

**POLICIES AND
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Policies and Protection for the Migrants of Nepal

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Policies and Protection for the Migrants of Nepal

**Som Niroula
Kamal Thapa Kshetri**

2022

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Commitment and Action: The Implementation of ‘Global Compact for Migration’ in Nepal

Som Niroula *

International labour migration from Nepal has increased due to poverty and lack of employment opportunities within Nepal.¹ The migrant workers started to choose South-East Asian and Gulf countries as their preferred destinations due to the high demand for migrant workers and the existing possibilities of high-earning opportunities compared to India.² The preliminary data of the 2021 Census shows that about 2.6 million migrant workers have been working formally in different countries of the Gulf and South-East Asia.³ Although migrant workers’ rights have been guaranteed by the Constitution of Nepal and have also adopted different legislations like the Foreign Employment Act 1985 and related policies to facilitate the employment of Nepalese migrant workers beyond India; the Foreign Employment Policy 2012 which stresses on safe and dignified migration of Nepali workers to foreign countries; and have been signatories to different international conventions and treaties including the Global Compact for Migration (GCM) and Sustainable Development Goals (SDGs), yet the experiences of migrant labourers and the returnees show the fault lines in protecting the rights of the migrant worker. This paper intends to explore the lacunae of the implementation of GCM and SDGs in Nepal. Civil society organizations expected that the implementation of the GCM will aid safe, orderly, and regular migration and will lead to the reduction of the vulnerabilities of migrant workers. The United Nations (UN) Member States adopted the New York Declaration⁴ and expressed their commitment to respect and protect the human rights and fundamental freedom of refugees and migrants. Nepal tried to achieve a more equitable sharing of responsibility of hosting and supporting refugees by adopting the Global Compact on Refugees in 2018 as well as to strengthen the global governance of migration through the development of a Global Compact for Safe, Orderly and Regular Migration. The UN member states including Nepal adopted the GCM, however, some of the member states opted out from adopting the Global Compacts which pose challenges in fostering solidarity and resource mobilization internationally.

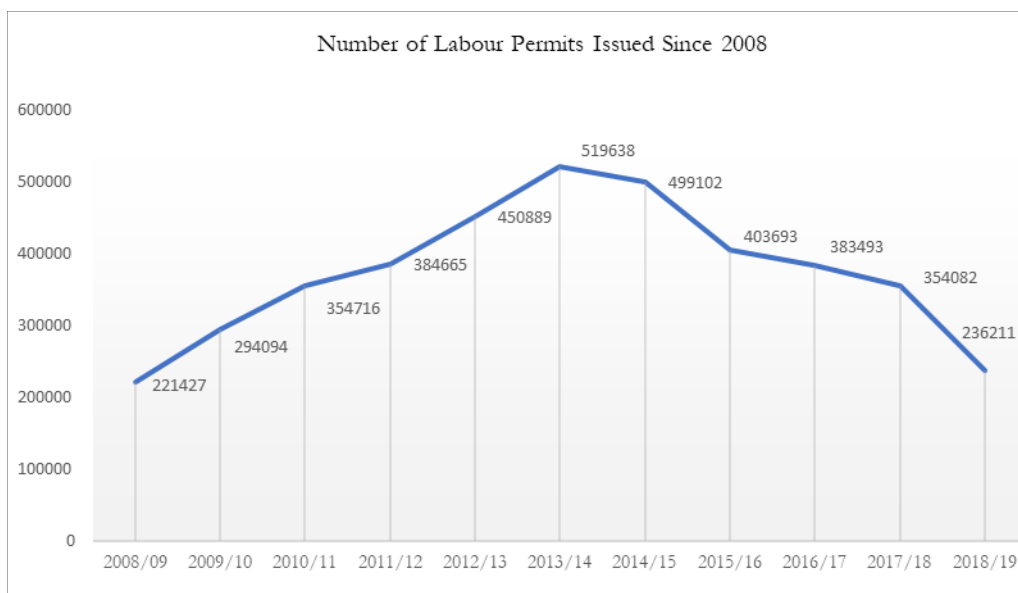
Migration and Employment

International labour migration is a regular process for Nepali youth to seek employment opportunities. The earlier practice of international migration from Nepal to India was to seek employment opportunities in the Indian army and work in other sectors after Nepal signed the

* Som Niroula, CRG-IWM, Visiting Fellow, 2021, and Researcher and Executive Member, Nepal Institute of Peace, Nepal. Email: somniroula@gmail.com
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British-Nepal Treaty of Friendship in 1923. Nepali migrant workers have been employed in the tea plantations in Darjeeling and Assam, extracting natural resources in the coal and oil industries in the north-eastern states of India. In addition, physically strong young men were also encouraged to join the British and Indian armies during World War II. The workers also have settled permanently in the hill stations of India. Malaria was also one of the reasons behind Nepalese migration to India. In addition, the Nepal-India Friendship Treaty of 1950⁵ makes it easier for Nepali migrant workers to settle in India. As seasonal migrant workers, they are employed as security guards, agricultural labourers, caregivers, etc. However, these Nepali migrant workers in India are not considered labour migrants. The government of Nepal promulgated laws on labour migration in 1985 and it defines migrants as people seeking employment in the international job market except in India.⁶

Figure 1: The Trend of Foreign Labour Migration



Source: International Organization for Migration, *Migration in Nepal: A Country Profile 2019* (Baluwatar: IOM, 2019), 46, https://publications.iom.int/system/files/pdf/mp_nepal_2019.pdf.

Labour migration increased rapidly in the latter part of the 1990s to the Gulf and South-East Asian countries. Nepal's lack of employment opportunities and increasing violence and insecurity in remote areas forced the young population to seek jobs in foreign countries.⁷ The government also encouraged the youth to migrate to reduce the direct or indirect radicalization of youth in rural Nepal. The ratio of the young population has been continually increasing and according to the Census of 2011, persons between the age group of 16-40 years were 40.3 per cent of the total population.⁸ It clearly shows that many Nepali youths are going to seek employment opportunities in the future. The number of permits issued by the Department of Foreign Employment (DoFE) was 59,55,051 till the fiscal year 2019-20.⁹ Among 110 officially open destinations, GCC countries (64 per cent), and Malaysia (30 per cent) have hosted the largest section of Nepali migrant workers and migration to other destinations is barely 6 per cent.¹⁰ Remittances from Nepali migrant workers were US\$8.1 billion in 2018 contributing around 32.1 per cent of

Nepal's GDP.¹¹ Human Development Index (HDI) was 0.57 and per capita income was US\$1,047. 18.7 per cent of the total population was under the poverty line. In Nepal, about 0.5 million manpower enters the labour market every year. Due to the low absorption capacity of the domestic labour market, the additional labour force leans towards foreign employment. About 1,000 youths are leaving the country daily and remittance income is 25.1 per cent of the GDP, which is one of the highest in the world.

It is essential to adopt the proper strategies to generate employment in Nepal and at the same time explore the potential destinations for work and employment which are safe for the migrants. In addition, the Nepal Demographic and Health Survey (NDHS) 2016 mentioned that 47 per cent of the families had at least one person in the family who had migrated in the decade preceding the survey. The survey also shows that the migration of women is higher within Nepal due to marriage.¹² Men mostly migrate outside of the country to the Middle East (32 per cent) and India (17 per cent). About 7 per cent of women migrated to the Middle East and to other countries.¹³ There was a greater expectation amongst the multiple stakeholders that the implementation of the Global Compacts will facilitate safe, orderly, and regular migration which will reduce the vulnerabilities of migrant workers. However, the last four years of its implementation have shown little hope for the improvement of the condition of migrant workers in the context of Nepal.

Policies to Govern the Migrant Workers

Article 17.2 (e) of the Constitution of Nepal (2015) guarantees every citizen the fundamental freedom to move and reside in any part of Nepal. The Constitution also guarantees the right to seek employment opportunities and education and guarantees rights regarding labour. The government has adopted the Foreign Employment Act in 2007 and Foreign Employment Regulation in 2008. However, the Foreign Employment Act did not address the issues of Nepalese labour migration to India. The Foreign Employment Policy (FEP) which was adopted in 2012 highlights the development of the skills and safe migration of Nepali migrant workers and carried out a memorandum of understanding with Malaysia (2018), Jordan (2017), Israel (2015), Bahrain (2008), Qatar (2005), UAE (2007), South Korea (2007) and Japan (2009). Moreover, the Nepal government has also signed in Bilateral Agreement (BLA) with the major destination countries with the objective of promoting the rights, safety, dignity, and prosperity of Nepali migrant workers.¹⁴ 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 provision for amendment of the policy every five years. Still, no concern is expressed 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. It is essential to review the FEP to address the concerns regarding wage theft, compensation during the times of pandemic such as Covid-19, recruitment fees, voting rights of the migrant workers, and access to justice in the destination and in Nepal. The main objective of FEP has been to provide knowledge and skill-based training to Nepalese citizens to develop a skilled, empowered, and competitive labour force as per the requirement of the international market's demands, creating a safe, organized, and respectable environment for foreign employment. The policy has made the safety and protection of workers its utmost priority including institutional mechanisms provision for monitoring. It acknowledges the increase in the recruitment of female migrant workers especially for domestic work and the ever-growing care industry (the care of children, the elderly, and those who need assisted living)¹⁵ and the importance of remittances in the families of the migrant workers.¹⁶

Nepal is also part of several international organisations/treatises which protect migrant workers like the Universal Declaration of Human Rights (UDHR) 1948, the International Covenant on Civil and Political Rights (ICCPR) 1966, International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966, Global Forum on Migration and Development (GFMD), New York Declaration for Refugees and Migrants 2016, Abu Dhabi Dialogue and Colombo Process, and Sustainable Development Goals (SDGs) 2016-30.¹⁷ Nepal has adopted the SDGs to improve the livelihoods of the people. All SDG goals are interlinked and specifically Goal 8 on decent work and economic growth, and Goal 10 on reduced inequalities highlight the rights of the migrant workers. The implementation of SDG 8 is essential to increase employment opportunities and formalize jobs, safe and secure environment for women, and reduce the gender gap in employment opportunities. It further highlights the diversification of technology, development of new skills, decent job creation, and entrepreneurship. Nepal government participated in the Global Compact Volunteer Review Process survey conducted in March 2021 by the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) to review the progress made by the stakeholders in the implementation of the GCM.¹⁸ According to the survey, the major driving force behind migration from Nepal is poverty, and the major challenge exists in controlling human trafficking while seeking foreign employment opportunities. The government has started several initiatives like the Prime Minister Employment Programme (PMEP), established Employment Service Centre (ESC), and Vocational and Skill Development Training Academy (VSTDA). Nepal has made progress in terms of implementation of GCM at the country level and is taking initiatives to enter into Bilateral Agreements (BLA) and MoUs with the potential destinations. The government has adopted several laws and policies to steer labour migration. In addition to this, there are several institutional arrangements like the Ministry of Labour and labour tribunal at the federal level. Most of the mechanism has been centralized and the workers need to travel far to seek remedies or gain skills. Hence, the government needs to decentralize the services to make them accessible at the community level. It may be said that the government and civil society expected that the implementation of GCM would facilitate and address the grievances of the migrant workers in the destinations. However, the GCM has neither been properly implemented in the destinations nor at the national level in Nepal. The government has shown progress in drawing some of the earlier work and has recently started to draft an action plan. Civil society and workers have been expressing their dissatisfaction in terms of the effective implementation of the GCM in Nepal.

Commitment and Action on GCM

The key challenges faced while implementing the different objectives of GCM in Nepal are—a) cost of paying migrant workers, b) low skill of the migrant workers, c) access to justice for migrant workers, d) Covid-19 and its impact on migrant workers, and e) local integration of returnee migrant workers.

a. Cost of Paying Migrant Workers

Objective 6 of the GCM emphasizes ethical recruitment and safeguarding the condition that ensures a decent working environment for all migrants. At the national level, even though the government has been able to reduce the cost of migration drastically, migrant workers still have to pay extremely high amounts to recruitment agencies for their international work-based migration. Workers are still languishing in the destination countries. The government proposed the beneficial package of charging

a minimum cost of migration from workers as a recruitment fee for different destination countries.¹⁹ Nepal government has signed an MoU with the United Arab Emirates (UAE) for ‘Zero Cost’ jobs and has also issued regulations prescribing certain fees that the recruitment agencies are allowed to charge from the workers. Nepal has launched the ‘Free Visa Free Ticket’ to protect migrant workers from financial exploitations and make the process of migration easy for the poor as well. However, at times it makes the workers more vulnerable while seeking remedies as the workers will have the receipt with less amount and they cannot claim insurance with the company or Foreign Employment Board (FEB). The scheme is not working as there is no effective monitoring of the recruitment cost. The recruitment agencies provide the receipt for the minimum cost and not the actual higher amount they took from the workers and in most cases, they do not provide receipts or give fake receipts to the workers. In the receipt they show the bare minimum charges, taking advantage of the migrant workers’ unawareness, lack of education, over-dependence on the recruitment agencies, and their poverty-stricken situation which forces them to fly abroad at any available cost. The workers have been paying high fees to get recruited for jobs in the Gulf countries²⁰ and Malaysia. It has been already four years of the endorsement of the GCM and there is not much progress made in this context. The table below clearly shows the recruitment fees that have been charged by the recruitment agencies.

Table 1: Government-Prescribed Migration Fees, Average Cost & Average Monthly Earning in US\$

Country	Average Cost	Avg. Monthly Earnings	Fee Prescribed by Govt.	Remarks
Bahrain	1,404	418	90	
Japan	10,756	1,379	500	
Kuwait	1,106	346	90	
Malaysia	1,388	294	0	Employer should pay all the cost
Oman	1,172	310	90	
Qatar	1,083	313	90	
Saudi Arabia	1,122	294	90	
Republic of Korea (ROK)	1,141	1,197	970	
UAE	1,277	352	00	Employer should pay all the cost

Source: IOM KOICA 2016, ²¹ People Forum (PF), 2021

The recruitment agencies fail to provide the exact information to the migrant workers during the recruitment process. The information provided is mostly about the nature of work, the working environment, and salary.²² The complaints filed by the migrant workers are mostly related to fraud, and malpractice and have been registered against institutions and individuals. For instance, 12,090 complaints (4,627 against individuals and 7,463 against institutions) were registered at the Complaint Registration and Investigation Section between the financial year of 2012-13 and 2015-16.²³ The

International Labour Organization (ILO) argues that recruitment agencies do not follow ethical practices of recruitment while enrolling large volumes of workers who are willing to migrate to earn more money.²⁴ According to Felipe González Morales, UN Special Rapporteur in Nepal,

The practice of charging fees to migrant workers for recruitment services renders them more vulnerable to human trafficking and forced labour. Deceptive and coercive recruitment practices increase the vulnerability of migrant workers, as they pay recruitment fees up front. As a result, they are less likely to report violations of the Foreign Employment Act, abuse or exploitation. In many cases, the situation of migrant workers amounts to debt bondage, forced labour or human trafficking.²⁵

The workers must work for an average of four to six months to recover the cost of migration if they get the job guaranteed by the recruitment agencies. The recruitment agencies charge about US\$2,000 for the workers and the worker will get the job at the supermarket and the salary was set at about SAR300. While after reaching Saudi Arabia the workers did not get the job that was mentioned in the letter, and they were asked to work as road cleaners also. They did not get the agreed salaries and have been living in difficult situations and requesting rescue.²⁶

b. Low-skilled Migrant Workers

Labour migrants from Nepal are mostly low-skilled which makes them even more vulnerable in the destinations, as they are likely to get employed in risk-associated jobs. In most cases, women migrant workers have to do domestic care work which increases the possibility of getting exploited in the destinations. According to the Foreign Employment Information Management System (FEIMS), in 2018, 74.5 per cent of migrant workers were unskilled, 24 per cent were semiskilled and only 1.5 per cent were skilled which shows that a high ratio of unskilled Nepalese workers is mostly employed in work which can be summarised under the umbrella of three D's—Difficult, Dirty and Dangerous works. Hence, they are more prone to various forms of ill-treatment during the entire migration process. A 2021 World Bank study on the education status of migrants mentioned that,

7.5 percent of all migrants, and 7.0 percent of phone interview migrants have not completed even one year of schooling. Twenty-five percent of all migrants have five or less years of education, while 81.9 percent have 10 years of education or less. Only 3.2 percent have completed at least a bachelor's level of education. Hardly anyone in our sample had a Technical School Leaving Certificate (TSLC) or a Technical Diploma. On average, the education level of current migrants is slightly higher than that of returnee migrants and the difference is statistically significant. For example, 79.2 per cent of current migrants have 10 years or less of education, while the corresponding figure for returnee migrants is 83.9 per cent.²⁷

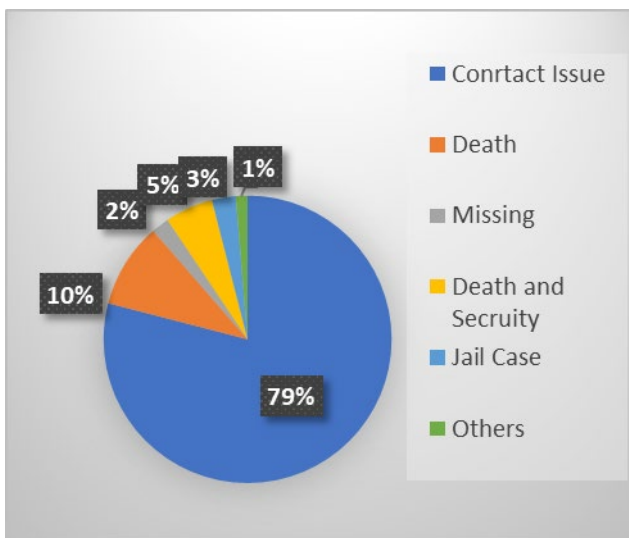
This indicates that the level of education of Nepali migrant workers is quite low, as a result, they get mostly risky work in the destinations. Around 5,00,000 young Nepalese leave the country every year for work and are currently working in hundreds of different countries around the world. Their remittances represent over 25 per cent of Nepal's GDP. Nearly 75 per cent of them are unskilled or low-skilled and the profile calls for more skill development of young people to enable them to find better employment opportunities both at home and abroad.²⁸ Enhancing the skill set of workers has significantly proved to be a better way to increase their earnings. Therefore, the

government of Nepal and other related stakeholders must start working with programs and policies which ultimately enhance workers' skill levels.²⁹

c. Access to Justice

The legal protection mechanisms for migrant workers have posed several challenges to their access to justice. The Constitution of Nepal (2015) states that legal aid is a fundamental right. There is already a scheme of financial support from the Foreign Employment Board in case a migrant worker faces criminal charges in destination countries. It is essential to expand the purview of legal aid to migrant workers to cover civil cases like wage theft, contract-related issues, job loss, insurance, and other areas associated with the process of migration. Access to justice refers to seeking remedy through formal and informal institutions of justice for grievance redressal, to normally provide legal protection, legal awareness, legal aid, and legal counselling. The major challenges posed to access to justice are inadequate legal provisions to safeguard the rights of migrant workers, centralized justice mechanisms, lengthy legal processes, lack of proper implementation of legal provisions, insufficient resources and training for law enforcement agencies, corruption in the foreign employment sector, lack of case referral practice among the civil society organizations, poverty, and internal challenges of accessing justice of the migrant workers. The workers also face different kinds of challenges in the

Figure 2: Case-wise Total Sufferer in the Last Two Years



destination countries like the language barrier, high cost of living, and difficulty in finding shelter. There are several institutions that can facilitate access to justice for migrant workers such as the Department of Foreign Employment (DoFE), Chief District Officer (CDO), Foreign Employment Tribunal (FET), and courts. The cases of foreign employment follow summary court procedure which states that cases need to be solved within 90 days of the defendant's statement. The complaints are investigated by a complaint investigation unit established within DoFE. The DoFE has the right to investigate, prosecute and adjudicate compensation cases like non-payment or less

payment of salary and other matters related to recruitment agencies etc. The complaints from the migrants and their families are recorded by DoFE's registration and investigation section. The CDO can also register any complaints regarding foreign employment dealing with individual and institutional cases. In cases related to individuals, CDO can mediate and provide compensation to the victim. For cases related to manpower agencies i.e., institutional cases, CDO refers the case to DoFE within seven days of the registration of the complaint. The FET investigates and adjudicates the cases of serious allegations against the individuals and recruiting agencies registered with them. Finally, those who are not satisfied with the decision of the FET can appeal to the Supreme Court within thirty-five days of the date of such decision. In 2020-21 Pravasi Nepali Coordination Committee (PNCC), a non-governmental organization received 3,295 cases related to contract violations, which constitute 79 per cent of the total cases received. In the case of contract violations, workers were provided with jobs that were not mentioned in the contract. Most of the time the workers are not paid properly and on time, also there are incidents of wage deduction and non-payment of wages with overtime. For example, during Covid-19 the workers were arbitrarily terminated with no payment, but at the outset of the pandemic, workers were forced to work, even though they had completed their contract period.

d. Covid-19 and Its Impact on Migrant Workers

Many migrant workers returned to their homes as the Covid-19 pandemic spread out in the destination countries. They were subjected to unlawful termination of jobs, non-payment/low payment of wages, lack of medical aids, etc. In this difficult situation, undocumented trafficking was the worst harm faced by Nepali workers in destination countries. Most of the migrant workers abroad were unaware of the labour laws and labour rights and the existing mechanisms of justice against the maltreatment they suffered.³⁰ Immediately after the restrictions were lifted in the destination countries, Nepali migrant workers opted to visit the GCC countries with a visit visa and the workers remained without jobs at the destinations. PNCC recorded a total of 617 wage theft cases.³¹ There was no proper evidence from the workers to justify their claims of wage theft. Hence, after returning to their native places, when the workers lodged complaints, it was difficult for them to get compensation. In a study conducted by PNCC, two-thirds of the research respondent stated that they had faced wage theft, ill-treatment, and abuse during their migration abroad. More than three-fourths stated to have faced non-payment/delayed payment of salary, and two-thirds mentioned facing a reduction in salary because of the pandemic. Nearly 40 per cent of the respondents mentioned having faced wage theft, ill-treatment, and/or abuse after the onset of the pandemic. The findings of the study also show that the migrant workers had been facing issues of non-payment/reduction of salary and benefits and the Covid-19 crisis further escalated the problem.³² Health and security also remain the major concerns of migrant workers in GCC countries. Lack of proper accommodation and food and hazardous working conditions result in the worsening of the health of the workers. Similarly, the lack of road safety awareness increases incidents of accidents among migrant workers.³³ PNCC received 219 (5 per cent) of the total cases related to the workers' health and security.

Article 17 of the Constitution of Nepal (2015) ensures freedom of movement. Article 67 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) 1990 ensures the right to return to the country of origin. Section 75 of the Foreign Employment Act 2007 sets an obligation for the government towards the repatriation of migrant workers affected by pandemic and war. Section 33 of the Act mentions that repatriation

costs should be borne by Foreign Employment Welfare Fund. Besides the legal obligations set by Sections 33 and 75 of the Foreign Employment Act 2007 and Section 11 of the Local Government Operation Act 2015, there is a lack of proper policy and plan by the government for the rescue, repatriation, compensation, and reintegration of migrant workers. In addition, the Supreme Court in 2020 issued an interim order to the government to repatriate and reintegrate migrant workers from destination countries.³⁴ After the Supreme Court's order, there was a debate in the political sphere, migrant community, and parliament level on how/when the government can repatriate, compensate, and reintegrate stranded migrant workers from destination countries. According to the Ministry of Foreign Affairs (MoFA) 1,04,000 migrant workers needed to be repatriated and 10,000-12,000 needed to be immediately repatriated.³⁵ There are some important issues regarding the repatriation of migrant workers. It includes payment of salary and benefit (wage theft), preparation for repatriation, relief package, assessment of the situation of the migrant workers in destination countries, voluntary repatriation, cost of repatriation, and access to justice. Nepal has prohibited workers from migrating to the destination country for work on a visit visa. However, after the Covid-19 pandemic, it was reported that most of the workers on visit visas remained stranded in various destination countries, especially in the UAE. They could not get a job within the stipulated time and were liable to overstay, with fines and dues. Even if their visit status was converted to working status, they did not receive fair pay and good work making them more vulnerable in the destination countries. The Covid-19 pandemic and the responses of the government clearly show that there is no clear protection and care mechanism for migrant workers. It is essential to place a robust social security system that adheres to international standards.

e. Local Integration of Returnee Migrant Workers

The GCM also highlights the issues of reintegration of migrant workers. The continuous return of migrant workers had been a regular feature and was expected to increase due to the Covid-19 pandemic. However, the recent large number of returnee migrant workers needed a job at the national level. The IOM states that if 'someone returns to a country or place where s/he has previously been living does not mean that reintegration is a seamless process'.³⁶ Migration is a process where people leave for a certain period of time and return back to their beloved home. However, the workers have to face multiple challenges during the course of employment. Some workers complete their job and gain skills while some workers have to abort their employment and return back. The ILO has mentioned that,

Returnees may have mixed characteristics and needs. Some migrants are forced returnees, such as workers in irregular status deported from destination countries. There are also victims of fraud, trafficking, abuse, and exploitation who did not manage to complete their migration objectives and who may need special assistance in integrating...unemployment, low wages, lack of savings, and psychosocial issues were common problems that many migrant workers face when returning home. At the same time, skilled and diaspora returnees may mostly require information on government economic and social policies and investment opportunities for skilled and diaspora returnees.³⁷

After the pandemic, migrant workers returned either voluntarily or forcefully. According to the Migration Report 2020, out of the total returnees, 44.2 per cent were employed, 14.3 per cent were unemployed and 41.5 per cent were not participating in the labour force. It notes that only 15.1 per cent of returnee migrants were employed in the same kind of occupation in which they were working abroad and hence for most of the returnees, the skills acquired by them were not utilized in the

internal market. The reintegration of returnees is not carried out appropriately and timely, though it falls under the mandate of FEB. Local governments have started ad-hoc reintegration programs for returnees.³⁸ Likewise, the SDG targets are shadowed because labour and migration issues have not received priority in the province-wise roadmap relating to SDGs including periodic plans and budgets of the government.

There were several provisions in laws and policies to integrate the returnee migrant workers. However, the government does not have a clear plan on how to reintegrate the returnee migrant workers who lost their jobs or have a detailed mechanism to address the psychosocial issues of workers. As per the MoFA Annual Report 2019-20, more than 28,000 stranded Nepalese were repatriated from twenty-five countries.³⁹ The number of returnee migrant workers in Nepal was approximately 7,56,000 according to Migration Report 2020. It stated that 24.1 per cent of the migrant workers returned after the completion of their employment contract followed by 12 per cent who returned in search of better opportunities. Unfavourable working conditions, illness, injury/disability were reported by 8 per cent of returnees each, while others returned as they were removed from work or had family reasons besides resignation, retirement, etc.⁴⁰ The Covid-19 crisis has forced policymakers and civil society to rethink the policies and programmes to address the need of the returnee migrant workers.

The coordination and collaboration among the different agencies are ineffective in terms of addressing the need of the returnee migrant workers. The government does not have records about the returnee migrants and their skills. The government needs to allocate a budget and prepare programs for local reintegration. The government has asked banks to provide soft loans to the returnee migrant workers so that they can start entrepreneurial endeavours. However, there is no effective monitoring mechanism. The local government also has the responsibility to design and implement programmes focusing on the returnee migrant workers at the community level. But the local government is not taking responsibility and ownership and generating employment is not receiving enough attention from the local government.⁴¹ Hence, collaboration and coordination among the stakeholders are crucial to implementing the GCM. The UN agencies like the IOM, ILO, and UNHCR are supposed to take the key leading role. The UN agencies are working to review the status and there is no effective collaboration among the UN agencies as well as with the civil society organizations.

Conclusion

Nepal's Constitution guarantees the right to employment and rights regarding labour as a fundamental right. It also focuses on developing a skilled and professional labour force. It is also expected that the provisions of GCM are in line with the national laws, policies, and aspirations. The GCM debates drew the attention of the government and civil society to work on safe migration. Some of the countries withdrew from the process at the time of the adoption of the GCM which undermine the whole spirit of safe and orderly migration. Migrant workers, trade unions, and civil society organizations expected that there will be a visible change in policies and practices in securing the rights of migrant workers. The government prescribed a certain amount as the cost for the migration, but it has not been implemented. Most recruitment agencies are charging high amounts from the workers and agencies still lack ethical recruitment practices. A high number of migrant workers is still pursuing unskilled jobs and are forced to work for low pay in unsafe working condition. Most of the complaints filed by the migrant workers are related to wage theft, loss of job, long working hours, and non-payment of agreed wages. This shows the breach of contract between

the workers and the contractor. The workers are not able to file any cases in the destination countries which are extremely expensive and difficult in terms of understanding the language and need to stay for a longer period of time in their destination to pursue the cases. The workers who return without earnings have to face multiple challenges in terms of paying back the loan and get psychologically depressed. There is not much effort from the government in initiating reintegration and support programs. The local government is supposed to collect the information and identify the need of the returnee migrant workers. It seems there is no political will in initiating the program at the community level. The Covid-19 pandemic also posed different types of new challenges such as immediate support to the workers, health support, and registration of grievances to seek remedies in cases of breach of contracts. In addition, there is no effective collaboration between the UN agencies in terms of monitoring and implementing the GCM at the country level.

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Nepali Labour Migration to India: A Growing Concern of Protection

Kamal Thapa Kshetri *

Labour migration from Nepal to India has been historical and is also a contemporary phenomenon because of the open border between the two countries. Despite the large number of Nepali workers who go for foreign employment to other countries nowadays, for most Nepali workers, India still stands as the first choice of destination. The Government of Nepal has protected and regulated the migrants in different destinations, through special laws, while there is no such provision in case of labour migration to India. Nepal Government has not paid serious attention and/or consideration to protect the rights of workers migrating to India. Drawing on the secondary sources of information and debates raised in Nepal, the paper attempts to show the scale of labour migration to India, the aspect of vulnerability of migrant labourers and suggests bringing special protection measure for the Nepali labourers migrating to India.

India and Nepal have a unique relationship of cooperation and exchange in many sectors, characterised by an open border and deep-rooted people-to-people contact of kinship and culture.¹ There has been a long tradition of free movement of people across the border. Nepal shares a border of over 1850 km with five Indian states—Sikkim, West Bengal, Bihar, Uttar Pradesh, and Uttarakhand. Nepal and India having an ‘open’ border based on the Indo-Nepal Bilateral Treaty of Peace and Friendship 1950, allows both countries’ citizens to cross the borders without visa and engage in jobs without any labour permit from the respective governments. But at the same time, the open border has confronted both Nepal and India with many challenges. One of the major problems is that there is no record of how many individuals cross the border, where they go, and for what purposes. Nepal and India have several formal entry and exit points at Indo-Nepal border [Table 1]. This paper uses data from secondary sources—the population census 2011 of Nepal², the National Planning Commission estimates and review of studies based on returnee migrant workers including the records maintained in the border between Nepal and India during the COVID-19 period. While there was no practice of maintaining records of the people crossing Nepal-India borders for years, Nepal government allotted certain entry points from India to Nepal to regulate and manage the record keeping of Nepali workers/people coming from India during the COVID-19 outbreak. The information related to the efforts of the National Human Rights Commission (NHRC) of Nepal, Human Rights Commission of India, and the Government of Nepal to gather data on migrant labourers have been used in this paper.

* Kamal Thapa Kshetri was CRG-IWM Visiting Fellow, in 2022 and is Human Rights Officer (International Relations and Migration Affairs) at National Human Rights Commission, Nepal. Policies and Practices, Issue No. 143, December 2022

Table 1: List of Entry-Exit Points along Indo-Nepal Open Border

Name of Locality/Place along the Border		Name of State/Zones		
Indian Side	Nepal Side	India (State)	Nepal (Zone)	Current Province
Sukhia Pokhari	Pashupatinagar	West Bengal	Mechi	Province 1
Naxalbari	Kakarbhitta	West Bengal	Mechi	Province 1
Galgalia	Bhadrapur	Bihar	Mechi	Province 1
Jogbani	Biratnagar	Bihar	Koshi	Province 1
Bhimnagar	Setobandha	Bihar	Koshi	Province 1
Kunauli	Rajbiraj	Bihar	Sagarmatha	Madhesh Pradesh
Jayanagar	Siraha, Janakpur	Bihar	Janakpur	Madhesh Pradesh
Bhitamore (Sursand)	Jaleswar	Bihar	Janakpur	Madhesh Pradesh
Sonabarsa	Malangawa	Bihar	Janakpur	Madhesh Pradesh
Bairgania	Gaur	Bihar	Narayani	Madhesh Pradesh
Raxaul	Birgunj	Bihar	Narayani	Madhesh Pradesh
Nautanwa	Bhairahawa	Uttar Pradesh	Lumbini	Lumbini Province
Khunwa	Taulihawa	Uttar Pradesh	Lumbini	Lumbini Province
Barhni	Krishnanagar	Uttar Pradesh	Lumbini	Lumbini Province
Jarwa	Koilabas	Uttar Pradesh	Rapti	Lumbini Province
Nepalgunj Road	Nepalgunj	Uttar Pradesh	Bheri	Lumbini Province
Katerniyaghat	Rajapur	Uttar Pradesh	Bheri	Lumbini Province
Tikonía	Prithivipur	Uttar Pradesh	Seti	Sudurpaschim Province
Gauriphanta	Dhangadhi	Uttar Pradesh	Seti	Sudurpaschim Province
Banbasa	Mahendranagar	Uttarakhand	Mahakali	Sudurpaschim Province
Jhulaghat (Pithoragarh)	Mahakali	Uttarakhand	Mahakali	Sudurpaschim Province
Dharchula	Darchula	Uttarakhand	Mahakali	Sudurpaschim Province

Source: Government of India, *Revised Indo-Nepal Treaty of Trade* (New Delhi: Ministry of Commerce and Industry, 2009), <https://commerce.gov.in/wp-content/uploads/2020/05/nepal.pdf>,³ and tabulated by author.

Legal and Human Rights Instruments

Treaty of Peace and Friendship between the Government of India and the Government of Nepal 1950

Article 6 of the Treaty states, ‘Each Government undertakes, in token of the neighbourly friendship between India and Nepal, to give to the nationals of the other, in its territory, national treatment with regard to participation in industrial and economic development of such territory and to the grant of concessions and contracts relating to such development’.⁴ Similarly, Article 7 of the Treaty states, ‘The Governments of India and Nepal agree to grant, on a reciprocal basis, to the nationals of one country in the territories of the other the same privileges in the matter of residence, ownership of property, participation in trade and commerce, movement and other privileges of a similar nature’.⁵ The Treaty makes migration both tacit and ambiguous and does not deal with how the rights of migrants are to be specifically secured apart from relying on the presumed goodwill of the host country. The Treaty also formally declared the open nature of the border between the two countries.

Foreign Employment Acts and Rules

Nepal enacted its first Foreign Employment Act (FEA) in 1985. The Act was amended thrice in 1992, 1998, and 2007. In 2007, a new Foreign Employment Act was promulgated. Likewise, the Foreign Employment Rules came into force in 1999 and was re-enacted again in 2008 following the 2007 FEA. The Foreign Employment Policy (FEP) was adopted in 2012. However, none of these laws or the institutions established by them, namely, the Foreign Employment Board (FEB), the Department of Foreign Employment (DoFE), and the Foreign Employment Tribunal (FET), deal with Nepali citizens going to India for work. The notion of ‘foreign employment’ and to a very large extent, the notion of ‘foreign destination’ itself is not concerned with migrations directed to India. All of these laws fail to acknowledge the fact that a large number of Nepalis go to India as workers and that there is a need to ensure their rights and safety. While migrant workers going to other countries are required to have all kinds of papers, workers migrating to India do not require official documents, and they migrate in all cases through informal channels, using personal or social networks.

Global Compact for Safe, Orderly and Regular Migration (GCM) 2018

The United Nations General Assembly adopted the Global Compact for Safe, Orderly and Regular Migration on December 19, 2018. The Compact is an important contribution to enhancing cooperation on international migration in all its dimensions. GCM aims to foster international cooperation on migration in a comprehensive manner to ‘facilitate safe, orderly and regular migration, while reducing the incidence and negative impact of irregular migration, reduce the risks and vulnerabilities migrants face at different stages of migration by respecting, protecting and fulfilling their human rights and providing them with care and assistance.’ The GCM sets out 23 objectives to achieve safe, orderly and regular migration and mentions a range of actions for the implementation of each objective. The text of the GCM affirms that it is a ‘non-legally binding, cooperative framework’ and that States have the ‘sovereign right to determine their national migration policy in conformity with international law’. The GCM highlights some of the objectives related to cross-border migration, border governance, missing migrants, migrant smuggling. Some of the related objectives have been briefly mentioned below.

- *Objective 8: Save lives and establish coordinated international efforts on missing migrants*—This objective contains three elements, to save lives and prevent deaths and injury; to identify the missing and the dead migrants; and to help their families. The state has the commitment to cooperate internationally to save lives and prevent migrant deaths and injuries through individual or joint search and rescue operations, standardised collection, and the exchange of relevant information. Identify those who have died or gone missing and facilitate communication with affected families. Develop procedures and agreements on the search and rescue of migrants, with the primary objective of protecting migrants' right to life. Enable migrants to communicate with their families without delay to inform them that they are alive by facilitating access to means of communication along routes and at their destination, including places of detention. Collect, centralise, and systematise data regarding corpses and ensure traceability after burial, in accordance with internationally accepted forensic standards. Make efforts, including through international cooperation, to recover, identify and repatriate to their countries of origin the remains of deceased migrants, respecting the wishes of grieving families, and, in the case of unidentified individuals, facilitate the identification and subsequent recovery of the mortal remains, ensuring that the remains of deceased migrants are treated in a dignified, respectful and proper manner.
- *Objective 10: Prevent, combat and eradicate trafficking of persons in the context of international migration*—This objective emphasises the prevention and eradication of trafficking in the context of international migration. Enhance international cooperation to investigate, prosecute and penalise the perpetrators. Identification and protection, assistance to migrants who have become victims of trafficking, particularly women and children. Monitor irregular migration routes, and apply measures that address the vulnerabilities of women, men, girls and boys regardless of their migration status.
- *Objective 11: Manage borders in an integrated, secure and coordinated manner*—National border management in a coordinated manner, promoting bilateral and regional cooperation, ensuring security for States, communities, and migrants, and facilitating safe and regular cross-border movements of people while preventing irregular migration. Implement border management policies that respect national sovereignty, the rule of law, obligations under international law, and the human rights of all migrants, regardless of their migration status, and are non-discriminatory, gender-responsive, and child-sensitive. Establish appropriate structures and mechanisms for effective integrated border management by ensuring comprehensive and efficient border crossing procedures, including thorough pre-screening of arriving persons, pre-reporting by carriers of passengers, and use of information and communications technology, while upholding the principle of non-discrimination, respecting the right to privacy, and protecting personal data. Review and revise relevant national procedures for border screening, individual assessment, and interview processes to ensure due process at international borders and that all migrants are treated in accordance with international human rights law, including through cooperation with national human rights institutions and other relevant stakeholders.

Recommended Principles and Guidelines on Human Rights at International Border

The principle of protecting human rights is fundamental while migrant workers are at the international border. The state must have a legitimate interest in border governance measures to

combat terrorism, smuggling, trafficking, and irregular migration. The state should consider the primacy of human rights, non-discrimination, and assistance and protection while adopting border governance measures. The state should also ensure effective protection and access to justice regardless of migration status. The following ten UN guidelines focusing on concerns related to the rights of migration at international borders may be noted in this regard [see Box 1].

Box 1

- Guideline 1: Promotion and protection of human rights
- Guideline 2: Legal and policy framework
- Guideline 3: Building human rights capacity
- Guideline 4: Ensuring human rights in rescue and interception
- Guideline 5: Human rights in the context of immediate assistance
- Guideline 6: Screening and interviewing
- Guideline 7: Identification and referral
- Guideline 8: Avoiding detention
- Guideline 9: Human rights-based return or removal
- Guideline 10: Cooperation and coordination

Source: United Nations Office of the High Commissioner for Human Rights, Recommended Principles and Guidelines on Human Rights at International Border, 2014, <https://www.refworld.org/docid/56d00ea54.html>.

Discussion and Findings

Scale of Labour Migration to India

It is difficult to precisely estimate the number of Nepali citizens working in India and the number of Indians working in Nepal because of the open border between Nepal and India. There are hundreds of thousands of people from these countries crossing the border daily as commuters, seasonal, temporary, or permanent migrants for the purposes of better education, work, business, and health care. The result of the 2021 Census of Nepal provides a glimpse of the magnitude of Nepalese migrants working in India and Indian migrants in Nepal. The National Planning Commission of Nepal (2020) estimated that there are around one million Nepali citizens in India and in terms of the number of workers, India still stands as the first major destination country for Nepali workers. Migration to India takes place from every district of Nepal.

Even within Nepal, Sudurpaschim Province and Karnali Province are known for the migration of a large number of Nepalese youth to India for work. In some of the hill districts of these Provinces, there are no villages from where young males have not migrated to India for work and there is a huge absence of young men in the villages. The study on the Haliya⁶ system by Subedi and Thapa, points out that in the Dadeldhura district, for example, in a village close to Amarghadi municipality (Ajameru-1, Pali) of 35 hamlets, migrants to India were reported from 30 hamlets. In Bajura district, one of the major livelihood strategies of most families, especially Haliya and Dalit, is still migration to India. This situation in Terai districts of Sudurpaschim Province such as Kanchanpur and Kailali is similar. In a virtual interaction programme, the Mayor of Tikapur Municipality of Kailali district reported that there were 14,000-16,000 people outside of the Municipality, and of them, between 12,000-15,000 are estimated as seasonal migrants to India.⁷ According to the population Census of 2011, Tikapur Municipality had a population of 76,114 and

the outmigration rate comes out to be 18-21 per cent of the total population in the Municipality. In Bheemdutta Municipality of Kanchanpur district, of the total population of 1,04,599, the absentee population accounted for about 7,500, and among absentees, more than 5,000 were reported to be seasonal migrants to India.⁸

The inflow and outflow of migrants in Nepal have been evident even during the second wave of COVID-19 and the subsequent lockdown periods. The Government of Nepal imposed a countrywide lockdown from April 29, 2021, and there was a restriction on crossing the border with India. The restrictions were lifted on September 27, 2021, through the Cabinet decision. The local administration in Kanchanpur, the far western district of Nepal, sharing a border with Uttarakhand of India, has maintained the data records of Nepalese citizens crossing the Nepal-India border from the district's two official border points i.e., Gaddachauki and Gauriphanta from April to August [Table 2]. On the first day of the lockdown, i.e., April 29, around 1,629 Nepalis entered Nepal from these two border points while only 111 Nepalis crossed the border to go to India. Net migration was positive till May 2021, after that, the net migration became negative as more Nepalese people crossed the Nepal border to go to India, and fewer workers came in. During the six days (April-May 2021) the average daily in-flow was 1,128 while it was only 236 in the case of outflow. Among the Nepalese coming to Nepal, nearly one-fifth constituted females and seven per cent were children. In the case of outflow, the share of females and children were considerable (33 per cent of the total outflows). After 10 June, when the net migration became negative, the average daily inflow was merely 288 while the outflow was 1,470. The share of females and children in the total outflow was 22.5 per cent and 11.3 per cent respectively.

Table 2: Average Daily Inflow and Outflow from Kanchanpur District during the Second Wave of COVID-19 and Border Restriction Period, April-August 2021

Month	Population	In-flows to Nepal		Out-flows from Nepal	
		Number	%	Number	%
April-May (6 days average)	Male	836	74.1	121	51.3
	Female	211	18.7	80	33.9
	Children	81	7.2	37	15.7
	Total	1128	100.0	236	100.0
June-August (5 days average)	Male	179	62.2	973	66.2
	Female	68	23.6	331	22.5
	Children	41	14.3	166	11.3
	Total	288	100.0	1470	100.0

Source: District Administration Office of Kanchanpur, <https://daokanchanpur.moha.gov.np>, accessed October 1, 2022; and tabulated by author.

Characteristics of Labour Migrants to India

According to the study conducted in 2019 by the International Organization for Migration (IOM), among 751 returnee migrants⁹ from India, it was found that irrespective of caste or ethnic groups

Nepali migrants to India were mainly males over females, young over older, and largely engaged as low paid wage labourers. Of the total 751 returnees, there were only 25 females. It suggests that an overwhelming majority of Nepali migrants going to India from Sudurpaschim and Karnali Provinces were male migrants and nearly one-half of them were under 30 years of age and 84 per cent were under 40 years of age. In the sample, majority of returnees were Brahman/Chhetri/Thakuri (46 per cent), followed by Dalit (38 per cent), Janjati (11 per cent) and others (5 per cent). The ratio of Dalits in the sample districts is unusually high and they migrate to India in absence of employment in Nepal. In terms of destination, these migrant workers were found to have gone to 25 states of India with around 67 per cent going to the top-six major states of Maharashtra, Gujarat, Delhi, Uttar Pradesh, Himachal Pradesh, and Punjab. Key occupations of these returnees in India were factory work (28 per cent), hotel work (28 per cent) and watchmen (26.5 per cent), driver (5 per cent), agriculture work (5 per cent), domestic work (4 per cent) and supporting staff (4 per cent).

Missing Nepali Workers in India

In Sudurpaschim Province, one issue that stands out is migrants (to India) missing for several months and in many cases for several years. There are many instances where the migrants are not in contact with their left-behind families in the villages either because they are suspected to have fallen into the trap of forced labour, or imprisoned or trafficked or they may have been involved in stigmatised work such as prostitution, watchmen, domestic work, street labourers or they have no earning at all which disconnects them from their families residing in Nepal. Research on missing migrants (who travelled to India for work) shows that there have been 209 missing persons (198 males and 11 females) from KI Singh Rural Municipality and Shikhar Municipality of Doti district and Punarbas Municipality and Mahakali Municipality of Kanchanpur district. The study indicated that more than 70 per cent were missing for more than 10 years; 17 per cent between 5-10 years and 14 per cent for less than 5 years. The study also recorded the educational status of these missing persons. Nearly half were reported to be illiterate, 40 per cent were just literate and the rest 10 per cent had some years of schooling at the time of their disappearance.¹⁰ The National Human Rights Commission (NHRC) of Nepal received some applications of workers missing in India with the request to identify their whereabouts.

Health Issues of Returnee Labour Migrants from India

Another major problem reported is related to the health vulnerabilities of returnee migrant workers from India. Nepali migrants coming back from India can be the vector of transmission of infectious diseases such as malaria, tuberculosis, and STDs such as HIV/AIDS and STI. A study conducted by IOM in 2019 reveals that among the 751 Nepali returnee migrants from India (most hailing from the western part of Nepal), 15 per cent of returnees had health problems and 13 per cent had already developed mental stress [Table 3]. The returnees were reported to have been involved in risky lifestyles while working in India as indicated by the fact that one-fifth had sexual intercourse with more than one sexual partner for the last six months preceding their return. In the sample of 751 returnees, 6.7 per cent and 1.7 per cent were reported to have contracted malaria and tuberculosis respectively while they were working in India, however, the status of cure was not known. This is also supported by the fact that 14.5 per cent of the returnees have sought medical check-ups after their return to Nepal and there were 16.5 per cent, 15.5 per cent and 12.8 per cent of those who sought the medical check-up for HIV/AIDs, tuberculosis, and STI respectively. Further, data reveal that there is prevalence of high rate of tobacco use (55 per cent) and alcohol consumption (58 per

cent) among the returnee migrants from India, and many of them were reported to have developed a habit of smoking and drinking due to their long working hours, work in night shifts and feeling of excessive insecurity at the workplace.¹¹

Table 3: Health Problems among the Returnee Labourers from India, 2017-18 (N=751)

Indicators [Physical & Mental Health Problems]	Number	Percent
Prevalence of any health problem (self-reported)	115	15.3
Prevalence of psychological morbidity (score of 6 or more)	101	13.4
Sexual health and experience of sexual violence	—	—
Sexual intercourse with more than one sexual partner in the past 6 months (148 men and 5 women)	153	20.4
Experience of sexual violence at workplace by the employers/ managers (all men reported)	12	1.6
Infectious diseases	—	—
Having suffered from Malaria while in India (self-reported)	50	6.7
Prevalence of TB (self-reported)	13	1.7
Non-communicable disease risk factors		
Prevalence of daily tobacco use (smoking, chewing and snuff)	414	55.1
Prevalence of alcohol consumption in the last 30 days	436	58.1
Health service seeking behaviour in India	—	—
Returnees ever got sick in India or his/her friend ever been sick	507	67.5
Sought health care in India	482	64.2
Paid themselves	377	78.2
Employer paid	56	11.6
Had health insurance	27	5.5
Faced difficulties in access to health	197	40.9
Health seeking behaviour in Nepal	—	—
Returnees had a medical check-up after they returned at home	109	14.5
Of medical check-up,	—	—

General health check-up	74	67.9
HIV/AIDS	18	16.5
TB	17	15.6
STI	14	12.8

Source: IOM, 2019.¹²

Protection of Nepalese Workers to India: A Growing Concern

In Nepal, the plea for the protection of the rights of Nepali migrant workers in India has remained a prominent feature at both the provincial level and federal level. At the provincial level, it was evident during the COVID-19 period that several stakeholders from Lumbini Province, Sudurpaschim Province discussed how Nepali workers in India can be protected. At the central level, the case even reached the Supreme Court for a judicial remedy for the protection of Nepali migrant workers in India.¹³ In a writ petition, the petitioner demanded before the Supreme Court:

Appoint a labo[u]r attaché in India; conduct a Bilateral Agreement with India; maintain registration of Nepalese citizens going to India from the Local Levels and at the border points; issue a Nepali identity card (ID) to the migrant workers in India; disseminate safe migration information through the Local Levels; make life insurance compulsory; establish the welfare fund to provide compensation in case of death or critical injury of migrant workers in India; make easy the process of remitting the income of workers to Nepal by coordinating with Nepal Rastra Bank and arrange re-integration programmes for returnee migrants.

The writ petition is a landmark effort of the civil society organisation, seeking a judicial response to protect and promote the rights of migrants working in India. The petition claims that the government has failed to formulate laws and policies addressing Nepali migrant workers in India. It rightly raises several issues related to migration and working conditions for the labourers working in India and highlights how Nepali workers have been denied several entitlements granted by the FEA 2007.

On the one hand, the Indo-Nepal open border has the benefit of unrestricted cross-border movements of both goods and people between the two countries; on the other hand, there is a high risk of human smuggling and trafficking. The Armed Police Force (APF) of Nepal looks after border surveillance to control crime on/through the border points. The APF Nepal has found 63 suspected human trafficking cases and 233 suspected victims at the border points from July 16, 2020, to May 14, 2022. These suspected cases and victims were handed over to the concerned authority for investigation. The APF discharges its duties in coordination with the district government authority of Nepal and regular bilateral meetings with the border and district authorities of India to combat crime and illegal activities in the Indo-Nepal border.

To assess the impact of the pandemic on the realisation of the rights of employees, employers, and other stakeholders, the National Human Rights Commission (NHRC) India constituted a Committee of Experts on “Impact of COVID-19 Pandemic on Businesses and Human Rights and Future Response” including the representatives from the concerned ministries, private sector representatives, civil society organisations and independent domain experts. On the basis of the impact assessment done by the Committee of Experts and recommendations made, the

Commission issued an advisory on “Impact of COVID-19 Pandemic: Business and Human Rights and Future Response” and directed the concerned ministries and states to implement the recommendations made in the advisory and to submit the action taken report for the information of the Commission. The commission expressed its concerns with the advisory, to the business houses and the employer to follow and pay attention to ‘any form of exploitation with child worker, the migrant worker should be discouraged by the employer/contractors followed by strict adherence to the global (ILO Standards, Conventions) and Constitutional obligations related to Right to Work, Minimum Wages.¹⁴ The Commission considered a written cooperation request by the National Human Rights Commission of Nepal (NHRCN) on a few incidents of human rights violation of Nepali workers in India. On July 17, 2020, the NHRC India organised a meeting to identify the administrative gaps in the wake of human trafficking racket busted in Manipur in February, 2019 and to discuss the recommendations of Mr. Ajeet Singh, Special Monitor, NHRC India in this regard. The groundings of this visit were based on evidences where the states of Manipur, Assam, Meghalaya, Nagaland, Mizoram and Arunachal Pradesh became the ‘source’ states in the North East from where children/women are still being trafficked. In February 2019, Manipur police rescued 179 Nepali citizens (147 women and 32 men) from various locations of the state. They were planning to cross the border from where most of them were scheduled to fly to countries like Iraq, Kuwait, Dubai and few to other countries like Oman, Kazakhstan and Lebanon. Some of the recommendations of this meeting were: a. the Standard Operating Procedures on Human Trafficking formulated by the NHRCI should be made available to all stakeholders in Central and State Government, Police Personnel, National Investigative Agency and several NGOs working on the ground dealing with trafficking issues. It should also be uploaded on the NHRCI website; b. Border Security Force on both sides of the international border must be sensitised about the role they should play in the prevention of cross-border human trafficking; c. in case of inter-country trafficking, necessary arrangements need to be made to record the statements of the victims through video conferencing; and d. Mr. Ajeet Singh’s Report on Manipur trafficking bust may be registered as a complaint in the commission.¹⁵

The COVID-19 pandemic has impacted the Nepali migrant workers in different ways. A large number of Nepali migrants working outside the country lost their job and income, while many of them lost their lives to the virus. Likewise, their human rights and labour rights have been violated, and they have faced stigmatisation, discriminatory behaviour and in particular, women, domestic and undocumented workers, pregnant and person with disabilities, those removed from their job, COVID-19 infected and with underlying health conditions were more vulnerable. The NHRC of Nepal also undertook a study with the objective of contributing to the protection, rehabilitation and reintegration of the migrant workers. The primary aim of the study was, to monitor human rights violations during the COVID-19 pandemic to address the urgent need to respect, protect and fulfil the human rights and labour rights of the migrant workers, while protecting them from the impact of COVID-19 pandemic and rescuing, repatriating and compensating them appropriately. The Commission recommended the rescue of the Nepali workers and people stranded at Nepal-India border points. The recommendations are focused on the gap between the policies. Formulation of policies and plans to facilitate immediate return of the Nepali workers stranded in India was recommended by the Commission along with the implementation of the order of the Supreme Court and directives from various Parliamentary Committees on this issue.¹⁶ The Commission received some cases on the human rights violation issues in India. During the course of inquiry, some of the cases were found reasonable for recommendation to the government for the

protection of rights under the respective mandate of the Commission. For the reference of the efforts made by the Commission, Box No. 2 may be noted.

Box 2

The case of 48 Nepali citizens including one minor boy, illegally arrested during a protest along with Indian workers at Himachal Pradesh. In this case, the Commission recommended to the Ministry of Foreign Affairs (MoFA), Nepal, to take the necessary measures to protect the rights of Nepali workers. In response the MoFA of Nepal, sent a diplomatic mission to Delhi, the Hot Line telephone number was in regular function, and the aim of the mission was to protect the Nepali workers across India with rapid response by the coordination of local police and administration and immediate, weekly and monthly reporting to the MoFA Nepal.¹⁷

Conclusion

The findings of this paper suggest that special protection mechanism for Nepali migrants working in India is much needed. The Government of Nepal needs to formulate a separate Employment Policy for the Nepali migrants working in India, by ‘respecting and acknowledging the complete sovereignty, territorial integrity and independence of each other’ (Article 1 of Peace and Friendship Treaty 1950), and historical relations between Nepal and India. The protection mechanism should ensure the basic labour rights of Nepali workers i.e., wage, protection, insurance cover, freedom from forced labour and safety from trafficking, respectful behaviour at the border points, safe and dignified return and safe remit of the income of Nepali workers to Nepal through formal banking channels, and reintegration of the returnees from India. The security agencies of both countries need to maintain the practice of keeping records of the Nepali workers in Indo-Nepal border points, and these records also need to be properly maintained by the local bodies. Search for missing Nepali workers may be initiated by India, if the Government of Nepal can make an effective bilateral dialogue with Indian Government. However, Government of Nepal has not yet seriously considered the enactment of policies, procedures, or circulars to protect the rights of the migrating Nepali workers going to India for better opportunities. The human rights protection issues of the India-going Nepali workers are among the important areas of research for understanding the situation of Nepali migrant workers in India. Conducting evidence-based studies covering both place of origin and destination of the Nepali migrant workers in India under the international human rights framework would facilitate the formulation of ‘India Employment Policy for Workers of Nepal’.

Notes

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²Government of Nepal, *National Population and Housing Census 2011*, National Report, Volume 1 (Kathmandu: Central Bureau of Statistics, National Planning Commission Secretariat, 2012), <https://unstats.un.org/unsd/demographic-social/census/documents/Nepal/Nepal-Census-2011-Vol1.pdf>; Government of Nepal, *Nepal Population Report 2011* (Kathmandu: Ministry of Health and Population Division), https://www.nhssp.org.np/NHSSP_Archives/monitoring/Nepal_Population_Report_2011.pdf.

³Government of India, *Revised Indo-Nepal Treaty of Trade* (New Delhi: Ministry of Commerce and Industry, 2009), <https://commerce.gov.in/wp-content/uploads/2020/05/nepal.pdf>.

⁴Commonwealth Legal Information Institute, “Treaty of Peace and Friendship between the Government of India and the Government of Nepal (1950),” *Indian Treaty Series*, July 31, 1950, <http://www.commonlii.org/in/other/treaties/INTSer/1950/12.html#:~:text=Kathmandu%2C,31%20July%201950&text=There%20shall%20be%20everlasting%20peace,and%20independence%20of%20each%20other.>

⁵*Ibid.*

⁶The Haliya, or ‘tiller’ system is an agricultural labour system practiced in the hilly region of western Nepal. Haliyas are indebted to their landlords and receive little or no pay in return for their agricultural work and domestic work. They are usually bonded because of their dependency on the land for livelihood, and the lack of ownership of the land. In September 2008, the Government of Nepal announced that the Haliya system was abolished and the government cancelled the debts of Haliya bonded labourers, yet, very little has been done in the implementation of these plans. “Independent impact report: Terms of Reference,” *Anti-Slavery International and Nepal National Dalit Social Welfare Organisation (NNDSWO)*, September 2020, <https://www.antislavery.org/wp-content/uploads/2020/12/Impact-Evaluation-TOR.pdf>; Birendra Giri, “The Bonded Labour System in Nepal: Perspectives of Haliya and Kamaiya Child Workers,” *Sage Journals* 44, no. 6 (December 2009), <https://journals.sagepub.com/doi/10.1177/0021909609343414>.

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⁸Milan Karki, “Bheemdatta Municipality Profile: Facts and Statistics,” Nepal Archives, December 9, 2019, <https://www.nepalarchives.com/content/bheemdatta-municipality-profile/>.

⁹The study’s sample came from Surkhet, Banke, Kailali, Kanchanpur, Doti and Achham districts.

¹⁰P.C. Madai, “Return of Indian Bound Migrants: Socio-Economic Impact,” paper presented at National Conference on Migrant Workers, Kathmandu, October 29-30, 2021, Sudurpaschim Nepal: NEEDS Nepal.

¹¹“Research on the Health Vulnerabilities of the Cross Border Migrants from Nepal,” *International Organization for Migration (IOM)*, 2019, https://nepal.iom.int/sites/g/files/tmzbdl1116/files/documents/Research_on_The_Health_Vulnerabilities_of_The_Cross_Border_Migrants_from_Nepal_0.pdf.

¹²*Ibid.*

¹³On August 21, 2022, Advocate Som Prasad Luiteal on behalf of the People’s Forum lodged a case in the Supreme Court of Nepal (Writ No. 078-WO-0146) seeking the Court’s mandamus or any appropriate order to protect the rights of Nepali migrant workers in India. For more details see Ram Kumar Kamat, “SC asks govt to bring back migrant Nepalis stranded in foreign lands,” *The Himalayan*, April 17, 2020, https://thehimalayantimes.com/nepal/supreme-court-asks-government-to-bring-back-migrant-nepalis-stranded-in-foreign-lands/?utm_source=newsletter&utm_medium=email&utm_campaign=ceslam_daily_news_compilation_17_april_2020&utm_term=2020-04-20.

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¹⁵National Human Rights Commission, India, *Human Rights: Annual Report 2019-20* (NHRC, India), 176, https://nhrc.nic.in/sites/default/files/AR_2019-2020_EN.pdf; National Human Rights Commission, India, “Human Rights Newsletter,” *NHRC, India* 27, no. 8 (August 2020), https://nhrc.nic.in/sites/default/files/2020_08_EN.pdf.

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¹⁷The NHRC Nepal letter response by Ministry of Foreign Affairs, Nepal.

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