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MASTER THESIS / MASTER'S THESIS

Titel / Title

„Examining the Implementation of Human Rights for Migrant Workers under
International Law, with a focus on Combating Forced Labour: A Case Study
Approach in Nepal“

verfasst von / submitted by

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angestrebter akademischer Grad / in partial fulfilment of the requirements for the degree
of
Master of Laws (LL.M.)

Wien 2024 / Vienna 2024

Studienkennzahl lt. Studienblatt /

UA 999 081

Postgraduate programme code as it appears on
the student record sheet:

Universitätslehrgang lt. Studienblatt /

International Law

Postgraduate programme as it appears on
the student record sheet:

Betreut von / Supervisor:

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ACKNOWLEDGMENT

I would like to express my sincere gratitude to everyone who supported and guided me throughout the journey of completing this thesis.

I want to thank the department of International Law at the Law Faculty of the University of Vienna and Soroptimist International of Europe for this opportunity and their support throughout this process and program.

My appreciation goes to my previous workplace, People Forum for Human Rights, based in Kathmandu, for guiding me and providing me with the details on their ongoing research and projects.

My heartfelt thanks go to my family and friends for their endless encouragement and understanding during this challenging period. Their moral support has helped me stay focused and motivated.

Abstract

The thesis examines the rights of Nepali migrant workers under international law, focusing on their employment abroad. It analyzes how international legal frameworks, including ILO standards, protect these workers from exploitation and abuse. It also examines whether such international standards have been incorporated in Nepal. Furthermore, it analyzes the intersection of international and national laws, evaluating mechanisms for redress and barriers to justice. The study examines issues of forced labor and human rights violations, assessing how sending countries address these challenges. Through case studies of Nepali migrants who had been victims of forced labour, the research highlights the effectiveness and shortcomings of the existing laws and regulations. The thesis aims to provide insights into the protection of migrant workers, offering recommendations for strengthening legal frameworks and improving enforcement to better safeguard the rights of Nepali migrants globally.

Abstrakt

Die Arbeit untersucht die Rechte nepalesischer Arbeitsmigranten nach internationalem Recht, wobei der Schwerpunkt auf ihrer Beschäftigung im Ausland liegt. Es wird analysiert, wie internationale rechtliche Rahmenbedingungen, einschließlich ILO-Normen, diese Arbeiter vor Ausbeutung und Missbrauch schützen. Es wird auch untersucht, ob solche internationalen Standards in Nepal übernommen wurden. Darüber hinaus analysiert es die Überschneidung von internationalem und nationalem Recht und bewertet Mechanismen für Wiedergutmachung und Hindernisse für Gerechtigkeit. Die Studie untersucht Fragen der Zwangsarbeit und Menschenrechtsverletzungen und bewertet, wie die Entsendeländer mit diesen Herausforderungen umgehen. Anhand von Fallstudien nepalesischer Migranten, die Opfer von Zwangsarbeit geworden sind, beleuchtet die Forschung die Wirksamkeit und die Mängel der bestehenden Gesetze und Vorschriften. Ziel der Arbeit ist es, Einblicke in den Schutz von Arbeitsmigranten zu geben und Empfehlungen zur Stärkung der rechtlichen Rahmenbedingungen und zur Verbesserung der Durchsetzung zu geben, um die Rechte nepalesischer Migranten weltweit besser zu schützen.

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List of Abbreviations

CMW	Committee on Migrant Workers
CBS	Central Bureau of Statistics
FEA	Foreign Employment Act
FLeAG	Forced Labor Elimination Advocacy Group
GA	General Assembly
GCC	Gulf Cooperation Council
GCM	Global Compact for Migration
GoN	Government of Nepal
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
ILO	International Labour Organization
MoLESS	Ministry of Labour, Employment and Social Security
MoU	Memorandum of Understanding
MWR	Migrant Workers' Rights
NCPA	National Child Protection Alliance
NHRC	National Human Rights Commission
NLFS	Nepal Labour Force Survey
PRA	Private Recruitment Agency
SAARC	South Asian Association on Regional Cooperation
SDG	Sustainable Development Goals
UNDP	Universal Declaration of Human Rights
UNODC	United Nations Office on Drugs and Crimes

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CHAPTER I

INTRODUCTION

As per Global Estimates 2021, 27.6 million people are in the situation of forced labour on a day, which would be 3.5 people for every thousand people in the world. Women and girls account for 11.8 million of the total,¹ while over 3.3 million children are trapped in forced labor.² The incidence of forced labor has been on the rise in recent years. According to a report by the International Labour Organization (ILO), the number of people in forced labor increased between 2016 and 2021.³ The Asia-Pacific region has the highest number, with 15.1 million individuals in forced labor⁴ which accounts to over half of the global total and more than three times the number in Europe and Central Asia, the region with the next highest figure.⁵ However, these statistics vary significantly depending on regional population sizes.⁶ When forced labor is assessed proportionally, the Middle East ranks highest at 5.3 per thousand people, followed by Europe and Central Asia at 4.4 per thousand, 3.5 per thousand in both the Americas and Asia-Pacific, and 2.9 per thousand in Africa.⁷

Forced labour practice exists in different sectors of Nepal. There is no single comprehensive national law on forced labour in Nepal, but a number of laws and regulations exist that directly or indirectly contribute to end forced labour in Nepal. These laws include the Constitution of Nepal 2015, Labour Act 2017, Kamaiya Labour (Prohibition) Act 2002; Human Trafficking and Transportation (Control) Act 207,; Foreign Employment Act 2007, Foreign Employment Policy 2008, and Child Labour (Prohibition and Regulation) Act 2000.

Nepal ratified the ILO Forced Labour Convention 1930 (C029) in 2002. According to the Convention, forced or compulsory labour includes any work or service that is demanded from someone under the threat of punishment, where the person has not willingly consented to

¹ International Labour Organization (ILO), Walk Free, and International Organization for Migration (IOM), *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*, Geneva, 2022, ISBN: 978-92-2-037483-2, 22 <<https://www.ilo.org/publications/major-publications/global-estimates-modern-slavery-forced-labour-and-forced-marriage>> accessed 26 August 2024

² Ibid.

³ Ibid.

⁴ Ibid., 23

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

undertake the work.⁸ The ILO identified 11 indicators of forced labour including: Abuse of vulnerability, deception, restriction of movement, isolation, physical and sexual violence, intimidation and threats, retention of identity documents, withholding of wages, debt bondage, abusive working and living condition and excessive overtime.⁹ The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, 2000 (Palermo Protocol) has also been ratified in 2020, which defines forced labour as a type of exploitation to which victims of trafficking can be subjected.

The migration of Nepali workers in search of better employment opportunities abroad is a significant aspect of Nepal's economic landscape. However, this pursuit of improved livelihoods often exposes them to severe vulnerabilities and exploitation in foreign labor markets. Despite the substantial contribution of remittances to Nepal's economy, Nepali migrant workers frequently encounter a range of challenges, including inadequate protection, legal ambiguity, and extreme working conditions.

This thesis explores the vulnerabilities faced by Nepali migrant workers during their foreign employment. It examines the systemic gaps in legal frameworks and support systems that fail to safeguard their rights effectively, and the profound impact of misinformation and inadequate pre-departure training on their well-being. It also examines the lack of awareness within the migrant workers making them even more vulnerable to labour exploitation. By analyzing these issues, this research aims to provide a comprehensive understanding of the struggles Nepali migrant workers endure and to identify actionable strategies for improving their conditions. Through a critical examination of enforcement shortcomings and the role of various stakeholders, including government bodies, recruitment agencies, and civil society organizations, this thesis seeks to highlight the urgent need for enhanced protection mechanisms and informed support systems to ensure that Nepali workers can pursue employment abroad without falling prey to exploitation and abuse.

Nepal has adopted the Constitution of Nepal 2015 and Labour Act 2017 which criminalizes forced labour and human trafficking. The GoN has enacted the Human Trafficking and

⁸ ILO, Forced Labour Convention, 1930 (No. 29), Article 2 (1)

⁹ ILO Indicators of Forced Labour, Special Action Programme to Combat Forced Labour, <https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-yangon/documents/publication/wcms_227848.pdf> accessed on 25 July 2024

Transportation (Control) Act 2007 and the Foreign Employment Act 2007. The Foreign Employment Act governs the labour migration process and includes the labour approval process to be followed by the workers. It further provides for compensation to workers in case of exploitation including fraud and non-payment of salary. The Human Trafficking and Transportation (Control) Act provides preventive measures on human trafficking and provides higher punishment for the crime of human trafficking than in foreign employment cases. However, certain gaps in these laws can be detected. For instance, The Foreign Employment Act provides a good compensatory provision in case of exploitation¹⁰ but does not state any specific provision on forced labour and trafficking. On the other hand, the Human trafficking Act states high punishment for culprits but less compensation for victims in the case of human trafficking and no compensation in the case of human transportation.¹¹ And therefore, both systems lack a case referral mechanism.

GoN is in the process of amending both the Human Trafficking and Transportation Control Act 2007 and the Foreign Employment Act 2007. In this context, this review of cases will be instrumental as it aims to draw some recommendations for this legislative reform to fill gaps in the law and align them to international standards. These legal frameworks will be discussed further in the upcoming chapters.

Research Objective

Throughout my experience providing legal aid assistance to victims of migrant worker exploitation, I have witnessed firsthand the dire need for comprehensive understanding and effective advocacy in this critical area. My time in the field has revealed the systemic challenges and injustices faced by migrant workers, many of whom are unaware of their rights and vulnerable to exploitation and abuse. By focusing on this topic, I aim to deepen my understanding of international legal frameworks, particularly the Universal Declaration of Human Rights (UDHR) and the ILO Convention, and analyze how these principles align with

¹⁰ Cheating, non-payment or less payment of salary, etc.

¹¹ Foreign Employment Act 2007, Section 4(2): “If anyone commits any of the following acts, that shall be deemed to have committed human transportation: (a) To take a person out of the country for the purpose of buying and selling, (b) To take anyone from his/her home, place of residence or from a person by any means such as enticement, inducement, misinformation, forgery, tricks, coercion, abduction, hostage, allurement, influence, threat, abuse of power and by means of inducement, fear, threat or coercion to the guardian or custodian and keep him/her into ones custody or take to any place within Nepal or abroad or handover him/her to somebody else for the purpose of prostitution and exploitation.”

the rights and protections afforded to migrant workers. Because there is a huge issue of unemployment prevailing in Nepal, many people are willing to work abroad, and in such desperation, they fall victim to being scammed, cheating and grave human rights abuse and exploitation. The aim of this thesis is to study the national laws and international laws ratified in Nepal and to study cases based in Nepal, to examine the intersection of international law, human rights, and forced labor within the specific context of Nepal. It also studies the access to justice of the victims of forced labor and in the end it aims to provide recommendations for the policymakers and civil society units.

Research Methodology:

The study is based on a literature review. It consists of primary sources such as legal documents, government reports, and official statistics related to forced labor and migrant workers' rights in Nepal. Similarly, secondary sources consist of books, handbooks, academic articles, reports from international organizations (e.g., ILO, UN agencies), NGO publications, journals and online newspapers focusing on forced labor and human trafficking. Data has been gathered which involves reviewing legal documents and policies, and analyzing case studies of specific incidents or legal cases related to forced labor among migrant workers in Nepal.

CHAPTER II

LITERATURE REVIEW

2.1 Background on Migrant Workers' Rights

The International Organization for Migration (IOM) Glossary on Migration technically defines a migrant as “an umbrella term, not defined under international law, reflecting the common lay understanding of a person who moves away from his or her place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons.”¹² The term encompasses several well-defined legal categories of individuals, such as migrant workers and those whose movements are legally regulated, like smuggled migrants and it also includes individuals whose status or means of movement are not specifically defined under international law, such as international students.¹³ A migrant worker is someone who is employed, has been employed, or is set to be employed in a paid activity in a country where they do not hold citizenship.¹⁴ These workers are further classified as "documented" or "undocumented." A documented migrant worker, or their family members, is authorized to enter, reside, and work in the host country according to its laws.¹⁵ Conversely, an undocumented migrant is one who lacks legal authorization to enter, stay, or work in the host country under its laws and international agreements to which the country is a party.¹⁶

2.2 Brief History

Nepal has experienced three notable phases of internal migration throughout its history.¹⁷ The first phase occurred during the country's unification, starting in 1743 and continuing into the early 18th century.¹⁸ The second phase began in the mid-1950s with a government-led

¹² Definition of “migrant”, IOM <<https://www.iom.int/key-migration-terms>> accessed 28 August 2024

¹³ Ibid.

¹⁴ Ibid. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICPRMW) 1990, 2220 UNTS 3, Art. 2(1); ILO, ‘Intervention Model: For extending social protection to migrant workers in an irregular situation’ (2021) <https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_protect/@protrav/@migrant/documents/publication/wcms_826719.pdf> accessed 28 August 2024

¹⁵ Ibid. ICRMW 1990, article 5(a).

¹⁶ Ibid. ICRMW 1990, a 5(b).

¹⁷ IOM, ‘Baseline Study on Cross-border Migration’ IOM, Kathmandu (2023), 20 <<https://publications.iom.int/books/baseline-study-cross-border-migration>> accessed 28 August 2024

¹⁸ Ibid.

resettlement program and then the third wave coincided with the introduction of democracy in 1951 and efforts to achieve planned socioeconomic development.¹⁹ Traditionally, internal migration was primarily directed towards the east along the hill regions. Until the 1950s, the Terai region was heavily affected by malaria,²⁰ but once the disease was brought under control in the mid-1950s, migration to the south increased significantly.²¹ Regarding cross-border migration, the development of industries in the Terai during the 1930s attracted workers from North India, while Nepalese migrants sought low-skilled employment opportunities in India.²²

In 1951, following the establishment of democracy in Nepal, a significant number of individuals who had been politically exiled in India and feared persecution by the Rana regime returned to Nepal.²³ Many years later, the Maoist Insurgency led hundreds of thousands of people to cross the border in search of work and safety from conflict.²⁴

In Nepal, labor migration abroad has become a common strategy to enhance living conditions. Starting from the mid-1980s, there has been a growing trend of Nepalese migrating to the Gulf Cooperation Council (GCC) countries and Malaysia for employment.²⁵ Additionally, many people have sought better job prospects in countries like Australia, Japan, South Korea, and the United States.²⁶ Some also cross borders illegally, heading to places such as Europe, the United States, and the GCC as smuggled (or undocumented) migrants.²⁷ Migration trends in Nepal can generally be divided into internal migration, migration to India, and migration to other countries, often referred to as "foreign employment" within Nepal.

A total of 3,210,848 Nepalese were residing in various destination countries, with the top five being India, Malaysia, Qatar, Saudi Arabia, and the United Arab Emirates, accounting for over

¹⁹ Ibid.

²⁰ Ibid.; Ministry of Health and Population (MoHP), Government of Nepal, 2011

²¹ Ibid.; Gautam, T.R., 2008, Migration and the Problem of Old Age People in Nepal. *Dhaulagiri Journal of Sociology and Anthropology*, 2:145 - 162

²² Ibid.; Subedi, S. P. (2008) The Himalayan Kingdoms of Nepal and Bhutan. International Center for Law and Religion Studies. <[https://classic.iclrs.org/content/blurb/files/Subedi%20Nepal%20-%20Max%20Planck%2029%20May%2008%20\(3\).pdf](https://classic.iclrs.org/content/blurb/files/Subedi%20Nepal%20-%20Max%20Planck%2029%20May%2008%20(3).pdf)> accessed on 20 July 2024

²³ Ibid.; Subba, T. 2002, Nepal and the Indian Nepalis. In: State of Nepal (K. Dixit and S. Ramachandran ed.). Koirala India-Nepal Foundation 2022, Himal Books. Lalitpur, Nepal.

²⁴ Ibid.; Dhungana, S.K. (ed.), The Maoist Insurgency and Nepal-india Relations: Friends for Peace. Kathmandu, Nepal, 2006

²⁵ Ibid.; National Planning Commission (NPC), Government of Nepal, 2020b.

²⁶ Ibid.; IOM, 2019.

²⁷ Ibid.; United Nations Office on Drugs and Crime (UNODC) 2018

70% of Nepalese migrants abroad.²⁸ According to indirect estimates from national surveys conducted by the Central Bureau of Statistics (CBS), such as the Nepal Labour Force Survey (NLFS) 2017/18, the number of Nepalese migrants in India alone is reported to be 976,625.²⁹

2.3 Definition of Forced Labour

According to the International Labor Organization (ILO), forced/compulsory labour is defined as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself/herself voluntarily.”³⁰ This means “situations in which persons are coerced to work through the use of violence or intimidation, or by more subtle means such as manipulated debt, retention of identity papers, or threats of denunciation to immigration authorities.”

The “menace of penalty” in the context of forced labor under the definition of Convention against Forced Labour can take multiple forms.³¹ The most extreme involves physical violence or restraint, or even death threats to the victim or relatives, with the subtle forms sometimes of a psychological nature.³² Some examples of forced labour are³³ threats of denunciation to the police or immigration authorities when a victim’s employment status is irregular, i.e. undocumented;³⁴ denunciation to village elders, in the case of girls forced into commercial sex trade in the cities;³⁵ economic penalties linked to debts in order to exact bonded labour;³⁶ non-payment of wages or the threat of loss of wages, accompanied by threats of dismissal if a worker refuses to do overtime beyond the scope of their contract or national law;³⁷ or threat of confiscation of identity papers in order to exact forced labour.³⁸

²⁸ NPC, Government of Nepal, 2020b.

²⁹ Ibid.

³⁰ Ibid. ILO Forced Labour Convention (No. 29), article 2(1)

³¹ ILO, Migrant Workers’ Rights - A Handbook, Jakarta, International Labour Office (2007), 19
<<https://www.ilo.org/media/324431/download>> accessed 28 August 2024

³² Ibid.

³³ ILO, A Global Alliance against Forced Labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Geneva, 2005, p. 5.

³⁴ ILO, Migrant Workers’ Rights - A Handbook, Jakarta, International Labour Office (2007), 19
<<https://www.ilo.org/media/324431/download>> accessed 28 August 2024

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid.

Forced labour is a severe violation of human rights and an infringement on individual freedom; it goes beyond merely inadequate wages or poor working conditions. It also does not encompass situations driven solely by economic necessity, such as when an employee feels trapped in a job due to a lack of other employment opportunities, whether real or perceived.³⁹

On the other hand, bonded labour is recognized as a system of forced labor in which individuals or families are compelled to relinquish their basic rights to fulfill a financial obligation.⁴⁰ This system is often seen in practices such as debt bondage and bonded labor.

Debt bondage refers to a situation where a debtor offers their personal services, or those of someone under their control, as collateral for a debt. If the value of these services is not appropriately used to reduce the debt, or if the duration and conditions of the services are not clearly defined and limited, the debtor is trapped in this state of bondage.⁴¹

A bonded labourer is someone who works under conditions imposed by economic pressures, particularly due to indebtedness. In cases where debt is the root cause, the laborer (and possibly their dependents or descendants) remains bound to a creditor until the debt is fully repaid,⁴² regardless of how long it takes. For instance, a grandfather might take out a loan from an employer and work in a rice mill or brick kiln to repay it. His son might continue working to settle the debt when he is old enough, and the grandson may find himself in the same predicament. If anyone attempts to leave, they may face severe consequences such as being tracked down and assaulted, a reality faced by some migrant workers.⁴³

While working abroad can offer liberation and empowerment, and many migrant workers, along with their families and communities, benefit from these experience,⁴⁴ It also comes with

³⁹ Ibid.

⁴⁰ ILO, *A Global Alliance against Forced Labour: Global Report* (under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Geneva, 2005), 5

⁴¹ UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery [1965], Article 1 (a).

⁴² OECD, *Bilateral Labour Agreements: Evaluation and Prospects - Report for Seminar*, Jointly Organised by the OECD and the Swiss Federal Office of Immigration, Integration and Emigration (IMES), Montreux, 19-20 June, 2003, p.5.

⁴³ P. Parameswaran, 'RI Woman's Mutilation Highlights Asia's Human Trafficking Woes' *Jakarta Post* (Wednesday 7 July 2006)

⁴⁴ International Labour Organization, *Migrant Workers' Rights - A Handbook*, Jakarta (International Labour Office, 2007) p. 20.

significant risks.⁴⁵ Migrant workers are particularly vulnerable in foreign countries where they are beyond the legal protection of their home country and do not fully benefit from the laws of the host country.⁴⁶

Increasing unemployment, economic challenges, and fears of terrorism have fueled xenophobia and racism, leading to more hostile attitudes towards migrants. Female migrant workers are especially susceptible to discrimination, exploitation, abuse, and forced labor, as labor markets in host countries often mirror the gender inequalities of their home country.⁴⁷

In host countries, migrant workers frequently face multiple layers of discrimination, disadvantage, marginalization, or vulnerability. This is due to their status as foreigners, women (for female workers), and individuals who may differ in language, culture, ethnicity, or religion from the native population. Moreover, the nature of the jobs that many migrant workers occupy often exacerbates these vulnerabilities.⁴⁸

In certain circumstances, the presence of a single indicator might suggest the occurrence of forced labour.⁴⁹ However, in other instances, multiple indicators may need to be considered collectively to determine whether forced labour is involved.⁵⁰ The comprehensive set of eleven indicators identifies the primary elements of forced labour and serves as a framework for evaluating whether a worker is a victim of this crime.⁵¹

⁴⁵ International Labour Organization, *Migrant Workers' Rights - A Handbook*, Jakarta, International Labour Office, 2007, p. 20.

⁴⁶ ILO, Preventing Discrimination, Exploitation, and Abuse of Women Migrant Workers: And Information Guide, Booklet 1 – Decision Making and Preparing for Employment Abroad, ILO Gender Promotion Programme, Geneva, 2003, p. 15 – 23.

⁴⁷ ILO, above n 37.

⁴⁸ International Labour Organization, *Migrant Workers' Rights - A Handbook*, Jakarta, International Labour Office, 2007, p. 20.

⁴⁹ ILO Indicators of Forced Labour, 'Special Action Programme to Combat Forced Labour', International Labour Office <https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_203832.pdf> accessed 29 August 2024

⁵⁰ Ibid.

⁵¹ Ibid.

CHAPTER III

Laws (National and International)

Article 17(2)(e) of the Constitution of Nepal 2015 guarantees every citizen with the fundamental right to freedom of movement and residence in any part of Nepal.⁵² The Constitution also ensures rights of citizens to seek employment opportunities, including rights relating to labour. In order to regulate and manage the process of sending Nepali workers abroad for employment, the Government of Nepal adopted the Foreign Employment Act in 2007 and Foreign Employment Rules in 2008.⁵³

However, the FEA failed to address the issues of labour migration of Nepali citizens to India.⁵⁴ The Foreign Employment Policy (FEP) which was adopted in 2012, is formulated to give direction to the effective management of foreign employment keeping the views on overcoming the shortcomings of the prevailing Acts and Rules.⁵⁵ This policy attempts to incorporate the provisions of various international conventions, including the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, 1966, Convention on the Elimination of All Forms of Discrimination Against Women, 1979, Convention on the Rights of Child, 1989, and ILO Convention 97 – Migration for Employment Convention (Revised), 1949, and ILO Convention 143 Migrant Workers (Supplementary Provisions) Convention, 1975.⁵⁶ The FEP further highlights the development of safe migration of Nepali migrant workers and carried out a memorandum of understanding with Malaysia in 2018, Jordan in 2017, Israel in 2015, Bahrain in 2008, Qatar in 2005, UAE in 2007, South Korea in 2007 and Japan in 2009.⁵⁷ Moreover, the GoN has also signed a Bilateral Agreement (BLA) with the major destination countries⁵⁸ with the aim to promote the rights, safety, dignity, and prosperity of Nepali migrant

⁵² Constitution of Nepal 2015, s. 17(2)(e)

⁵³ Som Niroula and Kamal Thapa Kshetri, *Policies and Protection for the Migrants of Nepal* (Mahanirban Calcutta Research Group, 2022), 3 <<http://www.mcrg.ac.in/PP143.pdf>> accessed 26 August 2024

⁵⁴ Ibid.

⁵⁵ Laxman Singh Kunwar, 'Foreign Labour Migration and Governance in Nepal' (2020) 115, 124 <[https://www.nepjol.info/index.php/jpd/article/download/33110/26069#:~:text=Foreign%20Employment%20Policy%202012&text=Policy%20is%20guided%20to%20make,migration%20\(GoN%2C%202012\).>](https://www.nepjol.info/index.php/jpd/article/download/33110/26069#:~:text=Foreign%20Employment%20Policy%202012&text=Policy%20is%20guided%20to%20make,migration%20(GoN%2C%202012).>) accessed 26 August 2024

⁵⁶ Ibid.

⁵⁷ Som Niroula and Kamal Thapa Kshetri, *Policies and Protection for the Migrants of Nepal* (Mahanirban Calcutta Research Group, 2022), 3 <<http://www.mcrg.ac.in/PP143.pdf>> accessed 26 August 2024

⁵⁸ Ibid.

workers.⁵⁹ The new constitution was drafted, and other laws have been amended. However, the FEP has not been amended since it was adopted in 2011. There is a legal provision in the policy which states that it “shall be reviewed on each five years and reformed as necessary”.⁶⁰ Despite this, no concern or question has been raised by the authorities to amend the foreign policy as it needs to incorporate some of the basic principles of the GCM, Abu Dhabi Dialogue and Colombo Process.⁶¹

It is crucial to reassess the Foreign Employment Policy (FEP) to address pressing issues such as wage theft, compensation during pandemics like COVID-19, recruitment fees, voting rights for migrant workers, and access to justice both in destination countries and in Nepal.⁶² The FEP's primary objective has been to equip Nepalese citizens with knowledge and skills through training, aiming to develop a skilled, empowered, and competitive labor force that meets the demands of the global market, while ensuring a safe, organized, and dignified environment for foreign employment.⁶³ The policy emphasizes worker safety and protection, including establishing institutional mechanisms for monitoring.⁶⁴ It also recognizes the growing recruitment of female migrant workers, particularly in domestic roles⁶⁵ and the expanding care sector,⁶⁶ as well as the importance of remittances for migrant workers' families.⁶⁷

Nepal is a member of various international organizations and treaties that safeguard migrant workers, such as the Universal Declaration of Human Rights (UDHR) 1948, the International

⁵⁹ ILO, *Recruitment of Migrant Workers from Nepal: Country Profile* (Geneva: ILO, Fundamental Principles and Rights at Work Branch, 2021)

<https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipec/documents/publication/wcms_814432.pdf> accessed 26 August 2024

⁶⁰ Foreign Employment Policy 2012, Chapter 12(b)

<https://www.skills.gov.np/uploads/newsFiles/4594_eccf972dfee35fdc1e7ae3c2334751fb_1478599773_2.pdf> accessed 26 August 2024

⁶¹ Som Niroula and Kamal Thapa Kshetri, *Policies and Protection for the Migrants of Nepal* (Mahanirban Calcutta Research Group, 2022), 3 <<http://www.mrcg.ac.in/PP143.pdf>> accessed 26 August 2024

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Human Rights Watch, “‘I Already Bought You’: Abuse and Exploitation of Female Migrant Domestic Workers in the United Arab Emirates” (USA: Human Rights Watch, 22 October 2014)

<<https://www.hrw.org/report/2014/10/22/i-already-bought-you/abuse-and-exploitation-female-migrant-domestic-workers>> 29 August 2024

https://www.hrw.org/sites/default/files/reports/uae1014_forUpload.pdf.

⁶⁷ Paras Kharel, “Remittances as Development Resources: The Experience of Nepal,” paper presented at Asia-Pacific Regional Meeting on Implementing the Istanbul Programme of Action, Bangkok, December 14-16, 2011 <https://www.sawtee.org/Research_Reports/R2011-02.pdf> accessed 17 July 2024

Covenant on Civil and Political Rights (ICCPR) 1966, the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966, the Global Forum on Migration and Development (GFMD), the New York Declaration for Refugees and Migrants 2016, the Abu Dhabi Dialogue, the Colombo Process, and the Sustainable Development Goals (SDGs) 2016-2030.⁶⁸ Nepal has adopted the SDGs to improve its citizens' livelihoods,⁶⁹ with a focus on goals that are interconnected. Specifically, Goal 8 on decent work and economic growth and Goal 10 on reduced inequalities underscore the rights of migrant workers.⁷⁰

Implementing SDG 8 is essential for expanding employment opportunities, formalizing jobs, creating a safe and secure environment for women, and narrowing the gender gap in employment.⁷¹ It also emphasizes the importance of technological diversification, skill development, decent job creation, and entrepreneurship. In March 2021, the Nepalese government participated in the Global Compact Volunteer Review Process survey conducted by the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) to assess the progress made by stakeholders in implementing the Global Compact for Migration (GCM).⁷² The survey highlighted that poverty is a significant driver of migration from Nepal, and a major challenge remains in curbing human trafficking while pursuing foreign employment opportunities.⁷³

The government has initiated several programs, such as the Prime Minister Employment Programme (PMEP), the establishment of Employment Service Centers (BSC), and the Vocational and Skill Development Training Academy (VSTDA).⁷⁴ Nepal has made strides in implementing the GCM at the national level and is working to establish Bilateral Agreements

⁶⁸ Som Niroula and Kamal Thapa Kshetri, *Policies and Protection for the Migrants of Nepal* (Mahanirban Calcutta Research Group, 2022), 4 <<http://www.mcrg.ac.in/PP143.pdf>> accessed 26 August 2024

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Ministry of Labour, Employment and Social Security, Nepal, and United Nations ESCAP, Nepal-GCM Voluntary National Report (Regional Review: Asia and the Pacific), Survey conducted to inform the Asia-Pacific Regional Review of Implementation of the Global Compact for Safe, Orderly and Regular Migration Bangkok, (10-12 March 2021), January 13, 2021, <<https://migrationnetwork.un.org/resources/nepal-gcm-voluntary-national-report-regional-review-asia-and-policies>> accessed 15 July 2024

⁷³ Som Niroula and Kamal Thapa Kshetri, *Policies and Protection for the Migrants of Nepal* (Mahanirban Calcutta Research Group, 2022), 4 <<http://www.mcrg.ac.in/PP143.pdf>> accessed 26 August 2024

⁷⁴ Ibid.

(BLA) and Memoranda of Understanding (MoUs) with potential destination countries.⁷⁵ Additionally, the government has introduced various laws and policies to guide labor migration,⁷⁶ along with institutional arrangements like the Ministry of Labour and labor tribunal at the federal level.⁷⁷ However, many of these mechanisms are centralized, requiring workers to travel long distances to seek remedies or acquire skills.⁷⁸

Therefore, the government needs to decentralize these services to make them more accessible at the community level.⁷⁹ While there were expectations that the GCM's implementation would help address the grievances of migrant workers both in destination countries⁸⁰ and in Nepal, the GCM has yet to be fully and effectively implemented in either context.⁸¹ The government has made some progress by building on previous efforts and recently began drafting an action plan.⁸² However, civil society and workers have expressed dissatisfaction with the GCM's implementation in Nepal.⁸³

2.1 International Legal Framework

Universal Declaration of Human Rights (UDHR)

The Declaration is a pivotal document in the evolution of human and civil rights, comprising 30 articles that outline an individual's "basic rights and fundamental freedoms." It emphasizes the universal nature of these rights, asserting that they are inherent, inalienable, and applicable to every person.⁸⁴ As the General Assembly proclaimed UDHR as a "common standard of achievement for all peoples and all nations,"⁸⁵ the declaration obliges state parties to

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Human Rights Law, The Foundation of International Human Rights Law, *United Nations* <<https://web.archive.org/web/20200813084117/https://www.un.org/en/sections/universal-declaration/human-rights-law/index.html>> accessed 21 July 2024

⁸⁵ UDHR 1948, Preamble <<https://www.un.org/en/about-us/universal-declaration-of-human-rights>>

acknowledge that “all human beings are born free and equal in dignity and rights”,⁸⁶ regardless of "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."⁸⁷

The Declaration is widely regarded as a landmark document due to its universal language, which avoids any reference to specific cultures, political systems, or religions.⁸⁸ The UDHR played a crucial role in shaping international human rights law and paved a way for the creation of the International Bill of Human Rights, in 1966, which entered into force in 1976. Although the UDHR itself is not legally binding, its principles have been expanded upon and integrated into later international treaties,⁸⁹ regional human rights frameworks, and the constitutions and legal systems of various nations.⁹⁰

The Declaration was purposefully adopted to articulate and expand upon the principles of customary international law concerning "fundamental freedoms" and "human rights" as outlined in the UN Charter, which all member states are legally obligated to follow.⁹¹ This connection makes the Universal Declaration of Human Rights a foundational document of significant importance within the framework of the United Nations. As a result, it holds particular relevance not only for the UN itself but also for all 193 member states that are signatories to the UN Charter.

Articles like Article 4, which addresses the prohibition of slavery and servitude, play a crucial role in safeguarding human rights.⁹² Specifically, Article 4 asserts that no individual shall be subjected to slavery or servitude in any form.⁹³ It mandates that both slavery and the slave trade are to be unequivocally prohibited, ensuring that these practices are eradicated in all their

⁸⁶ UDHR 1948, Art 1 <<https://www.un.org/en/about-us/universal-declaration-of-human-rights>>

⁸⁷ Ibid., Art. 2.

⁸⁸ Dania Akkad, "Human Rights: The Universal Declaration vs The Cairo Declaration" (*Middle East Centre*, 10 December 2012) accessed 21 July 2024

⁸⁹ Christian Tomuschat, 'Protection of Human Rights under Universal International Law', No. 4 Vol. LIII, Human Rights (*United Nations*, December 2016) <<https://www.un.org/en/chronicle/article/protection-human-rights-under-universal-international-law>> accessed 21 July 2024

⁹⁰ Chandler Green '70 Years of Impact: Insights on the Universal Declaration of Human Rights'. (*United Nations Foundation*, 5 December 2018) <<https://unfoundation.org/blog/post/70-years-of-impact-insights-on-the-universal-declaration-of-human-rights/>> accessed 21 July 2024

⁹¹ "Glossary of terms relating to Treaty actions" <treaties.un.org> accessed 27 July 2024

⁹² UDHR, Article 4.

⁹³ Ibid.

manifestations.⁹⁴ This provision is fundamental in upholding human dignity and freedom, reflecting a commitment to eliminating practices that exploit and oppress individuals.⁹⁵ By enshrining such a prohibition, Article 4 reinforces the global commitment to human rights and the protection of individuals from such severe violations of their liberty and autonomy.⁹⁶ Article 23 guarantees several key employment-related rights, including the right to work, the freedom to choose one's occupation, and the assurance of fair and favorable working conditions.⁹⁷ This article ensures that every individual is entitled to work under conditions that are just and equitable, and provides protection against unemployment.⁹⁸ It affirms the right to equal remuneration for equal work, without any form of discrimination.⁹⁹ Furthermore, it stipulates that individuals are entitled to fair wages that support a standard of living worthy of human dignity, with additional social protection if needed.¹⁰⁰ Additionally, Article 23 recognizes the right of individuals to form and join trade unions as a means of safeguarding their interests and advocating for their rights in the workplace.¹⁰¹

As stated above, UDHR further serves as a foundation for the two most binding United Nations human rights covenants, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

ICCPR is a human rights covenant that includes the right to life and protection against physical violence, the right to equal treatment and a fair trial as well as freedom of expression, religion and assembly.¹⁰² These rights include the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights, and the right to due process and a fair trial.¹⁰³ The ICCPR is widely regarded as a landmark document in the evolution of international law and human

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ UDHR, Article 23.

⁹⁸ Ibid.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² Nico Schrijver, 'FIFTY YEARS INTERNATIONAL HUMAN RIGHTS COVENANTS. IMPROVING THE GLOBAL PROTECTION OF HUMAN RIGHTS BY BRIDGING THE GAP BETWEEN THE TWO COVENANTS', *Wolters Kluwer Navigator NTM|NJCM-Bull. jrg.* 41 [2016], nr. 4, 458
<<https://www.geneva-academy.ch/joomlatools-files/docman-files/Nico%20Schijver%20-%20Fifty%20Years%20International%20Human%20Rights%20Covenants.pdf>> accessed 26 August 2024

¹⁰³ Office of the United Nations High Commissioner of Human Rights, International Covenant on Civil and Political Rights.

rights, and it is an essential component of the International Bill of Human Rights.¹⁰⁴ Article 8 of the ICCPR specifically bans slavery, servitude, and forced labor in all situations and circumstances.¹⁰⁵ While it strictly prohibits slavery and involuntary servitude, the article allows limited exceptions to the prohibition of forced labor, such as for criminal punishment, military service, and certain civil obligations.¹⁰⁶

ICESCR is a human rights treaty that was adopted by the UNGA on December 16, 1966, under Resolution 2200A (XXI)¹⁰⁷ that covers, amongst other rights, the right to work and to form free trade unions as well as the right to social security, an adequate living standard, education, health and family life.¹⁰⁸ This treaty, which plays a crucial role in the protection of economic, social, and cultural rights worldwide, officially came into effect on January 3, 1976.¹⁰⁹ The adoption and subsequent enforcement of the ICESCR marked a pivotal moment in the global commitment to ensuring that these fundamental rights are recognized and upheld across all nations.¹¹⁰ Until February 2024,¹¹¹ a total of 172 countries have ratified the Covenant. Article 6 of the Covenant emphasizes the right to work, which is defined as the opportunity for every person to gain a livelihood through work that is chosen or accepted freely.¹¹² Member states “will take appropriate steps to safeguard this right”.¹¹³ This right shall include providing technical and vocational guidance, policies and techniques to achieve economic progress, and full and productive

¹⁰⁴ UN OHCHR, *Fact Sheet No.2 (Rev.1), The International Bill of Human Rights*, UN Geneva (1996) <<https://web.archive.org/web/20080313093428/http://www.unhchr.ch/html/menu6/2/fs2.htm>> accessed 14 August 2024

¹⁰⁵ ICCPR, Articles 8.1, 8.2

¹⁰⁶ ICCPR, Article 8.3

¹⁰⁷ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, United Nations, Treaty Series, vol. 993, p. 3, 16 December 1966 <<https://www.refworld.org/legal/agreements/unga/1966/en/33423>> accessed 21 July 2024

¹⁰⁸ Nico Schrijver, ‘FIFTY YEARS INTERNATIONAL HUMAN RIGHTS COVENANTS. IMPROVING THE GLOBAL PROTECTION OF HUMAN RIGHTS BY BRIDGING THE GAP BETWEEN THE TWO COVENANTS’, *Wolters Kluwer Navigator NTM|NJCM-Bull. jrg.* 41 [2016], nr. 4, 458

¹⁰⁹ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, United Nations, Treaty Series, vol. 993, p. 3, 16 December 1966 <<https://www.refworld.org/legal/agreements/unga/1966/en/33423>> accessed 21 July 2024

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.*

¹¹² ICESCR, Article 6.1

<<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>> accessed 26 August 2024

¹¹³ *Ibid.*

employment.¹¹⁴ The right to work entails that parties must ensure equitable access to employment opportunities and protect workers from unjust loss of employment. This responsibility includes preventing workplace discrimination and ensuring that disadvantaged individuals have access to job opportunities.¹¹⁵ Since work must be freely chosen or accepted, parties are required to ban forced labor and child labor.¹¹⁶ Furthermore, the work described in Article 6 of the Covenant must be characterized by decent working conditions.¹¹⁷ Article 7 of the Covenant further elaborates on this by affirming the right to "just and favorable" working conditions.¹¹⁸ Such conditions include fair salaries or wages with equal payment for equal work, adequate to support a decent livelihood for workers and their families, safe and healthy working environments, equal opportunities for all employees, and adequate rest and leisure time,¹¹⁹ which encompasses reasonable working hours and regular paid holidays.¹²⁰

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families¹²¹ (ICRMW)

ICRMW¹²² is a United Nations treaty aimed at safeguarding the rights of migrant workers and their families. It was signed on December 18, 1990, and came into force on July 1, 2003, after 20 countries ratified it in March 2003. The Committee on Migrant Workers (CMW), one of the seven UN human rights treaty bodies, oversees the convention's implementation. As of September 2023, the convention is in force in 59 states.¹²³

¹¹⁴ Ibid., a. 6.2

<<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>> accessed 26 August 2024

¹¹⁵ UN Economic and Social Council, 'ICESCR General Comment 18: The Right to Work' (6 February 2006) pp. 31 <<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmlBEDzFEovLCuW1a0Szab0oXTdImnsJZZVQfUKxXVisd7Dae%2FCu%2B13J25Nha7I9NlwYZ%2FTmK57O%2FSr7TB2hbCAidyVu5x7XcqjNXn44LZ52C%2BIkX8AGQrVyIc#:~:text=The%20right%20to%20work%2C%20as,be%20deprived%20of%20work%20unfairly.>>> accessed 21 July 2024.

¹¹⁶ Ibid., paragraph 23.

¹¹⁷ Ibid., paragraph 7.

¹¹⁸ ICESCR, Article 7.

¹¹⁹ Thom Brooks, "Justice and the Capabilities Approach", Routledge, 2017

¹²⁰ Ibid.

¹²¹ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990, General Assembly resolution 45/158

<<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-rights-all-migrant-workers>>

¹²² Ibid.

¹²³ International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families 1990, United Nations, New York, *Treaty Series*, vol. 2220, p. 3; Doc. A/RES/45/158

The convention underscores an essential connection between migration and human rights. The Convention is adopted to protect both migrant workers and their families, setting a moral benchmark and serving as a catalyst for advancing migrant rights within individual nations. Its central aim is to promote the respect and protection of migrants' human rights. Recognizing that migrants are more than just workers, but human beings with inherent rights, the Convention does not establish new rights but seeks to ensure equal treatment and working conditions for migrants, including those in temporary employment, compared to nationals. This treaty is notable for its commitment to providing a baseline level of protection for all migrants. It acknowledges that while regular migrants may be entitled to additional rights, irregular migrants are still entitled to have their fundamental human rights upheld, emphasizing the universal nature of human dignity.

Article 7 of this Convention states that “States Parties undertake, in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction the rights provided for in the present Convention without distinction of any kind such as to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status”¹²⁴.¹²⁵ Article 11 has the provision on prohibition of slavery and forced labor.¹²⁶ Article 25 ensures equality of treatment in terms of employment conditions and remuneration¹²⁷ and Article 68 focuses on measures to prevent and eliminate illegal or clandestine movements and employment of migrant workers.¹²⁸

International Labour Organization (ILO) Conventions

The International Labour Organization (ILO) has developed a series of conventions specifically aimed at eradicating forced labor and protecting migrant workers' rights. According to the ILO

<https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&clang=_en> accessed 29 August 2024

¹²⁴ Ibid., Article 7

¹²⁵ Karen L. Kinnear, “Women in Developing Countries: A Reference Handbook”, (ABC-CLIO 2011), 184

¹²⁶ ICRMW, Article 11.

¹²⁷ ICRMW, Article 25.

¹²⁸ ICRMW, Article 68.

definition, forced labour refers to "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily".¹²⁹

The Forced Labour Convention 1930 (No. 29) is one of the eight core conventions adopted by the ILO.¹³⁰ The Convention specifically defines forced labor as any work or service demanded from an individual under threat of penalty and for which the person has not voluntarily agreed to perform, with limited exceptions such as compulsory military service.¹³¹ To reinforce this commitment, the Convention was later complemented by the Abolition of Forced Labour Convention, which removed several exceptions from the original 1930 Convention, including those related to punitive measures for strikes and for holding certain political beliefs.

The Abolition of Forced Labour Convention, 1957, formally titled the Convention Concerning the Abolition of Forced Labour, 1957 (No. 105), is one of the eight fundamental conventions established by the International Labour Organization (ILO). This convention was created to address and eliminate specific forms of forced labor that were still permissible under the earlier Forced Labour Convention of 1930. Notably, it abolished practices such as using forced labor as a penalty for participating in strikes or for holding particular political views. As of October 2022, this convention has been ratified by 178 out of the 187 ILO member states, reflecting a broad international commitment to ending these practices.¹³² It outlines specific measures to eliminate forced labor practices.

The Convention on Domestic Workers, officially known as the Convention Concerning Decent Work for Domestic Workers, establishes labor standards specifically for domestic workers. As the 189th convention of the International Labour Organization (ILO), it was adopted during the ILO's 100th session on June 16, 2011,¹³³ and came into effect on September 5, 2013.¹³⁴ This

¹²⁹ Forced Labour Convention (No. 29) 1930, Article 2.1

<https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029> accessed 26 August 2024

¹³⁰ International Labour Organization, 'Conventions, Protocols and recommendations'

<<https://www.ilo.org/international-labour-standards/conventions-protocols-and-recommendations>> accessed 21 July 2024

¹³¹ The Convention Concerning Forced or Compulsory Labour, 1930 (No. 29), Article 2.

¹³² "Ratifications of C105 – Abolition of Forced Labour Convention, 1957 (No. 105)". International Labour Organization. 26 April 2013

¹³³ "100th ILO annual Conference decides to bring an estimated 53 to 100 million domestic workers worldwide under the realm of labour standards". *International Labour Organization*. 16 June 2011.

¹³⁴ "Ratifications of C189 - Domestic Workers Convention, 2011 (No. 189)", *ILO*.

convention aims to ensure that domestic workers receive decent work conditions, which include guaranteed daily and weekly rest periods (at least 24 hours), the right to a minimum wage, and the freedom to choose their place of residence and how they spend their leave. Member states that ratify this convention are required to take measures to ensure that domestic workers enjoy effective protection against all forms of abuse, harassment and violence¹³⁵ and to set a minimum age requirement that aligns with the standards for employment.¹³⁶ Additionally, domestic workers have the right to receive a detailed and clear outline of their employment conditions, that is to be provided before the recruitment and immigration. The convention also stipulates that domestic workers are not obligated to live in their employer's home or remain there during their time off.¹³⁷

To oversee the enforcement of fundamental international human rights treaties, there are 10 human rights treaty bodies in place.¹³⁸ These bodies consist of independent experts who are widely recognized for their expertise in human rights matters. Their primary role is to monitor and ensure adherence to the core international human rights agreements. Additionally, the Human Rights Council operates through special procedures, which are composed of independent human rights specialists. These procedures support the comprehensive realization of the rights outlined in these treaties by providing reports and offering advice on human rights issues from both thematic and country-specific viewpoints. This dual approach, combining the work of treaty bodies with the thematic and country-focused analysis of the Human Rights Council, helps to advance and safeguard human rights globally.¹³⁹ The Human Rights Council's special procedures, which consist of independent experts in human rights, play a crucial role in advancing the complete implementation of the rights outlined in these treaties. These procedures contribute to this goal by producing detailed reports and providing expert recommendations on human rights

¹³⁵ Ibid. Article 5

<https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189> accessed 26 August 2024

¹³⁶ Ibid., a 4.1

¹³⁷ Ibid.

¹³⁸ Namely, the Committee on the Elimination of Racial Discrimination, the Committee on Economic, Social and Cultural Rights, the Human Rights Committee, the Committee on the Elimination of Discrimination against Women, the Committee against Torture, the Committee on the Rights of the Child, the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Committee on the Rights of Persons with Disabilities and the Committee on Enforced Disappearances (OHCHR, n.d.a).

¹³⁹ Ibid.

issues. They approach their work either from a broad thematic perspective, addressing general human rights concerns across various contexts, or from a country-specific perspective, focusing on the unique human rights challenges faced by individual nations. Through their comprehensive analysis and targeted advice, these experts help to ensure that the rights established in international treaties are effectively realized and upheld.¹⁴⁰

Other Relevant International Instruments

Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000¹⁴¹ (Palermo Protocol)

Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, commonly known as the Trafficking Protocol or UN TIP Protocol, is an important extension of the United Nations Convention Against Transnational Organized Crime. Adopted by the United Nations General Assembly in the year 2000, this protocol came into effect on December 25, 2003. By November 2022, it had been ratified by 180 countries, including Nepal who ratified it in 2020, underscoring its global significance.¹⁴² The United Nations Office on Drugs and Crime (UNODC) oversees the implementation of this protocol. It supports member states by assisting with the development of legal frameworks, formulating comprehensive national anti-trafficking strategies, and providing necessary resources for their execution. In addition, UNODC initiated the Blue Heart Campaign in March 2009 to combat human trafficking, raise public awareness, and foster greater engagement and action against this grave issue. The protocol obligates ratifying countries to take measures to prevent and address trafficking in persons, offer protection and support to trafficking victims, and enhance international cooperation to achieve these goals.

The protocol provides a comprehensive definition of human trafficking, outlining that for an act to qualify as trafficking in persons, it must satisfy three critical criteria: the act, the means, and

¹⁴⁰ Ibid.

¹⁴¹ Protocol to Prevent, Suppress and Punish Trafficking in persons Especially Women and Children 2000 <<https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-prevent-suppress-and-punish-trafficking-persons>> accessed 26 August 2024

¹⁴² "UNODC – Signatories to the CTOC Trafficking Protocol". United Nations.

the purpose. Firstly, the "act" involves activities such as recruitment, transportation, transfer, harboring, or receipt of individuals. Secondly, the "means" refers to the methods employed to achieve these acts, which can include the use of force, threats, coercion, abduction, fraud, deception, abuse of power, or exploitation of a vulnerable position. It also encompasses situations where payments or benefits are exchanged to obtain the consent of someone with control over the individual being trafficked. Thirdly, the "purpose" of these actions is specifically for exploitation, which may involve a range of abusive practices. Exploitation, as defined by the protocol, includes at least the exploitation of prostitution, other forms of sexual exploitation, forced labor or services, practices akin to slavery, servitude, or even the illegal removal of organs. Importantly, the protocol asserts that if any of the specified means are used, the victim's consent to the exploitation is rendered irrelevant. This ensures that the focus remains on the coercive nature of trafficking, regardless of any purported consent by the victim.

International guidelines and commitments

United Nations Guiding Principles on Business and Human Rights

Despite States having the primary responsibility to secure the above-mentioned rights and freedoms,¹⁴³ businesses also have a legal obligation to guarantee labour rights and to protect their employees against exploitative practices. They furthermore have a responsibility under the United Nations Guiding Principles on Business and Human Rights to act with due diligence and to take measures against such practices by assuring trafficking for labour exploitation does not take place within their business, in their supply chain nor in their business partners, including private recruitment and employment agencies.¹⁴⁴ Businesses also have a responsibility to proactively check and assess terms of employment and compliance, including in their supply chains.

Sustainable Development Goal (SDG)

The 17 Sustainable Development Goals adopted by the United Nations in 2015 are also relevant here. United Nations Member States have committed to work towards achieving the goals and their related targets by 2030. Notably, goals related to decent work and migration fall under

¹⁴³ CoE, 1950.

¹⁴⁴ OHCHR, 2011.

SDGs 8 and 10, respectively, while the goals related to trafficking in persons are addressed in SDGs 5 and 16. On September 25, 2015, the United Nations General Assembly adopted the 2030 Agenda for Sustainable Development, acknowledging "the positive contribution of migrants to inclusive growth and sustainable development" in countries of origin, transit, and destination. The declaration emphasized that "international migration is a multifaceted reality of significant importance for the development of countries of origin, transit, and destination, necessitating coordinated and comprehensive responses."

SDG Goal 8 is focused on promoting sustained, inclusive, and sustainable economic growth, ensuring full and productive employment, and providing decent work for everyone.¹⁴⁵ Specifically, Goal 8.7 seeks to implement immediate and effective actions to eliminate forced labor, end modern slavery, and combat human trafficking.¹⁴⁶ SDG Goal 8.8 is of specific significance to the protection of migrant workers and labour migration governance.¹⁴⁷ SDG Goal 8.8 aims to protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment.¹⁴⁸ Nepal has been identified as one of the active countries for implementing SDGs 8.7.¹⁴⁹ The Government of Nepal has planned to implement consolidated efforts on tackling unfair labor relations, forced labor, modern slavery and taking up decent work for all into practice.¹⁵⁰ For this purpose the government has drafted Alliance 8.7 implementation plan and has provisioned to set up a designated office on Alliance 8.7, develop implementation and mobilization mechanism at province and local level,¹⁵¹ which has not been in full implementation and in addition to that, so far, no implementation and mobilization mechanisms have been formed.¹⁵²

¹⁴⁵ SDG, Goal 8

<<https://www.ilo.org/resource/goal-8-promote-inclusive-and-sustainable-economic-growth-employment-and>> accessed 26 August 2024

¹⁴⁶ Ibid., Goal 8.7

¹⁴⁷ Ibid., Goal 8.8

¹⁴⁸ Ibid.

¹⁴⁹ Forced Labor Elimination Advocacy Group (FLeAG) and National Child Protection Alliance (NCPA) Submission - *Decent Work and Labor Rights Situation in Nepal For 3rd Cycle of Universal Periodic Review* (2019), para. 14.

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

¹⁵² Ibid.

Global Compact for Migration (GCM)

Another important document in this regard is the 2018 Global Compact for Safe, Orderly and Regular Migration.¹⁵³ The Global Compact for Migration is rather a resolution and even though it is not a legally binding agreement, the GCM is the first United Nations global agreement on a common approach to international migration in all its dimensions. One of the primary goals of the Compact is to minimize the risks and vulnerabilities that migrants encounter during various stages of migration¹⁵⁴ by upholding, protecting, and fulfilling their human rights, as well as by offering them necessary care and support.¹⁵⁵ Among the 23 objectives outlined, the most critical¹⁵⁶ include ensuring the provision of accurate and timely information¹⁵⁷ throughout all phases of migration and guaranteeing that all migrants possess legal identification and proper documentation.¹⁵⁸ Objective 6 which commits in facilitating fair and ethical recruitment and safeguard conditions that ensure decent work,¹⁵⁹ objective 7 which commits in addressing and reducing vulnerabilities in migration”, and objective 10 focuses on preventing, combatting and eradicating trafficking in persons in the context of international migration”.¹⁶⁰ In summary, since 1948, a strong international framework to respect and protect the rights of migrant workers and victims of human trafficking for labour exploitation has been established.

2.2 Regulatory Framework and Policies in Nepal

2.2.1 National Legal Frameworks and Policies in Nepal

The rights of migrant workers are protected and guaranteed under the constitution and various municipal laws of Nepal. The constitution of Nepal guarantees the fundamental rights, whereas

¹⁵³ The Global Compact for Safe, Orderly and Regular Migration 2018 (A/RES/73/195) Resolution adopted by the General Assembly on 19 December 2018

¹⁵⁴ Ibid.

¹⁵⁵ Som Niroula and Kamal Thapa Kshetri, *Policies and Protection for the Migrants of Nepal* (Mahanirban Calcutta Research Group, 2022), 3 <<http://www.mcrg.ac.in/PP143.pdf>> accessed 26 August 2024

¹⁵⁶ National Human Rights Commission (NHRC), *The Situation of the Rights of Migrant Workers: Recruitment Practices and Access to Justice of Migrant Workers* (2019) <https://www.nhrcnepal.org/uploads/publication/Research_Report_on_the_Situation_of_The_Rights_of_MW.pdf> accessed 24 July 2024

¹⁵⁷ GCM, Objective 3

¹⁵⁸ Ibid., Objective 4

¹⁵⁹ Ibid., Objective 6

¹⁶⁰ Ibid., Objective 7

domestic laws protect other labor-related rights of migrant workers. In this regard, the primary instruments governing the rights of migrant workers include: the Constitution of Nepal, the Foreign Employment Act, 2007, the Labor Act, 2017, Foreign Employment Rules, 2017 and the Foreign Employment Policy, 2012.

Nepal's constitution firmly upholds the commitment to decent work, fair labor relations, and the criminalization of exploitative employment practices.¹⁶¹ Within the Fundamental Rights section, the constitution includes provisions that ensure decent work and protect workers' rights,¹⁶² such as the right to employment¹⁶³ provisions freedom of choice on employment and right to fair employment practices, labor rights¹⁶⁴ provisioning right to appropriate remuneration, access to Social Security, Form and Join Trade Unions, Engage in Collective Bargaining, and Prohibition of Child Labor.¹⁶⁵

Similarly, under the State policies chapter the constitution has adopted state policy to strengthen competency of laborers,¹⁶⁶ guarantee social security and basic rights for all laborers,¹⁶⁷ abolish all forms of child labor and to regulate, manage and promote safety and protection in foreign employment.¹⁶⁸ State policies related to social justice and inclusion¹⁶⁹ mandate the identification of freed bonded labourers, including Kamlari, Haruwa, and Charuwa, and their rehabilitation by providing housing, residential plots, cultivable land, or employment opportunities for their livelihood.¹⁷⁰

¹⁶¹ Forced Labor Elimination Advocacy Group (FLeAG) and National Child Protection Alliance (NCPA) Submission - *Decent Work and Labor Rights Situation in Nepal For 3rd Cycle of Universal Periodic Review* (2019), para. 7 <<https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=8136&file=EnglishTranslation>> accessed 26 August 2024

¹⁶² Ibid.

¹⁶³ Constitution of Nepal 2015, Article 33.

¹⁶⁴ Ibid., Article 34.

¹⁶⁵ Ibid., Article 39(4).

¹⁶⁶ Forced Labor Elimination Advocacy Group (FLeAG) and National Child Protection Alliance (NCPA) Submission - *Decent Work and Labor Rights Situation in Nepal For 3rd Cycle of Universal Periodic Review* (2019), para. 7 <<https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=8136&file=EnglishTranslation>> accessed 26 August 2024

¹⁶⁷ Ibid.

¹⁶⁸ CoN, Article 51(i)

¹⁶⁹ Ibid. Article 51(j)

¹⁷⁰ Forced Labor Elimination Advocacy Group (FLeAG) and National Child Protection Alliance (NCPA) Submission - *Decent Work and Labor Rights Situation in Nepal For 3rd Cycle of Universal Periodic Review* (2019), para. 7 <<https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=8136&file=EnglishTranslation>> accessed 26 August 2024

The Government of Nepal has enacted various domestic laws aimed at safeguarding workers' rights.¹⁷¹ These include the National Civil Code (2017), National Labor Code (2017), Acts Related to Children (2018), Child Labor Prohibition and Regulation Act (2000), Foreign Employment Act (2007), Human Trafficking and Transportation Control Act (2007), Act Against Sexual Harassment at the Workplace (2014), Right to Employment Act (2018), Crime Victim Protection Act (2018), and Contributory Social Security Act (2018). Additionally, laws such as the Right to Education Act (2018), Local Governments Operation Act (2017), and Public Health Service Act (2018) are also relevant to ensuring decent work and preventing exploitation.¹⁷² The government has also implemented policies like the National Employment Policy, Foreign Employment Policy, National Labor Policy, and Occupational Safety and Health Guidelines in Brick Industries.¹⁷³

a) Constitutional Provisions

As previously mentioned, the Constitution of Nepal, under Article 51, outlines 'Policies regarding labour and employment'¹⁷⁴ within the broader 'Policies of the State.' This policy includes measures to regulate and manage foreign employment to make it exploitation-free, safe, and well-organized, ensuring both employment and labour rights.¹⁷⁵ It also promotes the use of capital, skills, technology, and experience gained from foreign employment in the productive sectors of the country.¹⁷⁶

Article 29 of the Constitution provides that every person shall have the right against exploitation,¹⁷⁷ no person shall be exploited in any manner on the grounds of religion, custom, tradition, usage, practice or on any other grounds,¹⁷⁸ no one shall be subjected to trafficking nor shall one be held in and slavery or servitude,¹⁷⁹ and no one shall be forced to work against his or

¹⁷¹ Ibid., para. 8.

¹⁷² Ibid.

¹⁷³ Ibid.

¹⁷⁴ CoN, Article 51(i)

¹⁷⁵ Ibid., a 51(i) (5)

¹⁷⁶ Ibid., a 51 (i)(6)

¹⁷⁷ Constitution of Nepal 2015, Art. 29(1)

¹⁷⁸ Ibid., Art. 29(2)

¹⁷⁹ Ibid. Art. 29(3)

her will.¹⁸⁰¹⁸¹ It also states that violation of the provisions shall be punishable by law and the victim shall have the right to obtain compensation from the perpetrator in accordance with law.¹⁸² This way, this provision provides a preventive clause against trafficking, slavery, serfdom or any form of forced labor. Similarly, Article 33 of the Constitution¹⁸³ guarantees every citizen the right to employment and the freedom to choose their employment as a fundamental right.¹⁸⁴ Article 34¹⁸⁵ ensures that all laborers have the right to fair labor practices, appropriate remuneration, facilities, contributory social security, and the right to form and join trade unions, as well as engage in collective bargaining according to the law.¹⁸⁶

Moreover, Article 51(i)(5) of the Constitution¹⁸⁷ mandates the state to pursue policies that regulate and manage foreign employment, ensuring the sector is free from exploitation, safe, well-managed, and protective of workers' rights.¹⁸⁸ In addition to these, in the case of violations of the rights guaranteed under the Constitution or, in the case of absence of any other effective remedy, there is the provision of the right to constitutional remedy, as documented in Articles 46 and 133.¹⁸⁹

b) Foreign Employment Act, 2007

¹⁸⁰ Ibid.

¹⁸¹ NHRC, *The Situation of the Rights of Migrant Workers: Recruitment Practices and Access to Justice of Migrant Workers* (2019), 29
<https://www.nhrcnepal.org/uploads/publication/Research_Report_on_the_Situation_of_The_Rights_of_MW.pdf> accessed 27 August 2024

¹⁸² CoN. Art. 29(4)

¹⁸³ Ibid. Article 33

¹⁸⁴ NHRC, *The Situation of the Rights of Migrant Workers: Recruitment Practices and Access to Justice of Migrant Workers* (2019), 28
<https://www.nhrcnepal.org/uploads/publication/Research_Report_on_the_Situation_of_The_Rights_of_MW.pdf> accessed 27 August 2024

¹⁸⁵ CoN, Article 34

¹⁸⁶ NHRC, *The Situation of the Rights of Migrant Workers: Recruitment Practices and Access to Justice of Migrant Workers* (2019), 28-29
<https://www.nhrcnepal.org/uploads/publication/Research_Report_on_the_Situation_of_The_Rights_of_MW.pdf> accessed 27 August 2024

¹⁸⁷ Ibid., Article 51(i)(5).

¹⁸⁸ Law and Policy Forum for Social Justice (LAPSOJ) and Pourakhi Nepal: *Access to Justice of Nepalese Migrant Workers: Present-Day Problems and Challenges* (2018), 6
<https://lapsoj.org/wp-content/uploads/2018/02/Access-to-Justice-final_SR.pdf> accessed 7 July 2024

¹⁸⁹ Ibid.

The Foreign Employment Act (FEA) of 2007 and the Foreign Employment Regulations of 2008 are the primary legal frameworks governing and overseeing foreign employment in Nepal.¹⁹⁰ The FEA of 2007 was made to revise and unify laws related to foreign employment, aiming to ensure that the industry is safe, well-regulated, and fair, and to protect the rights and interests of Nepali workers seeking employment abroad, as well as those of foreign employment entrepreneurs, while also promoting the sector.¹⁹¹ It is the obligation of GoN to take appropriate measures for the protection of the citizens who want to go abroad for their profession. It is also the duty of GoN to ensure that foreign companies fulfill all the responsibilities under the Act. And therefore, in 2007, the GoN, with the introduction of FEA, has accepted the need for the protection of Nepali migrant workers going abroad for foreign employment and to regulate and monitor the process of their recruitment. Its primary aim is to ensure safe migration of Nepali migrant workers. The Act defines key terms such as "foreign employment," which refers to employment obtained by a worker outside of Nepal, and "worker," which refers to a Nepali citizen engaged in foreign employment. As per Section 2(a) of the Act¹⁹² "foreign employment" means employment which a worker gets abroad and in Section 2(b)¹⁹³ "worker" means a citizen of Nepal who gets in foreign employment.¹⁹⁴

The Act outlines the procedures for obtaining labor permits, recruiting workers, managing the foreign employment welfare fund, and addressing issues related to monitoring, complaints, investigations, penalties for offenses, and compensation for victims and survivors.¹⁹⁵ Additionally, the Act prohibits sending minors abroad for employment¹⁹⁶ and ensures that there is no gender-based discrimination in the process.¹⁹⁷ It also requires that individuals must obtain a

¹⁹⁰ NHRC, *The Situation of the Rights of Migrant Workers: Recruitment Practices and Access to Justice of Migrant Workers* (2019), 29

<https://www.nhrcnepal.org/uploads/publication/Research_Report_on_the_Situation_of_The_Rights_of_MW.pdf> accessed 24 July 2024

¹⁹¹ Foreign Employment Act 2007, Preamble

<<https://www.ceslam.org/uploads/backup/foreign%20employment%20act%202064%202007.pdf>> accessed on 27 August 2024

¹⁹² Ibid., Section 2(a)

¹⁹³ Ibid., s. 2(b)

¹⁹⁴ NHRC, *The Situation of the Rights of Migrant Workers: Recruitment Practices and Access to Justice of Migrant Workers* (2019), 29

<https://www.nhrcnepal.org/uploads/publication/Research_Report_on_the_Situation_of_The_Rights_of_MW.pdf> accessed 27 August 2024

¹⁹⁵ Ibid.

¹⁹⁶ FEA, s. 7

¹⁹⁷ Ibid., s. 8

license to operate a foreign employment business, with penalties in place for violations.¹⁹⁸ To support the implementation of the Act, the Foreign Employment Regulations of 2008 and various guidelines have been introduced.¹⁹⁹

c) Human trafficking and Transportation (Control) Act, 2064

The Human Trafficking and Transportation (Control) Act of 2007 provides definitions for specific forms of human trafficking and prescribes penalties for such crimes.²⁰⁰ It defines human trafficking²⁰¹ as activities like selling or purchasing a person for any purpose,²⁰² taking a person out of the country for buying and selling,²⁰³ or abducting someone through deceit or coercion for exploitation, including prostitution.²⁰⁴

In addition to these laws, Nepal's legal policies mandate that the Federal and Provincial Governments take necessary steps to protect workers' rights and promote decent work.²⁰⁵ Local Governments are required to set minimum wages for construction workers. The Right to Employment Act of 2018 has also established Employment Information and Service offices in every local government.²⁰⁶

d) Labour Act, 2017

The Labour Act of 2017 was enacted to safeguard the rights, interests, and benefits of workers, promote positive labor relations by clearly defining the rights and responsibilities of workers and

¹⁹⁸ Ibid., s. 10

¹⁹⁹ NHRC, *The Situation of the Rights of Migrant Workers: Recruitment Practices and Access to Justice of Migrant Workers* (2019), 30
<https://www.nhrcnepal.org/uploads/publication/Research_Report_on_the_Situation_of_The_Rights_of_MW.pdf> accessed 27 August 2024

²⁰⁰ Ibid.

²⁰¹ NHRC, *The Situation of the Rights of Migrant Workers: Recruitment Practices and Access to Justice of Migrant Workers* (2019), 30
<https://www.nhrcnepal.org/uploads/publication/Research_Report_on_the_Situation_of_The_Rights_of_MW.pdf> accessed 27 August 2024

²⁰² Human trafficking and transportation (control) Act, 2064, Section 4(1) (a).

²⁰³ Ibid. s. 4 (2) (a)

²⁰⁴ Ibid., s. 4(2) (b)

²⁰⁵ FLeAG and NCPA Submission - *Decent Work and Labor Rights Situation in Nepal For 3rd Cycle of Universal Periodic Review* (2019), para. 12.

<<https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=8136&file=EnglishTranslation>> accessed 27 August 2024

²⁰⁶ Ibid.

employers, and enhance productivity by eliminating all forms of labor exploitation.²⁰⁷ The Labour Act 2017 includes provisions for the protection of domestic and seasonal workers, although specific rules for these groups have not yet been developed or applied.²⁰⁸ The Act strictly prohibits forced labor²⁰⁹ and discrimination based on religion, color, sex, caste, ethnicity, language, political beliefs, or similar grounds.²¹⁰ It defines forced or compulsory labor and explicitly forbids bonded labor, which it describes as compelling a worker to perform any work or service against their will through threats of economic, physical, or mental harm.²¹¹

²⁰⁷ The Labour Act 2017, Preamble

²⁰⁸ FLeAG and NCPA Submission - *Decent Work and Labor Rights Situation in Nepal For 3rd Cycle of Universal Periodic Review* (2019), para. 12.

<<https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=8136&file=EnglishTranslation>> accessed 27 August 2024

²⁰⁹ Labour Act 2017, Section 4

²¹⁰ Ibid., s. 6(1)

²¹¹ Ibid., s. 4(1)

CHAPTER IV

Current Situation of Foreign Labor Migration in Nepal

4.1 Issue of Unemployment

Nepal's unemployment rate has been increasing, according The fourth Nepal Living Standards Survey, conducted in 2022-23,²¹² which is the first such survey since the country's turned into a federal republic democratic state.²¹³ Data was collected from a nationally representative sample of 9,600 households on a wide range of topics.²¹⁴ The fourth Nepal Living Standard Survey report, published by the National Statistics Office²¹⁵ on Thursday, shows that the unemployment rate climbed up to 12.6 percent in 2022-23 from 11.4 percent in 2017-18, representing a 1.2 percent rise in the five-year period.²¹⁶ The survey data on employment status reveals significant shifts in the labour market between 1995/96 and 2022/23.²¹⁷ The percentage of employed population is 32.4 percent in 2022/23 while the percentage of those not in the labour force is 62.9 percent. The unemployment rate is 12.6 percent in 2022/23. It is more pronounced among younger workers, with the unemployment rate for those aged 15-24 years is 22.7 percent in 2022/23. This highlights the challenge of finding employment for youth in Nepal.²¹⁸

The unemployment rate has risen from 4.9 percent in 1995-96 to 12.6 percent in 2022-23.²¹⁹ This rise is more pronounced among younger workers, with the unemployment rate for those aged 15-24 jumping from 7.3 percent in 1995-96 to 22.7 percent in 2022-23. The report said this highlights the challenge of finding jobs for youths in Nepal.²²⁰

²¹² Kantipur Media Group, 'Nepal's unemployment rate rises to 12.6 percent, survey says' (The Kathmandu Post, 16 June 2024)

<<https://kathmandupost.com/money/2024/06/16/nepal-s-unemployment-rate-rises-to-12-6-percent-survey-says#:~:text=The%20fourth%20Nepal%20Living%20Standard,in%20the%20five%2Dyear%20period.>> accessed 28 August 2024

²¹³ Ibid.

²¹⁴ Ibid.

²¹⁵ Ibid.; Office of the Prime Minister and Council of Ministers, *Nepal Living Standard Survey IV 2022-2023* (National Statistics Office, 2024)

²¹⁶ Ibid.

²¹⁷ Office of the Prime Minister and Council of Ministers, *Nepal Living Standard Survey IV 2022-2023* (National Statistics Office, 2024) <https://api.giwmns.gov.np/storage/36/posts/1719375782_27.pdf> accessed 28 August 2024

²¹⁸ Ibid.

²¹⁹ Ibid.

²²⁰ Kantipur Media Group, 'Nepal's unemployment rate rises to 12.6 percent, survey says' (The Kathmandu Post, 16 June 2024)

The survey report indicates that unemployment among individuals aged 15 to 24 decreased from 23.9 percent in 2017-18 to 22.7 percent in 2022-23. The data on employment status highlights substantial changes in the labor market between 1995-96 and 2022-23. The proportion of employed individuals has significantly dropped from 67.2 percent in 1995-96 to 32.4 percent in 2022-23, while the share of those not participating in the labor force has risen from 29.4 percent to 62.9 percent.

There has been a marked decline in the percentage of wage employment in agriculture, which fell from 70.7 percent in 1995-96 to just 1.9 percent in 2022-23. Conversely, wage employment in non-agricultural sectors has seen a notable increase, growing from 9.5 percent in 1995-96 to 56.6 percent in 2022-23. According to the survey, 32.4 percent of the population is employed, 62.9 percent are not in the labor force, and 4.7 percent are unemployed.

The labor force participation rate decreased from 38.2 percent five years ago to 37.1 percent in 2022-23. Although the overall unemployment rate appears low, experts suggest that the jobs being generated in Nepal's economy lack quality. This calls for new strategies, partnerships, and goals.

4.2 People moving abroad data

Between 2008/09 and 2021/22, over 4.7 million new labor approvals were issued to Nepalese migrants preparing for work abroad.²²¹ The number of approvals steadily increased, peaking in 2013/14 with more than half a million approvals issued. In subsequent years, there was a decline in the number of workers seeking new approvals, but the overall figures remained relatively stable, ranging between 500,000 and 600,000 annually.²²²

This consistency is partly due to a government policy introduced in 2011, allowing workers to renew their approvals instead of obtaining new ones if they wished to return to the same job in the same country after their contracts expired.²²³ Since then, over 1.8 million migrant workers

²²¹ Bandita Sijapati and Amrita Limbu, *Governing Labour Migration in Nepal: An Analysis of Existing Policies and Institutional Mechanisms* first published 2012, CESLAM 2017)

²²² Ministry of Labour, Employment and Social Security, *Nepal Labour Migration Report* (Government of Nepal 2022) p. 53

²²³ Ibid.

have renewed their approvals,²²⁴ indicating a strong desire to continue working abroad, which may reflect job satisfaction, limited opportunities in Nepal, or both.

However, the COVID-19 pandemic severely impacted Nepal's labor migration sector in 2019/20 and 2020/21. As the virus spread, countries imposed lockdowns, canceled flights, and restricted entry for foreign workers, leading to a near-total halt in labor mobility. From February 2020, many migrant workers were barred from entering their destination countries, and on March 12, 2020, the Government of Nepal temporarily stopped issuing labor approvals,²²⁵ resuming fully only in late August 2020. Consequently, around 115,000 aspiring migrant workers were unable to go abroad despite having approvals, and over 325,000 pre-approvals were suspended.²²⁶

Once travel restrictions eased and overseas labor demand rose from June 2020 onward, the number of approvals began to increase again.²²⁷ In 2021/22, the number of labor approvals issued rose to 630,089, nearly matching the record highs of 2012/13 and 2013/14.²²⁸

A notable issue is the significant gap between the position of workers certified by DoFE based on the demand of labour from private recruitment agencies and the exact number of approvals issued.²²⁹ During the period from 2019/20 to 2021/22, the demand for migrant workers, both men and women, was roughly double the number of labor approvals issued, with this gap being even wider in 2020/21.²³⁰ This suggests that Nepal has consistently struggled to meet the international demand for its workers.

4.3 Age and Sex of Migrant Workers

Labor migration from Nepal has largely been male-dominated, with women making up less than 6 percent of all new labor approvals issued between 2008/09 and 2021/22.²³¹ However, in the more recent period of 2019/20 to 2021/22, the percentage of women among migrant workers has

²²⁴ Ibid., p. 54

²²⁵ Ibid., p. 55

²²⁶ Ibid.

²²⁷ Ibid.

²²⁸ Ibid.

²²⁹ Ibid.

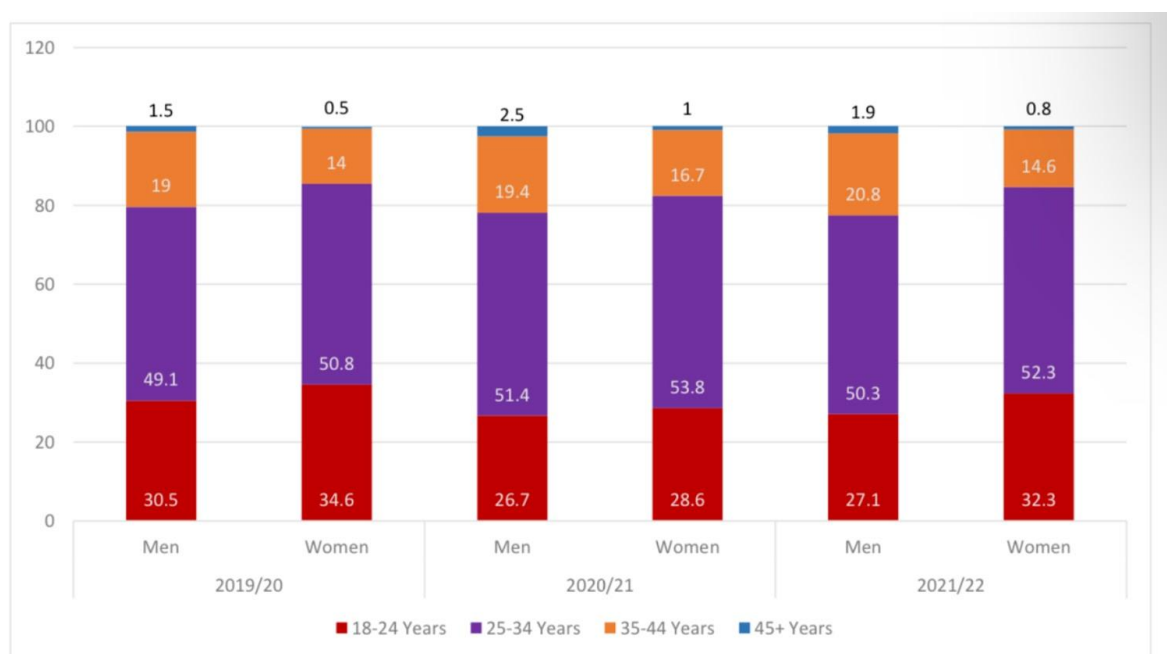
²³⁰ Ibid.

²³¹ Ministry of Labour, Employment and Social Security(MoLESS), *Nepal Labour Migration Report* (Government of Nepal 2022) 55-59

risen to nearly 10 percent,²³² suggesting a potential shift in future trends. This data, however, does not account for the significant number of migrant workers, especially women, who may have used irregular channels and are therefore undocumented. Consequently, a large portion of migrant workers, particularly women, are not reflected in the official records of the Department of Foreign Employment (DoFE).²³³

Most migrant workers from Nepal are young adults, primarily within the economically productive age range of 18 to 44 years, with half of them falling between 25 and 34 years old during the three years in question.²³⁴ The median age of these workers was just over 28 years.

Figure 1.1: New Labor Approvals Issued from 2019-2022²³⁵



Note: This figure only includes new labour approvals.

Source: FEIMS, 2022.

²³² Ibid.

²³³ Ibid.

²³⁴ Ibid.

²³⁵ MoLESS, *Nepal Labour Migration Report* (Government of Nepal 2022), 54

<https://www.ceslam.org/uploads/backup/Nepal%20Labour%20Migration%20Report_2022.pdf> 29 August 2024

4.4 Destination Countries

Nepalese citizens have been migrating to numerous countries for employment opportunities, with the Government of Nepal officially approving labor migration to 111 countries, although Afghanistan, Iraq, and Libya face temporary restrictions. Between 2019/20 and 2021/22, Nepalese migrants sought work in 150 different countries with DoFE's approval. The six Gulf Cooperation Council (GCC) countries (Kuwait, Qatar, Saudi Arabia, Bahrain, the United Arab Emirates (UAE), and Oman) along with Malaysia, continue to be the primary destinations for Nepali workers. Since 2013/14, over 80 percent of Nepali migrant workers have found employment in these seven nations,²³⁶ which consistently demand the highest number of workers.

The flow of Nepali migrant workers to GCC countries has varied over time, reaching a peak in 2015/16 when 336,614 new labor approvals were issued.²³⁷ This number dropped to 272,018 in 2016/17 (MoLE 2018) and continued to decline in subsequent years. However, these figures do not account for the renewals of labor approvals for workers returning to the same countries, which, when included, bring the total above 400,000 in both 2017/18 and 2018/19.²³⁸

In 2019/20 and 2020/21, the number of Nepali migrant workers heading to GCC countries dropped significantly but saw a resurgence in 2021/22.²³⁹ Notably, labor approvals for Kuwait fell sharply in 2020/21 due to a 16-month suspension of Nepali migration to the country during the pandemic.²⁴⁰

Malaysia, another key destination for Nepali workers, has also seen fluctuations. The highest number of labor approvals for Malaysia was recorded in 2013/14, with 210,099 Nepalis receiving approvals.²⁴¹ However, the numbers declined, hitting a low of 9,999 in 2018/19.²⁴² The decline in 2015/16, with 127,903 approvals, may be linked to Malaysia's temporary ban on hiring new foreign workers in March 2016, aimed at boosting local employment (The Kathmandu Post

²³⁶ Ibid., 60-66

²³⁷ Ibid., 14

²³⁸ MoLESS, *Nepal Labour Migration Report* (Government of Nepal 2022), 60-66

<https://www.ceslam.org/uploads/backup/Nepal%20Labour%20Migration%20Report_2022.pdf> 29 August 2024

²³⁹ Ibid.

²⁴⁰ Ibid.

²⁴¹ Ibid.

²⁴² Ibid.

2016).²⁴³ Additionally, in May 2018, Nepal halted labor approvals to Malaysia to negotiate reduced recruitment fees and related costs for Nepali workers. These fees included charges for online registration, biometric medical tests, One Stop Centre (OSC) services, and visa fees. This led to a Memorandum of Understanding (MoU) between Nepal and Malaysia in October 2018.

Despite the MoU, labor migration to Malaysia only resumed a year later due to issues with pre-visa services. The following two years saw a modest increase before a sharp decline in 2020/21, with labor approvals dropping to just 1,135 (including 107 new approvals), primarily due to COVID-19-related disruptions and Malaysia's restrictions on foreign workers (Mandal 2021).²⁴⁴ In response to the pandemic, Malaysia implemented the Movement Control Order on 18 March 2020, limiting movement nationwide and banning foreign entry. Malaysia further restricted foreign workers' entry in June 2020 to prioritize local employment. After a 16-month pause, Malaysia began gradually lifting the ban on migrant workers in November 2021, starting with the plantation sector.

Recently, new destinations have emerged for Nepali workers, including countries in Central and Eastern Europe like Albania, Croatia, Poland, and Romania, as well as Cyprus and Turkey in West Asia.²⁴⁵ The Maldives also saw a rise in labor approvals, increasing from 2,450 (including 1,789 new approvals) in 2017/18 to 6,591 (2,735 new approvals) in 2021/22.²⁴⁶ Jordan and Malta have similarly attracted more Nepali workers. This trend may be influenced by a 2022 policy from DoFE allowing workers to seek individual labor approvals for countries like Albania, Croatia, Poland, and Romania, provided they submit a self-declaration of safety for both the country and employment.²⁴⁷

Labor approvals for Nepali workers heading to the UK surged by 95% in 2021/22 in comparison to the year 2017/18.²⁴⁸ This rise is attributed to the UK's post-Brexit labor shortages and the introduction of various temporary visas for migrant workers. The data of the government of the UK indicates that 559 number of Nepali citizens were issued temporary visas (which included

²⁴³ Ibid.

²⁴⁴ Ibid.

²⁴⁵ Ibid.

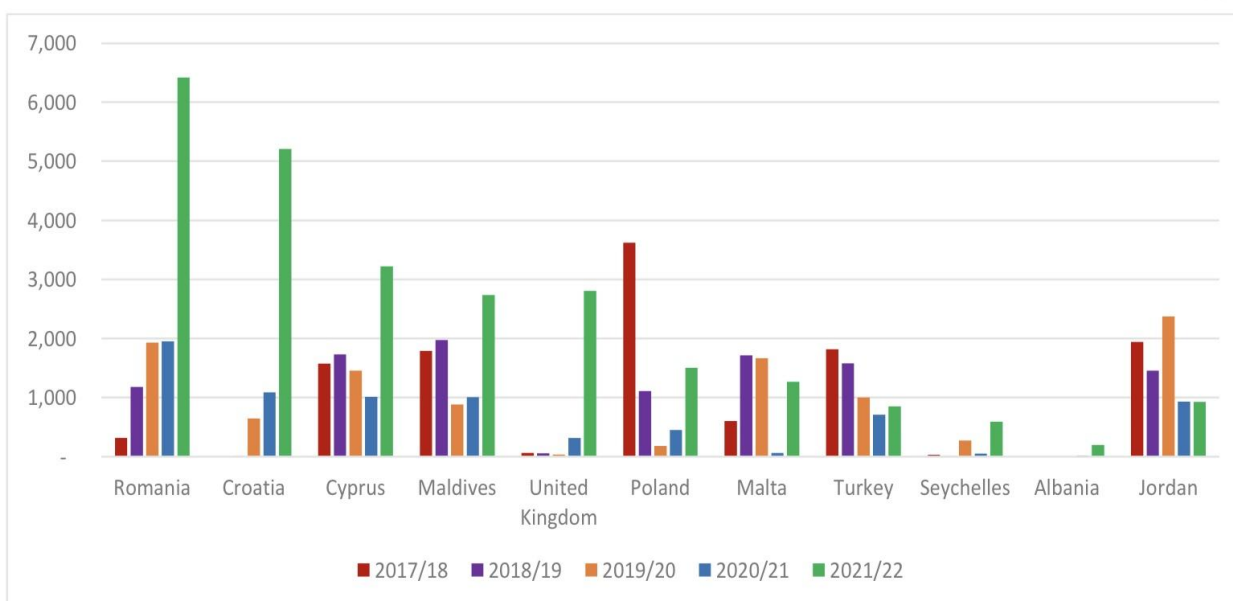
²⁴⁶ Ibid.

²⁴⁷ Ibid.

²⁴⁸ Ibid.

‘stay’ extensions) in 2021, and 415 Nepali citizens in the first three months of 2022.²⁴⁹ Reports by The Guardian and the Bureau of Investigative Journalism in 2022 revealed that Nepal ranked fourth among source countries for seasonal workers between January and March 2022, while the Migration Observatory at the University of Oxford placed Nepal ninth the previous year. The rise in labor approvals for the UK is likely due to the introduction of seasonal work visas, although not all those approved may be part of the seasonal work scheme.

Figure 1.2: New Labour Approvals Issued (by emerging countries of destination)²⁵⁰



Source: Data for 2017/18 and 2018/19 from MoLESS, Nepal Labour Migration Report 2020: 124-31; Data for 2019/20 to 2021/22 from FEIMS.

²⁴⁹ Ibid.

²⁵⁰ MoLESS, *Nepal Labour Migration Report* (Government of Nepal 2022), 62

<https://www.ceslam.org/uploads/backup/Nepal%20Labour%20Migration%20Report_2022.pdf> 29 August 2024

Table 1.1: Women Migrant Workers Renewing Labour Approvals
(by country of destination)²⁵¹

	2017/18	2018/19	2019/20	2020/21	2021/22
UAE	5,562	6,140	5,081	2,724	8,211
Qatar	1,029	1,185	1,180	389	2,790
Kuwait	908	689	1,040	168	1,633
Malaysia	996	1,078	723	12	206
Cyprus	468	576	497	218	826
Saudi Arabia	317	446	375	123	518
Bahrain	290	312	251	135	369
Israel	388	367	230	21	214
Maldives	145	206	160	111	263
Oman	160	144	181	112	263
Other Countries	284	402	509	265	773
Total	10,547	11,545	10,227	4,278	16,066

Source: Data for 2017/18 and 2018/19 from MoLESS, Nepal Labour Migration Report 2020; Data for 2019/20 to 2021/22 from FEIMS

In newer destinations, there are notable differences in migration patterns between male and female migrant workers. During the period from 2019/20 to 2021/22, data indicates that while most Nepali female migrant workers headed to the GCC countries, other countries such as Cyprus, Jordan, Turkey, Romania, Croatia, and Malta have become increasingly popular among women compared to men. Cyprus and Jordan, in particular, have been destinations for women migrant workers. For instance, in 2019/20, 2020/21, and 2021/22, 7.2%, 12.7%, and 8.6% of Nepali women migrant workers went to Cyprus, respectively, while less than 1% of male migrant workers chose this destination.²⁵²

When examining labor approval renewals by destination, the majority are concentrated in the GCC countries and Malaysia. This trend is consistent with the large number of labor approvals issued for these regions in previous years²⁵³. Given that the majority of approvals in the past decade were for the GCC and Malaysia, it is unsurprising that renewals continue to follow this pattern. However, recent years have shown a rise in labor approval renewals for countries like

²⁵¹ Ibid., 63

²⁵² Ministry of Labour, Employment and Social Security, *Nepal Labour Migration Report* (Government of Nepal 2022) p. 66

²⁵³ Ibid.

Cyprus, Poland, and Malta. For female migrant workers, the renewal data highlights the significance of the UAE, which accounted for roughly half of all labor approval renewals for women between 2017/18 and 2021/22.²⁵⁴ Additionally, the data underscores the growing importance of Cyprus as a key destination for Nepali women migrant workers.

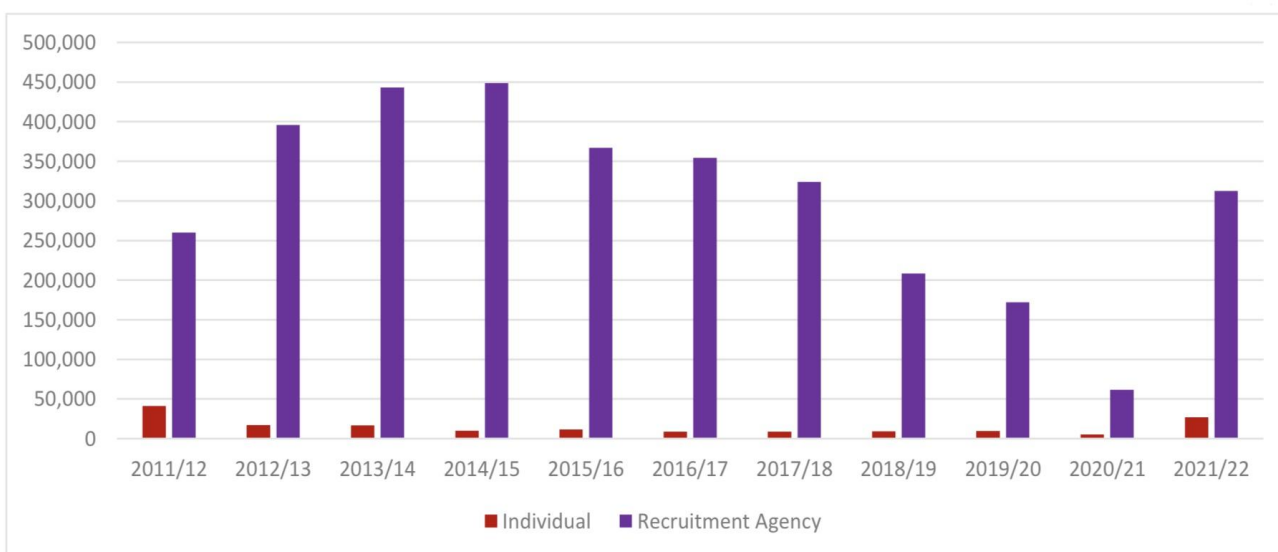
Table 1.2: Proportion of Women Migrant Workers Receiving New Labour Approvals (by top 10 destinations)²⁵⁵

	2019/20		2020/21		2021/22
UAE	40.4	UAE	32.8	UAE	39.1
Qatar	13.1	Qatar	14.7	Qatar	13.2
Jordan	12.7	Jordan	12.8	Kuwait	11.3
Cyprus	7.2	Cyprus	12.7	Cyprus	8.6
Kuwait	6.6	Maldives	6.0	Malaysia	3.8
Malta	3.0	Turkey	5.8	Croatia	3.3
Turkey	2.9	Romania	2.9	Maldives	2.7
Bahrain	2.3	Bahrain	2.4	Romania	2.5
Malaysia	2.2	Oman	2.2	Jordan	2.3
Oman	1.6	Croatia	1.9	Bahrain	1.9
Others	8.0	Others	5.8	Others	11.3
Total %	100		100		100
Total number	18,202		7,178		33,062

Source: FEIMS, 2022.

²⁵⁴ Ibid.

²⁵⁵ Ibid., 63

Figure 1.3: Mode of Obtaining Labour Approvals²⁵⁶

Source: Data for 2011/12 to 2018/19 from MoLESS, *Nepal Labour Migration Report 2020*; Data for 2019/20 to 2021/22 from FEIMS.

The most recent figure of 26,740 individual labor approvals issued in the year 2021/22 (which is 7.9% of the total) has been the highest since the year 2013/14.²⁵⁷

4.5 Skills Profile

Table 1.3: New Labour Approvals Issued (by skills profile)²⁵⁸

Type of skill	2019/20	2020/21	2021/22
Professional	0.09	0.1	0.06
Highly Skilled	0.01	0.02	0.01
Skilled	32.6	36.4	38.3
Semi - skilled	9.5	7.3	7.4
Unskilled	57.8	56.2	54.2
Total %	100	100	100
Total N	190,393	72,072	348,867

Source: FEIMS, 2022.

²⁵⁶ Ibid., 70

²⁵⁷ Ibid., 70

²⁵⁸ Ibid., 78

The skill level of migrant workers plays a crucial role in securing better opportunities, higher wages, and improved working conditions in the international labor market. Conversely, low skill levels often lead to lower pay and more vulnerable employment conditions. This importance of skills extends not only to aspiring migrant workers but also to those returning home. Skilled returnees can contribute to the local economy by introducing new skills and business models acquired abroad.

According to the International Standard Classification of Occupations, skill is defined as “the ability to perform tasks and duties of a specific job.”²⁵⁹ These skills can be gained formally through education and vocational training or informally through on-the-job experience.

Nepal categorizes its migrant workforce into 'unskilled,' 'semi-skilled,' 'skilled,' 'professional,' and 'highly skilled' based on demand letters from employers, though this classification doesn't align with international standards. Data shows that unskilled workers have historically made up the majority of Nepali migrant workers, though this proportion has been decreasing, from 64% in 2017/18 to just over 50% in 2021/22.²⁶⁰ Meanwhile, the proportion of skilled workers has risen from 27.8% to 38.3% over the same period, indicating a shift towards more skilled labor markets. However, the percentage of highly skilled and professional workers has seen little change.

Further analysis reveals that a higher percentage of professionals and highly skilled workers obtained individual labor approvals, while unskilled, semi-skilled, and skilled workers primarily relied on recruitment agencies. This suggests that more highly skilled workers are better equipped to navigate complex recruitment processes independently. Additionally, a higher proportion of labor approvals in the regularization category were issued to unskilled and skilled workers.

²⁵⁹ International Classification of Occupations (2008), Definition of ‘skill’.

²⁶⁰ Ministry of Labour, Employment and Social Security, *Nepal Labour Migration Report* (Government of Nepal 2022) p. 77-81

4.6 Occupation

Although the Foreign Employment Information Management System (FEIMS) does not adhere to a standard classification system for recording occupations, this report maintains the same categorization used in the Nepal Labour Migration Report 2020 to ensure consistency. The occupations are divided into 12 broad categories.²⁶¹

In 2021/22, most Nepali migrant workers, both men and women, were employed in elementary occupations.²⁶² Men were predominantly working as laborers, while women were mainly engaged in cleaning and laundry jobs. This occupational trend is consistent with that of 2018/19 when 54.8% of workers were in elementary roles, with nearly half of the women employed in cleaning and laundry, and 12% in caregiving or nursing aide positions.²⁶³ Men, however, had a wider range of job types.

The process of obtaining labor approvals varied depending on the worker's occupation. Workers who secured approvals individually or through the regularization process were more likely to engage in higher-skilled jobs, such as office or administrative roles, compared to those who went through private recruitment agencies (PRAs), who were mostly employed in elementary occupations.

The type of jobs also varied by destination. Most Nepali migrant workers in Qatar, Saudi Arabia, and Kuwait worked as laborers or in cleaning and laundry, while those in Malaysia were primarily in manufacturing.²⁶⁴ In newer destinations like Cyprus, Romania, Croatia, and Turkey, many workers were also in elementary occupations, followed by roles in the sales and service sectors. Additionally, a notable percentage of workers in these emerging destinations were employed in agriculture, fishery, poultry, animal husbandry, and gardening.

The top five destination countries for various occupational categories in 2021/22 were largely the same as in 2018/19.²⁶⁵ For instance, most migrant workers in manufacturing and agricultural jobs

²⁶¹ MoLESS, Nepal Labour Migration Report 2020

²⁶² MoLESS, Nepal Labour Migration Report 2022

²⁶³ MoLESS, Nepal Labour Migration Report 2020

²⁶⁴ Ibid., p. 84

²⁶⁵ Ibid., p. 85

were in Malaysia, while Japan had the highest number of professionals and had also become a leading destination for caregivers and nursing aides, surpassing Cyprus in 2021/22.²⁶⁶

4.7 Returnees

The reintegration of returnee migrant workers has gained significant attention, especially following the COVID-19 pandemic, which led to the repatriation of many Nepalis. This has highlighted the importance of utilizing their skills within Nepal. The NLFS 2017/18²⁶⁷ marked the first effort by the Government of Nepal to collect data on returnee migrants. Beginning in September 2020, the Foreign Employment Information Management System (FEIMS) also began recording returning migrants, in coordination with Nepali Port, managed by the Department of Immigration.

The COVID-19 pandemic left many Nepali workers stranded abroad, prompting the COVID-19 Crisis Management Coordination Centre (CCMCC) to begin repatriation efforts. The first group of 26 Nepalis was brought back from Yangon, Myanmar, on 5 June 2020. By January 2021, a total of 235,907 Nepali citizens had returned from 86 countries.

Data from FEIMS shows that 203,934 migrant workers returned via Tribhuvan International Airport in 2020/21, and this number surged to 470,978 in 2021/22.²⁶⁸ The lower number of returnees in 2020/21 can be attributed to the mobility restrictions in place during the pandemic. However, as these restrictions eased, the number of returnees increased significantly. The data for 2020/21 only includes information from September 2020 onward, so earlier returnees are not reflected, although the number is likely small due to the limited international travel at that time.

Men accounted for the vast majority of returnees, making up 94.2% and 93.3% of the total in 2020/21 and 2021/22, respectively.²⁶⁹ Most returnees came from the GCC countries and Malaysia, aligning with the primary destinations for Nepali migrant workers. The UAE was the

²⁶⁶ Ibid.

²⁶⁷ Central Bureau of Statistics, *Nepal Labour Force Survey, 2017/18*

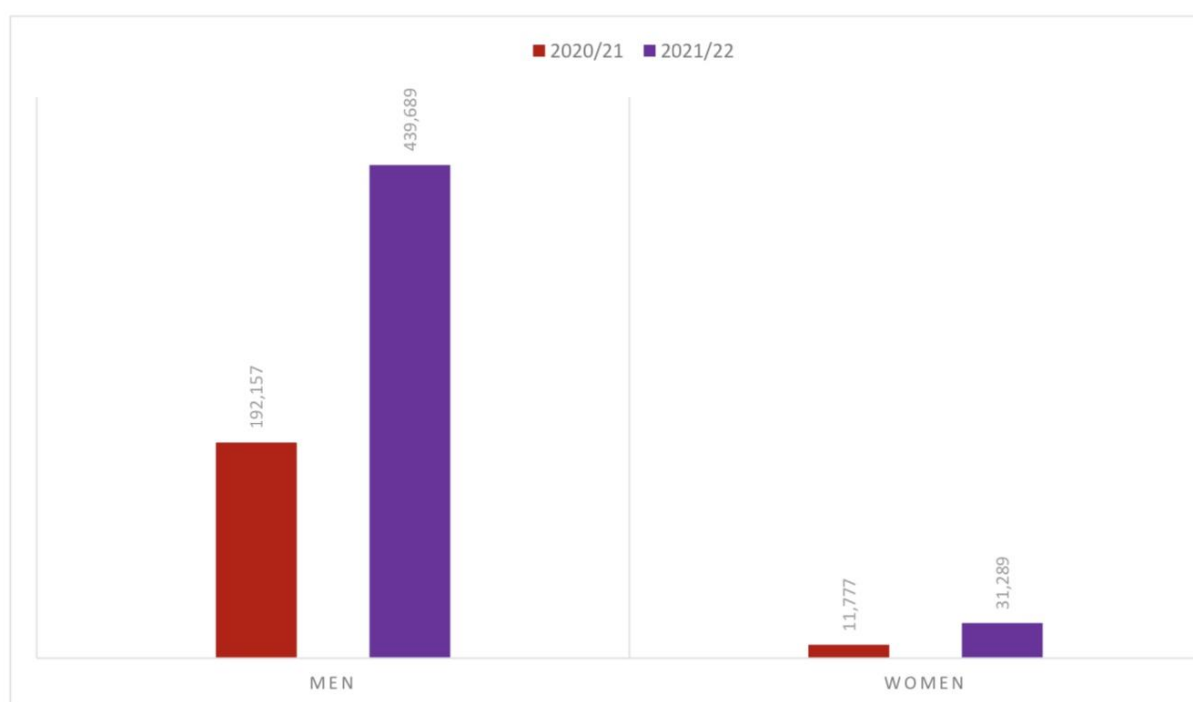
²⁶⁸ MoLESS, Nepal Labour Migration Report 2022

²⁶⁹ Ibid., p. 83-86

top country from which women returned, with notable numbers also coming from Jordan, Cyprus, Eastern and Central Europe, and other Asian countries.²⁷⁰

Despite progress in tracking returning migrants, there is still a lack of comprehensive data on their social and economic remittances, migration history, and circumstances of return. This gap complicates the development of evidence-based policies and strategies for their reintegration and the effective use of their remittances in Nepal.²⁷¹ However, the data available on returnees at the provincial and district levels can help the three tiers of government and other stakeholders formulate and implement targeted policies and programs. Additionally, the significant number of women returnees from countries where domestic work migration is prohibited highlights gaps in current policies, irregular migration issues, and the need for regularization and safer migration pathways in the future.²⁷²

Figure 1.4: Returnee Migrant Workers (categorized by gender)²⁷³



Source: FEIMS, 2022.

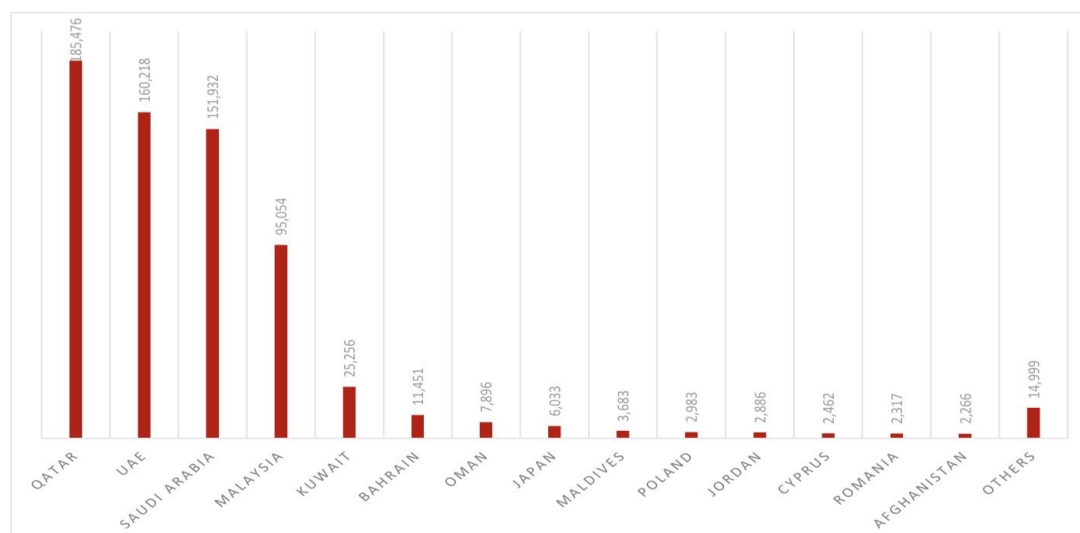
²⁷⁰ Ibid.

²⁷¹ Ibid.

²⁷² Ibid.

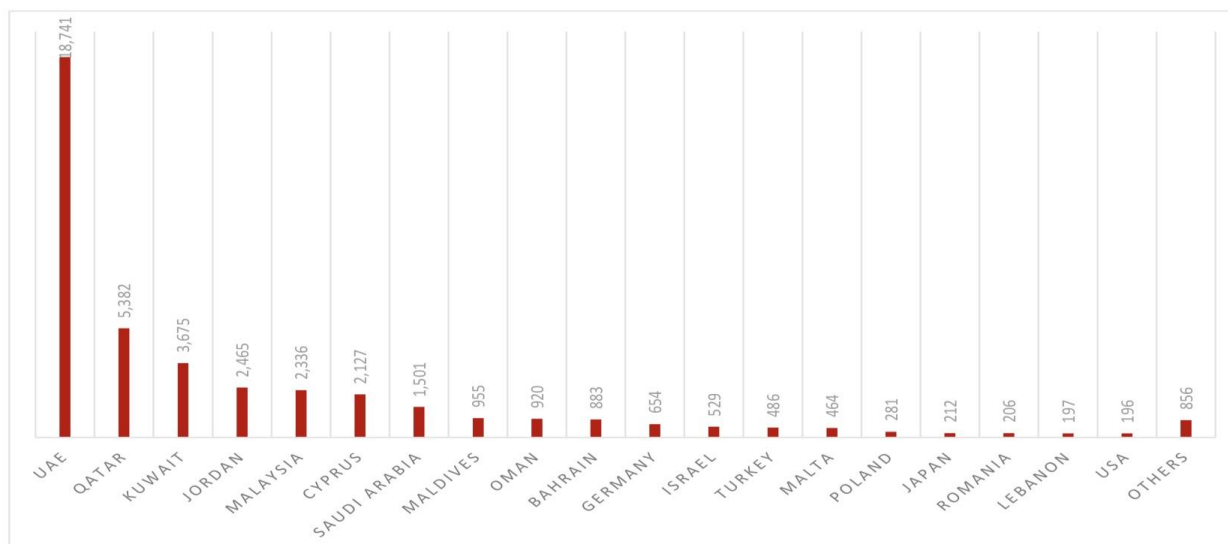
²⁷³ Ibid., 92

Figure 1.5: Returnee Migrant Workers (2020/21-2021/22) (categorized by destination country)²⁷⁴



Source: FEIMS, 2022.

Figure 1.6: Female Returnee Migrant Workers (2020/21-2021/22) (categorized by destination country of)²⁷⁵



Source: FEIMS, 2022.

²⁷⁴ Ibid., 93

²⁷⁵ Ibid.

CHAPTER V

Case Studies in Nepal

A. *Sewaram v. Eastern Regional Administration Office et.al.*,²⁷⁶

The victim filed a writ of Habeas Corpus in accordance with Article 107(2) of the Interim Constitution of Nepal 2007, to conduct field investigation at Om Brick Industry and free the workers, alleging that the defendants have forcefully kept the applicant and 64 others as bonded labourers. The victim stated that the workers have not been paid and were forced to work by coercion. The Court ordered the District Administration Office to conduct a field investigation in the brick industry. After the field investigation, the investigating authority stated that from the victim's interview, they felt that the victim's statements were true and that the victims have been forced to work and were forcefully restrained. All the defendants, in their written statements, stated that the writ of Habeas Corpus should be dismissed as all the victims have been sent back safely to their country.

The issue raised in the case was: Were the workers kept forcefully, in such a way that an order of habeas corpus should be issued against the defendants?

The Court's decision:

The Court explained that, in direct relation with the individual's freedom and protection of human rights, the act of restraining workers and subjecting them to forced labour is not only the violation of human rights, but is contrary to the Interim Constitution of Nepal 2007, national laws and international conventions. However, in this case, all the victims were released and sent to their respective places (India) in the course of the case hearing, so the order of habeas corpus was not issued and the writ application was dismissed. However, the court issued a directive order to the Ministry of Labour and Employment to initiate effective and regular investigations and monitoring regarding the implementation of labour laws, and take appropriate measures, steps and actions against those violating the laws.

²⁷⁶ *Sewaram v. Eastern Regional Administration Office et.al.*, Writ no. 069-WH-0044

Relevant legal provisions cited in the decision:

The court has cited Articles 4 and 5 of the ILO Forced Labour Convention No. 29, 1930, and the Abolition of Forced Labour Convention No. 105, 1957. Moreover, the court cited the Weekly Rest (Industry) Convention No. 14, 1921, the Equal Remuneration Convention No. 100, 1951, the Discrimination (Employment and Occupation) Convention No. 111, 1958, and the Worst Forms of Child Labour Convention No. 182, 1999. As per the Nepal Treaty Act 20, these conventions shall be enacted as good as Nepalese laws.²⁷⁷ Furthermore, the court cited Articles 20, 22 and 29, of the Interim Constitution of Nepal, Sections 16, 22, 27, 41, 42 and 84 of the Labour Act 2002. The court has also cited the Labour Rules 2002.

Relevance to forced labor and its Analysis: The concept of forced labor, as defined under the International Labour Organization's (ILO) Convention No. 29 on Forced Labour, 1930,²⁷⁸ is highly pertinent to understanding the conditions faced by workers in various contexts. According to this convention, forced labor is characterized by situations where individuals are compelled to work against their will through the use of coercion, threats, or deception. Workers who find themselves in environments where they are unable to freely leave their place of employment due to such coercive measures are considered to be in a state of forced labor.²⁷⁹

This definition underscores the critical importance of free will in the context of labor, emphasizing that any form of work that is performed involuntarily, particularly under duress or the threat of punishment, qualifies as forced labor. The inability of workers to leave their workplace—whether due to physical confinement, the withholding of wages or documents, or other forms of psychological or financial coercion—places them squarely within the bounds of this definition. Understanding forced labor through the lens of ILO Convention No. 29 allows for a comprehensive analysis of labor practices globally, highlighting the need for stringent measures to protect workers' rights and prevent exploitation. By recognizing the conditions that constitute forced labor, stakeholders—including governments, employers, and international

²⁷⁷ Section 9, Nepal Treaty Act 1990, Treaty Provisions Enforceable as good as Laws: (1) In case of the provisions of a treaty, to which Nepal or Government of Nepal is a party upon its ratification accession, acceptance or approval by the Parliament, inconsistent with the provisions of prevailing laws, the inconsistent provision of the law shall be void for the purpose of that treaty, and the provisions of the treaty shall be enforceable as good as Nepalese laws.

²⁷⁸ ILO 1930 (C039), Article 2

²⁷⁹ Ibid.

organizations—can work towards creating safer, more equitable work environments, ensuring that all individuals have the right to work in conditions of freedom, security, and dignity.

B. Dumre Kami et.al. v. GoN, Case no. 070-WO-0905

This writ petition seeking the order of mandamus in accordance with Articles 32 and 107(2) of the Interim Constitution of Nepal 2007, was filed before the Supreme Court to guarantee the human rights of Haliya victims. Haliya are those who served as agricultural bonded labourers for landlords to till the land and undertake heavy manual labour.²⁸⁰ The applicant argued that despite the formation of a High Level Committee²⁸¹ as per the national and international laws for the collection of data on freed Haliyas and protection of their rights, the defendant (Government of Nepal) was not concerned about the 10 points recommendations provided by the committee and formulated the guidelines without any consultation. The freed Haliyas (including the women Haliyas and their children) have not been rehabilitated and were forced to live without job, education and food. The writ demanded the protection of the freed Haliyas. The defendant provided written statement to dismiss the writ application. It argued that it complied with all the necessary actions and steps and that it did not violate the rights of the applicant in any way.

The issue raised in the case was: Does the Government of Nepal need to implement further action to ensure the rights of freed Haliyas are respected?

The Court's decision: The Court issued a directive order to establish a High Level Commission for Rehabilitation of Haliyas. The court ordered the Government to identify the haliyas in Surkhet, Jajarkot, Humla, Kailali, Kanchanpur, Dadeldhura, Baitadi, Doti, Accham, Bajhang, Bajura, and Darchula and take required actions to protect their rights and take necessary step within three months of the order and complete the actions within three years.

Relevant legal provisions cited in the decision:

The court stated that in 2065, Haliyas started a movement for their liberation from bonded labour practices. The National Haliya Mukti Samaj, Mahasangh presented 11 points demand before the

²⁸⁰ Freed Haliya in the Far West and their land concerns - Issue 7, UNRCHCO , 2011

²⁸¹ The committee was formed after the agreement between the government and National Federation of Liberated Haliyas in response of Haliyas' demand.

Government. Consequently, the representatives of Haliya and the government agreed on five points: dismissal of the loans of Haliyas and formal declaration of liberation of Haliyas, formation of 9 members task force to present a study report on the demands of the National Haliya Liberation Society, Federation, protection and security of the Haliyas in protest, initiate the procedure to solve the problems of Haliyas after the study report is presented, and halting all the protests being conducted by National Haliya Liberation Society, Federation. As per the agreement, the Government has agreed to liberate and rehabilitate Haliyas, to provide land to them and also to provide them with compensation and employment. It was also agreed to end discrimination against former bonded labourers and to include their representation in every sector in accordance with the Constitution.

The Court cited Article 12, 13, 14 and 29 of the Interim Constitution of Nepal 2007 and Article 16, 17, 18, 24 and 29 of the Constitution of Nepal. The Constitution of Nepal in Policies regarding social justice and inclusion under State Policies states the "Rehabilitation of Kamaiya (bonded labourers), Kamlari, Haruwa, Charuwa, Haliya, the landless and the squatters by identifying them, and making arrangements of housing, or providing small plot of land or house, employment, or arable land for their livelihoods." The court also cited Article 2, 4, 5 of Convention on Abolition of Slavery 2066 and International Covenant on Civil and Political Rights 1966.

Relevance to forced labour and Analysis: bonded labour is one form of forced labour. Hence, Haliya, like other traditional forms of bonded labour, are victims of forced labour.

In Nepal, traditional bonded laborers are known as 'Kamaiya', 'Haliya', or 'Haruwa-Charuwa'.²⁸² The phenomenon of bonded labor in Nepal has its roots in unequal agrarian relations and caste-based discrimination.²⁸³ Landless individuals, particularly those from Dalit and marginalized communities, often find themselves compelled to borrow money from wealthy landowners to meet basic subsistence needs.²⁸⁴ This creates a cycle where generations of families become trapped in debt, forced to work as unpaid laborers for the landlords. Although outlawed

²⁸² FLeAG & NCPA Submission - *Nepal: Decent Work*, para. 29, 10
<<https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=8136&file=EnglishTranslation>> accessed 28 August 2024

²⁸³ Ibid.

²⁸⁴ Ibid.

in 2000, approximately 32,000 Kamaiya still exist, alongside over 5,000 Kamlahri (outlawed in 2006), 20,000 Haliya (banned in 2008), and more than 70,000 Haruwa-Charuwa, Bhunde, Deuki, Badi, Balighare, Khalo, and Ritibhagya.²⁸⁵ Beyond these traditional forms of bonded labor, modern slavery-like practices persist in brick industries, foreign employment, adult entertainment sectors, and child labor in embroidery industries. Additionally, over two million Nepalese men and women have migrated abroad for low-skilled jobs, such as domestic work and construction.²⁸⁶

Nepal has made notable progress in reducing traditional forms of forced and bonded labor. The Government of Nepal, in collaboration with development partners, has been implementing rehabilitation programs for Freed Kamaiya and Freed Haliya Rehabilitation programs.²⁸⁷ These programs include provisions for land allocation, housing support, and skill training opportunities. To date, nearly 90% of freed Kamaiyas have received rehabilitation assistance, with the government working to support the remaining individuals.²⁸⁸ However, despite the release of a significant number of Haliya bonded laborers, the efforts have been hampered by limited government measures, poor coordination between departments, and a lack of cohesive policies.²⁸⁹

C. Bhagirath Dahal v. GoN, NKP 2074, Decision no. 9824

The victim filed an FIR on 2nd August 2007 stating that her niece convinced her to work as a baby caretaker in Kuwait. The defendant, the husband of her niece, induced her and sent her to Bombay via Kakadbhitta route. The victim was deceived by the defendant and told her that her visa for Kuwait had been approved and that she would be received by her employer at the airport, but was instead sent to Saudi Arabia. The victim stated that she was not given any money and was beaten and forced into prostitution. The victim stated that she fled from there after five

²⁸⁵ Forced labour of adults and children in the agriculture sector of Nepal: focusing on HaruwaCharuwa in eastern Tarai and Haliya in far-western hills / Bal Kumar KC, Govind Subedi, Bhim Raj Suwal; International Labour Organization.- Kathmandu : ILO, 2013.

²⁸⁶ FLeAG & NCPA Submission - *Nepal: Decent Work*, para. 29, 10
<<https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=8136&file=EnglishTranslation>> accessed 28 August 2024

²⁸⁷ Ibid., para. 30

²⁸⁸ Ibid.

²⁸⁹ Ibid.

months. The defendant argued that the victim was legally sent to Saudi Arabia for foreign employment in her own will and denied selling the victim.

The issue raised in the case was: The defendant agreed that he sent the victim to Saudi Arabia for foreign employment. Hence, the court is to identify whether the particular issue is to be discussed under Human Trafficking and Transportation Act 2007 or under Foreign Employment Act 2007.

The Court's decision:

As the defendant's crime has been proved in his acceptance to send the victim to Saudi Arabia, the court validated the Appellate Court's decision and stated that the defendant shall be punished with 10 years of imprisonment as per Section 8(1) of the Human Trafficking Act 1987 and the defendant's wife shall be punished for her role as an accomplice. Moreover, the court decided to offer the victim a compensation of 200,000 rupees.

Relevant legal provisions cited in the decision:

The Court referred to Section 7(1) of the Human Trafficking Act 1987 and the precedent case *Durga Dhimal v. HMG*, NKP 2054, stating that the burden of proof lies on the defendant to prove oneself innocent. The Court stated that for the justice to prevail, law makers, interpreters, implementers and justice seekers should be victim centered. The court cited *Booth v. Maryland's Victim Impact Statements* and *Payne v. Tennessee's* interpretation on victim impact evidence. Moreover, the court cited the provisions set to protect victim's rights, in the Crime Victims' Rights Act 2004. The court referred to Article 6 of CEDAW (1979), Article 6.1 of the ICCPR (1966), the Preamble of the 1949 Convention for the Suppression of the Traffic in Persons and the Exploitation of Prostitution of Others, Articles 12 and 13 of the 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, and Article 11 of the 2009 Draft UN Convention on Justice and Support for Victims of Crime and Abuse of Power. Various precedents and theories cited by the court favor victims. The court has also referred to Ronald Dworkin's principle to protect victim's rights.

Relevance to forced labor and Analysis: The relevance of certain practices to forced labor is crucial to understanding how exploitation occurs in various labor markets, particularly among

vulnerable populations. Indicators of forced labor include a range of unethical and illegal tactics employed by employers or recruiters to control and exploit workers. These tactics often begin with false promises, where workers are misled about the nature of the job, wages, working conditions, or other key aspects of employment. Such deceitful practices are used to obtain a person's consent under biased or false pretenses, creating a situation where the worker agrees to the employment but is unaware of the true conditions they will face. Recognizing these indicators is essential for identifying instances of forced labor and taking appropriate legal and regulatory actions to combat it. In many cases, like this one, the combination of false promises and coercion not only violates the fundamental rights of workers but also perpetuates cycles of exploitation and abuse, particularly among marginalized groups such as migrant workers, women, and children. By understanding and addressing these indicators, governments, organizations, and advocacy groups can work towards eradicating forced labor and ensuring that all workers are treated with dignity and respect.

D. HMG v. Rajesh Lama, NKP 2062, Decision no. 7525

The victim filed an FIR stating that she was lured and deceived by the defendant who convinced her that she would be able to work for foreigners in Darjeeling but instead she was sold and forced into prostitution in Puna, India. The defendant recognized that he sold the victim before the police but denied it during his statement in court. The Appellate Court in its decision stated that when the crime was committed, the defendant was above 14 and below 16 years of age, hence, he shall be punished as per Section 11(3) of the Act Relating to Children 1992.

The issue raised in the case was: As the defendant's age is unclear, and contradictory in the testimony, the court is to decide whether or not minimizing the defendant's punishment as per Section 11(3) of Children's Act 1992 is right or not.

The Court's decision: The court validated the Appellate Court's decision to decrease the defendant's punishment as per Section 11(3) of the Children's Act 1992 and convicted him of five years of imprisonment and a 30,000 rupees fine. As the defendant has agreed to the conviction made under Sections 8(1) and (5) of the Human Trafficking Act 1987, the Court needs no discussion regarding the issue of the conviction.

The Court relied on a medical expert's statement that, as per the tests conducted, it cannot be said that the defendant's age is above 16 years. Hence, the Court stated that as the defendant's age cannot be proved through any other means, the court has to rely upon expert's opinion and accept that the defendant has not completed the age of 16 years.

Relevance to forced labor and Analysis: In the context of forced labor, the situation where an applicant was trafficked for the purpose of sexual exploitation exemplifies a severe and exploitative form of labor abuse. This case highlights the profound intersection between human trafficking and forced labor, particularly within the realm of sexual exploitation. Trafficking for sexual exploitation involves coercing or deceiving individuals into engaging in sexual activities under conditions of exploitation, often involving manipulation, threats, and violence. In this specific case, the applicant was subjected to trafficking with the intent of sexual exploitation, a situation that underscores the broader issue of forced labor where individuals are compelled to perform tasks or services against their will, often under duress or coercion. The individual's experience reflects a grave violation of human rights, where the victim is deprived of their autonomy and subjected to exploitative conditions, which are central to the definition of forced labor.

Moreover, the legal context of the case included the recognition of mitigating circumstances due to the perpetrator being a minor. This aspect is significant as it introduces complexities into the legal and ethical considerations surrounding the exploitation. The fact that the perpetrator was a minor may influence the judicial response and the level of culpability assigned, reflecting an understanding that age and maturity can affect the nature and impact of their actions. However, this does not negate the serious nature of the exploitation experienced by the victim. The case is relevant to discussions on forced labor as it illustrates how individuals, particularly minors and vulnerable populations, can be coerced into exploitative situations through trafficking. It also emphasizes the need for comprehensive support systems for victims, as well as the necessity for legal frameworks that address both the exploitation itself and the context in which it occurs, including considerations for the age and circumstances of perpetrators. Addressing these issues requires a multifaceted approach, incorporating victim support, prevention of trafficking, and effective legal mechanisms to combat and eradicate forced labor and sexual exploitation.

E. Suresh Lama et.al. v. HMG, NKP 2062, Decision no. 7571

The victim filed an FIR stating that she was hired by the defendant to babysit his daughter but instead, the defendant coerced her and forced her into prostitution. The victim alleged that the defendant has forced other women as well. The defendant denied the accusation and stated that he did not know about the victim being sexually exploited.

The issues raised in the case was: Was the defendant liable under Section 8(3) of the Human Trafficking Act 1987?

The Court's decision:

The Court validated the Special Court's decision to convict the defendant in accordance with Section 8(3) of Human Trafficking Act 1987. The defendant's appeal to be acquitted from the charge cannot be entertained; hence, he shall be punished with 10 years of imprisonment. The court referred to the medical report which confirmed that the victim has been working as a sex worker.

Relevant legal provisions cited in the decision:

The court referred to Article 1 of the UN Convention on the Suppression of the Traffic in Persons and the Exploitation of Prostitution of Others, stating that since Nepal has ratified this convention, it must be enforced as national law. The Court stated that the letter and spirit of these legal provisions protecting the rights of women should be taken into consideration while interpreting the Act, hence, the evidence presented by the victim were proved in accordance with both the Human Trafficking Act 2043 and the Evidence Act 2039.

Relevance to forced labor and Analysis: The applicant's experience as a victim of trafficking for the purpose of sexual exploitation is a profound illustration of forced labor in its most egregious form. Trafficking for sexual exploitation involves the systematic and deliberate use of coercion, manipulation, and deceit to compel individuals into engaging in sexual activities under conditions that are both abusive and exploitative. This specific case underscores the direct link between human trafficking and forced labor, as it exemplifies how individuals can be coerced into labor through exploitation of their vulnerability.

In this context, the applicant's situation falls squarely within the definition of forced labor as articulated by international standards, including those set forth by the International Labour Organization (ILO). Forced labor is characterized by situations where individuals are compelled to work against their will through the use of coercion, threats, or deceit, and are deprived of their freedom to leave the exploitative situation. The trafficking for sexual exploitation is a clear manifestation of this type of labor abuse, where the victim is subjected to conditions of extreme exploitation and abuse, with no control over their own autonomy and labor.

The case is particularly relevant because it highlights the severe human rights violations inherent in forced labor situations involving trafficking. It brings attention to the harsh reality that victims of trafficking are not only deprived of their basic rights but are also subjected to repeated and continuous abuse, often under conditions that involve both physical and psychological coercion. Such circumstances represent a gross violation of human dignity and are emblematic of the broader issue of forced labor.

F. Fulmati Shrestha (Maharjan) v. GoN, NKP 2066, Decision no. 8208

The first information report (FIR) was filed against the defendant by the Children Welfare Organization alleging that the defendant had convinced and lured the victims (children) to work in a circus in India. The victims (who were under the protection of the organization) stated that the defendant had sold them for 2,000 Indian rupees each and they were able to return only after three years. The charge sheet was filed alleging that the defendant committed offences contrary to Sections 3 and 4(a) of the Human Trafficking (Control) Act 1987 and that they were to be convicted in accordance with Sections 8(1) and 8(5) of the same Act. The defendant denied selling the victims to a circus. The defendant argued that the applicants' parents agreed to the contract and that they received monthly payments for their work.

The issues raised in the case was: Did the defendant sell the applicants to a circus in India and does this constitute an offence under the Human Trafficking (Control) Act, 1987?

The Court's decision: The Court stated that the defendant committed an offence contrary to Section 4(a) of the Human Trafficking (Control) Act 1986. Hence, the Court ordered the

defendant to be imprisoned for 10 years in accordance with Section 8(1) and gave additional punishment as per Section 8(5). If the defendant admits to the charges, no other evidence is required. The Court stated that guardians' agreement does not legalize the acts. The act of letting children work in a circus cannot be considered innocent.

The Court stated that the act of human trafficking has a regional dimension, and in order to prevent and control the offence and punish the offender, Bilateral, Regional and International support is necessary.

Relevant legal provisions cited in the decision:

The court cited Articles 22(2), (3) and (5) of the Interim Constitution of Nepal 2007, Section 10(1)(b) of the Evidence Act 1977, Section 4 of the Human Trafficking and Transportation (Control) Act 2007, and Sections 17 and 18 of the Act Relating to Children. The court also referred to Article 2(1) of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography 2000 as well as Article 24(1) of the ICCPR 1966. The Court has also cited Article 2(2), Article 9, Article 19(1) and Article 32(1) of the Convention on the Rights of the Child 1989. Furthermore, the court has cited the "Guidelines for Action of Children in the Criminal Justice System" and "Proposal no 2005/20 of UN Economic and Social Council" for the protection of the child victims.

Relevance to forced labor and Analysis: In the context of trafficking for the purpose of labor exploitation, the victim's situation is intricately linked to both trafficking and forced labor, demonstrating how these two grave issues intersect and reinforce each other. Trafficking for labor exploitation involves the recruitment, transportation, or harboring of individuals through deceit, coercion, or force, with the intent of exploiting them for labor in conditions that violate their basic rights and freedoms.

Under international definitions, including those set by the ILO, forced labor is characterized by situations where individuals are compelled to work against their will through the use of threats, coercion, or deception, and are prevented from leaving their situation. Trafficking for labor exploitation fits squarely within this definition, as it involves the use of manipulative and abusive practices to control and exploit individuals, stripping them of their autonomy and subjecting them to conditions of severe exploitation.

The relevance of this case to the broader issue of forced labor emphasizes the need for comprehensive approaches to address and prevent such abuses. It highlights the importance of recognizing and combating the various forms of exploitation that trafficking can entail, including forced labor. Effective responses require coordinated efforts to both dismantle trafficking networks and protect victims, ensuring they receive the necessary support and legal remedies. By understanding how trafficking and forced labor intersect, policymakers, law enforcement, and advocacy groups can develop more targeted strategies to address these severe violations and work towards the eradication of exploitation in all its forms.

G. Prem Bahadur Moktan v. HMG²⁹⁰

The victim filed an FIR alleging that the defendant lured her and convinced her that he would offer her work, but instead, he sold her in Bombay, India. The victim stated that she was forced into prostitution for 10 years. The defendant recognized the allegation before the investigation authority but denied it in his statement before the Court. The issues raised in the case was: The Court is to decide whether or not the decision made by the District Court and Appellate Court to convict the defendant for twenty years of imprisonment as per no. 1 of Chapter on Jiu Masne Bechne of Muluki Ain, is right or not.

The Court's decision:

The Court ruled that the Appellate Court's decision to convict the defendant as per Muluki Ain's Chapter No. 1 on Jiu Masne Bechne was right. Hence, the defendant shall be punished with 20 years of imprisonment. The burden of proof lies on the defendant to prove his innocence, but as he was not able to prove it and as per the victim's statement, the Court cannot deny the proofs and the evidence.

Relevant legal provisions cited in the decision:

²⁹⁰ Prem Bahadur Moktan v. HMG, NKP 2060, Decision no. 7260

The court has cited no. 1 of Chapter on Jiu Masne Bechne of Muluki Ain and Human Trafficking Act 1987. The court stated that when the FIR states the defendant to be punished as per no. 1 of Chapter on Jiu Masne Bechne of Muluki Ain, as it was the prevalent law when the crime was committed. The court stated that as the FIR was filed in 2049 BS, the investigation conducted and the evidence collected as per the prevalent law i.e. Human Trafficking Act 1987 also holds the same place.

Relevance to forced labor and Analysis: In this case, the applicant's situation as a victim of trafficking for the purpose of sexual exploitation is highly pertinent to discussions on forced labor. Trafficking for sexual exploitation represents a severe form of forced labor, where individuals are coerced into engaging in sexual activities under conditions of extreme abuse and exploitation. This form of trafficking not only involves the illicit recruitment and transportation of individuals but also encompasses the abusive conditions under which they are forced to work, stripping them of their freedom and autonomy.

The relevance of this case is further underscored by the legal proceedings, where the Court assigned the burden of proof to the defendant. This legal principle is significant because it places the responsibility on the accused party to provide evidence that counters the allegations of trafficking and forced labor. By shifting the burden of proof, the Court recognizes the gravity of the accusations and acknowledges the inherent challenges faced by victims of trafficking, who often have limited resources and face substantial difficulties in presenting evidence against their traffickers.

Furthermore, the application of this legal principle highlights the need for a justice system that effectively addresses the complexities of forced labor and trafficking cases. It underscores the importance of recognizing the unique challenges faced by victims and ensuring that legal processes are structured to uphold their rights and seek redress for the severe abuses they have endured. By setting a precedent for how evidence and burden of proof are handled in such cases, the Court contributes to the broader efforts to combat forced labor and protect the rights of exploited individuals.

The victim filed an FIR stating that the defendant brought her to Kathmandu with an enticement of getting a job in a hotel. She was 16 years old at the time. Once in Kathmandu, the defendant restrained her in a room and then sold her and another victim in Bombay, India. The victim accused the defendant of trafficking and demanded him to be punished. The defendant denied selling or being accomplice to the victims.

The issue raised in the case was: Was the defendant liable to be convicted in accordance with the Human Trafficking Act 1987 as an accomplice?

The Court's decision:

The Court ruled that the defendant played the role of an accomplice, and thus decreased the punishment set by the Appellate Court and convicted the defendant to 10 years of imprisonment in accordance with Section 8(1) of the Human Trafficking Act 1987. Also, the Court ordered to compensate the victim with 300,000 rupees as per Section 14 of the Human Trafficking and Transportation Control Act 2007.

Relevant legal provisions cited in the decision: The court cited the Human Trafficking and Transportation (Control) Act 2007. The court cited the case *Calder v. Bull* while interpreting the retrospective effect of substantive law and the principle of ex-post facto law. The court cited both the Human Trafficking Act 1987 and the Human Trafficking and Transportation (Control) Act 2007 stating that the charges can be initiated as per the Human Trafficking and Transportation (Control) Act 2007 as the previous Act aligns with the latter.

Relevance to forced labor and Analysis: The applicant in this case was a victim of trafficking for sexual exploitation. In this particular case, the relevance of forced labor is further underscored by the legal outcome in which the perpetrator's punishment was reduced by being classified as an accomplice rather than the principal offender. This legal classification has important implications for the prosecution and sentencing of individuals involved in trafficking and forced labor. By being designated as an accomplice, the perpetrator's role and responsibility in the crime are deemed less severe compared to that of a principal perpetrator, which often results in a reduced sentence.

This adjustment in the legal classification and subsequent reduction in punishment can significantly impact the victim's sense of justice and the broader efforts to combat trafficking and forced labor. It raises concerns about the effectiveness of legal frameworks in addressing the full scope of responsibility for such heinous crimes. In cases of trafficking for sexual exploitation, where victims often suffer severe trauma and exploitation, it is crucial that those who perpetrate or facilitate these crimes face appropriate legal consequences that reflect the gravity of their actions. The reduction in the perpetrator's punishment as an accomplice highlights the challenges in ensuring that all individuals involved in trafficking and forced labor are held fully accountable for their actions. It underscores the need for a legal system that adequately addresses the complexity and severity of these crimes, ensuring that justice is served in a manner that aligns with the seriousness of the exploitation endured by the victims.

I. Devendra (name changed), a returnee migrant worker who returned from Qatar in July 2018²⁹¹

Devendra, a 34-year-old from the Dailekh district, had returned to his village after working in Malaysia but struggled to find employment there. In Asar 2074, he met an agent who frequently visited his town. The agent informed him of a job opportunity in Qatar for cleaning work, promising a monthly income of at least 1,800 Riyal, including a 1,500 Riyal salary and overtime. Without better alternatives, Devendra decided to pursue the job in Qatar. When the agent quoted a cost of NPR 220,000 for the process, Devendra mentioned hearing about free visas and tickets. The agent dismissed this, saying that the rule was not enforced, and eventually, they settled on a payment of NPR 200,000. In July 2017, the agent asked Devendra to send NPR 150,000, requesting that the money be sent via IME to a woman he claimed was his wife. Devendra compiled and sent the money. A few days later, the agent informed him that his visa had arrived and directed him to a health institution in Nepalgunj for a medical examination. After the medical test, the agent summoned Devendra to Kathmandu, where he collected an additional

²⁹¹ NHRC, *The Situation of the Rights of Migrant Workers: Recruitment Practices and Access to Justice of Migrant Workers* (2019), 65
 <https://www.nhrcnepal.org/uploads/publication/Research_Report_on_the_Situation_of_The_Rights_of_MW.pdf>
 accessed 27 August 2024

NPR 50,000 for the air ticket and visa fees. When Devendra requested a receipt, the agent refused, stating that the money had already been spent on the ticket and visa, leaving Devendra with little choice but to continue with the process.

In September 2017, Devendra traveled to Qatar, only to discover that he was sent to a different employer than the one specified in his labor permit and employment contract. Although promised a cleaning job, he was assigned to assist an air conditioning technician. After six months, he was moved to a different location. The employment contract promised a monthly salary of 900 Riyal, but his employer inconsistently deposited amounts ranging from 500 to 800 Riyal in his bank account. Additionally, the 300 Riyal promised for food was neither provided nor was food arranged by the company. After five months without receiving his full salary, Devendra contacted the agent and the recruiting company, who assured him that he would eventually be paid, but they soon stopped answering his calls altogether. Frustrated, Devendra considered returning home, but his employer demanded that he pay for his return ticket if he wished to leave before completing the two-year contract. Ultimately, Devendra forfeited four months of unpaid salary and purchased a return ticket for 730 Riyal, returning to Nepal. When asked by the NHRC if he had filed a complaint to recover the money from the agent and agency, Devendra said he didn't know where to report, whether he could recover his money, or if the process would cost him even more, so he chose not to pursue it. Still burdened by the debt he incurred to go to Qatar, Devendra is now contemplating seeking work in Malaysia.

Poverty and unemployment force hundreds of thousands of Nepalis like Devendra to seek foreign employment. Despite the Constitution guaranteeing the right to employment as a fundamental right, only a fraction of the 500,000 new entrants to the labor market each year find jobs within Nepal, leaving the rest to pursue work abroad. The primary destinations for Nepali workers include Gulf countries and Malaysia, where they are employed in construction, manufacturing, and domestic work. Over 90% of those who go abroad with labor permits do so through foreign employment agencies, often facilitated by local agents who act as intermediaries. Of the 418 individuals involved in this NHRC research who had either gone or were preparing to go to third-world countries, 395 (94.5%) were assisted by local agents or had their travel arrangements made informally by agents. For many, the services provided by these agents and agencies are crucial in connecting them with foreign employment, enabling them to earn income,

support their families, and save for the future. In this way, foreign employment entrepreneurs play a significant role in temporarily addressing Nepal's severe unemployment problem.

Although there are government mechanisms and special legal provisions designed to prevent abuses against those seeking foreign employment and to regulate the foreign employment sector, these measures have not been effective in safeguarding the rights of Nepali workers or in curbing the exploitation by employers. Various barriers and limitations have been identified that hinder access to justice for those who have been subjected to exploitation. The challenges faced by those seeking employment in India differ in nature. Due to the open border, hundreds of thousands of Nepalis, particularly from the western region, travel to India for work. They find employment in sectors like construction, industry, security, domestic work, and hospitality, as well as in seasonal jobs such as planting and harvesting. Workers heading to India do not need a labor permit, and there is no record-keeping or data available regarding the actual number of Nepalis employed there. It is estimated that millions of Nepalis are working in India, but if they encounter exploitation, fraud, or other abuses during their employment, Nepali laws cannot offer them protection. Even those who obtain individual labor permits have encountered issues during their foreign employment. However, the risks and vulnerabilities are significantly higher for those who go abroad with institutional labor permits (through agencies) compared to those with individual permits.

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CHAPTER VI

ANALYSIS

The rise in the number of workers migrating for foreign employment has also led to a surge in human rights violations and abuses, including fraud, exploitation, family separations, torture, and inhumane treatment in the destination countries.²⁹² In this regard, the most serious violations of the rights of migrant workers with the greatest detrimental effects on their lives, as well as their families, have been listed in this submission.²⁹³ The majority of reported violations involve fraud and scams committed by recruitment agencies, along with instances of abuse, exploitation, injury, or death occurring during employment in destination countries.²⁹⁴

A definition of effective access to justice was provided in the 2018 Report of the Special Rapporteur on the human rights of migrants.²⁹⁵ Effective access to justice ensures that everyone, without discrimination, has the right to utilize the systems available for resolving conflicts and restoring rights.²⁹⁶ Access to justice fulfills two essential roles: it is both a fundamental right that belongs to every person and a principle that requires States to ensure that everyone has the ability to seek legal protection for their rights through the judicial system..²⁹⁷ International human rights law mandates that states must protect the human rights of everyone within their territory, regardless of their nationality or migration status, and this includes guaranteeing access to justice and ensuring due process.²⁹⁸

In 2022, IOM, in a paper on migrants' access to justice, further noted "access to justice" as that individuals have access to and can make effective use of existing judicial or quasi-judicial

²⁹² NHRC, 'Rights of Migrant Workers – An Overview', 2012, 2

<http://www.nhrcnepal.org/nhrc_new/doc/newsletter/Rights%20Migrant%20Workers.pdf> accessed 30 July 2024

²⁹³ LAPSOJ and Pourakhi Nepal, 'Access to Justice of Nepalese Migrant Workers: Present-Day Problems and Challenges' (Joint Submission to Special Rapporteur on the Human Rights of Migrants) 2018

<https://lapsoj.org/wp-content/uploads/2018/02/Access-to-Justice-final_SR.pdf> accessed 7 July 2024

²⁹⁴ GoN, Ministry of Labour and Employment, 'Labour Migration for Employment: A Status Report for Nepal 2014/15, 2016, 23

²⁹⁵ OHCHR, *Report of the Special Rapporteur on the human rights of migrants* (A/77/189, 2022)

²⁹⁶ Ibid.; LAPSOJ and Pourakhi Nepal, 'Access to Justice of Nepalese Migrant Workers: Present-Day Problems and Challenges' (2018), 6 <https://lapsoj.org/wp-content/uploads/2018/02/Access-to-Justice-final_SR.pdf> accessed 28 August 2024

<https://lapsoj.org/wp-content/uploads/2018/02/Access-to-Justice-final_SR.pdf> accessed 28 August 2024

²⁹⁷ Ibid.

²⁹⁸ Ibid., United Nations, 2018

mechanisms to protect their rights and obtain redress in response to violations.²⁹⁹ This can include access to informal institutions, such as customary frameworks, and quasi-judicial alternative dispute mechanisms.³⁰⁰ The access to justice should not be hindered by anything, and certainly not by the irregular status in which some migrants find themselves.³⁰¹ The total and complete access to the existing legal and judicial mechanisms should be ensured, to guarantee that right.³⁰² Access to justice is therefore a crucial tool to address impunity and ensure the rule of law.³⁰³

Undocumented or Irregular status of Migrant Workers

One of the most significant and persistent challenges encountered by migrant workers is their undocumented or irregular status. This precarious situation creates a host of difficulties, particularly when it comes to seeking justice and claiming compensation, which is one of the most frequent issues these workers face. The irregularity of their status severely complicates their ability to access legal channels for redress, often leaving them without any formal means to recover wages or seek compensation for mistreatment. Furthermore, this status bars them from receiving financial support from the welfare fund established by the Foreign Employment Promotion Board, which is designed to provide assistance to migrant workers facing difficulties abroad.³⁰⁴ The exclusion from such a critical safety net means that undocumented workers are left even more vulnerable in foreign countries, where they may have little to no support system. This lack of access to essential resources, combined with their already precarious legal standing, further intensifies their susceptibility to exploitation, abuse, and other forms of mistreatment in their host countries. These workers often endure harsh working conditions, unfair wages, and even physical and psychological abuse, with limited options for recourse. The severity of this issue is starkly highlighted by data from 2013, which revealed that out of the estimated 3.2 million Nepali workers employed abroad (excluding those in India), more than half were

²⁹⁹ IOM, *Migrants' Access to Justice: International Standards and How the Global Compact for Safe, Orderly and Regular Migration Helps Paving The Way* (International Migration Unit, 2022)

³⁰⁰ Ibid.

³⁰¹ Ibid.

³⁰² Ibid.

³⁰³ Ibid.

³⁰⁴ Amnesty International, 'False Promises: Exploitation and Forced Labor of Nepalese Migrant Workers', December, 2011, p. 52, <<http://www.amnestynepal.org/downloads/English-Nepal-MW-Report.pdf>> accessed 19 July 2024

undocumented or irregular migrants.³⁰⁵ This staggering figure illustrates the vast scale of the problem and underscores the widespread vulnerability of these workers. Their irregular status not only strips them of the legal protections afforded to regularized workers but also places them in a position where they are more likely to be exploited by unscrupulous employers who take advantage of their precarious situation. Without proper documentation, these workers often live in constant fear of deportation, further diminishing their willingness to report abuses or seek help, thus perpetuating a cycle of exploitation and marginalization.

Avoiding Infringement of the Human Rights of Others by Businesses³⁰⁶

The UN Guiding Principles on Business and Human Rights³⁰⁷ outline the human rights standards businesses should adhere to. The Guiding Principles state that businesses must conduct human rights due diligence to identify, prevent, mitigate, and account for their adverse human rights impacts (principles 17-19).³⁰⁸ If a business causes or contributes to negative impacts, it should provide remedies, relief, or compensation.³⁰⁹ States are obligated to protect against human rights abuses by third parties, including businesses, within their jurisdiction by taking steps to prevent, investigate, and address such abuses (principle 1).³¹⁰ This responsibility extends to all businesses, regardless of size, sector, or structure (principle 14).³¹¹

Nepal's Company Act 2063 also mandates that businesses should not cause harm to others.³¹² Recruitment agencies are initially registered as private companies with the Company Registrar's office.³¹³ Therefore, they are regulated by both the Department of Foreign Employment (DOFE)

³⁰⁵ LAPSOJ and Pourakhi Nepal, 'Access to Justice of Nepalese Migrant Workers: Present-Day Problems and Challenges' (Joint Submission to Special Rapporteur on the Human Rights of Migrants) 2018

<https://lapsoj.org/wp-content/uploads/2018/02/Access-to-Justice-final_SR.pdf> accessed 29 August 2024

³⁰⁶ NHRC, *The Situation of the Rights of Migrant Workers: Recruitment Practices and Access to Justice of Migrant Workers* (2019), 105

<https://www.nhrcnepal.org/uploads/publication/Research_Report_on_the_Situation_of_The_Rights_of_MW.pdf> accessed 28 August 2023)

³⁰⁷ Ibid.; OHCHR, UN Guiding Principles on Business and Human Rights 2011

³⁰⁸ Ibid., Principle 17-19

³⁰⁹ Ibid., Principle 22

³¹⁰ Ibid., Principle 1

³¹¹ Ibid., Principle 14

³¹² Company Act of Nepal, 2063

³¹³ NHRC, *The Situation of the Rights of Migrant Workers: Recruitment Practices and Access to Justice of Migrant Workers* (2019), 105

<https://www.nhrcnepal.org/uploads/publication/Research_Report_on_the_Situation_of_The_Rights_of_MW.pdf> accessed 28 August 2023)

and the Company Act.³¹⁴ The Companies Act 2063 prohibits carrying out any fraudulent or illegal activities or activities that are against public interest, and further allows for the deployment of inspectors by the Company Registrar's Office if a company is suspected of such conduct.³¹⁵ Additionally, FEA outlines the responsibilities of recruitment agencies for migrant workers, which must be followed alongside other related laws.

Recruitment agencies are also bound by their own Code of Conduct,³¹⁶ which mandates respectful treatment of migrant workers and their families, transparency in service fees and other charges, and ensures that workers are not sent abroad without an employment contract. The Code prohibits sending workers to jobs that are harmful to their health or involve discriminatory, humiliating, or oppressive conditions.³¹⁷ The Nepal Association of Foreign Employment Agencies (NAFEA) has its own Code of Conduct,³¹⁸ and complaints against recruiters violating these codes can be filed with NAFEA. The Disciplinary Committee of NAFEA can investigate and impose various sanctions, including warnings, suspension from membership, or reporting to DOFE or diplomatic missions, and seeking compensation for any harm caused.³¹⁹

Challenges in Women's Migration

According to UN Women, among those classified as undocumented, approximately 90% are women.³²⁰ The ban on female migrant workers imposed by the Nepalese government has inadvertently led to this situation. With half of all migrant workers being undocumented or irregular, and in the absence of any Nepalese laws recognizing irregular migrants as rights holders, their access to justice has become a faraway dream. This is particularly true for female migrant workers as, in addition to traveling via irregular channels, they mostly work in domestic

³¹⁴ NHRC, *The Situation of the Rights of Migrant Workers: Recruitment Practices and Access to Justice of Migrant Workers* (2019), 105

<https://www.nhrcnepal.org/uploads/publication/Research_Report_on_the_Situation_of_The_Rights_of_MW.pdf> accessed 28 August 2024

³¹⁵ Ibid.; Company Act 2063 ch. 17

³¹⁶ Company Act 2063, a 121, Sub-Article 2 (a)

³¹⁷ Ibid.

³¹⁸ Code of Conduct of NAFEA 2005 <<http://www.nafea.org.np/code-of-conduct>> accessed 3 August 2024

³¹⁹ NHRC, *The Situation of the Rights of Migrant Workers: Recruitment Practices and Access to Justice of Migrant Workers* (2019), p. 106

<https://www.nhrcnepal.org/uploads/publication/Research_Report_on_the_Situation_of_The_Rights_of_MW.pdf> accessed 28 August 2024

³²⁰ Sarah Paoletti et.al, 'Migrant Workers' Access to Justice at Home: Nepal', Centre for the Study of Labor and Mobility (CESLAM), 2014, p. 46.

households, where they face an increased risk of physical and sexual abuse.³²¹ This matter requires immediate attention since their status as female, undocumented migrants puts them at even higher risk of exploitation, especially when working as domestic workers. The involvement of Nepalese government officials in unofficially sending migrant workers is a widely discussed issue.³²² The International Relations and Labour Committee's report addresses this matter.³²³ The International Relations and Labour Committee reports that 60% of domestic workers sent informally to Gulf countries used Nepal's airport on visit visas or through other arrangements, implicating immigration staff, security personnel, airline staff, and brokers. The remaining 40% were sent via various cities in India, Sri Lanka, China, and other African countries before being sold in the Gulf countries.³²⁴

Former Prime Minister Pushpa Kamal Dahal had also suggested the involvement of immigration officials in human trafficking during a formal event on January 24, 2017, where he announced reforms in the foreign employment sector.³²⁵ He pointed out that the issues faced by Nepalis in many countries are due to deficiencies within Nepal's own bureaucracy, immigration department, and recruitment agencies, and emphasized the need for improvements in these areas.³²⁶ A study by the Nepali Embassy in Saudi Arabia revealed that 70,000 women have arrived there via illegal routes.³²⁷ An ILO study found that imposing an age limit on female migrant workers has led to increased violence and discrimination against women, rather than effectively preventing

³²¹ Amnesty International, 'False Promises: Exploitation and Forced Labor of Nepalese Migrant Workers', December, 2011, p. 47

³²² NHRC, *The Situation of the Rights of Migrant Workers: Recruitment Practices and Access to Justice of Migrant Workers* (2019), p. 111

<https://www.nhrcnepal.org/uploads/publication/Research_Report_on_the_Situation_of_The_Rights_of_MW.pdf> accessed 28 August 2024

³²³ Legislature- Parliament, International Relations and Labour Committee, "Sub-Committee Report of Monitoring and Inspection Field Visit of Gulf Countries-2074", Pages 18-19

³²⁴ Ibid., NHRC, *The Situation of the Rights of Migrant Workers: Recruitment Practices and Access to Justice of Migrant Workers* (2019), p. 111

<https://www.nhrcnepal.org/uploads/publication/Research_Report_on_the_Situation_of_The_Rights_of_MW.pdf> accessed 28 August 2024

³²⁵ Ibid.; Speech of Prime Minister Pushpa Kamal Dahal on 24 January 2017 declaring reform program of foreign employment sector, <<https://www.youtube.com/watch?v=Y1F6PBImC9E>> accessed 29 July 2024

³²⁶ Ibid.

³²⁷ Ibid.; Nepali Embassy, Riyadh, Saudi Arabia, 'Problems of Nepali Workers in Saudi Arabia and their Solutions', 2012, 25

their migration.³²⁸ Nepali migrant workers have voiced significant concerns about unfair working conditions and the violence and abuse they encounter in some destination countries. These issues have been highlighted in various conclusions.³²⁹ This concern was addressed in the third report of Nepal on the implementation of the Convention on Economic, Social, and Cultural Rights, discussed during the UN Human Rights Committee meeting on November 19 and 20, 2014.³³⁰

The conclusion of the CEDAW Committee³³¹ Nepal's sixth report states that the ban on Nepali women migrant workers, particularly those in domestic roles, has exacerbated their vulnerability and heightened the risk of trafficking.³³² The Committee has raised concerns about the restrictions on Nepali women accessing foreign employment as domestic workers, noting that such limitations constitute discrimination against women. These restrictions have increased their vulnerability to forced labor, unequal pay, physical exploitation, and sexual abuse.³³³ The Committee has recommended implementing measures to ensure equal employment opportunities for women both within Nepal and abroad, in alignment with SDG No. 8.8, and to remove the discriminatory ban that limits women's access to foreign employment.³³⁴ The report by UN Special Rapporteur on the Human Rights of Migrant Workers, Phillip Gonzales Morales, submitted to the UNHRC following his visit³³⁵ highlights that women workers are particularly vulnerable to abuse and exploitation. He notes that the protective measures in place are discriminatory and that instead of implementing effective solutions, a policy restricting their

³²⁸ ILO, 2015. *NO EASY EXIT: Migration Bans Effecting Women from Nepal*. International Labour Organization, Migration Branch and Fundamental Principles and Rights at Work Branch, Page IX
<http://www.ilo.org/wcmsp5/groups/public/---ef_norm/--declaration/documents/publication/wcms_428686.pdf> accessed 17 July 2024

³²⁹ Report of UN Human Rights Committee meeting held on 19-20 November 2014

<https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=R/C.12/NPL/CO/3>

³³⁰ NHRC, *The Situation of the Rights of Migrant Workers: Recruitment Practices and Access to Justice of Migrant Workers* (2019), p. 111-112

<https://www.nhrcnepal.org/uploads/publication/Research_Report_on_the_Situation_of_The_Rights_of_MW.pdf> accessed 28 August 2024

³³¹ CEDAW Committee's report of 23 October 2018 <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/NPL/BO/6&Lang=En>

³³² NHRC, *The Situation of the Rights of Migrant Workers: Recruitment Practices and Access to Justice of Migrant Workers* (2019), p. 112

<https://www.nhrcnepal.org/uploads/publication/Research_Report_on_the_Situation_of_The_Rights_of_MW.pdf> accessed 28 August 2024

³³³ Ibid.

³³⁴ Ibid.

³³⁵ Report of UN Special Rapporteur on Human Rights of Migrant Workers, Phillip Gonzales Morales, presented to the UN Human Rights Council after his official visit to Nepal in February 2017

<<https://undocs.org/A/HRC/38/41/Add.1>> accessed 7 July 2023

ability to work abroad has been adopted. This restriction has led to increased use of irregular migration routes, further heightening the risk of abuse and exploitation for these workers.³³⁶

Fraudulent Employment Contracts

Another major issue is fraudulent employment contracts. Every individual seeking foreign employment with an institutional labor permit should have a contract that explicitly outlines their job responsibilities, salary, provisions for food, accommodation, and medical treatment, among other details.³³⁷ The employment contract should be provided before departure, and a copy should be given to the worker involved.³³⁸ However, it was discovered that the information initially provided about the job and remuneration often differed from what was specified in the contract, including the terms and conditions of service and pay.³³⁹ Among those interviewed by the NHRC research team who had returned after traveling with institutional labor permits, 62.68% (89 out of 142) reported that the information provided earlier about salary, work, overtime, food, or other contract terms differed from what was specified in the contract.³⁴⁰ The 56th report of the Auditor General also noted that an examination of documents and records revealed issues with the recruitment of workers for foreign employment.³⁴¹ Additionally, migrant workers often prefer jobs that offer the opportunity for overtime to earn more than their base salary. Entrepreneurs who recognize this tendency may promise overtime or additional pay during recruitment. However, while some workers receive separate compensation for overtime, others do not receive any extra payment for this additional work.³⁴²

Illicit Practice of Recruitment Agencies leading to Violation of Human Rights

³³⁶ NHRC, *The Situation of the Rights of Migrant Workers: Recruitment Practices and Access to Justice of Migrant Workers* (2019), p. 112

<https://www.nhrcnepal.org/uploads/publication/Research_Report_on_the_Situation_of_The_Rights_of_MW.pdf> accessed 28 August 2024

³³⁷ Ibid., 74

³³⁸ Ibid.; Interview by NHRC research team with Biswa in West Nawalparasi on 3 June 2018

³³⁹ National Human Rights Commission (NHRC), *The Situation of the Rights of Migrant Workers: Recruitment Practices and Access to Justice of Migrant Workers* (2019), 73

<https://www.nhrcnepal.org/uploads/publication/Research_Report_on_the_Situation_of_The_Rights_of_MW.pdf> accessed 28 August 2024

³⁴⁰ Ibid.

³⁴¹ Ibid.

³⁴² Ibid.

It was found, in the research of NHRC, that the recruiters and agents tend to avoid telling the truth about details on migrant workers' work and employment such as contract benefits, like salary rate, type of work, working hours, overtime and leave.³⁴³ The research also revealed that recruiters and agents have been illegally and systematically charging fees that exceed the government-approved amounts.³⁴⁴ These practices constitute exploitation of workers, which is a form of human rights abuse. Many Nepalis working abroad end up taking out large loans due to the misleading information provided by recruiters and agents about their work conditions and the high, illegal recruitment fees charged by the agencies.³⁴⁵ Sometimes, even when workers realize that the job offered has different salary and benefits than originally promised, they have no choice but to accept it. This is because they risk losing the entire recruitment fee they paid, which was often financed through a high-interest loan, leaving them with a significant financial burden.³⁴⁶ Some workers remain unaware of the discrepancies until they arrive in the destination country, as they may have been told one thing verbally while the contract specifies something entirely different.³⁴⁷ Documents such as contract papers are frequently not provided in a timely manner and are often given only a day or a few hours before departure.³⁴⁸ In such situations, workers are unable to change their decision even after realizing they have been deceived.³⁴⁹ Similarly, it is also difficult for those who wish to change their decision.³⁵⁰

Recruiters frequently inform workers that “the paid amount will not be refunded if they decide not to go” or that “only the remaining amount, after deducting airfare and incurred expenses, will be refunded.”³⁵¹ Although there is a mechanism for filing complaints about non-refundable fees, workers often lack evidence of payment because recruiters either do not provide receipts or fail to record the full amount on the receipts.³⁵² As a result, with insufficient or no evidence, there is

³⁴³ NHRC, *The Situation of the Rights of Migrant Workers: Recruitment Practices and Access to Justice of Migrant Workers* (2019), 90-92

<https://www.nhrcnepal.org/uploads/publication/Research_Report_on_the_Situation_of_The_Rights_of_MW.pdf> accessed 28 August 2024

³⁴⁴ Ibid.

³⁴⁵ Ibid.

³⁴⁶ Ibid.

³⁴⁷ Ibid.

³⁴⁸ Ibid.

³⁴⁹ Ibid.

³⁵⁰ Ibid.

³⁵¹ Ibid.

³⁵² Ibid.

little to no chance of recovering the money paid to the recruiters.³⁵³ Moreover, the complaint filing process is challenging, and workers are often not in a position to invest additional time and money into it.³⁵⁴ Once they discover that the work or salary in the destination country differs from what was promised in Nepal, returning home is also not straightforward, even if they wish to do so.³⁵⁵ Since the employer typically holds the passport and other personal documents, workers find it difficult to return home.³⁵⁶ In some countries, immigration rules such as the Kafala system prevent workers from returning home without their employer's permission.³⁵⁷ The situation becomes more difficult for domestic workers.³⁵⁸ Ultimately, they end up in situations of forced labor.³⁵⁹

Thus, placing someone in a situation where they cannot escape their work or return home voluntarily, especially when they agreed to different job conditions or salary, constitutes forced labor. Forced labor is a human rights abuse and violates the ILO Convention 1930 (No. 29).³⁶⁰ regarding forced or compulsory labor, as ratified by Nepal and outlined in Nepal's Labour Act³⁶¹ Article 29 of ILO Convention No. 29 stipulates that “any act of imposing forced or compulsory labor is a criminal offense, and it is the responsibility of the ratifying State to ensure that penalties are effective and adequate.” The NHRC gathered case details from individuals and their families who reported being forced to work abroad despite their desire to leave and return home upon discovering discrepancies in the promised job or salary. Dharmendra (name changed), a migrant worker from Morang district working in Qatar, in an interview with the NHRC:³⁶²

“I was told that the work is Mason Helper, salary will be 900, food allowance will be 300 and overtime will be paid separately. I was told that the worksite is inside

³⁵³ Ibid.

³⁵⁴ Ibid.

³⁵⁵ Ibid.

³⁵⁶ Ibid.

³⁵⁷ Ibid.

³⁵⁸ Ibid.

³⁵⁹ Ibid.

³⁶⁰ ILO Convention on Forced or Compulsory Labour, 1930 (No. 29), Article 2.1

³⁶¹ “Bonded Labour” has been defined as “an act of exacting work or service against the will of any person under the menace of any financial, physical or mental action if the said worker does not work or provide service”. Labour Act of Nepal 2017, Article 4 (1)

³⁶² NHRC, *The Situation of the Rights of Migrant Workers: Recruitment Practices and Access to Justice of Migrant Workers* (2019), 92-93

<https://www.nhrcnepal.org/uploads/publication/Research_Report_on_the_Situation_of_The_Rights_of_MW.pdf> accessed 28 August 2024; NHRC Research team's interview with Dharmendra on telephone and with his mother in Morang on 4 January 2019

the building. But I was made to work outdoors in road construction. Neither was I paid for overtime work, nor for food allowance. I was not paid even the salary that I was told, and although I was made to work overtime, I was not paid for that. The company did not make my ID card as well. Of late, I am not paid my salary regularly. My 3 months' salary is still due. When we demand our salary, we are threatened that they will call the police and get us arrested. So, I am working unwillingly to pay back the loan I had borrowed to pay the recruitment fee to come here. When I asked the agent why we were sent to work in such a place, we were told "my job was to send you, which I did. For other things, talk to the manpower agency". The manpower agency says, "don't talk to me, talk to the agent". Poor people like us are like toys for them."³⁶³

It was found that the recruitment agencies and local agents recruit workers by giving false information about the fundamental aspects (work, employer, salary, working hours or benefits) of work. Since the workers thus recruited are made to pay excessive or illegal fees and are exploited in terms or type of work and remuneration, these acts fall under human trafficking as per the definitions in International Human Rights Law and Nepal's Human Trafficking (Control) Act, 2007.³⁶⁴ Incidents of human trafficking were found in the NHRC research. Surajkumar (name changed), a migrant worker who returned from Qatar in April 2018 after two and half months of leaving, in an interview with the NHRC.³⁶⁵

"I was made to work in a different company than what was mentioned as the name of the employer in my labour permit, employment contract and visa. Although I had been told that I will have to work as a mason helper inside the building, I was made to work outdoors in heat in road construction work. I had been told that my salary will be 900 Qatari Riyal, food allowance will be 300 Riyal, daily work hours will be 8 hours and overtime payments will be made as per the rules. But after arriving in Qatar, the employer company informed that I will be paid only 800 as salary and food allowance and I will have to work 12 hours daily. I was not paid my salary after working for a month and when I asked

³⁶³ Ibid.

³⁶⁴ Ibid.

³⁶⁵ Ibid.; NHRC Research team's interview with Surajkumar on 4 January 2019

the reason, I was told that they will not pay me for three months to recover the cost they had incurred for bringing me to Qatar. The company did not make my residency card and the work they made me do was beyond my capacity. So, I borrowed money from others and bought the air ticket of 730 Riyals and returned home. I had borrowed loan from a moneylender at 36 percent interest rate with my land as mortgage. The payable interest is increasing day by day. If I cannot repay the loan within two years, the land will belong to the moneylender and I will be left with nothing.”³⁶⁶

Access to Justice and Legal Assistance

Legal assistance or legal representation given to migrant workers represents another large concern. The most severe violations of their rights occur mainly in the destination countries, with many Nepalese workers even serving sentences in foreign jails. The question of legal assistance and representation arises in such situations. The right to legal representation is the right of those workers in accordance with Article 20(2) of the Constitution of Nepal, and Article 14 of ICCPR. In most of these cases, the migrant workers do not receive any legal assistance. In some countries, embassies provide ad hoc assistance to migrant workers with legal problems, but they are unable to provide widespread assistance to access justice due to financial, human resources, and legal limitations.³⁶⁷ In this regard, Rule 26 of the new Foreign Employment Regulation, 2074 provides that one of the uses of the Foreign Employment Regulation shall be in providing legal aid to Nepalese workers in foreign countries; this represents significant progress, but its implementation is yet to be seen.

Another significant challenge for victims seeking justice is the physical accessibility to the relevant institutions. Both the Department of Foreign Employment (DoFE) and the Foreign Employment Tribunal, which are crucial for addressing grievances, are located in the capital city, Kathmandu. However, the majority of migrant workers come from remote areas, particularly the southern plains (Terai) and the rural hilly regions of Nepal.³⁶⁸ The distance from these areas to

³⁶⁶ Ibid.

³⁶⁷ Bandita Sijapati et. al, 'Overseas Assistance for Nepali Migrant Workers Seeking Justice Abroad', Policy Brief, No 6, CESLAM (Centre for the Study of Labour and Mobility), 2014, p. 5.

³⁶⁸ GoN, Ministry of Labour and Employment, 'Labour Migration for Employment: A Status Report for Nepal 2014/15', 2016, p. 14. 36 Bandita Sijapati et. al, '

the capital is considerable, requiring substantial time and money for travel. Additionally, the cost of accommodation in Kathmandu adds to the financial burden on these workers, many of whom have already faced significant economic hardship due to their migration experience.³⁶⁹ This geographical and financial barrier is particularly problematic because the most common claims filed by migrant workers are for compensation.³⁷⁰ The expense associated with pursuing these claims—travel, lodging, and legal fees—can be prohibitive. As a result, many migrant workers who seek redress are further victimized by the very system that is supposed to provide them with justice. The high costs involved not only discourage workers from filing claims but also place an additional burden on those who do, exacerbating their already precarious situation. This issue underscores the need for more decentralized and accessible mechanisms for addressing the grievances of migrant workers to ensure that justice is within reach for all, regardless of their geographical location.

Deception in remuneration and facilities by the Recruitment Agencies is also a huge issue. A common issue encountered by many migrant workers is deception regarding their wages and benefits.³⁷¹ Although a specific amount was promised during recruitment, workers are often compelled to sign contracts for a lower amount or do not receive the promised salary once they arrive in the destination country.³⁷² The salary rate is a key piece of information provided by the recruiter and requested by the worker during the recruitment process.³⁷³ The individual agent or agency staff often claim that the salary will be attractive.³⁷⁴ In some cases, details about food and overtime are also provided alongside salary information, leading the prospective worker to believe they will earn a substantial income.³⁷⁵ However, upon arriving in the destination country, they receive less than what was initially promised.³⁷⁶ ‘I was told that I would get 900 as salary, 300 food allowance and also overtime, and the work would be inside the building. In the first month, I was paid 534 Riyal for 23 days of work, then for the next months, I was paid 877 per

³⁶⁹ Ibid.

³⁷⁰ Ibid.

³⁷¹ NHRC, *The Situation of the Rights of Migrant Workers: Recruitment Practices and Access to Justice of Migrant Workers* (2019), p. 124

<https://www.nhrcnepal.org/uploads/publication/Research_Report_on_the_Situation_of_The_Rights_of_MW.pdf> accessed 28 August 2024

³⁷² Ibid.

³⁷³ Ibid.

³⁷⁴ Ibid.

³⁷⁵ Ibid.

³⁷⁶ Ibid.

month. The duty used to be for 12 hours, another 2.5 hours was spent to travel to work and back. The payment for the overtime work worth 100 hours a month was nowhere, neither did I get the allowance for food. Furthermore, from the third month I was not paid at all, they used to say that they are deducting the expenses that was incurred while taking us there.’ This was interviewed by NHRC to Ramesh (name changed), a migrant worker who returned after nine months in Qatar.³⁷⁷

Lack of Information

Nepali migrant workers frequently pursue overseas employment opportunities without sufficient knowledge about the laws, policies, and contractual obligations that govern their work abroad. This significant lack of information exposes them to a risk of exploitation, often leading to situations of forced labor. Many of these workers leave their home country with limited understanding of their rights or the specific terms outlined in their employment contracts. This vulnerability is compounded by deceptive practices from recruitment agencies, brokers, and employers, who may present misleading or false information about the nature of the job, wages, working conditions, and legal protections.

For instance, many migrant workers are promised well-paying jobs with decent working conditions, only to discover upon arrival that the reality is starkly different. They may find themselves working long hours in hazardous conditions, with wages far below what was initially agreed upon, or subjected to physical and emotional abuse. Furthermore, without proper information on their rights and the resources available to them, Nepali migrant workers are often ill-equipped to seek help or report abuses. Many do not know how to access legal aid, file complaints, or contact relevant authorities and organizations that could assist them. This isolation is exacerbated by language barriers, fear of retaliation, and the absence of a support network in the host country, all of which contribute to their exploitation.

The situation is further complicated by the fact that many workers are not fully informed about the importance of obtaining legitimate work permits and understanding the terms of their employment before leaving Nepal. This oversight leaves them vulnerable to working illegally in foreign countries, where they have no legal recourse or protection if they are mistreated.

³⁷⁷ Ibid.

Consequently, they are often reluctant to seek help or report their situation to authorities, fearing deportation or other legal repercussions.

Weak Enforcement Monitoring and Mechanism

The Foreign Employment Act has clearly authorized DOFE and Foreign Employment Board regularly monitor the performance of recruiters and intervene to ensure justice for migrant workers if recruiters are found to be cheating or exploiting them.³⁷⁸ In addition, various agencies such as the Company Registrar's Office and Inland Revenue Administration have the authority to verify the performance and accuracy of the details submitted by recruiters.³⁷⁹ Despite these provisions, the oversight of recruiters was found to be ineffective.³⁸⁰ It was discovered that there are no specific criteria that individuals must fulfill to establish a recruitment agency.³⁸¹ Other than paying a security deposit to start the business³⁸² and providing a certificate demonstrating at least two years of experience as a proprietor or manager in a foreign employment-related organization or in a financial, commercial, business, or industrial entity.³⁸³ There are no additional criteria. It was observed that there is no due diligence conducted to assess the potential impacts of a business enterprise on individuals or society before launching the business, nor are there measures in place to address any adverse effects.³⁸⁴ The UN Guiding Principles on Business and Human Rights state that businesses of all sizes should refrain from violating human rights and implement measures to address any negative impacts when they arise.³⁸⁵ However, Nepali businesses (recruiters) were found lacking in the necessary preparations and accountability to meet these standards.³⁸⁶

³⁷⁸ NHRC, *The Situation of the Rights of Migrant Workers: Recruitment Practices and Access to Justice of Migrant Workers* (2019), p. 121

<https://www.nhrcnepal.org/uploads/publication/Research_Report_on_the_Situation_of_The_Rights_of_MW.pdf> accessed 28 August 2024

³⁷⁹ Ibid.

³⁸⁰ Ibid.

³⁸¹ Ibid.

³⁸² Ibid., FEA 2007, a 11 (a) (2)

³⁸³ Foreign Employment Rules, 2008, Rule 6, Sub-Rule (1) Part (f)

³⁸⁴ NHRC, *The Situation of the Rights of Migrant Workers: Recruitment Practices and Access to Justice of Migrant Workers* (2019), p. 124

<https://www.nhrcnepal.org/uploads/publication/Research_Report_on_the_Situation_of_The_Rights_of_MW.pdf> accessed 28 August 2024

³⁸⁵ Ibid.

³⁸⁶ Ibid.

The Foreign Employment Act 2007 designates the DOFE with the responsibility to oversee the performance of recruitment agencies.³⁸⁷ Similarly, the DOFE is responsible for investigating any complaints or reports of misconduct, whether received directly or indirectly, concerning both licensed and unlicensed entities.³⁸⁸ Article 34 of the Foreign Employment Act 2007 mandates that the DOFE should periodically monitor and inspect the offices of licensed entities and review their documents and records. However, the fifty-sixth report of the Auditor General indicates that DOFE's monitoring practice has been limited to responding to complaints rather than including a comprehensive action plan for all foreign employment-related businesses. The report notes that in 2017/18 BS, DOFE conducted only 12 inspections, which represents around 1% of the total number of businesses.

Recruitment agencies initially register as private companies with the Company Registrar's Office and then obtain a license from the DOFE to recruit migrant workers. Although the DOFE is responsible for monitoring foreign employment activities, the Company Registrar's Office has the authority to deploy inspectors to investigate if these businesses are engaged in fraudulent, illegal activities or actions detrimental to the public interest.³⁸⁹ The inspector is authorized to review relevant documents, seize or take control of any items, request concerned individuals to submit documents, and examine or have examined the company's accounts.³⁹⁰ Despite the ongoing exposure of malpractices in the foreign employment sector, the Company Registrar's Office has not investigated any recruitment agencies in the past three years. The Office cited a shortage of qualified personnel, particularly financial auditors, and a lack of legal clarity on the aspects it should be monitoring.³⁹¹

Financial Indiscipline of Officials

Another significant issue is the financial mismanagement among officials at the ministry level, within DOFE and its associated offices, as well as at the immigration office, which are responsible for managing and regulating foreign employment.³⁹² Numerous cases have been

³⁸⁷ Ibid.

³⁸⁸ Ibid., FEA 2007, a 61

³⁸⁹ Ibid., Company Act 2006, Article 121, Sub-Article 2 (a)

³⁹⁰ Ibid., Company Act 2006, Article 121, Sub-Article 2 (b) and (c)

³⁹¹ Interview with Company Registrar Gitakumari Humagain on 27 February 2018 by NHRC research team

³⁹² NHRC, *The Situation of the Rights of Migrant Workers: Recruitment Practices and Access to Justice of Migrant Workers* (2019), p. 125

publicly reported involving corruption among high-ranking officials, including the Minister, the DOFE Director General, and other senior figures, who have been caught accepting bribes.³⁹³ Senior officials have acknowledged that corruption exists within the labor ministry and government agencies overseeing foreign employment.³⁹⁴ Despite repeated interventions from constitutional bodies such as the Commission for Investigation of Abuse of Authority (CIAA), corruption persists.³⁹⁵ There is considerable discussion about immigration officials collaborating with recruiters for financial gain and being involved in 'airport setting'.³⁹⁶ The report of International Relations and Labour Committee of Legislative Parliament³⁹⁷ has reported that immigration officials, airport security personnel, airline staff, and brokers are directly involved in human trafficking through 'airport setting'.³⁹⁸ which has been a problem that has been continuing since long ago.³⁹⁹ The government acknowledges that this is a significant issue and has made some high-level efforts to address it.⁴⁰⁰

<https://www.nhrcnepal.org/uploads/publication/Research_Report_on_the_Situation_of_The_Rights_of_MW.pdf> accessed 28 August 2024

³⁹³ Ibid.; The video of former Labour Minister Kumar Belbase was made public on 2 Kartik 2069 on TV channels where he was 'dealing' <<https://ceslam.org/index.php?pageName=newsDetail&nid=2806>> accessed 13 July 2024

³⁹⁴ The then Labour Minister had told in an interview to Kantipur Daily, "Labour Ministry is also known as Corrupt Ministry". The interview published on 6 Mangsir 2073

<<http://kantipur.ekantipur.com/news/2016-11-21/20161121152717.html>> accessed 13 July 2024

³⁹⁵ Ibid.

³⁹⁶ Ibid.

³⁹⁷ Ibid.; Report of 'Sub-Committee for field monitoring and inspection of Gulf countries' formed according to the decision of Legislative Parliament, International Relations and Labour Committee on 8 Mangsir 2073.

³⁹⁸ Ibid.

³⁹⁹ Ibid.

⁴⁰⁰ Ibid.

CHAPTER VII

Conclusion and Recommendations

Enhancing Embassy and Consulate Support for Migrant Domestic Workers

To effectively address the challenges faced by migrant domestic workers, it is crucial to strengthen the staffing and training of officials at embassies and consulates in destination countries. Migrant domestic workers, often vulnerable to exploitation and abuse, require robust support systems to protect their rights and well-being. Embassies and consulates serve as critical lifelines for these workers, particularly when they face violations of their rights abroad. Therefore, increasing the number of trained personnel dedicated to assisting these workers is essential.

The officials at embassies and consulates should be equipped with specialized training that covers the legal frameworks of both the sending and destination countries, as well as the unique challenges that migrant domestic workers may encounter. This includes understanding the nuances of local labor laws, human rights protections, and the specific needs of domestic workers, who may be isolated from the larger expatriate community. Training should also focus on crisis management, ensuring that officials can respond effectively to cases of abuse, trafficking, or other emergencies involving migrant workers.

Moreover, these officials should be empowered with the resources necessary to provide comprehensive support, including legal assistance, emergency shelter, and repatriation services when needed. By enhancing both the quantity and quality of staff at embassies and consulates, migrant domestic workers will have greater access to the assistance they need to navigate complex legal and social environments, ensuring their rights are protected and their dignity upheld.

Enhancing International Collaboration for Migrant Worker Protection

To effectively address the challenges faced by migrant workers and ensure their rights are protected, it is crucial to strengthen cooperation with the authorities of destination countries. This collaboration should focus on enhancing oversight of the entire recruitment process, from the

initial stages of hiring to the finalization of contracts. By ensuring the validity and fairness of contracts, workers can be better protected from exploitation and deception. Additionally, there must be mechanisms in place for resolving labor disputes, providing workers with accessible avenues for seeking redress and justice.

Coordination between countries is definitely essential in tackling severe issues, such as cases of alleged human trafficking, forced labor, and modern slavery. By working closely with the destination countries' authorities, it is possible to share vital information, conduct joint investigations, and implement more effective enforcement actions. This collaboration should also include regular dialogues and exchange of best practices, helping to build a unified approach to combating these serious crimes. Furthermore, capacity-building initiatives should be supported, ensuring that all parties involved have the necessary skills and resources to uphold labor rights and human dignity. Ultimately, such strengthened cooperation will contribute to creating safer, more equitable working conditions for all migrant workers, reducing the risk of exploitation, and enhancing the overall integrity of the labor migration process.

Empowering Domestic Workers Through Education, Support, Awareness and pre-departure orientation

Lack of adequate information and preparation for Nepali migrant workers before they depart for foreign employment significantly contributes to the violation of their rights and increases their risk of falling into forced labor. Ensuring that these workers are well-informed about the laws, policies, and contracts governing their employment is important in protecting them from exploitation and abuse. It is crucial to empower domestic workers with comprehensive knowledge about their rights under both the laws of their home country and the laws of the countries to which they are migrating for work. Providing this information is essential for safeguarding their well-being and ensuring they are aware of the legal protections and resources available to them. Workers should be thoroughly educated on their rights related to fair wages, working hours, conditions of employment, and the avenues available for redress in case of rights violations.

Providing comprehensive pre-departure orientation, legal support, and ongoing education about their rights is essential to empowering migrant workers and preventing the injustices they often

face abroad. In the context of international recruitment, bilateral agreements between countries of origin and destination play a crucial role in ensuring joint responsibility for tackling labor recruitment challenges. These agreements are designed to prevent the transfer of recruitment abuses between countries. While there is an increasing number of bilateral agreements addressing labor migration, only a few specifically address recruitment practices.⁴⁰¹ Another concern is that some destination countries may sidestep their recruitment responsibilities by turning to less-regulated countries of origin.⁴⁰² It is important to engage workers early in the recruitment process and educate them about potential risks to effectively combat forced labor. Pre-departure programs have shown success in mitigating recruitment debt and other forms of exploitation in certain migration corridors.⁴⁰³ Moreover, post-arrival orientation programs are useful in informing migrants about their rights and duties, particularly regarding the recruitment process.⁴⁰⁴

In addition to educating workers on their rights and available support, it is imperative to ensure that every domestic worker issued a travel visa is also provided with the contact information for their home country's embassy or consulate in the destination country. This step is vital for establishing a direct line of communication between the worker and their government representatives, enabling the worker to seek assistance in times of need. Having access to embassy or consulate contacts can be a lifeline for domestic workers who may face isolation or legal challenges while abroad. This proactive measure ensures that workers are not only aware of their rights but also have the means to connect with authorities who can offer assistance, thereby enhancing their safety and security during their employment abroad. Moreover, domestic workers must be informed about the various crisis support facilities and legal assistance services that are accessible to them in the destination countries. This includes guidance on how to access shelters, hotlines, legal aid, and other support mechanisms designed to protect them from exploitation, abuse, or any form of mistreatment.

⁴⁰¹ ILO, *Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A Review*, 2015, p. 26

⁴⁰² Kennedy Atong, Emmanuel Mayah and Akhator Odigie, *Africa Labour Migration to the GCC States: The Case of Ghana, Kenya, Nigeria and Uganda. An African Trade Union Overview*, African Regional Organisation of the International Trade Union Confederation (ITUC-AFRICA), 2018

⁴⁰³ ILO, *The Benefits of Fair Recruitment – Result of the impact study on the Nepal-Jordan corridor*, 2019

⁴⁰⁴ “Post-Arrival Orientation for Migrant Workers in Malaysia”, ILO, 19 April 2021

Promotion of fair and ethical recruitment

Unethical recruitment practices play a significant role in driving forced labor and other human rights violations in the workforce. Global data, for instance, shows that around 20% of all forced labor cases involve debt bondage. While some cases stem from traditional debt bondage systems, many are linked to exorbitant fees and costs that workers—especially migrant workers—must pay during recruitment by dishonest agencies and labor intermediaries. Other forms of coercion tied to forced labor, such as misleading information about job roles and conditions, contract substitution, passport confiscation, wage withholding, and unlawful wage deductions, are often rooted in abusive and deceptive recruitment practices. The COVID-19 pandemic has further heightened the vulnerability of workers to such recruitment contexts.⁴⁰⁵ These realities highlight the crucial need for fair and ethical recruitment as part of broader strategies to combat forced labor and trafficking. Implementing laws and regulations to protect workers and job seekers, including migrants, from recruitment-related abuses like deception, document retention, or high fees—consistent with international labor standards⁴⁰⁶ and guidelines⁴⁰⁷—is an essential first step. An ILO review of national regulations in the recruitment sector reveals that many countries' laws are still not fully aligned with international standards. Common issues include vague or absent definitions and prohibitions of recruitment fees, regulations that do not address both domestic and international recruitment, and a lack of explicit sanctions for recruitment violations.⁴⁰⁸ Other research indicates that existing regulations often only apply to recruiters at the top of the labor supply chain, leaving many labor intermediaries and subcontractors beyond the reach of government's regulatory authority.⁴⁰⁹ Strengthening enforcement efforts is crucial to ensuring compliance with current recruitment laws. There is an expanding collection of best practices to support these efforts.⁴¹⁰ National and local labor inspectorates and other relevant authorities have

⁴⁰⁵ The ILO Private Employment Agencies Convention, 1997 (No. 181), Articles 7.1, 8.1 and 8.2

⁴⁰⁶ ILO, *General principles and operational guidelines for fair recruitment & Definition of recruitment fees and related costs*, 2019

⁴⁰⁷ Global Compact for Migration, *Global Compact for Safe, Orderly and Regular Migration. Intergovernmental Negotiated and Agreed Outcome*, 2018

⁴⁰⁸ ILO, *Findings from the global comparative study on the definition of recruitment fees and related costs, Background paper for discussion at the Tripartite Meeting of Experts on Recruitment Fees and Related Costs*, MERFRC/2018, 2018

⁴⁰⁹ Beate Andrees, Alix Nasri and Peter Swiniarski, *Regulating labour recruitment to prevent human trafficking and to foster fair migration: Models, challenges and opportunities*, ILO Working Paper 1, 2015.

⁴¹⁰ ILO, *Compendium of Promising Practices to Advance Fair Recruitment of (Migrant) Workers: 5 Years of the Fair Recruitment Initiative*, 2022.

a critical role in overseeing private recruitment agencies, detecting abusive practices, handling complaints, and enforcing sanctions. In some countries, specialized inspection bodies with the power to impose significant penalties have been established to regulate the recruitment industry.⁴¹¹ However, the growing number of actors in the labor supply chain and jurisdictional challenges can strain the inspection and enforcement capacities of many national regulators. Joint liability laws are emerging as a strategy to ease the enforcement burden on authorities. These laws require employers to report on their recruitment due diligence, making them legally accountable for any fraudulent or abusive recruitment or labor practices in their operations, supply chains, and related recruitment processes. This approach encourages employers to leverage their market influence to promote better recruitment practices.⁴¹²

Creating a direct link between recruiter and job seekers through technology

There is also a significant opportunity to leverage information and communication technologies (ICT) to enhance workers' knowledge and facilitate the exchange of information on recruitment issues.⁴¹³ For instance, “Golden Dreams” which is a smartphone app developed by Issara Institute for jobseekers and migrant workers that is essentially a critical tool for education and empowerment, safe migration, ethical recruitment, and getting access to assistance if needed. It was originally launched in 2017 to empower Nepalese, Burmese and Cambodian jobseekers. The users can study updated information on costs and processes of migrating, and worker rights in destination countries, and can also read crowdsourced, anonymized ratings and reviews on employers, recruiters, and service providers. There is also a Recruitment Marketplace, where responsible employers and recruitment agencies can post jobs in their language, and workers can browse and research the opportunities in their language, and even apply directly at no cost.⁴¹⁴ This creates a direct link between the jobseeker and employer which avoids the middleperson and the scamming in between. Similarly, another example would be Recruitment Advisor,⁴¹⁵ an online platform developed by the International Trade Union Confederation with support from the ILO and other organizations, provides workers with details on recruitment agencies and a space

⁴¹¹ ILO, *Promising Practices for Fair Recruitment: Tunisia – Formation of a New Body of Inspectors for the Recruitment Industry*, ILO Brief, April 2021.

⁴¹² Jennifer Gordon, *Global labour recruitment in a supply chain context*, ILO Fair recruitment initiative series, Fundamentals Working Paper 1, 2015.

⁴¹³ ILO, *Use of digital technology in the recruitment of migrant workers*, 2021

⁴¹⁴ Issara Institute, “Golden Dreams”

⁴¹⁵ “Find out about your Rights & your Right Recruiter”, Recruitment Advisor

to share their experiences. A recent study underscores the effectiveness of various ICT tools, such as mobile apps, social media, and peer-to-peer networks, in offering recruitment information to migrants, enabling communication between migrant workers and support services, and providing online platforms for direct hiring.⁴¹⁶ Simple steps, like ensuring free internet access for workers, can also improve their awareness and well-being, reducing the risk of exploitation. Accurate media coverage on fair recruitment is essential for raising awareness about recruitment abuses and promoting a more informed, less politicized public discussion.⁴¹⁷ The ILO and its partners are actively involved in supporting networks of specialized journalists and have created a toolkit to aid in reporting on forced labor and fair recruitment.⁴¹⁸

Ensuring access to remedy for those freed from forced labour⁴¹⁹

Providing effective remedies for individuals who have escaped forced labor and human trafficking remains a major challenge. Evidence shows that only a small percentage of victims receive compensation, whether for material damages (like medical expenses, unpaid wages, legal fees, and lost income) or for moral damages (such as pain and emotional suffering). Access to these remedies is crucial for supporting recovery and preventing further victimization.⁴²⁰ Mandating that perpetrators pay compensation to their victims can both punish offenders and deter future crimes. While an increasing number of countries are enacting laws to ensure remedies for those freed from forced labor, significant challenges persist in implementing these laws effectively. Even where legal or judicial mechanisms for providing remedies exist, practical and procedural barriers often prevent individuals who have suffered forced labor from receiving compensation for the abuses they endured.⁴²¹ One significant barrier is the lack of awareness among victims about their rights and the procedures for exercising them. Migrants, who often find themselves in unfamiliar settings and may face language and cultural barriers, are usually among those least informed about their rights.⁴²²

⁴¹⁶ ILO, Use of digital technology in the recruitment of migrant workers, 2021

⁴¹⁷ “Media engagement on forced labour and fair recruitment”, ILO

⁴¹⁸ “Reporting on forced labour and fair recruitment, An ILO toolkit for journalists”, ILO

⁴¹⁹ ILO, Ending forced labour by 2030: a Review of Policies and Programmes (2018), 89-112 and 122-123

⁴²⁰ Ibid., p. 108

⁴²¹ Walk Free, and IOM, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*, ILO, Geneva, 2022, 87

⁴²² Ibid.

Engagement of Civil Society Organizations (CSOs) and Activists

The engagement of Civil Society Organizations (CSOs) and activists is vital in enhancing the conditions of migrant workers by advocating for their rights, offering critical support services, and fostering greater public awareness of their struggles. These organizations play a key role in influencing policy reforms by lobbying governments and international bodies to adopt and enforce stronger legal protections for migrant workers. They work tirelessly to ensure that existing labor laws are implemented effectively and that any gaps in legislation are addressed to prevent exploitation and abuse. Furthermore, CSOs and activists provide direct support to migrant workers through legal aid, counseling, and emergency assistance, helping them navigate complex legal systems and access the justice they deserve. They also organize educational programs that inform workers about their rights, the risks associated with migration, and the proper channels for seeking help, which empowers them to protect themselves from exploitation. Additionally, through public campaigns, research, and media engagement, CSOs and activists raise awareness about the often-overlooked plight of migrant workers, mobilizing public opinion and garnering support for their cause. By building networks of solidarity, both within countries and across borders, these organizations create platforms for migrant workers to voice their concerns, share experiences, and advocate for change, ultimately leading to improved working conditions, fair treatment, and the upholding of their fundamental rights. Mobilizing key actors who are often the initial contact points for individuals freed from forced labor—such as labor lawyers, trade unions, NGOs, and humanitarian organizations—is crucial for informing them about available legal remedies. Additionally, promoting paralegal support can help bridge the gap between survivors and the remedy system, assisting them in overcoming the financial obstacles associated with seeking justice.⁴²³ In many countries, migrant resource centers offer essential paralegal support to migrants and their families, aiding them in seeking redress for employment-related abuses.⁴²⁴

⁴²³ Ibid., p. 88

⁴²⁴ IOM, *Operational guidelines for Businesses on Remediation of Migrant-worker Grievances*, IOM Publications Platform, 2021

APPENDIX I

Table 1.4: Categories of Occupation⁴²⁵

1	Agriculture
2	Aviation and cruise worker
3	Construction (carpenter, mason, painter, scaffolder, steel fixer, others)
4	Driver/Machine operator
5	Electrical and mechanical technician (A/C technician, automotive technician, electrician, plumber/pipe fitter, welder, others)
6	Elementary occupations (Cleaning and laundry, packaging/loading/shipping/delivery, unspecified labour, specified labour)
7	Manufacturing
8	Office/Administrative/Associate professionals
9	Others
10	Professionals and Managers
11	Service & Sales (baker/dessert maker, barista/coffee maker, beautician & fitness worker, caregiver/au pair/nursing aide, housekeeper, security guard, tailor, waiter/waitress, retail worker, others)
12	Supervisor and Foreman

Source: MoLESS, Nepal Labour Migration Report 2020.

⁴²⁵ MoLESS, *Nepal Labour Migration Report* (Government of Nepal 2022), 84
 <https://www.ceslam.org/uploads/backup/Nepal%20Labour%20Migration%20Report_2022.pdf> 29 August 2024

Table 1.5: New Labour Approvals Issued (2021/22) (by sex, mode of obtaining approval and occupation)⁴²⁶

	Recruitment Agency			Individual			Regularisation			Total		
	M	W	T	M	W	T	M	W	T	M	W	T
Agriculture, Fishery, Poultry, Animal and Gardener	1.5	0.8	1.5	6.2	7.4	6.5	0.6	0.0	0.5	1.8	1.8	1.8
Aviation and Cruise	0.6	0.9	0.6	3.1	1.2	2.7	2.0	1.3	1.9	0.8	1.0	0.8
Construction	6.1	0.0	5.6	5.9	0.3	4.7	3.9	0.0	3.4	6.1	0.1	5.5
Driver/Machine Operator	8.4	0.3	7.7	3.4	1.1	2.9	5.3	0.6	4.7	8.0	0.4	7.2
Electrical and Mechanical Technician	3.0	0.1	2.7	3.8	0.8	3.2	2.9	0.0	2.5	3.0	0.2	2.8
Elementary Occupations	59.1	64.0	59.5	37.6	32.7	36.6	29.8	27.2	29.4	56.9	57.3	56.9
Manufacturing	9.4	6.7	9.2	4.3	2.4	3.9	1.7	0.2	1.5	8.9	5.7	8.6
Office/Administrative/ Associate Professionals	1.6	3.9	1.8	5.9	12.3	7.2	10.6	24.7	12.5	2.1	6.1	2.5
Professionals and Managers	0.1	0.2	0.1	2.9	4.0	3.1	3.3	5.1	3.6	0.4	1.0	0.4
Service & Sales	9.8	22.7	10.8	24.5	36.6	27.0	37.6	37.6	37.6	11.5	25.6	12.8
Supervisor and Foreman	0.3	0.3	0.3	2.0	0.9	1.8	1.8	2.6	1.9	0.5	0.5	0.5
Others	0.2	0.1	0.2	0.5	0.5	0.5	0.4	0.6	0.4	0.2	0.2	0.2
Total %	100	100	100	100	100	100	100	100	100	100	100	100
Total Number	286,177	26,238	312,415	21,227	5,513	26,740	8,401	1,311	9,712	315,805	33,062	348,867

Source: FEIMS, 2022

⁴²⁶ Ibid., 85

Table 1.6: New Labour Approvals Issued (2021/22) (by country of destination and occupation)⁴²⁷

	Qatar	Saudi Arabia	UAE	Malaysia	Kuwait	Cyprus	Romania	Croatia	Turkey	UK	Others
Agriculture, Fishery, Poultry, Animal and Gardener	0.7	0.8	1.6	5.1	1.3	3.6	3.7	6.6	2.7	20.7	3.8
Aviation and Cruise	0.5	0.1	2.3	0.3	0.9	0.0	0.5	0.5	2.8	0.8	2.2
Construction	10.8	3.8	4.7	0.0	2.5	0.03	4.9	18.6	0.2	0.04	6.5
Driver/Machine Operator	7.6	11.9	4.2	1.9	4.4	0.0	0.3	2.7	4.5	0.04	2.4
Electrical and Mechanical Technician	7.4	1.6	1.1	0.07	0.6	0.03	2.2	5.8	0.0	0.6	2.7
Elementary Occupations	57.0	68.9	55.9	14.9	57.8	85.7	59.7	35.2	34.4	56.3	43.0
Manufacturing	0.05	7.7	0.8	66.6	1.5	0.0	4.5	12.5	19.9	2.1	3.5
Office/Administrative/Associate Professionals	5.1	0.1	4.8	0.4	3.0	0.03	2.7	0.7	5.9	0.6	3.7
Others	0.01	0.2	0.4	0.0	0.3	0.0	0.2	0.04	0.5	0.04	0.4
Professionals and Managers	0.1	0.1	0.5	0.1	0.2	0.03	0.02	0.2	5.0	1.6	3.0
Service & Sales	9.2	4.6	23.3	10.5	27.4	10.6	21.2	17.0	23.9	16.9	28.1
Supervisor and Foreman	1.5	0.04	0.4	0.05	0.06	0	0.03	0.06	0.1	0.4	0.7
Total %	100	100	100	100	100	100	100	100	100	100	100
Total number	76,823	125,368	53,844	26,091	22,786	3,222	6,418	5,206	852	2,808	25,449

Source: FEIMS, 2022

⁴²⁷ Ibid., 86

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