

# Migrant Workers' Rights and NHRC Nepal's Initiatives



**National Human Rights Commission, Nepal**



## Background Information

Human migration is an age-old phenomenon that stretches back to the earliest periods of human history. In the modern era, emigration and immigration continue to provide States, societies and migrants with many opportunities. At the same time, migration has emerged in the last few years as a critical political and policy challenge in matters such as integration, displacement, safe migration and border management. In 2015, there were an estimated 244 million international migrants globally (3.3% of the world's population) - an increase from an estimated 155 million people in 2000 (2.8% of the world's population). Internal migration is even more prevalent, with the most recent global estimate indicating that more than 740 million people had migrated within their own country of birth.<sup>1</sup>

The issue of migration is also one of the pertinent issues of the present time and has becoming more and more recognized as human rights issue within the member states of United Nations. Therefore, right of the migrant workers is one of the core areas of the society. Migration can provide opportunities to improve workers' lives and that of their families, help them escape from economic vulnerabilities, and offer greater autonomy and empowerment. Sending countries have benefited from higher inflows of remittances and changes in societal and family relations.

Today, there are over 258 million migrants around the world living outside their country of birth. This figure is expected to grow for a number of reasons including population growth, increasing connectivity, trade, rising inequality, demographic imbalances and climate change. Migration provides immense opportunity and benefits – for the migrants, host communities and communities of origin. However, when poorly regulated it can create significant challenges. These challenges include overwhelming social infrastructures with the unexpected arrival of large numbers of people and the deaths of migrants undertaking dangerous journeys.<sup>2</sup>

Migration is a rational solution for many Nepali, especially the young, not only to access higher incomes but also to maintain or even improve the levels of their work qualification. While over 60 per cent of migrant workers have either no education or a low level of education, only 31 per cent engaged in low-skilled work, which means that many Nepali migrants manage to raise their qualifications while working abroad. Women are more likely to be engaged in lower-skilled activities than men, but when looking at highly skilled professions (including middle and high management, professional), gender is balanced.

Migration for foreign employment has become a major source of income for a many Nepali households. Nepali migrant workers make an enormous

<sup>1</sup> *World Migration Report 2018*

<sup>2</sup> <https://refugeesmigrants.un.org/migration-compact>



development contribution to their home country but also to the destination countries where they fill labour market niches by doing jobs that nationals are unable or unwilling to fill. But their contributions does not lessen their vulnerability to labour exploitation and abuse .Studies of recruitment processes and working conditions for low-skilled migrants consistently reveal indicators of abuse commonly associated with exploitation including forced labour and trafficking.<sup>3</sup>

The information for this booklet is prepared and analyzed on the basis of the monitoring conducted by the National Human Rights Commission, Nepal (NHRCN) in various districts. While monitoring the tools like the regional conferences, visiting the Governmental agencies, consultation with the representatives from the non-governmental organizations, discussion with the representatives of the manpower agencies, and the consultation program with the stakeholders to advance the policy issues for safe foreign employment were also used. The facts and suggestions provided in the issue centric discussion with the concerned subject experts by the NHRCN are the basis of the recommendations for the safe, well managed and dignified foreign employment.

### **Constitutional Mandate of the NHRC Nepal**

The Commission is mandated to ensure the respect, promotion and protection of human rights, is competent to launch inquiries and investigations into alleged human rights violations, and can recommend legal or departmental action against human rights violators. The establishment of the Commission complies with the standards set out in the 'Paris Principles'. To name a few, independence is guaranteed by the Constitution and an act; a broad mandate based on universal human rights standards. Apart from these powers, the Constitution has also envisaged that the Commission may review the provisions on safeguards provided by the Constitution and other prevailing law for the enforcement of human rights and submit necessary recommendations for the effective implementation of such provisions.

The Commission propagates human rights education at different levels of society through various seminars, symposia, conferences and also builds consciousness and awareness for the protection of human rights. The Commission encourages the functioning and efforts of institutions working in the non-governmental sector. In addition, there is a general power to carry out such activities, as the Commission may deem necessary and appropriate for the enforcement, promotion and protection of human rights.

The Commission has a broad mandate including civil and political rights, economic, social and cultural rights, and rights of the other groups. Article 249 of the Constitution of Nepal, 2015 lays down that the Commission shall perform the following functions, namely:

<sup>3</sup> <https://www.ilo.org/kathmandu/areasofwork/labour-migration/lang--en/index.htm>



- To respect, protect and promote human rights and ensure effective enforcement thereof.
- Inquire on its own initiative or on petition or complaint lodged in or sent to the Commission and investigate complaints about the violations of human rights of an individual or group or abetment thereof, and make recommendation for action against the perpetrators.
- Recommend to the concerned authority to take departmental action against any official, who fails to fulfill or perform his or her responsibility or duty or shows reluctance in preventing violations of human rights.
- Recommend to file a case in the court in accordance with law against any person or organization who has violated human rights.
- Coordinate and collaborate with the civil society in order to enhance awareness on human rights.
- Carry out periodic reviews of the relevant laws relating to human rights and make recommendation to the Government of Nepal for necessary improvements and amendments to such laws.
- Recommend Government of Nepal for the implementation of any international treaty or agreement on human rights, to which Nepal is a party.
- Publish, in accordance with law, the names of the officials, persons or bodies who have failed to observe or implement any recommendations or directives made or given by the Commission in relation to the violations of human rights, and record them as violators of human rights.

### **Who are Migrant Workers?**

Migrants: Article 2 I of the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families defines “For the purposes of the present Convention: 1. The term "migrant worker" refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.” Employment can be temporary.

*The Foreign Employment Act, 2007* defines the terminology that governs the foreign employment process and its elements.

**Labour migration:** The term is used to indicate migration for foreign employment from Nepal but excluding to India. Correspondingly, “labour migrants” refer to citizens of Nepal in labour migration.

**Recruitment agency:** The term refers to institutions established under the prevailing Company Act that have acquired a license to conduct a foreign



employment business that recruits workers for advertised jobs in other countries.

**Irregular migrant:** A person who crosses a foreign border in a movement that takes places outside the regulatory norms of the sending, transit and receiving countries. The term has been preferable in international practice since the International Symposium on Migration: Towards Regional Cooperation on Irregular/Undocumented Migration that took place in Thailand in 1999. Correspondingly, the term “irregular migration” refers to the process of migration through which the irregular migrant uses.

### **The Existing Situation of Migrant Workers:**

- Women going through Visit Visa are in the verse of forced labor and exploitation.
- Complaint rate in the Department of Foreign Employment is very low in comparison to the number of victims victimized by the foreign employment.
- It is essential to monitor and investigate the implementation status of bilateral Memorandum of Understanding (MoU) and labor agreement concluded with the destination country by the Government of Nepal.
- Non- effective implementation of the '**free visa, free ticket**' policy of the Government.
- No inter ministry effective and systematic coordination among the Ministry of Labor and Employment and Ministry of Foreign Affairs, Ministry of Home, Ministry of Women, Children and Social welfare in the issue of foreign employment.
- No victim centric environment in the Department of Foreign Employment.
- Lack of record keeping system and insufficient study and research on the issue of employment in India though going to India for employment is a long practice.
- It is necessary to conduct research study on the judgment of the destination countries' courts regarding capital punishment to Nepali workers during foreign employment.
- The hospitals of the destination country certify that the cause of death of the Nepali migrant workers is due to Cardiac Arrest and Natural Death but the reality is different. The dead bodies bringing from the destination countries to Nepal should be post mortem again (Counter post mortem) to find out the reality.
- Most of the dead bodies' cause of untimely death is due to Cardiac Arrest or because of the problems in the heart. No heart related checkup is



conducted when health checkup of the aspirant migrant workers done; only the blood pressure is checked.

- It seems necessary to monitor, research study and investigate on the issues like quality of health checkup, the standard, and technology of health checkup conducted by the Nepali Health related Institutions.
- The Specialist Health Checkup Committee of the aspirant persons of foreign employment which is under the ministry of Labor and Employment including the representatives from the Ministry of Health is passive.
- There is a monopoly of the private health institutes on the issue of health checkup of the aspirant migrant workers. It is necessary to pursue the inexpensive and accessible health checkup system to the Nepali workers.

### **Other Problems**

- **Trafficking:** trafficking during the foreign employment.
- **Forced labor:** Involuntarily cause to work in the unspecified job in the agreement.
- **Economic exploitation:** (remuneration) to pay less amount of salary than the commitment, to delay the payment of salary or no payment.
- **Unauthorized reception of money:** to receive money either more than specified or unauthorized reception of money.
- **Mortgage for debt:** Compulsion of unauthorized high profit rate loan from the money lender, to return the loan the compulsion of labor at any cost.
- **Exploitation of labor:** no payment for overtime and extra time.
- **Confiscation of the documents:** possession of the passport and other related documents by the employers.
- **Heinous type of violence:** Physical/ or Mental (to propel to the police or threat of not providing payments).
- Depriving from the facility of medicine and treatment, not providing the leisure /breaks and holiday.
- Unhealthy living environment, unsafe working place.
- No repatriation to the country of origin/restriction on freedom of movements.

### **The Efforts made by the NHRC Nepal for safe migration**

- NHRCN has signed in the Memorandum of Understanding with South Korea in 2010.



- NHRCN has recommended to the government of Nepal in 2012 to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990.
- NHRCN has concluded International Conference on Migration Rights in 2012 in participation with the National Human Rights Institutions of Asia Pacific Region, Non-governmental organizations, International Development Partner Organizations, the specialized agencies of the United Nations with the aim of inter coordination with the National Human Rights Institutions.
- The then Hon. Chairperson Kedar Nath Uphadhya led team monitored and observed the human rights situation of Nepali migrant workers in south Korea and Malaysia in September, 2013. After the observation and monitoring visit suggestions and recommendations were delivered to the government through the report for safe and decent migration.
- NHRCN has concluded ten points MoU with the National Human Rights Committee, Qatar on 16th November, 2015. For the implementation of the MoU both of the Commissions have nominated focal officers and the function has also initiated.
- NHRCN has concluded signing the eleven points bilateral implementation plan on 18<sup>th</sup> December, 2016, for the implementation of the stated MoU.
- Both of the NHRCs have nominated the focal officers for the implementation of the MoU. National Human Rights Committee Qatar has established '*Community Help Desk for Nepali Community*' through which grievances are handled in Nepali Language.
- NHRC, Nepal has designated two migration contact officers in its central office, one migration contact officer and one alternative contact officers in the Provincial and Branch offices.
- Information related to complaint exchanging and addressing with the NHRC, Malaysia has been initiated as well as the preliminary dialogue has been initiated for the establishment of the formal mechanism.
- NHRCN has received ten complaints related with migration issues from July to January, 2018.
- Monitoring the human rights issues of migrant workers from the NHRCN's Provincial and Branch offices are going on.
- The monitoring of the Tribhuvan International Airport, Department of Immigration, the Offices of the Department of Foreign Employment has been conducting time and again
- In coordination with the NHRCN's central office, two provincial



conferences (Province no. 1 and 2) have been concluded and national consultation discussion program has also been concluded.

- Capacity building training on migrant workers issue for the NHRCN staffs has been concluded.
- Suggestions and direction has been provided for necessary effort by the concerned authority and to draw attention of the government of Nepal basing on the complaints received by the NHRCN on the basis of the very sensitive news published in the newspapers related to the foreign employment.
- The report has been prepared focusing on the issue of migrant workers especially on the recruitment process and access to justice.
- Thirty three point recommendations related to safe migration and human trafficking (prevention and control) have been recommended to the government of Nepal on 13 July, 2016.

#### **NHRC Nepal's Recommendations to the Government of Nepal<sup>4</sup>**

One of the ironies in Nepal is that despite the ever-growing number of organizations and initiatives that seek to address the issue of trafficking and labour exploitation, these problems continue to persist. In general, there has been very little change from the past in terms of the nature of interventions and methodologies adopted to address issues of trafficking and labour exploitation by the concerned authorities despite evidence suggesting that forms of exploitation and trafficking are constantly evolving.

The National Human Rights Commission, Nepal's monitoring in the various districts by using the tools like the regional conferences, the monitoring of the Governmental agencies, monitoring of the representative non-governmental organizations, and the consultation program held in Kathmandu to advance the policy issues for safe foreign employment. The facts and suggestions provided in the issue centric discussion with the concerned subject experts by the Commission are the basis of these recommendations for safe, well managed and dignified foreign employment:

##### **(A) Prevention Related**

1. To draft the policy related to Human Trafficking discerning the changed scenario and to review and amend the National action Plan against human trafficking regarding the earthquake like disasters.
2. To run the labor bank creating the system/mechanism of investment of remittance collection in the productive area.
3. To concentrate on the effective surveillance system in the major border

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<sup>4</sup> NHRC Nepal's Recommendations to the Government of Nepal on 13 July, 2016.





points of Nepal and India, Nepal and Tibet, Tribhuvan International Airport and other minor border points. To inspire establishing the surveillance centers in the other border points to the NGOs and reduce duplication of the surveillance function.

4. To include the issues of Human Trafficking, Migration and Human Rights in the Grade 8 and 10 social studies syllabuses and to conduct awareness raising programs to the teachers and the students.
5. To sensitize to the journalists continuously in the issue of human trafficking, to conduct orientation program to build capacity for writing and publishing the victim centric, facts based news and articles maintaining protection of privacy of the victims and witnesses.
6. To ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol) 2000 and International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
7. To monitor effectively whether there is implementation of condition and process of inter country adoption and the standards followed by the Child Care Home.
8. To conduct awareness raising programs of anti-human trafficking and safe migration to the people of the community of such districts where there are large number of people are affected by human trafficking and people move to foreign employment.
9. To expand and strengthen the Safe Migration Information Booth up to the District Administration Office and Local Bodies.
10. To manage and cause to manage the dissemination of information of preventive measures of human trafficking and safe migration regularly and effectively through the print media, electronic media, especially by the local media in local language.

#### **(B) Protection Related**

1. To implement and cause to implement effectively the National Action Plan for Prevention of Human Trafficking, National Minimum Standards for care and protection of the victims of human trafficking.
2. To inspire to develop and implement periodic action plan in accordance with the local situation and context to the District Committee to Control the Human Trafficking.
3. To initiate efforts for bilateral agreements to rapid response system in the destination country and to reduce delaying process of rescue and repatriation.



4. To increase the rescue funds allocated to the Nepali Diplomatic Missions, and donation to NGOs and rehabilitation funds.
5. To strengthen the Women and children Service Directorate of Nepal Police as a police unit working on human trafficking issues as well as to expand and build the capacity of the central investigation bureau of police for addressing the issues of external and internal human trafficking like organized crime in coordination with the bilateral, multilateral and international institutions.
6. To manage and develop (infrastructure, skilled manpower and resources) the Department of Consular Services which is under the Ministry of Foreign Affairs as a special unit to look after human trafficking issues especially to act effectively and timely on rescue and repatriation of the victims of human trafficking during the foreign employment.
7. To increase the budget and resources to the Diplomatic Missions of Nepal to solve the problems related to migration and to advance the system of approval of the demands of the migrant workers in the destination countries.
8. To strengthen the safe houses established in the destination countries and to expand the services to the respective destination countries where Nepali women migrant workers are there.
9. To assist for the facilitation of the implementation of activation plan for the signed memorandum of understanding between the National Human Rights Committee of the State of Qatar and the National Human Rights Commission, Nepal for the protection of the Nepali migrant workers and to facilitate concluding such MOU to other destination countries.
10. To expand the services in the human trafficking most affected districts increasing the funds provided to the rehabilitation centers operated by the NGOs.
11. To strengthen the national and district level Human Trafficking Control Committees ensuring the adequate budget, human resource and other stimulating factors.
12. To monitor effectively whether the best interest has been taken into consideration while reintegrating the human trafficking affected family and community.
13. To ensure the access of education, vocational trainings and the income generation activities to the reintegrated human trafficking victims.



14. To manage the provision of compulsory (minimum 3 months) vocational training to the potential migrant workers, encouraging the skilled migrant workers. To manage support to the persons who cannot afford the cost of training.

**(C) Law Enforcement and Adjudication**

1. To draft an act following the directives of the Supreme Court of Nepal for the protection of women working in the entertainment industries.
2. To amend the acts *Human Trafficking and Transportation (Control) Act, 2007* and *"Foreign Employment Act, 2007* to address the issues of human trafficking effectively and, to implement effectively the *Human Trafficking and Transportation (Control) Act, 2007, Regulation 2065* and *"Foreign Employment Act, 2007*.
3. To amend the Immigration act and the Passport act for the protection of victims' rights addressing the issues of trafficking, persons affected from smuggling and the undocumented migrant workers.
4. To make gender friendly and human rights friendly strengthening the Women and Children Service Directorate of Nepal Police in national level and Women and Children Service Center in the district and local levels.
5. To make functional and active to the High Level Coordination Committee formed in 2012 for dispensing the effective justice to the victims consisting of the representatives of the Ministry of Home, Ministry of Labor and Employment, Nepal Police, the Attorney General Nepal.
6. To strength and expand the activities of National Judicial Academy outside Kathmandu valley to conduct effective training and workshops for the court officers, judges, prosecutors and the law practitioners.

**(D) Information, Study and Documentation**

1. To keep statistics with updated documentation of returnees from the foreign employment, number of cause to return, the number of persons in custody, nature and problems as well as the migrants workers who lost their lives.
2. To establish the bilateral relationship with the government of India to be informed and to keep data of the migrant workers who goes through India for foreign employment.
3. The following issues and areas are requested to study and research:
  - a. To study and research the situation of migrant workers through the household survey.



- b. Study the situation of the women who are in the gulf countries, similarly to study and research on the issues of trafficking in the name of marriage and for the purpose of bodily organ removal.
- c. To study and research comprehensively the situation of human trafficking in the aftermath of the 2015 earthquake.

National Human Rights Commission, Nepal also provides recommendations to the Government of Nepal for the prevention and combating Trafficking in Persons on the basis of its National Report. This report consists of the overlapping issues of trafficking and migration. The recommendations are related to four areas: i) prevention, ii) protection, iii) prosecution and iv) collection and generation of systematic data on situation of trafficking and migration. The following recommendations are provided for the implementation through TIP report 2018.

- Meet the demand of skill development training to the growing number of labor force in the country. While on the average, Nepali 500,000 youth enter into the labor market or they search for work, altogether annually 10,000 to 15,000 receive the skills based training.
- Utilize the Foreign Employment Contribution Fund (Rs. 1500 \* nearly 729,000 in FY 2016/17) increasingly for welfare of the MWs and their families, rather than in overhead cost of the Ministry.
- Ensure the rights of the female workers in entertainment sectors in the context where trade union movements have failed to address the rights of female workers in the entertainment sectors. For this, there is a need to study the actual situation of these workers and also monitor the entertainment sectors regularly.
- Link the safe migration information provided through MRCs and border areas to alternative livelihood options to the aspirant MWs or those who are intercepted in route to going for search for work. This is vitally important to ensure that the MWs do not feel that their mobility has been restrained or their right to mobility from one place to another is ensured.
- Conduct a study revealing that the safe migration information has actually benefited the individuals or aspirant migrants or repeat migrants. It is essential to know how the receivers receive the message and how it is linked to the intention of the message producers.
- Increase the effectiveness of law enforcement especially in the economic and market sectors like recruiting agencies, training orientation institutions, skill development training centers, education consultancies, travel agencies and airlines. The Mid-Term Evaluation Report of MoWCSC also found that there is weak monitoring in private sector and even the private sector is wrongly claiming that they are generating employment.



- Maintain the effective surveillance in border areas between Nepal and India in the context where Nepal-India has open-border. On the one hand, ensuring the rights of migration to the citizens of the two countries is crucially important. On the other hand, protection of the people from any types of human rights violation is equally important.
- Ensure and maintain the good governance in foreign employment business management by bringing the Governmental officials who are suspected to have been involved in 'setting' and colluding with the traffickers/smugglers into justice.
- Monitor the implementation status requirement of '*No Objection Letter*' provision to fly from Indian cities to the Nepal MWs from India by establishing the diplomatic relationship with the concerned Ministry of Indian Government.
- Address the issues that emerged due to the *Kafala* system in order to protect the rights of MWs especially women domestic workers in GCC Countries. Brining the importance of care work and care economy into focus at the regional and global forums and utilization of such forums for the benefit of the MWs is very important to protect the rights of MWs especially of women domestic workers.
- Expand access to and availability of rights based victim care services including for male victims even in the major destination countries and in Nepal as well, by both strengthening capacity development service delivery mechanism including of rehab centers/service centers/safe houses and also by maintaining the Minimum Standards for Rescue, Care and Rehabilitation of the victims.
- Lift the current age ban of female migration to Gulf countries in order to discourage the undocumented and illegal migration from India and ensure the informed choices to all equally.
- Establish and strengthen the coordination and cooperation between Nepal and major destination countries of Nepali MWs including the Nepali diaspora and other NHRIs for ensuring the rights of the Nepali MWs in the destination country.
- Use effectively the regional and international forums in favor of migrant rights and combating trafficking in persons especially women and children.

THANK YOU!

