

NHRC-Nepal on the Rights of the Migrant Workers

An Overview

Everyone has the right to life, liberty and security of person.

UDHR 1948/Art 3

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

UDHR 1948/Art 24

No migrant worker or member of his or her family shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

ICRMW 1990/Art 10

No migrant worker or member of his or her family shall be imprisoned merely on the ground of failure to fulfill a contractual obligation.

ICRMW 1990/Art 20



National Human Rights Commission
Harihar Bhawan, Lalitpur
Nepal



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National Human Rights Commission
Harihar Bhawan, Lalitpur
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Preface

The National Human Rights Commission has been involved in a number of ways to contribute to the respect, protection and promotion of human rights since its formation in 2000. In recent years, NHRC has extended its activities on the rights of migrant workers as well. The aim of this publication is to make public the major efforts of NHRC on different issue of migrant's rights. We expect that the booklet will provide essential information on the issue.

The booklet mainly entails brief information on the status of Nepali migrant workers, national and international commitments and NHRC responses through investigating, monitoring and promotional activities. In addition, the booklet contains information relating to the services offered by NHRC, list of NHRC publications that may partly deal with the issue followed by partnering, coordinating and collaborative efforts and strategies.

We acknowledge the work of the staff of the Central, Regional and Sub-regional offices that provided essential information and their involvement in the preparation process. We hope this publication will be useful for all concerned.

NHRC-Nepal

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Rights of the Migrant Workers

1. Introductory

Migration is a distinctive nature of freedom that human persons enjoy across the world. In recent years, migrating abroad in search of work has become common and popular trend for many Nepali youths. People prefer to work abroad mainly because of economic compulsion and social causes. Recent information shows that estimated 250 million people live as the migrant workers abroad. In the recent time estimated 4 million Nepali live and work abroad. In terms of financial gains, migration has positive effects. However, if it is seen from familial and social perspective, it does have the negative outcomes too.

In Nepal and many other developing countries, there is an increasing trend of people going abroad in search of employment. The reason behind choosing this option are economic problem in the country, shortage of farming land, industrial and business shrink, internal conflict, unemployment and rapid population growth and so on so forth. In addition gender and ethnic discrimination, lack of good governance, political instability, low pay and social disorder lead people to choose the option of seeking their fortune abroad. This trend is growing with the increase in population.

There is a pleasing aspect that the receiving countries are now able to meet the challenge caused by the current shortage of work force in their respective countries. In many cases, this might have been helping in sharing new technologies among themselves. However, the experience of the returned migrant workers in Nepal shows that their human rights are not respected in a number of countries they have been working. Like many other countries, Nepal has yet to ratify the International Convention on the Rights of the Migrant Workers and Their Family Members, 1990. Albeit, considering the issue of universality of human rights, NHRC-Nepal has been involved in different fronts on the promotion and protection of the rights of migrant workers.

There is a unanimous view that the migrant workers deserve human rights as other people do. They are entitled to enjoy various rights such as the right to leave a country and enter into another as provided in the law, they are free from torture and cruel, inhuman and degrading treatment, among others. Since human rights are the rights of human persons and not the rights of the citizens of a country in particular. Considering this, NHRC- Nepal has intensified its activities on the rights of migrant workers both Nepali migrant workers and their families abroad and other nationals who live and work in Nepal.

Considering the importance of the issue three years ago, NHRC-Nepal created a Unit that deals with the rights of migrant workers. The NHRC in general works through the Ministry of Foreign Affairs followed by Nepalese embassies and counselors at the receiving countries. In addition, it works with Government Ministries, Departments, NGOs and recruiting companies.

The share of remittance in the Gross Domestic Product (GDP) of Nepal's economy is about 24 percent. In order to make respectful earning, the State has to do more for the protection and promotion of human rights of the migrant workers and their family members. The remittance received in foreign employment is not only serving as the backbone of the rural economy, but also an important element for the reduction of poverty. With the increase in the number of the workers, migrating for foreign employment, more and more incidents of human rights violations and atrocities as the result of fraud, exploitation, fragmentation of families, and torture and inhumane treatments have been taking place sporadically in the countries of destination.

In the recent past, Nepal has taken positive initiatives through Foreign Employment Act, 2007 and related regulations to regulate the foreign employment, as well as on the rights and welfare of the migrant workers. However, rights of the majority of the migrant workers are found not respected properly. After the establishment of NHRC in 2000, NHRC has been providing information on the role it has played on the protection, promotion and realization of the rights of migrant workers. Considering this, the booklet on the rights of the migrant workers made public in order to make all the concerned agencies, including civil society and human rights defenders aware of its activities.

2. Status of the Rights of Nepali Migrant Workers: Brief Overview

A recent data show that estimated 250 million people live and work abroad. The migrants make almost 3 per cent of the world population. In 2010, almost US\$ 440 billion was in flow as remittance. The United States of America, Russia, Germany, Saudi Arabia and Canada are in the forefront in the list of the countries that receive immigrants. Qatar, Morocco, UAE and Kuwait have the highest percentage of immigrant population.

The Nepalese history of migration for employment appears to be more than 200 years old. Following the *Sugauli Treaty* in 1816 with British India, the practice of recruitment of Nepali people in British India began. Nepali people permanently migrated to a number of countries including Burma, Bhutan, India, Bangladesh, Thailand, Tibet autonomous province of China, Malaysia, Hong Kong, Singapore and lived there as Nepali speaking population of the countries, or Nepali immigrants. Today, Nepali people have spread across 108 countries, institutionally, and most of the countries in the world, individually.

According to a study conducted by NIDS, UNIFEF in 2006, 1.5 to 2 million Nepali workers live to work in India. In Nepal, every year some 400,000 workers enter into the internal labor market and three-fourth of the laborers have been engaged in foreign employment. A World Bank report in 2011 states, besides India, some 2.3 million Nepali people have gone abroad for foreign employment a part of those who work in India. Malaysia, Qatar, Saudi Arabia, UAE, Bahrain, South Korea are the major destinations of foreign employment for Nepali workers.

Remittance has been flowing to 56 per cent household in Nepal. Foreign employment has become the base of youth employment as well as poverty reduction. The Government of Nepal has done labor agreements with the countries of destination such as United Arab Emirates, Qatar, Bahrain, South Korea (EPS) and Japan (Industrial Intern).

The majority of male are employed as construction workers whereas women as domestic workers. A Report published by the Department

of Foreign Employment shows that estimated 90 per cent of those workers lives to work in Qatar, Saudi Arabia, UAE and Malaysia. Data indicates that most of those hired for overseas are unskilled workers. Among them, only 2 per cent are skilled, 23 per cent are semi-skilled and 75 as unskilled workers. Various studies suggest that real data of the migrant workers is not updated and a large number of workers are going by using irregular channels via neighboring countries.

3. National and International Commitments

The Government of Nepal has to follow Foreign Employment Act 2007 and Rules in order to regulate foreign employment. Recently the Government of Nepal has formulated Foreign Employment Policy-2012. Although the Government of Nepal has not ratified the convention that directly deals with the rights of migrant workers. It has expressed its commitments on the issue in various national and international forums. However Nepal has become a State Party to various International Labor related Conventions.

3.1 National Laws

The Interim Constitution of Nepal-2007 has guaranteed fundamental rights that also apply to the migrant workers. It guarantees equality that ensures the right to work and rights against exploitation and slavery or forced labor. The Constitution does not contain direct provision on the migrant workers. However, some positive initiatives are taken to protect the rights of migrant workers. The Foreign Employment Act, 2064 includes many positive provisions in order to protect the rights of migrant workers and regulate foreign employment. The major provisions are as below.

- (a) The Act provides that the Government itself may send the workers by establishing diplomatic relationship with the foreign countries and developing a transparent mechanism.
- (b) The Act provides that the foreign employment agencies should mandatorily present the bill for service charge; specify the charge for the service as per the specified limit; and fulfill the procedure for the labor approval letter, as prescribed.
- (c) The Act has attempted to discourage the practice of sending workers illegally via a third country by putting the provision to use

native airport before getting permission for proceeding abroad for foreign employment.

- (d) The Act has been providing service and facilities to the workers seeking to go abroad for foreign employment by establishing mechanisms such as the Department of Foreign Employment, Foreign Employment Promotion Board under the Ministry of Labour and Transportation. In addition, these mechanisms have been provided with the responsibilities to investigate and file cases on the crimes including the fraud cases on foreign employment.
- (e) The Act has provided extra-territorial power to look at the illegal activities and fraud against Nepali people outside Nepal.
- (f) The Act has listed the fraud on foreign employment under criminal acts and has given the Foreign Employment Promotion Board the responsibility to investigate and prosecute the persons responsible for this and power to arrest without an arrest warrant.
- (g) The Act has provided a Foreign Employment Tribunal to deal with the legal cases related to the foreign employment, while the Supreme Court shall work as an appellate court.
- (h) The Act has provided a Labor Attaché in a country where five thousand or more migrant workers are working.

Additional laws and rules dealing with foreign employment include the Immigration Act 2049, the Immigration Rules 2051, Passport Act 2020, Passport Rules 2067, Foreign Employment Policy 2068, Human Trafficking and Transportation (Control) Act 2064 and Human Trafficking and Transportation (Control) Rules 2065.

3.2 International Instruments Dealing on the Issue

A number of international conventions and instruments deal on the issue of the rights of workers. Some of the instruments dealing on the issue includes the Universal Declaration of Human Rights (UDHR), 1948, International Covenant on Civil and Political Rights 1966, International Covenant on Economic, Social and Cultural Rights 1966, Optional Protocol to International Covenant on Civil and Political Rights 1966, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at

the abolition of the death penalty 1989, Convention on the Elimination of All Forms of Discrimination against Women 1979, Convention on the Rights of the Child 1989.

Additional instruments includes ILO Conventions include Weekly Rest (Industry) Convention, 1921; Forced Labor Convention, 1930; Right to Organize and Collective Bargaining Convention, 1949. Similarly, Equal Remuneration Convention, 1951; Abolition of Forced Labor Convention, 1952; Discrimination (Employment and Occupation) Convention, 1958; Minimum Wage Fixing Convention, 1970; Minimum Age Convention, 1973 are also some other major conventions, Tripartite Consultation (International Labor Standards) Convention, 1976; Worst Forms of Child Labor Convention, 1999; International Labor Organization Convention on Domestic Workers 189. Although Nepal has ratified various ILO conventions, it has not yet ratified the International Convention on the Protection of Rights of All Migrant Workers and the Members of Their Families, 1990.

4. Role of NHRC

The Interim Constitution of Nepal - 2007 has bestowed vital responsibilities upon the National Human Rights Commission for the protection, promotion and effective implementation of human rights. The Article 32 of the Constitution deals with the functions and power of the Commission. In order to contribute to the protection of human rights, the NHRC receives the complaints, conduct monitoring and investigation and recommend for the remedies for the victims. In addition, the NHRC works in partnership and collaboration with civil society, NGOs, professional organizations, government and international organizations. Following is the summary of the functions and power of NHRC in order to fulfill its function and duties as provided by the Constitution and Act:

1. to publicize the names of the officials, person or bodies not following or implementing the recommendations and directions furnished by NHRC regarding the violations of human rights,
2. regarding its reporting obligation under an international human rights treaty, the Government of Nepal may seek opinion of NHRC before submitting its report,

3. NHRC may draw attention of an organization or its staff regarding the protection and promotion of human rights, if and when necessary,
4. undertake studies and research on protection, promotion and implementation of human rights,
5. Undertake other functions as it may consider necessary for the protection and promotion of human rights,
6. if NHRC considers a complaint or information received by NHRC or investigated by NHRC on its own initiative unfounded or it does not fall under its jurisdiction, it can cancel or put such complaint, information or subject on hold at any time with explanation,
7. except for the matters which are considered as serious violation of human rights and humanitarian law under the international laws or regarding the matters in which reconciliation cannot take place in accordance with the prevailing laws, if the concerned parties lodge a joint complaint for reconciliation in respect of a complaint that is under consideration in NHRC, NHRC may have them reconciled as prescribed.

5. NHRC Initiatives

5.1 Initiatives at National Level

The NHRC has been undertaking its activities for the protection, promotion and enforcement of human rights in accordance with the law and constitution complying with the Paris Principles. NHRC has "A" status accreditation with the International Coordination Committee (ICC) of the National Human Rights Institutions.

The NHRC has frequently shown concerns on the issues of the rights of the migrant workers. It receives complaints, conducts inquiry to the national stakeholders, corresponds with the Ministry of Foreign Affairs, Ministry of Labor and their subordinate agencies including departments.

The NHRC frequently provides support with regard to various issues such as safe return of exploited and stranded workers, corresponds to the NHRIs abroad on human rights abuses and safety and security issues of Nepali migrant workers. NHRC also carries out research

and studies on the rights of migrant workers and human trafficking and make public the report every year. NHRC has made recommendations on the regulation of foreign employment and adopting measures for safe foreign employment and facilitating the victims to get remedies from the concerned agencies.

The NHRC has been providing the Government of Nepal and other stakeholders with the policy and operational advices through the annual national report on human trafficking. The national report on human trafficking contains a chapter on foreign employment that describes the condition of foreign employment based on the activities of various government, civil society and research groups. The report also contains the information relating to NHRC recommendations (both policy and remedial recommendations) to the government, recommendations to other stakeholders as CSOs, recruiting companies and international agencies.

The NHRC organized a national workshop on the rights of the migrant workers in March 2012 in Kathmandu. The workshop identified key challenges and ways out for possible solutions to the problems faced by the migrant workers both at home and overseas. The workshop has come up with 34 point resolution.

The NHRC works in solidarity with the CSOs and other groups against death penalty and advocate against death penalty awarded to Nepali migrant workers abroad. To mention a few in the past, the NHRC advocated against execution of death sentence awarded to Nepali migrant workers by the courts in Indonesia, Kuwait, Qatar and Yemen. In addition, the NHRC took note of the brutal killings of the 12 Nepali migrant workers in Iraq by terrorists in 2004. The Constitution has abolished death penalty in Nepal.

In the case of a Nepali migrant worker, named Durga Bahadur Sunuwar who was sentenced to death by UAE court, NHRC began communicating to the Nepal Embassy and local agencies in order to save him from execution. Upon consulting with the family members of the person murdered, who was also and Nepali migrant, NHRC requested to the UAE government for the possibility of converting the capital punishment into jail term to the victim (assuring of blood money).

In the case of another Nepali migrant worker named Hari Bhadur Ghale, who is currently under death sentence, could be freed or reduced his punishment if the Head of State of Malaysia pardoned or relieved him. The Commission through communication dealt with this issue as a matter of urgency. NHRC also raised concern to the Government of Nepal on the prison sentence awarded to Govind Mainali convicted of rape and murder, once the issue appeared that there was an error in criminal investigation. After 15 years of detention, the superior court gave him clean shit and he is now back to his home country Nepal.

The NHRC worked with Ministry of Foreign Affairs, and NGOs to reduce death sentence awarded by a court in Kuwait to a Nepali migrant worker Dolma Sherpa. The NHRC worked in solidarity with coalition campaign of NGOs, her friends and family entitled 'Save Dolma Campaign'. Later her sentence was reduced to imprisonment.

Status of complaints - The NHRC has received complaints through the organizations working in the field of migrant workers. As of today, 103 complaints have been received at different 7 offices of NHRC. Monitoring upon complaints are held in coordination with the Ministry of Foreign Affairs and NGOs in the countries of destination among others. Based on the Regions the status of complaints is as below.

Office	Khotang	Biratnagar	Janakpur	Pokhara	Butwal	Nepalgunj	Jumla	Dhangadhi	Lalitpur	Total
Complaints	8	2	1	2	2	16	0	33	39	103

5.2 Initiatives at International Level

In order to work together on the issue NHRC Nepal and NHRC Korea have inked a Memorandum of Understanding (MoU). The MoU has opened the avenue for the migrant workers working in both the countries to register complaints of human rights violations at the NHRC of the country they live to work. By this arrangement, Nepali migrant workers in Korea can file the complaints in Nepali language at the NHRC Korea and Korean migrant workers in Nepal can file complaint at NHRC Nepal.

The Government of Nepal has made special arrangements through agreements with various countries in sending the workers for foreign employment. In relation to this, the Government of Nepal has done

separate agreement with the Governments of Korea (under EPS system), Japan (to send industrial interns), UAE and Bahrain.

In respect of protection of the rights of Nepali migrant worker, NHRC has communicated to NHRIs of respective countries such as India, Afghanistan and Malaysia. NHRC requested the Human Rights Commission of India on the matter of potential violation of rights of Nepali speaking people in the State of Meghalaya among others. The Commission dealt with the issue and provided timely assistance. NHRC in a letter dated June 21, 2006 to the Government of Nepal made recommendations to take diplomatic initiatives with the Government of India to provide appropriate compensation for killings after the abduction of eight Nepali workers in Indian Administered Kashmir by the members of Highbulla Mujahiddin and to take legal action against the culprits.

The NHRC has proposed with the NHRIs of a number of countries to conclude MOU on the rights of migrant workers. Recently, the NHRC-Nepal communicated to NHRIs of Bahrain, Jordan, Malaysia, Qatar, and UAE to know their interest to conclude such MOU.

The NHRC has participated in major international events on the rights of migrant workers. The events include the International Conference on Human Rights of Migrants and Multicultural Society Dignity and Justice for All Migrants held in Seoul in 2008, APF of NHRI Conference in Amman in 2009. The Amman meeting elected the NHRC-Nepal as the member of APF Sub-committee on the rights of migrant workers from South Asia.

The dialogue held with NHRI Qatar on the issue in 2010 during the APF Annual Conference in Bali. Nepal proposed for a MOU between the NHRIs of Nepal and Qatar that would help launch various programs in the future in the spirit of MOU.

The NHRC has been increasing its capacity on the issue by making participation of its officers in the training programs on the rights of migrant workers mainly organized by APF of NHRIs and NHRC Korea.

6. Service Delivery

Along with monitoring, investigation and recommendations, NHRC categorically performs the following works relating to the migrant workers.

1. receives complaints on the violation and atrocities against migrant workers,
2. performs initial action, communication and inquiry about the complaints,
3. monitors the right situation of the migrant workers,
4. performs inquiry, data collection and investigation on the complaints,
5. makes recommendations based on the investigation on the complaints,
6. undertakes promotional activities,
7. coordinates and collaborates with the concerned agencies regarding the protection of the rights of migrant workers,
8. publishes and disseminates materials on monitoring, study, research and promotional activities,
9. organizes trainings, interactions, seminars and talk programs,
10. makes aware about the international treaties and national laws regarding the rights of migrant workers,
11. provides opinion and advice whether national laws, policy and programs are human rights friendly

7. Publication

The NHRC has published data and information in its various publications. A number of periodic reports such as NHRC Annual Report, Annual National Report on Trafficking in Persons and Thematic report on the rights of migrant workers contain the information relating to the rights of migrant workers. Most of those reports are available at the NHRC website at www.nhrcnepal.org.

8. Partnership and Collaboration

Primarily, the NHRC works either in collaboration or in partnership with likeminded institutions. Considering the nature of issue working in partnership and collaboration appeared result oriented. Some of our lessons in this respect are outlined below

8.1. With the Government of Nepal

The NHRC and the Government of Nepal have been engaged in discussions, interactions, communications and collaborations regarding the rights of migrant workers. The Government agencies have been taking positive initiatives in order to implement policy recommendations following the review of the laws. As regards the protection and promotion of the rights, NHRC has been coordinating and collaborating with the Ministry of Labor and Transportation, Department of Foreign Employment and Foreign Employment Promotion Board and Ministry of Foreign Affairs of the Government of Nepal.

8.2. With Civil Society

The NHRC frequently receives various information, data, reports and complaints through NGOs. NGOs have been playing active role in the protection of human rights by submitting complaints in the NHRC offices. They are also providing opinions, advice and suggestions to NHRC during its investigation and monitoring activities.

The NHRC has maintained constructive relationship with various NGOs, professional organizations, academia, private sectors and media. At the local level, Regional and Sub-Regional offices of NHRC work in partnership and collaboration with those agencies. To mention a few, NGOs with whom NHRC frequently and closely work on the issue include Paurakhi, People's Forum, National Network for Safe Migration, Maiti Nepal, ABC Nepal and Prabasi Nepali Coordination Committee.

The national level annual human rights conferences commonly called as human rights magna meet) held in December 2010 and 2011 in collaboration with 150 agencies comprising NHRC, NIs, NGOs, professional organizations, media, CBOs and others discussed on the wide range of issues relating to the rights of migrant workers. The conference resolution highlighted the issue, and stressed on the need to give due priority to this issue in the Nepalese context.

The Human Rights Defenders' National Conference was held in October 2012 in the aegis of NHRC participated by human rights defenders from all 75 districts of Nepal discussed on the issue. The sizeable number of participants emphasized to give high priority to the issue considering that migrant workers contribute to substantial part for national economy.

8.3. With media

The NHRC collaborates with media as well with a view to advocate and widely disseminates the issue. The NHRC had human rights awareness program from 12 radio channels across the country via Radio Sagarmatha. In order to bring the issues to wider public notice NHRC often goes along with media in its major activities including on the rights of migrants.

8.4. With International Agencies

The NHRC works in partnership with international agencies primarily for the capacity building of NHRC. The NHRC and OHCHR-Nepal signed a Guidelines of Cooperation between these two organizations on February 20, 2009. The UNDP is a major partner for capacity building of NHRC followed by some other UN agencies.

The NHRC has been working with the Embassies of Denmark, Finland, Switzerland and UK for its capacity building initiatives. In the recent past, the European Union provided support to the issue of migrant workers. The APF of NHRI and the NHRC Korea have extended valuable support for the capacity building on the issue by providing training to the staff of NHRC Nepal.

The agencies namely Save the Children, American Bar Association and the Asia Foundation are also NHRC partnering agencies. The support of the international actors has significantly contributed to the effective functioning of NHRC.

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