



International  
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Organization

## ► Recruitment of migrant workers from Nepal: Country profile





▶ **Recruitment of  
migrant workers from  
Nepal: Country profile**

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## ▶ Contents

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▶ <b>1. General overview of labour migration in Nepal</b>	<b>1</b>
Facts and figures	2
▶ <b>2. Labour migration trends: challenges and opportunities</b>	<b>5</b>
Slowed migration flows	5
Gulf and Malaysia as major destination	6
Recruitment agencies as key facilitators	8
Policy framework	8
Recent legislative changes	10
Violation of human and labour rights	11
Recruitment fees and employers' pay principle	12
Limited protection through bilateral agreements	13
Restriction on mobility for domestic workers	14
Way forward: Review of legal and policy framework	15
▶ <b>3. Review of Law, Policy and Practice of Recruitment of Migrant Workers in Nepal</b>	<b>17</b>
▶ <b>4. ILO's support towards fair recruitment in Nepal</b>	<b>33</b>
▶ <b>Annex</b>	<b>37</b>
Annex I. Recruitment process	37



## 1

# General overview of labour migration in Nepal

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Foreign employment in Nepal is a primary source of income for many households and a lucrative business for recruitment agencies in Nepal. With growing opportunities abroad, particularly in the Middle East, combined with the lack of employment options at home, Nepal has witnessed an exponential rise in the migration of its workers for foreign employment over the past two decades. Migration to the Gulf Cooperation Council (GCC) countries and Malaysia accounted for more than 88 per cent of total labour migration in 2018/19.<sup>1</sup> In this flow of labour from Nepal to the Gulf and Malaysia, the majority of migrants are men (95 per cent),<sup>2</sup> with few advanced skills or higher education.<sup>3</sup> The Republic of Korea has also gained in popularity as a destination since the announcement of the Employment Permit System (EPS)<sup>4</sup> scheme in 2004. The Department of Foreign Employment (DoFE) estimates that 58,709 migrant workers were issued a labour permit to work in the Republic of Korea from 2008 to 2018.<sup>5</sup>

In recent years the government has reached out to European labour markets to expand the destination choices for Nepalese labour migrants. The new Bilateral Labour Agreement (BLA) with Mauritius, as well as accompanying increases in labour permits for countries such as Turkey, Cyprus, Malta, Romania, Macau SAR, China, and Japan, indicate the government's interest in this domain.<sup>6</sup>

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1 Government of Nepal, Ministry of Labour, Employment and Social Security: Nepal Labour Migration Report, 2020, available at: <https://moless.gov.np/wp-content/uploads/2020/03/Migration-Report-2020-English.pdf>

2 Ibid.

3 The DoFE records for 2013/2014 showed that nearly 75 per cent of the migrant workers were "unskilled", based on: Government of Nepal, Ministry of Labour and Employment: Labour Migration for Employment: A Status Report for Nepal: 2013/2014, available at: [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-kathmandu/documents/publication/wcms\\_312137.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-kathmandu/documents/publication/wcms_312137.pdf).

4 Under the Employment Permit System (EPS), workers going to the Republic of Korea are provided with a labour permit issued by the EPS Korea branch office through the Foreign Employment EPS office in Kathmandu.

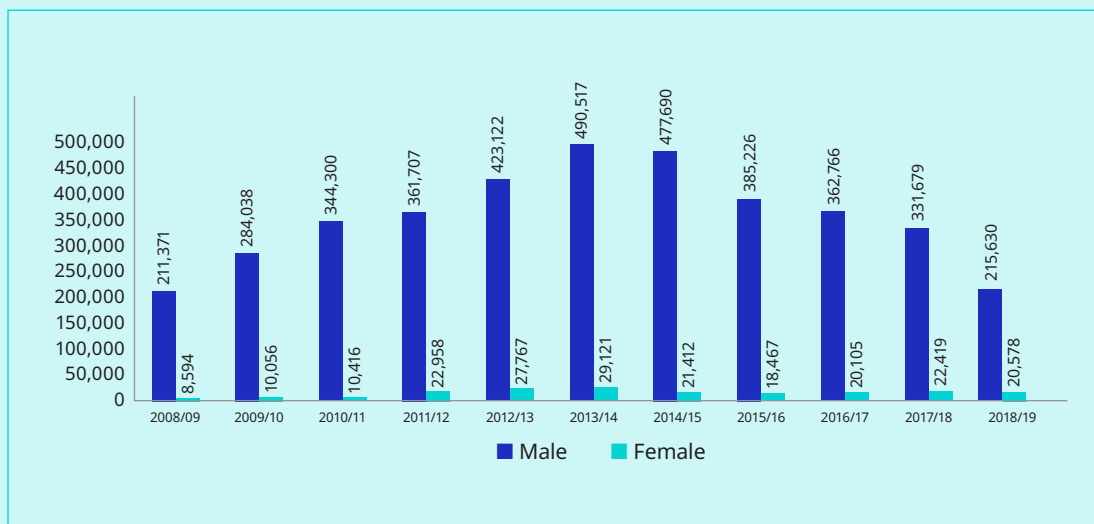
5 Nepal Labour Migration Report, 2020, op. cit.

6 The Nepal Labour Migration report, 2020 (p.16) found that 'prominent countries where over 1,000 workers received labour approvals in total in 2017/18 and 2018/19 include Poland (4,728), Maldives (3,763), Jordan (3,402), Turkey (3,396), Cyprus (3,304), Malta (2,317), Japan (1720), Romania (1,494) and Macau SAR, China (1,368).'

## ► Facts and figures

Between 2008/2009 and 2018/2019, the DoFE approved 4,099,939 migrant workers for foreign employment, of whom 3,888,046 were men and 211,893 women.<sup>7</sup> Between February and March 2020, 28,716 new labour permits (excluding re-entry permits) were issued.<sup>8</sup> These figures, however, do not include undocumented migrants travelling via irregular channels, and they do not list those going to India. Poverty, lack of employment and political instability, are considered key motivating factors for foreign labour migration in Nepal.<sup>9</sup> The differences in wages, along with better amenities, social networks and opportunities for upward social and career mobility, further add to the reasons for labour migration.<sup>10</sup>

► Figure 1.1. Trend in obtaining new labour approvals (disaggregated by gender)



Source: Nepal Labour Migration Report, 2020; Department of Foreign Employment.

Foreign employment accounts for a large share of Nepal's economy, with more than 400,000 people traveling abroad each year - averaging one in three Nepalese households receiving remittances.<sup>11</sup> Nepal, where migrant remittances are a major contributor to foreign exchange earnings,<sup>12</sup> ranks 19th among countries receiving the largest amount of funds from migrant

7 International Organization for Migration (IOM); Migration in Nepal: A Country Profile 2019 (IOM UN Migration, 2019), p. 41, available at: [https://publications.iom.int/system/files/pdf/mp\\_nepal\\_2019.pdf](https://publications.iom.int/system/files/pdf/mp_nepal_2019.pdf)

8 DoFE: Monthly Progress Report (2 February-2 March, 2020), available at: <http://dofe.gov.np/monthly.aspx>

9 United Nations Office on Drugs and Crime (UNODC): Multi Country Study on the Smuggling of Migrants and Trafficking in Persons and Smuggling from Nepal (2019), available at: [https://www.unodc.org/documents/southasia/Multicountry\\_study\\_TIP\\_SOM\\_NEPAL\\_2019.pdf](https://www.unodc.org/documents/southasia/Multicountry_study_TIP_SOM_NEPAL_2019.pdf)

10 Nepal Labour Migration Report, 2020, op. cit.

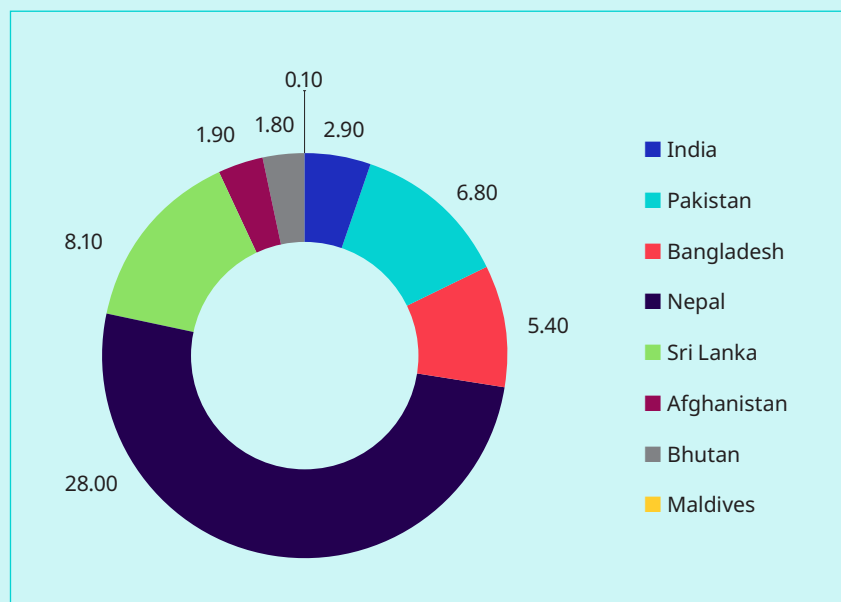
11 World Bank Nepal Development Update: Maximising finance for development (World Bank, Washington, DC, 2018); IOM, Migration in Nepal; A Country Profile, op. cit.

12 Nepal Rastra Bank: Inflow of workers' remittances: Nepal's experiences (paper presented at the SAARC-Finance Seminar on Management of Workers, 2016).



workers.<sup>13</sup> As documented by the World Bank, remittances were equivalent to 2.029 per cent of Nepal's Gross Domestic Product (GDP) in 2000, climbing to 31.753 per cent by 2015.<sup>14</sup> Recent evidence suggests that the country received US\$ 8.79 billion as remittances in the period 2018/19, accounting for 28 per cent of GDP in the year 2018.<sup>15</sup> Similarly, the Central Bank of Nepal (Nepal Rastra Bank) estimates that about 7 billion NRP were received as remittances from migrant workers in the first ten months of the fiscal year (FY) 2018/19, amounting to 25.1 per cent of the country's GDP.<sup>16</sup> Nepal was ranked as the fifth highest remittance-receiving country by share of GDP by the World Bank in 2019.<sup>17</sup> Remittances have proved crucial to household income, contributing to more than half of the reduction in poverty over the past 20 years.<sup>18</sup>

► Figure 1.2: Remittance inflows to South Asia in 2018 (% to GDP)



Source: World Bank and KNOMAD, 2018.<sup>19</sup>

13 World Bank Group and the Global Knowledge Partnership on Migration and Development (KNOMAD): Migration and remittances, Recent developments and outlook (April 2019), available at: <https://www.knomad.org/sites/default/files/2019-04/Migrationanddevelopmentbrief31.pdf>

14 The World Bank: Personal remittances, Received (% of GDP). Nepal, World Bank staff estimates based on IMF balance of payments data and World Bank and OECD estimates, 7 March 2017, available at: <http://data.worldbank.org/indicator/BX.TRF.PWKR.DT.GD.ZS?locations=NP>

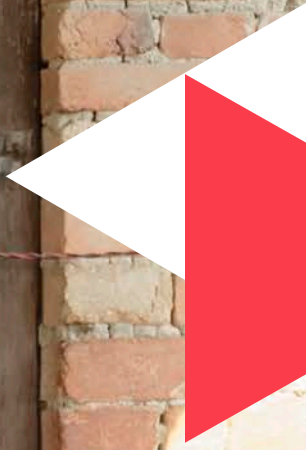
15 World Bank Group and KNOMAD, op. cit.

16 National Human Rights Commission (NHRC): Research-report on the situation of the rights of migrant workers (November 2019), p. 5.

17 Nepal Labour Migration Report, 2020, op. cit.

18 ODI: Structural economic transformation in Nepal: A diagnostic study submitted to DFID Nepal, available at: <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/9019.pdf>

19 World Bank Group and KNOMAD: Migration and remittances, op. cit.





# 2

## Labour migration trends: Challenges and opportunities

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### ▶ Slowed migration flows

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In the fiscal years (FY) 2017/18 and 2018/19, the DoFE issued 354,098 and 236,208 labour approvals for a total of 132 and 128 countries, respectively. This figure suggests a sharp decline in overall labour approvals compared to previous fiscal years.<sup>20</sup> Table 2.1 on the Nepalese migrant workers who migrate for foreign employment shows a consistent rise until 2014/15, followed by a gradual decline in FY 2018/19. Similarly, the number of migrant workers travelling to GCG countries has gone down since 2015/16. Current estimates suggest that the number decreased to 280,071 in FY 2017/18 and to 229,856 in FY2018/19. This trend may be attributed to economic and geopolitical factors, such as the slowdown in economic activities as a result of the sharp decline in oil prices, and nationalization policies adopted by the GCC countries - which give priority to the recruitment of local nationals, especially for skilled and highly-skilled jobs.<sup>21</sup>

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<sup>20</sup> Nepal Labour Migration Report, 2020, op. cit.

<sup>21</sup> Ibid; S. Hertog: Arab Gulf states: an assessment of nationalisation policies. GLMM Research Paper (Badia Fiesolana, Italy, 2014), available at <https://core.ac.uk/reader/20543522>; W. J. Essomba; Labor immigration into the Gulf: Policies and impacts (2017), available at: [https://www.sciencespo.fr/kuwait-program/wp-content/uploads/2018/05/KSP\\_Paper\\_Award\\_Fall\\_2017\\_Williams\\_Jason\\_Essomba.pdf](https://www.sciencespo.fr/kuwait-program/wp-content/uploads/2018/05/KSP_Paper_Award_Fall_2017_Williams_Jason_Essomba.pdf)

► **Table 2.1: Number of labour approvals granted by the Government of Nepal for foreign employment**

Fiscal Year	Male	Female	Total
2008/09	211,371	8,594	219,965
2009/10	284,038	10,056	294,094
2010/11	344,300	10,416	354,716
2011/12	361,707	22,958	384,665
2012/13	423,122	27,767	450,889
2013/14	490,517	29,121	519,638
2014/15	477,690	21,412	499,102
2015/16	385,226	18,467	403,693
2016/17	362,766	20,105	382,871
2017/18	331,679	22,419	354,098
2018/19	215,630	20,578	236,208
2019/20	172,247	18,206	190,453

## ► Gulf and Malaysia as major destination

The Government of Nepal has approved 110 countries as labour destinations, with restrictions on Iraq, Afghanistan, and Libya. Individual labour permits are also issued for 172 countries and “institutionally”<sup>22</sup> to 107 countries.<sup>23</sup>

The status report of the DoFE suggests that Qatar, Malaysia, Saudi Arabia, the United Arab Emirates (UAE) and Kuwait are the five most popular destinations among Nepalese labour migrants outside of India.<sup>24</sup> The open border with India makes it difficult to determine exactly how many Nepalese migrants travel there, although it is certainly one of the most popular countries for labour migration.<sup>25</sup>

Malaysia has been the top destination for Nepalese migrant workers for a long time (figure 2.1). However, the Government of Nepal halted labour migration to Malaysia for 16 months pending an agreement on recruitment fees and labour market conditions, outlined by an MoU between the two governments in October 2018. Therefore, Qatar received a higher number of migrant workers (31.8 per cent) in FY 2018/2019.

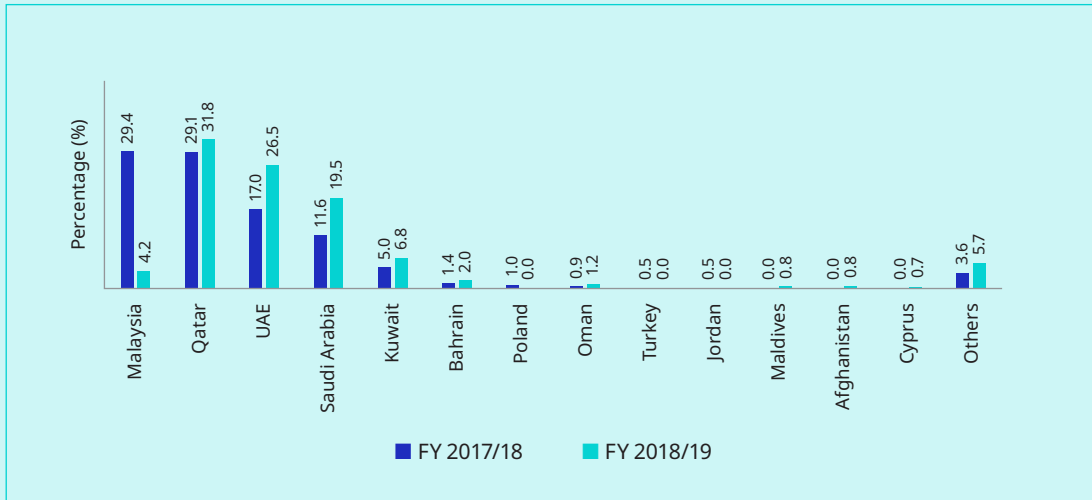
<sup>22</sup> The Foreign Employment Act (FEA) envisages two primary ways for migrating for foreign employment: migration on a personal or institutional basis (through private recruitment agencies). The latter is the most common mode of obtaining a labour permit for foreign employment in Nepal.

<sup>23</sup> DoFE official website, available at <http://dofe.gov.np/recognized.aspx>

<sup>24</sup> Nepal Labour Migration Report, 2020, op. cit.

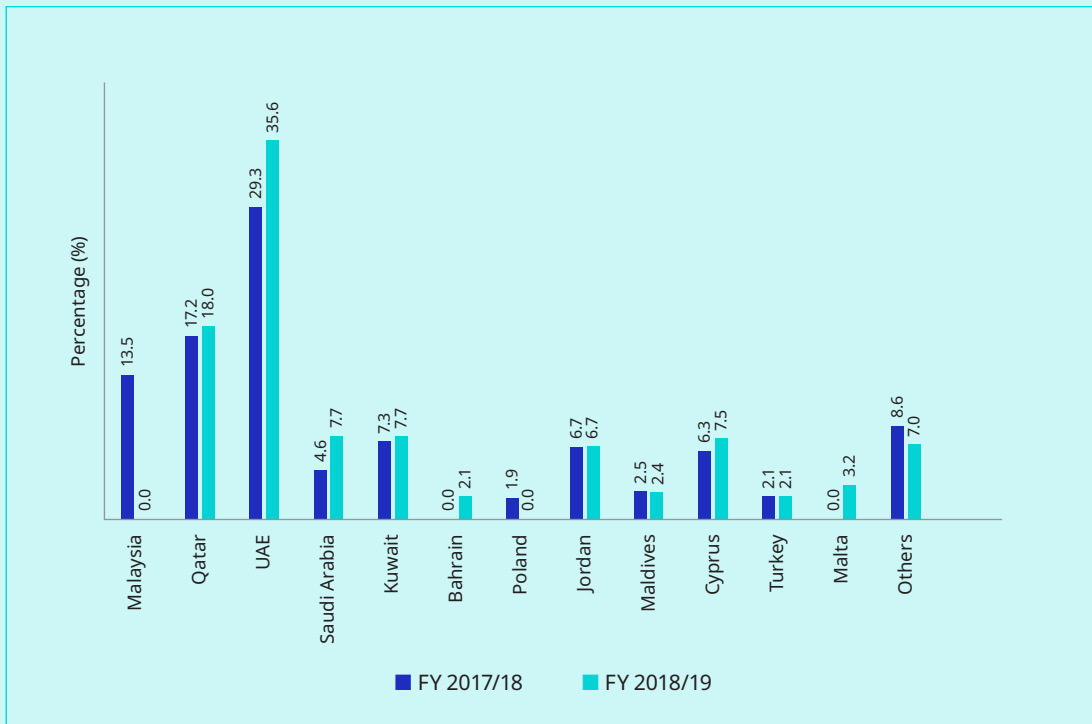
<sup>25</sup> The 2011 census showed that of the total absentee population, 37.6 per cent had left for India, making it the most popular destination country for Nepalis, see: IOM, Migration Profile, op. cit.

► Figure 2.1. Major destination countries for labour migration (overall)



Source: Nepal Labour Migration Report, 2020

► Figure 2.2. Major destination countries for labour migration (female)



Source: Nepal Labour Migration Report, 2020

## ► Recruitment agencies as key facilitators

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The Foreign Employment Act (FEA), 2007, envisages two primary ways for workers to obtain a permit allowing them to migrate for foreign employment. They are either required to obtain a labour permit on an individual basis or through recruitment agencies to legitimize the migration process. Only a handful of migrant workers apply for individual labour permits, while the majority are recruited through private recruitment agencies. The DoFE maintains a record of 827 recruitment agencies that have an active status.<sup>26</sup>

It has been established that a high share of workers recruited for foreign employment come from elementary and low-skilled sectors.<sup>27</sup> DoFE records that of those seeking foreign employment in FY 2017/18 and FY 2018/19, 53.7 per cent were low-skilled, 38.7 per cent were skilled, 7.4 per cent were semi-skilled and 0.1 per cent were professional - while high-skilled workers were not represented at all.<sup>28</sup> Elementary occupations<sup>29</sup> account for the major share of Nepalese migrant workers at 54.8 per cent, followed by service and sales (18 per cent) and construction (9.3 per cent).<sup>30</sup>

## ► Policy framework

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Foreign labour migration in Nepal is regulated through two primary laws: the Foreign Employment Act (FEA), 2007, and its subsequent rules, Foreign Employment Rules (FER), 2008. The overarching goals of foreign labour migration are contained in the Foreign Employment Policy, 2012. The FEA and FER delineate the government's role of administering and regulating the recruitment process for foreign labour migration. A number of key provisions in the FEA include the government's power to make bilateral agreement with the destination country,<sup>31</sup> and also cover minimum remuneration, mandatory contracts, insurance coverage, orientation training, a foreign employment welfare fund, investigation of and enquiries into complaints,<sup>32</sup> punishments, and the trial and settlement of cases.<sup>33</sup> It has also incorporated some protective provisions, such as the prohibition of sending minors for employment<sup>34</sup> and protection against gender discrimination.<sup>35</sup> It further provides for special facilities for women, the Dalit,

<sup>26</sup> DoFE official website, available at: <http://dofe.gov.np/Recruiting-Agences.aspx>

<sup>27</sup> Nepal Labour Migration Report, 2020 , op. cit.

<sup>28</sup> Ibid.

<sup>29</sup> According to the DoFE classification, Elementary Occupations include occupations such as "Cleaning and Laundry", "Labour" (Specified and Unspecified), and "Packaging, Loading, Shipping and Delivery", see: Nepal Labour Migration Report, 2020 , op. cit. (p. 101).

<sup>30</sup> Ibid.

<sup>31</sup> Foreign Employment Act (FEA), 2007, Section 4

<sup>32</sup> Ibid., Sections 23 – 36.

<sup>33</sup> Ibid., Sections 9 – 11.

<sup>34</sup> Ibid., Section 7.

<sup>35</sup> Ibid., Section 8.

indigenous nationalities, the oppressed, victims of natural disasters and people from remote areas.<sup>36</sup>

The FER sets out in detail the administrative and procedural requirements related to the provisions contained in the FEA. These include - but are not limited to - licensing provisions, the renewal of licenses and their cancellation, advertisement requirements, skills and pre-departure trainings, and procedures relating to the welfare fund.<sup>37</sup> The Foreign Employment Policy sets out to make foreign employment safe, organized, respectable and reliable, utilizing both its economic and non-economic benefits to alleviate poverty and maximize the contribution of foreign employment to the country's sustainable economic and social development.<sup>38</sup> Its main objective is to provide the knowledge and skills demanded by the international labour market, and to develop a skilled, capable and competitive labour force so as to make the entry of Nepalese workers into the international market safe, organized and respectable.<sup>39</sup>

The Constitution of Nepal, 2015, recognizes the right to labour,<sup>40</sup> and contains preventive clauses against exploitation including human trafficking, slavery, bonded labour or any form of forced labour.<sup>41</sup> Similarly, the Constitution stipulates additional guarantees concerning the right of women,<sup>42</sup> the right to equality,<sup>43</sup> and the right against exploitation,<sup>44</sup> which it considers as fundamental rights. The Constitution further mandates the government to pursue policies to regulate and manage the foreign employment sector in order to make it free from exploitation, safe and well-managed, in order to systematically guarantee workers' employment and rights.<sup>45</sup> In addition, gender equality is considered a political objective of the state and one of its directive principles.<sup>46</sup>

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36 Ibid., Section 9.

37 Foreign Employment Rules (FER), 2008.

38 Foreign Employment Policy, 2012, Goal (6)

39 Ibid. Objective (7)

40 Constitution of Nepal, 2015, Article 34

41 Ibid. Article 29

42 Ibid. Article 38 (5): Women shall have the right to special opportunity in education, health, employment and social security, on the basis of positive discrimination.

43 Ibid. Article 18 (1): All citizens shall be equal before law. No person shall be denied the equal protection of law. 18(2): No discrimination shall be made in the application of general laws on grounds of origin, religion, race, caste, tribe, sex, physical condition, condition of health, marital status, pregnancy, economic condition, language or region, ideology or on similar other grounds. 18(3): The State shall not discriminate citizens on grounds of origin, religion, race, caste, tribe, sex, economic condition, language or geographical region, or ideology and such other matters.

44 Ibid. Article 29 (3): No one shall be subjected to human trafficking or bonded labour, and such an action shall be punishable by law.

45 Ibid. Article 51(i)(5)

46 Ibid. Article 50 (1)

► **Table 2.1: Key legislations governing labour migration from Nepal**

Primary legislation	Subordinate legislation
a) Foreign Employment Act, 2007	a) Legal representation for foreign employment, 2019
b) Foreign Employment Rules, 2008	b) Directives for monitoring team, 2019
c) Foreign Employment Tribunal Rules, 2011	c) Skills training procedure, 2019
d) Foreign Employment Policy, 2012	d) Guideline on Foreign Employment Demand Attestation, 2018
	e) Procedure on the monitoring of recruitment agencies and training institution, 2017
	f) Directive on Sending Domestic Workers for Foreign Employment 2015
	g) Manual on the Registration and Renewal of Orientation Training Institutions, 2014
	h) Standard on the Enlisting Process of the Health Examination, 2013
	i) Directive on the Procedure on Individual Labor Permits, 2013

## ► Recent legislative changes

The government's efforts to regulate foreign employment in Nepal began in 1985 with the enactment of the first Foreign Employment Act (FEA).<sup>47</sup> Its approach towards migration governance, as witnessed by its recent amendments to the legislative framework, has included:

- Removal of the provision of agents from the overall migration cycle;
- Demanding an attestation from consuls at destination countries to avoid false representation and contract substitution,
- Adopting integrated software, such as the Foreign Employment Information Management System (FEIMS), to monitor and keep records on outbound and returning migrant workers, including online re-entry permits.
- Installing the "Nepali Port" - a software to record the data of returning migrant workers at the immigration office at Tribhuvan International Airport (TIA).<sup>48</sup>
- Decentralizing its activities in line with its current shift towards a federal structure. Out of ten labour offices in Nepal, seven (i.e., in Birendranagar, Tahachal, Pokhara, Biratnagar, Butwal, Janakpur and Dhangadi) in seven different provinces have started issuing labour permits.<sup>49</sup>

The recent amendment to the FEA (2019) introduces some new provisions, primarily targeted at strengthening the regulation of the foreign employment recruitment process, including:

- Increasing the amount of the bank deposit and bank guarantee required for recruitment agencies to obtain a license at the DoFE.
- Allowing the voluntary merging of two independent recruitment agencies.

47 Government of Nepal, Ministry of Labour and Employment: Labour Migration for Employment. A Status Report for Nepal: 2015/2016 – 2016/2017, available at: [https://nepal.iom.int/sites/default/files/publication/LabourMigration\\_for\\_Employment-A\\_%20StatusReport\\_for\\_Nepal\\_201516201617\\_Eng.PDF](https://nepal.iom.int/sites/default/files/publication/LabourMigration_for_Employment-A_%20StatusReport_for_Nepal_201516201617_Eng.PDF)

48 "Nepal starts maintaining data on returning migrant workers", in Kathmandu Post, available at: <https://tkpo.st/2OfYyJP>

49 "Labour offices to provide work permit from all provinces," in Kathmandu Post, available at: <https://kathmandupost.com/national/2018/11/29/labour-offices-to-provide-work-permit-from-all-provinces>



- ▶ Adding grounds for revoking a recruitment agency's license, that include sending workers to foreign employment with falsified documents and failing to send at least 100 workers within a two-year time-frame.
- ▶ Ensuring that the employers cover the costs of workers' flights to the destination country and back, and provide the relevant details in the application they submit to the DoFE.
- ▶ Insisting that recruitment agencies send workers to their respective destination countries within three months of receiving the labour permit, or return the amount with an additional interest rate of 25 per cent per annum within 30 days.

The new amendment also gives the Chief District Officer (CDO) the authority to hear workers' complaints at the DoFE. Complaints lodged with the DoFE can also be heard by the Chief District Officer (CDO). If a complaint against a recruitment agency is filed at the CDO's office, it must be sent to the DoFE within seven days. If the complaint is lodged against an individual, the CDO can mediate the case so that the victim or his/her representative receive compensation; however, the information concerning the mediation must be subsequently transmitted to the DoFE. In cases where the mediation is not successful, or if the case is such that it cannot be solved by mediation, the CDO must send the original complaint to the DoFE for its necessary intervention in the case.<sup>50</sup>

## ▶ Violation of human and labour rights

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While international migration has had a positive impact on Nepal's economy, a number of challenges have been identified with respect to the personal experiences of migrant workers. Studies have revealed the indicators of abuse commonly associated with the poor working and living conditions encountered by workers in their destination countries. These are characterized by low wages, unsafe working environments, a virtual absence of social protection, a denial of freedom of association - especially as it relates to the right to form trade unions and other workers' rights - discrimination, xenophobia and other indignities.<sup>51</sup> In addition to these problems faced in their destination countries, workers have reported experiencing considerable pre-departure exploitation. These include misrepresentation of the nature and terms of work available, excessive recruitment fees, the delay or cancellation of departures, and a failure to provide workers with the correct pre-departure documents, including receipts and contracts of employment and recruitment.<sup>52</sup> Forced labour, human trafficking and human smuggling under the pretext of foreign employment are routinely reported.<sup>53</sup>

50 Reports from the National Human Rights Commission (NHRC) suggest that the victims were unaware that they could file a complaint at district level, and not a single case was filed for four months after the amendment of the Act. After this four-month period, only one complaint was filed at district level (NHRC 2019, op. cit., p. 151).

51 ILO: International labour migration: A rights-based approach, Cornell University ILR School (Geneva, 2010).

52 S. Paoletti et al.: Migrant workers' access to justice at home: Nepal (Open Society Foundations, 2014), p.18.

53 P. Acharya; Pipeline to peril: Desperate for work, how underage girls from Sindhupalchowk are lured into trafficking in Gulf countries, Center for Investigative Journalism Nepal, 10 November, 2017, available at: <https://cijnepal.org.np/pipeline-peril-desperate-work-underage-girls-sindhupalchowk-lured-trafficking-gulf-countries/>; 'CIB steps up crack-down on traffickers', in The Himalayan Times, 27 January, 2018, available at: <https://thehimalayan-times.com/kathmandu/central-investigation-bureau-of-nepal-police-steps-crackdown-traffickers/>

The adverse health conditions leading to the large-scale deaths of migrant workers remains a major challenge. According to the Foreign Employment Board of Nepal, 7,467 Nepalese workers died in destination countries between the periods 2008/9 to 2018/19, while 753 deaths was recorded in the period 2018-19 alone.<sup>54</sup> The causes of these workers' deaths have been identified as heart attacks, heart diseases, natural deaths, suicide, vehicular accidents, workplace accidents, and murder.<sup>55</sup>

## ► Recruitment fees and employers' pay principle

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In 2015, the Government of Nepal adopted the "free-visa, free-ticket" policy for seven labour destination countries,<sup>56</sup> in line with international labour migration norms and guidelines advocating the "no recruitment fee" principle. This policy aimed at shifting the financial cost associated with recruitment to the employer and reducing the cost burden on the workers. Although it remains one of the most important policy decisions taken by the government, several reports - including those of the NHRC,<sup>57</sup> the Minister of Labour and Social Security (MoLESS),<sup>58</sup> and the Gulf Visit Report 2017<sup>59</sup> of Nepal - have demonstrated that there are shortcomings in the implementation of this policy for various reasons. These include the difficulty of monitoring the value of transactions between the worker and the recruitment agency, the failure to maintain receipts and providing the forged receipts with the authorized charge of NPR 10,000. These reports suggest that the migrant workers continue to pay high fees for their recruitment and receive inaccurate recruitment receipts for fees paid to recruitment agents and agencies.

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54 Nepal Labour Migration Report, 2020, op. cit.

55 Ibid.

56 Saudi Arabia, Kuwait, UAE, Qatar, Oman, Bahrain, and Malaysia.

57 NHRC report, op. cit., p.108. Reference is made to the failure of implementing the 'free-visa free.ticket'.

58 Nepal Labour Migration Report, 2020, op. cit., p. 60.

59 Report of the 'Sub-committee on field monitoring and inspection of the Gulf Countries', set up by the International Relations and Labour Committee, under the Legislative Parliament, hereinafter referred to as 'Gulf Visit Report, 2017'

## ► Limited protection through bilateral agreements

The Government of Nepal has signed a number of Bilateral Labour Agreements (BLAs) and Memorandum of Understanding (MoUs) with destination countries (table 2.2). It has concluded two agreements with the United Arab Republic and Japan.<sup>60</sup> Labour agreements with Oman, Saudi Arabia, Kuwait, Turkey and Israel are under the review process (MoLESS).

► **Table 2.2. Nepal's labour agreements with destination countries and their classification**

Country	Years of agreement	Nature of agreement
Japan	2009/19	JITCO Agreement/Memorandum of Cooperation (MoC) for specialized skilled workers
Mauritius	2019	Memorandum of Understanding (MoU)
Malaysia	2018	MoU
Jordan	2017	General agreement (BLA)
Israel	2015	MoU
Bahrain	2008	MoU
UAE	2007/19	MoU
Republic of Korea	2007	MoU
Qatar	2005	General agreement (BLA)

Source: Nepal Labour Migration Report, 2020

Furthermore, the FEA provides for the appointment of a labour attaché in a country with more than 5,000 workers in order to protect the labour and human rights of migrant workers in the destination countries (Section 68). It also mandates the appointment of a woman labour attaché in a country where 1,000 or more women migrant workers have been sent for foreign employment (Rule 43(1)). However, the Government of Nepal has so far only appointed labour attachés in eight countries: Bahrain, Kuwait, Malaysia, Oman, Qatar, the Republic of Korea, Saudi Arabia, and the UAE.<sup>61</sup>

60 The new 2019 Nepal-Japan agreement is a Memorandum of Cooperation (MoC) between the Governments of Nepal and Japan, on the Basic Framework for Information Partnership for Proper Operation of the System pertaining to Foreign Human Resources with the Status of Residence of "Specified Skilled Worker." The purpose of the MoC is to hire Nepalese blue-collar workers to work in 14 different job categories (caregiving, building cleaning management, machine parts and tooling, industrial machinery, electric, electronic, information and construction industries, shipbuilding and ship machinery, automobile repair and maintenance, aviation, accommodation, agriculture, fishery and aquaculture, manufacture of food and beverages and food service industry). A Nepalese migrant aspiring to work in Japan must possess N4-level language competency and skills.

61 Labour Migration for Employment A Status Report for Nepal: 2015/2016 – 2016/2017, op. cit., p.50,

## ► Restriction on mobility for domestic workers

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Until recently, the government, over a period of 20 years, imposed a series of bans on migration for domestic work with a view to reducing the vulnerabilities faced by women migrant workers. The recent domestic workers' ban came into force following a ten-day field visit to some of the Gulf countries in April 2017 by the members of the Parliamentary Committee of the International Relations and Labour Committee.<sup>62</sup> An analysis of the ban's impact showed that it had had adverse effects on women, undermining their economic opportunities, and increasing irregular migration and risks of trafficking.<sup>63</sup> Consequently, the Parliamentary Committee on Commerce, Labour and Consumer Welfare issued a directive to the Government of Nepal to relax the ban enforced on the migrant domestic workers on 29 September 2020. However, the Government has put forward stringent preconditions that need to be fulfilled to allow migration for domestic work. These include:

1. The destination countries should have a strong and separate law for ensuring services, conditions and protection of migrant domestic workers.
2. Nepal must have signed a bilateral agreement with the labour-receiving countries.
3. Labour agreements should ensure workers' basic rights such as wages, weekly and annual leave.
4. Workers must be included in the social security mechanism in the destination countries.
5. Workers should be covered by occupational safety and health provisions.
6. Workers should be covered by provisions on working hours and receive additional benefits for extra work.
7. Workers should enjoy 24-hour insurance coverage.<sup>64</sup>

In 2015, the government adopted the Directive on the Management of Sending Domestic Workers for Foreign Employment to regulate the recruitment process of domestic workers. This Directive stipulates that domestic workers may only be recruited in countries that have a bilateral agreement with Nepal, and that recruitment agencies involved in sending these workers must be separately registered with the DoFE; furthermore, the employer must bear all the costs of migration including the costs of repatriation.<sup>65</sup>

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62 "New provision to allow Nepali domestic help in Gulf to return home during break", in Kathmandu Post (August 23, 2019) available at: <https://kathmandupost.com/national/2019/08/23/new-provision-to-allow-nepali-domestic-help-in-gulf-to-return-home-during-break>.

63 ILO: No easy exit – Migration bans affecting women from Nepal, Fundamental Principles and Rights at Work (FUNDAMENTALS), Labour Migration Branch (MIGRANT) (Geneva, 2015); and NHRC, op. cit.

64 "House panel asks government to Nepali women take up domestic help jobs in the Gulf", in Kathmandu Post (1 October, 2020), available at: <https://kathmandupost.com/national/2020/10/01/house-panel-asks-government-to-let-nepali-women-take-up-domestic-help-jobs-in-the-gulf>.

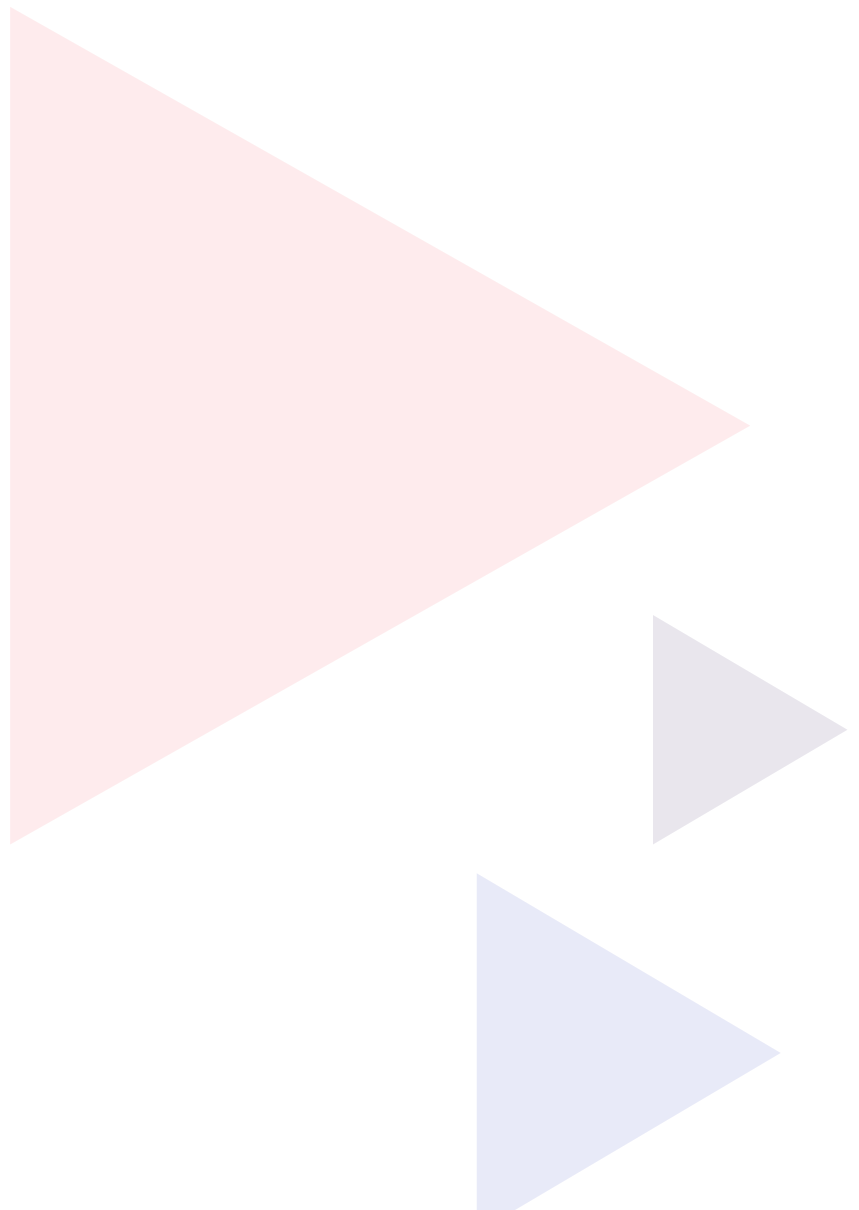
65 Nepal: Directive on the Management of Sending Domestic Workers for Foreign Employment (2015), see: NHCR, op. cit., p. 58.

## ▶ Way forward: Review of legal and policy framework

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Migrant workers' rights to foreign employment have been guaranteed under various forms of legislation in Nepal, of which the Foreign Employment Act (FEA) (and its regulations) is the primary legal standard governing overall foreign employment and the protection of migrant workers. Despite this, it falls short in addressing the changing trends of labour migration. For instance, it fails to give adequate protection to areas such as undocumented migrant workers, domestic workers and social protection - including zero recruitment costs (this issue is also taken up in Section 3, which contains a review of the national law, policy and practice in Nepal).

Nepal's current federal structure calls for the advancement of migration governance through the decentralization of laws at provincial and local levels. Progress has been made by establishing foreign employment offices at provincial level; however, this has yet to be regulated through the governing laws.





# 3

## National law, policy and practice on labour migration

This section provides a review of Nepal’s national law, policy and practice on labour migration, compared to the ILO’s 13 General Principles and Operational Guidelines for Fair Recruitment.

Principle 1	Adherence
Recruitment should take place in a way that respects, protects and fulfils internationally recognized human rights, including those expressed in international labour standards, and in particular, the right to freedom of association and collective bargaining, and prevention and elimination of forced labour, child labour and discrimination in respect of employment and occupation.	Partially compliant
Analysis	
The Foreign Employment Act (FEA), 2007, which is the key legislation governing labour migration in Nepal, draws upon international labour standards in recognizing prohibitions on child labour (Section 7) <sup>66</sup> and discrimination on the basis of gender (Section 8). <sup>67</sup> However, despite Nepal being party to all core UN human rights treaties, legislation governing labour migration does not cover key aspects related to human rights and labour rights, such as forced labour. The Foreign Employment Policy 2068 (2012) implements general recommendation No. 26 of the Committee on the Elimination of all Forms of Discrimination Against Women (CEDAW), which calls for separate measures to protect the rights of female migrant workers in their countries of origin, transit, or destination,	

<sup>66</sup> FEA, Section 7: Prohibition on sending a minor for employment: Any minor who has not completed eighteen years of age shall not be sent for foreign employment.

<sup>67</sup> FEA, Section 8: Prohibition on gender discrimination: No gender discrimination shall be made while sending workers for foreign employment pursuant to this Act. Provided that where an employer institution makes a demand for either male or female workers, nothing shall prevent the sending of workers for foreign employment according to that demand.

to avoid harassment and discrimination through a multilateral approach (Strategy 9.4). The Policy further adopts programmes related to the welfare of children of migrant workers in collaboration with local agencies, and provides for collaboration with child welfare committees and NGOs as a reintegration strategy (Strategy 9.3).

The Constitution of Nepal (2015) guarantees protection against forced labour (Article 29), as well as fundamental human and labour rights such as freedom of association (Article 17). Additionally, the right to labour has been guaranteed as a fundamental right. This provision ensures the right to fair labour practices, the right to appropriate remuneration and facilities, and to social security; as well as the right to form and join trade unions and to engage in collective bargaining (Article 34 (1) (2) (3)).

Nepal has yet to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990; however the Supreme Court of Nepal has directed the government to study the issue and coordinate with the responsible stakeholders, and to arrange for all necessary infrastructure for Nepal to sign on to the Convention. (Prem. Chandra Rai et al. vs. The Office of Prime Ministers and others, 2019). Similarly, the key ILO Conventions governing labour migration, including the Migration for Employment Convention (Revised), 1949 (No.97) and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), amongst others, have yet to be ratified by Nepal.

The recent BLAs and MoUs signed by the Government have rectified some of these oversights. For instance, the MoU with Malaysia (2018) calls for both parties to take measures to protect workers from all forms of forced labour. Similarly, the MoU with Mauritius (2019) ensures the safety of foreign workers and pegs their minimum wage to that of the host country, while also forbidding any form of coerced labour. Finally, the MoU with the UAE (2019) requires both governments to ensure that workers are not subject to unlawful discrimination. The BLA with Jordan (2017) outlines the responsibility of both parties to eradicate forced labour and take all necessary measures to prevent the abuse, compulsion, and exploitation of Nepalese workers. The agreement further mandates the Government of Jordan to establish a judicial mechanism against any violence towards women migrant workers, including special measures to respect their privacy. The agreement has further opened up new avenues for workers to join trade unions and be granted freedom of association and collective bargaining rights in accordance with Jordanian law.

Principle 2	Adherence
Recruitment should respond to established labour market needs, and not serve as a means to displace or diminish an existing workforce, to lower labour standards, wages, or working conditions, or to otherwise undermine decent work.	Partially compliant

**Analysis**

The FEA edicts the process of recruitment under the heading: Provision relating to the prior approval and selection of workers. According to this provision, the recruitment agencies are mandated to obtain prior approval from the DoFE after receiving a demand for workers. The DoFE provides this once it has assessed the relevant occupational safety and health conditions, including the terms and conditions of the work. This process involves publishing the advertisement and preparing the list of the selected workers. It is mandatory to obtain approval from the labour office before sending workers, in accordance with the FEA.

The recruitment of migrant workers is therefore largely based on the demands of the destination countries. The entire recruitment process is a complex matter, which requires a series of steps - including seeking demand for workers in the destination country and having that demand certified by the Nepalese diplomatic mission. This is followed by other administrative procedures: obtaining a license from the DoFE to begin the process of recruitment; publishing the advertisement selection process; and undertaking the medical tests of the selected workers. There is also the matter of visa procedures, signing contracts, pre-departure orientation training, insurance, contributions to the welfare fund and the final labour permit itself. In short, the recruitment process starts with the demand letter, which represents the interest of the employer in the country of destination.



The Government introduced the Foreign Employment Information Management System (FEIMS) with a view to involving all the key stakeholders (including the private sector) in the recruitment process – thereby ensuring accountability, strengthened data management, and the systematic monitoring of all actors involved in an integrated system. This system includes information related to the visa approval process and specific recruitment agencies. It also includes all information related to migrant workers and their employers. The government has opened up avenues for the online registration of grievances through the FEIMS (Nepal Labour Migration Report, 2020).

The legal and policy frameworks of Nepal call for the study of international migration trends and the identification of new markets depending on needs. The FEA tasks the Foreign Employment Board (FEB) with studying trends in the international labour market and exploring new markets (Section 39(a)). Similarly, the Foreign Employment Policy, 2012, mentions the “identification and promotion of employment opportunities on the international market” as a primary policy goal among seven broad foreign employment policies.

The government has recently been exploring countries outside the Middle East as destination countries for migrant workers, as evidenced by MoUs with Mauritius and Jordan, a technical agreement with Japan, and labour approvals in other European countries such as Poland and Belgium. It has been reported that the absence of Nepalese missions in these emerging destination countries has adversely affected labour demand and an exploration of the overall labour market (Nepal Labour Migration Report, 2020). As described above, government responses are partially directed towards responding to established labour migration needs as opposed to exerting an active influence on demand. In short, migration for employment from Nepal is largely contingent upon demands that have been authorized by the relevant authority in the countries of destination. For instance, in the MoU between the Government of Nepal and UAE, employers are mandated to recruit migrant workers from an authorized recruitment agency licensed by the government of UAE. The employer is hence required to obtain an approval from the relevant authority in the UAE before recruitment.<sup>68</sup>

Principle 3	Adherence
Appropriate legislation and policies on employment and recruitment should apply to all workers, labour recruiters and employers.	Partially compliant

**Analysis**

The Constitution of Nepal makes safe and dignified employment a guiding principle and calls for the regulation and management of the foreign employment sector. It further calls for the deployment of the capital, skills, technology and experience gained from foreign employment in the country’s productive sector (Article 51). Further, the regulatory provisions in the FEA include, but are not limited to: vesting power in the government to make bilateral agreements with potential countries of destination; establishing a minimum wage, mandatory orientation and skills training, a foreign employment welfare fund, and a formalized complaints mechanism; initiating investigations and inquiries, punishment, and the trial and settlement of cases; using airports for foreign employment, including the setting up of labour desks at the national airport; deploying labour attachés in destination countries’ embassies; setting up a licensing system for those hoping to engage in foreign business; putting the burden on employers to purchase insurance to protect against injury at the of workplace; and regulating contracts between employers or their agents, workers, and licensees regarding the terms and conditions of employment. The FEA also mandates for special protection and privileges.<sup>69</sup>

Similarly, the Act establishes two institutional mechanisms, namely a Complaints Registration and Investigation Section within the Department of Foreign Employment (DoFE), and a Foreign Employment Tribunal to hear complaints and settle disputes. The Foreign Employment Rules (FER), which constitute

<sup>68</sup> Article 3(1), Employment Contract, Memorandum of Understanding (MoU) between the Government Of Nepal and The Government Of The United Arab Emirates in the Recruitment, Employment And Repatriation Of Workers.

<sup>69</sup> Section 9 of the Act specifically provides for special privileges to women, Dalits, indigenous nationalities, oppressed groups, victims of natural calamities, and people from remote areas seeking foreign employment. Subsection 2 accordingly allows the Government to set an employment quota for these groups.

the implementation guidelines for the FEA, include procedural aspects, such as provisions on the renewal and cancellation of licenses. It also lists the procedural requirements for the selection of workers, including the requirement to advertise a job posting in a national daily newspaper. It also specifies the nature and use of the Foreign Employment Welfare Fund, which provides social security and financial assistance to workers, as well as other services such as skills training, the repatriation of dead bodies and legal representation. The Foreign Employment Policy, 2012, on the other hand, aims to cultivate the necessary knowledge and skills required to remain competitive in the international market, and to provide for the safety and respect of Nepalese workers.

The Approach Paper for the Fifteenth Five-year Plan of the National Planning Commission (NPA)<sup>70</sup> (fiscal year 2019-20 to 2023-24) of Nepal incorporates a number of policies to ensure safe, dignified and organized foreign employment. The Plan adopts a strategy<sup>71</sup> to “make all phases of foreign employment safe, free from exploitation, dignified and maximum result-oriented,” by providing a labour agreement with the major destination countries and working towards the enactment of strong labour diplomacy to protect the rights of migrant workers. Furthermore, the Paper envisions coordination with the service providers in the destination countries, as well as with their civil society organizations and migrant workers’ organizations, with a view to protecting and promoting the rights of migrant workers and assisting them in their rescue and repatriation. It also covers India-bound Nepalese migrant workers, who are largely absent from the above-mentioned legislation; it proposes a legal procedure to register these workers at the local level, which would issue them identity cards and incorporate them into insurance and welfare fund schemes. As far as returning migrant workers are concerned, the Paper aims to establish and maintain digital records of their skills to attract foreign direct investment more efficiently; this same efficiency would be brought to bear on the distribution of remittances within the domestic economy by directing them through authorized banking channels, both inbound and outbound. The policy also aims to increase the gross amount of remittances by increasing skills and other aspects of human capital, which will help Nepalese workers enter higher-paying sectors of the economy.

BLAs and MoUs have been instrumental in establishing obligations between their signatories. Recent labour agreements have clearly established the role and responsibility of governments in destination countries to ensure that their employers protect and respect the rights of migrant workers, and this will play a key role in future efforts to strengthen legislation. By way of example, a number of MoUs in various countries have included the following:

Ensuring workers are paid no less than the minimum wage of the host country (Mauritius);

Establishing parity between host country citizens and migrant workers in the fields of equal and fair treatment regarding wages, overtime, working conditions, and access to justice (ibid.);

Requiring that demand letters and contracts of employment indicate the job’s specifications, the types of jobs for which recruitment is proposed, as well as the terms and conditions of employment offered - including wages, other benefits, accommodation and transportation, when applicable (ibid.);

Stipulating the costs to be incurred, including, but not limited to, travel expenses, insurance, medical expenses, work permit/labour card fees, service fees paid to the Nepalese Recruitment Agency, and other procedures related to recruitment, are all borne by the employer (Mauritius, UAE, Jordan, Qatar<sup>72</sup>);

Ensuring the safety, security and welfare of the worker, with due consideration to the special characteristics of women (Mauritius, Jordan, UAE and Malaysia);

Establishing proper mechanisms to monitor the timely payment of wages and dispensation of other benefits (Mauritius);

Ensuring that the worker shall have the right to remit their income through official channels to Nepal, at their discretion, in ‘accordance with and subject to financial and other relevant regulations in the destination country’ (Mauritius);

<sup>70</sup> The National Planning Commission is the apex advisory body of the Government of Nepal for formulating a national vision, periodic plans and policies for development.

<sup>71</sup> Under Paragraph 10, Objective 4.3(4) of the Fifteenth Plan Approach Paper, National Planning Commission, available (in Nepalese) at: [https://www.npc.gov.np/images/category/15th\\_Plan\\_Approach\\_Paper2.pdf](https://www.npc.gov.np/images/category/15th_Plan_Approach_Paper2.pdf)

<sup>72</sup> Travel expenses only in the Qatar agreement

Ensuring that workers are not subject to any form of harassment, abuse, forced labour, unlawful withholding of passports, or restrictions on movement or communication with their families and the Diplomatic Mission of Nepal (Mauritius, Malaysia, Jordan, UAE).

Principle 4	Adherence
Recruitment should take into account policies and practices that promote efficiency, transparency and protection for workers in the process, such as mutual recognition of skills and qualifications.	Partially compliant

**Analysis**

Current policy emphasizes adequate skills training. However, the law is largely silent on efficient and transparent worker protection, and especially on recruitment agencies. Current provisions also lack requirements for embassies to report on problems associated with employers' institutions in the destination countries.

The government has recently introduced a recruitment e-portal through the Foreign Employment Information Management System (FEIMS) to monitor and keep records of outbound and returnee migrant workers - including re-entry permits obtained online. The FEIMS is intended to increase the transparency and accountability of all stakeholders, and to reduce the role of intermediaries and any ambiguities that might arise during the migration cycle. It has been reported that the occupational data collected in the FEIMS are largely based on the occupation mentioned in the demand letter (which often fails to reflect the worker's actual occupation), and do not comply with any standard classification of skills (Nepal Labour Migration Report, 2020). This causes transparency issues and undermines the usefulness of this data

The FEA has authorized orientation training as a mandatory requirement to obtain a labour permit. Prospective migrant workers, pursuant to the FEA, undergo compulsory orientation training at the institution accredited by the Department of Foreign Employment. In cases where the workers need to obtain more specific skills, they are required to undergo additional training. The government authorizes the Vocational and Skill Development Training Academy (VSDTA) to carry out skills development initiatives for enhancing the employability of Nepalese youth in both the domestic and international labour market (Nepal Labour Migration Report, 2020).

The Skills Training for Employment Procedure, 2019, has categorized four sectors: construction (masonry, scaffolding, welding); hotel management (cook, waiter, housekeeper, etc.); services (security guard, office secretary, painter, and beautician); and other (garment tailoring and aluminium fabricator).<sup>73</sup> The procedure reserves 160 hours (30 working days) for skills training, and the curriculum must be approved by the Foreign Employment Promotion Board (procedures number 5 and 6, respectively). It was recently reported that prospective migrant workers need to pass a mandatory skills test successfully in order to acquire a labour permit.<sup>74</sup> Similarly, the Foreign Employment Promotion Board has initiated programmes to evaluate the occupational skills of returning migrant workers in cooperation with the National Skill Testing Board (NSTB), under the Council for Technical Education and Vocational Training (CTEVT).<sup>75</sup>

<sup>73</sup> Nepal Skills Training for Employment Procedure, 2019 (Annex I).

<sup>74</sup> Skill test mandatory for outbound Nepali workers to acquire permit, available at: <https://english.onlinekhabar.com/skill-test-mandatory-for-outbound-nepali-workers-to-acquire-permit.html>

<sup>75</sup> "Government bid to use migrant workers' skills", in The Kathmandu Post (2020), available at: <https://kathmandupost.com/national/2018/11/25/government-bid-to-use-migrant-workers-skills>

These are undoubtedly significant welcome moves on the part of the Nepalese Government on the skills development front. However, their key shortcoming is that there is no mutual recognition system to recognize these skills once the workers have moved abroad. The skills obtained through these training programmes are inadequate and do not match with the occupational skills required by employers, and are thus not recognized in the destination countries.<sup>76</sup>

The need for agreements on mutual skills recognitions is being addressed in recent BLAs. The Nepal-Japan agreement requires a Nepalese migrant aspiring to work in Japan to possess N4-level language competency, while the MoU with Mauritius envisages the establishment of a Joint Working Group composed of at least two officials from the relevant authorities of each signatory party, with responsibilities including mutual skills recognition, vocational training, and counselling for workers (Article 10, Joint Working Group, in the MoU between the Government of Nepal and the Government of Mauritius, 2019).

Principle 5	Adherence
Regulation of employment and recruitment activities should be clear and effectively enforced. The role of the labour inspectorate and the use of standardized registration, licensing or certification systems should be highlighted. The competent authorities should take specific measures against abusive and fraudulent recruitment methods, including those that could result in forced labour or trafficking in persons.	Partially compliant

**Analysis**

The FEA gives the DoFE the authority to monitor recruitment agencies and to ensure compliance with the law. The DoFE must designate an officer ranked as at least Gazetted Third Class as the investigating officer for the case and inquire into any allegations of illegal behaviour. This investigating officer has the same powers as a representative of the police, which include the authority to arrest the suspect, search any place in relation to the offense, seize documents or other evidence pertinent to the charge, record depositions, and execute recognizance deeds (Section 61). Similarly, in 2019, MoLESS issued a Guideline for the Mobilization of a Rapid Response Team with a view to monitoring recruitment agencies and other service providers to deter fraudulent activity. A recent Government audit report revealed that monitoring by the DoFE, which included all foreign employment-related businesses, was limited to financial auditing and its role was more ad hoc/reactive to complaints.<sup>77</sup> Similarly, the National Human Rights Commission Report reiterated the DoFE’s inconsistent follow-through due to under-staffing, and found that other organizations like the Company Registrar’s Office (CRO) and the Inland Revenue Administration (IRA) - having due diligence and monitoring obligations themselves - had largely failed in their duties. The report of the UN Special Rapporteur on the Human Rights of Migrant Workers also suggested that monitoring obligations had fallen far short, giving rise to forced labour and trafficking, abuse, and exploitation. Thus, adequate law enforcement resources and institutional responsibility are largely lacking in Nepal. Private companies registered with the Company’s Registrar’s Office (CRO) are supposed to be monitored in a timely manner under the Companies Act, 2006, and the FEA outlines procedures for the acquisition and revocation of licenses, for example for misrepresentation and fraud.

76 P. Thami and A. Bhattarai: Labour Migration and Skills Training, Centre for the Study of Labour and Mobility (CESLAM), 2015, available at: [https://www.ceslam.org/uploads/backup/CESLAM%20Policy%20Brief%20VII\\_Labour%20Migration%20and%20Skills%20Training.pdf](https://www.ceslam.org/uploads/backup/CESLAM%20Policy%20Brief%20VII_Labour%20Migration%20and%20Skills%20Training.pdf)

77 Office of Auditor General: Performance and Specialized Audit Report (2018).

However, there has been evidence of gaps in the practice of this legislation, including weak monitoring and understaffing; a sparse presence outside of the centralized jurisdiction; the favouring of recruitment agencies; and an abuse of authority and financial indiscretion. The indicators of forced labour are not holistically integrated into the monitoring mechanism. Despite the fact that trafficking-related offences are covered under the Human Trafficking and Transportation Control Act (HTTCA), both the FEA and HTTCA remain silent on interconnected offenses such as trafficking under the guise of labour migration. Against this backdrop, a MoU between the Nepal Police and the Department of Foreign Employment on investigating human trafficking cases in foreign employment (2020) has recently been signed. The MoU aims at preventing trafficking under the guise of foreign labour migration, as well as at protecting and rehabilitating the victims. The MoU further carries with it the objective of preventing the immunity of perpetrators and bringing the unlicensed intermediaries under the custody of law.

Principle 6	Adherence
Recruitment across international borders should respect the applicable national laws, regulations, employment contracts and applicable collective agreements of countries of origin, transit and destination, and internationally recognized human rights, including the fundamental principles and rights at work, and relevant international labour standards. These laws and standards should be effectively implemented.	Partially compliant
Analysis	
<p>A range of labour rights are guaranteed in Nepal,<sup>78</sup> including collective bargaining, freedom of assembly, and the right to a fair trial and legal assistance. Nonetheless, these frameworks only apply within Nepal. As described above, recent agreements have attempted to protect the rights of migrant workers - but the BLA/MoUs are limited to only nine destination countries.</p> <p>Although Nepal is party to all major human rights conventions and major ILO treaties, excluding the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), it can only protect migrant workers' dignity to the extent allowed by the host and transit nations. The non-ratification of human rights treaties among major destination countries, compounded by sophisticated migration management systems (such as Kafala), contributes to routine violations of the human rights of migrant workers or even their death. Torture, inhumane treatment, workplace safety<sup>79</sup> and health hazards,<sup>80</sup> up to and including trafficking,<sup>81</sup> are reported as being the daily lot for migrant workers.</p>	

78 Under the Constitution and domestic laws including the Labour Act, Right to Employment Act, Contributions Based Social Security Act, and National Criminal Procedure Code.

79 Labour Migration for Employment, op. cit., shows that around 70.41 per cent of the reported causes of injury and disability during the periods 2008/09-2016/17 were on account of workplace accidents (figure 16, p. 27).

80 "Nepalese migrants who go to work in the Gulf risk exploitation and abuse, from recruitment fees and debt bondage to health problems due to heat stress", extracted from: Business and Human Rights Resource Centre (BHRRC): Nepalese migrant workers in Qatar face exploitation - Companies employing them should take action, available at: <https://www.business-humanrights.org/en/nepalese-migrant-workers-in-qatar-face-exploitation-companies-employing-them-should-take-action>

81 The Gulf Visit Report, 2017, op. cit., found instances of trafficking leading to the worsening condition of women who went to Kuwait as domestic workers. These women were currently taking shelter in 'Kuwait's shelter for domestic workers.' operated by the Kuwaiti Government.

Principle 7	Adherence
No recruitment fees or related costs should be charged to, or otherwise borne by, workers or jobseekers.	Partially compliant
<b>Analysis</b>	
<p>The governing regulatory frameworks do not explicitly refer to the prohibition of charging recruitment fees or related costs to workers or jobseekers. However, the new amendment to the FEA requires the recruitment agents to furnish the details about flight tickets to the employee in the application sent to the DoFE (Fourth Amendment, FEA, 2019).</p> <p>In July 2015, the Government of Nepal decided to adopt the “free-visa, free-ticket” (FVFT) policy for seven labour destination countries, shifting the cost associated with recruitment to the employer. The policy allows the recruitment agencies to charge a maximum of NPR 10,000 to workers in the event that the employer does not provide service fees to the recruitment agency for the services provided. This decision was in compliance with global recruitment practices and international laws governing labour migration.</p> <p>Although it remains one of the most important policy decisions taken by the government, several reports, including those of the NHRC, MoLESS and the Gulf Visit Report, have demonstrated that there are shortcomings in the implementation of the policy (see above: Recruitment fees and Employers pay principle). The ILO’s 2017 report further validates the claim that the government’s “zero-cost to migrants” initiative is yet to have a significant impact.<sup>82</sup></p> <p>Migrant workers continue to pay high fees for their recruitment and receive inaccurate recruitment receipts for fees paid to recruitment agencies.<sup>83</sup> On many occasions, as IOM findings suggest, the associated charges - including costs for obtaining passports, language course costs, and logistical costs including travel to and from Kathmandu - are uncovered, hidden and not reported.<sup>84</sup></p> <p>On a different note, reports have suggested that the implementation of zero-cost recruitment has been highly specific to the migration corridor and sector in question. For instance, a Tufts University/ILO report found that the Nepal-Jordan labour migration corridor had complied with and implemented the no-recruitment fee principle fairly effectively (excluding certain related costs like those for a passport).<sup>85</sup></p> <p>The employer’s pay policy has been set out under the BLAs and MoUs signed by Nepal in recent times, including the agreement with Qatar (2005).<sup>86</sup> The agreement with Malaysia, Jordan, Mauritius<sup>87</sup> and</p>	

82 ILO: The migrant recruitment Industry: Profitability and unethical business practices in Nepal, Paraguay and Kenya, Fundamental Principles and Rights at Work Branch (FUNDAMENTALS) (Geneva, 2017), available at: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_574484.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_574484.pdf)

83 Amnesty International: Turning people into profits, (London, 2017), p. 5, available at: <https://www.amnesty.org/download/Documents/ASA3162062017ENGLISH.PDF>

84 IOM UN Migration: Migration in Nepal: A Country Profile 2019 (Geneva, 2019), available at: [https://publications.iom.int/system/files/pdf/mp\\_nepal\\_2019.pdf](https://publications.iom.int/system/files/pdf/mp_nepal_2019.pdf)

85 ILO: The benefits of fair recruitment. Results of the impact study on the Nepal-Jordan corridor (Geneva, ILO/Tufts University, 2018), available at: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---ipec/documents/publication/wcms\\_727143.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipec/documents/publication/wcms_727143.pdf).

86 Agreement between His Majesty’s Government of Nepal and the Government of the State of Qatar concerning Nepalese manpower employment in the State of Qatar. Article 6 provides that: The employer shall bear all travel expenses of the workers from the Kingdom of Nepal to the place of work in the State of Qatar upon entering the service for the first time as well as the expenses of the return passage. The employer shall also bear the round-trip travel costs of the second party on leave periods as provided for in the employment contract. These expenses shall not cover costs of acquiring a passport of payment against any guarantees.

87 MOU between the Government of Nepal and the Government of the Republic of Mauritius on the recruitment and employment of workers from Nepal. Article 7 (Recruitment, safety and security of workers) provides that the Government of Nepal shall ensure that the worker is not charged any fees by recruitment agencies in Nepal other than those specified by the Government of Nepal. Similarly, the Government of Mauritius shall ensure that the costs to be incurred including but not limited to, travel expenses, insurance, medical expenses, work permit/ labour card fees, service fees paid to the Nepali Recruitment Agency and other processes related to the recruitment of the Worker in Mauritius are borne by the Employer.

UAE<sup>88</sup> reiterates the zero-recruitment fee (employer covering all charges), while the government sets a cap of NPR 10,000 for countries including Qatar, Saudi Arabia, Kuwait, Bahrain, Oman, Brunei, Sweden and Malta.<sup>89</sup> The BLA with Qatar exempts the worker from any charges (excluding the cost of acquiring a passport); however, the government has set a cap of NPR 10,000 for the cost of recruitment. A study has nonetheless found that despite the BLA and government caps, employers tend to ignore their legal obligation and the workers paying for their own recruitment costs.<sup>90</sup>

In a recent judgment of 2019, courts have ordered the government to ensure the effective implementation of the FVFT policy.<sup>91</sup>

Principle 8	Adherence
<p>The terms and conditions of a worker’s employment should be specified in an appropriate, verifiable and easily understandable manner, and preferably through written contracts in accordance with national laws, regulations, employment contracts and applicable collective agreements. They should be clear and transparent, and should inform the workers of the location, requirements and tasks of the job for which they are being recruited. In the case of migrant workers, written contracts should be in a language that the worker can understand, should be provided sufficiently in advance of departure from the country of origin, should be subject to measures to prevent contract substitution, and should be enforceable.</p>	<p>Partially compliant</p>
Analysis	
<p>Under the FEA, the submission of a contract between the employer and the worker, as well as between a recruitment agency and the worker, is a mandatory requirement before the DoFE to obtain pre-approval.<sup>92</sup> However, this requirement has not always been enforced, and there have been constant reports of contract substitution (<i>Nepal Labour Migration Report, 2020</i>). The Report of the Special Rapporteur on the human rights of migrants confirmed that contracts had been substituted, not translated into a language that migrant workers understood, and not provided to workers in a timely manner.<sup>93</sup></p>	

88 MOU between the Government of Nepal and Government of UAE in the recruitment, employment and repatriation of workers, in article 5 (responsibility of second party), sub article 13 provides: 'Within its jurisdictions, the Second Party (UAE) will ensure that the Worker does not have to pay any recruitment related costs and fees. Employers will bear all the costs related to recruitment, employment and the residency of Nepali Worker in the United Arab Emirates including but not limited to recruitment agency fees, air ticket costs, insurance fees, visa fees, medical examination fees and all other recruitment related costs and fees.'

89 Nepal Labour Migration Report, 2020, op. cit., p. 60 (table 10).

90 NYU, STERN, Center for Business and Human Rights: Research Brief: Less than One Percent: Low-Cost, Responsible Recruitment in Qatar’s Construction Sector, available at: [https://issuu.com/nyusterncenterforbusinessandhumanri/docs/nyu\\_qatar\\_ssp\\_report\\_may31\\_final?e=31640827/70564076](https://issuu.com/nyusterncenterforbusinessandhumanri/docs/nyu_qatar_ssp_report_may31_final?e=31640827/70564076)

91 Advocate Prem Chandra Rai on behalf of the Law and Policy Forum for Human Rights (LAPSOJ) vs. Nepal Government, Office of the Prime Minister and Council of Ministers et al, Writ No.: 074-WO-0111, 1 January, 2020.

92 FEA, Section 25(1) and (2) requires recruitment agencies to furnish a contract with details including terms and conditions of the employment to be observed by both parties, and remuneration to be received by the worker. It further mandates that the licensed agencies sign a contract with the workers and provide a copy of the contract by translating it into the Nepali language in terms clearly understandable to the prospective worker.

93 UN Human Rights Council: Report of the Special Rapporteur on the human rights of migrants (Felipe González Morales) on his mission to Nepal (Geneva, 2018).

In an effort to curb contract substitution, employers are required to verify all job requirements with Nepalese diplomatic missions in destination countries and to send the necessary documentation to the DoFE for further confirmation.<sup>94</sup> Similarly, recent MoUs have merged the standard employment contract<sup>95</sup> with the details including the terms and conditions of the employment, wages and benefits, accommodation, leaves, repatriation, and dispute settlement provisions, as well as medical and accidental insurance. They also provide for translations of the contract. For instance, the MoU with Malaysia mandates that the contract of employment be in three language (Malay, Nepalese and English), while the MOU with UAE requires Arabic, Nepalese and English translations. However, considering the diversity of languages (around 129) spoken in Nepal, and taking into account that the majority of migrant workers from the various provinces come from a non-Nepalese speaking community,<sup>96</sup> it is still often challenging for workers to make sense of essential terms and conditions. For instance, Maithili is spoken as a mother tongue by 45.3 per cent of the total population, making it the most widely spoken language in Province Two.<sup>97</sup>

Principle 9	Adherence
Workers' agreements to the terms and conditions of recruitment and employment should be voluntary and free from deception or coercion.	Partially compliant

**Analysis**

The FEA includes provisions aiming to protect workers from deception or coercion (Sections 15, 19 and 20) and delegates authority to the DoFE to investigate contract deception. It also prohibits recruitment agencies from renegeing on obligations, such as paying a lower wage than stipulated in the contract and misrepresenting the nature of the work. It further lays down the penalty of 100,000 NRP, and requires the licensee to pay the difference between the wage agreed upon and the actual payment (Section 55).  
 Despite the FEA's ban on these practices, unscrupulous agents in the migration cycle continue to pose a significant problem, often leading workers into unsafe and dishonest situations.<sup>98</sup> Dual and fake contracts are some of the most widely reported examples (NHRC, 2019). Dishonest job descriptions also present a challenge (*Special Rapporteur Report*, 2018). Dual contracts often lead to exploitation and, in certain cases, adversely impact the workers' migration status by rendering them undocumented (*Gulf Visit Report*, 2017). Furthermore, studies have shown that workers are made to sign their contracts one day before departure, or sometimes even at the airport, leaving them no time to read and understand or negotiate the terms and conditions in their contract.<sup>99</sup>

94 Foreign Employment-related Demand Letter Directive, 2018, Clause 3, FEA 4th amendment (2019).

95 MoU with Malaysia, UAE, Jordan, Mauritius, Israel and Japan.

96 According to the Nepal Labour Migration Report, 2020 ( op. cit.): Provinces 1 and 2 witnessed the highest share of labour migration in 2018/19, comprising over 24 per cent of the migrant workers.

97 S. Nepali., S. Ghale and K. Hachhethu: Federal Nepal: Socio-Cultural Profiles of the Seven Provinces. (Kathmandu, Governance Facility, 2018).

98 Amnesty International; Turning people into profit: Abusive recruitment, trafficking and forced labour of Nepali migrant workers (2017).

99 ILO: The migrant recruitment industry, Profitability and unethical business practices in Nepal, Paraguay and Kenya (Geneva, 2017), p. 22; NHRC, op. cit., p. 91: Report of the Special Rapporteur on the human rights of migrants on his mission to Nepal, 2018, op. cit.



Principle 10	Adherence
Workers should have access to free, comprehensive and accurate information regarding their rights and the conditions of their recruitment and employment are in place.	Partially compliant
<b>Analysis</b>	
<p>Both the Foreign Employment Policy, 2012, and the National Employment Policy, 2014,<sup>100</sup> have as their goal the dissemination of information vis-à-vis foreign employment. The FEA has delegated the mandate to collect, process and publish information regarding foreign employment to the Foreign Employment Board (Section 39 (b)).</p> <p>Lack of information about safe migration has been a challenge in the governance and management of labour migration from Nepal for a long time (<i>NHRC, 2019; Special Rapporteur Report, 2018</i>). It has been observed that workers have been misrepresented by recruiters, brokers and online service providers, who have taken advantage of their lack of education regarding the rules governing their situation (<i>NHRC, 2019</i>).</p> <p>Against this backdrop, the Government has introduced Employment Service Centres (ESC), with a view towards providing employment-related information on the model of the Safer Migration Project (SaMi),<sup>101</sup> a Swiss government-funded project that runs Migrant Resource Centres (MRC) in districts where accurate information to promote safe migration is disseminated through Information and Counselling Centres (ICC), set up at District Administration Offices - which people visit for their passport applications. Other organizations such as Maiti Nepal, Pourakhi, WOREC, ABC Nepal, Samana and Sambriddhi Project are also operating MRCs alongside SaMI (<i>Nepal Labour Migration Report, 2020</i>).</p> <p>As mentioned above, the government has recently introduced the Foreign Employment Information Management System (FEIMS), which brings all the key stakeholders in the recruitment process, including the private sector, into an integrated system to ensure accountability, strengthened data management, and the systematic monitoring of all the actors involved. The system includes information related to the visa approval process and specific recruitment agencies. It also includes all information related to migrant workers, and their employers (<i>Nepal Labour Migration Report, 2020</i>). It does not, however, portray the accurate statistics as it fails to record those going to India or those workers who opt to go through irregular channels.</p> <p>Similarly, the government has launched a mobile application (<i>Baideshik Rojgari</i>) that enables workers to facilitate their search for authentic job offers and track their application process (<i>Nepal Labour Migration Report, 2020</i>). The official website of the DoFE also contains relevant information about foreign employment for aspiring migrant workers. This information includes, inter alia, lists of labour approvals, employment contracts, recruitment agencies, banking channels used, medical exams, pre-departure orientation trainings, native airports used, remittances, skill trainings, age requirements.<sup>102</sup></p>	

<sup>100</sup> Policy related to Objective 4: Awareness programmes will be conducted to disseminate information about opportunities in the destination countries as well as the risks related to migration.

<sup>101</sup> The Safer Migration Project (SaMi) is a bilateral initiative of the Governments of Nepal and Switzerland, with technical assistance from Helvetas. In its current third phase (2018-22), SaMi is working in 39 districts with high rates of labour migration, including Kathmandu, available at: <https://www.sami.org.np>

<sup>102</sup> DoFE website, available at <http://dofe.gov.np/importantinfo.aspx>

Principle 11	Adherence
Freedom of workers to move within a country or to leave a country should be respected. Workers' identity documents and contracts should not be confiscated, destroyed or retained.	Partially compliant

**Analysis**

Freedom of movement within Nepal, including the freedom to practice any profession, carry on any occupation, and establish and operate any industry, trade and business in any part of Nepal, are fundamentally guaranteed under the Constitution of Nepal (Article 17 (e)(f), *Right to Freedom*). Similarly, given that Nepal is party to the International Covenant on Civil and Political Rights (ICCPR), the Government of Nepal bears an international obligation to ensure freedom of movement especially, “freedom to leave any country, including [one’s] own,” without any restrictions.<sup>103</sup>

The freedom of movement to and from India for foreign employment is governed by the 1950 Treaty of Peace and Friendship between the Governments of India and Nepal. The Treaty allows free movement of people between the two nations on a reciprocal basis;<sup>104</sup> meanwhile, the government has approved 110 countries for labour migration.

Various reports suggest that the confiscation of passports is one of the key issues with which workers have to contend. The findings from one survey by Sramik Sanjal reports that “one out of 10 workers’ passports were retained by the employer.”<sup>105</sup> The ILO<sup>106</sup> and Amnesty International<sup>107</sup> reports further endorse that migrant workers are routinely exposed to abusive business practices, involving the recruiters’ confiscation of their passport and other personal documents. This often makes it difficult for workers to return home (*NHRC Report, 2019*).

In destination countries following the Kafala<sup>108</sup> system, workers are unable to leave the country without their employer’s permission. Their embassy’s support is difficult as their legal documents, including their passports, are retained by their employers; furthermore, there is no freedom of movement.<sup>109</sup>

Nonetheless, the recent MoUs of the Government of Nepal with Mauritius, Malaysia, Jordan and the UAE establishes protection against the unlawful holding of passports, the restriction of movement and any restrictions on workers’ communication with their families and the Diplomatic Mission of Nepal; this is an obligation of the destination country.

103 Article 12 of the ICCPR states:

- Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
- Everyone shall be free to leave any country, including his own.
- The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

104 Article 7 of the Treaty of Peace and Friendship between the Government of India and the Government of Nepal, available at: <https://mea.gov.in/bilateral-documents.htm?dtl/6295/Treaty+of+Peace+and+Friendship>

105 Shramik Sanjal: Findings from a survey of Nepalese migrant workers, Commentary, 10 July 2019, available at: <https://www.ihrb.org/focus-areas/migrant-workers/shramik-sanjal-findings-from-a-survey-of-nepalese-migrant-workers>

106 ILO, 2017, op. cit.

107 Amnesty International, 2017, op. cit.

108 “Under the Kafala system a migrant worker’s immigration status is legally bound to an individual employer or sponsor (kafeel) for their contract period. The migrant worker cannot enter the country, transfer employment nor leave the country for any reason without first obtaining explicit written permission from the kafeel,” extracted from: Migrant Forum in Asia (MFA): Policy Brief No. 2: Reform of the Kafala (sponsorship system), (Quezon City, Philippines) , available at: <https://www.ilo.org/dyn/migpractice/docs/132/PB2.pdf>.

109 Ibid.

Principle 12	Adherence
<p>Workers should be free to terminate their employment and, in the case of migrant workers, to return to their home country. Migrant workers should not require the employer’s or recruiter’s permission to change employer.</p>	<p>Partially compliant</p>
<p><b>Analysis</b></p>	
<p>The FEA mandates workers to return to Nepal after the expiry of the terms of the labour permit issued by the concerned authority. The Act further urges the concerned recruitment agency to facilitate the return of the workers in cooperation with the DoFE. The Act places a three-year travel ban on any worker who overstays after the expiry of their contract (Section 76(1)(2)(3)). The statutory contract period of employment (labour approval) is two years;<sup>110</sup> however, the period has been extended to three years for Malaysia (<i>Labour Migration Report, 2020</i>).</p> <p>Migrant workers are required to reapply for a labour permit from the labour office in order to change their employer. However, under the Fifth Amendment in the existing FER, Nepalese workers are able to obtain a re-entry labour permit from Nepalese foreign missions in the respective destination countries, for a period of two years.<sup>111</sup></p> <p>The FEA does not consider returning to the country of origin as a right; it only mandates for the return after the contract period is over. However, the right to return has been established as a right under international agreements to which Nepal is a signatory. For instance, Article 12(4) of the International Covenant on Civil and Political Rights (ICCPR) states that “no one shall be arbitrarily deprived of the right to enter his own country”. Article 24 (h) of CEDAW’s General Recommendation No. 26 also urges the states parties (the countries of origin) to ensure that ‘women who wish to return to their countries of origin are able to do so free of coercion and abuse’.<sup>112</sup> Article 13(2) of the Universal Declaration of Human Rights (UDHR) clearly states: “Everyone has the right to leave any country, including his own, and to return to his country”. Similarly, The Constitution of Nepal takes the implementation of international treaties or agreements to which Nepal is a party as its governing policy.<sup>113</sup> Furthermore, Section 9 of the Treaty Act (1990) makes treaty provisions enforceable in Nepal upon the ratification, accession, acceptance or approval of such a treaty.<sup>114</sup></p> <p>The MoU between Nepal and Malaysia provides workers with the opportunity to change their employer in the event of exploitation, abuse, physical and mental harassment subject to the domestic law of the country, or of closure or cessation of business.<sup>115</sup> In order for an employer or worker to terminate the contract, both should provide an adequate written notice as stipulated under the labour law. If the employer terminates the contract, he or she is bound to provide the worker with the airfare to Nepal; if the worker terminates the contract, he or she must bear the costs of the airfare.<sup>116</sup></p>	

110 In accordance with Rule 12 (A) of the Fifth Amendment to the FER.

111 “New provision allows migrant workers to obtain re-entry labour permits in destination countries”, in Kathmandu Post, available at: <https://kathmandupost.com/national/2019/08/25/new-provision-allows-migrant-workers-to-obtain-re-entry-labour-permits-in-destination-countries>

112 CEDAW: General recommendation No. 26 on women migrant workers, /C/2009/WP.1/R.

113 Constitution of Nepal, 2015, Article 51 (b) (3): Implementing international treaties and agreements to which Nepal is a State party.

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

115 MoU between Nepal and Malaysia, Article 4.

116 Ibid. Clause 18: Employment, Contract of Employment, Appendix A.

The agreement with Mauritius also allows for a change of employer under conditions similar to those of Malaysia; the applicable law is the Employment Rights Act, 2008, of Mauritius.<sup>117</sup> Similarly, the BLA with Jordan grants the worker permission to change employer if the employer fails to provide the work as per the contract, or if the company closes for other reasons.<sup>118</sup>

Some of the destination countries require exit permits to leave the country. For instance, workers need to obtain an exit visa, which requires permission from an employer before leaving Saudi Arabia.<sup>119</sup> The old residency law of Qatar required all foreign workers to obtain a permit from their sponsor to leave the country on a temporary or permanent basis.<sup>120</sup> However, Qatar has recently revoked the provision of exit permits for most migrant workers.<sup>121</sup>

Principle 13	Adherence
Workers, irrespective of their presence or legal status in a State, should have access to free or affordable grievance and other dispute resolution mechanisms in cases of alleged abuse of their rights in the recruitment process, and effective and appropriate remedies should be provided where abuse has occurred.	Partially compliant

**Analysis**

In cases of abuse at the domestic level, the FEA delegates the authority of grievance handling, dispute resolution and rights enforcement to two institutions: Department of Foreign Employment and Foreign Employment Tribunal.

The Act mandates the DoFE to carry out the necessary inquiry and investigation into the matter or complaint relating to the non-fulfilment of contractual liabilities by the employer or recruitment agencies (Section 35(1)). If the employer institution fails to provide employment as per the terms mentioned in the contract, the worker or his/ her representative could register a complaint along with evidence with the DoFE and seek for compensation (Section 36(1)(2)). The Complaints Registration and Investigation Section of the DoFE is authorized to handle the complaints received. Similarly, the FEA establishes a three-member Foreign Employment Tribunal for the purpose of 'trying and settling cases other than those punishable by the Department' (Section 64 (1)). The new MoU between the DoFE and Nepal Police authorizes complaints relating to foreign employment fraud cases to be received and preliminarily investigated by the Nepal Police.

117 MoU between Nepal and Mauritius. Article 6.

118 General Agreement between Jordan and Nepal, Article 4(g),

119 GLMM; The legal framework of the sponsorship systems of the Gulf Cooperation Council Countries: a comparative examination, GLMM - EN - No. 4/2019, available at: [http://gulfmigration.org/media/pubs/exno/GLMM\\_EN\\_2019\\_04.pdf](http://gulfmigration.org/media/pubs/exno/GLMM_EN_2019_04.pdf) (p. 11)

120 Ibid.

121 Human Rights Watch: Qatar: End of abusive exit permits for most migrant workers, 20 January, 2020, available at: <https://www.hrw.org/news/2020/01/20/qatar-end-abusive-exit-permits-most-migrant-workers>

Dispute resolution mechanisms in destination countries are handled through diplomatic missions and labour attachés<sup>122</sup> in accordance with the FEA (Section 68(2)), while the Department of Consular Services under the Ministry of Foreign Affairs holds the authority to handle complaints related to the rescue and repatriation of migrant workers abroad (*Nepal Labour Migration Report, 2020*).

The Government of Nepal issued guidelines to provide legal protection to migrant workers in 2018, with a view to providing free legal aid to needy Nepalese workers who migrated through legal channels to destination countries. The guidelines delineate the authority to investigate the criminal offence with which the worker has been charged, the legal aspects of the case specific to the destination country, and the judicial process vested upon the Nepal government authorities. Embassy officials are mandated to hire 'a competent local lawyer with knowledge of the foreign country's legal system to defend the migrant worker's legal rights' as per the guidelines. However, the guidelines strictly exclude undocumented migrant workers, stating that 'they are not subject to protection and legal assistance' from the government. Similarly, the 'use of the welfare fund' has been extended to provide legal aid to Nepalese migrant workers arrested or charged in foreign countries, under the third amendment of the Foreign Employment Regulations.

The government has also introduced a hotline service so that workers may file their complaints via telephone or internet-based communications including Messenger, Viber and Imo.<sup>123</sup> Similarly, the government has opened the avenues for the online registration of grievances through the FEIMS (*Nepal Labour Migration Report, 2020*).

Access to justice - both in the destination countries and the source country - remains limited due to insufficient human and financial resources (*Nepal Labour Migration Report, 2020*). Understaffing and insufficient resources have undermined effective and efficient support from the Embassy. The access to justice is particularly difficult in the major destination countries where the Kafala system is in place, as it severely limits migrant workers' chances of accessing justice and filing a complaint against an employer.<sup>124</sup> There has been an increasing demand for labour attachés in countries that do not have residential diplomatic missions, including countries with which Nepal has signed bilateral agreements.<sup>125</sup>

MoUs signed by Nepal address concerns regarding the settlement of disputes. For instance, the MoU with Malaysia provides for the settlement of disputes through diplomatic channels without reference to any third party or international tribunal, while the MoU with Jordan, the UAE and Mauritius requires the establishment of joint working groups/committees and assigns dispute-settlement authorities.

122 As specified by the FEA and FER, the Government can appoint a gazetted officer as the Labour Attaché in a country where 5,000 or more Nepali workers are working. The duties of the Attaché are to provide the necessary information to the Government of Nepal, resolve disputes, enter into bilateral agreements, consult with Nepalese workers in destination countries, and supervise.

123 Online Khabar: Govt opens call centre to listen to complaints of migrant workers abroad, available at: <https://english.onlinekhabar.com/govt-opens-call-centre-to-listen-to-complaints-of-migrant-workers-abroad.html>.

124 Helvetas and SaMi; Lessons learned from the Safer Migration Project Phase II (2013 – 2018), available at: <https://www.dhulikhelmun.gov.np/sites/dhulikhelmun.gov.np/files/2019-09-03-Lessons%20Learned%20from%20the%20Safer%20Migration%20Project%20Phase%20II%20%282013%20-%202018%29.pdf>

125 Ibid.





# 4

## ILO's support towards fair recruitment in Nepal

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In 2014, the ILO launched a “Fair Recruitment Initiative” aimed at fostering fair recruitment practices across borders. This initiative is operationalised through a range of technical cooperation projects across some 30 countries, including the Integrated Programme on Fair Recruitment (FAIR). Now in its second phase, the ILO Integrated Programme on Fair Recruitment (FAIR) implements a comprehensive strategy to strengthen fair recruitment and protect migrant workers’ rights in five countries, including Nepal. In Nepal, FAIR mobilizes stakeholders to generate a common understanding of opportunities and challenges for implementing fair recruitment. The ILO aims to work with licensed private recruitment agencies and suppliers that are committed to respect human rights instruments such as international labour standards.

The project’s overall objective is to increase migrant workers’ access to fair recruitment practices and to preserve their fundamental principles and rights at work. For this, the ILO plans to consolidate and expand the achievements of the first phase of the FAIR project by upscaling the fair recruitment practices for migrants moving from Nepal to the garment sector in Jordan. Additionally, the project aims to support recruitment processes towards key destinations for Nepali workers, by engaging with the recruitment industry in Nepal, with a focus on agencies recruiting towards Qatar and Malaysia. This proposed intervention has been designed to eliminate deceptive and coercive recruitment practices in these sectors, reduce the vulnerability of migrant workers to labour exploitation, and provide workers with decent work opportunities.

### Main activities:

- ▶ Engage with the governments of Nepal and Jordan to promote the principles of fair recruitment and focus on the operationalization of the ILO General Principles and Operational Guidelines for Fair Recruitment.
- ▶ Develop and promote a specific skills training programme that meets the requirements of international labour standards and factories.
- ▶ Identify and build the capacity of national private employment agencies and registered sub-agents in Nepal, which are committed to respecting core human rights instruments - including international labour standards.

- ▶ Conduct specific pre-departure training towards Jordan and Qatar to ensure that workers are fully aware of the working and living conditions that await them in the country of destination.
- ▶ Engage with trade unions to improve their capacities to develop their services, including access to legal support for violations during the recruitment process, both for migrant workers in countries of destination and returnees.
- ▶ Engage with the media to promote the reporting of recruitment abuses, as well as solutions and best practices.

## Project outcomes

**Outcome 1:** Key stakeholders (national institutions, social partners, businesses, and civil society organizations) have improved capacities to implement, monitor and regulate fair recruitment processes.

**Outcome 2:** Migrant workers have access to reliable information and improved services.

**Outcome 3:** Evidence-based policy advice and knowledge on fair recruitment are available.

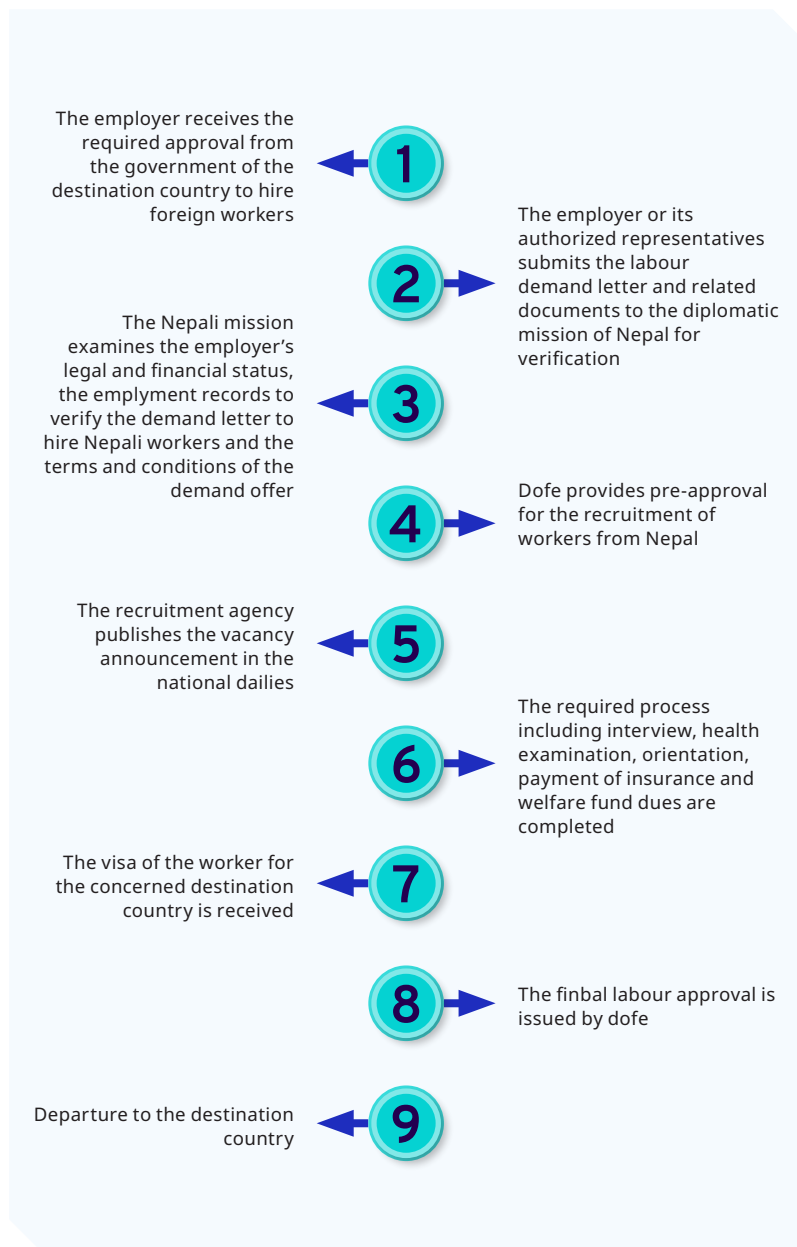






# Annex

## ► Annex I. Recruitment process



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**Fundamental Principles and Rights at  
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