor permit and who are currently at the abandoned situation.

Some positives aspects of the Guideline are that it grants maintaining the privacy of the workers and brings the licensee agencies on board for the rescue of the workers. If a licensee agency does not support the process, its license may not be renewed for the next five-years. However, the Guideline has some several weaknesses. First, it has not clarified how an undocumented worker was to be rescued as a Nepali citizen and as a humanitarian ground. Second, the application process appears to be lengthy and lousily¹⁵ in the context of humanitarian crisis that the workers were facing in the destination country due to lock-down, short-down of factory or company and lost the job and restriction of mobility in destination country. In some of the cases, the migrant workers had to wait more than six-months in the destination countries without work, income and appropriate accommodation and food. Finally, the expenditure management for supporting for air ticket also appears to be faulty. It is assumed that those workers who have more than one year contract period and who have gone abroad through re-approval can pay all the cost of air fare without considering their nature of work, earning capacity and others. According to the Guideline, the airfare to the worker shall be paid on the basis of the following:

	Description of worker	Of the total airfare, Fund shall pay:
1	If the worker has < 1 year contract period	100%
2	If the worker has more than 1 year contract period	50%
3	If the worker went by re-approval labor permit	50%
4	If the worker released from prison and granted amnesty	100%
5	Charges from TIA to the quarantine centers	100%

The Supreme Court's Verdict on Migration Governance During the COVID-19 Pandemic-

One of the good examples of how the Supreme Court of Nepal has played a lead role to comply the Government to rescue the Nepali citizens/workers from abroad during the pandemic is the verdict of the One Judge Islas of Hon'ble Justice Sapana Pradhan Malla on rescue of migrant workers affected by COVID-19 (Advocate Som Prasad Luitel v Prime Minister and Council of Minister Office. The petitioner's demanded the implementation of the *Foreign Employment Act 2007* (section 75) that if in a country where Nepali have been working has been affected by the war, pandemic or natural disaster and if the workers have to be rescued immediately, the Government of Nepal though concerned diplomatic Missions and Labor Attachés should manage to rescue the workers. And if the workers have to be returned according to the provision of section 75 of the Act, the cost required to repatriate the workers to the country should be borne by the Government of Nepal though Foreign Employment Welfare Fund.

15 First, a worker has to apply to the concerned Foreign Mission. Second, the Foreign Mission should write to the licensee agency that recruits the workers to the employer/company for preparation of worker's salary, benefits and contract period and requesting to arrange the air ticket from the employer or company. Third, the licensee agency shall submit the details to the Mission. Fourth, the Mission has to verify documents and uploads on the FEIMS and also write to Foreign Employment Board via Minister of Foreign Affairs for the release of money for air ticket and other expenditure. Upon verification of the documents, Foreign Employment Board reimburses the airfare to the name of the worker in the concerned Mission. Finally, the Mission shall lead a role to send the workers in coordination with the Ministry of Tourism and Culture and Foreign Affairs and employer and company.

In this case, the Supreme Court offered the order following.

1. The Government of Nepal though mobilization of its Embassies, Labor Attaché in destination countries affected by the COVID-19 pandemic should prepare the list of Nepali workers who have been affected by COVID-19 following the standards of World Health Organization (WHO) protocol.
2. The Government via MOFA should increase diplomatic relations to ensure that Nepali workers affected by COVID-19 get medical treatment without discrimination in the discrimination countries.
3. With the view of high, uncontrolled and unmanaged influx of Nepali citizens into the country on land, it is essential to both protect the individual rights of citizens to return to the country and also ensure that the larger interest of population for life and health has not been compromised.
4. The Government should manage the required administrative, financial and other arrangement to facilitate the process of return of Nepali citizens to the country.

NPC'S Policy Initiatives to Address the Impact of COVID-19 on Migrant Workers - The National Planning Commission (NPC, 2020) examined the effects of COVID-19 on foreign employment and on the economy. It has suggested the policy responses in three stages (Box 4.1).

Box 4.1 An overview of NPC policy responses of COVID-19

Immediate rescue and relief strategy	The survival and recovery strategy (3 to 12 months)	The rebound and revival strategy (1-3 years)
<ol style="list-style-type: none"> 1. Update data base of MWs who require support including for repatriation of dead body; 2. Preparing a rescue Guideline to repatriate the MWs (allocating 60% financial cost from the Federal Government for the management); 3. Initiate online registration of all returnees to ensure proper follow-up, livelihoods and skill development support; 4. Adopting the alternative measures to rescue the undocumented MWs; 5. Increase the diplomatic efforts to the major destination countries to make employers accountable for the rights of MWs during the COVID-19 pandemic 	<ol style="list-style-type: none"> 1. Conduct a study on labor supply and demand and strengthen the Local Employment Center ; 2. Emphasize public work, food for work in collaboration Ministries including private sectors; 3. Formulate policy and program environment for self-employment for returnees; 4. Ease gradually lock-down situation to resume economic activities; 5. Emphasize skills training, testing and certification programs; 6. Conduct a nationally representative survey of returnee MWs; 7. Update Foreign Employment Policy 8. Establish a research unit under the MOLESS for evidence-based dialogue and policy discourse 9. Emphasize the recovery of wages/benefits of MWs who have returned without payment 	<ol style="list-style-type: none"> 1. Establish the 'National Employment Promotion Authority' to integrate various employment generation programs; 2. Formulate a human resource development plan to match the demand and supply of labor force for the five-years; 3. Update the curriculum of secondary school to include vocational training to replace the foreign workers in Nepal; 4. Emphasize joint skill training initiatives with the collaboration of destination countries' public and private sectors 5. Introduce policy and programs making house-keeping and caregiving into formal sector by conducting research or collection of data of returnee female domestic workers.

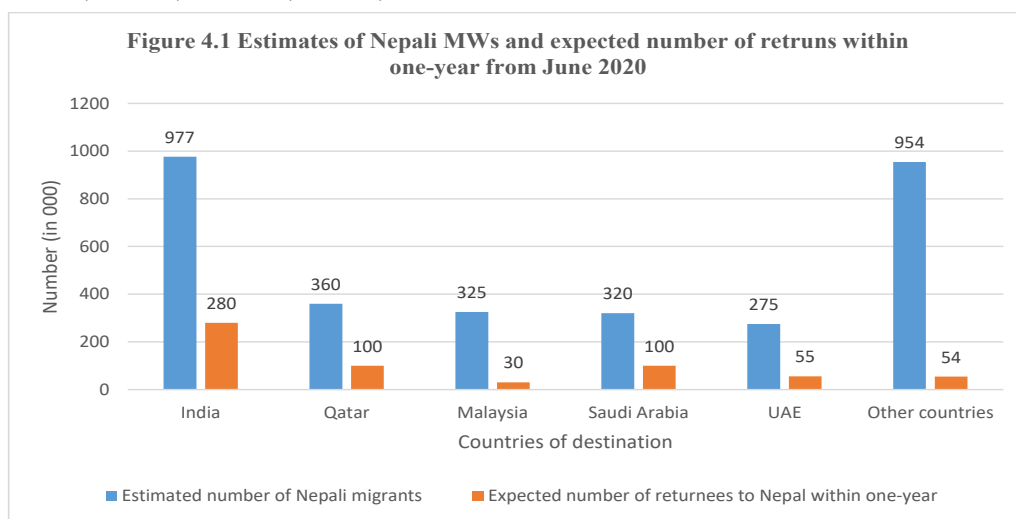
Source: NPC (2020).

It is tough to judge how many of NPC's policies have been implemented to curb the effect of COVID-19 on migrant workers in details in this Report. Yet our review suggests that many of the policies have not been implemented. For example, MOLESS failed to issue a white paper regularly stating the situation of migrant workers abroad both during the first and second wave of COVID-19 – thus there

was a violation of right to information to Nepali citizens especially to families of migrant workers. There was need to know the number of migrant workers aboard, number infected by the COVID-19, died due to COVID-19, performance of funeral, repatriation of dead bodies and remains, and number of workers rescued and so on. Such information was also very critical to protect the rights of migrant workers at abroad to create pressure to the Government of destination countries through different International Forums and including by the civil society at large. The NPC recommends for online registration of the returnee migrant workers including from India, but such information has not been properly maintained either by the border security posts or by the immigration official and not used for follow up, livelihoods and skill development programs. Strategies such as establishing special research unit under the MOLESS and conducting a nationally representative survey of returnee migrant workers fall under the exclusive scope of the MOLESS but the Ministry has not been found in initiating these efforts till the end of FY 2021/22.

4.1.2 Estimates of Citizens/Workers to be rescued during the First Wave of COVID-19

What was the size of abandoned, laid-off and displaced migrant workers to be rescued during the first wave of COVID-19 and from which country? It is difficult to response this question precisely in the absence of updated stock of migrant workers including those in regular and irregular status at abroad. Yet National Planning Commission, NPC (2020) estimate¹⁶ can be taken as an indication of scale of the problem spread across the globe during the first wave of COVID-19. The NPC estimated 3.2 million stock of Nepali migrant workers including other migrants such as students who were spread across more than 125 countries by March 2020 (Figure 4.2). India occupied the largest share of Nepali emigrants with 977,000. This is followed by Qatar (360,000), Malaysia (325,000), Saudi Arabia (320,000) and UAE (275,000).

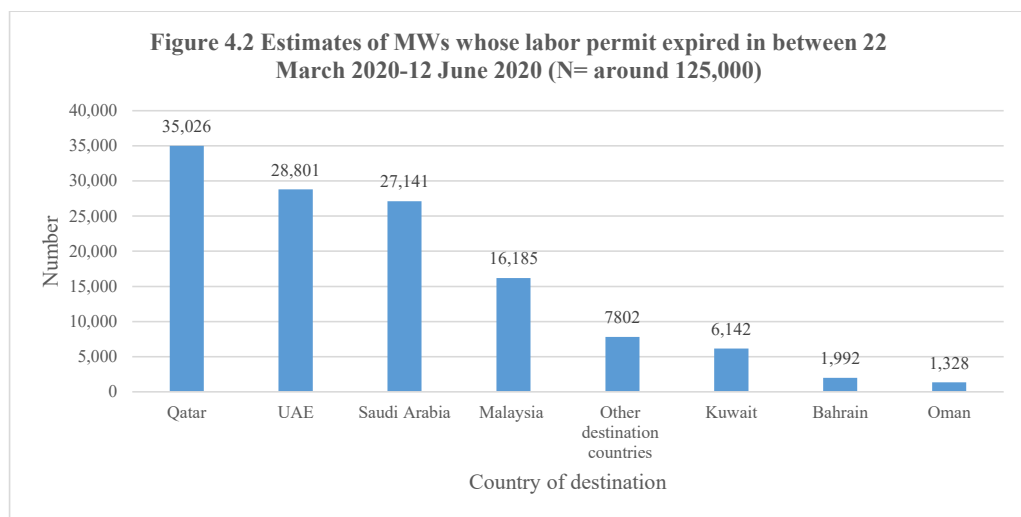


Source: NPC (2020). Effects of Covid-19 Pandemic on Foreign Employment and its Impact on the Economy of Nepal. Kathmandu: Author.

16 The estimate was derived by taking information from Foreign Mission to Nepal, analyzing the Nepal Labor Force Survey 2017/18 data and experts' views.

The annual number of returnee migrants to Nepal is estimated to be 618 hundred thousand or nearly one-fourth of the total emigrants expected to return in Nepal within one year. By country of destination, the highest number of returnee was estimated to be from India (280,000), followed by from Qatar (100,000), Saudi Arabia (100,000), UAE (55,000) and Malaysia (30,000).

ILO and CESLAM (2020) rapid assessment (RA)¹⁷ also provides the estimates of migrant workers who need immediate rescue during the first wave of COVID-19 pandemic (Figure 4.2). According to this study, on the average, every day 1,500 Nepali migrant workers' visa would be expired due to end of their contract period and it was estimated that that number reached about 125,000 within three weeks of the lockdown (between 22 March and 12 June of 2020). Of those whose labor permit had already expired, nearly 81% was estimated to be in GCC countries, 13% in Malaysia and rest 6% in other countries. At the individual country, the highest number of laborers expiring labor permit was from Qatar (35,026, followed by UAE (28,801), Malaysia, Saudi Arabia (27,141) and Malaysia (16,185). In term of origin of the migrant workers, the highest proportion was from Province 2 (25%), followed by Province 1 (23%), Lumbini Province (17%), Gandaki Province (15%) and the least was estimated to be in the Karnali Province (2.8%) and the Sudurpaschim Province (2%) (Not shown in Figure).



Source: ILO and CESLAM (2020) Socio-Economic and Health Impacts of Covid-19 on Migrants and Their Families. Kathmandu: Author.

4.1.3 Duration of Stranded in the Destination Countries

Studies have revealed that the migrant workers have been stranded for months in the destination countries without proper food, accommodation, medical care and in the state of fear because of the indefinitely lockdown and restriction of coming to Nepal during the first wave of COVID-19. One of such recent research, published by PNCC and CESLAM - the reputed research and migrant rights

17 The RA was carried out between 13 April and 2 June 2020. The RA was carried out by utilization of data/information from the leading newspapers published from Nepal and abroad. It utilized data from NLFS and Department of Foreign Employment and consultation with the stakeholders and some 10 migrant workers from UAE, Qatar and Kuwait were also interviewed.

organizations in Nepal, is of Bhattarai et al. (2022). They have surveyed 90 Nepali migrant workers (72 returnee migrant and 18 currently working in four destination countries, namely, Qatar, Saudi Arabia, UAE and Malaysia). Their study revealed that nearly one-fourth of migrant workers had to wait for more than six months in the destination countries (Table 4.1). This proportion was as high as 46 percent in Malaysia, 18 percent in UAE and 13 percent in Qatar. Conversely, only slightly more than one-fifths of the migrant workers could have been repatriated within less than one month. The repatriation was mainly from Qatar (32%) and Saudi Arabia (27%).

Table 4.1 Duration of stranded in the destination countries during the first wave of COVID-19

Duration	Total (N=90)	Malaysia (N=18)	Saudi Arabia (N=18)	Qatar (N=37)	UAE (N=17)
< 1 month	22.2	7.7	26.7	32.3	-
1 month	13.9	23.1	20.0	9.7	9.1
2 months	19.4	7.7	26.7	29.0	-
3 months	8.3	7.7	6.7	9.7	9.1
4 months	8.3	7.7	6.7	-	36.4
5 months	8.3	-	13.3	6.5	18.2
Six months above	19.4	46.2	-	12.9	18.2

Source: Bhattarai, S., Baniya, J., & Tumsa, D. (2022).

The same study revealed that there has been greater impact of the COVID-19 on the migrant workers during the first wave of COVID-19. Top five impact reported by the migrant workers include loss of job (41%), followed by unsafe working environment (33%), non-payment of salary (26%), expiration of labor permit/visa (24%) and health problem (23%). While one considers the individual country, it is revealed that more than two-thirds of the migrant workers from Qatar, 47 percent from UAE and 35 percent in Saudi Arabia viewed as the loss of job was the most important impact of COVID-19 while health problem has been cited the top impact among the migrant workers from Malaysia (Table 4.2).

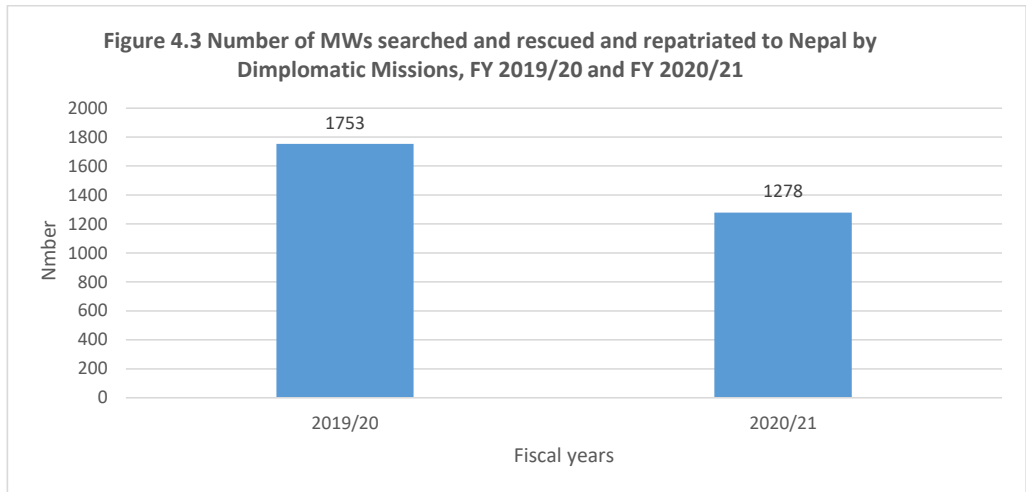
Table 4.2 Five most cited impact of covid-19 on migrant workers

Nature of impact	Total	Malaysia	Saudi Arabia	Qatar	UAE
Loss of job	41.1	22.2	35.1	66.7	47.1
Unsafe working environment	33.3	22.2	43.2	33.3	23.5
Non-Payment salary	25.6	11.1	24.3	27.8	41.2
Expiration of labor permit/visa	24.4	5.6	29.7	33.3	17.6
Health problem	23.3	61.1	13.5	22.2	5.9

Source: Bhattarai, S., Baniya, J., & Tumsa, D. (2022).

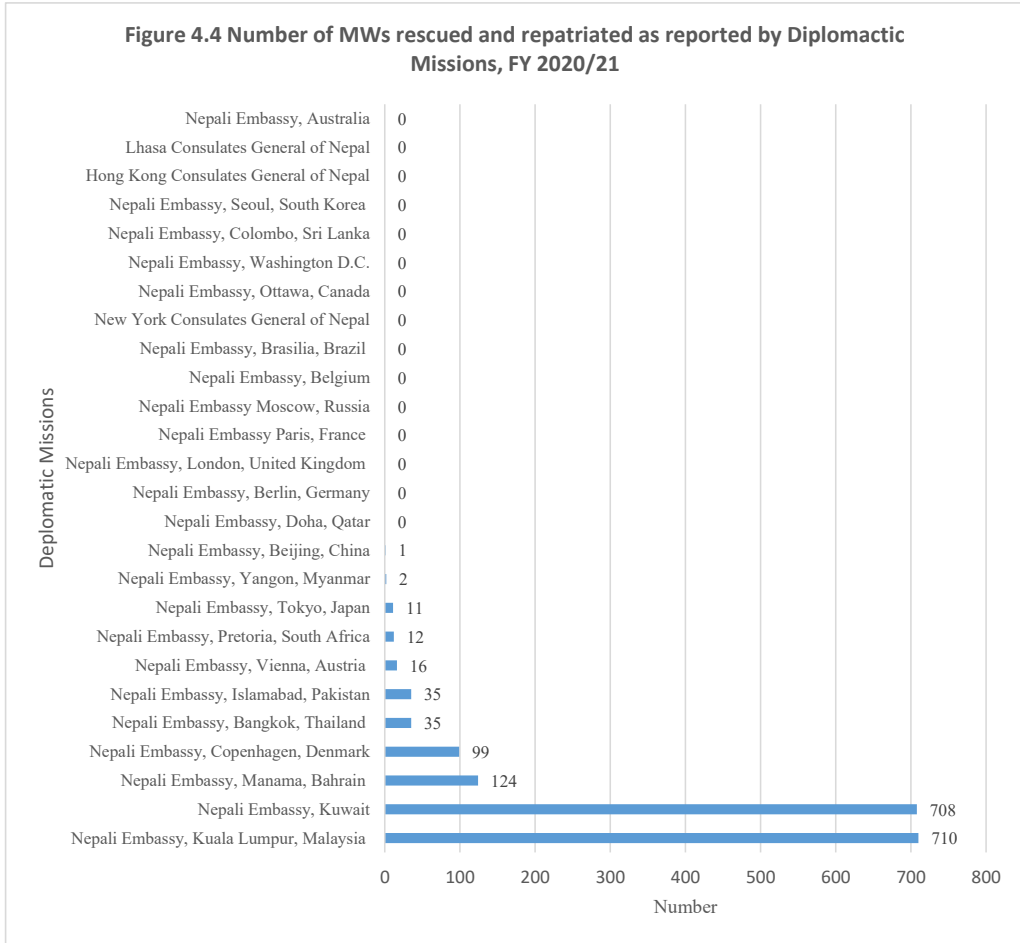
4.1.4 Rescue Efforts by Diplomatic Missions

National Human Rights Commission requested to Department of Consular Service to provide the data of the number of rescue and repatriation by different foreign Diplomatic Missions of Nepal for the FY 2019/20 and FY 2020/21. Accordingly, the Department of Consular Service compiled the data from 28 Foreign Diplomatic Missions and sent the letter to the NHRC. Based on this data set, 1753 and 1278 workers were rescued and repatriated with the facilitation of the corresponding Diplomatic Missions in FY 2019/20 and FY 2020/21, respectively (Figure 4.3). It is, however, not known why there was relatively lower number of rescue in FY 2020/21 compared to the previous fiscal year. It is expected that the number should have been much higher in FY 2020/21 because of the COVID-19 effects.



Source: Letter of Department of Consular to NHRC, 2021 (compiled for all the Diplomatic Missions that reported)

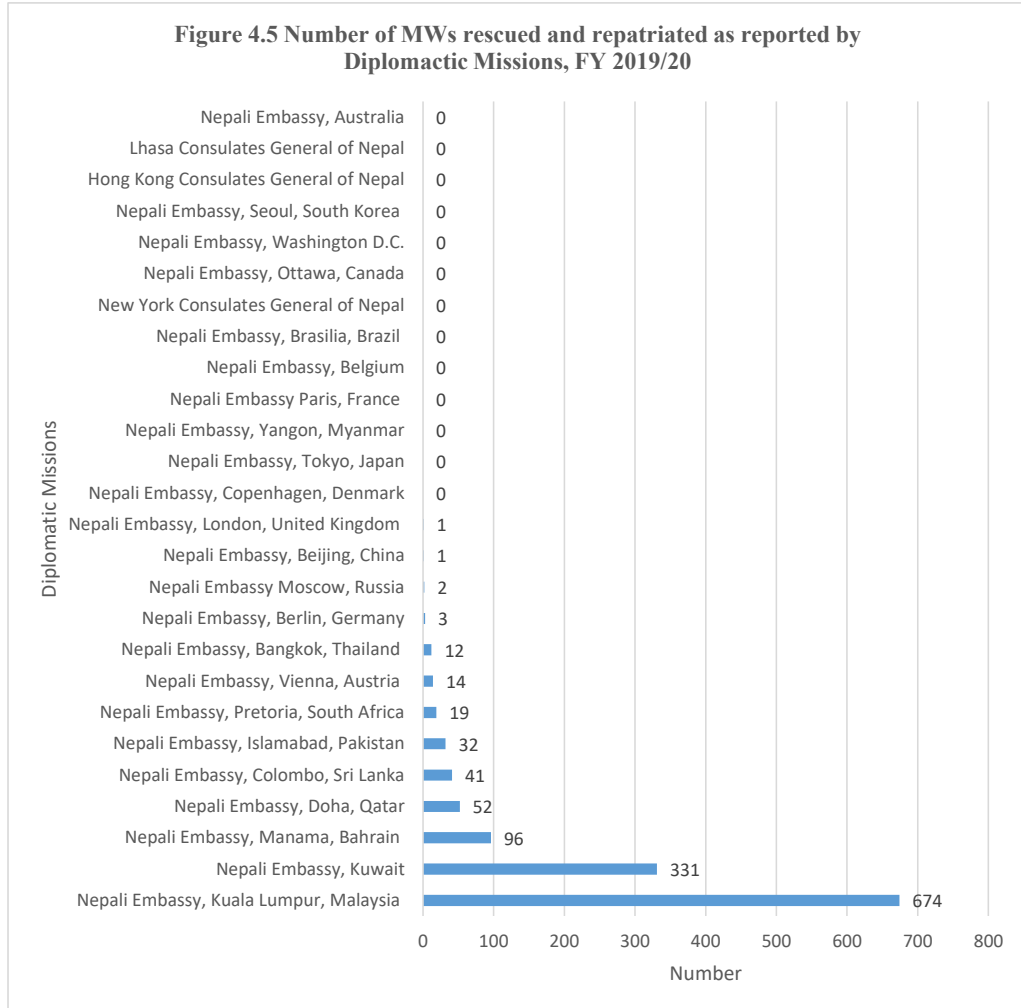
From where was rescue operated or from which country rescue operation was facilitated? This is shown in Figure 4.4 and Annex 4.1 for FY 2019/20. Data reveal that of the 28 Diplomatic Missions responded about the status of rescue and repatriation, only 11 reported that they have undertaken rescue and repatriation while the rest 17 reported that they did not receive any applications from the MWs to rescue and repatriate to Nepal. The highest number of rescue and repatriation was reported by Nepali Embassy of Malaysia (710), followed by Nepali Embassy of Kuwait (708), Bahrain (124). There were also a few from Denmark (99), Thailand (35), Pakistan (35), Austria (16), South Africa (12), Japan (11), Myanmar (2) and China (1).



Source: Letter of Department of Consular to NHRC, 2021 (compiled for all the Diplomatic Missions that reported)

In FY 2020/21, of 28 Foreign Diplomatic responses, 13 Diplomatic Missions have reported that they have at least one rescue and repatriation of the MWs while the rest 15 reported that they did not receive any application for the rescue and repatriation. Among those Diplomatic Missions reporting the rescue and repatriation, the highest number was reported from Malaysia (674), Kuwait (331 and Bahrain (96). There were also rescued from UK, China, Russia, Germany, Thailand, Austria and South African including from Asian countries of Pakistan and Sri Lanka (Figure 4.5 and Annex 4.1).

Figure 4.5 Number of MWs rescued and repatriated as reported by Diplomatic Missions, FY 2019/20



Jeddah Consulates General of Nepal – A total of 6000 applications were registered for rescue and return to Nepal during the two fiscal years. However, it did not provide information about actual number of rescue and repatriation.

Nepali Embassy, Kuwait reported that 708 and 331 number of migrant workers were rescued and repatriated to Nepal in FY 2019/20 and FY 2020/21, respectively. In Kuwait, one Safe House in operation since 2010. There is also provision of food, accommodation in the Safe House. The Staff of the Embassy also visit the working place of the workers and also raised the awareness. Further, with the coordination of the Embassy also carried out the programs related to increasing awareness about trafficking. The Embassy handles the complaints through email, phone calls and hotline. The Embassy also suggests the migrant workers rescued and sent to Nepal should file the complaint about their trafficking or irregularities in the process of foreign employment. The Embassy noted the following challenges in dealing with the rights of migrant workers in Kuwait. First, there has

been substantial number of migrant workers who come illegally to Kuwait and migrant workers who became illegal because of changing of employers. Second, migrant workers who come to illegally do not often report the agents/agencies from which they are illegally sent and it is difficult to bring the perpetrator into justice. Third, the space in Safe House has not been sufficient because of the COVID-19 effects and at the same time, the number of WMWs coming to Embassy by running away from their employers has not declined. Finally, the rapid rescue to the migrant workers during the COVID-19 pandemic could not be done because there is only provision to purchase the air ticket to only migrant workers who were released from prison or detention center, all the migrants workers have to purchase their own ticket. And, many migrant workers who were displaced due to COVID-19 did not have money to buy the ticket. In this case, the Embassy had to establish the coordination with the Local Governments for travel expenditure, this took much time.

Nepali Embassy, Berlin, Germany - It reported that three Nepalese citizens were rescued: one young man (Hari Lal Rana) from Afghanistan to Germany and sent through Air Ambulance to Nepal; another young man (Milan Adhikari) who had come to Germany fell mentally ill and was missing. He was found and he had undergone PCR test and sent back to Nepal; and another young woman (Melesa Paudel) was rescued from Poland she had respiratory problem. As the application to bring to her in Nepal received through the Department of Consular, she was facilitated to return to Nepal.

In United Kingdom, the Nepali Embassy assisted to rescue and provide legal defense to three victims. One victim who was imprisoned with the charge of theft for 9 years had been assisted to release from the imprisonment and he was sent back to Nepal. In another case, Amit Adhikari, who was accused of using and trafficking of drugs died in Belmarsh prison in the United Kingdom? His family members in Nepal were contacted about it. Another person – Anil Raj Wagle, who was accused of women trafficking had been imprisoned in Her Majesty Prison Edinburg for 8 years. According to the Embassy, he is being supported to release from the prison.

Nepali Embassy, Vienna, Austria reported that in FY 2019/20, with the coordination and request of IOM, the Embassy rescued 16 Nepali (3 female and 13 male) from Greece and issued one-way travel permit to return to the Nepal. In FY 2020/21, with the coordination and request of IOM, the Embassy rescued 14 Nepali (3 female, 11 male) and issued one-way travel permit to return to Nepal. Of the rescued persons, 8 were rescued from Bosnia and Herzegovina, and 8 from Greece. From Denmark, 99 Nepalese were rescued during the COVID-19 context.

Nepali Embassy, Kuala Lumpur, Malaysia provided a detail of the rescue and search of the Nepali migrant workers in Malaysia in the FY 2019/20 and 2020/21.

Accordingly, it classified the search and rescue as:

- Search for those Nepali migrant workers in Prison, informed to family members and those whose terms of prison completed were rescued (56 in FY 2019/20 and 45 in FY 2020/21)
- Search for those reported to be missing in Malaysia (1 in FY 2019/20 and 3 in FY 2020/21);
- Rescued from detention center and sent to Nepal (610 and 354 in FY 2019/20 and 2020/21 respectively);

- Rescued to those who were at abandoned state because of not having money for food and accommodation (43 and 61 in FY 2019/20 and 2020/21, respectively) and
- 211 rescued from Detention Center and sent to Nepal (15 July 2021-12 Nov., 2021)

One of the key challenges related to protection of rights of migrant workers in Malaysia is that the contract period of many of the accused in the prison had expired before they were arrested. In this case, the budget for legal defense cannot be demanded from the Foreign Employment Board and as a result, there is difficulty in appointment of legal professional for their legal defense.

In Myanmar, 2 cases of rescued was reported. From Sri Lanka, 41 cases of rescue including 40 females were rescued in FY 2020/21 and from South Korea, there were no cases of rescue in the FY 2020/21. The Nepali Embassy, Thailand reported 35 and 12 migrant workers rescued in FY 2019/20 and 2020/21, respectively. In FY 2019/20, the number of trafficking victims rescued also includes from Thailand 11, Cambodia 17, Laos 3 and in FY 2020/21, the number of rescue include 7 from Thailand, 2 from Cambodia, and 3 from Singapore.

In Japan, the application for rescue of 11 Nepalese citizens who were reported to be missing was received in the Embassy. It is reported that in Japan, the rights of individual privacy is very strong and the individual information is not even given to the Embassy. In this context, it is not easy to identify the missing persons on time.

In China, it is reported that marriage migration to young Nepalese women has been reported and the marriage migration ultimately ends as trafficking. The Embassy rescued two young women from China in the FY 2019/20 and 2020/21 who were reported to be married by Chinese men and the young women were the victim of violence. The Lhasa Consulates General of Nepal reported that there were no cases of rescue in FY 2020/21. Nepali Embassy, Pakistan reported that it has rescued 35 and 32 Nepalese in FY 2019/20 and 2020/21, respectively. In FY 2019/20, among the 35 rescued migrant workers, 23 and 12 were rescued from Turkey and Iran, respectively. Similarly, in FY 2020/21, of the 31 rescued, 15 were from Turkey, 11 from Iran and 5 were from Pakistan. The Embassy reported that it carried out the following activities:

- Prepared the travel permit to those who lost passport or who do not have the passport and sent the concerned country
- Conducted correspondence and coordination for the fee or reduce fine for those who have had overstay fine
- Provided fee-travel permit letter to those who have not money and at abandoned situation and coordinate to repatriate to them to Nepal
- Coordinated to provide the relief package to those who have lost the jobs, those who have run away from the company due to several reasons, or those who have been arrested by Police, they have been provided relief package until they reach to Nepal

The Embassy noted the following challenges when carrying out the search and rescue operation:

- Employers of the destination countries (agencies, companies, house owners) are often

reluctant to address the problem of migrant workers especially those who have left out the employers.

- The recruiting agencies in Nepal make contract for 2 years period to send to Turkey while they reach to Turkey, the contract period is found only one year.
- Having provided to the dream of entering to Western Europe from Turkey, agents collect a lot of money from the migrant workers to send them to Turkey and the agents send the workers to Turkey in visit visa or other illegal means. In such case, the migrant workers are instructed to hide their identity and in this case, they turn to be unlawful non-citizen – making it difficult to rescue the victim.
- When workers are illegal residence or those who left the legal employer and have been working to other employer illegally, in this case, it is difficult to provide health services, and compensation of workplace accident.
- Other problems include those coming to work without necessary skills and training, workers not having knowledge on the concerned country's working environment, culture, traffic rules are other major challenges to rescue and search for migrant workers.

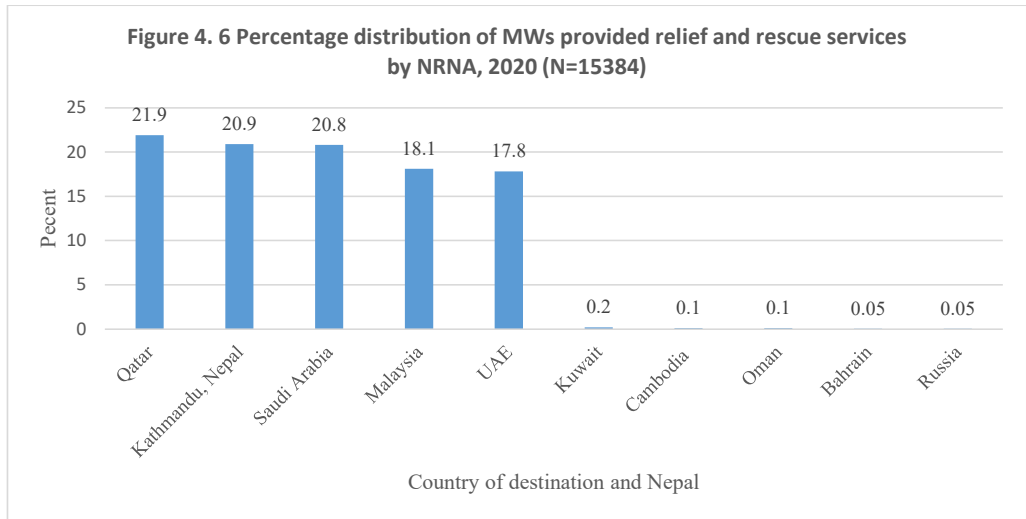
Australia – Nepali Embassy, Australia reported that there were no cases requested for rescue or search by Nepali citizens in Australia.

South Africa - Nepali Embassy, Pretoria, South Africa reported that there are 18 countries accreditation under the Embassy including South Africa. All of these countries are from Africa. The Embassy reported that it has written to all its 18 accreditation countries for the number of rescue and search. However, the Embassy reported that there were 12 and 19 migrant workers who were rescued and repatriated to Nepal in FY 2019 and 2020/21 respectively. The Embassy reported that it has actively involved in rescue, relief and repatriation to the country by coordination of the concerned agencies in African countries, NRNA. The Embassy also updates records of the Nepali in prison or in the detention center and also inform to the family members. The Embassy has established Hotline service of 0027-765093941 and website of za.nepalembassy.gov.np. The Embassy also reported that it has recommended for the legal treatment of the perpetrators involved in trafficking and human smuggling to the MOFA and other concerned agencies.

4.1.5 Rescue and Relief Initiatives by NRNA

Non-Resident Nepali Association (NRNA) was the only hopes of many migrant workers abandoned or laid off to communicate their problems in the event where all Government and civil society offices were closed due to COVID-19 pandemic in many destination countries. NRNA provided relief and rescue services to 15,384 Nepali migrant workers within the six months from 25 March 2021 to September 2020 (Figure 4.6). Altogether, migrant workers were covered from nine countries but the majority was mainly from Gulf countries as Qatar (22%), Saudi Arabia (21%), UAE (18%) and Malaysia (21%). With the coordination of concerned country's Nepalese diplomatic mission at abroad, NRNA launched relief and rescue initiatives. The program was initially started from Malaysia, Qatar and UAE and later extended to Bahrain, Kuwait, and Oman and other countries. The program aimed

at providing food and shelter; pay the partial airfare to return to Nepal, PCR service, psychosocial counseling services, outreach services, legal aids to those in detention center, transportation and food cost from Tribhuvan International Airport to home of the affected migrant workers.



Source: NRNA (2021). *Question-Answer about the Relief and Rescue Program of Covid-19 Affected Nepali Laborers* (in Nepali). Kathmandu: NRNA.

The affected migrant workers were provided multiple relief services such as psychosocial counseling services (64%), support to prepare documentation to return to Nepal (26%), immediate food and shelter (18%), local transport cost in Nepal (7%), support to get re-employment in the destination country (1.6%), PRC test (2.1%), partial airfare support (1.3%) and legal support (1.3%). The notice of the NRNA posted in its website suggests the fact that NRNA has been working in multiple service areas for providing relief and rescue to the COVID-19 affected migrant workers (Box 4.2).

Box 4.2 Public notice of NRNA for relief and rescue of the migrant workers affected by COVID-19

If you are in problem while at foreign employment, contact us. Foreign Employment and Welfare Department of NRNA has been supporting to Nepali in foreign employment across the world especially in Gulf countries and Malaysia who are in following conditions:

- *If you have lost job at abroad*
- *If you have problem of food and shelter*
- *If you are at abandoned situation*
- *If you have any health problem, mental stress and if you need doctor*
- *If your visa has expired and you have not able to pay the penalty*
- *If you have problem to return to Nepal, if you are in custody or residing in the home return centers without money to buy the air ticket to come back to Nepal*
- *If you have not been paid by the employer or you wish to appeal to the Labor Court or other agencies or you need any other legal support*
- *If you have no ways to reach to home even returning to Nepal*

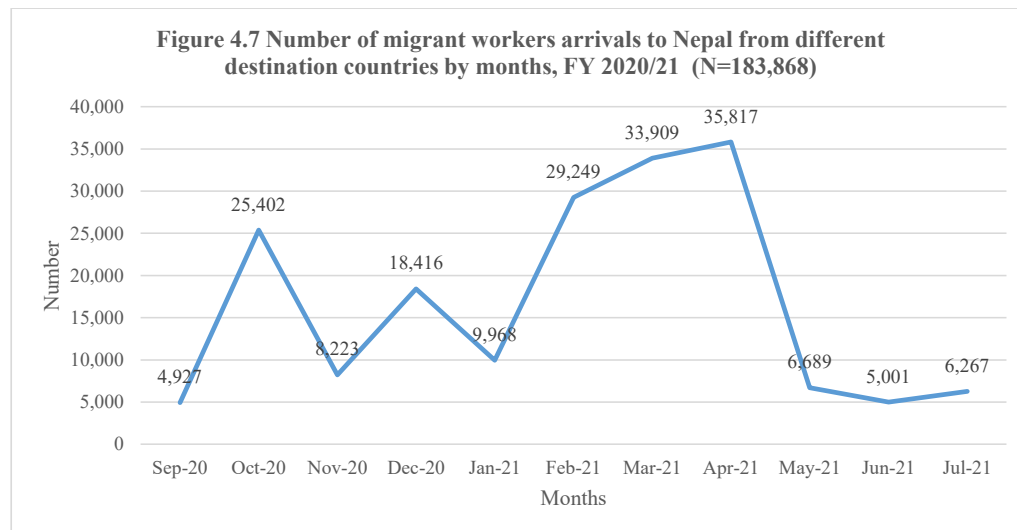
Yes, contact directly through NRN (National Coordination Committee), we shall attempt to solve your problem soon.

Source: NRNA (2021).

4.2 Return Process

4.2.1 Number of Arrivals in FY 2020/21

As discussed in 4.1 section, every day, on the average, 1500 migrant workers' visa were estimated to have expired because of not able to take re-approval labor due to lock-down and restriction in mobility in the destination countries. As a result, a huge number of MWs were got struck in the destination countries without work, proper food and accommodation in the absence of Government failure to rescue own citizens from different destination countries. In the second wave of COVID-19 Nepal imposed a four month lock-down to contain the virus from April-September 2020. The flights were resumed from 27 September 2020 onwards between Kathmandu and other countries. Immediately after the resumption of the flights, the MWs who were struck for months got opportunity to come back to home. Drawing upon the raw dataset obtained from FEMIS, it is known that overall, 183,868 MWs arrived in Nepal though air from different destination countries during the 11 months of FY 2020/21 (Figure 4.7). Of total MWs, an overwhelmingly majority (94%) constituted male migrants and the rest nearly 6 percent were females. Within four days of flight resumption in September 2020, nearly 5000 MWs landed in TIA especially from UAE and Saudi Arabia. The monthly arrivals thereafter increased considerably reaching to more than 25,000 in October while it again declined in December to 18,000. Data reveal that monthly arrivals was very high in the months of February, March and April 2021 – picked to nearly 36,000 in April 2021 and then it declined very sharply dropping to 6,267 by July 2021.

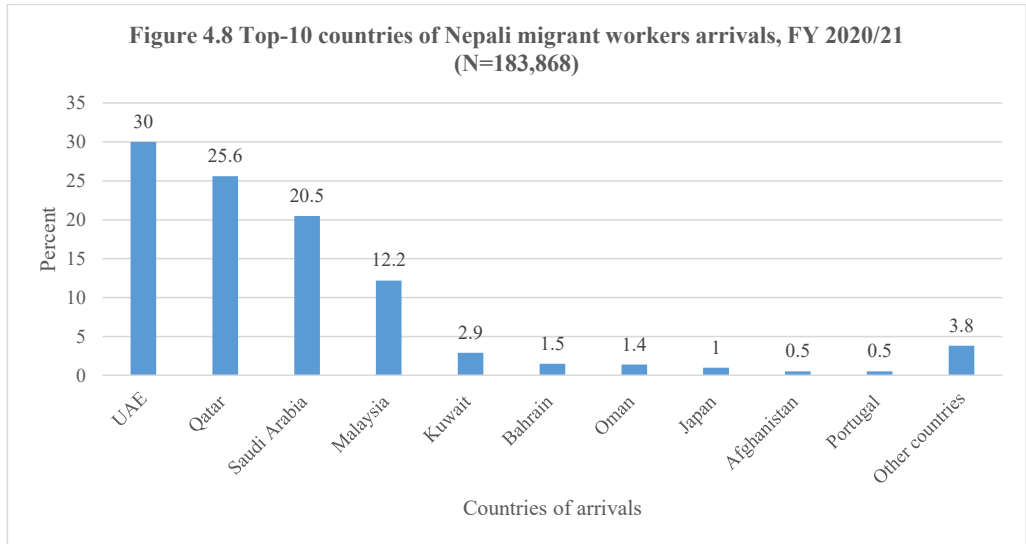


Note: * for September, it is only for 4 days (since 27th September).

Source: raw data sets obtained from FEMIS from MOLESS (dated 10 August 2022).

There were 139 countries from where at least one MWs returned to Nepal during the FY 2020/21 (Annex 4.2). However, the top-10 countries from where Nepali MWs arrived mainly constituted from GCC countries, Malaysia, Japan and Portugal (Figure 4.8). This arrival figures almost resemble the

annual number of MWs going for foreign employment, which was discussed in Section 2.1. Of 183,868 arrivals, the highest percent was from UAE (30%). This is followed by MWs coming from Qatar (26%), Saudi Arabia (20.5%) and Malaysia (12%). Other top-ten countries of arrivals of Nepali MWs were Kuwait (12%), Bahrain (1.5%), Oman (1.4%) and Japan (1%). There were more than 1,000 MWs who arrived from Afghanistan and another 976 from Portugal. Note that the Taliban, the insurgent armed group, took control over Afghanistan in 15 August 2021 and a huge evacuation of foreigners was operated from Kabul and it was reported that more than 1500 Nepali workers were to be evacuated immediately.



Source: raw data sets obtained from FEMIS from MOLESS (dated 10 August 2022).

Data also reveal that not all MWs arrived from the countries in which they have had the latest labor approvals, but rather they also arrived from countries in which they did not have labor approvals – illustrating the possible phenomena of trafficking. Of the total 183,868 MWs arrivals in FY 2020/21, more than 5 percent arrived from the countries in which they did not have the labor approvals. By individual country, for example, 50,458 MWs had latest labor approvals in UAE, while 55,166 arrived from there. The same case happened from Malaysia – there were 20,548 MWs having labor approvals but 22,412 arrived from there. On the other hand, there are many countries from which number of arrivals exceeds the number of labor approvals. For example, in Saudi Arabia, 42,797 MWs had the latest labor approvals but only 37,725 MWs came from there. There were altogether 19 countries for which at least one MW had the latest labor approval (118 MWs total) but when they (MWs) arrived in Nepal they did not come from these countries. Countries from which such types of MWs came were Algeria, Bosnia and Herzegovina, Chile, Dominican, Lithuania, Malabo, Mongolia, Panama, Peru, Bulgaria, Congo, Macedonia, Seychelles, Sint Maarten, Tanzania, Togo, Tunisia and Uruguay.

4.2.2 Returns before Ending the Contract Period

In their survey by Blitz Media Private Limited and Humanity United (2022) among the 4046 returnee migrant workers, they have enquired whether the respondents return to Nepal before the end of the employment contract period and if they did so reasons for it (Table 4.3). Data reveal that at least one-fourth of the returnee migrants returned to Nepal before the end of their Contract period in the destination countries while the three-fourth reported so after the end of the Contract period. By country of destination, relatively higher proportion from Qatar (28%), UAE (27%) and Malaysia (25%) came before the end of the Contract period compared to those from Oman (8%), Saudi Arabia (16%), Bahrain (22%) and Kuwait (24%).

Examining the reasons for returns before the end of the Contract period, it appears that it is not the push factors such as taking care of family in Nepal or mental stress that evolve as the main reasons for the majority of the returnees. But, rather it is the pull factors such as not matching the work/salary, feeling sick, closing down the company, transfer to another company, termination from the work, scolding, workplace accident and supervisor not good that evolve as the key factors of returns before completing the Contract period. This data, *ceteris paribus*, gives the two powerful messages: one working condition at abroad is the critical for retaining workers for the whole of their Contract period and two, there are several areas for interventions mainly related to basic labor rights and physical and mental health of the workers in the destination countries.

Table 4.3 Distribution of the returnee migrants by time of return and reasons for returns if returned before the end of the Contract period

	Number	Percent
When did you return to Nepal?		
Before the end of the contract	990	24.5
After the end of contract	3,056	75.5
If return before the end of Contract, country of destination (row %)		
Malaysia	1,699	25.4
UAE	456	27.4
Saudi Arabia	708	16.0
Qatar	961	28.2
Oman	25	8.0
Kuwait	165	24.8
Bahrain	32	21.9
If came before the end of the contract, reasons for		
Pull factors		
Need to take care of the family back home	163	16.5
Mental Stress	47	4.7

Push Factors		
Salary/work stated in the Contract not match	318	32.1
Company closed down	151	15.3
Inadequate overtime	83	8.4
Company subcontracted me to other company	65	6.6
Terminated from work	38	3.8
Had to bear scolding	26	2.6
Supervisor was strict	19	1.9
Physical injury or accident at work	17	1.7
Not stated	63	6.4
Total	990	100.0

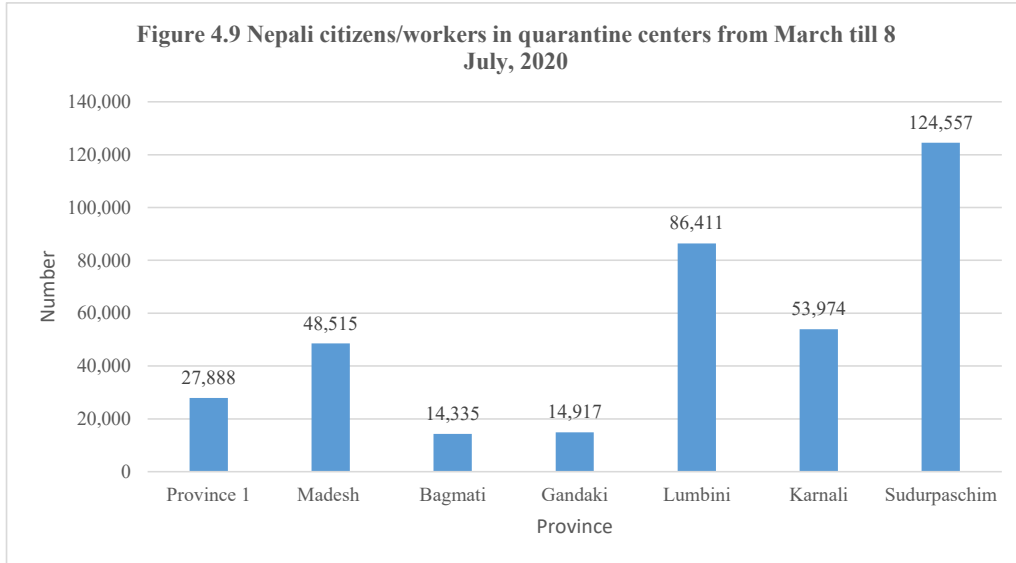
Source: Blitz Media Private Limited and Humanity United (2022).

4.2.3 Management of Returns: Lack of Adequate Quarantine Facilities and Security

Several studies conducted after the COVID-19 including burgeoning number of media reports contend that that Government of Nepal has failed to provide the dignified returns to Nepal citizens/workers during the first wave of COVID-19. The Federal Government has instructed the Province and Local Governments to establish the holding sites and quarantine facilities. Returnee migrants with symptoms of COVID-19 are to be kept in the quarantine centers for a mandatory 14-day period. The quarantine facilities were to provide multiple facilities according to the MOHP Quarantine Center Management Guideline such as proper food, safe drinking water, isolated bed facilities, hygiene kits, masks, sanitizers and toilets. The Government allowed the Home Quarantine to those returnee migrants who had no symptom of COVID-19 after keeping them few hours in holding centers and checking their body temperature.

A study conducted by IOM (2020)¹⁸ shows that there has been a large scale failure to respect the rights of protection of migrant workers who return to Nepal. They were deprived of getting the adequate quarantine facilities including clean drinking water, food and PCR test and medicine, toilet facilities, separate beds, 24-hours ambulance services, emergency medical equipment such as oxygen cylinders. The cumulative number of returnees stayed in quarantine facilities as of 8 July 2020 across the 699 Local Levels was 370,597 (Figure 4.9). Among the Province, the highest number of returnee in quarantine centers were in Sudurpaschim Province. This Province is hard hit by the phenomenon of labor migration to India. In these quarantine facilities, the total number of confirmed cases of COVID-19 infection were 12,510 while it was reported that 27 returnee had already died. Among the infected persons, more than 90 percent had travel history of India, 2 percent had from overseas and rest within Nepal.

18 IOM (2020) survey covered 730 Local Levels out of total 753 in the country. They have interviewed the chief administrative officers, health coordinators, and deputy health coordinators, information and technology officers, COVID-19 focal persons and Chairpersons/Mayors of the Local Levels.



Source: IOM (2020).

As the uncertainty grew due to COVID-19 and failure to effectively, timely and appropriately provide the quarantine facilities of returnees across the country, a large-scale fear, anxiety and resistance erupted among the community people. At the meanwhile stigma and discrimination against COVID-19 cases was widely reported. In their sample of 730 Local Levels by IOM (2020, op. cit.), 32% reported that there was some forms of stigma and discrimination against returnee migrants. In some areas such as in western Terai district of Nepal, Banke district, the community people protested against establishing quarantine facility closed to their community and many of the returnee migrants from India who were sheltered in the quarantine facility were reported to have fled from the quarantine or in some cases, a ridiculous news also spread as 'some returnees used to sleep at night in their houses and in the day in the quarantine facilities'.

4.3 Processes of Sustainable Reintegration

4.3.1 Measures to Reintegrate the Returnee Migrant Workers

The MOLESS has brought reintegration measures such as loan facilitation schemes for the returnees, establishing safe houses in case of providing the temporary shelter for the victims in the course of foreign employment, financial literacy to migrant workers and their family members, provision of nation and honor and awards. The MOLESS has recently issued *Directive for the Returnee from Foreign Employment for the Reintegration Program (Operation and Management) 2079* (2021). The Directive classifies three types of reintegration program: socialization programs for the returnees with their families and in the community; program related to involvement in employment and program related to promotion of entrepreneurship. According to the Directive, the programs can be held from NGOs, International Organization/Foreign countries as well as by the Government of

Nepal, Province Governments and Local Governments. The Directive has also made the institutional mechanism to implement the program. At the central level, a coordination committee under the chair of Executive Director of the FEB and at the Local Levels, a coordination committee under the Deputy Chairperson/Deputy Mayor of Local Levels has been provisioned. Thus, one of the key feature of this Directive is that it opens up the foreign countries to come to Nepal and invest on reintegration programs for the returnee migrant workers.

Loan facilitation scheme for returnees – Foreign Employment Board has the loan facilitation scheme of returnees from foreign employment. The eligibility of this scheme is that the workers will have to stay at least 6 months working at abroad and they have not exceeded 3 years of their return at home. The returnees shall be provided up to Rs. 1 million soft loan through a bank and a financial institution for at most 5-years. The aim of the intervention is to contribute to utilize the skills and professional capacity of the returnees that they have learnt at abroad and also generate the self-employment within the country. For this intervention activity, the Foreign Employment Board prepares the list of returnees, conducts the examination of the skills of the returnees on free basis and provides certificates and recommends to the soft loan to a bank or a financial institution. According to the Annual Report of Foreign Employment Board 2017/18, there were 18,767 returnee migrants listed in the Board. However, there is no information about how many of them have received the soft loan for establishing the business.

Initiation of foreign employment reintegration and reunion program – The MOLESS has brought the *Reintegration Program Implementation Directive 2076 (2018)*. This Directive makes the provision of establishing Safe Houses to provide the remedy and counseling services to those migrant workers who have been victims of physical, psychological and sexual violence. The Safe Houses are funded by the Government and can operate in partnership with NGOs and private sectors. With the consent of the victims, victims shall be provided at most 3 months shelter in the Safe House. The reintegration program also incorporates activities of capacity development of returnees such as by providing entrepreneurship development training, providing seed money to establish the business, marketization, networking and leadership development programs.

Financial literacy – Foreign Employment Board in collaboration with Nepal Central Bank¹⁹, commercial Banks and Agricultural Development Bank and with the management of Returnee Migration – an NGO – has conducted financial literacy class to the returnee migrants to make migrant workers and their families more aware on utilization of remittance in productive and human capital formation sectors, rather than spending on luxuries consumption. According to the Annual Report of Foreign Employment Board of 2018/19, a total of 775 returnee were provided financial literacy class in that year.

Guideline for the Management of National Honor and Award to the Returnees from Foreign Employment Engaged as Entrepreneur, 2076 - The MOLESS issued this guideline aiming to encourage returnee migrant workers to establish enterprises in the country and use the skills, knowledge and capital learnt abroad to promote entrepreneurship in the country. It is assumed that this policy would contribute to stop the foreign labor migration and attract the returnees to

engage in self-employment income generating activities and entrepreneur skills and services. The national honor award is recommended by the MOLESS to the government of Nepal in which joint secretary of the Ministry shall work as the coordinator of the award recommendation committee. According to the provision, annually, the Ministry awards one person the best entrepreneur of Rs. 100,000 and other seven persons as the second best entrepreneurs of Rs. 50,000 each (one entrepreneur each Province of Nepal). The selection criteria were outlined giving the weightage in i) capital investment 30%, ii) use of local resources and technology 20%, iii) export of products 10%, iv) social responsibility 10% and v) environment-friendly 10% and vi) place of residence of the enterprise 10%. But looking at the criteria of selection it appears that the award mainly targets to relatively big entrepreneurs, not the small ones. For example, for generation of employment, at least 6 workers have to be employed; for capital investment, the enterprises should have at least Rs. 1 million investment and promotion of export.

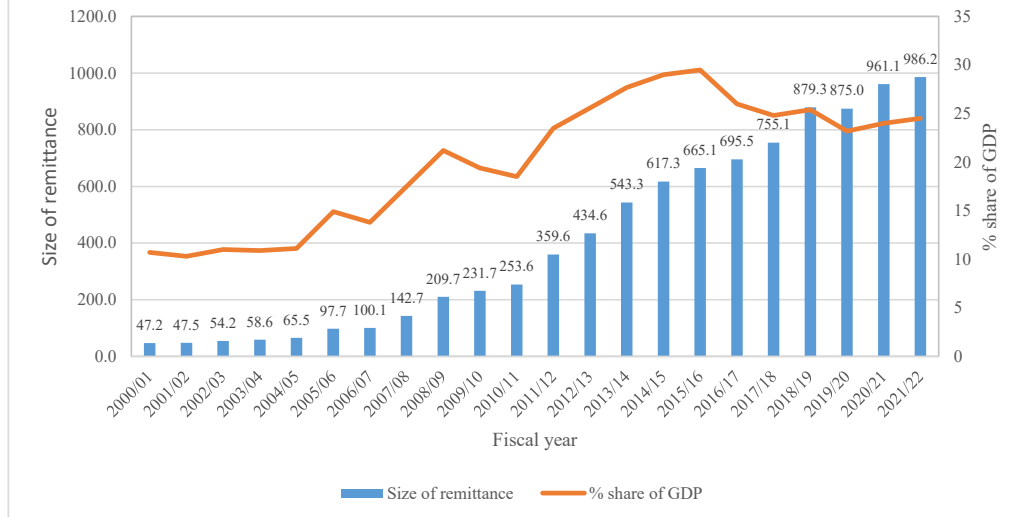
4.3.2 Remittance Inflows to Nepal from Major Destination Countries

In terms of remittance income inflow to Nepal, currently several issues have been in surface: the size of the remittance and its contribution to GDP, appropriately management of remittances for the productive sectors and investment in infrastructure development; safely bringing the remittances through the legal banking or financial institutional channel and increase the remittance income by diversifying the destination countries or revising the minimum monthly salary in the major destination countries in which minimum salary has been already determined.

In terms of the size of the remittance income, both size and percentage share in remittance have persistently increased over the last two decades in Nepal (Figure 4.10 and Annex 4.3). For example, the size of remittance increased to Rs. 986.2 billion in FY 2021/22 from merely Rs. 47.2 billion in 2000/01 – an increase by nearly 21 folds over the 22 years. In terms of remittance share in the GDP it increased from 10.7 percent in 2000/01 to 29.5 percent in 2015/16 and then showed a steadily decline to 24.5 percent in 2021/22. Data reveal that although the share of remittance to GDP declined from FY 2015/16 onwards, the size of the remittance has continuously increased in the following years. However, it should be noted that the size and share to the GDP both has declined from FY 2018/19 to FY 2019/20 – this may be the adverse effect of the COVID-19 pandemic in the destination countries as well as in Nepal. Some foreign employment experts like Dr. Ganesh Gurung argued that the remittance income might go up to Rs. 900 billion in FY 2020/21 and its share may be about 35 percent if one counts all the remittances coming to Nepal – including all the formal and informal channels – like through Hundi money transfer.

The remittance income is so large that the share of tourism, which also generates the foreign currency, to the GDP has never exceeded to 5 percent in Nepal in the same period of time. Further, the remittance income is the income of the poor and deprived Nepalese families who went for foreign employment while the income from tourism is of the income of the relatively rich families or already prosperous families of Nepal. Studies reveal that remittances have contributed to reduction in poverty levels and formation of human capital by increasing investment in education and health of the children of the migrant families.

Figure 4.10 Size of remittance inflow in Nepal (in Billion Rs.) and % share of GDP



Source: Nepal Central Bank (2020) and * data of size of remittance for FY 2020/21 and 2021/22, DOFE (2022). Power-point presentation by DG of DOFE.

Another issue related to remittance income is that there has been high degree of inequality in size of remittance coming to Nepal vis-à-vis the number of Nepali migrant workers in the destination countries (Table 4.4). For example, in 2017, Nepal received an estimated 7.087 billion USD remittance from GCC countries, Malaysia and South Korea. At the same time, there were an estimated 893,649 Nepali migrant workers in these countries in that year. Among the countries, it is Saudi Arabia where more than one-half Nepali workers work while the share of remittance from Saudi Arabia comes out to be 25.4% of total remittances of these countries. Similarly, the migrant workers' share in Malaysia comes out to be 23.4% while its share in remittance comes out to be merely 2.68%. Countries like South Korea, UAE and Qatar, on the other hand, remit the greater share than that of the number of migrant workers there. The per capita annual remittance among the migrant workers is estimated to be USD 7,930 but there is much variation by the country of destination – the highest being in South Korea (USD 186,428), followed by UAE (USD 31,158), Kuwait (USD 16,114), Qatar (USD 12,958) and much lower in Saudi Arabia (USD 3,948), Malaysia (USD 909) and the least in Bahrain (USD 514).

Table 4.4 Comparison of remittance volume with the number of MWs

Country	Size of remittance received in Nepal in billion USD (in 2017)	% share of remittance size to the total among these countries	Estimated no. of Nepali MWs (2017)	% share of MWs to the total among these countries	Per capita annual remittance in USD
Bahrain	0.002	0.03	3,888	0.44	514
Kuwait	0.25	3.53	15,514	1.74	16,114
Oman	NA	-	17,194	1.92	-
Qatar	2.00	28.24	154,340	17.27	12,958
Saudi Arabia	1.80	25.42	455,905	51.02	3,948
UAE	0.84	11.86	26,959	3.02	31,158
Malaysia	0.19	2.68	209,121	23.40	909
South Korea	2.00	28.24	10,728	1.20	186,428
Total	7.087	100.00	893,649	100.00	7,930

Source: data adopted from CESLM (2019, 2019a, 2019b, 2019c, 2019d, 2019e, 2019f and 2019g.). Labor Migration from Nepal: Fact Sheet of Bahrain; of Kuwait; of Oman; of Qatar; of Saudi Arabia; of UAE; of Malaysia and of South Korea.

In the interaction program held by the Kantipur Media Group²⁰ in 29 December 2021, one of the key thematic areas related to foreign employment was how to manage the remittance coming to Nepal. The Federation of Nepalese Chambers of Commerce and Industry (FNCCI) vice-chairperson – Mr. Chandra Prasad Dhakal argued that a strong leadership is needed to bring the remittance through the legal channels. He also argued that currently the remittance amount is about Rs. 900 Billion and the per capita monthly remittance is no more than USD 200-300, and this amount is very small to divert the money to the productive sector and in this circumstance, there is no reason to claim that remittance has not been used in productive sector but it has almost spent on consumption. Another speaker, Mrs. Kalpana Khanal in the interaction program emphasized the need of diverting the remittance for the infrastructure development from the consumption one. The Governor of the Nepal Rastra Bank –Mr. Maha Prasad Adhikari - claimed that the remittance inflow to Nepal has not been misused and it has been greatly contributing to reduce the poverty and maintain the foreign currency in the country. Although remittance may come through illegal channel like Hundi, remittance inflow is largely through the legal means. Another speaker in the interaction program – Mr. Tul Narayan Sha – argued that once the people start earning by going abroad, their respect and dignity has also increased in the village. Giving example from this own district – Saptari, Mr. Sha argued that respect for Dalit, for example, has changed. Before they were addressed as 'ta', now they are addressed as 'you'. Mr. Sha claimed that the discrimination based on gender, caste has reduced due to the foreign employment phenomenon and the power relations – the client and the patron – between the landowners and tillers has also changed in the village.

20 On Wednesday 29 December 2021, the Kantipur Media Group organized 'Kantipur IME Migration and Remittance 2021. In the interaction program, in four themes were chosen for discussion: i) why youth not stay in the country; ii) requirement for the formulation of policy for the management of remittance; iii) making easy way to go abroad and iv) problem of women workers due to discriminatory policy.

4.3.3 Cost of Sending Remittance of USD 200

Drawing data from World Bank of the first quarter of 2021, Table 4.5 summarizes the costing of sending remittance to Nepal, Bangladesh, Pakistan, India and Sri Lanka from major destination countries of Nepali MWS, namely, GCC countries and Malaysia. Data reveal that cost for sending remittance from UAE to Nepal accounted for 4.31%. This cost is much higher than that of cost of sending remittance from UAE to Bangladesh (2.51%), to India (2.91%), and to Sri Lanka (2.80%) and it is only below cost of sending remittance from UAE to Pakistan (5.51%). Take example of cost of sending remittance from Qatar to these countries. In case of sending remittance from Qatar to Nepal, it is 3.98 percent for USD 200 and this proportion is higher than that of the cost for sending remittances to Bangladesh, India and Pakistan and Sri Lanka.

Table 4.5 Cost of sending remittance of USD 200 to Nepal and some selected countries of south Asia (in %)

Destination countries	Nepal	Bangladesh	India	Pakistan	Sri Lanka
First quarter of 2021					
Bahrain	NA	2.01	2.44	3.61	NA
Kuwait	-	-	2.03	-	-
Oman	3.26	3.66	3.13	3.93	3.32
Qatar	3.98	3.67	2.70	3.56	3.20
Saudi Arabia	2.73	2.11	1.94	3.26	2.69
UAE	4.31	2.51	2.91	5.51	2.80
Malaysia	3.30	3.29	2.70	5.51	-
South Korea					
First quarter of 2018					
Bahrain					
Kuwait					
Oman					
Qatar	6.07				
Saudi Arabia					
UAE	4.31				
Malaysia	-				
South Korea	-				

Source: World Bank, <https://remittanceprices.worldbank.org/en/data-download> (accessed on 3 July, 2021).

4.3.4 Has the PM Employment Program Supported the Sustainable Reintegration?

It appears that the Prime Minister (PM) Employment Program²¹ has not contributed substantially for sustainable reintegration of the returnee migrants because of three reasons. First, the program does not explicitly targets the returnee migrants. It just ambiguously targets 'the poor- unemployed persons aged in between 18 and 59 years'. Second, even if it has provided the employment for the returnee migrants without maintaining the disaggregated data of beneficiaries by migration status, the employment days it has generated is very low for the subsistence for a returnee migrant's family (Table 4.6). The PM Employment Program generated 2.21 million and 1.64 million total employed days in FY 2018/19 and FY 2019/20, respectively. The average number of employment per person was 13 days and 16 days in the corresponding fiscal years against 100 days minimum employment requirement in a year as the minimum employment security.

Table 4.6 Number of people involved in the program, total employment days and average employment days

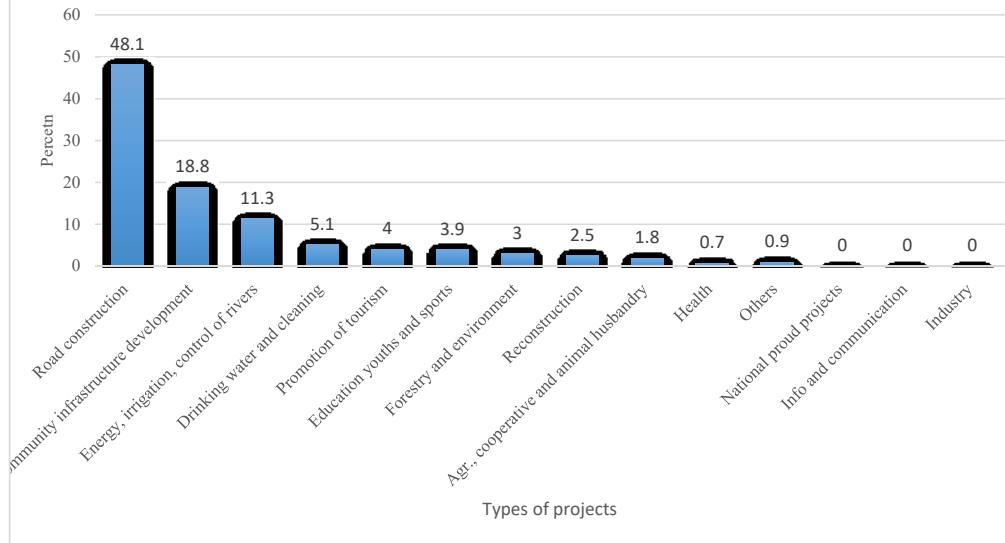
Province	Total employed days		Average days		No. of people engaged	
	2018/19	2019/20	2018/19	2019/20	2018/19	2019/20
Province 1	258,795	234,513	14.8	15.8	15048	17,447
Madesh	312,675	148,097	11.4	16.2	9484	27,448
Bagmati	226,036	196,019	12.8	13.7	14355	17,619
Gandaki	203,113	124,238	11.6	12.7	9611	17,495
Lumbini	490,630	296,156	15.4	14.6	21123	31,958
Karnali	283,755	296,648	11.0	18.9	16438	25,871
Sudurpaschim	433,306	343,729	12.6	18.1	19576	34,432
Total	2,210,310	1,639,400	12.8	16.0	105,635	172,270

Source: MOLESS (2020a). *Annual Progress Report of Prime Minister Employment Program, FY 2076/77 (2019/20)*.

Third, the program has not generated employment in productive sector and no small and cottage industry was initiated due to this scheme. Examining the types projects and number in which the PM employment program was conducted, it is revealed that of the total 4,302 projects implemented, the share of road construction alone accounted for 48 percent, followed by community infrastructure (19%), energy irrigation and control of rivers (11%) while there were no projects related to information and communication and industry. Thus, largely the PM employment program was skewed in favor of infrastructure development and less concentrated on human development and empowerment (Figure 4.11).

21 The PM Employment Program, which has been implemented since February 2019, aims to ensure the minimum employment grantee to every citizen by promotion of internal employment promotional activities through employing labor intensive technology and promotion of social security. The Program has been designed for five years (2018/19-2022/23) with the total budget of Rs. 26.6 Billion. The Program defines 100 days employment in a year as the minimum employment security.

Figure 4.11 Percentage of total projects implemented under the PM Employment Program, FY 2019/20 (N=4302)



Source: MOLESS (2077). *Annual Progress Report of Prime Minister Employment Program, FY 2076/77 (2019/20)*.

4.4.5 Emerging Concerns of Dignified Returns and Sustainable Reintegration

Realizing the need of dignified return and sustainable reintegration of returnee migrants, migration networks comprising of Government of Nepal, UN agencies, development partners, I/NGOs organized the *National Conference on Returnee Migrant Workers* in Kathmandu on October 27 and 28, 2021. The outcome of the conference was the Kathmandu Declaration with 19 points (Annex 4.4). Several key issues have recommended. First, the conference rightly came with the conclusion that addressing the issue of migrants' return and their reintegration should be the integral part of the migration cycle for which a range of stakeholders. Second, the Declaration urges the concerned stakeholders in bringing of coherent and unified policy measures, establishing the institutional mechanisms, setting the agenda in all layers of Governments, coordination and collaboration among the three layers of Governments in dealing with returnees, making the migrant workers and returnees as an agenda for social movement, making Local Government responsible for carrying out the reintegration programs, maintaining disaggregated data of returnee migrant workers, ensuring the rights to information for the returnees and their family members and managing the social security schemes for the migrant workers, returnees and family members and respecting the rights of migrant workers. Third, the Declaration calls for ensuring the migrant domestic workers returning with their dignity, formulating the gender-friendly policies and programs for the returnee woman migrant workers, establishing the temporary safe houses and long-term reintegration programs, ensuring the birth registration and identity of the child born from a migrant woman worker who returns with a child or with a pregnancy. Fourth, the Declaration calls for granting the non-

discrimination and treating all equal to all Nepali migrant workers at abroad for their rapid rescue, relief, access to justice, psychosocial counseling and medical treatment. Fifth maintaining the data of the returnee migrant workers is essential and finally, adopting the public-private partnership policy for the sustainable reintegration of the returnee migrant workers is suggested.

This Chapter described the rescue, return and reintegration measures espoused by the Government of Nepal in collaboration with different development partner, civil society and human rights organizations. Some measures were already in place while others were formulated during the COVID-19 pandemic period. Our analysis, however, fails to accept the proposition that Nepal adopted and conducted a rapid rescue operation to migrant workers from abroad by spending its public treasury (for detail analysis of spending, please refer to Chapter 7). At the beginning of the spread of COVID-19, the Government showed its reluctance to recognize the lumping large crisis, and later, it was found that many Nepali Diplomatic Missions' capacity (budget, human resources, knowledge and information all) were grossly inadequate to evacuate in en-mass the abandoned and stranded migrant workers from many countries. As a result, not only rescue operation was delay but also return process became chaotic, undignified and less human rights friendly. The Government could not adequately establish holding centers and quarantine facilities, either. At the local level, the reintegration measures adopted were ineffectively designed due to the lack of data of returnee migrants and failure to timely realize the agendas of returnee migrant workers. Neither the high sounding PM Employment Program shielded returnee migrants and generated the minimum employment for them. The scale of remittance coming to Nepal has been on rise both in term of size and in terms of its share to GDP, but the Government of Nepal has not yet successful in diverting the remittances to investment in employment generating economic and productive sectors in Nepal. Also, the cost of sending the remittance from GCC countries is still high.

Having critically described the protection and reintegration measures of migrant workers in Nepal, we now turned to look at migration from gender lens and children affected international migration.

Chapter 5

Women Migration and Children in the Context of International Migration

This Chapter interprets the migration for foreign employment from gender lens especially focusing on the domestic workers abroad. The legal framework and bans on women migration have been critically reviewed. Further, the chapter attempts to infer whether the migration and child protection frameworks have incorporated the children affected by international migration and also assesses the education support scheme to the children of the migrant workers.

5.1 Legal Framework for Women's Migration

Nepal has already been the state party of United Nations Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) 1979. The 26th General Recommendation of CEDAW specifically calls for the state party that migrant women, like all women, should not be discriminated against in any sphere of their life. Similarly, Nepal is the state party to South Asian Regional Countries (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002 and Palermo Protocol to Trafficking in Persons (TIP) 2000 that calls for state parties to adopt preventive, protective, legal and judicial measures to combat trafficking in persons including women and girls. Nepal is also the state party of UN Convention on the Rights of Children 1990 which calls for state party's to protect the migrant children and children of the migrant parents.

In the past, the Government of Nepal has adopted some conditional provisions to women migrant workers to go abroad for work. The *Foreign Employment 1985 Act* required women to obtain consent of a "guardian" (parent, husband or other relatives) to go abroad for employment. *Foreign Employment Act 2007* has been formulated adopting the principle of non-discrimination in foreign employment for men and women and the Act also revoked the provision of requirement of guardian consent for women's migration for foreign employment.

5.1.1 Conditional Women Migration to Domestic Work to GCC Countries

Unfortunately, the Government of Nepal has failed to implement the provision of non-discrimination in women's movement, as the Government has time and again has imposed bans and lifting since 1998. There has been about 24 such bans and lifting since then. In 2015, the Government imposed a ban to WMWs under the age of 25 years from migrating to the Gulf countries as domestic workers and in April 2016 the ban was again lifted to migrate for domestic work to the Gulf countries and Malaysia. Since August 2017, women (domestic) migrant workers were once again prohibited from working in the domestic sector in Gulf countries, following a parliamentary committee field visit report. The Parliamentary International Relations Committee made visits to Kuwait, Qatar, UAE and Saudi Arabia to assess the situation of migrant workers including women domestic workers. The Committee was led by the Hon'ble member of Constituent Assembly, Mr. Prabhu Saha. On 2 April

2017, the Committee recommended **a total ban for all domestic women workers including men** in Gulf Countries unless BLA or MOU has been concluded to the country in which labor has to be sent. The BLA or MOU should also include the provisions of protection of WMWs.

In February 2020, the Parliamentary Committee on Commerce, Labor and Consumer and Welfare revisited the three major destination countries of Nepali migrant workers, namely, Oman, Saudi Arabia and UAE and in December 2020, the Parliamentary Committee recommended to uplift the ban of women domestic workers bound to Gulf countries that was imposed in April 2017 provided the following six conditions have been come across:

1. The Nepali domestic workers receiving country must have a separate and unified law that grants services, terms and conditions for the domestic workers.
2. The Government of Nepal must sign a BLA with the domestic workers receiving country before sending the workers in the domestic work. The BLA should include the provisions of basic workers' rights such as wages, leave (weekly, annual, including public holidays), social security, occupational security and health, fixed working hours, 24-hours insurance, provision of additional benefits for the additional work, payment of remuneration through the bank, and ensuring the regular contact with the concerned Embassy and to the family members.
3. The BLA should also contain the provision of establishing a strong and effective bilateral mechanism to tackle the problems faced by the domestic workers.
4. Before sending the domestic workers to the destination country, the domestic workers should be provided with basic training on domestic work, the language of the concerned country, the basic knowledge on the tradition, culture, ritual of the concerned destination country and also there must be mandatory training to the domestic workers in the destination country before they start work (according to the need of concerned country).
5. Ensure that there shall not be discrimination between the Nepali domestic workers and workers of the concerned destination country with regard to services, security, work environment and benefits.
6. The domestic workers receiving country should have a law that the sponsors, employers, masters, or family members of the masters who have committed physical, mental and sexual violence against the domestic workers shall be punished stringently.

This practice Nepal's Government's ban to women's movement appears to be faultily internalized by some of the Local Levels in the country. As the Local Levels are endowed with by the Constitution of Nepal for the management of migration in their spatial jurisdiction and there is the danger of misunderstanding their power and adopting the policy of a ban in the name of protection of women and children. On 6 July 2021, the online news in Nepali Times reported such practice as:

The Ratnanagar Municipality of Chitawan district has imposed a ban of women migration for foreign employment if a woman has a child under 2 years of age. The authorities of the Municipality claimed that children are deprived of maternal care when mothers migrate for work and the ban would ensure the mother's care as well as breastfeeding to the infant. The ban will be effective from 15 August 2021.

A number of studies reveal that the bans and restrictions on the departure of WMWs and/or migrant domestic workers for foreign employment from Nepal have failed to protect women from violence and exploitation (ILO, 2017; NHRC, 2020). The studies show that the bans have rather increased the vulnerability of women to use more risky ways and routes such as through India to go to abroad and thereby more likely of slipping into the exploitation and trafficking situation.

5.1.2 Some Examples of Debate to Uplift of Conditions of Bans for Domestic Work

Kantipur Media Group Dialogue - Despite this claimed by ILO study (2017), the narratives of woman migrant workers who experienced the extreme form of exploitation in their migration processes and working environment cannot be overlooked and denied such as the case of Keshari Tamang – the returnee and currently working as a facilitator of safe migration project in NGO in Kathmandu. In the interaction program held by Kantipur Media Group on 29 December 2021, she shared her experiences while she went to Kuwait in 2009:

We were enslaved there three months in a room. The employers used to visit us and choose which among us was better for their work. They chose as like we chose goats in the market and paying some 12-15 Dinners to the recruiter, they bought us and we became the commodity of the employer. For women, I think, the foreign employment is like a hell. Neither we know the language nor do we know how to work. I felt like a nightmare when I remember the past. See, you are in awkward position when you do not know the language and skills.

In the same interaction program, the ILO Safe Migration Project Coordinator, Mrs. Neha Chaudhari argued that there is need to study why and how women migrant for work. It is essential to raise issue not only protection of women but also rights of protection. Any policy affecting women need to be reformulated by representing women themselves. She argued that there has been 22-23 restrictions imposed to women's migration for the last two decades.

In the same program, the journalist who reports from Gulf countries, Mr. Hom Karki viewed that there are large number of woman migrant workers in Gulf countries who entered illegally. Generally, women who go using legal channel are more likely to be protected while those who use illegal channel to reach there, their workplace, accommodation all appear to be unprotected. He argued that some woman migrant workers compel to run away from the employer because of not bearing the sexual and labor exploitation. However, they are not able to return to the country, and even they do not have access to the Nepalese Embassy to support them to safely return to the country and legal remedy, and they finally commit the suicide.

Interaction among Parliamentary Committee, AMKAS and NHRC - In another interaction program held in NHRC office among the members of Federal Parliamentary Committee of Industry and Commerce and Labor and Consumer Interest, AMKAS, members of migrant networks and NHRC Hon'ble Members and staff on 7 January 2022 revealed the mixed-reaction about conditions for women's migration for domestic work at abroad imposed by the Parliamentary Committee in the September 2020. Some have argued that ban has not ensured

the security of women, but rather it has increased the risk of trafficking of women, and hence any bans should not be imposed while other argued in favor the conditions.

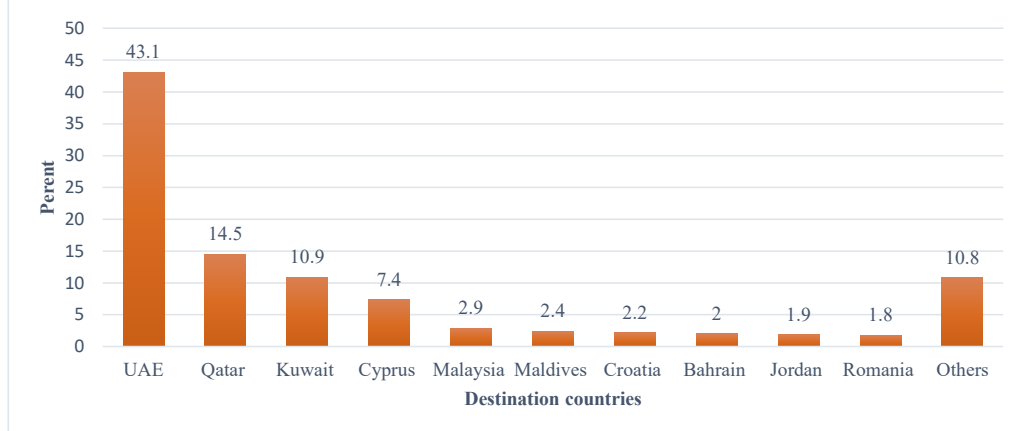
The staff of MOLESS in the interaction program argued that due to using the illegal routes for going to foreign employment, the bargaining power of Nepal with the destination country has reduced. The Joint Secretary of MOFA reported that at least 10 Foreign Missions to Nepal have reported that all the seven conditions imposed for women's migration may not be fulfilled. He also argued that Nepalese citizens should not be sent for domestic work to a county in which the labor law does not take account of domestic work. In the same program, the Hon'ble Member of NHRC, Lily Thapa viewed that there should not be ban in women's migration but there is need to reason how to make women's migration safe. The Hon'ble Member of Federal Parliamentary Committee of Industry and Commerce and Labor and Consumer Protection, Mr. Prakash Rasaili thought that the lobby for sending women to foreign employment appears to be negative. The development partner, instead, has to play the role to generate employment within the country. Another member of the Parliamentary Committee – Mr. Bimal Sriwastaw viewed that while sending women workers at abroad, caution must be taken into account to protect them from exploitation. He said that in the destination country, women are being sold as goats, and only city centered programs may not likely to produce good achievement. In the same program, the Chairperson of National Women Commission – Mrs. Kamala Parajuli regarded that women have contributed a lot and women going for foreign employment is their compulsion and there is need of working towards making women's migration easy.

5.2 Magnitude of Domestic Workers in GCC and Other Countries

There are no data available to assess the Nepalese domestic workers situation abroad. Because data has not been specifically maintained on domestic work by the Department of Foreign Employment. As discussed in Chapter 2, as majority of domestic women workers are believed to be undocumented migrants in GCC countries due to several bans imposed to women migration from Nepal, data obtained from the Department of Foreign Employment for female workers cannot be representative, either. Studies conducted in destination countries show that there are several interacting factors contributing to the high demand for household paid care and domestic work in GCC countries (Tayah, 2016)

In case of Nepalese WMWs, drawing on the Report of the Parliamentary Visit to Gulf Countries in 2020, it can be reasonably argued that more than three-fourths of women migrants to GCC countries constitute for domestic workers. The number of women migrant workers was recoded as 48,975 in FY 2021/22 by taking labor permit from the Department of Foreign Employment. Data reveal that the top-10 countries of destination for Nepali women migrants are mainly of GCC countries like UAE, Qatar and Kuwait that they alone accounted for more than two-thirds of women migrant workers. Countries like Maldives, Croatia, Jordan and Romania also emerge in the scene (Figure 5.1).

Figure 5.1 Top-10 destination countries of women migrant workers for foreign employment, FY 2021/22, Nepal (N=48,975, new plus re-approval)



Source: DOFE (2022) (Power point presentation in 15 July 2022 by DG of DOFE).

5.3 Narratives of Returnee Women Migrants: Exploitation, Unintended Pregnancy and Child Birth

Reviewing the data from the Safe Houses and Shelter Home in Nepal of the returnee women migrant workers, it is evident that a considerable number of women are forced to return to the country with forced and unintended pregnancy and having with the child without the father's identification. This has posed the challenge of both integration of the returnee with her family as well as establishing the rights of the child for nationality and identification. One of the NGOs working to provide the temporary shelter and rehab services to the returnee women migrants at vulnerable situation is the *Aaprabasi Mahila Kamdar Samuha* (AMKAS Nepal). During the last five years (2017-2021), AMKAS Nepal provided shelter services to 1514 returnees. More than three-fourth of them travelled in undocumented status, without having knowledge on safe migration and language of the country in which they were going. On top of this, 90 percent of returnees came in the AMKAS Nepal shelter with some psychosocial problem, and 15% to 20% had developed severe mental health problem, and there were 19 cases of pregnancy, six returnee with babies born in prison and were persons with physical disability. Nearly one-fifth of them could not be reintegrated with their families and societies mainly due to 'coming back with empty hands, unwanted pregnancy, and severe mental health problem and with baby'.

Four returnee women's chronicles maintained by AMKAS Nepal have been recited here to understand the gender specific problem arising from the foreign employment. Foreign employment produces different bitter experiences and trauma among migrant women – the trauma, in turn, results to detachment from their children and husband left beyond and breakdown of the family. Generally, the cases here reveal that these women were deceived by their co-worker men or foreign worker men

in the destination country that they would be married. The story of deception goes like: women are compelled to escape from the unbearable workload, physical torture, mental scolding, long working hours and non-payment or low payment. Once they run away from the sponsor's house, they end up in another trap of fake love with men. The cases reveal that the consensual sexual intercourse has happened, but once women became pregnant, the men ran away without taking any responsibility of fatherhood. In this way, women became abandoned in the destination country and they were forced to return to Nepal with losing of their dignity with their family members and neighbors.

Returnee A, 44, is from Pipara-Simara-8 of Bara district. She was rescued by AMKAS TIA in 15 January 2022. She went to Kuwait via India and worked as a domestic worker for about six years there.

Long working hours, no payment, physical torture, no proper food to her sponsor's house all led her to run away from the house and join in another work. While working as an irregular migrant, she started staying with an Indian man, and later she became pregnant from him, and they had a baby girl. After the birth of the child, the man ran away leaving her and the child beyond. This caused her lots of problems in Kuwait. So, she carried the child along with her and went to Nepali embassy in Kuwait. She stayed in the safe house of the Nepal Embassy for four months and the Embassy helped her to make travel documents of her child to return back to Nepal.

When she first came to AMKAS, she expected for safe quarantine facility and wanted to go to her family. However, she feared that her family would not accept her. She had to stay in the shelter and now there is problem of taking care of the child and birth registration.

Returnee B, is from a village of Nuwakot district. She flew to Dubai for position of a cleaner in a company.

One day, on her vacation, she decided to travel to another city with her friends. She felt on love with a man working in another company, they spent the night and had consensual sex. Next day, she returned with her friends. As days passed, she realized that she was pregnant of four months. She shared it to the man who had sexual relation but the man refused to accept that reality and had been contactless. Instead, one day, she got information that he flew back to Nepal. She worked at the company till date of her delivery. She gave birth to a boy child there. Due to the critical health condition, the baby was to keep on ICU for 16 days. The company did not take any responsibility and she along with her baby was sent to Nepali Embassy. The Nepali Embassy sent her and the baby by preparation of require travel document back to Nepal.

When she was offered shelter AMKAS Nepal in Kathmandu, AMKAS identified the man through social media platform that the man had already married with two children. Letter, he escaped to India. From support of AMKAS Nepal, Returnee B was reintegrated with her family.

Returnee C, 33, is a village of Dailekha district. She has already been Oman and Dubai. Being a frequent migrant worker, her marriage relation was broken down. While she was still recovering from her broken marriage she again went to Malaysia as a company worker.

While working in a company, she started living together with a man and after few month, she realized that she was pregnant. Her boy-friend wanted to abort it, but she refused it.

It had been seven months her pregnancy that Returnee C felt difficult to stay in Malaysia. She returned to Nepal by terminating her job. After landing in Tribhuvan International Airport, she had no idea where to go and how to tell her family about it. The client support officers of AMKAS Nepal found her alone at the airport. She looked stressed and scared, and she was rescued by the AMKAS staff from there.

Returnee C was provided free shelter services including food, accommodation, communication and internet services, counselling. She was taken to hospital for regular check-ups. AMKAS also provided her psychosocial counselling. As the due date arrived, she was taken to hospital where she gave a birth to a girl child. After two months of her delivery, AMKAS was able to reintegrate with her family.

Returnee D, 28, is from Morang district. She had 2 sons and one daughter before she went to Kuwait. She went to India with the support of a neighbor where she stayed one month before she was transported to Kuwait via Dubai transit. She was recruited in a house as a domestic worker. She had to work 17 hours a day and the employer also used to scold her mentally and physically. She spent three years in this way.

In this course of her life, she was lured by an Indian man who was working as a driver in the same house. She and the man ran away from the house, and they rented a separate room. While living together with the Indian man, she became pregnant. When she had labor pain, she was not assisted to bring her to a hospital by the man but by another driver. After delivery of the baby, she was sent to Nepalese Embassy as there was no any evidence that she was married with an Indian man. She stayed three months in the safe house of the Embassy and she and her baby were repatriated to Nepal.

In Tribhuvan International Airport, AMKAS staff rescued and taken to safe house. Six months have gone by but her family members still did not accept her. So, AMAKAS provided her more shelter services and also provided shoes making training and now she has involved in marketing of shoes and earns Rs. 7500 monthly.

5.4 Assessing the Effectiveness of Measures of Promotion and Protection of Women Domestic Workers

5.4.1 Basic Training on Domestic Work and Skill Deficits

In 2015, the Foreign Employment Board designed the *Curriculum for the Skill Development of Domestic Workers*. The aim of the training program is to contribute to develop skill-oriented human resources in domestic work in a foreign country. The curriculum includes theoretical as well as practical issues. It is 210 hours training. Overall, the curriculum is designed to impart 80% skills and 20% knowledge in different aspects. The eligibility of training participants is that the participants

should be literate, has attained the age specified by the Government of Nepal and those who passed in the entrance exam. According to the Manual, women from remote areas having Identity Letter being as poor from the concerned Local Levels shall be given the priority to enroll in the training program. Examining the training Manual, the curriculum has given much weightage to cooking skills (60 hours), followed by cleaning (48 hours), language and skills on communication (30 hours), serving food and beverage (20 hours) and introduction to domestic work and introduction to the destination country (17 hours). Ten hours is allocated for life useful skills, 8 hours for taking care of domestic animals and 4 hours for safe foreign employment issues.

Drawing on the finding of the studied conducted in destination countries, it can be said that there are a lot of gaps in skills training provided to the domestic workers in Nepal and the skills required in the destination countries for domestic work. Tayah and Assaf (2021) assessed the skills of the domestic workers with reference to GCC countries from the perspective of domestic workers themselves as well as from the employers. The study broadly classified skills into vocational and transversal skills. Vocational skills refer to the specialized skills needed to perform specific duties/tasks such as cleaning the house, using household appliances and taking care of the elderly. On the other hand, transversal skills refer to the core employability skills and their ability to learn, communicate and engage in teamwork and demonstrate a problem-solving aptitude. Vocational skills have been further classified into physical development, cognitive development and emotional development. Transversal skills refers that the employers look for domestic workers who can read and write in a common language (mostly English) and who are mature and can allocate extra shifts to attend to a sick child and have experience working with children of different age categories.

In their study of domestic workers, Tayah and Assaf (2021, op cit.) also showed how the domestic workers themselves view skill-deficits relating to the use of household appliances, detergents and to cooking:

"The automatic washing machines and microwaves are different from one house to the next. How do you clean vacuum cleaners, for example?" (Domestic worker, Dubai).

"I am not sure which clothes to launder, which to wash by hand and which to send to the laundry. I also confuse towels. I am not sure which are the guest bathroom towels, bedroom or kitchen towels. Why can we not use color-coded towels?" (Domestic workers, Dubai).

"I find it hard to tell which soap and detergent to use with different tiling. I am also not sure how to mix them and what the right mix is" (Domestic worker, Abu Dhabi).

Similarly, they have also showed how the domestic workers identified skill-deficits in dealing with household beneficiaries:

Children, including special needs children - In the workers' own words:

- *"The child in my care has seizures. I am never sure when to call the doctor or take him to the emergency room? How does one perform first aid in the situations?" (Domestic workers, Dubai)*

Elderly care - In the workers' own words:

- *"The elderly gets irritated and violent with me, sometimes taps me on the wrists. I can never sleep. He wakes up at 2 am and starts calling on me. I think he is senile."* (Domestic worker in Dubai / this same concern was expressed by a large number of workers in Dubai and Abu Dhabi).

Pets care - In the workers' own words:

"I have never been around pets. I don't know what and how to feed them, when to walk them or bathe them...when to be afraid of them. I am not sure when the employers prefer to walk them and when they would rather I do so" (Domestic worker in Dubai).

Interpersonal relationships - *"We find it hard to communicate with the employers. Not all Westerners are fluent in English like Americans and British. Some have problems speaking it"* (Domestic worker in Dubai).

Coping with stress and preoccupations - *"We have concerns of our own... We don't want to tell the employer because we don't want them to think that we are unprofessional. We are always homesick. Holidays are the worse. Christmas and Easter are the hardest. ...How do we relieve the worries?... Some housemaids go crazy. They cannot cope with the stress"* (Focus group discussion with domestic workers in Dubai).

5.4.2 The Directive to Sending Domestic Workers in Foreign Employment

The Government of Nepal has adopted the *Directive of the Sending of Domestic Workers in Foreign Employment, 2072 (2015)*. The Directive has brought a number of provisions to make domestic work safe and respected and the Directive assigns the obligations and responsibilities of the countries of destination, employers and recruitment agencies. The Directive defines domestic work as:

Cooking of food in the house and for the family, taking care of the house, cleaning the house, working in the nursery or garden, taking care of the children or elderly, private domestic vehicle driver, housemaid or house-boy.

The Government of destination country shall be responsible for providing full and accurate information about the sponsor, ensuring the security of workers, and workers are not recruited to employers who has history of maltreatment or abuse or violence. While the employer shall be responsible to pick up the domestic worker from the airport, provide the temporary shelter and bring her to Nepali Embassy within 3-days of her arrival to register her in the Embassy. The Directive envisions ensuring the basic labor rights and the employers should not force the domestic workers to take or use any drugs, tobacco, alcohol and other substances that their uses have are prohibited by the destination country.

The Government of destination country is also responsible to rescue the domestic workers whose life is at risk and allow the Nepalese Mission to visit the worker place at any time. The Directive makes it provision that the domestic workers are not sold to another employer and their passports are not withheld. The Directive makes the provisions for safe return and rescue of domestic workers and it is the recruiting agency that send the worker abroad and the agency listed in Foreign Mission

are to facilitate to return and rescue the domestic workers in collaboration with the employer and Foreign Mission. Domestic worker can be rescued in conditions of job which is different from that mentioned in the contract letter, if the salary provided is different; if the worker is critically ill and cannot work; if the worker has been victim of physical and mental violence; if the employer did not agree to allow the worker return to the country after completion of the contract period and if the employer sold the worker to another sponsor or another country. The Directive makes provisions of 'fee cannot be taken', providing skill development training, provision of minimum monthly salary not less than USD 300. The Directive empower the Foreign Employment Department, Nepali Mission at abroad, listed Agency in destination country in relation to maintaining the data of the domestic workers and establishing a separate desk and online database.

However, there are some funny provisions in the Directive. One such a provision is that the registered Agency of the destination country, which works as the agent between the employer and the worker, is made responsible for the monitoring the working conditions of domestic work including the salary, benefit, leave, information, undesired and violent acts, working hours. Another strange aspect of the Directive is that it restricts the women's mobility to Saudi Arabia, Qatar, Kuwait, UAE, Oman, Bahrain, Lebanon and Malaysia for domestic work that a woman should be at least 24 years old and she should not have a child under two years of age at her time of departure to foreign employment.

Box 5.1 Sample for the Women Domestic Workers from Nepal to Qatar

The following specific terms and conditions are applicable to bring the women domestic workers to Qatar from Nepal:

1. *Bring the housemaid in every four months to the Embassy following the first appearance to make Embassy acquaint with her status and welfare.*
2. *Transfer an amount of QR 1,000 against her monthly salary to the maid's account and allow her to remit from the account to her family.*
3. *Provide free Visa and other daily personal logistics including the sanitation items during menstruation.*
4. *Ensure that the age of the proposed housemaid is not less than 30 years and she is married/unmarried, her husband.... children.*
5. *I've.... (Number) family members including the children for the maid to deliver her service; if the number exceed..., I will employ another housemaid.*
6. *Provide the first aid box in her accommodation and in my kitchen for use of housemaid in case of emergency.*
7. *Take responsibility to orient the housemaid about the use of household appliances for 7 days.*

" I am aware that the Embassy can ask me to send the maid back to Nepal at my expenses from the bank guarantee kept as deposit in the Embassy prior to bringing the housemaid...."

Name of the sponsor...

Signature of the sponsor...

Contact number of the sponsor (cell phone)...

Electricity no....

Box 5.5 cites the sample of application that the employer has to sign to bring the Nepali female domestic workers to Qatar. The signed copy of the application by the sponsor should be submitted to the Embassy of Nepal.

Examining the terms and conditions to be signed by the employer to bring the domestic workers from Nepal, it is known that some key rights entitlements like contract period, communication to the Embassy and to the family, provision of free visa, tickets, accommodations and paid leave have been included in the terms and conditions. Moreover, the terms and conditions prohibits the employer supplying or selling of domestic worker to any third party within Qatar or outside and that the master will be only for his family not of others; and no exchange of domestic worker shall take place. Further, the application also includes some gender sensitive provisions for housemaids like ensuring the sanitary pads during menstruation, access to first aid box and orientation to be provided to the use of household appliances.

However, application lacks some important provisions to well protect the domestic workers. First, there is still discriminatory provisions between the male and female domestic workers. While for women domestic workers, the provisions of age bar (age < 30 years), marital status, number of children has been imposed. Second, some basic labor rights such as workload, working hours, day work, nights work have not been not included. Third, no mention is made about the provision for respecting labor, not abusing scolding, and physical punishment. Fourth, it does not mention about the minimum monthly salary, benefits, end-entitlements, provision of compulsory life insurance to be paid by the employer. Finally, the identity of housemaid is conflated with her number of children as well.

Female Worker Protection in Kuwait - The Company that demands the female domestic workers from Nepal has to sign a letter 'guarantee of non-deployment or transfer of Nepali Female Workers to domestic work' and submit it to the Embassy of Nepal, State of Kuwait.

The signed letter says

" .. I would like to state that all the female workers recruited from Nepali manpower...to our company as per the demand letter submitted to the Embassy for the purpose of attention will be offered the specified jobs and will not be sent for domestic work to other sponsors whosoever."

"If our company is found guilty of deploying the Nepali Female Workers in domestic work...., the company will be obliged to face any legal consequences arising thereof."

5.4.3 Protection Measures of Women Domestic Workers in Major Destination Countries: A Critical Review

Some studies reveal that major domestic workers receiving countries have reformed in their legal framework to protect the women domestic workers from any types of violation. These reforms basically related to ensuring the basic labor rights of the domestic workers such as written contract, timely payment, weekly leave, working hours, paid leave, rest time, medical insurance etc. Despite

the reforms, it is said that there is still Kafala system in place in Bahrain, Kuwait, Saudi Arabia and Qatar. It is a system that gives the sponsors complete control over the worker's mobility as well as their visa status – thus, the workers virtually become enslaved (Box 5.2).

Box 5.2 An overview of legal provisions for domestic workers in major domestic workers receiving countries

Country	Name	Key provisions	Major gaps
Bahrain	<i>Bahrain Labor Law for the Private Sector No. 36</i> <i>2017 decree with respect to a model form of contract for domestic help and similar persons.</i>	Written contract; On time payment of wages; Penalties for non-payment of wages and paid leave.	<i>Kafala</i> system in place
Kuwait	<i>2015 Domestic worker law (Law no. 69)</i> <i>2015 reforms to Kafala system.</i>	Weekly day off; 30 days annual paid leave; End-of-service benefits; prohibitions on passport retention; Overtime pay; Access to complaint mechanisms; adequate accommodation and food; Treatment at government hospitals; Overtime payment; Minimum wage and worker are allowed to transfer sponsorship to new employer after three years.	<i>Kafala</i> system in place No specific enforcement mechanism No provisions of inspections of working conditions and sanctions on employer for withholding passports
Oman	<i>2004 domestic workers' regulations</i>	Monthly wage; Adequate room, medical care Settling of labor dispute in Manpower Ministry	Not formal law and there is no daily/weekly limits to working hours; No vacation or leave days; No overtime payment; No minimum wage
Saudi Arabia	<i>2013 Ministerial decision No. 310 of 1434 regulating the employment of domestic workers; 2017 Ministerial decision No. 605 of 1434; 2019 reforms</i>	Weekly day off; 9-hour break per day; One month of leave every two years; 30 days sick leave per year; End-of-service gratuity; Suitable healthcare and accommodation Domestic workers are permitted to transfer between employers under certain circumstances	Strict <i>Kafala</i> system in place No equal with rights afforded under regular Saudi labor law

UAE	<i>Law on support service workers (federal Law No. 10).</i>	Weekly day off; 12 hours rest per day; 30 days paid vacation; 30 days medical leave; Round-trip ticket home every two years; Prohibits retention of personal documents; Requires contract; Prohibits discrimination; Requires medical insurance; Workers compensation; Access to dispute resolution mechanisms; Right to terminate contracts	These measures has no prohibitions on charging of recruitment expenses; No minimum wage; No requirement that workers be allowed to leave their workplace during non-working hours; No rights to freedom of association; Salary discrimination based on nationality.
Qatar	<i>2017 Law No. 15 on service workers in the home ("domestic workers law").</i>	Ensures the workers maximum 10-hour workday; End-of-service payment equal to at least three weeks of salary; Safe accommodation and food, toilets and sufficient living facilities; At least 24 consecutive hours of rest per week	<i>Kafala</i> system in place. No equal rights afforded under regular Qatari labor law; No minimum wage; No overtime pay; Does not provide that workers can leave the home during non-working hours; Few measures for labor inspections.

Source: summarized from ILO (2017).

5.5 Children of Migrant Workers

5.5.1 Limited Integration of Children Affected by International Migration in Migration and Child Protection Frameworks

In the context of international migration, protection and promotion of the rights of children have been well recognized by the concerned UN Committees. *The Joint General Comment No. 3 (2017) of the Committee of the Protection of the Rights of All Migrant Workers and Members of Their Families* and *No. 22 (2017) of the Committee on the Rights of Children on the general principles regarding the human rights of children in the context of international migration* recognizes that children are at risk of double vulnerability situation as children and as affected by migration. The Committee identifies

three categories of children in the context of international migration:

- i) Migrant children themselves;
- ii) Children born to migrant parents in the countries of destination and
- iii) Children remain in their country of origin while one or both parents have migrated to another country.

In the context of Nepal, *Foreign Employment Act 2007* prohibits a child for foreign employment, and hence there are few migrant children themselves unless they have been trafficked or smuggled to India (this issue may be more relevant from child trafficking perspective). The second category 'children born to migrant parents' is important to be taken into account by the migration related frameworks and policies in Nepal. This is because there are cases of unwanted pregnancies, child being born from the migrant women in destination countries, and child born by the returnee women who gets conceived in the destination country. In this case, special measures are needed to address the identity of the child as well as caring and rearing of the children born from the migrant women in Nepal. The third category of children identified by the Committee 'children remain in their country of origin of the migrant families' is also crucially important category in the context that there is no family migration for foreign employment. Note that almost all migration for foreign employment is individual migration, and there is likely that both parents are absent at home in some cases and in majority of cases, either one of the parents is away from the family for at least 3 to 5 years.

The UN Child Rights Committee calls for state party to ensure that children in the context of international migration are treated first and foremost as children and recommends that both the migration related frameworks and child protection frameworks should address the issues of children simultaneously. The Committee calls the state parties to consider the following elements as the part of the policy in the context of international migration: i) non-discrimination; ii) best interest of the child; iii) the rights to life, survival and development; iv) the rights of child to express his or her views affecting to their life and v) non-refoulement, prohibition of collective expulsion.

Act Relating to Children 2075 (2018) – This Act is the recent most child rights related law of Nepal and it is the most progressive law²² hereto adopted. The Act specifies 15 areas related to child rights. However, the Act has missed to include children in the context of international migration as a special category. In nowhere in the Act, migrant children or children affected by the international migration has been mentioned although there are some rights relevant to children in the international context of migration such as the right to name, nationality and identity; right to non-discrimination and special category of children such as infant born due to rape or fictitious relationship and children who have lost both or either their parents.

Children in Foreign Employment Policy 2012 – The Foreign Employment Policy 2012 is the recent most policy in foreign employment in Nepal. The Policy outlines foreign employment related policies as identifying and promoting employment opportunities; developing skilled human resources; making foreign employment safe and orderly; addressing concerns of female

22 The Act was formulated with the due consideration of the views and suggestions from different stakeholders including child rights organizations.

workers in all migration cycles; ensuring good governance on foreign employment management and mobilization of different stakeholders and promotion of collaborative efforts and mobilization of remittance on human development and productive sector. One of the critical gaps in the Policy is that it has not discussed about the migrant children and children affected by the international migration process or children born from the women of international migrants.

5.5.2 Education Support to the Children of Deceased or Critically Injured Migrant Workers

The MOLESS has brought the *Foreign Employment Scholarship Operation Directive 2071 (2014)*. The Directive makes it provision to allocate budget for education support to children of migrant workers who have lost their life or have critically injured or become sick during work at the destination countries. Here children are those who are under 18 years of age. Education support to children's application can be made via district education office and education board and currently through Local Levels. Once all the processes complete, the Foreign Employment Board opens the fee account in a Bank to the name of the student and deposits the money. The schools are informed about the scholarship one month before the new academic calendar year begins. The scholarship is provided to Rs. 8,000 per student up to grade 8 and Rs. 12,000 per student for 9-12 grade children annually. Examining the Annual Report of the Foreign Employment Board of 2020/21, only children attending in the public schools and institutional schools have been allocated the education support. There are no records whether children attending in any religious schools such as Madrasa, Gumba or Gurukul have also received the education support or not.

Table 5.1 summarizes the number of children provided education support by the Foreign Employment Board for two fiscal years by Province of Nepal. Accordingly, 1438 and 2209 children were provided education support in FY 2018/19 and FY 2020/21, respectively.

Table 5.1 Distribution of children affected by foreign employment provided education support in FY 2018/19 and FY 2020/21 by Province of Nepal

Province	FY 2018/19		FY 2020/21		
	Number	%	Number	%	Amount distributed (in Rs. '000)
Province 1	303	21.1	508	23.0	4,798
Province 2	285	19.8	452	20.5	4,078
Bagmati	283	19.7	378	17.1	36,604
Gandaki	190	13.2	316	14.3	3,098
Lumbini	312	21.7	424	19.2	4,074
Karnali	40	2.8	63	2.9	964
Sudurpaschim	25	1.7	68	3.1	672
Total	1,438	100.0	2,209	100.0	21,078

Nature of affected MWs children					
Death of either mother or father	1,418	98.6			
Critically injured or become sick either mother or father	20	1.4			

Source: Foreign Employment Board (2019). *Annual Report of FY 2075/76 (2018/19)* and Foreign Employment Board (2022). *Annual Progress Report of FY 2077/78 (2020/21)*.

Looking at the number of children receiving the education support and the amount of education support offered per student from the Foreign Employment Board, it can be argued that a large number of children affected by foreign employment have been missed from the education support welfare measure. This is because the number of migrant workers' death bodies bringing to Nepal and number of injured migrant workers being deported to or returned to Nepal is far higher than that the number of children provided education support. On top of this, the annual amount of Rs. 8,000 per student from Nursery to grade 8 and Rs. 12,000 from grade 9 to 12 is very low to incur educational direct and indirect costs in the context of commercialization and privatization of education in Nepal.

In addition to the education support program, the Directive also makes provision of professional training scholarship to the affected children. But, according to the Annual Progress Report 2020/21 of Foreign Employment Board, this scholarship has not been distributed yet. The professional training, which is to be accredited by CTEVT, will have 1696 hours at three-year diploma in Agriculture, Nursing and Engineering. Among the total scholarships to be decided and distributed by the Foreign Employment Board, 60 percent, 30 percent and 10 percent shall be allocated for children of deceased migrants, children of critically sick and children of the critically injured migrant workers, respectively. And, 45 percent the total scholarship seats have been allocated as reservation quotas. However, the Foreign Employment Board has not distributed this scholarship yet.

5.5.3 Impact on Children of Migrant Workers

Children of migrant workers have been greatly affected. This has been well documented by a recent study conducted for Foreign Employment Board by independent researchers (FEB, 2019a). The study was carried out by interviewing 113 males and 160 females comprising of students, parents and teachers. Their sample covered 5 districts and 7 Local Levels from Province 1, Province 2, Bagmati and Gandaki Province of Nepal. Findings suggest there are greater number of negative impacts on children's lives than that of the optimistic realizations of their parents that they would send remittance etc. In their sample, 99 percent children would like to see their father and mother together. In the absence of either one of or both parents, children's cognitive development appears to be adversely affected. Evidence suggests that children of those parents who are at problem situation at abroad were found to have poor school achievement, and high rate of irregularity in schools and drop-outs. Their poor performance school is however generally viewed as individual poor performance by schools and neighbors, rather than a problem arising due to separation of parents from the children as a whole. Other adverse consequences evolve from the study are an

increase in workload especially to girl children, high risk of sexual abuse and violence, possibility of slipping into child labor, child marriage and children ending in bad habits.

In this Chapter, we have briefly reviewed the legal framework on women mobility and bans enforced on women's migration to domestic work repeatedly since 1998. While the bans may have the motive to safeguard women from exploitation, it is against the principle of non-discrimination envired in the Constitution of Nepal. Studies suggest that bans have increased the illegal women migration to GCC countries via India, and thereby more risk of exploitation and trafficking. In recent years, the Nepal's Parliament has also taken the women migration for domestic work as a serious concern – leading to visits of the Parliamentarians to understand working condition of women in GCC countries. The latest visit of the Parliamentary Committee in 2020 came with recommendations of taking away the ban of women migration for domestic work in GCC countries provided some conditions are met before sending them for domestic work. Although these conditions aimed at protection of women from exploitation, they are not easy to meet in the short-run, and there is still risk of illegal women migration.

Our analysis suggests that the Guideline of sending domestic workers has still gaps especially in relation to addressing the issues of scolding, sexual violence, physical punishment and bringing the employers (abusers) in legal liability of committing such crimes. Given the more than three-fourth of women migration has been on domestic work, more protection and promotional measures including skills development training are needed while ensuring the rights to mobility of women. It is found that some major domestic workers receiving countries have carried out legal reforms in recent years to protect the rights of migrant domestic workers. Nevertheless, these reforms have not barred the Kafala system – a system in which a worker comes completely under the control of a sponsor or employer.

We have reviewed both migration and child protection legal frameworks and learnt that both frameworks have missed considering children affected by migration as a special intervention category. The FEB has been providing education support to children of injured and deceased migrant workers. This intervention, however, is still inadequate in terms of its coverage and amount supported.

Chapter 6

Rights to Health of Migrant Workers

This Chapter explains why and how the migrant workers health conditions have been persistently at peril by illustrating the incidence of disability/sickness and unusually high death rates and why causes of death prescribed do not match with the international medical standards. Further, the Chapter discusses the initiatives to uphold the rights of health of migrant workers and how they are inadequately implemented to safeguard their rights of health.

United Nations High Commissioner for Human Rights (UNHCHR) and World Health Organization (WHO) (2008) argued the following in relation to right to health of migrants:

"Migrants' right to health is closely related to and dependent on their working and living conditions and legal status. In order to comprehensively address migrants' health issues, states should also take steps to realize their rights to, among other things, adequate housing, safe and healthy working conditions and adequate standard of living, food, information, liberty and security of people's due process and freedom from slavery and compulsory labor". (p. 20)

Rights to health are defined from the broader perspective. UNHCHR and WHO (2008, op. cit.) lists a number of key aspects of the rights to health²³ and suggested that the right to health is NOT the same as the right to be healthy; but rather it extends from good health condition of an individual to dealing with the right to the enjoyment of a variety of goods, facilities, services and conditions necessary for its realization. Right to health is NOT only programmatic goal to be attained in the long-term, but rather the state has the obligation to realize the immediate health needs of individuals. A country's financial situation cannot be taken to excuse that the country's not realizing the right to health.

6.1 Working and Living Conditions

Nepali workers' living condition appears to be very miserable in the destination countries of Gulf nations and Malaysia when one considers the average number of people resides in a room and average number of people sharing a 100 square feet room. The study by Blitz Media Private Limited and Humanity United (2022) revealed that there is only a few cases in which the Nepali workers stay alone in a single room in these destination countries. In their 4046 returnee migrant workers interviewed, only 3 percent reported that they stayed alone in the room while 38 percent reported that there were 2-5 people in the room, 40 percent stayed in a room where there were 6-10 people and 19 percent stayed in a room where there were more than 10 people. In terms of average number of people sharing a 100 square feet room, the number ranges from 3 people in Bahrain, 4 in Kuwait, Qatar, Saudi Arabia and Oman each to 5 people in Malaysia. A one hundred square feet

23 They are: i) rights to health are the inclusive rights; ii) right to health contains freedom from any types of coercive or non-consensual use of medicine or forced sterilization; iii) right to health contains entitlements such as health protection, the right to prevention, treatment and control of diseases and access to essential medicines, immunization and other essential services; iv) non-discrimination in access to health services, goods and facilities and v) availability, accessibility, acceptability and quality of health services.

room is a room with 10 feet length and 10 width if the room is perfectly square one. Thus, on the average, in Malaysia, for example, 5 people share the 10 feet by 10 feet room. This implies that one person would have 20 square feet (4 feet by 5 feet, for example) space in that room if all sleep simultaneously in the room. Otherwise they would have to sleep in rotation- day shift or night shift. In term of food arrangement, only about 27 percent or 3 in 10 migrant workers cook themselves while the rest either eat the food managed by the company, or manages with other migrant workers. This means that large number of Nepali workers depend upon the food cooked and served in a mess by foreigners. The quality and verities of food are not the same as of quality and verities of Nepali food.

Table 6.1 Distribution of returnee migrant workers by reporting their accommodation, food arrangement and discrimination in the workplace in Gulf nations and Malaysia

Living condition	Number	Percentage (%)
People sharing a room		
Alone	123	3.0
2-5 people	1,538	38.0
6-10 people	1,630	40.3
>10 people	755	18.7
Total	4,046	100.0
Number of people sharing a 100 sq. ft. room (N=3911)		
Malaysia	1653	5.1
Qatar	440	4.4
Saudi Arabia	688	4.4
UAE	932	5.0
Kuwait	22	3.5
Bahrain	146	3.3
Oman	30	4.2
Food arrangement		
It was managed by the company		31.4
Cooked on their own		26.7
Cooked with other migrants		24.1
Managed by others living with them		20.0
Order from hotel/restaurant		1.0
Types of discrimination faced at work (N=1156)		
Harassment	390	33.7
Salary/benefit different	286	24.7
Assigned to difficult work	204	17.6
Discrimination on religious basis	133	11.5
Accommodation not good	73	6.3
Pressure to follow Muslim religion	70	6.1

Source: Blitz Media Private Limited and Humanity United (2022).

6.2 Major Health Concerns of Migrant Workers

Several studies have revealed the worse health and wellbeing of Nepali workers in many destination countries especially in Gulf countries and Malaysia. These countries accounted for nearly three-fourth of the Nepalese workers abroad. One of such recent studies is of Paudyal et al. (2020). They have systematically reviewed 33 studies²⁴ related to health status of Nepali workers in foreign employment and their review suggests the following areas of health concerns:

Occupational health and hazardous – workplace related issues such as not safe work place, no safety measures, no medical support from the employer, long working hours, forced to work even during the hot temperature, fall from the roof, trapped in the hole, injured backbone, legs, hands and head have been commonly reported (Adhikari et al., 2019).

Sexual health – Joshi et al. (2014) analyzed the 408 returnee Nepali migrant workers from Qatar, Saudi Arabia and UAE who had stayed at least 6 months in these countries as the workers and they assessed the knowledge about HIV/AIDS and risk perceptions. Their findings suggested that 9 in 10 MWS are concerned about HIV/AIDS and also view that there is high risk of being infected due to unsafe sexual activities. However, nearly one in five MWS have had sexual intercourse with a partner other than their spouse during the last 12 months.

Mental health problems – Studies show mental health problems as crucially important issue among the Nepali MWS (Poudel and Subedi, 2020). According to Adhikari et al. (2019), nearly one-quarter of the MWS to Malaysia, Qatar, and Saudi Arabia had developed mental stress. The mental health problem is correlated with perceived health risk factor as well. Regmi et al. (2017) studied 20 returnee migrants from Qatar, Saudi Arab, Malaysia, Oman and UAE and found various mental health problems such as tensions, anxiety and attempt to suicide and lack of access to mental health services among the Nepali MWS in these destination countries. Jha et al. (2018)²⁵ provides an estimate that more than one in 10 Nepalese adolescents and adults develop any mental morbidity. They showed that rate of suicidality (serious thought about taking one's own life) as 8.7% and 11% for adolescents and adults, respectively and 7 percent adults and 3 percent adolescents had developed substance use disorder and alcohol disorder, respectively. However, their study did not show disaggregation by migration status of research participants. Had the study analyzed data by migration status among adults, the prevalence of mental illness would have been expected to be much higher among the migrant families vis-à-vis the non-migrant families. This is because the former type of family is the one in which there is long term separation of the loved one or death or injury of the migrant while the later type of family may not experience such miserable condition.

Infectious diseases problems – Studies conducted by the foreign scholars in the destination

24 Among them 12 studies were conducted in Qatar, 8 in Malaysia, 9 in Nepal 2 in Saudi Arabia and 1 each in UAE and Kuwait and another two included all Malaysia, Qatar, Saudi Arabia and UAE. Their inclusion criteria of the studies were that the study must be based on i) primary data, ii) have dealt about Nepali MWS and iii) sound methodology. In terms of research design, 18 studies were cross-sectional, 13 studies adopted the retrospective analysis of routine health care data and 2 studies were of qualitative.

25 They carried out survey in three districts: Dhanusa, Dolakha and Bhaktapur and interviewed 276 adolescents (13-17 years) and 1647 adults (18 years and above).

countries show that there is relatively high prevalence of infectious diseases such as TB, meningitis, diarrheal bacterial infection, Hepatitis E and hook-worms among the migrant workers compared to the native population of these countries. This was happened due to poor working condition, unsafe drinking water and unhygienic food among the migrant workers.

Other health issues – Simkhada et al. (2018) study showed how there is high prevalence of abuse, torture or maltreatment and physical harm in their workplace. According to their study, 41% returnee WMWs were abused at workplace, 41 percent faced torture at work, 11 percent faced physical harm, 9 percent mental stress and 3 percent got pregnant during their work in the destination country. Of the 31 pregnant women, 16 were pregnant due to sexual abuse while rest 15 said to have become pregnant due to their 'consensual' relation (Table 6.2)

Table 6.2 Distribution of returnee WMWs by their health problems and status in the destination countries

Health problems	N=1010	%
Abuse at work place	413	40.9
Torture at work	311	30.8
Physical harm	112	11.1
Had mental health problem	88	8.7
Pregnancy at work place	31	3.1
Pregnancy through sexual abuse	16	0.0
Pregnancy through consensual relation	15	0.0
Accident at workplace	12	1.2
Received health service at work place	130	12.9

Note: the responses are multiple ones and total may not add to 100.0.

Source: Simkhada, P. et al. (2018).

Kidney Diseases – Some studies conducted in Nepal among the migrant workers also claimed that the migrant workers from Gulf nations and Malaysia are more prone to be affected by kidney diseases (cited in Amnesty International, (2021) Dhakal et al., 2020). According to their finding, long working hours, and lack of access to timely medical care may have contributed to have high incidence of chronic kidney diseases among these migrant workers.

6.3 Consequence of Health Rights Violation

6.3.1 Injury and Disability

Table 6.3 shows the number of disability cases of workers in foreign employment who have received some compensation from the Foreign Employment Board from FY 2008/09 to 2020/21. Note that the case of disability here only indicates those workers who received compensation in Foreign Employment Board and there may be more number of injuries and disability cases of workers who

have not reached to the Board for compensation or those who reached there but they were not provided compensation because of lack of required evidences.

Table 6.3 Numbers of migrant workers with physical disability/sick provided compensation from Foreign Employment Board, FY 2008/09 – 2020/21

Fiscal year	Male	Female	Total
2008/09	8	0	8
2009/10	9	2	11
2010/11	29	0	29
2011/12	54	2	56
2012/13	89	4	93
2013/14	108	7	115
2014/15	180	4	184
2015/16	111	5	116
2016/17	200	6	206
2017/18	355	5	360
2018/19	323	12	335
2019/20	-	-	-
2020/21	138	5	143
Total	1604	52	1656

Source: MOLESS (2018); MOLESS (2020) and data for FY 2020/21, Foreign Employment Board Secretariat (2078BS).

Note: data for the FY 2019/20 is not available.

From 2008/09 to 2020/21 (excluding the data of FY 2019/20), overall 1656 cases of disability have been reported with 1604 for males and 52 for females. Majority of disability cases were reported from Gulf nations and Malaysia. However, the disability and injuries cases have also been reported to Nepali migrant workers in so called much attractive destination countries like South Korea, Macau, Jordan (5), Israel, Turkey, Cyprus, Seychelles, Afghanistan and Romania. Examining the reported causes of injury and disability for the year of FY 2017/18 and 2018/19 to the Foreign Employment Board, more than half of the total 695 cases was reported to have occurred due to 'workplace accident'. Other causes of disability and injury were reported to be 'disease' (36%), 'fighting' (8%) and 'traffic accident' (5%). This suggests the fact that more than 4 out of 5 injuries of Nepali migrant workers happens due to their unsafe workplace environment and health hazardous places, which could have been prevented if there had been appropriate working environment and protective measures.

6.3.2 Deaths of Migrant Workers

Table 6.4 summarizes the distribution of reported number of deaths of migrant workers provided financial support by the Foreign Employment Board for the period of 13 years (FY 2008/09 to 2020/21). Data reveal that during the last 13-year period, 9363 deaths have been recorded in Foreign Employment Board for claiming of the compensation. Of the total deaths, 9148 were males and 215 were females.

The recorded number of death of the migrant workers continuously increased over the years with some exceptional cases. For example, in 2008/09, only 90 cases of deaths were recorded for compensation in the Foreign Employment Board, which continuously increased to 1006 alone in FY 2014/15 and it declined to 661 in FY 2019/20 and again raised to 1242 in FY 2020/21. The death of 1242 in the FY 2020/21 means on the average, every day, there were more than three deaths of Nepali workers in foreign employment in the last fiscal year. The total financial support for the deceased families provided was nearly Rs. 2.90 Billion during the period of eight years (2013/14-2020/21).

Table 6.4 Distribution of deaths of migrant workers and financial support provided, 2008/09 – 2020/21, Nepal

Fiscal Year	Male	Female	Total	Financial Support (Rs. in 10 Million)
2008/09	87	3	90	-
2009/10	399	19	418	-
2010/11	541	8	549	-
2011/12	632	14	646	-
2012/13	716	11	727	-
2013/14	853	24	877	12.06
2014/15	1000	6	1006	21.74
2015/16	792	24	816	22.16
2016/17	738	18	756	22.63
2017/18	801	20	821	45.65
2018/19	731	23	754	50.02
2019/20	645	16	661	41.54
2020/21	1213	29	1242	73.77
Total	9148	215	9363	289.58

Source: cited in Ministry of Finance, 2021: pp. 100; and data for FY 2020/21, is obtained from Foreign Employment Board Secretariat (2078BS).

Looking at the four-year (2017/18-2020/21) data of the deaths of the workers in foreign employment by country of destination of the workers, it is found that almost 93 percent of the deaths occurred in either in Malaysia or in GCC countries while the rest 7 percent occurred outside of these countries

(Table 6.5). In terms of individual countries, the highest number of deaths have been recorded from Malaysia (28%), followed by Saudi Arabia (26%), Qatar (18%), UAE (14%), Kuwait (4%), Bahrain (2%) and Oman (<1%).

Table 6.5 Distribution of deaths of migrant workers provided financial support by the Foreign Employment Board, by country of destination, FY 2017/18-2020/21

Country	2017/18	2018/19	2019/20	2020/21	Four-yearly total	% of total of four years
Malaysia	289	229	177	280	975	28.3
Saudi Arabia	203	194	151	362	910	26.4
Qatar	123	135	115	239	612	17.8
UAE	94	85	106	208	493	14.3
Kuwait	26	29	37	55	147	4.3
Bahrain	9	11	8	31	59	1.7
Oman	5	6	3	7	21	0.6
Other countries	72	65	59	60	256	7.4
Total	823	753	656	1213	3445	100.0

Source: Annual Progress Report of Foreign Employment Board 2074-77; feb.gov.np and Foreign Employment Board Secretariat (2078BS). *Annual Progress Report of FY 2077/78*.

Altogether the death victims originated from 66 out of 77 districts of Nepal in the FY 2020/21. Districts having number of deaths, however, vary significantly and they are proportional to the number of migrants from a particular district (Table 6.6). The top-five districts having deaths of migrant workers were Morang, Dhanusa, Siraha, Mahottari and Jhapa – in these districts, the deaths occurred in the range of 50-60. The share of the deaths in these five district is 22.5 percent of the total death recorded in the Foreign Employment Board. Similarly, there are four districts having 40-49 deaths. They accounted for 14 percent of the total deaths and these districts are again from the Terai region except Syanja. There are four districts having 30-39 deaths – they altogether accounted for 11 percent of the total deaths. Further, there are 9 districts having 20-29 deaths, 21 districts having 10-19 deaths, 16 districts having 5-9 deaths and there are 7 districts having 1-4 deaths. These death statistics reveal the fact the incidence of the death of the migrant workers is necessarily concentrated in particular high or medium or low magnitude of labor migration districts. However, from the perspective of rights to live, each individual life is crucially important. This follows that the safe migration interventions should cover all the districts of Nepal irrespective of the magnitude of foreign labor migration.

Table 6.6 Distribution of death of the migrant workers by their district of origin, FY 2020/21

Number of deaths	Name of districts	Number of districts	Total deaths	% of total deaths
50-60	Morang, Dhanusa, Siraha, Mahottari and Jhapa	5	280	22.5
40-49	Syanja, Saptari, Sunsari, Nawalparasi-West	4	174	14.0
30-39	Sarlahi, Chitwan, Dang and Kaski	4	137	11.0
20-29	Gorkha, Rupandehi, Tanahu, Rolpa, Udayapur, Panchathar, Palpa, Kapilbastu and Makwanpur	9	226	18.2
10-19	Sindhupalchok, Bara, Lamjung, Arghakhanchi, Baglung, Salyan, Khotang, Bhojapur, Sindhuli, Kavre, Gulmi, Banke, Nuwakot, Bardiya, Rautahat, Ramechhap, Illam, Surkhet, Dhading, Parbat and Parsa	21	296	23.8
5-9	Kanchanpur, Dhankuta, Nawalparasi-East, Myagdi, Sankhuwasabha, Okhaldhunga, Kathmandu, Dolakha, Lalitapur, Solukhumbu, Dailekha, Pyuthan, Bhaktapur, Kailali, Taplejung and Terathum	16	110	8.9
1-4	Dadeldhura, Darchula, Kalikot, Doti, Rukum East, Rukum West and Mustang	7	19	1.5
	Total	66	1242	100.0

Note: the districts have been arranged according to the descending order for each column.

Source: calculated based on data from Foreign Employment Board Secretariat (2078BS).

Deaths of Migrant Workers: Data from Nepali Embassies Abroad

Each of the Nepalese Embassy of the major destination countries of Nepali migrant workers have reported that there has been sadly death of migrant workers during the last 5-years but they have provided data of only FY 2020/21 (Table 6.7).

Oman - According to the Embassy data, a total of 30 migrant workers have died during the last four years (FY 2017/18-2020/21) of which 23 were males and 7 were females. The causes of deaths reported include natural deaths (8), suicide (11), COVID-19 (6), workplace accident (1), road traffic crash (3) and anemia (1). All the migrant workers were in the age range of 25-49 years.

UAE – The total number of deaths of Nepali migrant workers was reported to be 181 including 9 females.

Saudi Arabia – A total of 249 Nepali migrant workers have been reported in the FY 2020/21. Among the deceased, there were 4 females and rest 242 were males.

Israel – The Embassy of Nepal, Israel has the jurisdiction to look after the Cyprus as well. According to the letter of Embassy of Israel to Nepal to NHRC, there are about 2,500 Nepalese residing in Israel for the study and work and about 10,000 Nepalese in Cyprus. Israel is one of the very attractive destination countries of Nepali migrant workers and it is considered as one of the best countries in terms of income, social security, health security at workplace as well. In Israel, till today, there has not been any complaints registered about violation of human rights from any Nepalese citizens residing in Israel. On the other hand, in Cyprus, complaints and grievances of human rights violation have been reported by Nepali migrant workers. Mainly women go to Cyprus for domestic work. Although there is no attractive income/wage for Nepalese migrant workers in Cyprus, Nepalese workers chose it as one of the good destination counties because it is the member country of the European Union where other benefits and facilities may be available. A large number of Nepalese students come to Cyprus hoping to enter into other European countries.

A total of 6 deaths of Nepali migrant workers have been reported by the Embassy of Nepal, Israel. Of the deaths, 4 deaths occurred in Cyprus and 2 in Israel. Among these 6 deaths, 5 were females and one was male. In terms of age group, one woman died in Cyprus when she was just 22 years old and others were in the age range of 30-55 years old. Majority of deaths was reported due to suicide (4 cases), one death due to Covid-19 and one due to brain hemorrhage.

Egypt – The Embassy of Nepal, Egypt has the jurisdiction to look after the countries of Jordan, Lebanon, and Syria including 14 African countries. There are more than 20,000 Nepali migrant workers in Egypt, Jordan and Lebanon. There are also considerable number of Nepali migrant workers in other 14 African countries including in Syria. It is found that many Nepalese women have been smuggled by to Syria and other countries using the transit of Dubai, Qatar and countries of the Middle East. Till now, there are no human rights violation cases of Nepali migrant workers reported in Egypt, while in other countries the complaints and grievances by Nepalese migrant workers have been heard of. For this, the Embassy has taken initiatives to address the problem by contacting the concerned authorities in these countries.

In FY 2020/21, a total of 9 Nepali migrant workers have died in Egypt, Uganda, Lebanon and Jordan. Of 9 deaths, 5 were reported from Jordan, 2 from Uganda, 1 from Lebanon and 1 from Egypt. Of deceased people, 4 were female and 5 were male. The age range of deceased was from 21 to 47 years. Of the deceased, 3 died due to suicide, one died due to COVID-19; one due to post Covid-19 cardiac arrest; one aplastic anemia; one due to pancreatitis; one post COVID-19 audio pulmonary arrest (Table 6.7).

Table 6.7 Number of deaths of Nepali migrant workers reported by Embassies of Nepal

Embassy of Nepal to:	2020/21	2019/20	2018/19	2017/18
Oman	8	5	12	5
UAE	181	Na	Na	Na
Saudi Arabia	249	Na	Na	Na
Israel	6			

Egypt	9			
Kuwait	74			
Malaysia	311	-	--	-
South Korea				
South Africa	3			
Qatar	162	-	-	-

Source: Letters sent to NHRC by the corresponding Embassies, 2021.

In Malaysia, in the FY 2020/21, a total of 311 Nepali workers have been reported to have died in Malaysia. Among them, 308 were males and 3 were females.

In Qatar, a total of 162 Nepali migrant workers died in FY 2020/21. Among them, 160 were males and 2 were females. Province-wise disaggregated data indicate that there were 42 deaths from Province 1, 55 from Province 2, 12 from Bagmati Province, 34 from Gandaki Province, 8 from Lumbini Province and 11 from Karnali Province and no record of death from the Sudurpaschim Province of Nepal.

South Arica – Till now three persons have died in Seychelles – the east African country. All of them are males and they are from Nawalpur and Syanja of Nepal.

Kuwait – There were 74 deaths of Nepali migrant workers reported by the Nepali Embassy to Kuwait in the FY 2020/21. Of them, 49 and 25 were males and females, respectively.

Number of Deaths during the COVID-19

Table 6.8 shows the number of deaths of Nepali migrant workers reported by the Embassies of Nepal from the selected destination countries of Nepali migrant workers. While the inquiry was made to number of deaths in the first wave and second wave of COVID-19 separately, many Embassies have only reported the total number of deaths due to COVID-19 (irrespective of first or second waves).

Almost all the Embassies of Nepal reported the death of Nepali migrant workers during the first and second wave of Covid-19 in the destination countries. Embassy of Nepal to Oman reported that there were altogether 6 deaths – one died during the first wave and rest 5 died during the second wave. Numerically, the highest number of deaths was reported from Saudi Arabia (97). This is followed by UAE (41), Kuwait (19), Oman (6), Israel and Cyprus (6) and one reported by Egypt Embassy to Nepal. In Israel, one woman, aged 55, died due to Covid-19. With the consent of deceased family, the funeral was managed in Israel. While there is no report of deaths of Nepali workers and students in Cyprus in 2020/21 due to Covid-19 pandemic. The Embassy of Republic of South African of Nepal reported that during the Covid-19 three Nepali workers have died – two in South Africa and one in Kenya.

Table 6.8 Number of deaths of Nepali migrant workers reported due to COVID-19, FY 2020/21

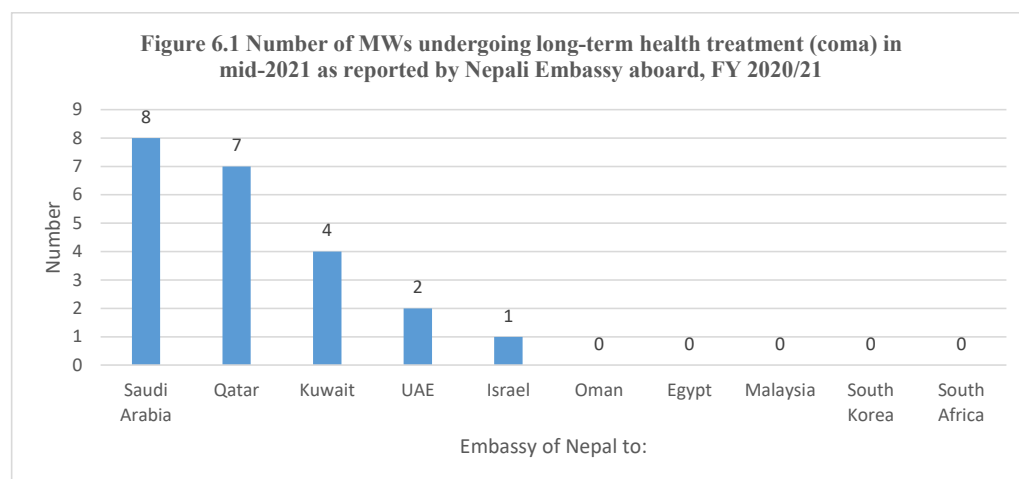
Embassy of Nepal to:	Male	Female	Total
Oman	5	1	6
UAE	39	2	41
Saudi Arabia	93	4	97
Israel	1	5	6
Egypt	1	0	1
Kuwait	11	8	19
Malaysia	12	0	12
South Africa	3	0	3
Qatar	32	0	32
Total	197	20	217

Source: Letters sent to NHRC by the corresponding Embassies, 2021.

Embassy of Nepal, Qatar – The Embassy reported that altogether 32 Nepali workers died in Qatar during the first and second wave of COVID-19 (18 in the first wave and 14 in the second wave). Twenty- three Nepali workers were infected by the Covid-19 while the causes of death has not been identified for 9 deceased although they were infected by COVID-19.

6.3.3 Migrant Workers in Critical Health Conditions at Aboard

Embassies were inquired about the number of Nepali migrant workers who are in critically injured or sick and have been hospitalized for a long time. Embassies of Saudi Arabia, Kuwait, and UAE reported a few Nepali in critical health condition and have been hospitalized while the Embassy of Israel reported that there was one student in critical health condition admitted in a hospital in Cyprus (Figure 6.1). He was reported to have suffered from Pituitary Brain Tumor. Now, his health condition has been improving.

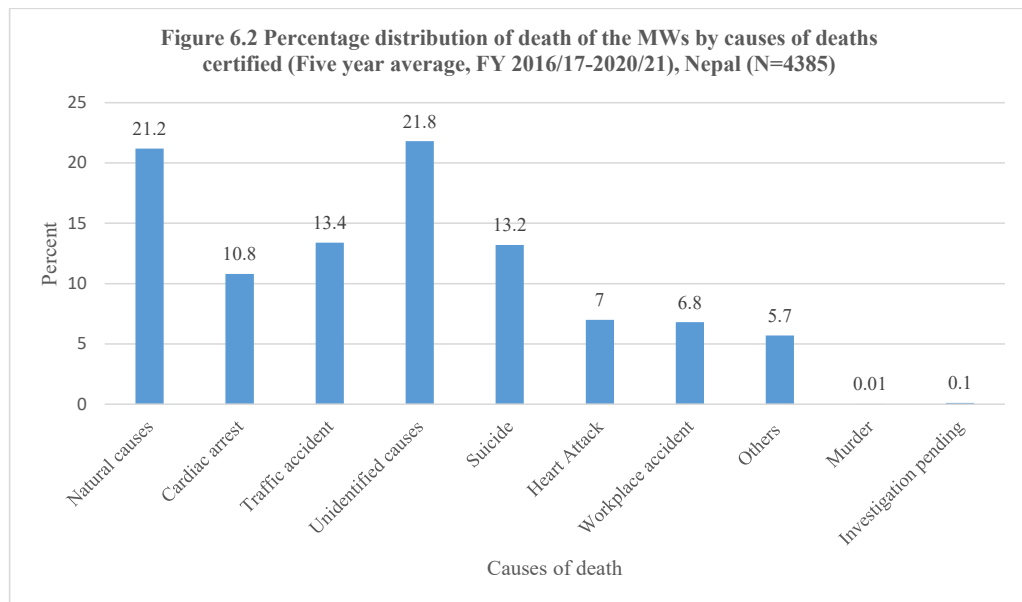


Source: Letters sent to NHRC by the corresponding Embassies, 2021.

In Qatar, the Embassy reported that there were 7 Nepali migrant workers in coma in different hospitals of Qatar. All of them are males and their name include: Gir Bahadur (36 years old), Basanta Dangi (31 years old), Deepak Basnet (25 years old), Arjun Kumar Mandal (40 years old), Bir Bahadru Kunwar (47 years old), Avisek Kumal (24 years old) and Purna Bahadur Rana (44 years old). Unfortunately, the Embassy did not provide data of causes of hospitalization – whether it was due to workplace accident, traffic accident, fighting or any diseases, and how the expenditure of the health is being paid – whether it is incurred by the employer/company or by the Qatar state or by the worker themselves or by the Government of Nepal has not been known.

6.3.4 Investigation and Certification of Causes of Deaths: Not Meeting the International Standards

Drawing data from the Foreign Employment Board²⁶, the main causes of deaths of Nepali migrant workers at the different destination countries for the period of FY 2016/17-2020/21 have been summarized in Figure 6.2. The total number of deaths in these five-year was 4,385 with much higher (1242) in FY 2020/21 compared to the earlier years (Annex...). Data show that there have been false practices of certifying and classifying the causes of deaths as indicated by the fact that there is more than one-half of the total deaths in which, causes of deaths have not been stated as any pathological or biological causes, but rather it is classified as 'natural cause' (21%), 'cardiac arrest' (11%) and 'unidentified cause' (22%). Further, the incidence of suicide is also very high (13% of the total migrant deaths) while workplace accident as the cause of death is fairly low (7%) – suggesting the fact that there is tendency of obscuring the workplace accident in order to avoid the obligation of compensation to be paid to the victims by the employers and the country of destination.



Source: Foreign Employment Board 2019/20; MOLESS (2020) and for data of FY 2020/21, Foreign Employment Board Secretariat (2078BS), and also see Annex 6.1.

26 Note that this data only shows the number of deceased families who applied for compensation from the FEB.

Many studies conducted at both abroad and in Nepal have raised questions of accuracy of investigation and certification process of causes of deaths of Nepali migrant workers, and they have charged that such practices have been knowingly done in order to avoid the state's and employers' liabilities of compensations to the deceased families.

Studies have also revealed a strong correlation between heat stress and death of the migrant workers. Pradhan et al. (2019) examined whether heat stress impact on deaths of Nepalese migrant workers in Qatar drawing data of temperature of Doha Weather station between 2009 and 2017 and data of deaths of Nepalese migrant workers from Foreign Employment Board of Nepal. They measured the heat exposure by taking monthly estimates of daily Wet Bulb Global Temperature (WBGT). WBGT is a measure of environment heat that accesses the cumulative effect of air temperature and humidity. In addition, they have also interviewed the returnee migrant workers in Kathmandu. Their study findings showed that Nepalese migrant worker's deaths as cause of cardiovascular disease tends to increase from 22% in the cold months to 58% during the hot months- suggesting that a large proportion of these cardiovascular deaths during hot months were likely to serious heat strokes. They concluded that there is strong correlation between the level of WBGT and death of Nepali migrant workers in Qatar during their study period. They showed that 'as many as 200 of 571 cardiovascular deaths of Nepalese migrant workers during 2009-2017 could have been prevented if effective heat protection measures had been implemented as a part of local occupational health and safety programs'. The study finding implies that on the average 35% of the Nepalese worker's deaths from cardiovascular disease in Qatar during the period of 2009-2017 could have been prevented had there been appropriate heat protection measures in the workplace and at accommodation.

In Table 6.9, the death rate of Nepali migrant workers as the cause of cardiovascular disease was considerably high in between May and September, in which the max temperature was recorded more than 40°C in each month. In these months, the death rate of Nepali migrant workers due to cardiovascular disease ranged from 76 per 100,000 migrant workers to as high as 107 in August and slightly declined to 68 per 100,000 in September. When the temperature gets cooler in the months of Number to April reaching to 24°C to 30°C, the death rate of migrant workers also declined to as low as 27 per 100,000 in December and 32 in the months of January and February. The association is more precisely observed when one takes into account the level of WBGT and death rates of the migrant workers. The WBGT level can be considered²⁷ as 'hazardous' when it is more than 31°C; 'severe' when it is in the range of 28-31°C; 'high' when it is in the range of 25-28°C and 'moderate' when it is less than 25°C. In the first and second conditions, there is high risk of heat stress if the daily activities are conducted under the sunlight. In case of Qatar, the WBGT values are above 29 in the months of May to October – suggesting the very high risk of heat stress when one is exposed in the sunlight without rest or working in the middle of the day.

27 <https://www.otsuka.co.jp/en/health-and-illness/headisorders/wbgt/> (Access on October 4, 2021).

Table 6.9 Number of deaths of Nepalese workers against heat index level (WGBT), temperature (max) and cardiovascular causes of death

Month	Average temperature	Average heat index level	Cardiovascular causes of deaths		Total deaths	
	Max (2015-2014)	WGBT (2015-2017)	Cases (n)	Per 100,000 deaths	N	Per 100,000
May	40.1	28.5	57	76	123	163
June	42.1	29.6	71	94	137	182
July	42.9	32.4	81	107	130	173
August	42.2	34.1	52	69	98	130
September	39.7	31.8	51	68	88	117
October	36.3	28.7	54	72	42	149
November	30.1		29	38	102	135
December	25.1		20	27	110	146
January	23.6		24	32	106	141
February	24.2		24	32	98	130
March	27.3		37	49	113	150
April	34.1		71	94	137	182
Total			571		1354	147

Source: Pradhan et al., (2019).

Drawing on the cases of Nepali and Bangladeshi death of migrant workers in Qatar, Amnesty International (2021, op. cit.) showed how the Qatar Government – one of the key destination countries of Nepali migrant workers – has failed to adequately investigate the causes of death of migrant workers and how it has failed to prevent the deaths of migrant workers which could have been prevented had the Qatar Government imposed the appropriate protection measures both in the work place and in the accommodation place. According to the study, investigation and certification of deaths must be carried out by identifying the deceased medical history, the circumstances surrounding the death and a full examination of the body. If cases of death are not identified easily, the certifying doctor should refer to the coroner or legal body for further investigation. The mechanism of death should not be reported as the immediate cause of death such as cardiac or respiratory arrest – for all human deaths happen after arrest of cardiac or respiratory failure. The certifying doctor must look for the disease process and the 'terms that do not identify a disease or pathological process are not acceptable as the only cause of death'. According to the Epidemiologist experts, 'there may be less than 1% of deaths that are unexplained in well-run, properly resourced health system.' While this figure is as high as 70% in Qatar to the five labor sending countries workers' death.

The same study revealed that there have been poor practices of certifying death of migrant workers in Qatar. Although the poor certification process was first identified in 2011 through research work,

the Qatar Government has not effectively translated it into its legal measures. In 2017, Human Rights Watch recommended that Qatar Government should pass a law that certifying the migrant death must include reference to the medically meaningful cause of death such as trauma, a disease or a pathological process, not just the 'natural cause', 'cardiac arrest', 'unknown causes'. Amnesty International (2021, op. cit.) examined 18 death certificates and in all of the cases, the causes of death was labeled as either cardiac arrest or unknown causes or acute cardio respiratory failure. Tul Bahadur case is among the one:

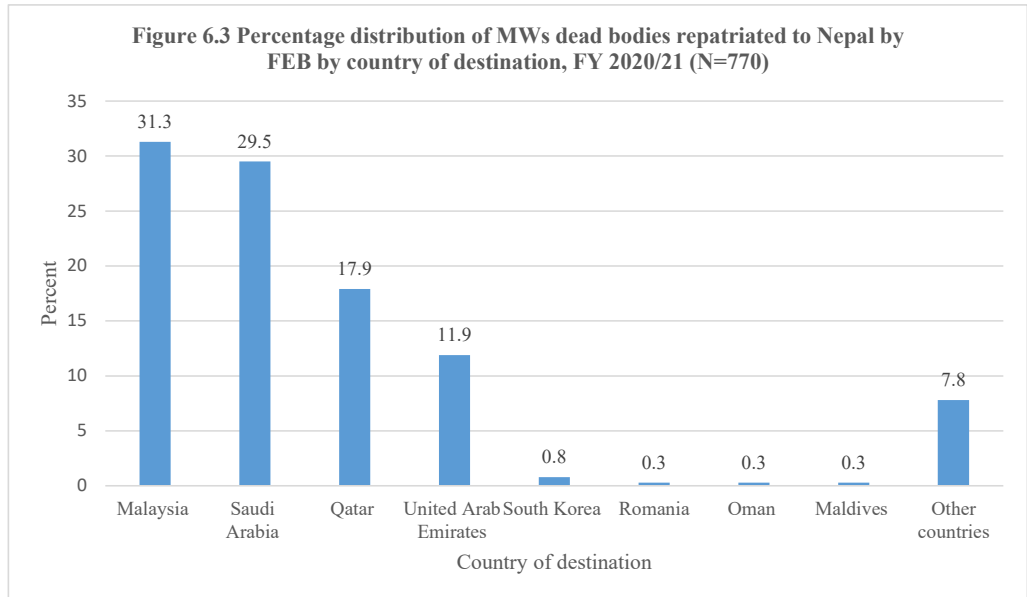
Tul Bahadur died in Qatar on 28 May 2020 at the age of 34. The death certified by the Qatar authority notes the causes of deaths as 'Acute cardio respiratory failures due to natural causes.'

He was involved in cutting of wire in a construction sector where he used to work 10 hours a day. Tul Bahadur's wife wanted to perform the autopsy of her husband's death body to find out the details of cause of death of her husband. However, she was discouraged by her relatives and neighbors saying that it was not even possible in Nepal, not to talk to perform the autopsy in Qatar. She says, 'my husband was set on fire. I feel like I'm burning in oil' (p. 41).

An individual death of a migrant worker is not only the loss of an individual life but also loss of breadwinners, and beloved father or mother of the children and children turning to be orphans and abandoned. Given the fact that an overwhelmingly majority of migrant workers death is of married males, this also implies that their wives have turned to be widows in their fairly young ages. This is also confirmed from the study carried out by PNCC (2017) drawing death statistics of migrant workers occurred in between 1 January 2015 and 31 July 2016. They have analyzed 305 death statistics that reveal that death of the migrant workers has occurred in all age groups including in the fairly young life cycle. Of the total deceased, 14 percent were in the age range of 18-24 years; 27 percent in the 25-29 years; 40 percent in the age range of 30-40 and 18 percent were above 40 years of age. By sex, 98 percent deceased were males and rest 2 percent were females. Overall, 85 percent of the deceased were married while there were only 15 percent unmarried. Data also reveal that 21 percent of deceased had one child; 32 percent had children and 29 percent had three or more children.

6.3.5 Delay on Repatriation of Dead Body and Remains

A total of 770 dead bodies of Nepali migrant workers have been repatriated in FY 2020/21. By country-wise, Malaysia stands out the first country from which Nepali workers died has been repatriated. It accounted for 31 percent of the total dead bodies repatriated while Saudi Arabia comes close to Malaysia (29.5%). Qatar and UAE are other major destination countries from where a very considerable number of dead bodies were repatriated. Dead bodies were also repatriated from South Korea, Romania, Oman, Maldives and other countries (Figure 6.3).



Source: Foreign Employment Board Secretariat (2078BS). *Annual Progress Report of FY 2077/78*.

Data reveal that repatriation of the death body took much longer time to reach to Nepal and to the grievance families. It is only 44 percent of the deceased bodies were repatriated within one-week of the death, while another 13 percent in 2-3 weeks and for the rest of deceased bodies it took more than four weeks.

Covid-19 pandemic spread across the major destination countries of Nepali migrant workers has resulted to delay in repatriation of dead bodies of the Nepali migrant workers mainly from Malaysia and Gulf countries. On 30 June 2021, the Kantipur Daily writes, '42 deaths abandoned in Malaysia'. The news reads:

Karna Bahadur Sunwar, 37, of Janaki Rural Municipality-2 of Banke district died on 6 Jestha 2078 [20 May, 2021] in Malaysia when he was at work. His death body could not be brought due to lock-down and no flights between Nepal and Malaysia. His funeral was observed by his younger brother after two weeks of his death in Malaysia following the Hindu death ritual. ...According to the Ambassador of Nepal to Malaysia, there were 42 deaths of migrant workers in Malaysia. The Ambassador said that the death cases due to suicide is on rise in Malaysia mainly because of increasing family stress and the worker's not getting the said job and wages.

The journalist cites the research report conducted two years ago in Malaysia that the main reasons for high prevalence of death among the migrant workers were forced to work in a dangerous work, extreme temperature, effects of the pesticide and chemical substance in the working and accommodation places, heavy physical labor, uncertainty of the security of the work, violence against the workers in the work place, trafficking and forced labor, lack of knowledge and experiences in the use of the equipment and safety measures including lack of knowledge about traffic rules.

6.3.6 Denial of Receiving Compensation from the Government of Destination Countries and Employers

Studies reveal that majority of the deceased families are denied to receive the compensation from the government of the destination country and employers due to the false classification of causes of death as 'natural' or 'cardiac arrest'. In PNCC (2017) study of 305 death cases, an overwhelmingly majority (70%) of the deceased's families did not receive any compensation from the employer/company of the destination country while only 29 percent reported to be in the process and those getting compensation was less than 1 percent. Further, it was found that nearly 17 percent of the deceased had undocumented status in Nepal and 6 percent in the destination country. The undocumented status in Nepal of these migrant workers who unfortunately died prevent their family members from claiming for compensation and insurance.

Similarly, in the study of 18 families of deceased migrant workers of Bangladesh and Nepal in Qatar by Amnesty International (2021, op. cit.), it found that none of them has received any compensation from Qatar Government, and any money they received came either from their own insurance policies or from their Governments. The report of Amnesty International reminds us as, 'the failure to carry out investigation therefore denied their families the options of making civil claims against employers of the Qatari state, which can be brought under Qatar's Civil Code", (P.42). The Qatari state's Supreme Committee classified deaths as work-related and non-work related for the purpose of providing the compensation. The compensation paid for the work-related death for the three fatalities was, on the average, more than US\$ 43,500 while it was US\$ 11,360 for the non- work related deaths for the 34 fatalities. The Supreme Committee included compensation as outstanding salaries, benefits, group life insurance, voluntary company contribution or Sharia law payment where applicable.

6.4 Initiatives to Uphold the Rights to Health of Migrant Workers

6.4.1 Legal and Protection Measures in Destination Countries: The Case of Qatar State

Drawing on the study of Amnesty International (2021, op. cit.), Qatar Government has adopted a number of legal measures in recent years to protect the workers from abuse, exploitation including from heat stress, but such measures have not been effectively implemented and there have been greater challenges to protect the health rights of migrant workers in Qatar. In 2017, the Qatar Government revised its law and practices to eliminate the *Kafala* system – allowing the migrant workers to leave the country and change job without the permission of their employers. Yet there has not been effective implementation of these reforms that many migrant workers are reported to force to pay the high recruitment fee, faced delayed unpaid, long working hours, lack of access to justice and wide spread impunity.

In order to mitigate the problem of heat stress on migrant workers, the Qatar Government introduced a ban on work in 2007 from 11:30 to 15:00 from 15 June to 31 August each year. However, the ban

had not been effectively implemented due to the fact that ban did not include additional measures such as rest schedule, appropriate pacing of the work tempo to prevent health related illness or deaths. In May 2021, the Qatar Government again revised and adopted several measures to protect workers from heat stress. First, it extended a ban on work between 10:00 to 15:30 from 1 June to 15 September every year – prohibiting to work in the sun in outdoor workplaces or in the places that are not shadowed and ventilated. Second, it has also adopted the WGBT heat stress index to assess the level of occupational heat stress and stop work if the index rises above 31.1 °C. Third, it provided workers with the right to stop working and lodge a complaint to the ministry provided that there is reasonable belief that heat stress is a threat to their safety or health. Finally, employers are required to mitigate the risk of workers from the harsh climate in Qatar by regularly updating heat stress risk assessments, undertaking annual health check and managing chronic diseases that may contribute to the rise of the heat stress; and providing with appropriate personal protective equipment for the hot weather including thin, loose and light-colored clothing.

Although these measures offer workers greater protection from climate risk, heat stroke experts argue that a balance of work and rest period are critically important to protect workers from heat stroke. The expert demanded that periods of work should not be voluntary. This is because 'individuals are unable to perceive work- rest ratios with accuracy to rest voluntarily or due to the asymmetrical power relation between employer and the worker, the rest period may not be sufficiently implemented.

Other Initiatives in Qatar

Qatar Government has promised additional measures for the greater protection of workers. These include the adoption of national heat stress guidelines, cooling jackets and an increased number of labor inspectors to ensure the compliance with the summer working ban. It has also adopted national occupational safety and Health Policy in March 2020, which focuses on strengthening the registration system of work-related injuries and occupational diseases, improving data collection and analysis. Qatar has ratified five out of eight ILO Conventions: The Forced Labor Convention (No. 29); The Abolition of Forced Labor Convention (No. 105); The Discrimination (Employment and Occupation) Convention (No.11); The Minimum Age Convention (No. 138) and The Worst Forms of Child Labor Convention (No.182). However, it has yet to ratify ILO's Occupational Safety and Health Convention (No. 155) and Occupational Safety and Health Recommendation (R164, 1981) that calls for state parties to formulate, implement and review national policy on occupational safety, occupational health and the working environment. Similarly, Qatar has not ratified the ILO's Employment Injury Benefits Convention 1964 (No. 121) with rectification of this convention, the state party is obliged to provide compensation in the event of a work-related injury, illness or deaths. To date, Qatar has not included diseases related to exposure to extreme temperature in the list of occupational diseases attached to Qatar Labor Law 2004, either.

Data on Migrant Workers Death

By examining the website of the Planning and Statistical Authority (PSA) of Government Qatar, it is known that the PSA publishes monthly death statistics regularly. The PSA has classified the

death statistics by nationality and sex of the deceased (Qatari and non-Qatari) and causes of death by nationality and sex. Although the Qatar Government has increased some transparency in the management and publication of death statistics by nationality, the data provided missed several critical areas. First, data have not been provided by specific types of occupation, and nationalities. For example, one cannot access how many deaths of Nepalese migrant workers who were working in construction sector died? How many working in factories died? How many working in Oil Refinement Companies died? Secondly, the published data by the Qatari Government is not likely to be reliable because the classification of deaths in official statistics does not match the classification of causes of deaths of Nepali migrant workers maintained by the Nepal Foreign Employment Board.

6.4.2 Judicial Responses

In relation to health and death of migrant workers, the Supreme Court of Nepal in case of Law and Policy Forum for Social Justice and Paurakhi Nepal v Government of Nepal dated 16 November 2017 (2074/7/30) in 073-WO-0916 offered a verdict to make mandatory provision to conduct autopsy/post-partum of those migrant workers who were certified as 'natural' and 'sudden death' so as to avoid further risk of death due to such causes. The Court orders making pre-departure medical examination of workers effective by revision of the pre-departure orientation training program and including the contents related to basic health awareness on the training curriculum of international standards. In case of repatriation of death body, the Court makes the verdict that the process of repatriation of dead body should be easy, simple so that the honor and respect of the grievance's families shall be compromised while waiting in the Tribhuvan International Airport, Kathmandu. For this, the Court orders the Government of Nepal for formulation of the Directive to make repatriation of dead body easy and simple, and victim's family friendly. Finally, the Court verdicts also relates to making necessary pre-conditions required for the ratification of the UN Convention on the Migrant Workers and Their Family Members 1990 in consultation with the concerned stakeholders and carrying out study needed.

Despite the Supreme Court Verdict, the Government of Nepal has yet to make easy process of repatriation of dead body to Nepal. It is lengthy and lousily. For example, for repatriation of the dead body or remains of a Nepali worker from Qatar to Nepal, at least 16 types of documents are needed:

1) No objection certificate from police station; 2) Police report; 3) Notification of death; 4) To whom it may concern letter; 5) Death certificate; 6) Passport copy of deceased; 7) Next of keen page of passport; 8) Identify card of deceased; 9) Passport of the accompanying person; 10) Company registration; 11) Computer card of the company; 12) Salary payment slip/sheet bank transfer of salary of the last six months; 13) Payment of leave period to the deceased; 14) Letter addressed to Embassy of Nepal in the prescribed format; 15) Employment contract copy attested from Labor Minister Qatar, and 16) Statement of the Bank account of the deceased.

Several leading Newspapers such as Kantipur Daily, Annapurna Post in months of September and October 2021 reported that voices of victim's family when they come to Tribhuvan International Airport (TIA) to receive their deceased family member. There was also criticism that the Government cannot make easy process to transform the dead body to the victim's family members. It was

reported that there is no separate waiting room or place in TIA to the victim's family members. Further, as the death body is landed in the TIA, no Government high echelon responsible for the regulation of foreign employment including Parliamentarians, Ministers or other elected persons appear in the TIA to mourn with the victim's family and provide them sympathy and assurance to facilitate timely compensation to the victim's family members.

6.4.3 Government Responses

Having examined the policy, directives and programs of Government of Nepal, which will be discussed below shortly, it is found that the Government of Nepal has initiated to deal with the health issues of migrant workers and their families. However, the jurisdiction of ensuring the universal health services and information to all Nepalese lies on the MOHP on the one hand and on the other hand, the MOLESS is responsible for ensuring the rights of migrant workers including their health rights. This requires effective coordination among these line Ministries including the Province and Local Levels to effectively deliver the health rights of the migrant workers. The Directive, Policy that we have reviewed below have been drafted separately and they do not provide the functional linkage between these line agencies and hence there is less likely of effective health delivery to the migrant workers and their family members.

Directive for the Listing, Renewal and Monitoring of the Health Institutes Engaged in Medical Examination of Workers for Foreign Employment, 2072 (2015) – Ministry of Labor, Employment and Social Security (MOLESS) adopted a Directive to regulate the medical institutes that undertake the medical examination of Nepali migrant workers. The Directive outlines the rules of registration, renewal, monitoring and supervision of the health institutes. A health institute can be registered if it has valid certificate from the MOHP by paying the registration charge of Rs. 25,000 and Rs. 5,000 for renewal fee. The MOHP is responsible for the monitoring of such health institutes. In the monitoring process, the following documents/records are enquired: records of the medical examination of the migrant workers; records of the discount and human resource availability. A health institute can be removed from the registration list and its officials can be brought to legal action provided the following offences found:

- a. If the medical examination certificate has been issued without the presence of the migrant worker who is going to abroad;
- b. If not undertaking medical examination in the all area specified;
- c. If not sending the daily records of the medical examination of the migrant workers to the online database system of Department of Foreign Employment/MOLESS;
- d. If not keeping the medical examination records of the migrant workers who were examined for the last one year;
- e. If not submitting the quarterly report to the Secretariat of the MOLESS.

However, it is not known which Division/Section of the MOHP is responsible to monitor the health institutes. There is also no inter-Ministry coordination committee between MOLESS and MOHP to

monitor the health institutes whether or not they are meeting the Directive's minimum standards while carrying out the health-check-up to the migrant workers. Further, there is also no information about MOHP monitoring status, either.

National Migrants Health Policy (2076) Draft - The MOHP has drafted the *National Migrants Health Policy 2076* in 2018. The Policy rightly identifies several problems in relation to addressing the health issues of the migrant workers. First, there was no priority of health issue of migrant workers in the BLA and MOU that were previously conducted between Nepal and different destination countries. Second, there has been cases of returnee migrant due to medical test failure in the destination country. Third, Nepal has not been able to undertake the autopsy of the deceased migrant workers so as to identify the actual causes of deaths. Finally, Nepal has failed to provide the full compensation to the victims in the process of foreign employment. Some of the challenges that the Draft policy outlines include the following: I) coordinate and collaborate with the multi-stakeholders effectively to address the health issues of migrant workers; ii) establish vertical linkage among the Federal, Provincial and Local Government in providing health services to the migrant workers and returnees; iii) increase access to health information and services to Nepali migrant workers in the destination countries; iv) provide medical treatment and rescue migrants having serious health problems; v) address the risk of spread of pandemic to the wider community through the returnees vi) manage the migrant health information effectively.

The Policy sets the following objectives: I) ensure the quality healthy life of Nepali citizens in all stages of migration (pre-departure, departure, destination country and to return) by guaranteeing health security and health promotion; ii) monitor the health status of every person entering to Nepal and monitor, identify and control the infectious diseases and iii) develop institutional mechanism and information system to address the health concerns of migrants and health risk associated with the process of migration. The Draft Policy include the following policies:

1. Manage the health awareness and health check-up of migrants before their departure.
2. Make necessary arrangement to increase easy access to and use of health services to Nepali citizens at the destination countries.
3. Undertake the health check-up of returnees from different countries and diagnose their health status and provide necessary health services.
4. Prepare a list of countries having high risk on the basis of infectious diseases and make mandatory provision of health check-up who enter the country.
5. Initiate the special health program targeting to the internal migrants, those residing in unsystematic settlements and displaced communities.
6. Launch the special health programs to the groups who have been affected due to internal and external migration especially to women, children, senior citizens, persons with disabilities.
7. Make arrangement to monitor, identify, and control the pandemic that is likely to be spread due to people's mobility across the open border and at airports.
8. Develop the multi-sectoral coordination institutional mechanism among the Federal, Province

and Local Governments to address the additional health issues of migrants.

9. Update the data of migrants' health by incorporating it in the existing National Record and Information System.

However, the Draft Policy has yet to be tabulated to the Cabinet for approval, and it is not known why it has been delay in approval of the policy.

National Mental Health Strategy and Action Plan 2077 (2020) – This strategy outlines the need of mental health information and services to the migrant workers. Key strategies include I) giving priority to evaluate and manage the mental health of migrant workers while undergoing pre-departure medical check-up; ii) coordinating and collaborating the health insurance programs; iii) ensuring the health insurance and tele-mental health services reaching even to the major destination countries of Nepali migrant workers and iv) making arrangement to identify and manage the mental and psychosocial problems to returnees.

Insurance of Workers in Foreign Employment - According to the *Foreign Employment Act 2007* (Section 16) and *Foreign Employment Regulation 2008* (Section 19), the licensee shall procure the insurance of at least Rs. 500,000 before sending the working at abroad. Table 6.10 summarizes the death, critically injury and minor injury insurance benefits of workers in foreign employment as per the current provision of Government of Nepal. Accordingly, the death-benefits have been fixed as a maximum of Rs. 1.5 million including the cost of repatriation of dead body, transportation of the dead body from Tribhuvan International Airport to the victims' house, performance of death rituals, economic support to the families to maintain the loss of income and treatment cost if the worker dies during the treatment. In case of critically injury of the workers in foreign employment, the insurance benefits have been fixed to Rs. 1 million. The critically injuries have been classified as the following: permanent disability, damage of sight on both eyes, complete damage of parts of body above the ankles, complete damage of one of the legs or hand or eyes. The insurance benefits for those who lost for speech or hearing capacity is of Rs. 500,000. For minor injury, the insurance benefits have been fixed as minimum of Rs. 15,000 for complete damage of an index finger to Rs. 200,000 the complete damage of hearing capacity of an ear or complete damage of thumb.

Table 6.10 Insurance benefits of workers in foreign employment

	Description	Benefits (in Rs.)
	Deaths	
1	Death compensation	1,000,000
2	Bring the dead body to Nepal	100,000
3	Perform the death rituals	100,000
4	Maintain the loss of income due the death of MW	200,000
5	Treatment cost in case the death occurs during the treatment	100,000
	Total (maximum)	1,500,000
	Critical injury	

1	Total permanent disability	1,000,000
2	Incurable damage of sight on both eyes	
3	Complete damage of parts of body above the ankles of both legs or wrists of both hands, or	
4	Complete damage of one of the legs, hands or eyes.	
	Speech or hearing	
1	Complete speech-impairment; or complete hearing-impairment.	500,000
	Other injuries	
1	Complete damage of the hearing capacity of an ear; or Complete damage of thumb	200,000
2	Complete damage of and index finger	15,000
3	Complete damage of and index finger	70,000
4	Complete damage of a big toe	50,000
5	Complete damage of any other toe	40,000
6	Damage/loss of any other body parts.	As determined by an expert

Source: CESLM (2019).

Despite the legal provision of insurance benefits to the workers in foreign employment, the process of receiving the compensation and insurance benefit is of lengthy, centralized and cumbersome for the workers and their families who reside in remote areas of Nepal. The collection of required documents to claim for the benefits such as migrant workers passport, labor permit, contract letter, death certificate from destination country (in case of death in a destination country), death certificate from Nepal (in case of death after arriving in Nepal) all require much time and efforts for the victim's family. Similarly, the centralized system of Foreign Employment Board to distribute the compensation is another obstacle to easy access to insurance and benefits of death and injury.

The premium amount of insurance varies by age and duration of insurance. For example, for the age group 18-35 years of migrant workers with 2 years of contract period, the premium is determined as Rs. 2,646 annually while the comparable figures for the migrant workers of 36-50 years, 51-64 and 64 are Rs. 3625 and 7250, respectively. Similarly, the premium for those going for 3 years of contract period is Rs. 3525 for those in the age range of 18-35 years and which increases to Rs. 5728 for the contract period of 6 years. The same holds for other age groups as well.

Health Treatment to the Migrant Families and Government Spending on Health of Migrant Workers - MOLESS has adopted *Standards to Support the Migrant Worker's Family for Health Treatment 2073 (2016)*. According to the Standard, the financial support is provided to the migrant workers' family members if they have been affected by the following five non-communicable diseases: cancer, kidney transplant, surgery of heart, Parkinson disease (a progressive nervous system disorder that affects movement) and Alzheimer. In the FY 2018/19, according to the Annual Report of Foreign Employment Board, the Board has provided health treatment support to 29 families. Family members of the migrant workers for which medical treatment support distributed comprised of wife (5), mothers (6), father (1), sons (3) and daughters (14). The support provided was Rs. 50,000 per family except in one case it was Rs. 15,000.

6.4.4 Social Security Scheme for Foreign Workers (SOCSO): The Case of Malaysia

The Government of Malaysia has provisioned the Social Security Protection for foreign workers (SOCSO) since 1 January 2019. This scheme is also applicable for Nepali workers in Malaysia. According to the scheme provision, employers are required to register their foreign workers with the social Security Organization, called PERKESO, to receive protection under the Employees Social Security Act 1969 (Act 4) of Malaysia. The documented foreign workers possessing a valid passport and work permit are entitled to register in this Scheme. The foreign workers are required to contribute to 1.25 percent of the insured wages and to be paid monthly by the employer only. Employers can register their foreign workers through online registration through the PERKESO Assist Portal and PERKESO counters in Malaysia.

According to PERKESO, Nepal ranks third in terms of number of workers in Malaysia registered in SOCSO²⁸ and a total of 311,374 Nepali workers have been registered as of 22 March 2022 and it is reported that 5,915 Nepali migrants have already benefited and more than Rs. 270 million has been paid off (Table 6.11).

Table 6.11 Nepali migrant workers registered with SOCSO in Malaysia

Total foreign workers registered in SOCSO in Malaysia	2,017,866
Total Nepalese workers registered in SOCSO	311,374
% of Nepali workers as total registered in SOCSO	15.4
Number of total employers registered their workers in SOCSO	107,276
Benefit received as of 22 March 2022 Nepali workers	
Total number of processed benefits cases	5,915
Total amount of benefit paid (in RM)	9,317,033
Total amount (in Rs.)	270,375,389

Source: Power point Presentation of PERKESO on March 22, 2022 (Courtesy visit from the National Human Rights Commission of Nepal).

SOCSO has offered seven types of benefits: medical benefit, temporary disablement benefit, permanent disablement benefit, constant attendance allowance, rehabilitation facilities, funeral benefit and dependents' benefit (Please refer to Annex 6.2 for details of description of these benefits). In addition, COVID-19 is recognized as one of the occupational diseases covered under this scheme.

Citing the interview with the Ambassador of Malaysia, the journalist of Kantipur Daily on 30 June 2021 argued that

Malaysia Government has introduced compulsory social security scheme from January 2020, that is, life insurance and compensation to the worker if he or she dies on work. About 300,000 Nepalese

28 The other top-nine labor sending countries registered in the SOCSO include: Indonesia, Bangladesh, Myanmar, India, Pakistan, the Philippines, China, Thailand and Vietnam.

workers have been affiliated in the social security scheme by June 2021. As per the compensation, overall 60 percent of the daily wages of the deceased will be paid for the whole life of the deceased's legal family members. The Nepali Embassy has been monitoring the types of insurances purchased to the workers by the company. The cheaper the insurance procured by the employer to the worker, the less likely the migrant workers will get the quality of health services.

Memorandum of Collaboration (MOC) between PERKESO and Foreign Employment Board of Nepal was signed in February 2021 for three years validity period. Areas of collaboration include: I) the promotion of practices and measures regarding the protection and improvement of health and occupational safety of Nepali workers; ii) exchange of ideas with a focus on enforcement and benefit delivery; iii) exchange of strategies to close the coverage and easiness gaps for rehabilitation and protection of Nepali workers and iii) expedition's payment of benefits.

This Chapter explained the health status of migrant workers at abroad mainly diagnosing the working and living conditions, emergent major health concerns, and consequences of health rights violation –disability, deaths, and delay in repatriation of dead bodies and remains, failure to investigate and certify the causes of death as pathological and biological ones to escape the liability of death compensation. The Chapter also analyzed the various initiatives evolved to uphold the rights of migrant workers both in destination countries and in Nepal, but found that provisions have not been strictly implemented to safeguard the health of migrant workers.

Having analyzed the situation of rights of health of the migrant workers in this Chapter, we finally come to assess the rights to information, data protection and migration governance situation in the following Chapter.

Chapter 7

Rights to Information, Data Collection, and Migration Governance

This Chapter gives an account of legal framework of rights to information and data protection pertinent for dealing with the migrant workers. The Chapter further goes on outlining how far the Government service delivery mechanism has become accountable towards the migrant workers and their family members by critically reviewing the efficiency and effectiveness of the migration governance actors.

7.1 Rights to Information

The Constitution of Nepal guarantees the right to seek information to every citizen concerning the matters of his/her or the public (Article 27). The *Right to Information Act 2007* outlines the rights to information and provision regarding the flow of information (section 3) that 'every citizen shall have the right to information subject to this Act', and 'every citizen shall have access to information held in public bodies'. Each office will have an Information Officer for the purpose of disseminating information (Section 6). A person can seek information to the public body stating reason to receive such information (Section 7) and such information must be provided by the concerned authority immediately or within 15 days (Section 9). If information is denied, the person shall make an appeal to National Information Commission and the Commission shall take action against the authority not providing appropriate information (Section 10).

Foreign employment expert like Joshi (2075 BS) argued that there has been no practice of linking the rights to seek information with foreign employment in Nepal. But if the rights to seek information has been guaranteed to those goers, those working at abroad and returnees, this would increase the safe migration and reduce the risks of human smuggling, trafficking, deception, exploitation and support for rescue, return, and reunion processes. Joshi further argued that ensuring the rights to seek information for foreign employment mainly remain the responsibility to the political parties, because they are the ones they ultimately run the Governments. And, Government staff are also equally important to ensuring the rights to information. Although the main political parties' manifestos include the issues of foreign employment, the question still remains to what extent the political party carders and leaders are aware on foreign employment. Currently, it appears that only two Federal Ministries, namely, MOLESS and MOFA, are mainly involved in management and regulation of foreign employment. But this is not adequate, ensuring the rights to seek information to the foreign employment requires to be mobilized the whole of the government including incorporation of curriculum about foreign employment by the Ministry of Education in secondary level education and adoption of the rights of migrants' course in Public Service Commission, for example.

7.1.1 Tools and Resources to Deliver Information on Foreign Employment

There are different tools from which information on the safe migration has been disseminated in the country including in the abroad. The key tools include FEIMS, Mobile Apps *Baideshik Rojagari*, Information Desk of Department of Employment and MRCs including the websites of the Ministry of Labor, Employment and Social Protection, Department of Employment and Foreign Employment Board. At abroad, the websites of the Nepalese Embassies also provide information about safe migration and others. Apart from the Government sources, there are number of I /NGOs, UN agencies that provides safe migration information in the country.

Foreign Employment Information Management System (FEIMS) - Minister of Labor, Employment and Social Security (MOLESS) launched FEIMS in 4 September 2018 and also brought the guideline for operation of it. The aim of the FEIMS is to monitor and keep the records of outbound and returnee migrant workers, and thereby reducing the role of intermediaries and maintaining the transparency and accountability to all stakeholders. The FEIMS is a computer-based software online data management system. This system can be accessed by all concerned actors including MOLESS, recruiting agencies, line offices under MOLESS, orientation centers, Department of Passport, Department of Immigration, Department of Consular Services, various government agencies, diplomatic missions and Nepali embassies abroad. However, access has been limited as per requirement of concerned entity.

According to the FEIMS operation guideline 2018, data refers to all digital, images and description related to pre-approval, advertisement, publication, final labor approval, re-entry labor approval, regulation, registration of the agency and renewal of the licenses. The FEIMS can be accessed by the ordinary users that: I) they can obtain the user account; ii) submit the online application and the required documents and iii) check the progress on application time to time. Further, the FEIMS data of Department of Foreign Employment can be shared with data of Department of Immigration. This would facilitate generating data on the number of Nepalese going abroad or returning home. The system is also expected to facilitate in regulation of illegal activities and malpractices prevalent in the foreign employment sector and framing suitable policies targeting returning migrant workers.

Mobile Apps *Baideshik Rojagari* - Department of Foreign Employment has established and published a mobile Apps called *Baideshik Rojagari* (literally meaning foreign employment). This Apps can be easily downloaded in the smart mobile sets in Nepal from the play-store. The Apps provides the information related to labor approval, license agencies and agencies providing orientation training, medical facilities that provide medical test services, insurance companies linked to FEIMS and banks that are linked to FEIMS. The Apps facilitates one to look his/her progress status of the complaints filed in the Department of Foreign Employment. The Apps also provides information about the contact details of the Ambassador, Labor Attaché, Labor Consular and other important mission and individual at abroad including different public notices.

Information Desk and Migration Resource Centers - MOLESS has established information desk in crucially important offices and routes where migrant workers pass through. These offices/routes include the following: Information desk in Tribhuvan International Airport, Kathmandu; Information

desk at Department of Passport in Kathmandu; and Information desk at Foreign Employment Office, Kathmandu. In addition to Migration Information Desks, Foreign Employment Board in collaboration with different I/NGOs and UN agencies has been conducting public awareness programs through Radio Nepal, Nepal Television, Kantipur and other Television Channels. With the technical and financial support of Foreign Employment Board, Radio Nepal broadcasts safe migration news, views and jingles in every Tuesday after 7 PM for 15 minutes. Nepal Television also broadcasts telefilms related to foreign employment and safe migration in every Tuesday at night 10 PM. In addition, according to the Annual Report of Foreign Employment Board, in FY 2018/19, Foreign Employment Board organized one-day interaction programs with 40 media persons in Province 1, Lumbini Province and Gandaki Province in order to sensitize the media professionals and journalists to make foreign employment safe and uphold the rights of migrant workers and their families.

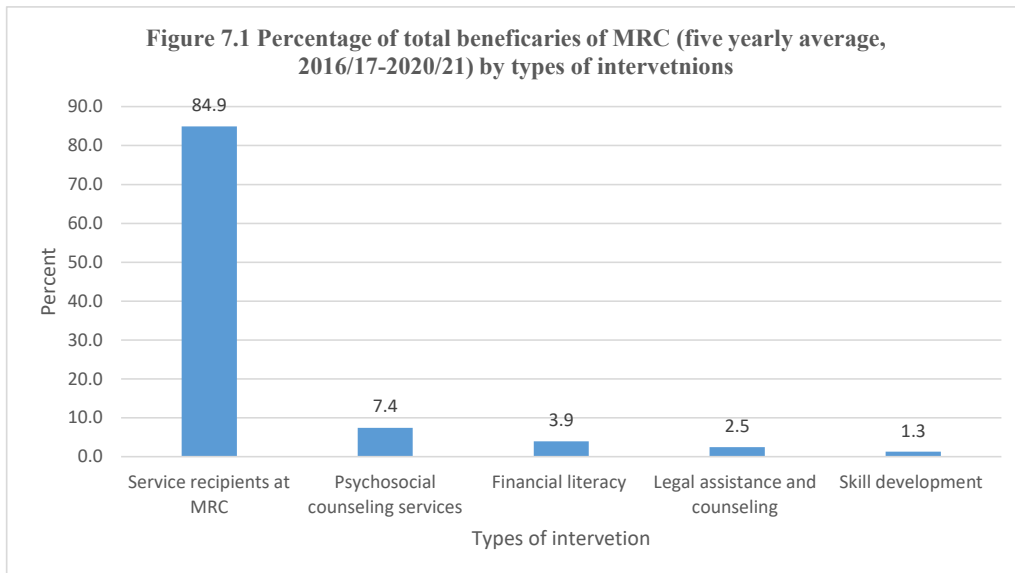
Besides the Government's handled Information Desks, Safer Migration Project (SaMi) - a bilateral project of Government of Nepal and Government of Switzerland – has been implemented by the MOLESS in partnership with Halvetas Nepal. At the local levels, the project in its third phase (2018-2022) has been executed by Local Governments and the project has been extended to 39 districts plus Kathmandu valley, covering 156 Local Levels across all 7 Provinces of Nepal.

Province	Districts Coverage in SaMi project
Province 1	Jhapa, Morang, Sunsari, Panchathar, Illam, Bhojपुरi, Khotang, Udayapur
Province 2	Saptari, Siraha, Dhanusa, Mahottari, Sarlahi, Rautahat, Bara, Parsa
Bagmati Province	Sindhuli, Sindhupalchok, Ramechhap, Dhading, Nuwakot, Kavre, Chitawan, Makwanpur, Kathmandu (TIA, Department of Passport)
Gandaki Province	Nawalparasi-East, Kaski, Gorkha, Tanahu, Baglung, Syanja
Lumbini Province	Nawalparasi-West, Gulmi, Dang, Rupandehi, Kapilbastu, Banke and Rolpa
Karnali Province	Salyan
Sudurpaschim Province	Kailali

Source: <https://www.sami.org.np/working-area> (Accessed on 19 December, 2021).

One of the key aims of the SaMi protect is to contribute to achieve the **objective 3** of the Global Compact for Migration (GCM) (right to information provision)²⁹. Figure 7.1 displays the details of number of beneficiaries from the SaMi project from FY 2016/17 to mid-March 2020/21. Accordingly, the total five-yearly average (FY 2016/17-2020/21) annual number of SaMi beneficiaries was estimated to be 110,516. There were five types of key interventions with an overwhelmingly majority being reported as 'service receipt at MRC' (85%). The percentage of beneficiaries receiving psychosocial counseling, financial literacy, legal assistance and skill development all together accounted for about 15 percent.

29 Other areas of its contribution include i) achieving objective 5 (regular path ways), objective 6 (Recruitment and decent work), objective 7 (reduced vulnerabilities), objective 19 (migrant and diaspora contributions) and objective 23 (International cooperation).

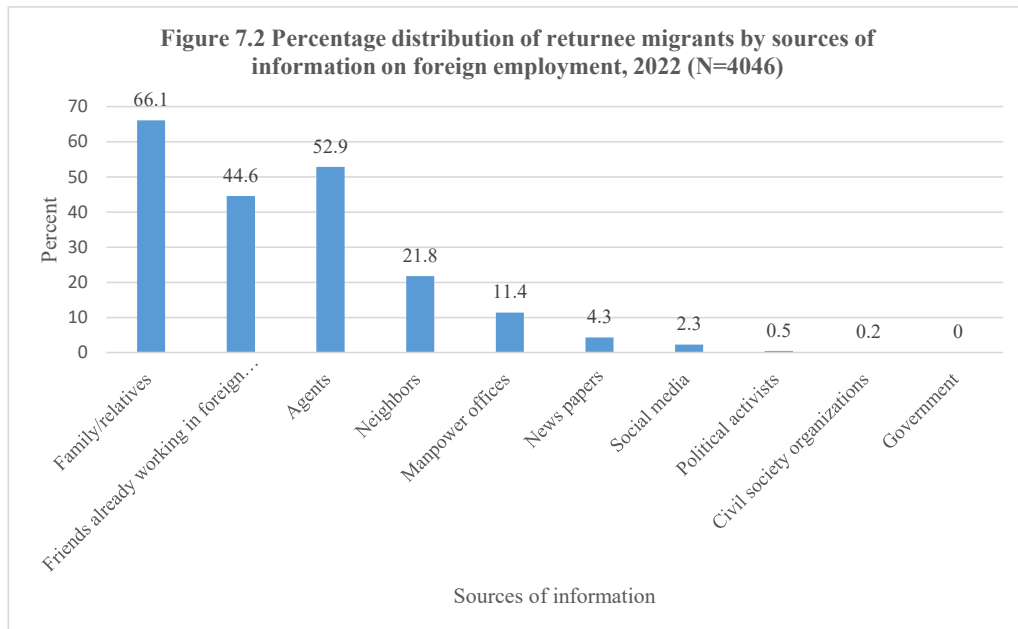


Source: <https://www.sami.org.np/working-area> (Accessed on 19 December, 2021). Please also refer to Annex 7.1.

In addition to SaMi project run in 39 districts plus Kathmandu valley, there are noted national level NGOs working in safe migration sectors in Nepal. Maiti Nepal has 6 MRCs in Jhapa, Kavre, Rupandehi and Makwanpur districts; Pourakhi Nepal has 4 MRC in New Bus-park (Kathmandu), Pharping (Kathmandu), Chitawan and Dolakha; WOREC has one MRC in Morang district and ABC Nepal has 1 in Butawal.

7.1.2 Perspective of MWs and Information Seeking Practices

Despite the several efforts and investment being done to increase access to information on safe migration in the country, a recent study conducted by Blitz Media Private Limited and Humanity United (2022) revealed that major source of information for foreign employment is neither the government, nor the civil society organizations or political activists or social media but rather it is the family or relatives or friends already working in the foreign employment or agents, neighbors or manpower agencies. Of the 4,046 returnee migrants interviewed in their study, two-thirds reported the main source of information for foreign employment was their family and relatives, 45 percent viewed it is their friends already working there and 53 percent reporting as agents. On the other hand, there were less than 1 percent of the returnee migrants interviewed saying sources of information about foreign employment as the Government, civil society organizations or political activists (Figure 7.2).



Note: responses are multiple ones and hence total may be more than 100.0

Source: Blitz Media Private Limited and Humanity United (2022).

Further, producing information is one thing but how the receivers receive the information is another thing. There are few studies conducted how the receivers or here migrant workers and their family members receive such information and how they have been benefited from information provided from different Government channels and civil society organizations. Right to seek information about foreign employment must include information that is understandable by all including people living in remote areas, people with disability, marginalized communities and women and even to those who cannot read and write. An appropriate, comprehensive, understandable information can only be possible when we are able to ensure the information to all in their own languages including in the national language. In this context, there is need to increase investment in rights to information. In many countries, it is reported that at least 10 percent of the investment goes to ensure the right to seek information to the citizens (Joshi, 2075 BS). From the discussion of the stakeholders and review of the data, it is known that many of the Government's provisions included in the Foreign Employment Act, Foreign Employment Regulation, Standards, and Guidelines have not reached to the potential migrants, returnee migrants and their family members. Recently, the MOLESS has made the provision of providing Rs. 1 million to a returnee migrant worker for the establishment of self-employment scheme in the county. However, this information has not been widely known by the returnee and their family members.

In Nepal, information seeking practice related to foreign employment appears to be almost non-existence when one examines the data of number of appeals registered in the National Information Commission. For example, in the FY 2020/21, a total of 753 appeals related to seeking of information were registered in the Commission. But none of the appeals were related to foreign employment,

human smuggling and trafficking and exploitation. The appeals were mainly related to Local Levels (73%), banking and finance (32 cases); information and communication technology (6 cases); law, justice and administration (31 cases); education, health and sports (56 cases); drinking water, electricity, construction and transport (20 cases), institutions and *Pratisthan* (7 cases); land, forest and agriculture (13 cases); administration (11 cases); and others (NGOs, others) (31 cases) (National Information Commission, 2021).

7.2 Data Collection and Protection

7.2.1 Legal Provision of Data Protection

There is no separate legal provision to protect the data/information of migrant workers bound for foreign employment. As noted elsewhere in this Report, the migrant workers have to provide their personal and sensitive information in a required format to the recruiting agencies, pre-departure orientation institutions, training institutions, insurance companies, medical facilities, travel agencies, agents, Department of Foreign Employment, Foreign Employment Board, Immigration Office, Passport Office and other relevant offices before departure for foreign employment. These Government and private actors collect, store and compile the required personal information of the migrant workers. Biometric information is also taken in relevant offices. The Foreign Employment Board also maintains data of the family members of the deceased migrant workers, injured/sick migrant workers. The nature of personal information collected and stored are also very sensitive such as if a returnee woman is pregnant, or came with a child without father's identification from foreign employment, or if the returnee is convicted and released from imprisonment. However, how and to what extent the migrant workers personal and sensitive data have been protected by these wide range of actors? Our review suggests that no specific studies have been conducted so far in this direction either by the MOLESS, or Ministry of Communication, Information and Technology – the line Ministry of data protection in the country.

Nonetheless, the Government of Nepal has adopted *Individual Privacy Act* (2018) and *Individual Privacy Regulation* (2020) to protect the individual privacy³⁰. These legal measures can be applicable for data protection of migrant workers. The Privacy Act defines 'personal information' (Section 2.c) as information related to any person:

- Caste, race, birth, origin, religion, color, or marital status of an individual;
- Education or academic qualification of an individual;
- Address, telephone, or email address of an individual;
- Passport details, citizenship certificate, national identity number, driving license, voter identity card, or other identification card issued by any public body to an individual;
- Correspondence sent or received by an individual containing personal information;

30 In addition, there are some provisions of individual data protection in [National Civil Code 2074 \(2017\)](#) and [National Penal \(Code\) Act \(2017\)](#).

- Fingerprint, palm lines, retina of eye, blood group, or other biometric information of an individual;
- Details of criminal background, punishment, or sentence served by an individual for a criminal offence; and
- Views or opinions expressed by an individual in the capacity of a professional or an expert in a decision-making process.

The Act authorizes the public bodies for collecting or processing personal information in grounds for 'public interest' including for investigation or prosecution of a criminal offence and public research and studies. Section 12 (4) of the Act prohibits the disclosing, making public, or transferring of the following data of an individual, without the consent of the individual:

- Details relating to medical examination;
- Details relating to property and income;
- Details relating to employment;
- Details relating to family matters;
- Biometric data and fingerprints;
- Signatures or electronic signatures;
- Details relating to political affiliation and voting; and
- Details relating to profession and business.

Although the affected person may file a complaint to the District Court in case of violation of the personal data under this Act, the Act does not establish a data protection authority or regulatory authority responsible for the administration and enforcement. In some of the offences such as searching a body without the consent (Section 5), taking or selling the photographs (Section 16), making surveillance of the individual (section 21), using drone (Section 22), collecting and using the personal information without consent (Section 26.1), processing sensitive information (Section 27.1), the Government of Nepal shall become the plaintiff. In case of offences, the offender may be imprisoned to not exceeding to three years or fine of Rs. 30,000 or both. At the same time, the Act ensures the rights to obtain information of the individual about the time of collection, content of information being collected, objective behind its collection, method of processing and assurance as to privacy of collected information.

7.2.2 Household Level: Migrant Workers Data in Nepal

At the household level, the key sources of data on the migrant workers are the population census and household surveys in Nepal.

Population Census - The twelfth decadal population Census of Nepal 2021 includes the following questions regarding the absentee population and foreign migrants. These questions have been included in the individual questionnaire:

- *Absentee family members from the household for the last 6-months who went abroad*
- *Name of the family members who went abroad*
- *Sex (male, female)*
- *Age at the time of migrating to abroad*
- *Education grade completed at the time of migrating to abroad*
- *Duration of migration*
- *Main reasons for migrating to abroad (salary/wages/services, business/trade, study/training, seeking work, dependent etc.)*
- *Country of destination.*

According to the regular time-table set by Central Bureau of Statistics (CBS), the population census had to be completed by 8 June 2021. However, the Government of Nepal postponed it due to resurgence of Covid-19 pandemic in the country, and once the cases of Covid-19 infections tended to decline, the Government resumed the census taking process from 10 September 2021 and it was completed in between 11-25 November 2021. The census provides individual level information of the absentees and labor migration to India and overseas. These data can be disaggregated by demographic, social and spatial factors – giving one opportunity to measure the magnitude of absentees and labor migration including migration for other reasons from national, Province to Local Levels. For a robust analysis of census data, CBS may collaborate with NHRC – and whether they can be linked to monitoring of human rights situation of migrant workers and their families.

Household Surveys – Nepal Living Standards Survey (NLSS) 2010/11, Nepal Labor Force Survey (NLFS) 2018 and NDHS 2016 also provide some data of international migrants. These surveys provide opportunity in assessing magnitude of migration, and remittance being flooded in the country. However, these surveys, have been conducted for different purposes, rather than understanding the situation of the rights of migrant workers and hence they do not provide adequate information on assessing the situation of rights of migrant workers and their families. For example, NLSS 2010/11 generated data for migrants as follow:

- *For all household members aged 5 years and above*
- *Out-migration over the last-5 years*
- *Migration defining area – VDC/Municipality*
- *A person who migrated several times, only the last movement is considered*
- *Migration rates, origin of migrants (rural-urban, ecological belts, consumption quintiles)*
- *Reasons for migration*
- *Remittances – Number of remittances, size, means of transferring remittances, and share of remittances in household income and use of remittance received.*

The main objective of the NLFS 2018 was to provide up-to-date estimates of labor statistics – employment, unemployment and underemployment. Regarding migration, it provides following information: number of migrants (all age groups) by sex and provinces, migrants by origin (rural or urban areas) and migration by reasons. Similarly, the main objective of the NDHS 2016 was to

provide up-to-date estimates of basic demographic and health indicators including maternal and child health issues. With respect to migration related information, it collected information on household members who had migrated elsewhere in the 10 years prior to the survey and information was collected by sex, age at migration, date of migration, reasons for migration and destination.

Thus, there is lacking of migration specific household survey conducted in Nepal that provide the disaggregated data on the human rights situation of migrations including the returnee migrant workers.

7.3 Monitoring and Accountability

Relaying on the discussion with the Director General (DG) of the DOFE and his power-point notes disseminated to the journalists on 15 July 2022, it is known that the DOFE has brought several reforms in its service delivery mechanism to increase its accountability towards the rights holders. Key reforms mentioned are the following:

- Brought all labor approval systems (re-approval, new approval and individual) fully under the online system - As a result, the DOFE reported that it has contributed to provide services of 'faceless', 'cashless' and 'paperless' and reduced the crowds in the Department and other Labor Offices and also reduced the unnecessary delay in services.
- Established Rapid Response Team (RRT)
- Introduced the automatic token system from all offices
- Linked the online system of labor approval to the biometric description system so that those who have already in the biometric system are not required to do it again and those who do not have it, they can have it from a nearby Labor Office
- Introduced FEFO (First Expired, First Out) in online service delivery to provide first come to first service for both pre labor approval and final labor approval
- Established Foreign Employment Management Branch at Bhairahawa after the operation of the Bhairahawa Gautam Buddha Airport to provide services related to labor approvals
- Integrated e-passport with the FEMIS
- Initiated to update the profile of licensee agencies and orientation institutions and made their renewal through online system
- Assigned all Section Officers of the DOFE as the Investigation Officers so as to increase the access to justice delivery fast and rapid
- Removed the provision that the migrant workers have to pass through a separate departure gate in TIA and made common to all
- Conducted orientation training for controlling the cheating and fraud in foreign employment among the justices of the Foreign Employment Tribunal, relevant Government staff and representatives of People Forum.

In addition, the MOLESS has already brought the Guideline for operation of call centers and mobilization of monitoring team to increase the accountability of its staff. The *Call Centre (Operation and Management) Guideline 2075* (2018) aimed at addressing the grievances related to delivery of the services by the Ministry including Department of Foreign Employment, Security Department of Labor and Business, FEB, Prime Minister Employment Program, Social Security Fund, Business and Skill Development Training Centers, Foreign Employment Office, Labor and Employment Office.

The Call Center has:

- i. Toll free Telephone number: 16600150005 or 1141*
- ii. Email: callcenter@fepb.gov.np*
- iii. Facebook: facebook.com/molcallcenter*
- iv. Twitter: twitter.com/mol_callcenter*
- v. Viber number: 9801800013*
- vi. Mobile number: 977-9801800013 (SMS)*

The Chief of the Call Center Division of the Ministry is the Coordinator of the Call Center. The Call Center operates from 7 am to 9 pm every day. The Guideline clearly mentions the Code of Conduct for the Staff working at the Call Center that they have to reach to Office on time, to be honest, speak politely to the right-holders, and maintain privacy of nature of complaints and to the person who makes the complaints and need of equal treatment to all right holders. The Guideline classifies the complaints as: I) related to the Ministry and Units under the Ministry (including Prime Minister Employment Program); ii) related to Foreign Employment Department and Units under it; iii) related to Secretariat of the FEB; iv) Related to Security Department of Labor and Business; v) Related to Social Security Fund; vi) Related to training institute of skill development and business and vi) Related to other organizations. After recording the complaints and grievances by the staff of the Call Center, the staff forwards to the concerned offices.

A total of 8,764 calls have been received by the Call Center in the 4 months of 15 March and 15 July 2019. The Call Center has classified the calls received as related to 'provide information about foreign employment' (17%), 'follow-up calls' (34%), 'disconnection during calls' (35%), 'not essential to assign the calls to any agency' (10%) and 'unrelated calls' (4%). Of the total calls, only 3% were reported to have been forwarded for addressing the problem to the concerned agencies (Table 7.2). It is not known why such a large proportion of calls (35%) has been classified as 'service holders disconnected during the calls' – whether it was technical error from the service holders' side or from the Call Center or whether the responses from the Call Center were useless or un-helpful to solve the grievances related to foreign employment to the complained. Neither is it known the nature of complaints that is forwarded to the concern agency – whether it was related to delay in service delivery, or corruption, irregularities or government officials colluding with the middle persons and others to exploit the migrant workers.

Table 7.2 Number of phone calls received in call center of MOLESS (15 March -15 July, 2019)

Complaints/problem	Number of calls	%
Calls only for getting information about foreign employment	1,483	16.9
Follow-up call by the service holders	2,956	33.7
Service holders disconnected during the call	3,082	35.2
Calls no assigned to any offices	901	10.3
Calls of unrelated subjects	342	3.9
Total number of calls	8,764	100.0
Calls forwarded to the concern agency	261	3.0

Source: MOLESS website, Call Center Report, 2020.

In the FY 2020/21, a total of 8,410 calls have been registered in Call Center. Data reveal that an overwhelmingly majority of calls (93%) were related to getting information about foreign employment and they were resolved by the Call Center itself. Conversely, there were 7 percent calls or 620 class that have been forwarded to different offices and departments for resolution. Among those forwarded calls, majority (48%) have been resolved by the corresponding offices while the proportion of calls not seen yet and under investigation come out to be 23 percent and 6.6 percent respectively. Examining the forwarded calls, it is revealed that the highest proportion of calls were related to Foreign Employment Board, followed by Department of Foreign Employment, Labor Call Center, Ministry of Labor and Employment and Social Security including the Prime Minister Employment Program.

Table 7.3 Services provided by the Call Center, FY 2020/21

Organization	Total	% of total	Of those forwarded, resolve status			
			Unseen	Seen	Under processing / investigation	Resolved
Status of handling the calls						
For information (resolved by call center)	7,790	92.6	-	-	-	100.0
Forwarded to concerned offices	620	7.4	22.7	23.1	6.6	47.6
Of forwarded cases						
Department of Foreign Employment	120	1.7	50.0	10.8	17.5	21.7
Labor Call Center	138	1.6	0.0	0.0	0.0	100.0
Foreign Employment Office	100	1.2	34.0	35.0	0.0	31.0
E.P.S. Korea Branch	5	0.1	20.0	40.0	0.0	40.0
Foreign Employment Board	169	2.0	0.0	42.6	11.8	45.6

Ministry of Labor, Employment and Social Security	44	0.5	45.5	40.9	0.0	13.6
Department of Labor and Occupational Safety	14	0.2	14.3	0.0	0.0	85.7
Prime Minister's Employment Program	25	0.1	8.0	88.0	0.0	4.0
Vocational and Skill Development Training Academy	5	0.1	40.0	20.0	0.0	40.0
Total	8,410	100.0	141	143	41	295

Source: Foreign Employment Board Secretariat (2078BS). *Annual Progress Report of FY 2077/78*.

In 2019, the MOLESS has adopted *Guideline for the mobilization of monitoring team, 2076* (2019). The guideline aims to i) control the cheating and illegal activities effectively related to foreign employment; ii) make foreign employment safe and orderly and iii) regulate the illicit activities. The Director General of the Department of Foreign Employment is responsible for regular or sudden mobilization of monitoring. A sudden monitoring team can be mobilized if there is adequate written or oral information about the transition of money illegally in relation to foreign employment and if the migrant workers have been cheated. The regular monitoring can be conducted to ensure that the professional engaged in foreign employment business comply with the foreign employment related act, regulation, guideline and standards while doing their business. Before conduction of monitoring, the monitoring team has to make the work plan: pre-plan, during monitoring and activities of post-monitoring.

The guideline also explicitly lists several Code of Conduct of the monitoring team that the team has to maintain the confidentiality of the monitoring process, be neutral and responsible, respect to whom monitoring is being done. The team members are not expected to work in favor of foreign employment business professionals or the agent of education consultancy; the team members are not expected to receive or take any types of donation, gift, loan, money or other facilities from the individuals, groups or firms, or institutes to whom monitoring is being conducted and they should also avoid using or taking facilities of hotel, lodge, transport service, food or others from anybody during the field visit for investigation, research or other government work. Further, the monitoring team member should not be any family member or relatives of those on which monitoring is being conducted. Monitoring is only conducted with the order of the concerned competent authority.

The Guideline also outlines the subjects to be considered during monitoring of foreign employment related business or individuals or education consultancy indirectly engaged in foreign employment business. These subjects checking of pre-approval letters, receipt of bill, preparation of contract paper as the per the pre-approval letter, any firms/individuals illegally involved in foreign employment business, amount of fee and changes made in passport or visa and other offences committed as per the foreign employment act or not.

7.4 Migration Governance and Cooperation

Foreign Employment Policy – The Government of Nepal has included the foreign employment in its annual policy and budget speech as well. The MOLESS has reported that it has been revising the *Foreign Employment Policy 2012* with due consideration of Covid-19. The 5th Amendment of the *Foreign Employment Regulation 2008* was concluded. Some important amendments include increase in security deposit of recruitment agencies; merging of two or more recruiting agency; revoking the appointment of agent; authorization of District Administrative Office as the complaints handling authority; provision to review renew labor approvals upon two times from the Foreign Mission; and making mandatory of verification of the Labor Demand from the Foreign Mission of Nepal.

Government of Nepal's Budget Speeches – Examining the Budget Speeches of the Minister of Finance of the Government of Nepal for the few fiscal years (2020/21, 2021/22 and 2022/23), it appears that the Government has given priority in tackling the foreign employment issues, especially upholding the rights of migrant workers. The Budget speech of FY 2020/21 focused on addressing the impact of COVID-19 and made commitment for the utilization of Foreign Employment Fund in the employment rehabilitation programs. It also made commitment to maintain the records returnees (skill, experiences and interests of the workers) and linked them to the work opportunities created within the country. The Budget Speech of FY 2022/23 includes a details about making the safe, systematic and dignified foreign employment. It calls for skills development as per the demand of the destination countries; assessing the effectiveness of existing labor agreements and identifying for the attractive labor destination countries; providing foreign employment-related services through online systems by upgrading the foreign employment management information system. Further, the budget speech makes the commitment to provide information to the workers about destinations, type of work, wages, and social security in advance via digital means including telemedicine services to migrant workers at abroad. For returnee migrant workers, the budget speech states that they will be encouraged to work in the productive and self-employment sectors by investing their experience, skills, and capital.

The Ministry of Labor Employment and Social Security efforts to promoting international cooperation - In its efforts to expand and promote the international cooperation to address the migrant workers' rights, the MOLESS has involved in different global, regional forums particularly of the Global Compact for Safe, Orderly and Regular Migration (GCM); Colombo Process, Abu Dhabi Dialogue, Global Forum on Migration and Development (FMD) and SAARC. The Ministry has claimed the championship in the implementation of objective 6 [facilitate fair and ethnical recruitment and safeguard conditions that ensure decent work] of the GCM. In order to effectively implement the GCM, the Ministry has formed the Instruction Committee and Strategy Draft Preparation Committee. The Ministry has successfully transferred the Chairmanship of Colombo Process to Afghanistan in 20 April 2021. The Ministry reported that Nepal's commitment in different international forums including in the GCM, Colombo Process, Abu Dhabi Dialogue and SAARC is being translated into national strategy and the programs are being implemented.

Need of Restructuration in Foreign Employment Service Mechanisms – Some foreign employment experts like Luitel (2075 BS) has rightly proposed a need of structural reform in foreign employment service mechanisms. At the Foreign Employment Board, at least three reforms have been suggested: I) making it more autonomous body; ii) adding the representative from National Human Rights Commission in the Board and iii) expanding the function of the Board at the Province level in collaboration with the Province Governments. At the Foreign Employment Department, making legal provision to decentralize the function of the Department to the Province Level and strengthening the Department for investigation of the cases have been considered as important reform steps. It is argued that the practice of Foreign Employment Tribunal (FET) is probably the new one in Asia. However, its services have been centralized in Kathmandu only and making it many victims not able to file the cases. Considering this problem, at least in the short-run, it is argued that there is need to establish a separate foreign employment bench in each High Court and in the long-term, FET at the Province level can be established. The services of Counselor Service Department are to be decentralized at the Province level.

In addition to restoration discussed, Luitel argued that there is need of establishing new structure considering the Local Government Operation Act 2074 at the Local Levels. The Act has several provisions including:

Publicize the necessary information about safe foreign employment; collect and manage the data of labor at foreign; establish information center and operation; increase awareness about foreign employment; provide financial literacy to workers going to foreign employment and their family members; manage the skill development training; arrange economic-social reintegration of the returnees and utilize the skills, knowledge and entrepreneurial skills for returnees.

At the Province Government level, there is need of formulation of foreign employment policy, collection and information and data at the province level.

7.4.1 MOU and BLA: How Far they contributed to safeguard the rights of migrant workers?

Here, we have selected three MOU for critical review of how far they contribute to protect the rights of migrant workers. They are I) MOU with Government of Republic of Mauritius, ii) MOU with the Government of UAE and iii) MOU with Government of Malaysia. These MOU were conducted recently.

Data reveal that the Government of Nepal has concluded MOU and BLA with 10 countries by September 2021 (Box 7.1). And, according to the letter received from Nepali Embassies at abroad, Labor agreements with Oman, Saudi Arabia, Kuwait, Egypt, and Cyprus are under the review process and being finalized. While the BLA are binding instruments, the MOU are non-binding ones. The BLA has initiated since 2005 with Qatar, and it is seen that there was no MOU/BLA in between 2007 and 2014 while there was very high flow of foreign labor migration from Nepal. Looking at the report of the Embassies of Nepal at abroad, it appears that Nepal has been diversifying destination countries around the world – going beyond the Gulf nations and Malaysia.

Box 7.1 Nepal's labor agreements with destination countries and their classification

SN	Country of destination	Year of agreement	Nature of agreement
1	Qatar	2005	General Agreement (BLA)
2	Bahrain	2008	Memorandum of Understanding (MOU)
3	Republic of Korea	2007	Memorandum of Understanding (MOU)
4	Israel	2015	Joint Pilot Project
5	Japan	2009/2019	JITCO Agreement, memorandum of cooperation for specialized workers
6	Jordan	2017	General Agreement (BLA)
7	Malaysia	2018	Memorandum of Understanding (MOU)
8	Mauritius	2019	Memorandum of Understanding (MOU)
9	UAE	2007/2019	Memorandum of Understanding (MOU)
10	United Kingdom	2021	Memorandum of Understanding (MOU)
	Draft Being Finalized*		
1	Saudi Arabia		Draft exchanged and being finalized (Nepal's Embassy to Saudi Arabia reported)
2	Oman		Draft exchanged and being finalized (Nepal's Embassy to Saudi Arabia reported)
3	Lebanon		Draft being done (Nepal's Embassy to Egypt reported)
4	State of Kuwait		Draft being done (Nepal's Embassy to Kuwait)
5	Cyprus		MOFA has been informed for the need of MOU (Nepal's Embassy to Israel reported)
6	Seychelles		Nepal's Embassy to South Africa has been attempting to conclude the MOU with Seychelles

Source: MOLESS (2020) and note * based on the information provided by the concerned Embassy to NHRC through letters, 2021.

According to the letter of MOLESS to NHRC, the Ministry has conducted the following activities in relation to labor agreement in the FY 2019/20. The Ministry has conducted the joint meeting with i) Nepal and Malaysia, ii) Nepal and UAE and iii) Nepal and Mauritius. The provision that the cost of workers going in foreign employment to be borne by the employers has been included in the Labor Agreements. The Council of Minister of Government of Nepal has approved to conduct the labor agreement with Jordan and there has been exchanges of draft Labor Agreement letter to Saudi Arabia, Turkey, Israel, Kuwait and Romania.

The MOU with Japan allows Nepalese workers to be hired in the following 14 job sectors: caregiving, building cleaning management, machine parts and tooling, industrial machinery, electric, electronic, information and construction industries, shipping and ship machinery, automobile repair and maintenance, aviation, accommodation, agriculture, fishing and aquaculture, manufacturing of food

and beverages and food service and industries. In addition to those skills required to work in Japan, a Nepalese aspirant migrant worker requires to pass N4-level Japanese language test.

According to the letter received to NHRC from different Embassies of Nepal at abroad, Nepal has been preparing to conclude MOU with Saudi Arabia, Oman, Lebanon and State of Kuwait. The Nepal's Embassy to Israel reported that it has suggested the MOFA for the conduction of MOU with Cyprus given the fact that there are more than 10,000 Nepali citizens and workers in Cyprus. The Embassy of Nepal to South Africa reported that it has been engaged to finalize the MOU with Seychelles – the east African country.

The MOU between the Government of Nepal and the Government of Republic of Mauritius on the Recruitment and Employment of Workers from Nepal: Conducted in June 2019, this MOU includes 14 articles including appendices of Contract of Employment and responsibilities of contractual parties (of employers, of workers and of the Nepalese recruitment agency). The MOU defines objective as 'establishing a framework relating to recruitment and employment of the workers and to protect the rights and welfare of workers and the employers'. The MOU assigns the concerned authority of the both parties (Article 3) for implementation of MOU. In the key areas of cooperation, the MOU includes provisions such as control and regulation of recruitment, handling of illegal migration and trafficking, exchange of updated information between the parties, establishing cooperation between the parties for the development of relevant technical and human resources. Article 6 and Annex A provide the provisions required for the contract of employment. The contract of employment details at least 20 sub-headings. They include:

duration of contract, type of work, wages, working hours, overtime, leave, medical and accident insurance, condition for deduction of wages, accommodation and food, renewal of permit, travel expenses, repatriation of dead body and remains in case of death of the worker, termination of the contract, restrictions of worker involving in political activities, safely keeping of the passport, outstanding wages, end of year gratuity, amendment and language of the contract.

The contract paper shall be in three languages: English, Mauritius and Nepali and in the event of any dispute in the interpretation of the MOU arises, the English text shall prevail. Further, the MOU states that worker can change the employer or may return to Nepal if the company has closed down or has gone bankrupt.

In Article 7, 'recruitment safety and security of workers' have been discussed, and the MOU clearly assigns the role of the Government of Nepal and the Government of Republic of Mauritius in this matter. While the Government of Nepal is expected to ensure that her workers possess required skills, training, complete the pre-departure training, meet the medical requirements, have the good character and ensure that workers are not charged with any recruitment fee. The Government of Mauritius is expected to ensure that the Nepali workers shall be paid no less than the minimum wages determined by Mauritius Government; ensure that there is non-discrimination between the Nepali workers and the Mauritius nationals on matters of wages, overtime, working conditions and access to justice; ensuring that safety and security of all migrant workers including special provisions for female workers be in place; monitoring of timely payment and wage system and ensuring that

the workers are not subject to any forms of harassment, abuse, forced labor and restriction of their mobility and communication with their family members.

The MOU also brings the contractual parties such as employers, recruiting agencies within the scope of legal action if contravening any provisions of each party's laws and regulations while recruiting and employing the workers (Article 8). Article 9 of the MOU outlines the mechanism of access to justice if any dispute arises between the worker and the employer. In this case, a complaint can be filed to the administrative authority for amicable reconciliation and if the case is not settled over there, the case can be filed to the judicial authority. In case of searching for judicial remedy, the workers are granted the fee legal and translation services if needed. Article 10 outlines the formation of the joint committee and its function and duties. The joint committee is mandated to coordinate between the parties for the necessary implementation of MOU, exchange of information, expertise and research, and is also authorized to make recommendation to resolve the dispute arising from the implementation of the MOU. Finally, the MOU makes it provision that the parties shall reserve their rights to suspend the implementation of this MOU.

The MOU between the Government of Nepal and the Government of the United Arab Emirates (UAE) in the Recruitment, Employment and Repatriation of Workers – The MOU between Government of Nepal and Government of UAE was conducted in June 2019. The MOU includes 8 articles including Annex of Limited Term Employment Contract. The MOU defines 'employment', 'employer', 'worker' 'employment contract', 'Nepali recruiting agency' and 'UAE recruiting agency'.

Article 2 outlines the areas of cooperation: establishing a framework for the recruitment, employment and repatriation of the worker; protecting the rights of worker and employer; maintaining the transparency, ethical recruitment, fairness in the process of recruitment, employment and repatriation of workers; regulating the costs associated with recruitment; exchange of information; addressing the issues of irregular/illegal recruitment, forced labor and promoting the technical and human resource development.

The MOU outlines the responsibilities of Government of Nepal (Article 4) that the Government must ensure that the worker possesses necessary qualifications, skills and medically fit; contract of employment duly signed by both the worker and the employer and verified by the Government; provide pre-departure orientation to the workers on the relevant laws, regulations, customs and rituals of UAE and ensure that the worker does not have to pay the recruitment fees and costs. While the responsibilities of Government of UAE (Article 5) are to uphold the rights of workers in UAE and ensure that fair and equal treatment to workers compared to other foreign workers on matters of wage protection, working conditions, complaint handling and access to justice all be in place. The MOU also emphasizes the UAE government should ensure that the employment offer letter should include job specification, qualifications, types of job, wages, non-wages benefits, accommodation and transportation and safety, security and welfare of the worker with special consideration of female workers. It also makes provision of monitoring of wage protection system and right to remit his/her income through official channels and the worker is free to communicate to his/her family member.

To provide the access to justice, the MOU establishes the mechanism to dispute resolution between the worker and the employer if disputes arises between them. First, a complaint can be filed to the competent authority for amicable reconciliation, if it is not settled within two weeks, the complaint can be field to the competent judicial authorities for the settlement. The MOU makes the provision of a joint committee between the two parties in order to implement, review or revise the MOU. Finally, the MOU period is 4 years, and can be automatically renewed another same period if both parties wish to do so.

MOU between Government of Nepal and the Government of Malaysia on the Recruitment Employment and Repatriation of Workers – This MOU was conducted in 2018. The MOU includes 16 articles including three Appendixes: contract of employment, responsibilities (of employer, of the worker, of the Nepali recruitment agency) and terms of reference for the joint working groups for the implementation of the MOU. The MOU aimed at 'establishing a framework and repatriation of the worker and protecting the rights of both workers and employers'. Article 3 and 4 outline the authority designated and implementation modality of the MOU, respectively.

The MOU offers a detail terms and conditions of contract of employment under at least 27 sub-headings. They include:

duration of contract (2 years); type of occupation; wages (which shall not be minimum of the national minimum wage of Malaysia); working hours (8 hours/day); overtime; rest day (weekly rest day); public holiday; paid annual leave including 15 days leave in case of death of parents, spouse and children of the worker; provision of levy; medical and accident insurance (but not made compulsory); deductions (not more than 50% of the salary); accommodation and sick leave (paid sick leave and paid hospitalization).

Further, the contract letter makes the responsibility of the employer like renewal of worker's visit pass 3 months prior to the expiry, paying the airfare of the worker to return to the country after termination of the contract period and cost incurred for the repatriation of death body in case of death of the worker. If the funeral takes place in Malaysia with the consent of the family of the deceased, the employer shall pay for funeral cost. The contract letter also includes workers entitlements of termination of work, restrictions of workers involving in the any political activities and engaging any criminal activities. According to the MOU, the Contract of Employment letter shall be three languages: Malay, Nepali and English and each one copy has to be brought by the worker once they land to Malaysia. If there is any divergence arises in interpretation of the MOU, it is said that English text would prevail.

The MOU includes provision of 'recruitment, safety and security of workers' and for which both the Governments will have specific roles. The Government of Nepal shall ensure that her workers shall have in the age range of 18-45 years. They should possess required qualifications and skills; basic knowledge on Malaysian culture and social practices; receive pre-departure orientation; abide by Malaysian relevant laws and medical requirement for foreign workers and ensure that the worker has no any previous criminal records. The Government of Malaysia is expected to ensure the safety and security of workers in Malaysia with special attention to female workers; protect workers from

all forms of harassment, abuse and forced labor; provide special pass to the worker who has filed a complaint until settlement of the labor dispute and ensure equal and fair treatment to Nepali workers vis-à-vis other foreign workers on matters of wages, overtime, working conditions and access to justice.

Article 8 and Appendix B of the MOU bring the contractual parties that is, the employer, worker, Malaysian recruitment agency, Nepali recruitment agency, under the legal scope of the MOU. The responsibilities of the employer are to recruit the worker through an authorized Malaysia recruiting agency; pay the worker's basic wages and other the payments as agreed and provide the original copy of the Demand Letter and Contract of Employment to the Embassy of Nepal. Further, the employer shall be responsible for the following payments: security deposits, processing fees of visa, visit pass, appropriate insurance scheme in Malaysia, medical examination in Malaysia, security screening (to be reimbursed to worker if they have paid it), medical examination in Nepal (to be reimbursed to worker if they have paid it), single entry visa, round trip air ticket and recruitment service charge of 50% of one month minimum wage of the worker. The responsibilities of the workers include: sign the Contract of Employment in Nepal before departure to Malaysia and keep three original copies (one each in Malay, Nepali and English language), pay the charges, bear the related approved cost for the accommodation, bring along with the copy of medical examination report, abide by all Malaysia laws, rules, regulations, national polices. The Malaysia recruitment agency shall be responsible to request the Employer recruit Nepali workers through the Nepalese recruitment agency and comply with the guidelines stipulated by the both Governments. The Nepali recruitment agency is responsible in providing potential worker according to employer's job specification, facilitate the worker to obtain the necessary travel documents, conduct the interview, ensure that the workers undergo pre-departure orientation training, and ensure that the terms and conditions of the Contract of Employment are fully explained and understood by the worker.

The objective of the Terms of Reference for the Joint Working Group is to 'ensure appropriate and effective implementation of the MOU by promoting the rights and the protection of both the Employers and the Workers in Malaysia. The Joint Working Group is mandated to monitor the implementation of MOU, monitor the implementation of any programs regarding the recruitment, employment and repatriation of workers, advice services and technical assistance on the employment of workers and performed any other tasks required by the state parties. The Nepali Embassy to Malaysia reported that two meetings of the Joint Working Group have already been held after the signing of MOU on 29 October 2018 between Nepal and Malaysia. The meetings focused on effectively implementation of the provisions of the MOU. In addition to the attestation of the Demand Letter of the workers by the Embassy regularly, the Embassy also reported that it has focused on the Employer's Pay Principle. When there is a complaint of the violation of the workers' rights, the Embassy gives the warning to the employers, make them to correct it, make them provide compensation to the victim and if the employer does not obey the request, the Embassy keeps such employers under the black list.

Achievements and Gaps in MOU

By reviewing these three MOUs, it can be argued that some of the landmark provisions have been incorporated in these MOUs especially related to granting the basic labor rights, non-discrimination, free recruitment, bringing the contractual parties into the scope of legal action, security and safety of workers including the female workers and provision of mechanism of access to justice in the destination countries.

Despite these achievements, these MOU still lack crucially important provisions embodied in the Nepal's commitment with the GCM and other human rights instruments for the protection of rights of migrant workers (Box 7.2). First, the objective of the MOUs includes only generic terms of 'protect the rights of workers and employers', but they fail to include the human rights of migrant workers to be protected, fulfilled and prevented from the violation of the third party in their preambles. Second, the MOUs do not explicitly mention the terms and conditions of the contract of employment according to the nature of work. For example, some work involves much risk – like working in a building of a very height, under the sea or in the tunnel, working in the factory premises or oil refinement places may require special consideration for the health and safety of the workers. Third, the MOUs also lack provision of effective monitoring and inspection in the workplace whether the ban time of middle day has been obeyed by the employers and workers are not forced to work in the very hot temperature. Fourth, the MOU also lacks no special measures to protect the rights of migrant workers in case of disasters like pandemic, strong earthquake, war or other public disorder in the destination country – how the workers can be protected and how they will be provided humanitarian services like relief and rescue and who will be responsible for it has not been mentioned in these MOU. Finally, the MOU does not comply state party to produce an annual progress report which assesses the extent of implementation of the MOU provisions, need of revisions and recommendations of the joint committee to improve the situation of the rights of the migrant workers.

Box 7.2 Comparison of the key provisions of MOU among the selected three countries

	Key provisions/parameters	MOU between Nepal and Mauritius	MOU between Nepal and UAE	MOU between Nepal and Malaysia
1	Objective and general provisions			
1.1	Date conducted	11 June 2019	June 2019	2018
1.2	Duration of MOU	4 years	4 years	5 years
1.3	Either party may opt to suspend the implementation of MOU (for reasons of national security, public order or public health)			
1.4	Objective: explicitly states to protect the rights of workers and workers			
3	Areas of cooperation			

3.1	Ethical and fair recruitment			
3.2	Control and regulate costs associated with recruitment and employment of workers			
3.3	Address the issues of irregular migration and TIP			
3.4	Exchange of information			
3.5	Cooperate technical and human resource development			
4	Contract of Employment			
4.1	Workers fully understands the terms and condition of the contract of employment			
4.2	Basic labor rights (type of work, duration, wages, working hours, overtime, leave, deduction)			
4.3	Living condition (medical insurance, accommodation, food)			
4.4	Benefits (outstanding benefits, end year gratuity, travel expenses)			
4.5	Repatriation – dead body, remains (cost to be insured by the employer)			
4.6	Control over passport, ID, ATM cards			
4.7	Worker can change the employer or return to the country (in the context of closure of the company or wind up)			
4.8	Right to remit the income of the workers from the official channel			
5	Safety and security of workers			
5.1	Age range of workers	20-60 years	Not mentioned	18-45 years
5.2	Non-discrimination - equal and fair treatment of workers compared to nationals of destination country on matters of wages, overtime, working conditions, and access to justice			
5.3	Protection from violence and exploitation (Workers not subject to any forms of harassment, abuse, forced labor, unlawful holding of passports, restriction in movement and communication)			
5.4	Gender lens in safety, security measures			
6	Access to justice			
6.1	Competent authorities designated to implement the MOU in both countries			
6.2	Mechanism available for resolving worker's grievance with the employer (administrative, judicial and labor courts)			
7	Establishment of joint working group			

7.1	Monitoring the workplace by the competent authority and by the Nepalese embassy	X	X	X
7.2	Monitoring the payment system			
8	Major Gaps in MOU			
8.1	Primary of human rights of migrant workers	X	X	X
8.2	Domestic workers rights	X	X	X
8.3	Right to life (measures for prevention of death and occupational safety and workplace hazardous and heat stork)	X	X	X
8.4	Medical insurance during the pandemic	X	X	X
8.5	Humanitarian services (rapid rescue, food, accommodation, security etc.) during the disasters (pandemic, natural disaster, war, conflict)	X	X	X

Note: X refers no provision; refers to there is somewhat provisions mentioned in the MOU.

Source: Summarized from MOU between the Nepal and the concerned countries.

7.4.2 Role and Effectiveness of Labor Attaché and Consular (Labor)

Labor Attaché is the government authority posted to a destination country to provide the services to the workers in that country. The Government of Nepal has classified Labor Attaché into I) Consular (Labor) and ii) Labor Attaché. The former is appointed as equivalent to Under-Secretary and the latter is the Section Officer. The Section 68 (1) of the Foreign Employment Act 2007 makes it provision of appointment of a Labor Attaché to a country where 5,000 or more workers have been sent for foreign employment. Section 68 (2) outlines the function, duties and power of the Labor Attaché. Accordingly, the Labor Attaché has to: I) obtain factual information regarding the ways how the international migrants are protected in the destination country; ii) attempt to resolve the dispute between workers and employers or licensees if it arises; iii) provide information to Government about any work available corresponding to the skills of Nepalese workers; iv) take initiative in sending back the dead body of any workers; v) make efforts to conduct a bilateral labor agreement; vi) discourse workers not to do any work other than stated in the Contract and vii) supervise any activity that may affect the workers. The Section 68 (3) makes the provision that if any country has both diplomatic mission and Labor Attaché, the Labor Attaché shall have the obligation to perform the functions and duties of the Labor Attaché.

Diplomatic experts like Bhandari (2075 BS) has extensively discussed the role of a Labor Attaché in foreign employment management: from a worker entering to a country, joining a job and working condition and even to return. At the time of entering the worker in the country, the Labor Attaché shall have the responsibility to look several things like: whether the worker has any problem in the immigration; whether the employer has received the worker on time from the airport or not; whether any problem arises resulting the worker being sent to a Deportation Center; whether the employer's representative brought the worker in the said company and work or not. Once the worker is employed, the Labor Attaché shall have responsibility of regularly monitoring the health condition

of workers by observing the workplace and accommodation place whether it is hygienic or not and whether the workers are getting quality and adequate food and sleep or not.

Bhandari argues

There are evidences that the worker who died in road accident, or who got injured during their work are not getting the accident insurance or compensation. In some cases, it is reported that the employers or their representatives take the amount of compensation, and they do not transfer the money to the heir of the deceased or the injured workers.

The Labor Attaché must take information about the remuneration and other benefits that the worker has been receiving as stated in the Contract. The case of non-payment, according to Bhandari is often happens in the end of period of Contract. He says,

It is often that many workers are not paid in the end of the contract period, that is, within 2-3 months. The employer attempt to trick the worker by saying that his /she visa period shall be extended. When the visa period is ended, the worker automatically turns to be illegal migrant and his/her bargaining position to the employer becomes feeble. In such case, Labor Attaché has the role to ensure that the worker get paid.

Labor Attaché is role is to resolve the dispute between workers and employers or between workers and workers if they arises. In such case, the Labor Attaché must be able to identify such events and reach on time to provide the justice of the Nepali workers. Further, the Labor Attaché are expected to establish the network of Labor Attaché /Network of Organizations of the labor supplying countries so that any disputes between and among the workers can be resolved through the network and also learn from other countries. It is also important to establish the linkage with the trade unions, human rights organizations, bar associations of the destination country. Further, Labor Attaché are expected to establish relations and cooperation with the Chamber of Commerce and Employers' Association in the destination Country. Establishing relations with these organization is vitally important to address many of the Labor problems. Employers can easily manage the minimum salary, working environment, accommodation, insurance, food and health measures, but in many cases, it is reported that it is the middle persons/agents that they extract the profit from the workers.

While the Labor Attaché has so important role to protect the rights of migrant workers at the destination country, the Government of Nepal has failed to appoint the Labor Attaché in several countries where there are more than 5,000 Nepali workers currently working and where there are more than 1,000 women migrant workers.

In addition to the appointment of the Labor Attaché, the competency and commitment of the Labor Attaché and resources in the Mission are also important factors in promotion of rights of migrant workers.

7.4.3 Role of Human Trafficking and Investigation Bureau, Nepal Police

According to the letter of the Bureau to NHRC, the Bureau has been actively engaged in providing services related to rescue, repatriation and security to victims of international and cross-border trafficking and smuggling. For this, it has established Toll free number 1177 to help and coordinate the victims and their families. The Bureau provides necessary security to the victims during their rescue on the route and other places; conducts necessary coordination with different organizations on route, in the airport and in collection of information, writing of application (*Jahere*) and legal advice to the victims. Further, the Bureau coordinates the local police to make contact of the victims to their family members and coordinates the relevant stakeholders to provide the health services to the victims if it is needed.

The Bureau has established the coordination particularly to NGOs like Maiti Nepal, Shakti Samuha, People's Forum and other NGOs for rescue and rehabilitation services to the trafficking and smuggling victims. Once victims are rescued, there is need to provide the essential services like health treatment, writing of *Jahere* and authentication of *Bayan* (the statement of the victim given in the court), keeping the victims in the Safe House. In the context of combating trafficking in relation to foreign employment, MOU between the Nepal Police and the Department of Foreign Employment has been signed in 2019 and it is a landmark step to prevent trafficking, protect and rehabilitate the victims. The MOU also aims to prevent the impunity of perpetrators by bringing them into justice and law of the land.

Despite these efforts by the Nepal Police, it is reported that there is difficulty to provide temporary safe shelter to the victims rescued/intercepted as there is no government owned Safe Houses and there is no adequate resources to provide health services to the victims.

7.4.4 Efficiency of Nepali Diplomatic Mission: Initiative of MWs Targeted Programs

How far the Nepali Diplomatic Mission has become efficient to deliver the services for upholding the rights of migrant workers and how far they have launched migration related programs. For this, NHRC collected information about whether they have conducted any targeted program/activities for the protection and promotion of the rights of migrant workers. Many of the Diplomatic Missions of major destination countries have responded to NHRC regarding their programs/activities.

In Saudi Arabia, the Embassy reported that in FY 2020/21, it carried out 72 awareness programs related to the protection and promotion of rights of migrant workers. In addition, the Embassy has the following website: sa.nepalesembassy.gov.np. The Website includes the following sub-domains 'about us', 'consular services', Nepal- Saudi relation about Nepal, Community welfare, contact, publicize my profile. However, it has not developed the sub-domain of online complaint handling system as in the case of Qatar.

In Oman, the Embassy reported that in 2020, NHRC team including Government authorities led by Hon'ble member Sudeep Pathak visited Muscat including other Gulf countries. The team visited

the Chief of Oman Human Rights Commission and other concerned authorities and received the information about the human rights situation of migrant workers in Muscat including in other Gulf countries. The Embassy has its website which shows the following details of complaint handling system of migrant workers: full name, contact address, email address, name of the company, director's contact number and brief description of the problem.

Embassy of Nepal, Abu Dhabi, and UAE has developed the online services in the following areas: visa pre- arrival, visa conversion, entry visa, visa online arrival, visa application track, check visa, non-visa arrival and visa extension.

The Embassy of Nepal to Israel reported that it is in contact with organizations working for the Human rights of migrant workers such as Kav Laoved, Makeren, and Centre for International Migration and Immigration (CIMI). With the coordination of the Embassy, CIMI rescued Nepalese migrant workers from Cyprus during COVID-19 crisis and helped return them safely. In Cyprus, one safe house has been established and run with the support of Nepali unpaid General Commercial Council and Non-Residence Nepali Association (NRNA). In this safe house, more than dozen Nepali have already taken shelter. The Embassy of Nepal, Cairo, Egypt reported that it has been in continuous contact with the Human Rights based organizations in Egypt and in other countries of its jurisdiction and consulates General of Nepal including IOM

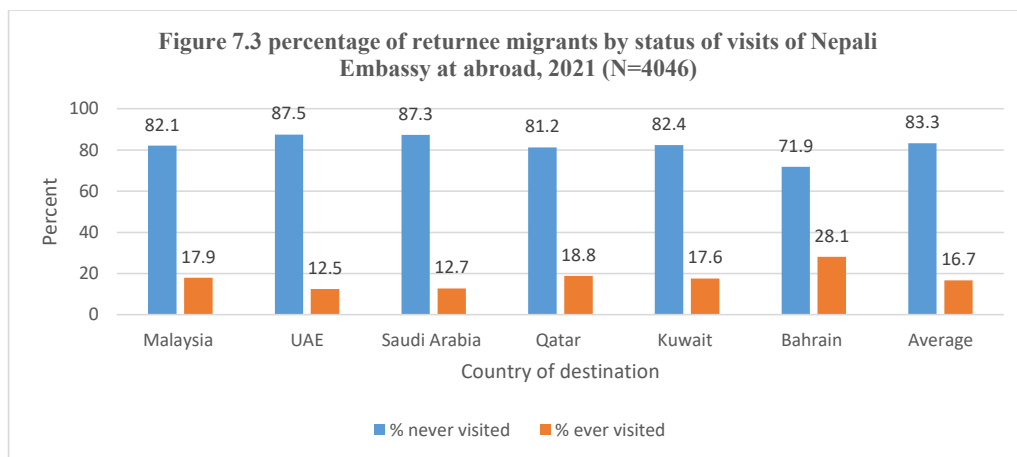
The Embassy of Nepal, State of Kuwait stated that it has launched targeted activities such as the following. One, it has conducted awareness program about the Nepalese workers' acts, duty, legal rights, protection of rights by visiting of different companies in Kuwait. Two, it has conducted Orientation Programs about acts, duty, rights, Kuwait Labor and immigration laws targeting to workers by involving local expert trainers. Three, it has continuously published the useful information to migrant workers through different publications, hand-books, social media websites and finally, it has conducted coordination and collaboration to different Minister/Agencies in Kuwait to promote and protect the rights of migrant workers.

The Embassy of Nepal, Qatar reported that the Embassy has been carrying out the awareness programs to the Nepali workers in Qatar and has also been coordinating the relevant companies and Qatari authorities for the protection of the rights of migrant workers. However, the Embassy failed to provide the details of the programs/activities carried out in this direction. In addition to conducting the regular program, the Embassy has developed the online complaint handling system and posted in ad.nepaleseembassy.gov.np. The website include the following description while making online complaints: name/caste, passport number, visa number, mobile number, email address, name of employer/name of director, contract number of employer/director, brief description of the problem.

The Embassy of Nepal, Malaysia reported that with the due consideration of the rights of the Nepali migrant workers in Malaysia, the Embassy has been extending its coordination and collaborative work through regular visits and meetings to Malaysian Police, Immigration Department and other Government Offices. Apart from it, the Embassy has also been running a live face-book awareness program on every Friday aiming to provide the workers immediate response on their inquiry and more clarification on matters that have not been understood by the workers. The Embassy also

reported that it has collaborated with the SUHAKAM. In this matter, the Ambassador has discussed the situation of rights of Nepali migrant workers on 14 September 2020 with the Commissioners of the Malaysian Human Rights Commission. Similarly, the Embassy also conducted a virtual meeting with the Malaysian Human Rights Commission in 3 March 2021 for the timely repatriation of the death body of the Nepali migrant workers. In 9 April 2021, the Embassy participated in an advisory meeting of the forced labor in construction sector in Malaysia and also participated the virtual meeting conducted between the Nepal Human Rights Commission and Malaysian Human Rights Commission. Further, the Embassy has its own website which provides labor grievances, important information and return recalibration program.

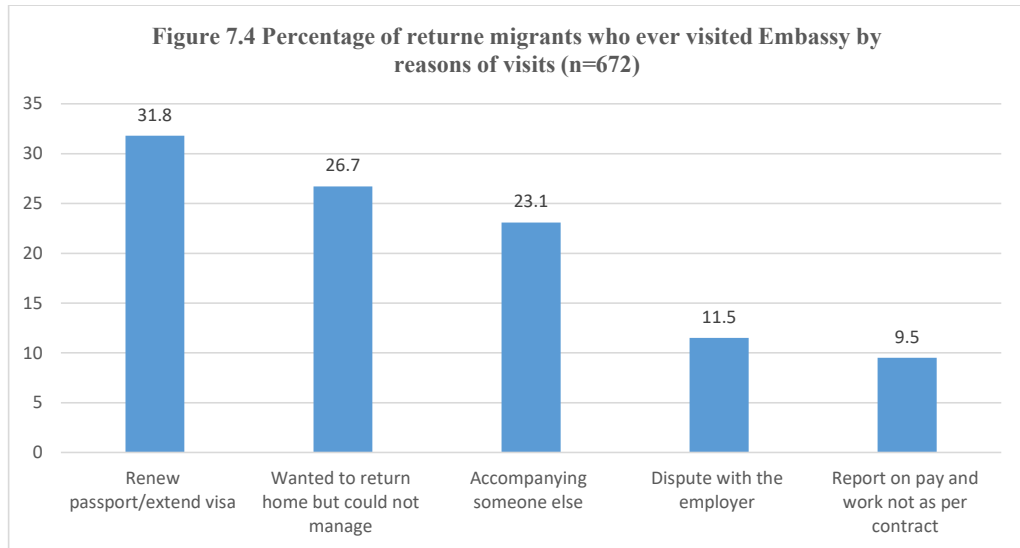
Extent of Visits of Embassy by the Migrant Workers - Visit of Embassy by the migrant workers can be taken as an indicator to measure the effectiveness of Nepali Mission abroad in addressing the migrant issues abroad. In the survey of returnee migrants by Blitz Media Private Limited and Humanity United (2022), it was enquired that whether the returnee migrants ever visited the Nepali Embassy in the destination countries and if they have visited, the reasons for it. Data reveal that among the 4021 returnee migrants interviewed from six countries (Malaysia, UAE, Saudi Arabia, Qatar, Kuwait and Bahrain), 83 percent reported that they have never visited the Embassy while only 17 percent reported so (Figure 7.3).



Source: Blitz Media Private Limited and Humanity United (2022).

Among those who visited the Embassy, nearly one-third (32%) visited for renewal of passport/extend visa, 27 percent for managing the return, 23 percent accompanying someone, 11.5 percent for dispute resolution with the employer and another 9.5 percent to report on the payment and work not provided as mentioned in the Contract paper (Figure 7.4). The tendency of visit to Embassy appears almost the same across all the countries of destination while the reasons for visits to the Embassy vary by countries of destination. For example, nearly half of the returnee migrants from UAE and more than two-thirds from Bahrain visited the Embassy for renewal of passport/visa while more than one-thirds of returnee migrants from Malaysia visited the Embassy for managing the return process to Nepal, and a relatively a higher proportion of returnees from Qatar (16%) reached to the

Embassy for making complaint of not getting the salary and work and 22 percent of returnee from the Bahrain reached to the Embassy to resolve the dispute with the employers.



Source: Blitz Media Private Limited and Humanity United (2022) and Annex...for details.

Budget

Embassies of Nepal were enquired to provide the information about the budget allocated by the Government of Nepal for the protection and promotion of rights of migrant workers to the Embassies and the responses have been summarized in Box 7.3.

Embassies of Oman, Embassy of Israel, Embassies of Egypt and Embassy of Kuwait have provided somewhat detail data related to budget allocation. Data reveal that although the amount of budget allocated has increased over the years in these countries from as low as Rs. 200,000 to as high as Rs. 1,500,000, the annual budget allocated to each of these countries are fairly low against the problems and complaints recorded in these Embassies from the migrant workers. In early years such as in FY 2016/17 and FY 2017/18, budget was allocated mainly in the headings of labor rights protection and public awareness; while in the following years, the budget headings were extended to include 'rescue', 'compensation', 'legal defense' and 'safe return'. In case of Egypt, it is reported that there is no specific budget allocated in rescue, or public awareness program heading, but budget has been allocated as unconditional grant to spend for the protection of migrant workers.

Box 7.3 Budget allocation in key heading by country of destination and fiscal years

FY	Oman		Israel		Egypt		Kuwait	
	Amount (in 000 Rs.)	Key budget headings	Amount (in 000 Rs.)	Key budget headings	Amount (in 000 Rs.)	Key budget headings	Amount (in 000 Rs.)	Key budget headings
2016/17	200	Public awareness	500	Public awareness	50	Unconditional grant	500	Compensation
2017/18	600	Public awareness	300	Public awareness	50	Unconditional grant	500	Compensation
2018/19	1,000	Public awareness + compensation	300	Public awareness	100	Unconditional grant	1500	Compensation
2019/20	1,500	Public awareness + compensation	1500	Public awareness + compensation + rescue+ legal defense	250	Unconditional grant	1500	Compensation
2020/21	1,500	Public awareness + compensation + rescue+ legal defense	400	Public awareness + compensation + rescue+ legal defense	200	Unconditional grant	1500	Compensation

Source: Letters sent to NHRC by the corresponding Embassies, 2021.

The Embassy of Nepal, the Republic of South Africa reported that there is no budget allocated in this heading. While the Embassy also reported that it has continuously been carrying out the virtual and face-to-face programs related to rights of migrant workers. While it also reported that due to the COVID-19 crisis in this Fiscal Year (2020/21), there has not been any program in collaboration the Human Rights Commission of Republic of South Africa. In UAE, according to the Embassy, budget required for the rescue of migrant workers (food, accommodation, air-ticket, out-pass, return to the country etc.) has been received by the Embassy through the FEB. The Board has also allocated budget for emergency work as well. In Qatar, the Embassy reported that the Government of Nepal has not allocated the budget for the legal defense of the Nepali workers accused or convicted by the Qatari Government and are in Police custody or in prisons.

7.4.5 Activities Carried Out by Department of Consular Service

According to the letter received to NHRC from the Department of Consular Services, MOFA on 21 October 2021, the Department and the Legal Advisory Section has carried out the following activities in the FY 2019/20 and 2020/21. The activities are mainly related to correspondences for claiming the compensation amount of the deceased migrant workers, correspondences for search and rescue, receiving the compensation amount and handing over the compensation amount to the CDO (Box 7.4).

Box 7.4 Number of activities carried out by Department of Consular Services

SN	Description of activities	FY 2019/20	FY 2020/21
1	Number of correspondences to the concerned agencies to claim the compensation of the deaths of the Nepali citizens abroad (Power of Attorney, Verification of Relation, H-form GOSI forms)	422	665
2	Number of correspondences for the search and rescue of Nepali citizens from abroad	560	610
3	Number of correspondences to bring the dead body of Nepali died abroad and perform the death ritual at abroad	533	431
4	Number of draft (bank orders) of the compensation amount received from Malaysia	33	5
5	Number of migrant workers' compensation amount received from different Nepali Missions abroad to the Consular Department I	579	
6	Number of migrant workers' compensation amount received from different Nepali Mission abroad to the Consular Department that sent to the CDO	575	

Source: Letter received from the Department of Consular Service Department, MOFA to NHRC on 21 October, 2021, and GOSI refers to the General Organization for Social Insurance.

7.4.6 Issues of migrant workers in Malasiya

During the NHRC Nepal team visit in Malasiya, team received the information on migrant workers by different consultation with Civil Society Organization based in Malasiya, Nepalese Communities, Embassy officials. The following issues are important in addressing the Nepali migrants' rights issue in Malaysia, but because they are also equally relevant in addressing the migrant rights issues in other major destination countries including in GCC countries.

1. Labor related issues – forced to work overtime than that of permitted by the Malaysian law, inadequate working and living conditions and unethical recruitment practices. In the study of 95,870 workers' accommodation units of 14,835 employers by the Labor Department of Malaysia in 2021, nearly three fourth of the employers were found not complying with the Workers' Minimum Standards of Housing and Amenities Act 1990 (Act 446) of Malaysia. The issue of living conditions has particularly come in front during the Covid-19 pandemic when the migrant workers are reported to have cramped and provided dirty accommodations by the many employers especially in the Malaysian glove companies and other manufacturing companies.
2. Issue of Check-Out Memo (CoM) – This is the exist permit of foreign migrant workers, and it has to be received from the respective employers. CoM is mandatory to return the workers to their country. While the employers often do not make the CoM on time and as a result, the migrant workers are forced to work longer period of time than intended. According to the Embassy, this issue can also be brought to the Joint Working Group meetings related to MOU between Nepal and Malaysia. It is said that such exist permit practices have already been

removed even in Qatar and UAE. The exit permit system needs to be simplified and make it possible to obtain from airport/point of exit from Malaysia.

3. Custodial death – It is one of the important issues in Malaysia. 'Malaysian law requires the police, in the event of custodial death, to notify the nearest available magistrate in order for an inquiry into the cause of death to be held. However, this provision does not seem to be applicable in case of the foreign nationals'. It is reported that a Nepali worker on death row – Mr. Kamal Tamang, died in May 2021 at Kluang Prison. 'The Embassy was informed that he had committed suicide. However, there does not seem to have been any further inquiry by a magistrate in his particular case.' This incidence suggests that there must be a judicial inquiry in addition to investigation by the Malaysian Human Rights Commission for foreigners who die in police/detention or prison.

4. High inequality in cost of public health services between the national and non-nationals – Public health care system of Malaysia charges a very high fee for the foreign nationals' vis-à-vis the Malaysian nationals. As summarized in Box 7.5. The price difference is so high that the charges in medical deposit, for example, is 1400 Malaysian Ringgit (RM) for a non-national against merely 20 RM for a Malaysian national. Similarly, the surgery deposit and maternity deposit each for the non-national is as high as 2800 RM each while they are merely 30 RM and 15 RM, respectively, for a Malaysian national. Further, comparing the basic monthly salary of an unskilled migrant worker of 1200 RM, the charges in basic health services such as maternity deposit for the non-national is more than twice the monthly basic salary of an unskilled migrant worker. The Embassy of Nepal, Malaysia also rightly raised the concern of high charges in medical treatment makes it difficult to afford even by the Embassy/ Government of Nepal in case of the obligation to pay for medical treatment to a Nepali citizen.

Box 7.5 Charge differences in medical treatment between the Malaysian nationals and non-nationals in public hospitals in Malaysia

Minimum charge	Malaysian nationals (in Malaysian Ringgit)	Non-nationals (in Malaysian Ringgit)
Daily ward charges	3	160
Out-Patient Department (OPD)	1	40
Specialist clinic	5	160
Medical deposit	20	1400
Surgery deposit	30	2800
Maternity deposit	15	2800

Source: <https://hsgbuloh.moh.gov.my/en/corporate/contact-us/hospital-information/15-pelawat/caj-dan-bayaran.html> RM = Malaysian Ringgit.

5. Issues of death penalty – Malaysia has issued a temporary ban on all executions of death row inmates in 2019, it appears that it has not implemented due to the Government changes in Malaysia and Malaysian law still requires the automatic death penalty for certain crimes

as discussed in Chapter 3 (Access to Justice). Currently there are 5 Nepali who have received the death sentence while other 9 are facing cases that could result to get death penalty. In this context, the Embassy of Nepal, Malaysia viewed that NHRC could follow up to Malaysian Human Rights Commission on the possibility of changing the death sentences into a fixed term imprisonment and also on the possibility of international transfer to sentenced prisoners between Nepal and Malaysian for their better rehabilitation, fair treatment and social welfare.

6. High rates of unnatural death among Nepali workers – The Embassy reported that there has been unusually high number of deaths as a cause of hanging. These cases could have been suicide. There were 45, 49 and 46 hanging recorded Nepalese deaths in Malaysia in the year of 2018, 2019 and 2020, respectively. This issue has been raised by the Embassy even to the Malaysian Human Rights Commission for prevention of such high incidence and understand more about the real causes of death.
7. Unauthorized cremation of Nepali nationals – The Embassy of Nepal, Malaysia reported that evidence of an unauthorized cremation of a Nepali national in Malaysia - Mr. Bal Bahadur Limbu in May 2021 without taking consent from family members and even from the Embassy. This incidence suggests the fact that the MOU between Nepal and Malaysia must ensure that all the Malaysian authorities including hospitals, police must liaison with the Embassy on such sensitive issue.
8. Access to Covid-19 vaccines for undocumented migrants – The Malaysian authorities announced free vaccinations to all adults in the country including foreign nationals. However, it appears that this promise has not been implemented given the fact that there has been 'continuing raids by the Immigration Department of Malaysia' in the accommodation units of the foreign nationals. This raises the question that many foreign nationals may be denied from getting access to Covid-19 vaccinations due the fear of immediate arrest if they are in irregular migration status.
9. Identification of dead foreign nationals – 'The Malaysian system has the ability to identify the foreign national as their biometrics are captured before coming to Malaysia. However, in practice, it is sometimes difficult to correctly identify the allegedly Nepali nationals, when they do not possess the essential documents'. According to the Embassy, in such case, it is difficult to repatriate the alleged national to back to Nepal.

7.4.7 National Human Rights Commission: Activities on Migrant Workers Rights

The Strategic Plan 2015-2020 and 2021-2026 of NHRC has given the priority in dealing with migrant workers. As an institutional mechanism, at the central level, NHRC has the provision of Migration Focal Person under the International Relation Division while at the Province and district level, NHRC Offices are mandated to monitor and observe the situation of migrant workers. Annex 7.5 summarizes an overview of selected press releases, research reports, conferences hosted by the NHRC and recommendations provided to Government of Nepal in between 2015 and 2021. It is evident that

NHRC has showed concerns over different migrant workers' issues such as monitoring of routes, data concerns, ensuring the health rights and vaccination against COVID-19 and conduction of MOU for the promotion of rights of migrant workers.

On 10 March 2018, NHRC provided a 16 point recommendations to the Government of Nepal for the effective realization of the rights of migrant workers. We have summarized them here in order to reintegrate the importance of these recommendations even after the COVID-19 context. The recommendations were as follows:

1. Rescue the migrant workers who are in the state of abandoned, undergoing critical medical treatment in the destination countries and arrange for the safely return to the country.
2. Amend the laws that include 'human trafficking and transportation' in the context of labor exploitation in the Trafficking and Transportation (Control) Act 2006 and amend the *Foreign Employment Act 2007* to include the human trafficking in the process of foreign employment. Also amend the laws of immigration, passport that punish the culprits and the victims are not treated as criminals.
3. Monitor and regularize the recruiting agencies, agents and all agencies involved in foreign employment business and ensure that the criminal offences are not reconciled without court trail.
4. Eliminate the discrimination against woman migrant workers; make special measures for protection of women and end the ban on women migration.
5. End the fraudulent practice of dual-contract and ensure that the migrant workers hold their passports and other required documents themselves and not withheld them by the employers, recruiting agents/agencies and others.
6. Come to end the fraudulent practice of charging of recruitment fee other than the prescribed and manage to provide the receipt of the payment to the migrant workers.
7. Increase access to migrant workers to the state apparatus by decentralization of management and regulation of foreign employment business.
8. Ensure that the safe migration information system is effectively reaching to the people and also make responsible Local Levels for the delivery of safe migration information.
9. Make effective pre-departure training by making it more practicable and useful in departure and in the destination countries.
10. Make functional the national agencies for carrying out skill development training, skill test that matches with the skills demand in the destination countries.
11. Increase the capacity of Government's offices responsible for the management and overseeing of foreign employment business.
12. Ensure the migrant workers representation in decision-making processes that affect their lives and manage for ensuring the migrant workers' franchise rights from the destination countries.

13. Integrate the migrant workers to India into the *Foreign Employment Act 2007* and address the issues of migrant workers to India.
14. Conduct the BLA to the destination countries and make effective role of Diplomatic Missions to deal with the rights of migrant workers abroad.
15. Ensure that the recommendations provided by the NHRC and judgment by the Supreme Courts related to migrant workers have been implemented.
16. Ratify the international treaties (The International Convention on Migrant Workers and their Family Members 1990; UN Protocol to Prevent, Suppress and Punish Trafficking Protocol 2000; and ILO Domestic Workers Convention 2011 (No. 189).

In the research study conducted in the context of COVID-19, NHRC again came to the following recommendations in eight areas:

1. *Protection of the rights to health of migrant workers in the destination countries* (collection of data, PRC test in the destination countries and in Nepal, maintaining the physical distance, ensuring the mandatory 14 days quarantine and providing special treatment to women, pregnant and lactating women and people with underlying health conditions and providing mental health services);
2. *Protection of labor rights and welfare* (protection from unilateral cancellation of contract, forced unpaid leave, wage theft, forced labor, and excessive working hours);
3. *Rescue and repatriation* (based on their vulnerabilities, make arrangement of food, air travel and transportation, timely repatriation of dead bodies and dignified cremation);
4. *Access to justice and compensation* (collect data of migrant workers who human rights and labor rights have been violated, hold account of the Government and employers of destination countries, make arrangement for compensate who suffered from violation of human rights);
5. *Protection of women migrant workers and those at particular risk* (introduce special provisions, identify the undocumented);
6. *Collection, management and use of information and data* (maintain disaggregated data who require rescue and who have been repatriated, those who have been infected by Covid-19, those who have lost jobs);
7. *Rights to information* (adequate, timely and understandable information including to the family members);
8. *Rehabilitation and reintegration* (make agencies up to the community levels responsible for protection of returnees, provision of psychosocial counseling, reintegration measures based on skills and capacity); and
9. *Mechanism, coordination and collaboration* (making inter-ministerial cooperation, ensuring adequate resources, adopting the programs based on the whole-of-government and whole-of-society approach).

on endanger not only because of not having adequate protection measures employed in workplace, accommodation and learning of traffic rules in the destination countries but it is also due to the armed conflict erupted in the countries of destination. In June 2020, a total of 14 Nepali nationals were killed and 5 were critically injured in an incident of bomb attack in Kabul – the capital city of Afghanistan. There was challenge to render support to the victims and their family members.

Two international conferences on protection of rights of migrant workers have been hosted by NHRC, that is, one in 2012 and another in 2019 (NHRC, 2019). Both conferences focus on the need of international cooperation, coordination and collaboration to prevent the unethical recruitment, trafficking and smuggling of migrant workers. In 2019, the conference identified the barriers of migrant workers as language, lack of money for legal and court proceedings, lack of knowledge on the laws of the destination countries. Besides, NHRC has been time and again monitoring of border points between Nepal and India, Tribhuvan International Airport to ensure that the migrant workers' are respected.

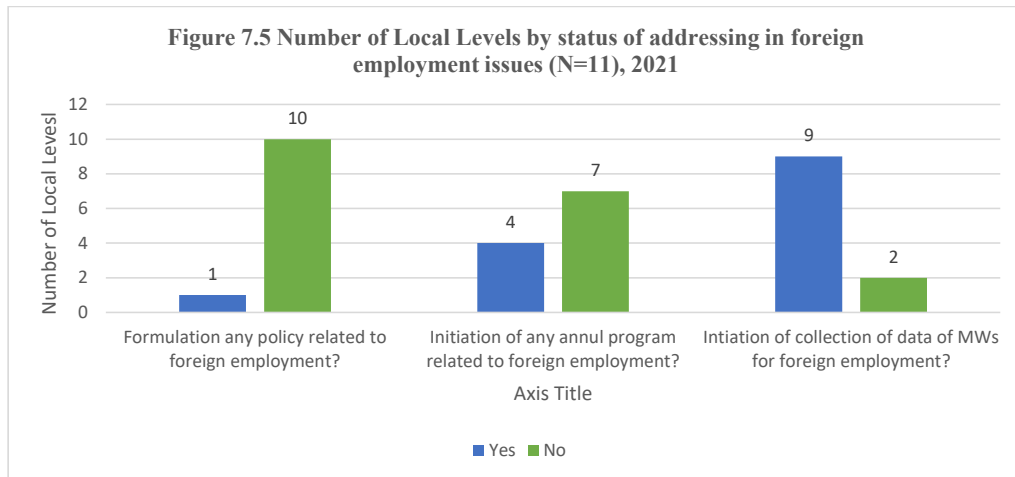
7.4.8 Local Levels: Foreign Employment Related Activities

The *Local Government Operation Act 2074* (2017) makes responsible the Local Government to maintain data of domestic and foreign laborers. The Act also calls for conduction of financial literacy, skills training for the labor force going in foreign employment and integration of returnee migrant workers in Local Development agendas. Note that the Judicial Committee of the Local Levels, which is chaired by the Deputy Mayor or Deputy Chairperson of the Local Levels, is not empowered to handle the cases related to foreign employment, however.

National Human Rights Commission (NHRC) through its all Provincial Offices has written the Local Levels in all Provinces requesting them to provide the following information:

1. Has the Local Level formulated any policy, guideline or directive related to foreign employment?
2. Has the Local Level initiated any annual program related to foreign employment?
3. Has the Local Level initiated to collect the data in its jurisdiction related to foreign employment according to the *Local Government Operation Act 2017*?

NHRC compiled data from 11 Local Levels. Among the 11 Local Levels, only one responded that it has formulated the policy on foreign employment while 10 responded that they have not done so. In case of incorporation of the foreign employment in their regular annual program, 4 Local Levels responded that they have done so while rest 7 responded that they have not yet started. With respect to the question of data collect, nine out of 11 Local Levels responded that they have initiated data collection of foreign labor migrants (Figure 7.5).



Source: the letter of the corresponding Municipality to NHRC, 2021.

The following is the discussion about the individual Local Levels that responded about the incorporation status in their regular program (Annex 7.1).

Damak Municipality, Jhapa -This Municipality's Generally Assembly adopted a policy to engage the returnee migrant workers from foreign employment in agriculture and animal husbandry. For this, the Municipality has initiated leasing-in land and manage other facilities such as irrigation, fertilizer and soil test and electricity. The Safe Migration Project (SaMi project) has been implemented in the Municipality. Under the SaMi project, till now, the Municipality has carried out a number of activities targeting to the returnee migrant workers and potential migrant workers and their families:

- *Conducted one orientation program targeting to the executive body of the Municipality including journalists, Police and others. There were 22 participants in the program.*
- *Conducted a total of 14 community orientation programs in which there were 516 participants.*
- *Conducted two in-depth orientation programs in which there were 28 participants.*
- *Conducted four financial literacy programs with 24-week package. There were 21 participants in the program.*
- *Conducted face-to-face counseling to 21 individuals*
- *Carried out house campaign program with the involvement of the returnee migrant workers. The campaign covered 650 households in the program.*

The Damak Municipality also reported that it prepared socio-demographic profile of the municipality in 2018. Accordingly, there were 10,957 absentees in the Municipality. This comes out 14% of the total population of 75,743 in 2011. Of those absentees, more than two-thirds were absent because of foreign employment and 55% destined to Gulf countries other Asian countries.

Gauradaha Municipality, Jhapa – This Municipality has not yet formulated the foreign employment

related policies and programs. However, the Municipality reported that it has been in the process of implementation of many provisions of *Local Government Operation Act 2074 (2017)* including data collection of the foreign migrant workers.

Jahada Rural Municipality, Morang – This Rural Municipality (RM) has not formulated any specific policies related to foreign employment but it has reported the number of men and women in foreign employment by Wards. There are 7 Wards in the RM and from all Wards 378 males and 4 females have been reported to be in foreign employment. The number of migrant workers from by Ward ranges as low as 20 in Ward 3 to as high as more than 100 in Ward 6. Thus, it suggests that the incidence of foreign employment has been widely reported at the micro level but its incidence varies by Ward and probably which caste/ethnic group people have been residing over there.

Dhaknuta Municipality, Dhaknuta- Dhankuta Municipality reported that it has conducted several activities to protect and promote the rights of migrant workers and their families through establishing Migration Resource Center, providing safe migration information, counseling services, conduction of rescue, providing financial assistance and relief packages to the victims and their families, collecting updated data of the people going to and returning from the foreign employment. The Municipality has also prepared the draft of the foreign employment and reintegration policy. The Municipality established collaboration with the international organizations like Rural Entrepreneur and Remittance Project Prosperity (RERP), Center for Migration and International Relations (CMIR) and International Migration Organization (IOM) for carrying out the safe migration related activities. According to the Municipality, the following number of people have benefited from the safe migration project by July 2021 in the municipality:

Activities	Number benefited
Financial literacy	878 returnee migrant workers and their family members
Social reintegration	58 returnee migrant workers
Safe migration information and counseling	1029 potential migrants and their family members
Economic grants for the reintegration	250 migrant workers
Registered complaints (Number) (cheating, missing, accident, death)	38 (18 resolved by the Municipality)
Relief and grants to the returnee migrant workers (in Rs.)	11,884,597

Vimad Municipality, Tanahu – It has carried out a household survey to all its all 9 wards to examine the magnitude of foreign employment from the municipality. According to the data, there were 2893 emigrants from this Municipality with 182 females and 2711 males. As presented in Annex 7.2, it has collected and tabulated data, which provides a great level of disaggregation by wards, and further break-down by sex (male, female, other) and country of destination and reasons for migration (as employment, study, for settlement and trade). Despite the Municipality's praiseworthy

work, it has failed to provide disaggregated data of the international migrants by caste/ethnic groups and the data also does not allow to estimate the magnitude or rate of emigration because the total population of each ward has not been given.

Sundar Bazar Municipality, Lamjung - The Municipality has not formulated any policy, guideline and standard related to foreign employment. There are also no targeted annual activities for the protection and promotion of the rights of migrant workers launched by the Municipality, either. The Municipality however reported that it has initiated collection of data related to foreign employment and the profile of the Municipality was reported to be prepared by the end of 2021.

Malika Rural Municipality, Myagdi – The Rural Municipality has not formulated any policy, guideline or directive related to foreign employment till now. The RM has self-employment scheme in which returnee migrant workers were encouraged to participate in its FY 2020/21 program. However, ward offices have collected data related to foreign employment.

Chapakot Municipality, Syanja – The Municipality has not designed any policy, guideline or directive related to foreign employment till now. During the Covid-19 pandemic, the municipality collected information about the people of the municipality residing in different countries and supported for the management of Covid-19 quarantine facilities.

Paiyau Rural Municipality, Parbat - The Municipality has not formulated any policy, directive or guideline till now related to foreign employment. There are also no specific annual targeted programs for the migrant workers or returnees and the Rural Municipality reported that it has just initiated collection of data on the foreign employment.

Mangala Rural Municipality, Myagdi – This Rural Municipality has no any policy, guideline or directive formulated yet and there are no specific targeted programs for the migrant workers, either. However, the RM has run Prime Minister Employment Program and the RM is planning to include the returnees who had returned by losing their jobs and those who are unemployed. Also, the RM has given special priority to returnee migrant workers, poor, for the income generating training.

Aadhikhola Rural Municipality, Syanja - The Rural Municipality has yet to formulate the directive or guideline related to migrant workers. The RM is planning to collect data related to foreign employment.

7.4.9 Government Spending on Migration Governance

Government spending on migration governance especially for the welfare of the migrant workers and their family members is extremely low vis-à-vis their contribution in the remittance income in Nepal.

While the total budget allocated under the different Departments/Sections/Centers of MOLESS was Rs. 814.7 Million in FY 2019/20, the remittance income sent by the migrant workers from abroad in the same FY was Rs. 879,271.3 Million. Thus, the budget for Ministry to deal with the migrant and their family members comes out to be less than 0.1% of the total remittance that the workers sent to the country.

Further, the capacity of the MOLESS and its subordinate Departments/Sections/Centers appears to be very low when one takes into account the spending of the approved budget. For instance, only one-thirds of the Rs. 814.7 Million approved budget in welfare program under the MOLESS was actually spent in the FY 2018/19 (Table 7.4). On the basis of spending, the performance of Skill Development Training Center can be said to be very low and unsatisfactory. For example, only one-fifth of the current expenditure and less than one-third of the capital expenditure was spent in that year. This implies that the Skill Development Training Center has largely failed to provide the skill based training to a large number of targeted potential migrant workers in the fiscal year. On the other hand, only 52% and 62% of the current expenditure was spent by the office of Employment Promotion Program and by the Department of Foreign Employment, respectively. The performance of FET and FEB can be said to be very satisfactorily in terms spending for each of these offices has spent more than 95% of the approved budget in the FY 2019/20.

Table 7.4 Annual spending performance of offices of MOLESS in FY 2019/20

	Approved budget (in Rs. 000)	Budget spent (in Rs. 000)	% spent
Department of Foreign Employment			
Current expenditure	188,500	116,900	62.0
Capital expenditure	8,700	5,100	58.6
Total	197,200	5,100	61.9
Skill Development Training Center			
Current expenditure	210,000	43,400	20.7
Capital expenditure	28,900	9,100	31.5
Total	238,900	52,500	22.0
Employment Promotion Program			
Current expenditure	330,900	173,200	52.3
Capital expenditure	15,000	14,500	96.7
Total	345,900	190,700	55.1
Foreign Employment Tribunal			
Current expenditure	12,900	12,500	96.9
Capital expenditure	4,800	4,400	91.7
Total	17,700	16,900	95.5
Foreign Employment Board			
Current expenditure	15,000	12,600	84.0
Capital expenditure	0	0	-
Total	15,000	12,600	84.0
Grand Total	814,700	272,700	33.5

Source: MOLESS (2020). Annual Progress Report, FY 2076/77 (2019/20).

According to the Annual Progress Report of 2019/20 of FEB, the Board had a budget of Rs. 154,910,000 for its all types of programs. The highest share of the budget was allocated for the welfare program (as the mandatory liability) in FY 2019/20 (Table 7.5).

Table 7.5 Distribution of budget of FEB in FY 2019/20 and estimated budget of 2020/21 (in Rs. '000)

	Event and program	2076/77 (2019/20)			2077/78 (2020/21) Annual Goal	
		Approved budget	Total Spending	% spending	Weight	budget
A	Current Expenditure					1,881,400
1	Welfare Programs (Mandatory Liabilities)	165,000	80,258	48.6	45.79	862,900
2	Rescue, and repatriation of the abandoned MWs due to COVID-19 for buying of the air ticket	-	-		39.8	750,000
3	Reintegration and Rehabilitation programs	44,510	34,000	76.4	7.96	150,000
4	Launching of skill training	4,000	57	1.4	0.82	15,500
5	Safeguarding, rescue and promotion rights of the Nepali MWs at abroad	56,500	15,854	28.1	2.41	45,500
6	Management of pre-departure orientation training	5,300	0	0.0	0.59	11,000
7	Formulation of the policies and programs	2,500	1,389	55.6	0.08	1,500
8	Production of the IEC materials and dissemination	31,000	13,178	42.5	1.25	23,600
9	Other Professional spending	4,000	2,274	56.9	0.65	12,400
10	Office operation cost	7,100	5,301	74.7	0.48	9,000
	Sub-total	154,910	72,053	46.5	100	1,881,400
B	Capital Expenditure				0.16	3000
	Total				100	1,884,400

Source: Foreign Employment Board (2021). *Annual Progress Report of 2077/78 (2020/21)*.

7.4.10 Assessing the Migration Governance: the Case of Bahrain State

Literature review suggests that in some major destination countries of Nepali migrants, human rights and civil society organizations have been working to protect and promote the rights of migrant workers. One good example is from Bahrain. The National Institute for Human Rights (NIHR), established in 2014, is the constitutional body of Bahrain state responsible for protection

and promotion of human rights including of migrant workers. Complaints can be registered in NIHR by individuals or relatives or heir of the victims or through the civil society organizations including by the children under 18 years of age. According to the leaflet (in Hindi language) issued by the NIRH Bahrain State, complaints can be registered in its head office, Branch Offices including via hotline.

NGOs such as the Migrant Workers Protection Society (MWPS) is also active for the protection of rights of migrant workers in Bahrain. It has opened the facebook.com/mwpsbh. According to the face-book page, the organization has posted different evidence-based views and photo gallery of its activities. It also provides mental health counseling to the migrant workers. According to the Vice-Chairperson of the NGO (AI Watan),

"Bahrain labor law excludes domestic workers from its provisions with exception of Article 13 and two sections that subject to domestic workers and those similar status to them who are farmers, house guards, caretakers, drivers and cooks. While the law has the provision of contract between the employer and the worker, the law does not include any reference to daily or weekly rest". And... it does not provide domestic workers with fair and equitable protection.

According to the *Country Report of Human Rights Practices for 2020 of Bahrain*, the Government of Bahrain has taken several measures to protect the migrant workers' rights. One measure is that employers may not employ Muslim workers during the month of *Ramadan* for more than 6 hours/ day or 36 hours/ week. Two, the labor law and relevant protection apply to citizens and non-citizens alike with the exception of domestic work. Three, the Ministry of Labor enforced occupational safety and health standards and the Ministry is also responsible for enforcing the law and mandating acceptable conditions of work. Four, there is prohibition of outdoor work between noon and 4 PM in the months of July and August because of heat condition. Employers who violate the provision are subject to up to 3-months imprisonment, fines or both. The Ministry documented 27 companies in non-compliance with the summer heat ban during the year of 2020. According to the Report, violation of payment of wages, overtime, and occupational safety and health standards were common in sectors employing foreign workers mainly in construction, automatic repair and domestic work. It is said that 60 percent of laborers in Bahrain in these sectors are from South and South East Asia.

The Bahrain Government in April 2020 took two initiatives to combat COVID-19: I) temporary suspension of work permission and ii) amnesty for thousands of illegal foreign workers to legalize their status. However, some citizens demanded the Government to deport the migrant workers to prevent the spread of corona virus in the country.

There are about 86,000 domestic workers in Bahrain and most of them are women. They have to work 12 to 18 hours/day and surrender their identity documents to employers. Although there were reports of employers and recruiting agencies sexually exploiting the female domestic workers, a few complaints have been reached to the Ministry. According to NGO like the Migrant Workers Protection Society in Bahrain, the construction sectors mostly employ laborers from South Asia. Workers' deaths were due to inadequate enforcement of standards, violation of standards, inadequate safety procedures, worker ignorance of those procedure and inadequate safety standards for equipment. In terms of accommodation condition of the migrant workers, it is reported that many workers

lived in unregistered accommodation, that is, squalid, over crowded places which are likely to contribute to a large-scale outbreak of COVID-19. It is said that Labor Inspectors do not have right to enter houses or apartment buildings which are not registered as work camps to inspect working conditions. The number of complaints received by the NIRH were, therefore, extremely low compared to the number of cases believed to be exploited or abuse. There were 88, 66, 137 and 848 number of complaints in the year of 2014, 2015; 2016 and in 2017, respectively.

In this Chapter, we have debated status of rights to information, migration data and data protection. Further we examined the different aspects of accountability and migration governance. Our analysis suggests that there has been little work to link the migration for foreign employment and rights to information, migrant workers and data protection issues in Nepal. In migration governance and collaboration, the Government of Nepal has conducted MOU with some major destination countries in recent years and these MOUs basically embrace the labor rights issues, but they have not been designed by giving the priority of human rights of migrant workers. The budget allocated to the Nepali Diplomatic Mission aboard in dealing with the migrant workers' rights and welfare programs is, however, very limited vis-à-vis the problem in the countries of destination. At home, the Local Levels have been made responsible to deal with the foreign employment issues in their jurisdiction but data obtained from a couple of Local Levels show that they have yet to mainstream migrant workers agendas in their regular development programs.

Chapter 8

Conclusion and Recommendations

This Chapter summarizes the top line findings and draws on the conclusions and recommendations based on the findings.

8.1 Summary of Findings

The central objective of this report was to evaluate the situation of rights of migrant workers. The report has been prepared utilizing both the primary and secondary data. Primary data were collected through the organization of interaction meetings with the stakeholders, interviews, and questionnaire administration to the concerned law enforcement bodies while the secondary data were collected through different relevant research reports, annual progress reports, dataset including media news and views. The Report mainly covered the period of three fiscal years (2018/19-2021/22). The topline findings have been summarized as follow:

Overview of Scale of Foreign Employment

- Migration for foreign employment in Nepal has become a human rights agenda because of accelerating number of Nepali youths migrating to wide range of destination countries for employment. In FY 2021/22, the number of migrant workers reached to 347,504 from about 220,000 in FY 2008/09.
- The average annual stock of migrant workers (new plus re-labor approvals permits) during the last five-years (FY 2017/18-2021/22) comes out more than 457,000. Of them, 52.5 percent received the new labor permits while the rest 47.5 percent received the re-labor permits.
- The top-10 countries of destination comprises of Saudi Arabia, Qatar, UAE, Kuwait, Bahrain, Oman, Romania, Croatia Malaysia and Japan. Nonetheless, nearly 80 percent have bound to Saudi Arabia, Qatar and United Arab Emirates (UAE). South Korea, Israel and Japan have also become the attractive countries of destination of Nepali migrant workers.

Assessing the Irregularities in Recruitment Processes

- The private sector has been permitted to run the foreign employment business while the Government basically regulates the business. The key private actors include: recruiting agencies, orientation centers, training institutes, medical institutes, insurance companies, financial institutes and travel agencies. Each of these actors has a role to play to make safe, orderly and exploitation free foreign employment.
- Although several legal pre-requisites have been stipulated to regulate foreign employment, irregularities have been found in implementation in free visa and free ticket provision, the

payment process, giving to the receipt, receive of employment contract paper and waiting time to go aboard. One study among 4046 returnee migrant workers found that the average expenses for processing for foreign employment was Rs. 126,400 per migrant worker to go to a GCC country or Malaysia.

- Further, Nepal's Police data suggests the emerging nature of trafficking and human smuggling in the context of foreign employment. At least 12 countries have been used as the land, air and sea routes to reach the migrant to USA, for example and making the migrant as risk of death on route.
- An overwhelmingly majority of Nepalese migrant workers are still engaged in low skills, general laborers jobs. For example, the percentage of Nepali male migrant workers engaging in jobs of skill levels 1 or 2 ranges as high as 85 percent in Malaysia, 76 percent in Saudi Arabia, 71 percent in UAE, 73 percent in Oman and 67 percent in Qatar to as low as 43 percent in Kuwait.
- Long working hours, low salary and non-payment have been widely reported. Total working hours (basic plus overtime) ranges from as low as 11 hours/day to as high as 14.5 hours in GCC countries and Malaysia. The actual monthly salary in GCC countries and Malaysia is at least lower by one-fourth of the Governments' prescribed salary.

Access to Justice

- Data show that a few DAOs (7 out of 22 CDOs) have received the complaints related to foreign employment even after three years of the amendment in the Regulation.
- The five-yearly (FY 2016/17-2021/22) average number of complaints registered in DOFE comes out to be 1,830 with 39 percent settlement rate. The compensation provided by the DOFE was just 16 percentage of the claimed amount of about Rs. 131.5 million in FY 2020/21 and 48 percent in FY 2021/22.
- The clearance rates of the cases by FET was 37 percent in FY 2019/20 and it was 56 percent in FY 2020/21. Yet, there is no disaggregated data available to assess how many of the settled cases were in favor of the migrant workers, and how many victims received compensation. Also, the clearance rate of cases in the Supreme Court was only 13 percent in 2018/19 and 24 percent in 2019/20.
- According to the data obtained from Nepali Diplomatic Missions, the number of Nepali migrant workers in jail/police custody has increased from an estimated figure of 800 in 2016 to 1,030 in 2021.
- Among the 1030 reported number of migrant workers in jail, only 7.2 percent were provided legal defense support by the different Nepali Embassies at abroad.
- Complaints and grievances of the migrant workers have also been filed in Nepali Diplomatic Missions. The total number of complaints registered in Kuwait, Saudi Arabia, Malaysia, UAE, Qatar and Oman was 24,952 in FY 2020/21.

Rescue, Return and Sustainable Reintegration

- There was delay in policy response to rescue the migrant workers during the first wave of COVID-19 pandemic. At the beginning of the pandemic, the Government of Nepal adopted the policy of 'stay in the place where you are living' to contain the virus. And, it is only four or five months latter of the spread of the pandemic, the Council of Minister adopted Order to facilitate the Nepali citizens abroad to come to Nepal.
- According to the NPC (2020) estimates, the scale of the rescue was too high. For example, there were total 3.2 million stock of Nepali migrant workers at aboard during the first wave of COVID-19. India occupied the largest share of Nepali emigrants with about one million. This is followed by Qatar (360,000), Malaysia (325,000), Saudi Arabia (320,000) and UAE (275,000).
- ILO and CESLAM (2020) rapid assessment (RA) revealed that on the average, every day 1,500 Nepali migrant workers' visa were expiring and number reached about 125,000 within three weeks of the lockdown (between 22 March and 12 June of 2020). Of those whose labor permits had already expired, nearly 81 percent was estimated to be in GCC countries, 13 percent in Malaysia and rest 6 percent in other countries.
- Altogether 28 Nepali Diplomatic Missions provided information about their rescue efforts during the first and second waves of COVID-19. In FY 2020/21, 13 Diplomatic Missions have reported that they have at least one rescue and repatriation– accounting to 1278 migrant workers. In FY 2020/21, among those Diplomatic Missions reporting the rescue and repatriation, the highest number was from Malaysia (674), followed by Kuwait (331) and Bahrain (96).
- During the COVID-19 pandemic and lock-down, a number of INGOs/civil society organizations including People Forum, PNCC, AMKAS Nepal, NRNA provided relief, rescue and temporary rehab and legal aid services.
- Drawing upon the raw dataset obtained from Foreign Employment Information Management System (FEIMS), 183,868 migrant workers arrived in Nepal though air from last week of September 2020 to second week of July 2021. Data reveal that at least 5 percent migrant workers arrived from the countries in which they have not had the latest labor approvals.
- At least one-fourth of returnee migrant returns to Nepal before the end of their employment contract period because of not matching the work/salary, feeling sick, closing down the company, transfer to another company, termination from the work, scolding, workplace accident and supervisor not good.
- IOM (2020) study showed that during the COVID-19 pandemic and lock-down period in Nepal, many returnee migrant workers were deprived of getting the adequate quarantine facilities with clean drinking water, food and PCR test and medicine, toilet facilities, separate beds, 24-hours ambulance services and emergency medical equipment.
- As reintegration measures, the MOLESS has introduced socialization programs, programs related to involvement in employment and promotion of entrepreneurship, loan facilitation schemes for the returnees, financial literacy to migrant workers and their family members, provision of national honor and awards. But their implementation is poor.

- Both the size and share of remittance in Nepal has increased remarkably over the years. For example, the size of remittance to GDP has increased to Rs. 986.2 billion in FY 2021/22 from merely Rs. 47.2 billion in 2000/01 and its share enlarged from 10.7 percent in 2000/01 to 29.5 percent in 2015/16 and then it declined to 24.5 percent in 2021/22. However, some experts argued that the share of remittance to GDP may go up to 35 percent if one counts all the remittances coming to Nepal including all the formal and informal channels.
- Another issue related to remittance income is that there has been high degree of inequality in size of remittance inflows to Nepal vis-à-vis the number of migrant workers in the destination countries. For example, in 2017, Saudi Arabia accounted for more than one-half workers while the share of remittance from there was about 25.4 percent. Similarly, the migrant workers' share in Malaysia was 23 percent while its share in remittance comes out to be merely 2.68 percent. Countries like South Korea, UAE and Qatar, on the other hand, remit the greater share in respect to the number of migrant workers there.
- World Bank data showed that the cost for sending remittance of USD 200 from UAE to Nepal accounted for 4.31 percent in the first quarter of 2021. This cost is much higher than that of cost of sending remittance from UAE to Bangladesh (2.51%), to India (2.91%), and to Sri Lank (2.80%) and it is only below cost of sending remittance from UAE to Pakistan (5.51%).
- The PM Employment Program has not contributed substantially for sustainable reintegration of the returnee migrants: the employment days it has generated is 13 days and 16 days in the FY 2018/19 and FY 2019/20, respectively against 100 days for the survival of the family.

Women Migration and Children in the Context of International Migration

- There has been about 24 bans pre conditions and lifting on women migration for domestic work in Gulf countries since 1998. However, the bans and restrictions to migrant domestic workers for foreign employment from Nepal have failed to protect women from violence and exploitation.
- In February 2020, the Parliamentary Committee on Commerce, Labor and Consumer and Welfare recommended to uplift the ban of women domestic workers bound to Gulf countries provided some conditions have been met.
- Based on the Report of the Parliamentary Visit to Gulf Countries in 2020, more than three-fourths of women migrants to GCC countries constitute for domestic workers. With respect to regular migrants or those going taking labor permit from Nepal, the number of women migrant workers was recorded as 48,975 in FY 2021/22.
- NGOs like AMKAS Nepal data revealed that a sizable number of women are forced to return to the country with forced, unintended pregnancy and having with the child without the father's identification. This has posed the challenge of integration of the returnee with her family and establishing the rights of the child for nationality and identification.
- There are many gaps in skills training as promotional measure provided to the domestic workers in Nepal and the skills required in the destination countries for domestic work.

- Studies reveal that the Governments of GCC countries have attempted to revise their domestic labor laws, immigration laws, and they are marching towards more progressive labor rights entitlements than they have before 10-15 years. Despite this, studies show that in all these countries *Kafala* system in de-facto manner still exist.
- Children of migrant workers have not been surfaced explicitly both in migration framework and children act in Nepal in the context of international migration as a special category while findings show that they have been greatly affected by the death or injury of their parents as well as long term separation from either both or one parent. Although Foreign Employment Board has distributed scholarship to children of affected migrant families, it is not known that whether the school support scheme covers all the children of the victims and to what extent the school support scheme has increased the school participation rates.

Rights of Health of Migrant Workers

- Major health concerns of the migrant workers emerged as occupational health and hazardous, sexual health, mental health problems, infectious diseases problems, workplace abuse, torture or maltreatment and physical harm. These health concerns persist not only to those working abroad but also among the returnees.
- A large number of migrant workers got injured and turned to be long term disability. For example, during the 12 years (2008/09 -2020/21), 1,656 cases of disability have been reported in FEB for the claim of compensation. More than half of the cases was reported to have occurred due to 'workplace accident', followed by 'disease' (36%), 'fighting' (8%) and 'traffic accident' (5%).
- The death rate of the migrant workers is unusually high. The deaths of 1,242 in the FY 2020/21 implies that on the average, every day, there were more than three deaths of Nepali migrant workers. During the 12 years (2008/09 - 2020/21), 9,363 migrant workers were reported to have died and provided compensation from the FEB. But, the actual number of death might go up because the death compensation provided by the FEB covers only regular migrant workers not the irregular ones.
- In addition to injury and death of migrant workers, there are migrant workers in quoma or long term hospitalization (18 altogether) in GCC and Malaysia. However, there is no information provided about health financing, rearing of these sick persons and communication status with the family members in Nepal.
- More than one-half of the total death toll of 4,385 during the FY 2016/17-2020/21, the causes of deaths have not been stated as any pathological or biological causes but rather simply as natural cause, cardiac arrest and unidentified cause in order to escape from the liabilities of the compensation by the country of destination and/or employers.
- Repatriation of the death body took much longer time to reach to Nepal and to the grievance families especially during the lock-down period of COVID-19 pandemic. In 2021, only 44 percent of the deceased bodies were repatriated within one-week of the death, while another 13 percent in 2-3 weeks and for the rest of deceased bodies it took more than four weeks.

- Death of migrant workers due to heat stress was remarkable in GCC countries. For example, on the average, 35 percent of the Nepalese worker's deaths from cardiovascular disease in Qatar during the period of 2009-2017 could have been prevented if there had there been appropriate heat protection measures in the workplace. In order to mitigate the problem of heat stress, the Qatar Government has introduced a ban on work since 2007 from 11:30 to 15:00 from 15 June to 31 August. In May 2021, the Qatar Government again revised and adopted several measures to protect workers from heat stress. Despite these efforts, heat stroke experts argue that a balance of work and rest period are critically important to protect workers from heat stroke.
- Although the Government of Nepal has initiated to deal with the health issues of migrant workers and their families, the implementation aspect is very poor when it comes to promote the health rights of migrant workers. The current provision of death-benefits of maximum of Rs. 1.5 million and severely injury of the workers benefits of Rs. 1 million appears to be low compared to the increasing cost in transportation, medical expenditure and grievance of the families suffered.
- Some destination countries such as Malaysia introduced social security scheme for migrant workers and 311,374 Nepali workers have already been registered by 22 March 2022 in the scheme.

Rights to Information, Data Collection and Protection, and Migration Governance

- Findings of this study show that there has been little work in linking the rights to information with the safe migration and foreign employment in Nepal. Despite this, major information tools and resources introduced by the government and NGOs and private sectors include FEIMS, Mobile Apps *Baideshik Rojagari*, Information Desk of DOFE and migration resource centers (MRCs). These tools can be accessed by the ordinary users.
- Despite the several efforts and investment being done to increase access to information on safe migration in the country, a recent study conducted by Blitz Media Private Limited and Humanity United (2022) revealed that main source of information for foreign employment was still family and relatives (45%), and friends already working, and agents (53%).
- No substantial work has been found to protect the data/information of migrant workers bound for foreign employment while migrant workers they have to provide their personal and sensitive data to a range of foreign employment business actors and regularity bodies including medical check-up, finger thump biometric information.
- Further, no international migration specific household survey conducted in Nepal.
- As per the accountability towards the rights holders, DOFE was found to have brought some reforms in its service delivery mechanism. It has also brought the Guideline for operation of call centers and mobilization of monitoring team to increase the accountability of its staff. In the FY 2020/21, the call center received 8,410 calls with 93 percent related to getting information and 7 percent of calls have been forwarded to different offices and departments for resolution of complaints/grievances.

- The Government of Nepal has given priority in foreign employment in its annual policy and budget speeches. The Government has expanded its international cooperation to address the migrant workers' rights through different global, regional forums. As a result, Nepal has been claimed as champions in the implementation of *objective 6* [facilitate fair and ethical recruitment and safeguard conditions that ensure decent work] of the GCM.
- Some of the landmark provisions have been incorporated in MOUs conducted recently with destination countries. Yet MOU still lack important provisions embodied in the Nepal's commitment with the GCM and other human rights instruments for the protection of rights of migrant workers.
- While the Labor Attaché has important role to protect the rights of migrant workers at the destination country, the Government of Nepal has failed to appoint the Labor Attaché in many countries where there are more than 5,000 Nepali workers currently working and where there are more than 1,000 women migrant workers.
- The Human Trafficking and Investigation Bureau, Nepal Police has been actively engaged in providing services related to rescue, repatriation and security to victims of international and cross-border trafficking and smuggling. For this, it has established Toll free number 1177 to help and coordinate the victims and their families.
- Some Nepali Embassies at abroad have carried out programs/activities related to protection and promotion of rights of migrant workers. However, the annual budget allocated to each of these countries (about Rs. 1.5 million) are very low against the problems and complaints recorded in these Embassies from the migrant workers.
- This study findings suggest that a few Local Levels has formulated the policy on foreign employment following *Local Government Operation Act 2074* (2017).
- Government spending on migration governance is extremely low vis-à-vis their contribution in the remittance income. While the total budget allocated under the different Departments/Sections/Centers of MOLESS, for example, was Rs. 814.7 Million in FY 2019/20, the remittance income sent by the migrant workers from abroad in that year was Rs. 879,271.3 Million. Thus, the budget for Ministry to deal with the migrant and their family members comes out to be less than 0.1 percent of the total remittance income.
- At the same time, MOLESS performance appears to be less satisfactory when one examines spending in programs related to foreign employment of FY 2019/20 and 2020/21.

8.2 Conclusion

The Report has been prepared based on the previous research, data and narratives, and hence, it reiterates some of the earlier findings. However, the Report is also the departure from the previous work of NHRC (2019, 2020, op. cit.) and MOLESS, (2020, op. cit.) or any other scholarly work (ILO, 2021 op. cit.; IOM, 2020, op. cit. and Amnesty International, 2021, op. cit.). One of such departure arises from the utilization of data. This Report triangulates data from CDO, DOFE, Local Levels and Diplomatic Missions including data from NGOs as the primary sources of data to explain the situation of rights of migrant workers. Second, the Framework of the Report has been derived from human rights instruments related to migrant workers such as *Principles and Guidelines, supported*

by practical guidance, on the human rights protection of migrant workers in vulnerable situation of OHCHR and GMGs and objectives of the Global Compact for Migration. The themes in the Report have been crafted drawing on the interactions held in NHRC among the members of the migration networks and government personnel relevant to foreign employment business management and regulation including from the suggestion of the Honorable Commissioners of Human Rights Commission. Third, some crucial new findings evolved from this study – in recruitment process, in areas of access to justice, rescue and return process during the pandemic, women migration and impact of international migration on children, rights to health of migrant workers and in areas of rights to information and data protection and migration governance. The specific findings have been summarized in each chapter. Finally, in addition to the specific conclusions drawn in each Chapter of this Report, we have here attempted to examine the findings with the SDGs and selected objectives of the GCM to reflect to the wider implications of the study.

Linking the Findings with the SDGs and Targets

As discussed in Introduction Chapter, several SDGs and targets³¹ are directly relevant in the context of migrant workers. Drawing on *Nepal's Sustainable Development Goals: Status and Roadmap 2016-2030 Report* (NPC, 2015), the SDGs, targets and indicators that are relevant to migrant workers have been assessed against the findings of this Report.

SDG: 3 Ensure healthy lives and promote well-being for all at all ages: The targets related to ensuring healthy life to all Nepalese to all age groups particularly targets of 3.3.1, 3.3.2 and 3.3.3 are unlikely to be achieved unless the migrant workers' rights to health and life is ensured and promoted. Findings reveal that there is unusually high deaths among migrant workers. On the other hand, there is no target incorporated in the SDG 3 to reduce the death of migrant workers. Further, the National Planning Commission's SDG monitoring framework only includes the level of disaggregation at the subnational, gender and social group, while there is a need of monitoring all health related indicators by migrant status.

Targets : 3.3. By 2030, end the epidemics of AIDS, tuberculosis, malaria and neglected tropical diseases and other communicable diseases

	Indicators	2015	2022	2030
3.3.1a	Number of new HIV infections adults 15-49 years old (per 1000 uninfected population)	0.03	0.018	0.014
3.3.2	Tuberculosis incidence (per 100,000 population)	158	67	20
3.3.3	Malaria incidence (per 100,000 population)	0.1	0.04	0.01

Our analysis suggests that migrant workers, especially those in Saudi Arabia, are prone to be exposed with the some communicable diseases like AIDS, tuberculosis and malaria (Chapter 6).

31 The directly relevant SDG include: SDG 3 (Healthy life), SDG 5 (Achieving gender equality), SDG 8 (Promoting sustainable and inclusive economic growth), SDG 16 (Promoting peace and just society) and SDG 17 (Creating/strengthening global partnership).

The report of the Parliamentary Committee of Industry, Commerce, Labor and Consumer Interests and NHRC visit to Gulf Countries in 2020 showed that Saudi Arabia has been struggling to eradicate the malaria. The delegates of Saudi Arabia's Parliament, the Shura Council, praised Nepal that it has succeeded in eradication of malaria and Saudi Arabia can take support from Nepal how to effectively and immediately eradicate the malaria in Saudi Arabia. This saying of Shura Council delegates suggests that there is high incidence malaria in Saudi Arabia. Note that Nepali migrant workers are employed in length and breadth of Saudi Arabia – in agriculture, industry and construction sectors which are often unsafe accommodation, they are likely to be exposed with malaria or they can be the vectors of malaria transfer in Nepal.

SDG 5. Achieve gender equality and empower all women and girls: Targets related to achieving gender equality and empowering all women and girls, particularly targets of 5.3.2.1 and 5.2.2.2 are unlikely to be realized unless the widespread violence and exploitation against WMWs especially women domestic workers has been eliminated, or reduce to zero tolerance levels.

Target 5.2 Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual exploitation and other types of exploitation

	Indicators	2015	2022	2030
5.2.2.1	Women aged 15-49 years who experience physical/ sexual violence within the last 12 months (%) (by other than by intimate partner)	26	13.9	6.5
5.2.2.2	Women and girls trafficking (annual number)	1697	650	325

While the target 5.2.2.1 is important for the protection of women from physical and sexual violence in general, as discussed in Chapter 5, migrant women workers especially women domestic workers are the migrants in vulnerable situation because of their individual disadvantaged position and because of situational vulnerability before going to abroad, during the journey and at the destination. Thus, to achieve this target, it is essential to reduce the extent of migrant in vulnerable situation in all life cycle of migration from departure to transit, working place and to return. At the same time, the monitoring framework of NPC has not included migration status as level of disaggregation. As discussed in Chapter 2, foreign employment is linked to smuggling and trafficking, and failure to combat these crimes in the context of international migration means that Nepal cannot achieve its targets of reduction of victims of trafficking by 2030.

SDG. 8. Promote sustainable, inclusive and sustainable economic growth, full and productive employment and decent work for all: Our analysis in Chapter 6 shows a large number of migrant workers have been severely injured, got chronically ill and turned to be long-life disabled. This happened because of lack of safe working environment, lack of access to occupational safety measures at work, working in dangerous places like very height, under the surface and working and living around the petroleum oil processing factories including at heat stress. While the NPC's target 8.8 includes about the fatal and non-fatal occupational injuries as an indicator for assessing the SDG goal 8, NPC has not provided the baseline value and targets including the level of disaggregation by status of migration for monitoring purpose.

	Targets/Indicators	2015	2022	2030
<i>Target 8.8 Protect labor rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment management</i>				
8.8.1	Frequency rates of fatal and non-fatal occupational injuries, by sex and migrant status (baseline and targets not mentioned)			

SDG 10: Reduce inequality within and among countries: Targets related to reducing the recruitment cost (10.7.1) and remittance transition cost (10.c.1) appear to be unlikely to be attained by 2030 given the current trends of unethical recruitment fee imposed invisibly to the migrant workers and high rate of remittance transition cost.

	Targets/Indicators	2015	2022	2030
<i>Target 10.7 Facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies</i>				
10.7.1.1	Recruitment cost borne by migrant labor (average cost for Malaysia, South Korea and Middle-East – USD)	1000	767	500
<i>Target 10.c By 2030, reduce to less than 3% the transition costs of migrant remittances and eliminate remittance corridors with costs higher than 5%</i>				
10.c.1	Remittance costs as a proportion of the amount remitted	3.97	3.1	2.0

As discussed in Chapter 2, Nepal announced ‘free visa’ and ‘free ticket’ policy in 2015 for the recruitment of workers and government has prescribed the minimum cost as Rs. 10,000 for going to GCC countries and Malaysia. Despite these provisions, migrant workers are forced to pay a huge amount of money to the recruitment agencies and agents. Our analysis indicated that the recruitment cost is much higher than that of the target set by the SDGs in 2022. For example, the cost for sending USD 200 from UAE to Nepal is 4.31 percent, and this is 3.98 percent from Qatar to Nepal; 3.26 percent from Oman to Nepal, 3.3 percent from South Korea to Nepal and 2.73 percent from Saudi Arabia to Nepal in the first quarter of 2021. Given this context, it is unlikely to meet the target 10.c of reducing to less than 3 percent the transition costs of migrant remittance by 2030.

SDG 16. Promote peace, justice and strong institutions: Targets to reduce the corruption and bribery (16.5), increase the implementation status of budget originally allocated by the Government (16.6), increase the country’s voting rights at the international level (16.8), increase the access to public information on migrant workers, and strengthen the human rights institutions (6.10) all cannot be fully realized without consideration of foreign employment business and migrant workers in the

context of Nepal. As discussed in Chapter 2, there are irregularities involved in recruitment of migrant workers. The Report of Parliamentary Committee of Industry, Commerce, Labor and Consumer Interests and NHRC visit to Gulf countries in 2020 has raised the issue of corruption, bribery and irregularities involved in the recruitment of migrant workers. Further, as demonstrated in Chapter 7, our analysis of the budget of MOLESS in the FY 2018/19, FY 2019/20 and FY 2021/22 confirms the fact that the Ministry has far beyond in implementation of the budget originally allocated especially in sub-headings of skills development of migrant workers, welfare of the migrant families such as providing medical support, providing school support to children of migrant families and establishing safe houses in the destination countries. This all suggest that it is unlikely that Nepal would achieve to reduce corruption and bribery to 0% level by 2030 unless the irregularities and corruption involved in foreign employment business is obliterated across all nexuses. Similarly, the Targets of 16.8 'strengthen the partnership global governance' – for which the NPC did not provide the baseline and target – is also an important target when one considers the migrant workers. Several regional, international migration forums can be the platforms of making global partnership to Nepal in coming years. Further, attaining target 16.10 'ensure public access to information' is unlikely to be realized by Nepal if the country has failed to create the conducive environment to grant the rights to information to the migrant workers and their family members left beyond in Nepal.

	Targets/Indicators	2015	2022	2030
<i>Target 16.5 Substantially reduce corruption and bribery in all their forms</i>				
16.5.1.1	People's perception on corruption (% of people with at least one instance in the past 12 months that require to give a bribe/present) – corruption index score	29	15	0
<i>Target 16.6 Develop effective, accountable and transparent institution at all levels</i>				
16.6.1	Primary government expenditures as a proportion of original approved budget, by sector	76	84.9	95.0
<i>Target 16.8 Strengthen the partnership in global governance</i>				
16.8.1	Proportion of members and voting rights of developing countries in international organization (baseline and target not mentioned)			
<i>Target 16.10 Ensure public access to information</i>				
16.10.2	Number of countries that adopt and implement constitutional, statutory and/or policy guarantees for public access to information	Yes		

SDG 17 – Strengthen the means of implementation and revitalize the global partnership for sustainable development: The Government of Nepal's target to increase the contribution of remittance on GDP from 29 percent in 2015 to 31.8 percent in 2022 and 35 percent in 2030. Given the current trends that the share of remittance to GDP which is around 25 percent in 2022, these targets appears to be unattainable. This is because three years have already gone by due to COVID-19 pandemic (2019-2021). On top of this, remittance can only be increased if Nepal can diversify its worker destination countries especially in high paying countries and if it can send the

migrant workers with higher skill levels and if they are appropriately protected from all types of exploitation and violence. Our analysis in Chapter 7 showed that the share of remittance influx to Nepal is fairly low from the countries of large number of workers.

Target 17 Mobilize additional financial sources for developing countries from multiple sources

	Targets/Indicators	2015	2022	2030
17.3.2	Volume of remittances (in US Dollar) as proportion of total GDP	29.1	31.8	35.0

Linking the Findings with the Objectives of Global Compact for Migration (GCM)

Here, judgment for level of compliance in a particular objective is assessed subjectively, and assigned the labels as 'low', 'low-to-medium' and 'medium'. Low compliance refers to the fact that Government has initiated the process but there is lack of implementation. 'Low-to-medium' compliance implies the Government has initiated the process and also has somewhat effectively been implementing the programs and policies while the 'medium' compliance implies that Nepal has achieved a substantial commitment to safeguard the rights of migrant workers.

Objective 1. Collect and utilize accurate and disaggregated data as a basis for evidence-based policies: On the basis of our analysis, the level of compliance in this objective can be said to be low. As discussed in Chapter 7, the Government has not yet developed any comprehensive migration data reporting system which can be comparable internationally. The Government has maintained data of the documented migrant workers while there is lacking of data of undocumented migrant workers – thus not knowing the status of majority of WMWs who are believed to be in undocumented status due to restriction measures imposed by the Government in time and again. This objective also requires establishing and strengthening migration specific resources and training center while neither the MOLESS nor the MOHP has initiated such initiatives. Nepal still lacks migration specific survey even in the context where more than an estimated 3.2 million stock of migrant workers at abroad or more than 10 percent of the estimated 30 million population of Nepal constitutes the migrant workers in Nepal. The population census 2021 questionnaire incorporated some attributes of absentee population for abroad such as age, sex, education, country of destination and reasons. However, by its inheritance limitation, the population census's questionnaire does not include detail about assessing the rights of migrant workers. With the absence of migration specific policy, there is lacking of horizontal and vertical collaboration among the actors responsible for maintaining migration statistics. There is, for example, no digital network between the federal government, province government and local government responsible for maintaining migration data. There is no horizontal linkage between Government agencies and NGOs that organizes safe migration program activities, either. The MOLESS publishes annual or bi-annual report of migrant workers by largely drawing on the documented migrant data maintained by the DOFE, FEB and FET. However, it lacks information about irregular and undocumented migrant status and it also lacks situation of migrant workers from rights perspective.

Objective 3. Provide accurate and timely information at all stages of migration: On the basis of our

analysis, the level of compliance in this objective can be said to be low-to medium. The MOLESS has established FEIMS which provides foreign employment business related information. Recently conducted MOUs between i) Nepal and Malaysia ii) Nepal and Jordan; iii) Nepal and Saudi Arabia – which we have analyzed in Chapter 7, also include provisions of exchange of information and research studies between the countries of destination and Nepal. Migration Resource Centers have been extended in more than 39 migration prone districts of Nepal including at abroad with the support from NGOs, UN organizations. Migration information desks have been established along the migration routes, passports issuing offices and border areas between Nepal and India. In the destination countries, the websites of the many Nepalese Embassies provide basic information including information about access to justice available. Despite these achievements,

Our analysis suggests that there has been no practice of linking the rights to seek information with foreign employment in Nepal. Further, it is not known that whether the FEIMS has contributed to increase access to information to the migrant workers, and make them aware from fraud and deception in the process of foreign employment. The implementation status of the MOU has not been known – making it suspect that whether there has taken the exchange of information and research studies between Nepal and destination countries. Our research indicates that there is no joint platform for sharing information especially related to victims of violence in the process of migration. Although websites of the Embassies and websites of MOLESS, Department of Foreign Employment and FEB provide information about safe migration in Nepali and English languages, it is not known whether these websites are used by the migrant workers or how the receiver interpret the message posted in the websites because of the lack of impact study carried out by the Ministry.

Objective 6. Facilitate fair and ethical recruitment and safeguard conditions that ensure decent work: On the basis of our analysis, the level of compliance in this objective can be said to be low-to medium. The MOLESS has brought the directive to regulate and monitor the recruiting agencies. The Government has initiated free visa and free ticket system for migrant workers going to GCC countries and Malaysia since 2015. The *Foreign Employment Act 2007* has been recently amended which outlaws the agents system. The recently conducted MOUs with destination countries allow migrant workers change employers in case of bankrupt of the company and they also grant the same labor rights in terms of working conditions, wages and access to justice with the non-migrants. In 2015, the MOLESS has brought the domestic workers guideline which protect the rights of domestic workers including migrant women workers.

Despite these achievements, there are several gaps to fully realize this objective. Nepal has not yet ratified the UN Convention on Migrant Workers and Their Families 1990 which grants the rights of migrant workers at origin, transit and destination countries. The MOLESS has not yet revised the *Foreign Employment Policy 2012* in the changing context of the country and Covid-19 pandemic. It has not developed any unified national plan of action to address the rights of migrant workers, either. Recruitment process still largely involves irregularities and such irregularities cross all actors involved in the foreign employment business from recruiting agencies to orientation centers, training institutes, health facilities permitted to perform medical check-up to travel agencies. Free visa and free ticket system has been said to have completely failure. Further this system has been in operation in case of private recruiting agencies while Government itself is sending migrant workers

to South Korea and Israel by charging of fee. This shows the paradox situation. However, the Director General (Mr. Deepak Kafle) of DOFE in addressing the Kantipur Media Group on Wednesday 29 December 2021 reported that the DOFE is revising this provision. In the same program, the former Ambassador of Malaysia – Mr. Udaya Raj Pandey also argued that the Government has to charge the migrant workers fee equivalent to one month salary as the recruitment service in order to avoid the risk of migrant workers falling into the trap of unscrupulous recruiting agencies and agents. Despite the removal of agents system by the Government, our analysis suggested that they are working invisibly and there is often fraud involved in providing the contract letter to the migrant workers, for two contract letters are given – one fake and one real one. The monitoring mechanism has not been effective as well.

Objective 8. Save lives and establish coordinated international efforts on missing migrants: On the basis of our analysis, the level of compliance in this objective can be said to be low. As discussed in Chapter 4, the Government of Nepal has brought the guideline for rescue and repatriation of migrant workers during the Covid-19 pandemic context. The Department of Consular Service has been established in Nepal and in some countries, the labor attaché and labor consular have been appointed to assist to search for the missing migrant workers. On the other hand, there has been challenge to save lives of the migrant workers at the destination countries. And, it has rather fueled due to the COVID-19 pandemic situation. The Government has yet to effectively establish coordination with the international community to identify the missing migrant workers. The Government has yet to examine the impact of ban on women migration that how it has been adversely affecting WMWs and how they are more likely to be ending in trafficking situation.

Objective 15: Provide access to basic services for migrants: On the basis of our analysis, the level of compliance in this objective can be said to be low-to-medium. As discussed in Chapter 7, a number of NGOs in collaboration with development partner organizations and FEB have been running safe migration awareness programs across the countries. The SaMi project provides the safe migration information to the potential migrant workers, returnees and also collects the grievances of the migrant workers and assist to file the complaints to the concerned government agencies.

Despite these activities, the services are not adequate and not reaching out to the target groups especially among the very poor, disadvantaged groups and culturally and socially excluded groups. In case of addressing the health needs of the migrant workers, the MOHP has recently drafted the health policy of migrants' workers which covers a range of preventive, curative and health care schemes to the critically injured migrant workers. However, this policy has yet to be submitted to the Cabinet and implemented. In case of welfare measures of the children of the migrant families, the FEB has been providing the scholarship to some children across the country. However, given the considerable size of the critically injured and deceased migrant workers annually, the coverage of children in welfare measures appears to be very low. On top of this, the budget allocated for welfare of children has not been fully implemented – meaning that the rights of the migrant workers' families have not been adequately respected.

8.3 Recommendations

In addition to the NHRC's recommendations suggested for the implementation in 2018 (16 points) and 2021 in the context of COVID-19 (discussed in Section 7.4.7), this Report reiterates the following recommendations for urgent actions:

General Recommendations

1. Harmonize the foreign employment policy with the existing law and regulation of foreign employment. Reorient the Foreign Employment Policy 2012 by incorporating the changing context of migration for work (individual migration, demand of care work, risk of smuggling and trafficking and exploitation) and considering the COVID-19 pandemic and like disasters including the possible pandemic in coming days. The Foreign Employment Policy needs to be framed considering the fundamental rights and labor rights of Nepalese citizens as embodied in the Nepal's Constitution and international commitments in GCM, SDGs, OHCHR's Principles and Guidelines on the human rights protection of migrant workers in vulnerable situation, and other international, regional forums and dialogues. Also, develop the periodic action plan.
2. Reorient the Nepal's SDGs targets and indicators and ensure that all the relevant targets and indicators have migration disaggregation information and targets. And, there is need of formulation of forthcoming Federal Government's periodic Development Plan which integrates migration as cross-cutting issue, taking consideration of rights of migrant workers and their family members.
3. To formulate a National Plan of Action for the implementation of UN Global Compact on Migration
4. Establish vertical and horizontal coordination among the key stakeholders in dealing with the rights of migrant workers. Vertical coordination is needed among the Federal Government Agencies, Province Government Agencies and Local Levels. MOLESS should play a lead role for coordination among these agencies. Horizontal coordination is needed among the MOLESS, MOFA, MOHP, Ministry of Finance and Nepal Police and among the civil society organizations. A powerful inter-Ministerial coordination committee is suggested for speedy response in case of violation of the rights of migrant workers.
5. Establish the powerful oversight monitoring mechanisms under the Parliamentary Committee responsible for independent monitoring the recruiting agencies including other private sectors and government agencies and individuals involved in foreign employment business.
6. Institute the migrant workers and returnee migrant workers' agenda as the mainstream development and rights agenda for all three layers of Governments – the Federal, the Province and the Local Government. This may be done by mobilization of leaders and carders of political parties representing in the Federal Parliament, Province Assemblies and Local Levels and integration of migrant rights issues in development planning. Migrant workers' agenda may unfold as a social movement if the voting rights of migrant workers is guaranteed as per the verdict of the Supreme Court of Nepal.
7. Establish the Migration Research Center under the MOLESS – which will be responsible

for collection, compilation and analysis of migrant data. Also, collaborate with University, academic institutions and civil society organizations for bringing the migrants issues in schools and University curriculum and more academic research and study.

8. Increase the capacity of MOLESS and Foreign Diplomatic Missions for increased collaboration and coordination with the Governments of destination countries and National Human Rights Institutions. This is vitally important to dialogue for ensuring the labor rights of migrant workers and including for determining the minimum salary. Capacity enhancement of the Diplomatic Missions abroad is also needed to effectively handle the complaints and grievances of migrant workers, monitoring and inspection of living and working conditions aboard and provide the remedy in timely manner.

Institutionalize the ethical recruitment process

1. Make special measures to protect the migrant workers who go on the individual basis. This is needed in the context where the proportion of migrant workers going abroad through individual basis has been increasing. There is increased risk of falling into deep-fake images and messages due to the possibility of misuse of Internet and digitization and thereby luring the individuals in the promises of good employment and earning, while they become the victims of smuggling and trafficking.
2. Make foreign employment recruitment business more competitive in countries with high scale of migrant workers so that the monopoly of recruitment agencies can be eliminated.
3. Ensure that the free visa and free ticket system have been effectively implemented so that the migrant workers are not cheated.
4. Monitor effectively the foreign employment business including recruiting agencies, travel agencies, training centers, medical centers, and other related private actors involved in foreign employment business, and punish the agencies immediately involved in the violation of the rights of the migrant workers and their family members.
5. Combat the human smuggling and trafficking in persons by strengthening the capacity of Nepal Police and also bringing the traffickers and smugglers legal proceeding and also carrying out the effective and en-mass safe migration awareness programs across the country, especially in the most migration prone districts.
6. Conduct skill development training to the potential migrant workers. This is essential in the context that nearly three-fourth of the migrant workers constitute of skill level 1 or 2 only. Also provide skill development training that matches with the demand of the international labor market, and ensure that the training is accredited by the destination countries' employers and companies.
7. Revise the minimum wages determined for the Nepali migrant workers in the destination countries. This revision is particularly needed to GCC countries and Malaysia where there is very low salary level. The revision should be based on the Consumer Price Index of Nepal as well as the minimum salary levels of other developing countries' workers in a particular destination country in the same nature of work.

Increase access to justice to migrant workers both in destination countries and within the country

1. Implement the *Guideline for the Legal Defense of the Workers in Foreign Employment 2018* effectively so that the accused migrant workers for a criminal offence in a destination country and are in jail can be supported timely and adequately, and free from unlawful detention, imprisonment and fine. Free legal supports shall also be included not only to the documented migrant workers but this provision should also be extended to undocumented migrant workers/migrant workers whose contract period expired at the time of the alleged crime.
2. Upturn the clearance rates of cases handled by the FET given the fact that the resolved case is 39%. For increasing the clearance rate, increase the capacity of the FET by increasing the human resources and provisioning for the full time judges.
3. Implement effectively the Supreme Court's verdicts to protect the rights of migrant workers in response to the cases filed by different migrant rights' activists and civil societies such as related to appointment of Labor Attaché and establishment of the safe houses, monitoring of the standards of medical institutions; decentralization of work of the Department of Foreign Employment; sending of workers only after the BLA and establishment of rapid rescue mechanism; reducing the judicial power of the Department of Foreign Employment; granting the voting rights of the Nepali in foreign employment; effective implementation of the government policy of free visa and free ticket including rescue of migrant workers during the COVID-19 pandemic period.
4. Make available compensation to the migrant workers who were the victims of wage theft in the destination countries during the COVID-19 pandemic.

Ensure the speedy rescue, dignified return and sustainable reintegration

1. Revise the Guideline for the rescue of Nepali citizens and workers affected by pandemic, war and disaster so that not only the documented migrant workers but also the undocumented workers are to be rescued at the time of global crisis from the humanitarian lens, and also need to make the rescue process easy, simple, safe, speedy and gender and human rights friendly.
2. Manage to provide the relief packages to the migrant workers who are in the state of need of by coordination and collaboration with Non-Resident Nepali Association (NRNA).
3. Allocate adequate budget for the rescue, safe returns and other welfare measures to the Nepali Diplomatic Missions abroad to carry out programs of rescue, relief, to run the safe houses, inspection of working sites and accommodation and other welfare measures of the migrant workers and to the Local Levels for the sustainable reintegration of the returnee migrant workers and maintaining the data of the migrant workers.
4. Establish the mechanism to issue a white paper regularly stating the situation of the Nepalese migrant workers abroad, especially during the disaster, war and pandemic circumstances. The white paper may include information about the number of migrant workers in a destination country by sex, types of work they do, number of migrant workers in imprisonment, number

of migrant workers died or critically injured or have been hospitalized and number of migrant workers in other difficult situation.

5. Ensure the sustainable reintegration by effectively implementing *Directive of Reintegration of Returnee from Foreign Employment (Operation and Management) 2079 (2021)*. Ensure that returnee migrant workers' skills, knowledge and remittance is diverted for human development, productive sectors and promotion of entrepreneurship within country.
6. Ensure that the reintegration schemes shall take into account the types of returnees: returnees from decent work, returnees with long term physical and/or psychological health problems or persons with disability, those with imprisoned or those who were deported.
7. Establish and support to run the safe houses in the destination countries for the migrant workers who were victims of violence and also establish and support the safe houses to run within the country for the returnee migrant workers. Also, arrange the safe houses not only for the WMWs but also for the male migrant workers who are in need of rehabilitation and recovery.
8. Provide the compensation of the deceased family members and those who have been critically injured. Ensure that this provision should also be applicable not only to those who went abroad by taking labor permit but also to those in undocumented migration status.
9. Increase the capacity of the Local Governments for effective response to the need of returnee migrant workers.
10. Revise the cost of sending the remittance per 100 US Dollar, for cost of sending remittance to Nepal is still much higher compared to other South Asian countries.

Address the vulnerability aspects of women migrant workers

1. Remove the pre-conditions imposed for women's migration for domestic work, but ensure that the special protection measures be in place in Nepal as well as in destination countries. Also, include the protection measures in MOU and BLA. Also, amend the MOU and BLA that do not possess the gender friendly protection measures of any destination countries.
2. Collect and update data of Nepalese domestic workers abroad through Nepalese Mission abroad. This is mainly because majority of women domestic workers in GCC countries constitutes undocumented migrants.
3. Establish the mechanism to report the sensitive cases (returnee women with pregnancy, child birth, sexual abuse, violence) being provided rehab services by NGOs to the relevant Government mechanism so that all the sensitive cases can be compiled in one place.
4. Ensure that the both situational vulnerability (pre-departure, during journey and at the destination place) and individual vulnerability of women migrant workers are addressed by enhancing the resilience and agency of women migrant workers.
5. Ensure that working conditions at abroad of Nepalese women domestic workers is decent and they are free from any types of violation of basic labor rights.

6. Eliminate the physical, sexual and psychological violence experienced by WMWs including women domestic workers in all life cycle of migration from departure to transit, working place and to return.
7. Manage skill development training to the women domestic workers so that the skill demand is matched and avoid any skill deficit. Matching of skills not only increases efficiency of workers but it also tends to reduce the risk of abuse, scolding and physical violence by employers.
8. Implement effectively the provisions of the *Directive of the Sending of Domestic Workers in Foreign Employment, 2072* (2015) which aims to make domestic work safe, orderly and beneficial to migrant workers by monitoring of all involved in foreign employment business.
9. Revise the terms and conditions of the employers to bring the Nepali domestic workers so that the discriminatory provisions between male and female domestic workers shall be removed. The terms and conditions also need to include other provisions like workload, working hours, day work, nights and respect for labor, not abusing scolding, and no physical punishment.
10. Ensure that there is effective enforcement mechanism and workplace inspection even in the context of *Kafala* system by the dialogue of destination countries.

Integrate the children of migrant workers in Child Act, foreign employemnt policy and developemnt agendas

1. Amend the *Act Relating to Children 2075 (2018)* to specify the children in the context of international migration as a special category and also incorporates the children affected by foreign employment in Foreign Employment Policy 2012 (while it is revised).
2. Ensure that children of the migrant workers shall not develop physical and mental adverse circumstance due to their parents in foreign employment by increasing intervention to the children of the migrant workers in education, physical and mental health services and counseling. It is important to greatly take care of children's whose parents have lost their lives, or critically injured or are imprisoned in the destination countries.
3. Revise the *Foreign Employment Scholarship Operation Directive 2071* (2014) that only include the scholarship provisions for children of those migrant workers who have taken labor permit from DOFE and those migrant workers who have already been provided compensation by the Government. There is also need to include children of migrant workers who went abroad as in undocumented status. Also, increase the coverage of the scholarship schemes.

Ensure the right to life and rights of health of migrant workers and their family members

1. Arrange the health desk in the border area in between Nepal and India and ensure that the migrant workers coming from abroad including from India are free from any communicable diseases including Tuberculosis, Malaria, pandemic and STI.
2. Espouse the independent autopsies to validate the causes of death. This provision is needed in order to facilitate the victim's family for claiming the death entitlement from the Government of destination country and employers/companies. Also, it creates the pressure to the destination

country's government for classifying the real causes of deaths and thereby the destination country and employers will, in turn, be compelled to increase protection measures to prevent the untimely death of the migrant workers.

3. Ensure that the destination countries use appropriate protection measures both in the workplace and in the accommodation place by compulsory including the health protection measures including heat stroke protection measures in MOU and BLA. It is important to use the heat protection measures especially in GCC countries in order to mitigate the problem of heat stroke on migrant workers and prevent the risk of death. Also, effectively inspect the employers and companies whether they have forced to the workers engage in work during the ban period and make stringent punishment in case of violation of the ban period and heat protection measures.
4. Arrange the timely repatriation of the death body and remains from the destination countries and ensure that the cremation is conducted according to the victims' religious faiths and beliefs. Also, send the dead bodies to Nepal only by identifying the victim's real name, address and sex. Implementation of this provision is crucially important to keep away from the cremation by the non-victim family and also to claim for the death entitlement by the real victim family.
5. Ensure that the victim's families receive the compensation from the Government of destination country/company/employer in case of the death or injury of migrant workers in workplace or in the accommodation.
6. Adopt *National Migrants Health Policy* which aims to ensure the quality healthy life of Nepali citizens in all stages of migration, that is, from pre-departure, departure, destination country and to return by guaranteeing health security and health promotion. Also, effectively implement the *National Mental Health Strategy and Action Plan 2077 (2020)* that intends to provide the mental health information and services to the migrant workers and their families.
7. Decentralize the legal provision of providing the insurance benefits to workers in foreign employment so that the victims' families who reside in remote areas can also access the benefits and compensation easily and timely without mingling on lousily bureaucratic process.
8. Implement the *Standards to Support the Migrant Worker's Family for Health Treatment 2073 (2016)* effectively which grants the financial support to the migrant workers' family members if they have been affected some deadly non-communicable diseases of cancer, kidney, heart Parkison disease and Alzheimer. Also, collect data/information about the health conditions of the migrant workers' family members and provide support accordingly.
9. Create a special unit under the MOHP to monitor the health status of migrant workers and their family members, medical institutions that provide the health certificates to the migrant workers. This provision can be implemented in coordination with the MOLESS.

Ensure the rights to information, regular data collection, and good migration governance

1. Ensure that the legal provisions of rights to information to migrant workers and their family members have been implemented.

2. Ensure that the individual and sensitive data of the migrant workers, their status of health, their exposure at situation of exploitation, imprisonment and crimes cases, injuries, forced pregnancy and child birth all are well protected and not used by unauthorized individuals or parties.
3. Strengthen the FEIMS to monitor and keep the records of outbound and returnee migrant workers and use the data for reducing the role of intermediaries and maintaining the transparency and accountability to all stakeholders.
4. Continue to use the mobile Apps *Baideshik Rojagari* for providing information related to labor approval, license agencies and agencies providing orientation training, medical test services, insurance companies and banks linked to FEIMS. Also, there is need to study how far the mobile Apps has contributed for safe migration.
5. Strengthen the capacity of information desk in terms of human resources, equipment, materials in some crucially important offices and migration routes. Such desks shall provide safe migration information including the information about the sustainable reintegration within the country to returnee migrant workers.
6. Carry out the nationally representative 5-yearly periodic household survey focusing on the situation of the rights of migrant workers. The household survey should generate information about migrant workers' socio-demographic characteristics including types of migration (one time migration, repeat migration, and circular migration), violation of the rights of migrant workers such as injuries, deaths, imprisonment and detention, illegal deportation, abuse, sexual exploitation and victims of trafficking.
7. Strengthen the capacity of Local Levels to collect, compile and update data of migrant workers including other vital events and develop the uniform digitized database system for utilization of planning purposes and link the Local Levels database with the FEMIS. Also, maintain the records of migrant workers who cross the border to India and from India to Nepal daily. These real time data are needed to effectively carry out the intervention programs related to protection and promotion of rights of migrant workers including their sustainable reintegration.
8. Use the population census 2021 data to map out the magnitude of the migrant workers at the Local Levels so that the Local Levels can develop the migration specific policies based on the size and distribution of the migrant workers.
9. Strengthen the database of DOFE, FEB, and FET by collection, compilation and publishing the details of the migrant workers and there is also need to make the uniformity in information and data. The Annual Report produced by MOLESS should include the disaggregated information of migrant workers.
10. Effectively implement different Guidelines brought by the MOLESS to maintain the good governance and monitoring such as *Call Centre (Operation and Management) Guideline 2075 (2018)* and the *Guideline for the Mobilization of Monitoring Team, 2076*. These guidelines intend to regulate the illicit activities carried out by the Government officials as well as by the private actors involved in foreign employment business.
11. Ensure that any MOU and BLA signed by the Government of Nepal to any destination countries

shall embrace the crucially important provisions embodied in the Nepal's commitment with GCM, SDGs and other human rights instruments for the protection of rights of migrant workers. And, also ensure that provisions and measures of the MOU and BLA has been effectively implemented and there is need of regular updates on the implementation status of the MOU and BLA. Develop the joint platform for sharing information, research and studies especially related to victims of violence in the process of migration.

12. Coordinate, collaborate and mobilize the Nepali diaspora for the protection of migrant workers overseas, safe returns and providing information and services about the migrant workers in difficult circumstances. It is also important to provide incentive measures and rewards to attract their earnings, knowledge and skills for the country's development.
13. Collect the information of migrant workers who are in death row and create strong lobby at the regional, international migration and human rights forums to amnesty the death penalty. Requests are needed from head of the state and executive, National Human Rights Commission to the particular government or head of the state of the destination country where Nepali migrant workers are in death penalty row. Also, need to make aware of the migrant workers' in criminal justice system in a destination country before their departure and even during their work abroad.
14. Appoint and strengthen the capacity of Labor Attaché and Labor Consular where there are at least 5000 Nepali migrant workers. Also, provide adequate training about the situation of migrant workers, human rights and gender issues.
15. Appoint the Police Labor Attaché under the Foreign Diplomatic Mission in major destination countries and transit routes of Nepali migrant workers so as to provide the rapid rescue in collaboration with the Police of the concerned country of destination.
16. Strengthen the capacity of Human Trafficking and Investigation Bureau of Nepal Police to provide services related to rescue, repatriation and security to victims of international and cross-border trafficking and smuggling. Also, establish and strengthen the coordination with the international community to identify the missing migrant workers.
17. Implement the *Local Government Operation Act 2076 (2018)* which makes responsible the Local Governments to maintain data of foreign laborers including the number of unemployed population, conduction of financial literacy and skills training and integration of returnees in Local Development agendas. Also, strengthen the capacity of Local Levels to formulate the policy or guideline related to foreign employment in their regular annual programs.
18. Increase budget allocation to MOLESS substantially for ensuring the rights of migrant workers and their families in all life cycle of migration. Also, increase the spending capacity of MOLESS and its subordinate Offices so that the budget allocated in welfare of the migrant workers and their families are sufficiently implemented. And, failure to implement such provisions mean that rights of migrant workers and their family members has been grossly denied.

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Legal and Policy Documents Reviewed

1. Act Relating to Children 2075 (2018)
2. Call Centre (Operation and Management) Guideline 2075 (2018)
3. Criminal Code Procedure of 2075 (2018)
4. Curriculum for the Skill Development of Domestic Workers
5. Directive and Standards for the Selection and Appointment of Consular (Labor) and Labor Attaché, 2073 (2016).
6. Directive for the Listing, Renewal and Monitoring of the Health Institutes Engaged in Medical Examination of Workers for Foreign Employment, 2072 (2015)
7. Directive of the Sending of Domestic Workers in Foreign Employment, 2072 (2015)
8. Employment Rights Act 2075 (2017)
9. Foreign Employment Act 2007 (Including Amendment)
10. Foreign Employment Policy 2012
11. Foreign Employment Regulations 2008
12. Foreign Employment Related Skill Development Training Work Operation Directive, 2074 (2017);
13. Foreign Employment Scholarship Operation Directive 2071 (2014)
14. Guideline for the Legal Defend of the Workers in Foreign Employment 2018
15. Guideline for the Management of National Honor and Award to the Returnees from Foreign Employment Engaged as Entrepreneur, 2076 (2019)
16. Guideline for the Mobilization of Monitoring Team, 2076
17. Guideline for the Reintegration of Migrant Returnees – (Conduction and Management) Guideline, 2078
18. Guideline for the Reintegration of Migrant Returnees 2021 (Draft);
19. Guideline for the Rescue of Nepali Citizens and Workers Affected by Covid-19, 2077 (2020)
20. Local Government Operation Act 2076 (2018)
21. Monitoring of Border between Nepal-India: the Context of Covid-19 Pandemic
22. National Mental Health Strategy and Action Plan 2077 (2020)
23. National Migrants Health Policy 2076 (Draft)
24. Parliamentary Committee Visits Report 2021 of Gulf Countries 2021
25. Reintegration Program Implementation Directive 2076 (2018)
26. Standards to Support the Migrant Worker's Family for Health Treatment 2073 (2016)

27. Summary Procedures Act 1972
28. The Call Centre (Operation and Management) Guideline 2075 (2018)
29. The Constitution of Nepal
30. The Joint General Comment No. 3 (2017) of the Committee of the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of Children on the general principles regarding the human rights of children in the context of international migration
31. Treaty of Peace and Friendship 1950 between Nepal and India
32. Vocational and Skill Development Training Operation Guideline, 2077 (2020)
33. Workplace Based Apprenticeship Training Operation Guideline, 2076 (2019)

Other Documents Reviewed

1. Global Compact for Safe, Orderly and Regular Migration (GCM).
2. Draft of Points Prepared by the Embassy of Nepal, Malaysia for the meeting between NHRC of Nepal and Malaysian Human Rights Commission (SUHAKAM)
3. Nepal's Sustainable Development Goals: Status and Roadmap 2016-2030 Report
4. Supreme Court Verdicts Related to foreign employment and migrant workers
5. Sustainable Development Goals (SDGs) of Nepal
6. DOFE (2022) (Power point presentation in 15 July 2022 by DG of DOFE).

Annexes

Annex 1.1 Name list of individuals interviewed

SN	Name	Position	Visited Date
	PNCC		14 July 2022
1	Kul Prasad Karki	Chairperson	
2	Som Lamichhane	CO	
3	Purnima Malla	Malaysia Cluster Coordinator	
4	Abinav	Case Management	
5	Shanti Singh	Saudi Arabia Cluster Coordinator	
6	Ramesha Sahu	UAE Cluster Coordinator	
	People Forum		15 July 2022
1	Som Luitel	Chairperson	
2	Sudip Devkota	Officer	
3	Nita Dahal	Officer	
	DOFE		15 July 2022
1	Shesh Narayan Paudyal	Director General	
	MOLESS		19 July 2022
1	Dr. Thaneshowar Bhusal	Under Secretary	
2	Shanti Paudyal	Section Officer	
3	Prem Pokharel	Section Officer	
4	Dr. Keshav Basyal	Advisor of the MOLESS	
	Nepal Police		19 July 2022
1	Anjana Shrestha	DSP, Anti-Human Trafficking Bureau	
	Foreign Employment Board		
1	Rajan Prasad Shrestha	Executive Director, FEB	19 July 2022
2	Pankaj Lal Karna	Officer, FEB	
	MOLESS – Migration Report Writing Team		22 July 2022
1	Kabi Raj Upreti	Under Secretary, MOLESS	
2	Dev Chandra Rai	SaMi Project Coordinator	
3	Sadikchya Bhattarai	MOLESS Migration Report Writing Team Member	
4	Arjun Kharel	MOLESS Migration Report Writing Team Member	

Note: we highly acknowledge those who participated in the interaction with us and provided information about their intervention about the rights of migrant workers.

Annex 1.2 Name list of participants on consultation programme

1. Consultation with Government agencies

Date: 2079/05/26

Venue: NHRC Hall

S.N	Name	Office	Designation
1	Top Bhadur Magar	NHRC	Hon. Chairperson
2	Manoj Duwadi	NHRC	Hon. Member
3	Lily Thapa	NHRC	Hon. Member
4	Murari Prasad Kharel	NHRC	Acting Secretary
5	Ramchandra Dhakal	Ministry of Labor, Employment and Social Security	Joint Secretary
6	Nava Raj Sapkota	NHRC	Joint Secretary
7	Hari Prasad Gyawali	NHRC	Under Secretary
8	Kamal Thapa Kshetri	NHRC	Human Right Officer, International Division Head
9	Madhu Sunam	NHRC	Human Right Officer
10	Kiran Bram	NHRC	Human Right Officer
11	Prasanna Poudel	Nepal Rastra Bank	Deputy Director
12	Shardha Rijal	OPMCM	Under Secretary
13	Yashoda Aryal		Chief Public health Administrator
14	Sabitra Oli	Ministry of Foreign Affairs	Section Officer
15	Dayaram Acharya		Deputy director
16	Anurag Dwibedi	Nepal Police Trafficking Investigation Bureau	Senior Superintendent of Police
17	Dr.Govinda Subedi		National Consultant
18	Anjali Shrestha	Foreign Employment Board Secretariat	NMRC Officer
19	Anuja Dutta	Ministry of law	Section Officer
20	Punam Thapaliya	SPSP	

CSOs, Development Partners, Trade Union consultation**Date: 2079/05/27****Venue: NHRC Hall**

S.N	Name	Office	Designation
1	Lily Thapa	NHRC	Hon. Member
2	Navraj sapkota	NHRC	Joint Secretary
3	Hari Prasad Gyawali	NHRC	Under Secretary
4	Kamal Thapa Kshetri	NHRC	Human Rights Officer
5	Kalpana Nepal Acharya	NHRC	Human Rights Officer
6	Madhu Sunam	NHRC	Human Rights Officer
7	Kiran Kumar Baram	NHRC	Human Rights Officer
8	Som luitel	People forum,	Advisor
9	Dr Govinda Subedi	National Consultant	
10	Ojaswini Shah	NHRC	Intern
11	Sudarshan Neupane	TDH	
12	Narbada Sorali Magar	TDH	Project manager
13	Prakriti karki	AMKAS	Programme Coordinator
14	Kulprasad Karki	PNCC	Chair person
15	Prajesh Aryal	CESLAM,SSB	Senior Research Associate
16	Hari Krishna Neupane	Labour Forum	Member
17	Hari Bhadur THapa	National Network for Safe Migration	Chair person
18	Nilamber Badal	Asian Forum	Secretary
19	Dipendra Sharma	Winrock International- Hamro Samman	CTIP coordinator
20	Dinesh Regmi	Kantipur daily	Correspondent
21	Punam Thapaliya	SPSP Project	Project Officer
22	Sita Ghimire	SAMI/Helvetas	Team leader
23	Neha Choudhary	ILO	National project coordinator
24	Sandhya Sitaula	ILO	National project coordinator
25	Writu Bhatta Rai	SAN	Executive Board member
26	Laxman Prasad Adhikari	NTVC	MigrationnDEPT.Secretary
27	Tara nidhi panta	GEFONT	Secretary
28	Ramsharan Paudel	Maiti nepal	Program mannager

29	Yashoda Banjade	NHRC	
30	Kishor bikram Shah	SARTUC	Program Officer
31	Hari Prasad Gyawali	NHRC	
32	Sama Dongol	People Forum	Legal AId Officer
33	Krishn Prasad Neupane	People Forum	Vice Chair
34	Manju Gurung	PouRakhi Nepal	Strategic Advisor
35	Krishma Sharma	Issara Institute	
36	Sunita mainali	WOREC	Campaign coordinator

Annex 2.1 Percentage distribution of migrant workers by occupational status (who go via recruiting agency only, FY 2016/17, Nepal

Country/Occupation	Male	Female	Total	Skill level
Malaysia				
Factory worker (production and manufacturing)	60.4	84.9	61.0	1,2
General labor (unspecified)	19.4	14.5	19.3	1,2
Security guard	12.2	0.0	11.9	3
General cleaning labor (sector unspecified)	3.4	0.0	3.3	1,2
Constructive worker	1.6	0.0	1.6	1,2
Restaurant and hotel worker	1.6	0.6	1.5	3
Agriculture labor (farm, plantation)	1.5	0.2	1.4	1,2
Total	100.0	100.0	100.0	
Total number of MWs	90186	2000	92186	
Row %	97.8	2.2		
Qatar				
General labor (unspecified)	62.8	0.3	61.7	1,2
Mason	10.1	0.0	9.9	3
Driver(light and heavy vehicles)	9.6	0.0	9.4	3
General cleaning labor (sector unspecified)	4.3	94.8	6.0	1,2
Carpenter	5.6	0.0	5.5	3
Electrician	2.9	0.0	2.9	3
Security guard	2.4	4.9	2.5	3
Painter	2.2	0.0	2.1	3
Total	100.0	100.0	100.0	
Total number of MWs	91666	1716	93382	
Row %	98.2	1.8		
Saudi Arabia				
General labor (unspecified)	60.2	0.4	59.1	1,2
Driver(light and heavy vehicles)	10.1	0.0	9.9	3
General cleaning labor (sector unspecified)	6.2	99.5	8.0	1,2
Restaurant and hotel worker	7.1	0.1	7.0	3
Construction labor(unspecified)	6.2	0.0	6.1	1
Factory labor (production and manufacturing)	3.1	0.0	3.1	2

Mason	2.7	0.0	2.6	3
Electrician	2.5	0.0	2.5	3
Carpenter	1.9	0.0	1.9	3
Total	100.0	100.0	100.0	
Total number of MWs	55293	1052	56345	
Row %	98.1	1.9		
United Arab Emirates				
General cleaning labor (sector unspecified)	29.3	83.4	36.7	1,2
General labor (unspecified)	41.7	1.8	36.3	1,2
Security guard	11.9	1.9	10.5	3
Restaurant and hotel worker	4.4	7.9	4.8	3
Scaffold	5.3	0.0	4.6	3
Carpenter	4.2	0.0	3.6	3
Shop worker(retail and wholesale)	3.2	5.0	3.4	3
Total	100.0	100.0	100.0	
Total number of MWs	35199	5545	40744	
Row %	86.4	13.6		
Kuwait				
General labor (unspecified)	40.3	0.3	38.5	1,2
Civil technician labor	13.8	2.0	13.3	2
General cleaning labor	7.5	69.9	10.3	1,2
Scaffold	10.5	0.0	10.0	3
Restaurant and hotel worker	7.8	20.8	8.3	3
Carpenter	8.7	0.0	8.3	3
Security guard	6.8	7.1	6.8	3
Welder	4.6	0.0	4.4	3
Total	100.0	100.0	100.0	
Total number of MWs	8478	395	8873	
Row %	95.5	4.5		
Bahrain				
General labor (unspecified)	32.7	0.0	31.7	1,2
Security guard	27.3	2.6	26.6	3
Driver(light and heavy vehicles)	14.8	0.0	14.4	3

General cleaning labor (sector unspecified)	10.6	59.2	12.1	1.2
Maintenance clerk	10.2	0.0	9.9	3
Restaurant and hotel worker	4.4	38.2	5.4	2
Total	100.0	100.0	100.0	
Total number of MWs	2436	76	2513	
Row %	97.0	3.0		
Oman				
General cleaning labor (sector unspecified)	48.5	95.1	55.7	1,2
General labor (unspecified)	24.8	0.0	21.0	1,2
Restaurant and hotel worker	12.1	4.9	11.0	2
Scaffold	7.4	0.0	6.3	3
Mason	3.6	0.0	3.0	3
Carpenter	3.6	0.0	3.0	3
Total	100.0	100.0	100.0	
Total number of MWs	1477	267	1744	
Row %	84.7	15.3		

Note: Skills levels have been categorized according to ILO (2012) International Standards of Classification of Occupation (ISCO-08). As there is no disaggregated data available for occupations, it is not possible to precisely classify occupations into skills level and hence here we have lumped skills levels 1 or 2 and skills levels 3 or 4.

Source: summarized from MOLESS (2018): 55-58 pp. *Labor Migration for Employment: A Status Report from Nepal: 2015/16-2016/2017*. Kathmandu: Author.

Annex 2.2 Minimum monthly wages given to Nepali migrant workers in the major destination countries

Country/skills	Minimum wages/salary (in the concerned country currency)			USD adjusted minimum salary		Equivalent to Rs. (exchange rate USD 1=117.22 in May 15, 2021)
	Minimum Salary	Food Allowance	Total	Exchange rate of per in May 15, 2021	Equivalent to USD	
Qatar (in Qatari Riyal)						
Unskilled	900	300	1200	3.64	330	38,683
Semi-skilled	1100-1400	300	1400-1700		385-467	
Skilled	1500-3600	300	1800-3900		495-1071	
Professional	4200-11100	300	4500-11200		1236-3077	
Saudi Arabia (in Saudi Riyal)						
Unskilled	1000	300	1200	3.75	320	37,510
Semi-skilled	1200-2500	300	1500-2800		400-747	
Skilled	1200-3000	300	1500-3300		4000880	
Professional	5000-11000	300	5300-11300		1413-3013	
Oman (in Omani rial)						
Unskilled	100	20	120	0.38	316	37,042
Semi-skilled	120-140	20-30	140-160		368-421	
Skilled	150-360	30	180-380		474-1000	
Professional	420-1100	50	490-1150		1289-3026	
Kuwait (in Kuwaiti dinar)						
Indoor work	75	20	95	0.30	317	37,159
Outdoor work	85	20	105		350	41,027
UAE (in Dirham)						
Bahrain (Bahrain Dinar)	100	20	120	0.38	316	37,042
Malaysia (in Ringgit)						
Minimum monthly salary (for all workers)	1100 (from 1 Jan 2019)		1100	4.12	267	31,031
South Korea (in won)						
Minimum wage per day	6740		1126.56		6	
Minimum monthly salary	1,462,220				1298	150,854

Note: USD = United States Dollar.

Source: summarized from CESLM (2019, 2019a, 2019b, 2019c, 2019d, 2019e, 2019f, 2019g). Labor Migration from Nepal: Fact Sheet of Bahrain; of Kuwait; of Oman; of Qatar; of Saudi Arabia; of UAE; of Malaysia and of South Korea and MOLESS, 2020.

Annex 3.1 Requirement to file a complaint related to offences in foreign employment

	Subject of complaint	Where to file a complaint?	Within what time?	Who should make a complaint?	Documents to be included in the complaint
1.	Offences related to foreign employment	Foreign Employment Office or District Administration Office	Anytime	Victim Self Victims' relatives or representatives	<ol style="list-style-type: none"> 1. Receipt of money paid 2. Victim's passport 3. Labor Permit 4. Contract of Employment/ Agreement 5. Visa 6. Air –tickets
2.	Complaint related to work or company in which the worker has to engage than that said in the contract of employment	Foreign Employment Office or District Administrative Office	Within one year of the work or within one year of return to the country	Victim Self Victims' relatives Representatives	<ol style="list-style-type: none"> 1. Receipts of money paid 2. Victim's passport 3. Labor Permit 4. Contract of Employment 5. Air -ticket 6. Evidence/letter that work, service, benefits different from the contract of employment

3.	Medical fail	Medical expert committee, Kathmandu	Within 90 days of the return to the country	Victim self	<ol style="list-style-type: none"> 1. Medical certificate undertaken health treatment at aboard 2. Document stating that the worker has to return to the country due to failure of health test. 3. Up-down air ticket, boarding pass 4. Passport 5. Other documents as demanded by the medical expert committee.
4.	Financial support for the deaths of migrant worker	Foreign Employment Board	Within one year of the dead body received in Nepal.	Deceased right holder	<ol style="list-style-type: none"> 1. Passport 2. Labor Permit Letter 3. Contract Letter 4. Up-down air ticket 5. Death registration certificate 6. Relation certified certificate 7. Citizenship Certificate
5.	Financial support for the worker injured or wounded	Foreign Employment Board	Within one year of the return of the country	Self or Right holder of the victim	<ol style="list-style-type: none"> 1. Labor permit 2. Worker passport or travel document 3. Contract letter 4. Letter from the company stating that worker has been injured. 5. Injured certified by the hospital at abroad

6.	Rescue	Department of Consular, Kathmandu	Immediately after knowing the missing at abroad	Right holder, victim or relatives, Representatives	<ol style="list-style-type: none"> 1. Passport 2. Labor approval letter 3. Agreement letter, receipt
7.	Repatriation of death body	Foreign Employment Board	Immediately	Relatives or right holder of the victims	<ol style="list-style-type: none"> 1. Death Certificate 2. Passport 3. Labor approval 4. Contract letter 5. Insurance
8.	Different salary, different work	Department of Foreign Employment	Within one year of going abroad or within one year after the return to the country.	Victim self relatives or right holders	<ol style="list-style-type: none"> 1. Receipt of money paid 2. Passport of the victim 3. Labor approval 4. Agreement/ Contract letter 5. Visa 6. Air-ticket 7. Evidence letter that the company, work, benefit different

Source: People's forum (2076) (2018). Procedure for the conduction of awareness training program related to foreign employment (in Nepal).

Annex 3.2 Status of the cases related to foreign employment handled by the DAO as per the Section 21 of the Foreign Employment Act 2007 (including amendment), Gandaki Province and Sudurpaschim Province

	District Administration Offices	Number of cases as per Section 21 Ka (2) of the FEA 2007 (Including Amendment) registered	Number of cases registered in DAO and forwarded to the DOFE as per the Section 21 Ka (3) of FEA 2007	Number of cases registered in DAO in which reconciliation of the cases by DAO as per the Section 21 Ka (4) of the FEA 2007
	Province 1			
1	Sunsari			
	FY 2018/19	18	-	18
	FY 2019/20	12	12	
	FY 2020/21	11	11	
2	Illam	14 (8 victims)	4	4
3	Panchathar	2	2	1
4	Sankhuwasava	No	No	No
5	Taplejung	No	No	No
6	Okhaldhunga	No	No	No
7	Khotang	4 (victims 4 males)	4 (victims 4 males)	-
	Bagmati Province			
1	Dolakha	No	No	No
2	Makwanpur	No	No	No
3	Kathmandu	No	No	No
4	Nuwakot	No	No	No
5	Lalitapur	No	No	No
	Gandaki Province			
1	Lamjung	No	No	No
2	Mustang	No	No	No
3	Syanja	1 (2 victims)	0	0
4	Tanahu	30 (105 victims)	0	0
5	Gorkha	1 (4 victims)	1 (3 victims)	0

6	Parbat	No	No	No
7	Myagdi	No	No	No
8	Nawalparasi (East)	No	No	No
9	Kaski	No	No	No
	Sudurpaschim Province			
1	Baitadi	No, but daily commuters data available from Jhulaghat	No	No

Note: DOFE refers to Department of Foreign Employment and FEA refers to *Foreign Employment Act 2007*.

Source: Letters of Concerned DAOs to NHRC, 2021.

Annex 3.3 Number of cases and number of accused and free legal defense support provided status

	Embassy of Nepal to:	Number of migrants in prison 2021	Number of accused for which Govt. provided legal defense support	Number of migrants in prisons aboard 2016*	Number migrants facing death penalty 2016*
	Middle East/GCC countries				
1	UAE	260	0	100	2
2	Kuwait	168	0	26	0
3	Saudi Arabia	113	67	427	24
4	Qatar	45	0	44	1
5	Jeddah Consulate General, Saudi Arabia	40	Na		
6	Bahrain	4	0	-	-
7	Israel	1	1	Na	
8	Oman	0	0	1	0
	<i>Sub-total</i>	<i>631</i>	<i>68</i>	<i>598</i>	<i>27</i>
	Asia (excluding Middle East and GCC countries)				
9	Malaysia	223		217	14**
10	Hong Kong	88			
11	Thailand	27			
12	Japan	15			
13	Lhasa, China	12			
14	South Korea	8	0	0	0
15	Singapore	7			
16	Sri Lanka	3			
17	Myanmar	2	0	0	0
18	Egypt	0	0	1	0
19	Beijing, China	Na			
20	Pakistan	Na			
	<i>Sub-total</i>	<i>385</i>			
	North America				

21	Brazil	0	0	0	0
22	Consulate General, New York	0	0	0	0
23	Ottawa, Canada	0			
24	Washington D.C., USA	0			
	<i>Sub-total</i>	<i>0</i>			
	European countries				
27	United Kingdom	3	3		
28	Moscow, Russia	3	3		
29	Denmark (including in Portugal)	3	0	0	0
30	Vienna, Australia	3			
31	Germany	1	0	0	0
32	Switzerland	0			
33	Paris, France	0			
34	Belgium (including Netherlands, Luxemburg)	0			
	<i>Sub-total</i>	<i>13</i>			
	Africa				
35	South Africa	1	0	Na	0
36	Australia	0			
	Total	1030			

Note: * The Himalayan, August 31, 2016 'Over 800 migrants in prisons abroad', and 3 cases in Bahrain not shown here. ** Data refers to 2021 from Embassy of Nepal to Malaysia – of 14, five have already been ordered death penalty while 9 are on death row. ** Number of migrants in prison here includes all affected persons who are currently in police custody, imprisoned but their cases have yet to be decided by the court and imprisoned after decision of the court.

Source: Letters sent to NHRC by the corresponding Embassies, 2021.

Annex 3.4 Retention of capital punishment in some selected destination countries

Country	Year of last execution	Execution 2019	Nature of crimes and ways of execution
Bahrain	2019	3	Hanging and firing squad Premeditated murder; aggravated murder; rape, sexual assault or statutory rape; kidnapping; arson; assault; deliberately obstructing funerals or memorial services; certain crimes against property, transportation or agriculture under aggravating circumstances; terrorism; plotting to topple the regime; collaborating with a foreign hostile country; threatening the life of the Emir; defiance of military orders in time of war; perjury causing wrongful execution; treason; drug trafficking and espionage
Jordan	2017		Hanging, shooting Some cases of terrorism, murder, aggravated murder, rape, aggravated robbery, drug trafficking, illegal possession and use of weapons, war crimes, espionage and treason.
Kuwait	2017		Apostasy; drug trafficking; rape; murder; aggravated murder; kidnapping; piracy; torture; human trafficking; terrorism; certain military offences; national security crimes; espionage; treason and perjury causing execution of an innocent person.
Malaysia	2017		Hanging Trafficking of dangerous drugs; discharging a firearm in the commission of a scheduled offense; accomplices in case of discharge of firearm; offenses against the Yang di-Pertuan Agong's person (a Ruler); murder; kidnapping; burglary; robbery; terrorism and treason. Discretionary for weapons trafficking; abetting mutiny; perjury causing wrongful execution; consorting with a person carrying or having possession of arms or explosives; waging or attempting to wage war or abetting the waging of war against the Ruler Although a plan to abolish the death penalty was revoked on 13 March 2019, it did abolish mandatory capital punishment, and a moratorium on executions remains.
Qatar	2020		Espionage; threat to national security; apostasy; homosexuality; blasphemy; murder; aggravated murder; violent robbery; arson; torture; kidnapping; terrorism; rape; drug trafficking; extortion by threat of accusation of a crime of honor; perjury causing wrongful execution and treason.

Saudi Arabia	2021	184	Decapitation, firing squad, stoning; Performs public executions Aggravated burglary, treason, espionage, homosexuality, adultery; murder; blasphemy; apostasy; drug trafficking; rape; armed robbery; some military offences; witchcraft; sexual misconduct and terrorism.
UAE	2017		Firing squad, Stoning, Hanging Murder; aggravated murder; drug offenses; inciting the suicide of a person afflicted with total lack of free will or reason; arson resulting in death; kidnapping resulting in death; acts of indecent assault resulting in death; rape; treason; adultery; apostasy; aggravated robbery; terrorism; sodomy; homosexuality; espionage; and joining the Islamic State of Iraq and the Levant in Syria or Iraq

Source: https://en.wikipedia.org/wiki/Capital_punishment_by_country#Asia_2 (Accessed on 22 October, 2021).

Annex 4.1 Number of migrant workers searched, rescued and repatriated to Nepal from different Foreign Mission of Nepal, FY 2019/20 and 2020/21

		2019/20			2020/21		
	Mission	Total	Male	Female	Total	Male	Female
	GCC countries						
1	Nepali Embassy, Manama, Bahrain	124	97	27	96	81	15
3	Nepali Embassy, Doha, Qatar	0	0	0	52	38	14
4	Nepali Embassy, Kuwait	708	0	0	331	0	0
	European Countries						
6	Nepali Embassy, Berlin, Germany				3	3	0
7	Nepali Embassy, London, United Kingdom				1	1	0
8	Nepali Embassy Paris, France	0	0	0	0	0	0
9	Nepali Embassy Moscow, Russia	0	0	0	2	1	1
10	Nepali Embassy, Belgium	0	0	0			
11	Nepali Embassy, Vienna, Austria	16	13	3	14	11	3
12	Nepali Embassy, Copenhagen, Denmark	99					
	North American and South America						
13	Nepali Embassy, Brasilia, Brazil	0			0		
14	New York Consulates General of Nepal	0			0		
15	Nepali Embassy, Ottawa, Canada	0	0	0	0		
16	Nepali Embassy, Washington D.C.	0	0	0	0		
	Asian Countries						
17	Nepali Embassy, Kuala Lumpur, Malaysia	710			674		
18	Nepali Embassy, Yangon, Myanmar	2	0	2	0	0	0
19	Nepali Embassy, Colombo, Sri Lanka	0	0	0	41	1	40
20	Nepali Embassy, Seoul, South Korea	0	0	0	0	0	0
21	Nepali Embassy, Bangkok, Thailand	35	35	0	12	11	1
22	Nepali Embassy, Tokyo, Japan	11*	10	1			
23	Nepali Embassy, Beijing, China	1	0	1	1	0	1
24	Hong Kong Consulates General of Nepal	0					

25	Lhasa Consulates General of Nepal	0					
26	Nepali Embassy, Islamabad, Pakistan	35	33	2	32	2	30
	Australia						
27	Nepali Embassy, Australia	0					
	Africa						
28	Nepali Embassy, Pretoria, South Africa	12	Na	Na	19		
	Total						

Note: * refers to only applications received for rescue, it may not refer to actual number of rescue. Note that the Jeddah Consulates General of Nepal, Saudi Arabia reported that it has received about 6000 application for rescue of Nepali workers in FY 2019/20 and 2020/21 but it has not provided information about how many of them have been successfully rescued and repatriated to Nepal.

Source: Letter of Department of Consular to NHRC, 2021.

Annex 4.2 Number of MWs arrivals to Nepal from a destination countries v countries from which the labor approval taken, FY 2020/21

SN	Countries	Number arrived from the country	Latest labor approval taken from the country	Number coming other than latest labor approval countries
1	United Arab Emirates	55,166	50,458	-4,708
2	Qatar	47,062	48,400	1,338
3	Saudi Arabia	37,725	42,797	5,072
4	Malaysia	22,412	20,548	-1,864
5	Kuwait	5,380	5,522	142
6	Bahrain	2,748	3,294	546
7	Oman	2,519	2,322	-197
8	Japan	1,815	1,805	-10
9	Afghanistan	1,003	1,171	168
10	Portugal	976	133	-843
11	Jordan	860	829	-31
12	Maldives	857	1,007	150
13	India	652	0	-652
14	Cyprus	432	520	88
15	Turkey	398	323	-75
16	United States of America	390	155	-235
17	Romania	288	524	236
18	Poland	283	1,015	732
19	Seychelles	280	360	80
20	Malta	249	402	153
21	Czech Republic	153	246	93
22	Macao	145	216	71
23	Israel	126	145	19
24	United Kingdom	124	93	-31
25	Sri Lanka	76	56	-20
26	France	73	30	-43
27	Germany	71	65	-6
28	Taiwan	70	0	-70
29	China	65	68	3

30	Singapore	64	79	15
31	Countries not stated	56	0	-56
32	Australia	54	10	-44
33	Egypt	53	28	-25
34	Hong Kong	49	29	-20
35	Lebanon	45	43	-2
36	Canada	44	21	-23
37	South Korea	44	0	-44
38	Croatia	43	193	150
39	Iraq	42	0	-42
40	Italy	41	19	-22
41	Netherlands	39	18	-21
42	Nigeria	39	44	5
43	Russia	39	55	16
44	Nepal	34	0	-34
45	Finland	33	28	-5
46	South Africa	32	3	-29
47	Somalia	29	34	5
48	Brunei Darussalam	28	49	21
49	Ukraine	28	37	9
50	Mauritius	26	29	3
51	Congo	24	0	-24
52	Thailand	24	7	-17
53	Philippines	20	2	-18
54	Uganda	19	19	0
55	Zambia	19	25	6
56	Cambodia	18	16	-2
57	Spain	18	24	6
58	Kenya	17	14	-3
59	Central African Republic	16	2	-14
60	Morocco	16	14	-2
61	Djibouti	15	16	1
62	New Zealand	15	17	2

63	Papua New Guinea	15	19	4
64	Senegal	15	13	-2
65	Comoros	14	9	-5
66	Mali	13	34	21
67	Mozambique	13	20	7
68	Angola	11	13	2
69	Ethiopia	11	6	-5
70	Indonesia	11	11	0
71	Kazakhstan	11	8	-3
72	Pakistan	10	0	-10
73	Tanzania	10	0	-10
74	Belgium	9	4	-5
75	Greece	9	8	-1
76	Myanmar	9	1	-8
77	Bangladesh	8	1	-7
78	Cayman Islands	8	20	12
79	Denmark	8	9	1
80	Sudan	8	10	2
81	Brazil	7	2	-5
82	Burundi	7	7	0
83	Colombia	7	7	0
84	Iran	7	5	-2
85	Malawi	7	9	2
86	Ireland	6	10	4
87	South Sudan	6	8	2
88	Sweden	6	5	-1
89	Tajikistan	6	9	3
90	Azerbaijan	5	7	2
91	Burkina Faso	5	4	-1
92	Estonia	5	10	5
93	Luxembourg	5	6	1
94	Macau	5	0	-5
95	Mauritania	5	0	-5
96	Norway	5	2	-3

97	Sierra Leone	5	5	0
98	Equatorial Guinea	4	4	0
99	Mexico	4	0	-4
100	Moldova	4	0	-4
101	Rwanda	4	5	1
102	Slovenia	4	6	2
103	Uzbekistan	4	3	-1
104	Viet Nam	4	3	-1
105	Austria	3	2	-1
106	Bahamas	3	0	-3
107	Bermuda	3	15	12
108	Falkland Islands	3	0	-3
109	Gambia	3	0	-3
110	Ghana	3	2	-1
111	Lao	3	3	0
112	Libyan Arab Jamahiriya	3	0	-3
113	Lithuania	3	0	-3
114	South Korea	3	23	20
115	Aland Islands	2	0	-2
116	Cameroon	2	1	-1
117	Gabon	2	4	2
118	Hungary	2	4	2
119	Latvia	2	5	3
120	Mongolia	2	0	-2
121	North Sudan	2	0	-2
122	Sao Tome and Principe	2	0	-2
123	Syrian	2	0	-2
124	Yemen	2	0	-2
125	Albania	1	1	0
126	Antigua and Barbuda	1	1	0
127	Argentina	1	0	-1
128	Benin	1	1	0
129	Bhutan	1	0	-1
130	French Polynesia	1	0	-1

131	Guinea	1	0	-1
132	Guinea-Bissau	1	0	-1
133	Honduras	1	0	-1
134	Kosovo	1	1	0
135	Lesotho	1	0	-1
136	Liberia	1	0	-1
137	Niger	1	0	-1
138	Saint Kitts and Nevis	1	0	-1
139	Serbia	1	2	1
140	Macedonia	1	0	-1
141	Turks and Caicos Islands	1	3	2
142	Algeria	0	1	1
143	Bosnia and Herzegovina	0	1	1
144	Chile	0	2	2
145	Dominican	0	1	1
146	Lithuania	0	21	21
147	Malabo	0	2	2
148	Marco	0	3	3
149	Mongolia	0	1	1
150	Panama	0	24	24
151	Peru	0	1	1
152	Bulgaria	0	2	2
153	Congo	0	33	33
154	Macedonia	0	1	1
155	Seychelles	0	6	6
156	Sint Maarten	0	2	2
157	Tanzania	0	13	13
158	Togo	0	2	2
159	Tunisia	0	1	1
160	Uruguay	0	1	1
	Total	183,868	183,868	-9,360

Source: raw data obtained from FEMIS, MOLESS, 2022.

Annex 4.3 Remittance inflow to Nepal, 2000/01 to 2020/21

Year	Size of remittance inflow in Nepal (in million Rs.)	% share of GDP	Per capital income in USD for Nepal
2000/01	47,216.1	10.7	-
2001/02	47,536.3	10.3	-
2002/03	54,203.3	11.0	-
2003/04	58,587.6	10.9	-
2004/05	65,541.2	11.1	-
2005/06	97,688.5	14.9	-
2006/07	100,144.8	13.8	-
2007/08	142,682.7	17.5	-
2008/09	209,698.5	21.2	502
2009/10	231,725.3	19.4	614
2010/11	253,551.6	18.5	718
2011/12	359,554.4	23.5	708
2012/13	434,581.7	25.6	714
2013/14	543,294.1	27.7	737
2014/15	617,278.8	29.0	778
2015/16	665,064.3	29.5	759
2016/17	695,452.4	26.0	887
2017/18	755,058.6	24.8	1010
2018/19	879,271.3	25.4	1051
2019/20	875,000.0	23.2	1098
2020/21*	961,100.0		
2021/22*	986,200.0		

Source: Nepal Rastra Bank (2020) and * for data obtained from DOFE (2022). Power-point presentation by DG of DOFE.

Annex 4.4 Kathmandu Declaration on Dignified Returns and Sustainable Reintegration, 2021

1. Formulate and implement the sectoral policy and long-term action plan and necessary procedures for addressing the dignified return of migrants and their sustainable reintegration by all three-layers of Governments with clarity in definition and concepts of returns and reintegration. Ensure that there is representative of returnee migrant workers in formulation of such policies and programs.
2. Establish the effective institutional mechanism for the return to the country and sustainable reintegration by representing different concerned line Ministries, Departments, Sections and ensure the effective role of National Planning Commission at the Federal Level and Policy and Planning Commission at the Provincial level for the formulation, implementation and monitoring of the programs related to dignified return and sustainable reintegration.
3. Coordinate, cooperate and develop partnership at all three layers of Governments from the United Nations Agencies, development partners, civil society and concerned stakeholders for the necessary resources, technology and information.
4. Carry out the necessary programs to develop the common understanding at all layers of Governments' elected representatives, government staff and stakeholders.
5. Make responsible and activate the Local Governments for the reintegration programs. Reintegration program shall not only be limited as economic activities but it should also include social and political participation of the returnee migrant workers including their leadership development, education, health, social security and enhancing the quality of life.
6. Maintain the disaggregated data of the returnee migrant workers including those from India and update the data regularly. Ensure that Province and Local Government also regularly update such data and allocate budget for carrying out the annual program, sectoral program and periodic plans. Ensure that a comprehensive reintegration programs comprising of employment, self-employment, enterprise development, participation and leadership development be in place.
7. Make the issue of migrant workers and returnees as an agenda for all political parties, policy makers and stakeholders. Ensure that this issue be established not only in economic spheres but it must be embedded in social and political ones, and ensure for the mainstreaming of the issue though adopting the slogan of 'establish the leadership of one who has the agenda'.
8. Ensure that employers and governments of the destination countries are also responsible for sustainable reintegration of the returnee migrant workers, and incorporate this issue in the BLA and MOU. Considering the enduring migrant workers' contribution for the benefits of the destination country through their labor-power, it is essential to make liable the employers and governments of destination countries for sustainable reintegration of the returnees once they return to Nepal.
9. Consider the return of migrant workers and their reintegration as an important element of the migration cycle and formulate and implement the reintegration programs considering the

magnitude of returnee migrant workers and their family members as well.

10. Ensure the rights to information to migrant workers, returnees and their family members on matters like access to employment, self-employment, entrepreneurship development, loan availability, foreign employment security bond, social security schemes and skill development training. Adopt appropriate means of communication and language so that such information can be accessed to migrant workers at abroad, returnees, their family members.
11. Incorporate the different programs of social security schemes to the migrant workers and their family members, and adopt the policy that the social security schemes as in essential pre-requisite for foreign employment and ensure that migrant workers and their family members are brought under the social security schemes.
12. Formulate and implement the integrated policies and programs at all three-layers of Governments for rescue, relief, reunion and reintegration of migrant workers, and develop the program for the rapid rescue in case of emergency and migrant workers at risk of their life.
13. Ensure that the migrant domestic workers shall return the country with their dignity and respectfulness.
14. Formulate the gender-friendly policies and programs for the returnee woman migrant workers and implement the special social security schemes to those who became critically injured or disabled at abroad.
15. Establish the temporary safe houses and long-term reintegration programs for those who were forced to return as a result of disaster, pandemic, problem and at risk.
16. Ensure that the birth registration and identity of the child born from a migrant woman worker who returns with a child or with a pregnancy.
17. Ensure that there is non-discrimination and treating all equal to all Nepali migrant workers at abroad for their rapid rescue, relief, access to justice, psychosocial counseling, and medical treatment including the other reintegration programs. Give the priority according to the theory of social justice and respect of the human rights of all migrant workers.
18. Maintain the data of the returnee migrant workers who are forced to return to the country due to disaster, pandemic and other crisis and loss the wage, jobs and address their problem of reintegration with the effective coordinative role of MOLESS, MOFA and Diplomatic Missions at abroad.
19. Adopt the public-private partnership policy for the sustainable reintegration of the returnee migrant workers by ensuring the participation of private sector, industry, business, academic institutions and financial institutions.

Annex 6.1 Distribution of deaths of migrant workers by causes of deaths, FY 2016/17-2020/21, Nepal

Causes of deaths	2016/17	2017/18	2018/19	2019/20	2020/21	Five-year total number	% of total of five year
Natural causes	246	252	126	136	171	931	21.2
Cardiac arrest	148	64	72	86	104	474	10.8
Traffic accident	103	122	127	115	119	586	13.4
Unidentified causes	32	103	184	210	427	956	21.8
Suicide	109	89	132	111	140	581	13.2
Heart Attack	94	64	114	33	0	305	7.0
Workplace accident	81	61	67	62	26	297	6.8
Others	-	-	-	-	248	248	5.7
Murder	-	-	-	-	2	2	0.01
Investigation pending	-	-	-	-	5	5	0.1
Total	813	755	822	753	1242	4385	100.0

Source: Foreign Employment Board 2019/20; MOLESS (2020) and for data of FY 2020/21, Foreign Employment Board Secretariat (2078BS).

Annex 6.2 Details of the types of benefits offered in SOCSO in Malaysia

	Type of benefits	Descriptions
1	Medical Benefit	<ul style="list-style-type: none"> Free medical treatment at SOCSO clinics or Govt. clinics, hospitals Reimbursement of medical expenses incur in non-SOCSO clinics /hospitals
2	Temporary Disablement, Benefit	<ul style="list-style-type: none"> Medical leave days granted to be certified by a Doctor Daily rate- 80% of the employee's assumed average daily wages subject to minimum rate RM 30 and maximum-rate RM 105.3
3	Permanent Disablement Benefit	<ul style="list-style-type: none"> Causal permanent disablement due to employment injury Daily rate - 90% of the employee's average daily wages subject to minimum rate RM 30 and maximum rate RM 118.5 Claim to be made within 12 months of the last date of the temporary disablement
4	Constant Attendance Allowance	<ul style="list-style-type: none"> Additional payment of RM 500 to be paid If an insured person is suffering from total permanent disablement that requires a personal attendance of another person
5	Rehabilitation facilities	<ul style="list-style-type: none"> Supply of prosthetics, orthotics and new appliances Supply of orthopedics apparatus such on wheelchair, crutches hearing aid, spectacles, special school and other rehabilitation treatment
6	Funeral benefit	<ul style="list-style-type: none"> Paid to the eligible person when a foreign worker has passed away due to of employment injury Maximum amount- USD 1,570 foreign work passes away in Malaysia and the remains way reported in the country of origin = US\$ 485.91
7	Dependents' Benefit	<ul style="list-style-type: none"> If an employee has passed away due to an employment injury, the dependents are entitled to this benefit Rate of daily benefit 98% of the assumed average assumed daily wage, subject to the minimum rate of USD 7.29 per day and maximum rate of USD 28-79 per day

Note: Dependents eligible for this benefit and share of the daily rate for each dependent is allocated in following priority: widow/widower 3/5 share of the benefits; children 2/5 share of benefit; mother/father 4/10 of benefit; siblings 3/10 of benefits and grandparents (if employer does not have parents) 4/10 of the benefits.

Source: Source: Power point Presentation of PERKESO on March 22, 2022 (Courtesy visit from the National Human Rights Commission of Nepal).

Annex 7.1 Details of services recipients related to foreign employment from SaMi project

Details	2016/17	2017/18	2018/19	2019/20	2020/21	Five-yearly average (2016/17-2020/21)
Number of service recipients at MRC (person)	118,181	113,766	87,377	78,936	71,000	93,852
Legal assistance and counseling (person)	2,091	2,905	3,015	3,152	2,451	2,723
Skill development (person)	3,061	1,263	1,229	1,120	277	1,390
Psychosocial counseling services (person)	2,805	3,304	2,117	15,676	17,183	8,217
Financial literacy	1,571	1,780	717	3,180	14,421	4,334
Total	127,709	123,018	94,455	102,064	105,332	110,516

Source: cited in Ministry of Finance, 2021. *Economic Survey 2020/21*. * Till Mid-March.

Annex 7.2 Status of foreign employment related activities by the Local Levels, 2021

	Name of Local Levels	Has the Local Level formulated any policy, guideline or directive related to foreign employment?	Has the Local Level initiated any annual program related to foreign employment?	Has the Local Level initiated to collect the data related to foreign employment according to the Local Government Operation Act 2018?
	Province 1			
1	Damak Municipality, Jhapa	Yes	Yes	Yes
2	Gauradaha Municipality, Jhapa	No	No	Yes, being implemented
3	Jahada Rural Municipality, Morang	No	No	Yes, the data of foreign migrant provided
4	Dhaknuta Municipality, Dhaknuta	No	Yes, Migration resource center established	Yes
	Gandaki Province			
1	Vimad Municipality, Tanahu	No	Yes	Yes
2	Sundar Bazar Municipality, Lamjung	No	No	Yes, but initiated only
3	Malika Rural Municipality, Myagdi	No	Yes, run PM self-employment program to returnees	Yes, Ward office initiated
4	Chapakot Municipality, Syanja	No	No	Yes, collected data during the Covid-19 crisis
5	Paiyau Rural Municipality, Parbat	No	No	Yes, but no detail given
6	Mangala Rural Municipality, Myagdi	No	No annual, but program under the PM employment	No
7	Adhikohola Rural Municipality, Syanja	No	No	No, but planning to collect data

Source: the letter of the corresponding Municipality to NHRC, 2021.

Annex 7.3 Distribution of international migrants of Vimad Municipality, Tanahu, 2020

	Male	Female	Total	%
Ward Numbers				
1	339	21	360	12.4
2	307	13	320	11.1
3	178	3	178	6.2
4	155	7	162	5.6
5	296	12	308	10.6
6	661	48	709	24.5
7	271	46	317	11.0
8	252	12	264	9.1
9	255	20	275	9.5
Destination country				
India	556	50	606	21.0
Qatar	469	7	476	16.5
United Arab Emirates	449	10	459	15.9
Malaysia	141	0	141	4.9
Kuwait	82	2	84	2.9
Japan	52	31	83	2.9
Australia	38	21	59	2.0
United Kingdom	31	15	46	1.6
United States of America	27	14	41	1.4
South Korea	37	3	40	1.4
Bahrain	16	0	16	0.6
Germany	6	4	10	0.3
Poland	10	0	10	0.3
Maldives	9	0	9	0.3
France	8	0	8	0.3
Canada	1	0	5	0.1
New Zealand	4	0	4	0.14
Thailand	2	2	4	0.14
Singapore	3	0	3	0.1
Bangladesh	2	0	2	0.07
China	2	0	2	0.1
Belgium	1	1	2	0.1
Sri Lanka	1	0	1	0.0
Vietnam	1	0	1	0.0
Others	769	21	782	27.0
Total	2711	182	2893	100.0

Source: Vimad Municipality letter to NHRC, 2021.

Annex 7.4 An overview of NHRC press notes, recommendations, study reports, conference reports related to respect, protect and fulfil the rights of migrant workers

Date	Themes
Press Releases/Notes	
17 August 2021	Immediately rescue the Nepalese citizens from Afghanistan
16 July 2021	Request and communication for ensuring the vaccination against Covid-19 to the migrant workers
15 June 2021	Request to ensure the access to health care services to persons with disability, indigenous and Janjati and migrant workers in the context of Covid-19
18 December 2020	The MOU between NHRC Nepal and NHRC Malaysia extends for one-year
13 August 2020	Rights of migrant workers in the clutches of Covid-19 pandemic study report 2020 is made public – the Commission recommends ensuring the rights of the Nepali migrant workers (recommendation in 9 areas)
27 April 2020	Ensure the protection of rights of the detainees, students and migrant workers
14 February 2020	Request to provide factual information with regard to the deaths and injuries of Nepali migrant workers in Kuwait
13 November 2019	Barriers on the rights of migrant workers: lack of ethical and responsible recruitment practice and access to justice
18 December 2018	NHRC monitored Tribhuvan International Airport
1 February 2018	Discussion between the UN Special Rapporteur on the Human Rights of Migrant Workers and the Chairperson of the Commission
20 June 2016	Concern expressed over the safety of all migrant workers
14 November 2015	NHRC Team lead by the Chairperson proceed to Qatar to promote rights of Nepali migrant workers
Recommendation for Implementation	
7 September 2018	Ensure for combating the human trafficking and transportation
10 March 2018	Recommendation related to rights of migrant workers (16 points)
3 July 2016	Ensure for combating the human trafficking and transportation
Research Reports	
2020	Rights of Migrant Workers in the Clutches of Covid-19 pandemic
November 2019	The Situation of Rights of Migrant Workers, Recruitment Process and Access to Justice of Migrant Workers
2018	Efforts of NHRC in Protection of Rights of Migrant Workers 2075
Sept 2013	Human Rights Situation of Nepalese Migrant Workers, South Korea and Malaysia, 30 Aug-7 Sept, 2013
Conference Report	
2020	International Conference on Protection of rights of migrant workers, 12-14 November 2019
November 2012	International Conference on the Rights of Migrant Workers, 26-27 November 2012

Source: compiled from the different NHRC documents.

