

UPDATED EDITION: 2017

# Governing Labour Migration in Nepal

An Analysis of Existing Policies and  
Institutional Mechanisms

Bandita Sijapati  
Amrita Limbu

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Centre for the Study of  
Labour and Mobility



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First published: 2012

Updated edition: 2017

Published by Himal Books for the Centre for the Study of Labour and  
Mobility

ISBN: 978 9937 587 03 7

Cover design: Swosti Rajbhandari

Book design: Chiran Ghimire

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**Himal Books**

Himal Kitab Pvt. Ltd.

521 Narayan Gopal Sadak, Lazimpat, Kathmandu - 2

GPO Box 4249, Kathmandu, Nepal

Tel: 4422794

info@himalbooks.com • www.himalbooks.com-

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## Acronyms

ASEAN	Association of Southeast Asian Nations
CCASG	Cooperation Council for the Arab States of the Gulf
CCVI	Certificate for Confirmation of Visa Issuance
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRC	Convention on the Rights of Child
DoFE	Department of Foreign Employment
DOLEP	Department of Labour and Employment Promotion
EPS	Employment Permit System
FEPB	Foreign Employment Promotion Board
GCC	Gulf Cooperation Council
GDP	Gross Domestic Product
GEFONT	General Federation of Nepalese Trade Unions
GoN	Government of Nepal
HRD Korea	Human Resource Development Service of Korea
ICCPR	International Covenant on Civil and Political Rights
ICERD	Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
ILO	International Labour Organisation
IOM	International Organisation for Migration
JAAN	Jica Alumni Association of Nepal
JITCO	Japan International Training Cooperation Organisation
KLT	Korean Language Proficiency Test
MOL	Ministry of Labour
MoLTM	Ministry of Labour and Transport Management
MoU	Memorandum of Understanding
NLSS	Nepal Living Standards Survey
NMS	Nepal Migration Survey
SAARC	South Asian Association for Regional Cooperation
SAARC	South Asian Association for Regional Cooperation
UAE	United Arab Emirates
UDHR	Universal Declaration of Human Rights





# CHAPTER 1

## Introduction

### **Evolution of Foreign Employment and Policy Frameworks**

The current scale of foreign labour migration from Nepal is unprecedented, providing an alternative to hundreds of thousands of youth who are unable to find satisfactory, or even any, employment within the country. Foreign labour migration is now an intrinsic part of everyday life for a majority of Nepalis, with its impact clearly visible in every sphere of society – social, economic, cultural and even political. It has also become a source of lucrative business for those involved in sending workers abroad. Foreign labour migration, hence, has multi-dimensional implications and is of significance to all concerned, including, but not limited to, migrant workers and their families; foreign employment entrepreneurs; government agencies; and employers in destination countries.

Nepal's foreign labour migration is part of the transnational movement of people that has become a prominent feature of today's modern world. International migration has been made possible by increased globalisation which has brought about greater flexibility in state policies, and facilitated by better communication and transportation. More importantly, globalisation has created conditions for the emergence of a global labour market, and allowed for easier mobility, including that of labour. Because of its transnational dynamics, labour migration is beyond the control of

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The authors would like to thank Prof Bhim Prasad Subedi of the Central Department of Geography, Tribhuvan University, for his helpful comments and suggestions on the draft of this book. Thanks are also due to Sampreeti Gurung, Rooja Bajracharya, Prashanta Pradhan and Sanjay Sharma of the Centre for the Study of Labour and Mobility for their support in the preparation of the manuscript.

states alone, and there is growing recognition of the need for cooperation between governments at the bilateral, regional and global levels to deal with it. Labour migration has thus emerged as an important issue for policy makers worldwide as well as a matter of concern for international human rights bodies.

In Nepal, foreign labour migration is governed by national, bilateral and international policy instruments. It is regulated directly by the Foreign Employment Act 2007 and the Foreign Employment Rules 2008, and indirectly by a number of other national laws, bilateral labour agreements, memoranda of understanding (MoUs), treaties and international conventions. Nepali labour migrants also come within the framework of specific national laws of the countries to which they migrate for work.

Despite these provisions, policies concerning foreign labour migration continue to be a matter of debate and discussion in Nepal, especially in terms of securing acceptable labour standards for Nepalis abroad, and addressing problems associated with foreign employment. Developing effective policy measures aimed at safeguarding the rights and interests of its citizens who migrate for employment is undoubtedly a priority for the government. But since labour migration has a very broad impact, it has been a challenge for the government to come up with policy measures that address labour migration in a holistic manner.

Labour migration from Nepal to foreign lands has a long history, but this phenomenon has seen rapid acceleration in the past couple of decades. Initially, the government was slow to recognise the potential value of foreign labour migration. It enacted the first Foreign Employment Act only in 1985, and took nearly a decade and a half to introduce the first Foreign Employment Rules in 1999. Prior to the 1985 Act, the government did not have any policies on foreign employment, and had only provisioned for sending individuals abroad to gain technical skills, mainly in the fields of agriculture and engineering.<sup>1</sup> Recognising the need for the Act to be in consonance with the changing dynamics brought about by the growth of foreign employment, particularly in terms of making the process of labour migration more systematic and to discourage and prevent irregu-

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1 As mentioned in the First to Fifth Five-Year Plans of Nepal, i.e., 1956-61 to 1975-80.

larities associated with foreign employment, the Foreign Employment Act was amended twice, before being replaced by a comprehensive Act in 2007. While the Foreign Employment Act 1985 and its amendments focused on regulating and controlling foreign employment, the Foreign Employment Act 2007 acknowledges the reality of the increasing outflow of Nepalis for employment abroad. In addition, the later Act also prioritises the welfare of migrants. The objectives of these changes over the years have been to facilitate the migration process and to make foreign labour migration safe and systematic.

In terms of documenting the number of Nepali labour migrant workers, it was only as late as 1993 that the Government of Nepal first began keeping official records of Nepalis migrating abroad for employment. Since then, as many as two million labour permits have been issued by the Department of Foreign Employment (DoFE) to individuals who migrate to countries beyond India for employment.<sup>2</sup> In the fiscal year 2010/11 alone, more than 300,000 Nepalis migrated for employment to destinations beyond India.<sup>3</sup> Today, about 29 per cent of the total households in Nepal have at least one member living abroad.<sup>4</sup>

The large number of Nepalis working in foreign countries indicate that there is a high demand for the Nepali labour force among employers in the destination countries, particularly in the Gulf, and East and Southeast Asia. At home, apart from helping address issues of unemployment, foreign labour migration has also contributed to poverty alleviation as evidenced by the significant contribution of remittances to individual households and the national economy. Remittances amounted to an equivalent of 23 per cent of the country's gross domestic product (GDP) in 2009, and 20 per cent in 2010 and 2011.<sup>5</sup>

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2 There is no official record of the flow of Nepali migrant workers to India since permits are not required to work in India. The DoFE records only those who received labour permits under the Foreign Employment Act and Rules and does not include individuals who went to work in foreign countries without the permit.

3 Department of Foreign Employment, Government of Nepal. A total of 2,081,034 Nepalis took final labour approval from the DoFE and went for foreign employment during the period 1993-2011. In 2010/11, 354,716 permits were issued.

4 Central Bureau of Statistics, 2011d.

5 World Bank, 2011b; World Bank, 2012; and World Bank, 2011d.

The increasing importance of foreign labour migration from Nepal has generated considerable interest on the subject. This volume is intended as one more contribution in the study of foreign labour migration, which analyses the legal framework that governs foreign employment originating from Nepal. It looks at foreign employment policies and other national laws, bilateral agreements with destination countries, and international conventions, all of which directly or indirectly regulate labour migration from Nepal. The book also provides an understanding of the implications and relevance of these legal frameworks, identify gaps therein, and recommends measures that can bring about a convergence of the welfare and rights standards enshrined in national, bilateral and international policies in order to ensure that the rights of Nepali labour migrants are assured through effective laws and their implementation. It should be noted here that this book does not deal with migration policies as a whole; rather, its focus is limited to policies related to foreign labour migration only.

The content of this book is based on secondary sources, primarily documentary analysis of existing migration-related policies and legal frameworks. The book also utilises primary data drawn from different workshops and conferences on migration; interviews in Kathmandu with government representatives, and representatives of non-government organisations and private recruitment agencies; and interviews with migrants and migrant family members during fieldwork in Tanahu district in August 2011.

In terms of structure, the book is divided into five chapters. The introductory chapter provides a background on migration in Nepal, including a brief discussion of historical and current migration patterns. The next three examine the policy frameworks guiding labour migration from Nepal. The second chapter focusing extensively on the national policies governing Nepal's labour migration, particularly the Foreign Employment Acts and Rules along with other national laws that deal with the process of migration as well as the rights and welfare of labour migrants. The third chapter is an overview of the bilateral agreements that regulate the migration of Nepali workers to a few destination countries. The fourth chapter looks at international instruments and identifies the standards adopted by them as important policy measures that could be drawn upon to protect the rights of Nepali labour migrants. The

final chapter draws out crucial policy implications of the national, bilateral and international instruments based on analyses presented in the preceding chapters, identifies gaps in the policy framework, and recommends measures to further strengthen the rights and welfare of Nepali labour migrants.

### **A Brief History of Migration in Nepal**

The history of migration to and from Nepal is a contested one, with scholars and others alike pointing to different historical epochs. Broadly speaking, however, the Trans-Himalayan trade between India, Nepal, Tibet and China, the origins of which can be traced as far back as 500 BCE, is identified as the earliest form of movement to and from Nepal.<sup>6</sup> The arrival from the north of people speaking Tibeto-Burman languages between the 5th and 10th centuries, and of Indo-Aryan groups, especially Brahmins and Kshatriyas, from the south from the 9th to the 13th centuries to what is present-day Nepal was a much more significant instance of migration.<sup>7</sup> Nepal's links were equally strong with both the north and the south. As a matter of fact, most parts of Nepal had greater economic ties and closer cultural affinity with Tibet until the early 19th century than with any other country. There were more Nepalis in Tibet than anywhere else outside Nepal, and more people of Tibetan origin than of Indian origin were known to be living in Nepal at that time.<sup>8</sup> Since then Nepal has experienced significant internal migration as well as emigration from and immigration into the country.

### ***Emigration***

The formal migration of Nepalis out of the country is generally associated with the induction of young Nepali males into the British army. The May 1815 treaty between Amar Singh Thapa and General David Ochterlony in Malaun (now in India) during the Anglo-Gorkha War paved the way for a tradition that has lasted almost 200 years.<sup>9</sup>

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6 H. Schrader, 'Trading Patterns in the Nepal Himalaya', *Bielefelder Studien zur Entwicklungssoziologie*, Vol 39, 1988, cited by Thieme, 2006, p. 12.

7 Adhikari and Gurung, 2009, p. 35.

8 Bista, 1980.

9 Khanduri, 1997a, p. 110; Khanduri, 1997b, p. 196. Article 5 of the Agreement stated: 'All the troops in the service of Nepal, with the exception of those granted to the personal honour of the Kajees Amar Singh and Ranjor Singh, will be at

Although the Sugauli Treaty signed in 1816 to end the war<sup>10</sup> did not specifically address the issue of recruitment, it helped establish a harmonious relationship between Nepal and the British East India Company. But, since the Nepali government was against its citizens serving in a foreign army, the British encouraged Nepalis to migrate to India along with their families and established Nepali settlements all along the hill areas of north India, extending from the border of Afghanistan eastward to Burma, including places such as Abbotabad, Murree, Bakloh, Simla, Bhaksu, Dharamshala, Darjeeling, Kalimpong, Shillong and Mandalay.<sup>11</sup> Some Nepalis had also migrated to Kumaun and Garhwal when those areas had come under Nepali rule in 1804, and many of these families had settled down in Almora, Nainital and Dehradun.<sup>12</sup>

It was only in 1886 that the recruitment of Nepalis into the British army was formalised.<sup>13</sup> Hundreds of thousands of Nepali youth fought in the First and Second World Wars on the side of the British, which were the earliest instances of a concerted recruitment of Nepali men to work abroad. The 1947 Tripartite Agreement between Nepal, India and Britain opened the way for a newly independent India as well to recruit Nepali men into its army. Hence, even two centuries later, the tradition of recruiting Nepali youth into foreign armies (the British and Indian as well as the Singapore police) continues unbroken.<sup>14</sup>

Even as some Nepalis were joining foreign armies, others had begun migrating to different states of India, particularly the North-east. In fact, the migration of the Nepalis to Northeast India began as early as the 1820s and continues till today.<sup>15</sup> However, the cir-

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liberty to enter into the service of the British Government, if it is agreeable to themselves and the British Government choose to accept their services...’.

10 Even though, the Anglo-Gorkha war ended on 2 December, 1815, the king of Nepal initially refused to sign the Treaty. Another attack on Nepal by the British followed in February 1816. Only then, in March of the same year, did Nepal sign the Sugauli Treaty (Stiller, 1976, pp. 22-25).

11 Kansakar, 2001a. Abbotabad and Murree now lie in Pakistan.

12 Upreti, 2002.

13 New Era, 1981.

14 Nepalis in these foreign forces are known as Gurkha (British and Singapore) or Gorkha (Indian). A contingent of former British Gurkhas also serve in the Gurkha Reserve Unit, a special force created for the protection of the Sultan of Brunei.

15 Nath, 2006, p. 133.

cumstances that have steered the emigration of Nepalis to India have changed over the years. They were initially lured by the establishment of tea plantations in Darjeeling and availability of lumbering opportunities in Assam, and also encouraged by the British to settle in Sikkim after 1888 to counter Tibetan influence.<sup>16</sup> The plantation of tea and, later, the discovery of coal and oil in the Northeast opened up a large number of jobs that were filled by Nepalis since the British considered Nepalis to be hardier than the locals, and the latter were also perceived to be indifferent to the opportunities that had opened up in their home region.<sup>17</sup> For their part, Nepalis were attracted mainly by the prospect of higher incomes and better educational facilities for their children at a time when employment opportunities back home were bleak or non-existent. They were further burdened by high taxation and exploitation at the hands of local elites, and driven to migrate due to indebtedness and lack of income to pay taxes.<sup>18</sup> While working at the tea estates, oil refineries, coalmines and sawmills across the Northeast, particularly, in Darjeeling, Assam and Meghalaya, many Nepalis also decided to settle there permanently. The emigration of Nepalis to the Northeast continued unabated in the post-colonial period due to the rising demand for unskilled labour arising from infrastructure development, industrialisation and road construction taking place in the region.<sup>19</sup>

The 1950 Nepal-India Treaty of Peace and Friendship formalised the free movement of people between the two countries without requirements of any formalities like passports and visas. Thus, while Nepalis had been encouraged by the British to emigrate to different regions in India, particularly the Northeast and the Northwest; after 1950, they began venturing to industrialised centres such as Delhi, Mumbai and Bangalore, which began to offer better employment prospects.<sup>20</sup> Consequently, India hosts a large number of Nepali migrant workers, so much so that until the first Foreign Employment Act came along in 1985, foreign labour migration from Nepal was equated with movement to India, and even today, the migration of Nepalis to India remains proportionately much higher than to other destinations.

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16 New Era, 1981.

17 Nath, 2006, p. 136.

18 Adhikari and Gurung, 2009, p. 36.

19 Nath, 2006, pp. 136-137.

20 Upreti, 2002, pp. 43-44.



During the 19th and 20th centuries, the Nepali migrant population dispersed to other countries as well, namely, Bhutan, Burma, Malaysia (then Malaya), Thailand, Bangladesh (then part of India) and Tibet. While Nepali emigrants to Tibet were essentially traders, migration to Malaysia is associated with Nepalis working in plantations growing rubber, sugar and palm; and in Thailand Nepalis worked at important market places in Bangkok.<sup>21</sup> Nepali migrants to Burma comprised of those who had moved on from Assam in the late 19th and early 20th centuries, and were engaged in agriculture, dairy farming, trade and business.<sup>22</sup> Nepalis also emigrated to Bhutan during the late 19th century where they settled in the uninhabited southern region as farmers.<sup>23</sup>

With regard to Tibet, Northeast India, Burma and Bhutan, the second half of the 20th century witnessed disruption of the migration process and also some return migration. Emigration of Nepalis to Tibet was obstructed by the Chinese takeover of Tibet in 1959, while that to Burma ended when the Burmese government adopted the Burmese Citizenship Act in 1964, forcing those who wanted to retain their Nepali nationality to return to Nepal. Many Nepali emigrants returned from the Northeast India in the wake of anti-foreigner/outsider agitations that swept across almost the entire region in the 1970s and 80s:<sup>24</sup> Assam in 1979-1985; Manipur in 1980; and Meghalaya in 1986-1987.<sup>25</sup> Similarly, thousands of Nepali-speakers fled Bhutan in the early 1990s when the Bhutanese government announced that Lhotsampas (people of Nepali origin in Bhutan) who could not prove their residence in Bhutan prior to 1958 would be denied citizenship.<sup>26</sup>

### *Tracking numbers*

The national population censuses conducted since 1952/54 show that a majority of Nepalis have been emigrating to India even though their proportion relative to the total migrant population has decreased over time, particularly in the last two decades. Compared

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21 Kansakar, 2005, pp. 68-69.

22 Kansakar, 2001b.

23 Cultural Orientation Resource Centre, 2007.

24 Kansakar, 2001b.

25 Nath, 2006, p. 144.

26 Cultural Orientation Resource Centre, 2007.

to later years, the figures available for 1952/54 show some discrepancy in that of the total Nepali emigrant population only 79.4 per cent are recorded to be in India (with 3.3 per cent in Malaya, 1 per cent in Burma, 0.2 per cent in Tibet, and 0.1 per cent in Pakistan).<sup>27</sup> A full 16 per cent are said to be in other countries which remain unspecified. Later data seem more in line with expected trends: in 1961, 92 per cent were in India (3.9 per cent in Malaya, 0.9 per cent in Burma, 0.3 per cent in Tibet and 2.9 per cent in other countries); in 1981, it was 93.1 per cent; in 1991, 89.21 per cent; but by 2001, it had gone down to 77.28 per cent. It should be noted that although the percentage of emigrants to India relative to total migrants has decreased, the actual numbers have, in fact, increased considerably over the years (from 157,323 in Census 1952/54 to 589,050 in 2001).

The decrease in the proportion of emigrants to India, particularly after 1981, indicates the changing trend of outmigration among Nepalis. The census of 1991 showed that the second largest group of Nepalis emigrated to European countries followed by North America. By the time of the census of 2001, Saudi Arabia had emerged in second place with a significant number of Nepalis having emigrated to other Gulf countries like Qatar, the United Arab Emirates (UAE), Kuwait and Bahrain, and East and Southeast Asian countries such as Hong Kong, Japan, Korea, China and Malaysia. Although a large number of Nepalis have also migrated to developed countries around the world for various purposes, emigration of late has been characterised by an unprecedented outflow of Nepalis as labour migrants.

The change in migration patterns to destinations beyond India clearly coincides with the formulation of the first Foreign Employment Act in 1985. It is apparent that the Act made possible the mobility of Nepalis for employment to destinations beyond India by, among other things, setting out procedures to obtain employment overseas. The People's Movement in 1990 and the onset of democracy in Nepal also facilitated migration through the establishment of liberal governments, better means of communication, and liberalisation of the travel regime such as issuance of passports in district headquarters. Concurrently, new avenues for labour migration to destinations like the Gulf region and East and Southeast Asia emerged during this period owing to the booming economies there.

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27 National Population Census 1952/54.

Taking advantage of the government's foreign employment policy that legally permitted employment overseas, Nepalis began migrating to these new destinations.

With the opening up of new destinations, there was a steady rise in the volume of labour migrants overseas (excluding India) throughout the 1990s – 3605 in 1993/94; and then 2159, 2134, 3259, 7745, 27,796 and 35,543 respectively in the subsequent years until 1999/2000.<sup>28</sup> The period of the Maoist insurgency – 1996 to 2006 – also saw a sudden and unanticipated outflow of a large number of Nepalis for foreign employment to destinations overseas, mainly to the Gulf countries and Malaysia. While just over 3000 individuals had taken labour permits in 1996/97, the beginning of the insurgency, this figure had risen to 165,103, by the time the insurgency ended in 2005/06 (see Fig. 1.1). Given the historical trend of migration to India for employment and the open border between the two countries, out-migration to India during those volatile years is believed to have been equally high. However, despite the end of the insurgency, the upward trend in foreign labour migration has not seen any decline.

The number of women seeking foreign employment has also been rising. This is in contrast to the past when the movement of women was generally either induced by marriage (especially to India), or whole families which characterises early emigration to Northeast India, Burma and Bhutan. The low levels of female migration prior to the 1990s are generally attributed to various cultural restrictions and lack of access to resources that would have enabled them to migrate. Today, while cross-border marriages give continuity to female migration, many more also choose to migrate independently for employment overseas. Female labour migration has been in demand due to the changing household structures in some countries where women have been increasingly abandoning household chores to find employment outside. This has led to increased demand for domestic workers from countries such as Nepal. And, in Nepal, foreign employment is increasingly becoming popular among women as it gives them an opportunity to become independent, make a living, and contribute to household finances, among others. Foreign labour migration today is thus characterised by the

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28 Department of Foreign Employment, Nepal [www.dofe.gov.np](http://www.dofe.gov.np). These figures represent the number of labour permits issued. See footnote 2 as well.

migration of both men and women even though the former outnumber the latter by far.

### ***Immigration***

Along with emigration, Nepal has also experienced and accepted the inflow of people into the country. Beginning with the period of the Gorkha conquests, the Shah rulers had actively pursued a policy that encouraged immigrants from north India to settle in the Tarai in order to generate revenue to sustain its military establishment for the further expansion of its own empire.<sup>29</sup> As explained below, the process came to a halt somewhat following the eradication of malaria in 1956,<sup>30</sup> enactment of the 1964 Land Reform Act, and the nation-building project embarked upon by the Panchayat regime, which encouraged the migration of hill people into the Tarai as opposed to Indian immigration.

In general, the concentration of immigrants has been higher in the Tarai, particularly in the east. The immigration of Indian nationals into Nepal is an ongoing phenomenon just as it is the other way around. It is also claimed that particular episodes in India's (and the neighbourhood's) recent past have sparked a higher inflow of immigrants from India. For instance, there was an increase in the number of Muslims in Nepal by 39 per cent between 1981 and 1991, which can be attributed to communal disturbances in India around the same time. Similarly, there was an influx of Sikhs as well after 1984.<sup>31</sup> Developments in agriculture, industry, commerce, transpor-

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29 Stiller, 1976. To cite an example, in 1798, King Rana Bahadur Shah introduced a land resettlement policy which involved the distribution of large areas of virgin lands on a contract basis to Indian nationals who commanded sufficient resources or who were willing to make initial investments to promote land settlements. Contractors were required to pay only nominal taxes to the government but were permitted to appropriate higher taxes as well as labour obligations from their settlers. Additionally, the contractors were granted certain portions of the total land cleared by them, often the best plots, as *birta* land free of taxes.

30 Ibid.

31 Kansakar, 2001b. Beginning in the mid-1980s, Hindu extremism gained force, culminating in the destruction of the Babri Masjid in Ayodhya, Uttar Pradesh, in 1992. Similarly, the year 1984 saw the Operation Bluestar military attack on the Golden Temple in Amritsar, the holiest shrine of Sikhs, and the subsequent assassination of the Indian prime minister, Indira Gandhi, sparked anti-Sikh riots in parts of India.

tation and other activities have continued to attract Indian immigrants from across the border though perhaps at a decreasing rate in recent years, especially owing to the economic boom in India itself.

While the majority of the immigrants in Nepal have been Indians from across the border, there has also been significant immigration from Burma, Tibet, Pakistan, Malaya and Bhutan. The influx of Tibetan refugees in 1959-60 from the north is a recent migratory trend. According to national population censuses, foreign nationals accounted for 1.17 per cent of the total population in 1961; 1.18 per cent in 1971; 3.21 per cent in 1981; 0.49 per cent in 1991; and 0.59 per cent in 2001. Likewise, the foreign-born population in 1961 stood at 3.59 per cent of the total population; decreased to 2.92 per cent in 1971 and 1.56 per cent in 1981; before rising to 2.38 in 1991 and 2.67 per cent in 2001.<sup>32</sup>

### ***Internal Migration***

Internal migration in Nepal initially consisted of migration from the Hills to the Tarai, primarily after the eradication of malaria in the 1950s. However, the scale of rural-urban migration in Nepal has also been substantial. In the beginning, expansion in administrative and transportation infrastructure led to an increase in services in existing towns and also to the emergence of new localities with urban commercial functions, which in turn attracted people from the neighbouring rural hinterland.<sup>33</sup> Lately, however, internal migration, especially rural-urban migration, has been promoted by international migration as migrant families have been leaving their rural households in search of better livelihoods and standards of living in urban areas,<sup>34</sup> even as the Hill to Tarai movement continues.

The direction of migration from the hills to the plains is indicative of Nepalis' dependence on agriculture as people moved from the land-scarce Hills to clear the Tarai forests for farming.<sup>35</sup> However,

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32 New Era, 1981, pp. 48-53.

33 New Era, 1981, pp. 55-73. (The censuses since 1952/54 qualify localities with over 5,000 population as urban.)

34 Urban population accounted for 2.9 per cent of the total population in the census of 2052/54, 3.6 per cent in 1961, 4 per cent in 1971, 6.4 per cent in 1981, 9.2 per cent in 1991, 13.9 per cent in 2001 and 17 per cent in 2011. (Sharma, 2005, pp. 32-52; and Central Bureau of Statistics, 2011a.)

35 New Era, 1981.

as stated earlier, equally important were state policies that encouraged Hill migration to the Tarai, following the government's policy of providing land grants to its officers, land reclamation and settlement encouraged by the state, eradication of malaria, and the 'Nepalisation' of the Tarai embarked upon by the Panchayat regime.<sup>36</sup>

The result, as seen in the census records, is that the share of the Tarai population increased from 35 per cent of the total population in 1952/54 to 44 per cent in 1981.<sup>37</sup> As of 2011, the Tarai was home to 50.15 per cent of the national population compared to 43.1 per cent in the Hills and 6.75 per cent in the Mountains.<sup>38</sup>

### **Labour Migration Today**

At present, nearly half of all households in Nepal have at least one member abroad or a returnee.<sup>39</sup> The number of labour migrants is increasing every year and so is the scale of remittances they send back. The top destinations to which Nepalis migrate for work include the Gulf countries and Malaysia, but their origin can be traced to each of the 75 districts of Nepal. But comprehensive data on Nepali labour migrants is difficult to come by. Unavailability of data is much greater with regard to Nepalis migrating to India for employment since neither the Nepali nor the Indian government has any mechanism to keep records of those going to India. It is equally difficult to keep track of Nepalis heading south to India as a fair number of them migrate to India seasonally, moving back and forth one or more times a year. There are, however, some studies that provide information on the number and characteristics of Nepali migrant workers in India but these have generally been conducted at a small scale and focus on a particular region only.<sup>40</sup>

There are two main sources of data from which national-level statistics on migration can be obtained: (i) the decennial national

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36 Gaige, 2002.

37 Ministry of Health and Population, 2011.

38 Central Bureau of Statistics, 2011a.

39 World Bank, 2011a.

40 Some surveys that give information of Nepali migrant workers in India are: Nepali Emigrants in India 1987; Nepalese Migrants in Delhi 2005; Project: Nature and Society (Social Networks and Migration: Far West Nepalese Labour Migrants in Delhi) 2006; Passage to India: Migration as a Coping Strategy in Times of Crisis in Nepal 2008; Nepal Migration Survey 2009; Migration, Security and Livelihoods: A Case of Migration between Nepal and India 2009 (Sharma and Sharma, 2011).

population census; and (ii) the Department of Foreign Employment (DoFE). Even though the decennial national census has been recording the population absent from home (including those who are out of the country) over the years, but the data collected groups together everyone who has left the country for any purpose (such as study abroad, marriage, business, etc) and not just for foreign employment. The DoFE does record the number of individuals going abroad for employment, but this source too does not accurately reflect the scale of foreign labour migration. First, it is based only on the number of labour permits issued by the government to go abroad as labour migrants. Hence, these records do not account for those who go to India for employment. Second, the data from the DoFE only indicates the number of labour permits issued and does not take into consideration the fact that the same individual may have received multiple permits over the years and/or there could be cases where permits have been issued but not used.<sup>41</sup>

Apart from the data from the national census and the DoFE, another recent source of information on migration patterns in Nepal is the Nepal Migration Survey (NMS), a survey of 3200 households carried out by the World Bank in 2009. It provides a comprehensive overview of the current patterns of migration and remittance, channels of remittance, the process of migration, and its impact on households and the economy.

### ***Labour Migration: Statistical Overview***

Despite some shortcomings, the DoFE figures currently represent the most valuable source of information on the number of people who have left the country for foreign employment (to countries other than India). As shown in Figure 1.1, the DoFE recorded 3605 Nepali migrant workers seeking foreign employment in the fiscal year 1993/94.<sup>42</sup> While the number remained consistently low till 1996/97, it began increasing drastically thenceforth.<sup>43</sup> After only two

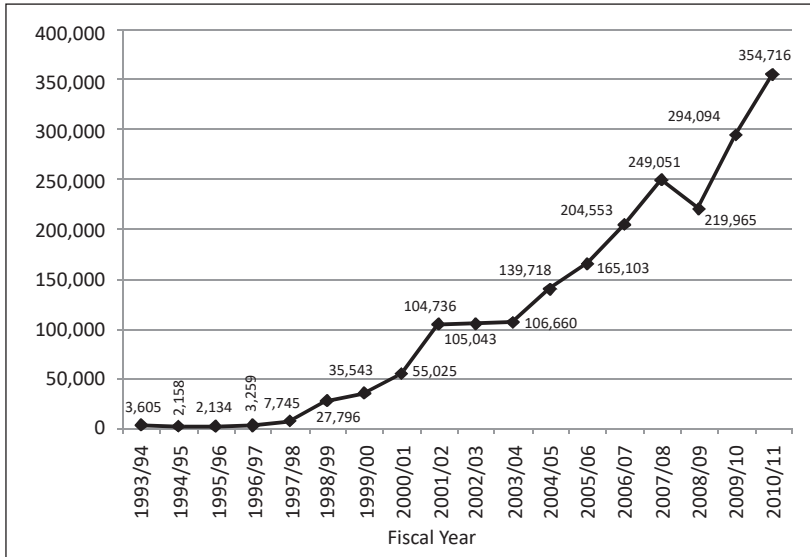
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41 The data provided by the DoFE is the only 'authentic' data on labour migration in Nepal. However, these figures indicate only the number of documented labour permits taken by migrants who use legal channels to migrate to destinations beyond India.

42 The DoFE data on the number of work permits issued is only available from the fiscal year 1993/94

43 According to DoFE records, 3259 Nepalis took labour approval for foreign

Figure 1.1: Number of Work Permits Issued



Source: Based on data obtained from the Department of Foreign Employment.

years into the insurgency, in 1998/99, 27,796 labour permits were issued. By the end of the insurgency in 2006, the number of individuals receiving labour permits had risen to 165,103 (2005/06). The slight dip in 2008/09 can be attributed to a decrease in the demand for workers due to the global financial crisis. But the figures have since bounced back.<sup>44</sup> The number of individuals who obtained work permits in the fiscal year 2010/11 alone is 354,716, out of which 10,416 (or 2.9 per cent) were women.

In terms of migration to India, the World Bank's Nepal Migration Survey 2009 calculated there to be 867,000 Nepali migrant workers in India, a figure that accounts for 41 per cent of the total 2.1 million Nepali workforce estimated to be abroad.<sup>45</sup> According to the Survey, a further 38 per cent (810,000) are in the Gulf countries and 12 per cent (245,500) in Malaysia.

The national censuses record data on the absentee population<sup>46</sup>

employment during the fiscal year 1996/97.

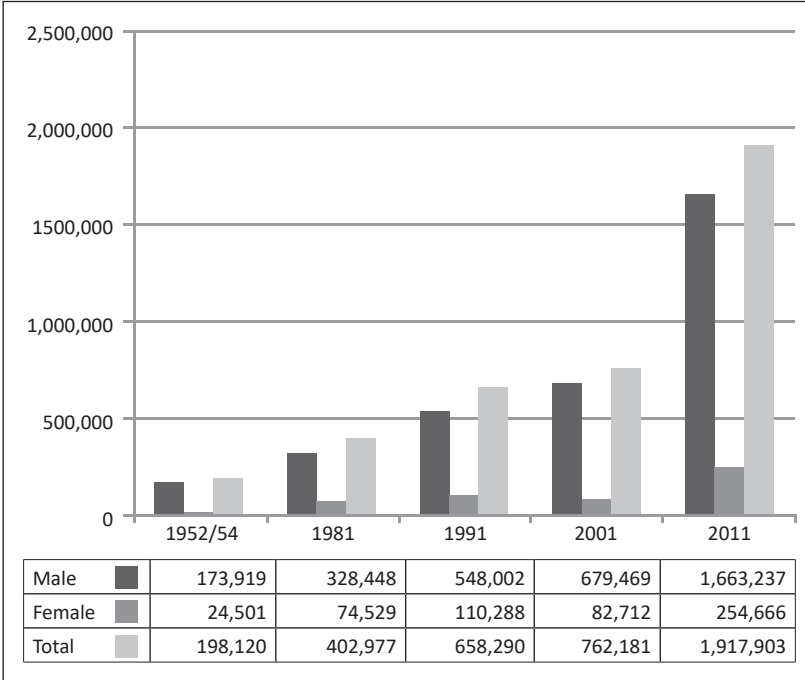
44 Department of Foreign Employment, Nepal.

45 World Bank, 2011a, p. i.

46 Absentee population – An individual absent from the household and gone abroad for more than six months before the census date has been defined as an “absentee” for the census enumeration purposes.



Figure 1.2: Absentee Population (Gone Abroad) over the Years\*



\* The census of 1971 only has data on internal migrants and not on external absentee population.

Source: Central Bureau of Statistics, Nepal

and the preliminary figures available for the 2011 census show 1.92 million Nepalis abroad (Fig. 1.2). This marks a considerable jump from a comparatively low of 762,181 in 2001, and bucks the trend of a slow but steady rise in absentee population since such data began to be collected in 1952/54.

### **Remittances**

Remittances sent home by migrant workers are a critical source of foreign exchange as well as a mainstay of the national economy. Recent data on the contribution of officially recorded remittances to individual households and the national economy amounted to an equivalent of 20 per cent of the gross domestic product (GDP) in 2010 and 2011.<sup>47</sup> In total, Nepal received USD 3.5 billion in remittances

<sup>47</sup> World Bank, 2011c; and World Bank, 2012.

in 2010.<sup>48</sup> It is noteworthy that despite the considerable increase in the number of migrant workers, remittance inflow as a percentage of GDP has not increased proportionately. Remittances contributed to 22.9 per cent, 20 per cent and 20 per cent to Nepal's GDP in 2009, 2010 and 2011 respectively even as the number of migrant workers increased from 219,965 in 2008/09 to 294,094 in 2009/10 and 354,716 in 2010/11. Furthermore, official remittance figures are believed to be lower than the actual volume remitted. This is attributed to the informal channels that workers use to send their earnings back home. It is estimated that the informal remittance flow from India could add another 4 per cent to the GDP, and funds coming in by way of *hundi*<sup>49</sup> and carried in person could add another 2-3 per cent.<sup>50</sup> Hence, the actual total remittance could be higher, at 25-30 per cent of GDP.

Notwithstanding the importance of the remittances to the national economy, its contribution to the household economy is even more significant. According to preliminary results obtained from the Nepal Living Standards Survey (NLSS) 2010/11, 56 per cent of Nepali households receive remittances. Of the total amount of remittances received by households, 19.6 per cent was from within Nepal; 11.3 per cent from India; and 69.1 per cent from countries other than India.<sup>51</sup> Qatar accounted for 16 per cent of the total share of remittances; Saudi Arabia, 9.9 per cent; and Malaysia, 8.4 per cent. The bulk of the remittances channelled through financial institutions also came from these three countries. The NLSS estimates that Nepal received a total of NPR 259 billion (USD 3.5 billion) as remittances in the year 2010/11. Of this, 77 per cent was transferred in person; 19 per cent via financial institutions; 3 per cent via *hundi*; and 2 per cent by other means.

The proportionate decrease in labour migration to India has also brought down its share of remittances. An analysis of the three NLSSs so far (1995/96, 2003/04 and 2010/11) suggests that remittances

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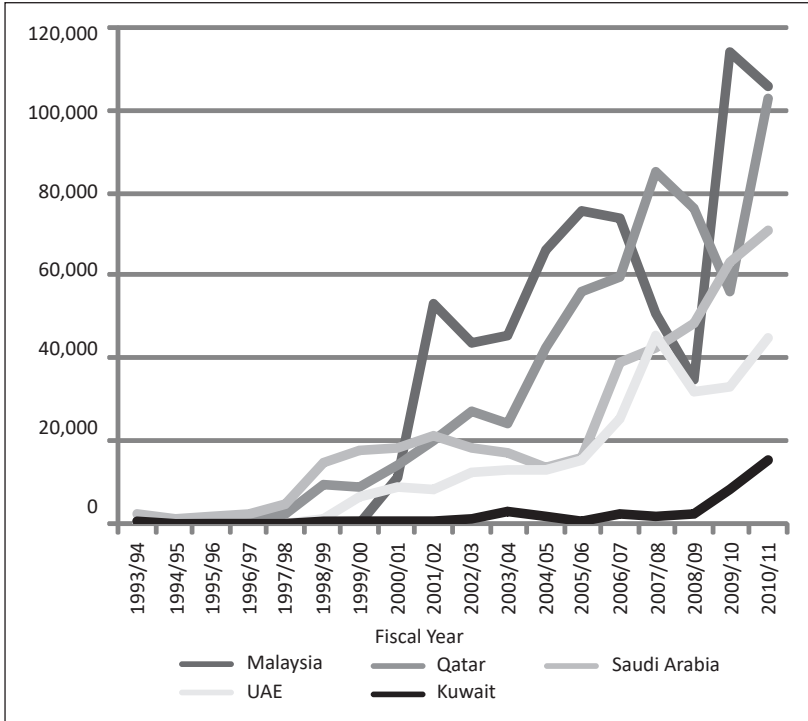
48 World Bank, 2011d.

49 *Hundi* is a traditional system of money transfer widely practised in the Indian subcontinent whereby individuals in destination countries give money to an agent, who instructs his/her associate back home to deliver the money to the concerned individual referred by the remitter. *Hundi* is illegal in most countries but still very common.

50 World Bank, 2011c.

51 Central Bureau of Statistics, 2011c, p. 80.

Figure 1.3: **Number of Work Permits Issued for Foreign Employment in Five Major Destinations, 1993/94 to 2010/11**



Source: Based on data obtained from Department of Foreign Employment

from India have decreased over the years: from 32.9 per cent in 1995/96 to 23.2 per cent in 2003/04 and 11.3 per cent in 2010/11.

### **Major Destinations**

India continues to be the highest recipient of Nepali labour migrants. Among the other Nepali migrant-receiving countries, until 2000/01, Saudi Arabia was where the highest number of Nepali migrant workers went. But with Nepalis starting to go to Malaysia that same year, it soon overtook Saudi Arabia as the most-favoured destination of Nepali migrant workers and has remained so, apart from the years 2007/08 and 2008/09 when more Nepalis went to Qatar. Both Malaysia and Qatar have attracted more Nepali migrant workers than any other country (apart from India) in recent years (see Fig. 1.3). In 2010/11, as many as 105,906 Nepalis received work permits to work in Malaysia; 102,966 in Qatar; 71,116 in Saudi Arabia; 44,464 in the United Arab Emirates; and 15,187 in Kuwait.

In contrast to men, the majority of Nepali female migrants in 2010/11 took up employment in Kuwait, while records of the three years prior to that have shown the highest number working in Lebanon. Similarly, Israel, Bahrain and the UAE are other popular destinations for female migrants. (See Annex 1 for details on the number of work permits issued.)

### ***Demographic Profile of Migrants***

Nepalis from the Mid- and Far-Western Nepal have always had a greater inclination to migrate to India than to other destinations. This trend is confirmed by NMS 2009, which also reports that people from the Eastern, Central and Western regions are more likely to migrate to the Gulf countries and Malaysia. Similarly, the NMS 2009 indicates that people from urban areas have a higher probability of migrating to the West, while those from the rural areas generally migrate to India and the Gulf.<sup>52</sup>

The absentee population recorded by the national population censuses over the years also reveal a similar pattern in the origin of migrants. According to the 2011 census, the absentee population is highest in the Hills (52 per cent) followed by the Tarai (42 per cent) and the Mountains (6 per cent). Figure 1.4 shows that the highest number of emigrants is from the Western Development Region while the least are from the Mid-Western Development Region. Likewise, among the total external migrants, 14.6 per cent belong to urban areas and 85.4 per cent to rural Nepal.<sup>53</sup>

In terms of social groups, the NMS shows that Hill Dalits have the highest probability of migrating to any destination (50 per cent), while it is the lowest for Tarai Dalits (24 per cent) and Newars (25 per cent). The largest cohort of emigrants among Hill Dalits, Madhesi Middle Castes and Bahuns/Chhetris go to India, while in the case of Hill and Tarai Janajatis, Tarai Dalits and Muslims, it is the Gulf countries. In the case of Muslims, more than three quarters go to the Gulf.<sup>54</sup>

The destination of migration is determined to a large extent by household wealth. Poor migrants invariably tend to go to India but

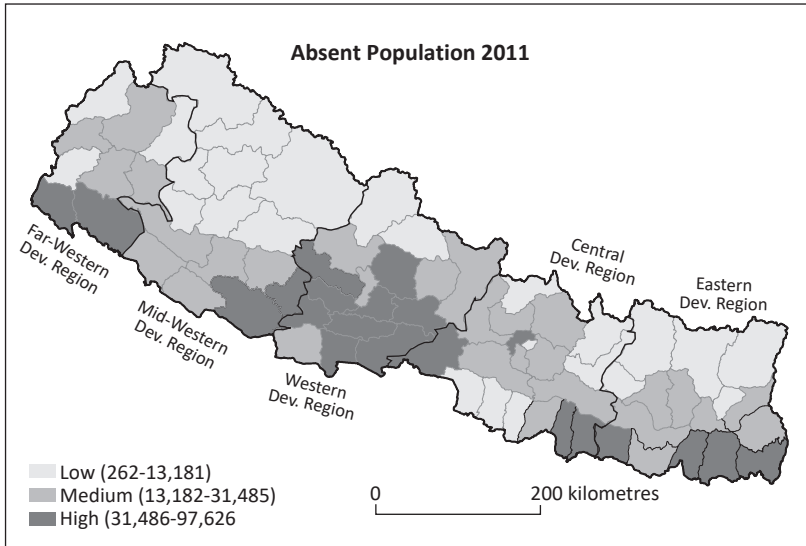
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52 World Bank, 2011a, pp. 35-37.

53 Central Bureau of Statistics, 2011a.

54 World Bank, 2011a, p. 36.

Figure 1.4: Absentee Population (Gone Abroad) by District



Source: National Population Census 2011

with a rise in household wealth, other destinations begin to look more attractive. The chances of a household sending a migrant to the Gulf countries or Malaysia rises with wealth up to the fourth quintile but goes down for the richest quintile. For the last group, the likelihood of having a migrant in the household goes down to the level of the poorest quintile but at the same time the probability of having someone in the West is the highest for this group.<sup>55</sup>

### **Sectors of Work**

A majority of the migrants work in the manufacturing and construction sectors as welders, construction fixers, carpenters, electricians, masons, plastering and painting workers, drivers and plumbers, and they also find work as security guards and technical workers.<sup>56</sup> Most female migrant workers find employment as domestic workers and caregivers, and in hotels, catering, manufacturing, and health and medical services.<sup>57</sup>

55 World Bank, 2011a, p. 35.

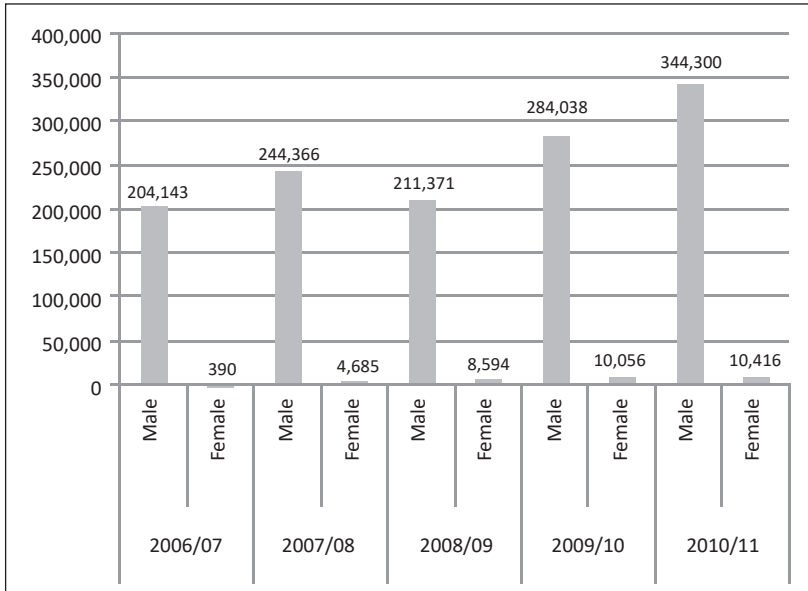
56 Gurung and Adhikari, 2004.

57 World Bank, 2011a.

### ***Age, Gender and Education***

According to the NMS 2009, 80 per cent of the migrants are between the ages of 20 and 44, with the majority in their mid-20s. Similarly, the NLSS 2010/11 reports the majority of the absentee population to be in the age group 15 to 29 years.<sup>58</sup>

Figure 1.5: **Number of Work Permits Issued by Sex**



Source: Based on data obtained from Department of Foreign Employment

In terms of education, the NMS indicates 87 per cent of the migrants to be literate. However, those migrating to India have a comparatively lower literacy rate than those going to other destinations. Similarly, it points out that while more than a third of the total migrants to developed countries have at least a bachelor's degree, less than two per cent of migrants to other destinations have a bachelor's degree. In other words, labour migrants to the Gulf countries have a lower academic qualification compared to migrants to western countries,

<sup>58</sup> NLSS 2010/11 defines 'absentee' as an individual who is considered by the reporting household as its member at the time of the interview but who is excluded from the survey's definition of household membership because of his/her prolonged absence (away for/expected to be away for more than six months).

while the migrants to India are those with the lowest academic qualification.

While official figures of Nepalis seeking foreign employment in destinations beyond India became available from the fiscal year 1993/94 onwards, gender-segregated data became available only after the fiscal year 2006/07. The DoFE figures show that a mere three per cent of the total individuals receiving permits for foreign employment in 2010/11 were women. The 2011 census, on the other hand, indicates that females comprise 13.3 per cent of the total absentee Nepalis, while, according to the NMS 2009, 10 per cent of the total migrants are females (the last two figures, of course, include those going to India as well).

All these sources make clear that females migrate for work at a lower proportion than males. However, it is also important to note that figures obtained from the DoFE could be an underestimation because of the illegal channels that Nepali women use to reach Gulf countries, given the barriers that the government has placed on female migration, most notably, the ban on female migration to these countries in 1998, which was partially lifted in 2003 and done away with only in 2010.

### **Impact of Labour Migration**

The unprecedented increase in foreign labour migration from Nepal has had an impact on various aspects of the economy and society. The national economy is increasingly becoming dependent on remittances, and while the inflow of money is helping reduce poverty and has become a means of sustenance for hundreds of thousands of families, it has brought with it central questions for policy makers regarding its long-term impacts, particularly in forms such as remittances being susceptible to economic downturns in destination countries, the rise in national wages due to outmigration of the labour force, Dutch disease,<sup>59</sup> etc. Foreign labour migration has also seemed to create an imbalance in local labour markets. For instance, it has been reported that 30,000 Bangladeshi workers today fulfil the labour shortage in the brick industry in the eastern Tarai, when

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59 World Bank, 2011a. 'Dutch disease' refers to erosion of external competitiveness and decline in the manufacturing sector due to a large amount of foreign exchange flowing into an economy, so called because of what happened in Holland after the discovery of a big natural gas field in 1959.

earlier it used to be Nepalis and a few Indians who worked in these brick factories.<sup>60</sup>

Further, as a major labour-sending country, a matter of greater concern for Nepal has also been the increasing number of problems faced by Nepali migrant workers in destination countries as well as at the hands of agents and recruitment agencies (known as manpower companies in Nepal). The majority of the complaints registered with the DoFE deal with the difference between the amount of salary mentioned in the contract signed in Nepal and what is actually paid in the destination country. The working and living conditions in the destination countries are also reported to be very hazardous, and diseases, workplace injuries and deaths are common. Nepali female migrants working as domestic workers face multiple forms of abuses—mental, sexual and physical—at the hands of their employers.<sup>61</sup> Moreover, the trend of Nepalis going abroad using fake documents and through third countries, especially India, is growing. There is a very high risk that those migrating in such a manner, i.e., without any government oversight, become victims of human trafficking.

In the recent past, Nepalis have also become victims of terrorism in countries like Iraq and Afghanistan.<sup>62</sup> But, comparatively, there have been many more cases of deaths, suicides, murders and rapes in destination countries. Official data show that 826 Nepalis died abroad in the year 2010,<sup>63</sup> but the actual number could be much higher as it is believed that, on average, three dead bodies of Nepalis arrive daily at the Tribhuvan International Airport in Kathmandu. Needless to say, these issues have drawn Nepal into the centre of the international debate concerning the rights and interests of migrant workers.

Amidst the dynamic socio-economic and political scenarios, it has become necessary for the government to become alert and gain foresight in order to avoid unwanted risk and consequences for the Nepali labour migrant population. There is a need for effective mechanisms to be put in place in order to regulate labour migration as a whole

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60 'Short-handed brick factories hiring Bangladeshi workers', *The Kathmandu Post*, 9 January, 2012.

61 For details, see Bajracharya and Sijapati, 2012.

62 For instance, 12 Nepalis were brutally killed in 2004 in Iraq, and many have lost their lives in Afghanistan.

63 'Over 800 workers died abroad, 160 suicides', *The Himalayan Times*, 14 January, 2011.



and to protect migrants in a foreign country. The foreign employment policies adopted by Nepal are important policy measures. Obligations have also been mentioned in the bilateral agreements signed between Nepal and a few destination countries as well as in international treaties that Nepal is party to. These national, bilateral and international policy measures adopted by the Nepali government for the welfare of its citizens migrating for foreign employment will be discussed in the following three chapters.

## CHAPTER 2

# National Instruments Guiding Labour Migration in Nepal

### **Background**

Foreign labour migration from Nepal is currently governed by the Foreign Employment Act 2007 and also a host of other national laws (see Table 2.1), bilateral agreements and international conventions. The government's effort to promote foreign employment and adopt measures to protect the rights of migrant labourers is fairly recent, beginning with the formulation of the Foreign Employment Act in 1985. With this Act, the government, for the first time, provided an institutional mechanism for Nepalis to seek employment abroad. The Act was later amended on two separate occasions, in 1993 and 1998; it was amended for the third time in May 2007 but soon thereafter replaced by the Foreign Employment Act 2007 in September that same year. These changes demonstrate that the government has also sought to attune the policy and legal frameworks governing foreign employment with new trends in foreign labour migration.

Foreign labour migration has wide-ranging consequences on any sending country. Most importantly, it has a direct impact on the economy and society, ranging from employment, balance of payments, wages and price levels to family relations or structure at home. Hence, countries intervene in the migration process and monitor their impacts right from policy level to implementation. In general, countries adopt a foreign employment policy either for development or social objectives though the specific goals may vary from country to country. In most countries, the development objectives of foreign employment policies are to reduce unemployment, generate greater foreign exchange income, increase the rate of savings, and increase social returns on investment in education. Similarly, some of the social objectives include: improving the wages and conditions

of employment of citizens working abroad; reducing the cost of migration by curbing recruitment abuses; providing safety nets for migrants and their families; and putting a check on undocumented migration to make the migration process more orderly.<sup>64</sup> These objectives also hold true for Nepal, but it is also important to understand and analyse changes in the laws governing foreign employment against the wider backdrop of labour movement, within and outside of Nepal.

**Table 2.1: National Instruments Guiding Nepal's Foreign Labour Migration**

<b>Foreign Employment Acts</b>	<b>Other National Instruments</b>
Foreign Employment Act 1985	The Interim Constitution 2007
Foreign Employment (First Amendment) Act 1992	Labour Act 1992
Foreign Employment (Second Amendment) Act 1998	National Labour Policy 1999
Foreign Employment Rules 1999	Labour and Employment Policy 2005
Foreign Employment Act 2007	Trade Union Act 1992
Foreign Employment Rules 2008	Child Labour (Prohibition and Regulation) Act 2000
Foreign Employment Policy 2012	Children Act 1992
	Human Trafficking and Transportation (Control) Act 2007
	Immigration Act 1992
	Passports Act 1967
	Nepal Citizenship Act 2006
	Non-Resident Nepali Act 2008

In the global context, while labour movement can be traced as far back as the Industrial Revolution of the 18th and 19th centuries, the establishment of the International Labour Organisation (ILO) in 1919 after the end of the First World War heralded a new era in the history of labour movement by setting universal standards regarding labour. ILO is the only UN agency that has a tripartite structure, including government representatives, employers and workers, and its establishment came in the context of the exploitation of workers in industrialising countries; the realisation of the economic interdependence amongst various national economies; the need for cooperation to obtain similar working conditions in countries competing

64 Abella and Abrera- Mangahas, 1997.

for markets; and a keen appreciation of the importance of social justice in order to institute peace.<sup>65</sup>

The origins of the labour movement in Nepal goes back to the time that the autocratic Rana regime was on its way out in 1950-1.<sup>66</sup> The workers' agitation in the Biratnagar Jute Mill in March 1947 is considered the first labour movement in Nepal. Following the democratic change of 1951, a number of workers' unions came into existence, and the struggle for labour rights continued. It took almost a decade before the Factory and Factory Workers Act was enacted in 1959 (although it came into force with retroactive effect only in December 1961). The Act was the first legal document on labour relations, and was amended three times, in 1960, 1973 and 1977, before being replaced by the Labour Act of 1992. Similarly, the Trade Union Act was formulated in 1992 and amended once, in 1999.<sup>67</sup>

### **Legislating Foreign Employment**

The Foreign Employment Act of 1985 came at a time when migration of Nepalis for employment was limited largely to India. Only a few Nepalis were known to be working overseas using private contacts at their own initiative. In the wider context, Gulf countries like Saudi Arabia, the United Arab Emirates and Qatar were experiencing a prosperous era of oil boom following the 1973-82 'oil decade' and were attracting a large number of foreign workers, particularly from developing countries, to work in their numerous development projects. The rapid economic boom in these countries during that decade led to 4.4 million foreign labourers arriving for employment in countries belonging to the Gulf Cooperation Council (GCC)<sup>68</sup> in 1985 alone. This represents more than a three-fold increase in a single

65 International Labour Organisation, 'Origin and History', [www.ilo.org](http://www.ilo.org).

66 Friedrich Ebert Stiftung, 'Origin of Trade Unions in Nepal', [www.nepaldemocracy.org](http://www.nepaldemocracy.org).

67 The main objective of both the Labour Act and Trade Union Act is to make timely provisions for the rights, interests, facilities and safety of workers and employees working in enterprises of various sectors. While the Labour Act relates directly with labour, the Trade Union Act deals with the registration and operation of trade unions.

68 The Cooperation Council for the Arab States of the Gulf (CCASG), also known as the Gulf Cooperation Council (GCC) is a political and economic union of six Gulf states, namely, Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates.

decade and foreign workers comprised approximately 60 per cent of the total workforce in these countries. Despite adopting policies to replace foreigners in the Gulf countries with their own citizens, the trend continued in the latter half of the 1980s and into the 1990s. In 1999, the number of foreign workers in those countries reached a total of 7.1 million – 70 per cent of the workforce.<sup>69</sup>

Despite a history that is over a quarter century old, Nepalis, as well as South Asians in general, are regarded as latecomers in the Gulf countries, which earlier hosted a larger number of Arab labourers from poorer countries like Egypt, Syria and Yemen as well as Palestinians. This arrangement was somewhat disrupted after the Arab-Israeli War of 1973, and more so after the 1990 Gulf War when the Yemenis and Palestinians were seen as having sided with Iraq during the war.<sup>70</sup> Labour migration into the Gulf region continued, with the citizens of these countries largely involved in the public sector while foreign workers were assigned to the private sector under the *kafala* system.<sup>71</sup>

Within Nepal, an increasing number of individuals were entering the labour market every year. The demand for labour in the Gulf countries served as a good opportunity for those who could not be absorbed into the national economy. But, despite the promulgation of the Foreign Employment Act in 1985, the Nepali government's attitude towards migration during the 1980s and early 1990s was restrictive even though the lack of employment opportunities at home and the promise of better prospects abroad was prompting more people to leave the country. The Foreign Employment Act 1985 was aimed at regulating foreign employment but it also had provisions through which the government could restrict the migration of qualified individuals who could potentially be used for the development of the country. The successive two amendments continued to uphold the restrictive principle with the aim of promoting economic growth at home. It can thus be argued that Nepal's foreign employment policies were initially geared towards regulating migration and preventing an exodus of qualified individuals. As

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69 Winckler, 2010, pp. 9-12.

70 Rahman, 2010, pp. 16-18; Colton, 2010, pp. 34-36.

71 Under the *kafala* system, a migrant is sponsored by an employer and assumes full economic and legal responsibility of the employee during the contract period. Nepalis in the Gulf also come under this same system. See also Bajracharya and Sijapati, 2012, for a detailed discussion on the *kafala* system, [www.ceslam.org](http://www.ceslam.org).

will be further elaborated in the ensuing section, the government's policies saw a drastic turnaround with the 2007 Act that sought to facilitate Nepalis to seek foreign employment than simply regulate their movement.

### ***Foreign Employment Act 1985***

The Foreign Employment Act 1985 called for licensing of institutions that wanted to be involved in the foreign employment business, the need to seek approval from the government while selecting workers, for business operators to advertise vacancies and mechanisms for action in case of non-compliance with the Act. However, as is obvious from the preamble itself, the first Act was aimed at controlling, not facilitating foreign labour migration. The main features of the 1985 Act are as follows:

#### *The preamble*

The preamble states that the Act was meant 'to control and manage foreign employment to maintain financial interests and facilities of the general public'.

#### *Provisions relating to licensee*

The Act made it mandatory to acquire a licence prior to operating foreign employment business, including submission of a security deposit. The licensee, or licensed recruitment agency, was allowed to send Nepalis only to those countries specified by the government.

#### *Provisions relating to selection of workers*

The Act required the licensee to obtain prior permission from the government while selecting individuals for foreign employment. While applying for permission, the licensee was required to provide details of where the worker was to be employed, the type of foreign employment, a copy of the agreement between the employer and the licensee, a copy of the contract to be entered into between the employer and the worker, etc.

The government was also given the option of denying approval if the applicant's qualifications were deemed necessary for the economic development of the country. Likewise, the government could withhold permission if the proposed employment was not governed by the laws of the destination country; if the services, terms and

facilities were found unsatisfactory compared to the qualification demanded by the employer; and if the proposed work was against the 'value, dignity or health of the worker'.

According to the Act, the position for employment abroad was to be advertised after obtaining prior approval from the government. The selection of the worker was to be done impartially, and representatives of both the government and the employer (if interested) were to be included in the selection process.

The Act prohibited women from going for foreign employment without the consent of their guardians, and had a similar provision for children.

#### *Provisions relating to sending workers for foreign employment*

The recruitment agency was allowed to charge a service fee as prescribed by the government and was required to provide detailed information to the worker about the full contents of the contract, including the facilities the worker would be entitled to, before it was signed by the worker and the employer. Additionally, the recruitment agency was also obliged to give details about the possible consequences of foreign employment as well as information about the geographical location, culture, labour laws and the economic, political and social conditions of the destination country. It was the responsibility of the company to keep a record of the workers it sent for foreign employment.

A copy of the contract signed by the two parties was to be provided to the worker and the government, and it was specifically mentioned that such a contract should not be different from the contract submitted by the recruitment agency. Only after these formalities were fulfilled, would the government give permission to the company to send the worker abroad.

The Act also allowed individuals to go for foreign employment in their personal capacity after obtaining the required work permit from the government.

#### *Other provisions*

The Act made it the responsibility of the recruitment agency to make arrangements for the transfer of remittances to Nepal.

It also provided for the formation of an advisory committee to advise the government on foreign employment. It conferred power

on the government to cancel the licence of companies at any time, and also gave it authority to inspect documents and undertake investigations on complaints registered by the worker or the employer in the destination country. If after investigation it was found necessary to call the concerned worker back home, the recruitment agency was required to provide the necessary funds for the worker's repatriation. In case of failure to do so, the government could deduct the necessary amount from the deposit provided by the company at the time of obtaining its licence.

The types of penalties in case of non-compliance with the Act were also mentioned: a fine of up to NPR 5000 for failing to observe the provisions of the Act or the rules; fine of up to NPR 10,000 or imprisonment of up to two years or both if someone was involved in the foreign employment business without obtaining a licence; and a fine of up to NPR 5000 or one year's imprisonment or both if someone concealed, changed or falsified the facts in any document, report, audit, etc. The recruitment agency was also liable to have its licence cancelled if it was penalised for any of the above-mentioned offences. Further, the government was to serve as the plaintiff in any case filed under this Act. (See Annex 2 for the full content of the Foreign Employment Act 1985.)

The Foreign Employment Act 1985 is the first legal document to address the migration of Nepalis for employment to countries beyond India, and it aimed to control and manage as well as maintain the economic interests of the general public. As for India, as will be discussed in Chapter 3, the open border between Nepal and India, and the provision of reciprocal rights to citizens of each country under the Nepal-India Treaty of Peace and Friendship of 1950 means that Nepalis do not require permission to work in India and vice versa. Hence, Nepal's foreign employment laws do not have any implications for those going to India.

As the first policy document addressing Nepali labour migration, the Foreign Employment Act 1985 not only brought migrants within the government's legal framework, it also opened the door for the currently flourishing recruitment business.

In general, the Act was geared towards regulating, controlling and managing the process of obtaining foreign employment, and thus failed to consider the welfare of the migrants. For instance,



the Act completely overlooked the aspects of safety and security of the migrants in destinations as well as after their return to Nepal. It was silent on the issue of insurance, compensation to the injured, bringing back the bodies of the deceased, etc, that the Foreign Employment Act 2007 has taken up. Despite these shortcomings, the Act was a landmark in the mainstreaming of labour migration in that it recognised foreign employment of Nepalis beyond India.

### ***Foreign Employment (First Amendment) Act 1992***

The first amendment to the Foreign Employment Act 1985 did not involve many changes to the original Act apart from a few minor modifications to some articles and the addition of some new sub-sections. Like the original Act, the 1992 Amendment was geared towards better management of foreign employment as well as control over it. The changes and incorporations made in 1992 reflected the objective of the government to keep licensed recruitment agencies under its purview. For instance, while the original Act did not have any provisions on ownership or liability, the 1992 Amendment prohibited the transfer or alteration of ownership and liability of the licensed agency without the approval of the government.

The new sub-sections under 'Selection of Workers' mirrored the government's attempt to make the selection process of workers more swift, systematic and transparent. The new provisions required the company to submit the name list of selected workers to the government within seven days of the date of selection. The 1992 Amendment also mandated that selected workers be sent for foreign employment within four months of the date of selection, and in case the company failed to do so, it was to pay back the amount received from the workers along with an interest (at 18 per cent per annum) within 15 days.

The two new sub-sections under 'Investigation' reveal the government's intention to forestall any financial burden while having to bring back stranded workers by making the recruitment agency liable for any such expenditure. While the original Act had provisions to use the deposit of the company repatriating workers,<sup>72</sup> the new provi-

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72 The repatriation of workers was possible in case of any complaints regarding the employment and if the licensed agency failed to abide by the government's order.

sions required the company to be informed as soon as possible about reimbursing the funds spent from the deposit and for the company to deposit that amount within 15 day of receiving such a notice. In case the deposit was insufficient for repatriation, the company was to pay the due amount within the time notified by the government. In cases of failure to pay within the specified time frame, the government was authorised to realise the amount from the assets of the licensee.

Penalties were made more severe in the 1992 Amendment, with a rise in fines as well as an increase in the number of years of imprisonment. In the case of non-compliance to the Act, a licensee could be fined up to NPR 25,000. Anyone conducting foreign employment business without a licence or having sent anybody by providing false assurances or having taken money on such pretences was liable to pay back the money along with 18 per cent interest on that amount besides covering the two-way travel expense of the migrant. Such offenders were also fined an amount ranging from NPR 50,000-200,000 or imprisoned for one to five years or both. However, if the worker had not been sent abroad, the offender was liable to pay only half of the aforementioned amount.

In cases where someone concealed, changed or falsified facts in any document, report, audit, etc, the offender could be fined NPR 25,000-100,000 or imprisoned for six months to three years. The licence of the concerned company was also to be cancelled for such an offence. Moreover, if any person was found to have abetted an offence, they were also to be held liable to half the punishment granted to the offender besides being prohibited from receiving a licence to conduct foreign employment business. (See Annex 3 for the full content of the Foreign Employment [First Amendment] Act, 1992.)

### ***Foreign Employment (Second Amendment) Act 1998***

The Foreign Employment Act of 1985 was further amended in 1998 and the government introduced certain flexibilities in order to make foreign employment business more accessible and convenient. For instance, immovable assets were accepted from the licensee in case the deposits were insufficient. The government made more stringent effort to make the selection process more transparent and dependable. While obtaining permission to select workers for foreign employment, the 1998 Amendment required that in addition to details of the type of employment, the licensee also had to furnish a

duplicate copy of the requisition notice of the employer institution, and a copy of its licence.

The section on 'Advertisement' was expanded, now requiring the recruitment agency to mention the terms of service and facilities available while advertising positions for foreign employment, the service charge to be paid to the company, and the time-frame for application. Likewise, the licensee was also required to prepare a merit list of the applicants and submit the same to the Department of Foreign Employment (DoFE) along with alternative names for not more than five per cent of the total number of positions. The company was required to make the selection according to the order in the merit list. If a person from the merit list was selected without advertisement such information was to be provided to the DoFE.

The 1998 Amendment also made the provision on the 'restrictions on children' more specific by categorising minors as those below the age of 18. It continued with its restrictive position on women, and, in fact, added that women wanting to leave the country for foreign employment had to take permission from the government in addition to their guardians, which was already mentioned in the 1985 Act.

The second amendment also required the company to provide specific information to the worker about the nature of work to be done rather than just the social conditions under which they will be working. The licensed agency was also required to submit an annual report detailing all its activities, acts, proceedings, etc, within 35 days of the end of each fiscal year.

The amendment continued to allow individuals to go for foreign employment in their personal capacity, but called for detailed information to be submitted to the DoFE, including an application to obtain approval, the destination country, nature of work to be performed abroad, employer, acceptance granted by the employer, terms and facilities of employment, and nearest relative in home country who consents to bear responsibility for the migrant worker.

A number of detailed provisions were added to the section on 'Inspection', and the penalty was made more severe. First, in case of failure to comply with the provisions of the Act or Rules, a recruitment agency could be fined between NPR 20,000-100,000, and the licence of the company would also be revoked. Secondly, a person who provides foreign employment to children, and women without the consent of her guardian and the government could be fined up

to NPR 500,000, imprisoned for up to 10 years or receive both punishments. Thirdly, anyone conducting foreign employment business without a licence or sending workers abroad by giving false assurances or taking money on such pretences was required to pay back the amount taken along with a fine of 50 per cent of that amount and paying the two-way travel expenses if the worker had already been sent abroad. In addition, the offender was to be fined NPR 50,000-500,000 or imprisonment for three to seven years or both. However, if the aspiring migrant had not been sent abroad the offender was liable to pay half the amount mentioned above. Fourthly, in cases where someone concealed, changed or falsified facts in any document, report, audit, etc, the offender was liable to a fine of NPR 25,000-250,000 or imprisonment of six months to three years. The licence of the company penalised for the third and fourth offences mentioned above was also to be cancelled while the offender would be barred from receiving a licence in future. (See Annex 4 for the full content of the Foreign Employment [Second Amendment] Act 1998, and Annex 5 for a comparative review of the original Act and its two amendments.)

### ***Foreign Employment Rules 1999***

The Foreign Employment Rules were issued only in 1999, after the 1985 Foreign Employment Act had undergone two amendments. The Rules had detailed provisions regarding the issuance and renewal of licences. Any agency applying for a licence to be involved in recruitment for foreign employment was required to have a working capital of at least NPR 2.5 million and was to submit NPR 500,000 to the government as deposit and NPR 10,000 as licence fee. The licensee was to establish an office within three months of obtaining the licence and equip it with at least five employees and basic facilities like telephone, email, etc. The licence was to be renewed within 90 days of the date of expiry with a renewal fee of NPR 5000.

Licensed agencies were also required to obtain prior approval while selecting workers to send abroad for employment. In addition, the Rules also specified that approval would not be given under the following conditions: (i) if the monthly remuneration was less than USD125; (ii) if the service conditions and facilities did not meet the minimum provided by the laws of the concerned country; (iii) if the Nepali ambassador reported that it was inappropriate to

send workers to a particular country; or (iv) if it was deemed inappropriate to send workers to any country due to public policy concerns. After obtaining the required permission, the company was required to advertise the positions in a national daily, giving at least seven days for people to apply while also providing details of the work, minimum qualification required, remuneration, arrangements regarding insurance and medical facilities, air tickets, expenses to be borne by the worker, etc. The Rules also stated that the qualification and experience of the applicant along with his/her age and physical fitness was to be considered while selecting the applicants.

All migrant workers, including those going on their own, were required to submit a certificate of medical examination conducted by a doctor recognised by the government. In addition, the 1999 Rules also specified that the contract had to mention all the necessary details, including the position of the employee and details of work to be done; remuneration; details about probation period; compensation in case of injury, disability or death; arrangement to bring back the dead body of the worker; procedure for settling disputes between the employee and the employer; arrangements about leave and insurance; etc. On the issue of insurance, the Rules specified that all individuals seeking foreign employment were to insure themselves for at least NPR 100,000 for the duration of the contract period, prior to leaving for foreign employment. All workers were required to send at least 10 per cent of the money earned to their family in Nepal.

The recruitment agency had to obtain approval to send workers abroad by applying to the government with the worker's recent photograph; a copy of the health certificate; original contract; details about air tickets, including date of flight; certificate of insurance; etc. The agency was also expected to keep records of workers it sent for foreign employment, and also to submit information about the living conditions of the workers to the government on a biannual basis. It was to acquire information about the country and employer on a regular basis and provide the same to the employee; to inquire regularly if the workers were being paid salaries, allowances, and facilities as mentioned in the contract; and protect the rights and interests of the employees. It was deemed the responsibility of the agency, in case a migrant worker was unable to get the job mentioned in the contract; if the contract was terminated during the probation period; or the

worker was stranded in a foreign country or died. The Rules authorised the agency to charge a service fee equivalent to 25 per cent of the worker's first month's remuneration.

The circumstances that would lead to the revocation of the licence were also stated: in case of non-compliance to the Act or Rules; falsification of details for obtaining licence; failure to send at least 50 employees for foreign employment within one fiscal year; or failure to furnish additional deposit. However, the Rules also required that prior notice be sent to the licensed agency which would be given an opportunity to provide an explanation prior to the cancellation of its licence. In case the licence was revoked, the agency was also required to return any amount taken in the form of service charge to send workers for foreign employment, while it would also receive the deposit it had made to obtain the licence.

The 1999 Rules also provided for an advisory board with the Minister of Labour as its chairperson. It also gave the government authority to appoint an officer, of at least gazetted rank, as labour attaché to countries where 5000 or more Nepalis were working, and also to reward the best licensed agency.

Even though the 1999 Foreign Employment Rules were enacted to operationalise the 1985 Foreign Employment Act and its amendments, there were significant additions that did not figure in the Act. Some of these include the provisions regarding insurance, certificate of medical examination, the requirement to remit 10 per cent of income, minimum monthly remuneration, authority of the licensee to collect 25 per cent of the workers' first month's remuneration as service charge, responsibilities and obligations of the licensee vis-à-vis workers abroad and labour attachés. (See Annex 6 for the full content of the Foreign Employment Rules 1999.)

### ***Foreign Employment Act 2007***

The Foreign Employment Act 2007, which states at the outset that it is an 'Act Made to Amend and Consolidate Laws Relating to Foreign Employment'. Unlike its predecessor, the 2007 Act reflects the government's effort to not only regulate the process of foreign employment but also to protect the rights of migrants. In many ways, this new Act reflects a more rights-based approach, focusing as it does on information dissemination to migrant workers; promotion of policy arrangements to manage and secure foreign

employment; and removal of the discriminatory clauses relating to women. The Act also contains provisions on producing skilled manpower for foreign employment; and making the whole process of obtaining employment systematic and shorter. The objective of this Act, as mentioned in its preamble, is 'to amend and consolidate laws relating to foreign employment in order to make foreign employment business safe, managed and decent and protect the rights and interests of the workers who go for foreign employment and the foreign employment entrepreneurs, while promoting that business'.

What follows below are brief discussions of some of the more distinctive provisions of the Foreign Employment Act 2007.

#### *Power to send workers by reaching bilateral agreement or treaty*

The Act allows the government to send workers for foreign employment by entering into bilateral agreements or treaties with other countries with which it has diplomatic ties.

To date, the government has entered into bilateral agreements with five countries: Bahrain, Qatar, the United Arab Emirates (UAE), South Korea and Japan.

#### *Obligation of the government*

The Act directs the Government of Nepal to resolve any problem facing a worker who has gone for foreign employment (Article 6.6). The 1985 Act had placed this responsibility almost exclusively on the recruitment agencies or agents with little obligation on the government. Similar to the earlier 1985 Act, the 2007 Act also puts the onus of bringing back workers who are unable to exercise the rights and facilities mentioned in the contract on the sending agency. However, in case of a war, epidemic or natural calamity it is now the responsibility of the government to bring back workers through diplomatic missions or labour attachés.

#### *Special priority and reservation*

The government is to provide special facilities to women, Dalit, indigenous nationalities, oppressed groups, victims of natural calamities and people of remote areas to go for foreign employment. The Act calls upon the licensees to provide reservations to the

aforementioned groups in numbers prescribed by the government, a provision that did not exist in the earlier Act or its amendments.

*Prohibition on gender discrimination*

The Act prohibits any form of discrimination against women while sending workers for foreign employment even though the prohibition on minors under the age of 18 remained.

This clause is significant since the government had imposed a ban on the foreign employment of women in the Gulf countries in 1998, following the death of a Nepali domestic worker in Kuwait and reports of sexual harassment and mistreatment in a number of countries. While the ban was partially lifted in 2003, the earlier decision was completely repealed by this Act, thus allowing women to choose foreign employment on their own will.

*Power to specify remuneration, service charge and promotional costs*

The Act empowers the government to specify the minimum remuneration for workers as well as the maximum service fee and promotional costs (visa fee, miscellaneous expenses made within and outside the country in the course of receiving quota of workers) to be collected by the recruitment agency from each worker. The Act further stipulates that the service charge is to be paid by the worker only after s/he receives information that the required visa has been issued.

Evidence thus far suggests that even though the government has tried to regulate the cost of going for foreign employment, it is still relatively high. On an average, Nepalis pay as much as NPR 50,000 to obtain work in Japan (as technical interns under the JITCO scheme), NPR 70,000 in the Gulf countries and NPR 80,000 in Malaysia.<sup>i</sup> Similarly, despite the authority given to the government to specify the minimum remuneration, the wages paid to Nepali workers is amongst the lowest compared to their counterparts from India, the Philippines or Sri Lanka, who are among the highest paid workers in the Gulf; the minimum earning of a Filipino worker in the Gulf is USD 320 while a Nepali earns USD 125 for the same work.<sup>ii</sup> The government has been working to increase the minimum wage for Nepalis, and, accordingly, in May



2012, increased the minimum wage for Nepali workers in Malaysia to about NPR 24,000 per month; workers in Saudi Arabia are expected to earn a monthly salary of NPR 25,000 and NPR 16,000 in the UAE.<sup>iii</sup>

<sup>i</sup> Foreign Employment Promotion Board, Nepal. [www.fepb.gov.np](http://www.fepb.gov.np).

<sup>ii</sup> 'Govt to hike migrant workers' salary', *The Himalayan Times*, 2 December, 2011

<sup>iii</sup> 'Malaysia hikes minimum worker wage', *The Himalayan Times*, 2 May, 2012; 'Govt to fix minimum pay for migrant workers', [ekantipur.com](http://ekantipur.com), 11 May, 2012.

### *Free visa free ticket*

On the 9th of June 2015, the government brought out a provision on minimal fee for migrant workers.<sup>73</sup> As per the new provision, the government will only issue labour permits if the visa, and two way air fare is borne by the employer, and no other charges are deducted from the migrant worker's salary. The recruitment agencies are allowed to charge Rs 10,000 to the migrant workers as service charges if the employer did not provide the cost of service charges and promotional costs. This provision of zero or minimal cost is initially implemented for workers going to the major destinations including Bahrain, Qatar, Saudi Arabia, United Arab Emirates, Oman, Kuwait and Malaysia. Although the provision is to benefit migrant workers from the significantly reduced cost of migration, the recruitment agencies association protested against the provision citing the policy is against the business of recruitment agencies and the policy will work only for the interest of few big recruitment agencies.<sup>74</sup>

The provision also referred to as 'free visa free ticket' has considerably altered the proportion of migrant workers in the months following the announcement. In the four months following the announcement from Shrawan to Kartik 2072, the number of migrant workers to Malaysia has drastically decreased almost 5 times in comparison to the same period in the last year 2071 whereas in the same timeframe the number of migrants to Qatar has increased.<sup>75</sup> In fact, in Bhadra of

73 Notice on sending Nepalese workers for Foreign Employment at minimum cost', MoLE, GoN (<http://www.mole.gov.np/ckfinder/userfiles/files/minimumcost.pdf>).

74 Nafea to protest free visa, ticket provision, *The Kathmandu Post*, 28 June 2015.

75 Department of Foreign Employment 2015

2072 the number of migrants (82,912) to Qatar is almost twice the number (47,095) in 2071. It is likely that migration to Qatar was not affected by the provision due to the already existing minimal cost of migration which was not the same for other countries including Malaysia.

### *Training*

The 2007 Act makes it compulsory for workers to undergo orientation from a government-recognised institution prior to leaving for foreign employment. As per the new Act, an orientation training certificate is mandatory while going abroad for employment. Any institution that wants to provide such orientations is to apply to the Department of Foreign Employment for a licence. The Foreign Employment Promotion Board has been given the responsibility of determining the curriculum and standards of the orientation. Since one of the government objectives is to send skilled manpower abroad, skills training prior to seeking foreign employment is also encouraged.

These provisions are more extensive than in the earlier Act, under which it was the responsibility of the licence holder to inform the prospective migrant worker about the geographical location, culture, labour laws and the economic, political and social conditions of the destination country.

According to the DoFE, as of December 2011, there were 49 institutions licensed to provide the two-day orientation to migrant workers before leaving the country as well as a number of private institutions providing skills training to prospective migrant workers. However, these institutions have time and again been reported to have provided certificates without having the migrant workers sit for the orientation. These institutions have also been criticised for providing training on issues that are not really relevant or too broad to be of any meaning to the workers. As a result, national and international experts and consultations have concluded that the orientations are insufficient and have instead proposed pre-employment trainings, or at the very least revising the existing curriculum and monitoring the way the orientation is conducted.

*Insurance*

The licensed agency is required to procure insurance of at least NPR 500,000 valid for the term of contract prior to the departure of the worker so that the worker can claim damages for death or physical mutilation. Any individual who leaves the country for employment abroad on their own is also required to purchase insurance of equal value.

There were no such provisions in the earlier Act or its amendments even though the 1999 Foreign Employment Rules did mention it. As of March 2012, the government had given approval to nine insurance companies to provide insurance to labour migrants.<sup>i</sup>

<sup>i</sup> Department of Foreign Employment, [www.dofe.gov.np](http://www.dofe.gov.np).

*Labour desk*

The 2007 Act requires the Government of Nepal to establish a labour desk at the international airport and other places, if necessary, in order to certify that workers leaving for foreign employment have followed the procedures specified in the Act. Accordingly, the Labour Desk set up at the Tribhuvan International Airport examines whether the workers have all the requisite documents, including the labour permit from the DoFE, orientation certificate, and receipt or voucher of payment of service fee. The Labour Desk sends a report along with the records of workers who have left for foreign employment to the Ministry of Labour and Transport Management (MoLTM) every week.<sup>76</sup>

*Use of national airport*

The 2007 Act requires the licensed agency to only use the national airport while sending migrant workers abroad. In case of reasons like non-availability of air tickets and the worker has to fly out of a foreign airport, prior approval has to be obtained from the DoFE, but the worker nevertheless has to be registered with Nepali immigration.<sup>77</sup>

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76 The provision of a Labour Desk did not exist in the earlier Act.

77 This is because Nepalis are not registered if they go via India.

This provision plays an important role in checking irregular migration as it requires that all migrants use an airport within the country. Since migrants pass through the Labour Desk at the airport, those who have not followed the correct procedures to obtain foreign employment or those who do not have the necessary documents are barred from going. This, it is expected, will help combat exploitation and abuse of workers, and also allow the government to easily trace them in case of some mishap. However, in practice, many migrant workers continue to go abroad, especially via India, in order to evade the government's oversight.

#### *Labour attaché*

As specified in the Foreign Employment Rules of 1999, the government can appoint a gazetted officer as the labour attaché in a country where 5000 or more Nepali workers are working. Among the duties of the attaché are to provide the necessary information to the Government of Nepal, resolve disputes, enter into bilateral agreements, consult with Nepali workers in destination countries, and supervise

All cases registered under this Act are to be considered state cases. In accordance with the Act, a Foreign Employment Tribunal was established in Kathmandu in 2010. The Tribunal is a semi-judicial body and all the cases that come before it have to be settled within 90 days.

However, cases received by the Tribunal have to first be registered with the DoFE. In the DoFE, cases are filed in a number of ways: individually; from a foreign country through the Nepali embassy or labour attaché; by different organisations; through the electronic media; by post; the police; etc. The cases are either against individuals (a person without a licence) or against organisations (licensees). The approach of the DoFE is to mediate and settle the cases through mutual understanding. Some of the cases are settled in this manner and others are even settled without the Department's involvement. Only those cases that cannot be resolved mutually (usually when the accused is unable to provide compensation or when the two parties fail to agree upon a compensation amount) are forwarded to the Tribunal.

There is a complaints investigation committee inside the DoFE to look into the cases that lack enough evidence. Such cases are forwarded to the committee by the DoFE, and the committee has to investigate such cases and refer it to the DoFE within 15 days.

According to the Summary Procedures Act, the accused is given 15 days to appear in court. In case s/he does not appear in court within that time, an additional 7 days is given. And if the accused does not comply with the court order even then, compensation will be granted to the victim from the deposit of the recruitment agency.

Though the Act was introduced in 2007 and the Tribunal established in 2010, a regulation to guide the Foreign Employment Tribunal has not been introduced yet. Thus, due to the lack of clearly outlined legal procedures, the Muluki Ain (Civil Code) of 1963 is still used, which makes the legal process a lengthy one.

In the fiscal year 2010/11, 1204 cases of fraudulence were registered with the DoFE, out of which the Tribunal received 120 cases (i.e. 10 per cent). Of these 120 cases, the Tribunal resolved 78.<sup>i</sup> In the same period, the DoFE resolved approximately 657 cases and 447 cases were withdrawn following negotiations outside the purview of the Department. Of the total, about 60 per cent of the cases were against individual agents, and the remaining against outsourcing/recruitment agencies.

<sup>i</sup> 'Less outsourcing frauds reach tribunal', *The Himalayan Times*, 9 August, 2011.

activities such as making arrangements to bring back a stranded worker or the body of any Nepali worker who has died in the country of work.

Bilateral agreements are comparatively few and many countries that host a large number of Nepali migrant workers do not have the facilities of embassies, consulates or labour attaché. See Annex 7 for the list of Nepali missions abroad.

#### *Foreign Employment Welfare Fund*

The 2007 Act provides for the establishment of a Foreign Employment Welfare Fund under the Foreign Employment Promotion Board (see next page) in order to provide for social security and ensure the

welfare of workers (and their families) who have gone for/returned from foreign employment. The Fund consists of the amount paid by workers going for foreign employment; interest accrued from the deposit, licence fees and licence renewal fees obtained from recruitment agencies and training institutions; 'funds received time to time from organisations involved in the foreign employment business'; and other grants and assistance. The Fund is also to be used to provide skill-oriented training to workers going for foreign employment; launch employment-oriented programmes for returnees; repatriate workers to Nepal due to mutilation or other reasons; bring back unattended dead bodies; and provide compensation and financial assistance to such workers' families.

#### *Foreign Employment Tribunal*

The Act establishes a three-member Foreign Employment Tribunal for the purpose of 'trying and settling cases other than those punishable by the Department'.

#### *Foreign Employment Promotion Board*

As its name suggests, the Foreign Employment Promotion Board is to be constituted for the purpose of promoting foreign employment. The objective of the Board is to make foreign employment safe, systematic and respectable and also protect the rights and welfare of both workers and foreign employment entrepreneurs. The Board is chaired by the Minister of State for Labour and Transport Management.

Some of the major functions and duties of the Board are:

- Study and explore new international labour markets;
- Collect, process and publish information for the promotion of foreign employment;
- Mobilise the Foreign Employment Welfare Fund to protect the interests of workers;
- Formulate, implement, monitor and evaluate programmes to utilise the skills and capital of returnees;
- Formulate short- and long-term policies;
- Carry out a comprehensive study on the implementation of the Foreign Employment Act and advise the government accordingly;

- Review laws relating to foreign employment, and provide suggestions to the government;
- Advise the government on determining service charges to be charged by recruitment agencies, etc;
- Advise the government on how to make the remittance process easier for Nepali workers abroad; and
- Monitor the organisations involved in the foreign employment business, in providing orientation.

#### *Other provisions*

The 2007 Act also has provisions similar to those mentioned in the 1985 Act and its amendments, including those on obtaining a licence to send workers abroad, determining the countries authorised for foreign employment, and prohibiting the transfer or change of ownership or liability of a licensed agency without the DoFE's approval.<sup>78</sup>

The requirement of prior approval from the DoFE; the need to advertise the positions in a national daily with all the details at least seven days prior to selection; and sending the selected applicants within the specified time or within three months if not specified, are unchanged. Similarly, the 2007 Act also requires a contract to be drawn between the employer or its agent and the worker as well as another contract with the recruitment agency and the worker mentioning details such as remuneration. Every migrant worker is still required to undergo medical examination from institutions recognised by the government.<sup>79</sup>

The Act continues with the provision of allowing individuals to go abroad on a personal basis by applying to the DoFE and giving details as required although it strictly prohibits a licensed agency from sending individuals abroad for employment on a personal capacity. Similarly, licensees are also required to keep records of the workers sent abroad and submit reports to the DoFE. For its

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78 At the end of December 2016, 754 recruitment agencies were licensed by the government to send Nepalis on foreign employment. while the government has also recognised 110 countries where Nepalis can seek foreign employment. (See Annex 8 for a list of recognised destinations.)

79 As of June 2012, the Ministry of Health and Population had authorised 205 medical centres to provide medical check-up services to Nepalis going for foreign employment. Department of Foreign Employment, [www.dofe.gov.np](http://www.dofe.gov.np).

part, the DoFE is required to publish details about licensed agencies and its agents and branches on its website and national dailies on a regular basis.

In addition, the 2007 Act also requires the recruitment agency to seek permission from the DoFE prior to taking passports of the selected applicants out of the country for procuring visas. Companies also have to obtain the labour permission sticker (which is a sticker/label pasted on the passport, indicating final approval received by the passport holder to go abroad for foreign employment)<sup>80</sup> from the DoFE prior to sending workers for foreign employment.

The Act allows for complaints to be filed in order to receive compensation in case the employment provided is not in accordance with the terms and conditions of the contract. It also lists provisions on monitoring, inquiry, investigation and punishment of those who break the law. It is the responsibility of the DoFE to monitor the recruitment agencies on a regular basis and inspect records and other relevant documents. The Act allows for the appointment of an investigation officer of at least gazetted third-class level for investigation and inquiry into complaints filed with the DoFE. The officer is given the same powers as the police, such as to arrest, search any premises, seize documents or anything else related to the alleged offence, record depositions and execute recognizance deeds.

Punishments for non-compliance have been made more severe in the 2007 Act: a fine of NPR 300,000-500,000 and imprisonment of three to seven years for being involved in foreign employment without a licence, for sending workers abroad without obtaining permission and also for sending minors for foreign employment; a fine of NPR 300,000-700,000 and imprisonment of three to five years for sending workers to countries not authorised by the government; a fine of NPR 100,000-300,000 and imprisonment of six months to one year for concealing or altering the contents of documents or reports by the licensed agency; and if a non-licensed institution sends workers abroad, the amount so taken along with an extra 50 per cent of that amount to be recovered as compensation.

The DoFE has also been authorised to penalise any licensee that opens a branch office without permission with a fine of NPR 200,000

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80 The sticker contains basic information such as name of the destination country, date of issue and signature of the Director General of the DoFE.



per branch and also close any such branch(es). The DoFE can also punish a company that does not advertise or advertises without approval with a fine of NPR 50,000 and cancel such advertisements. A licensee that does not publish the list of selected workers or publishes such a list without informing the DoFE can be fined NPR 50,000 and ordered to (re)publish it. There is also a fine of NPR 100,000 and cancellation of the licence of an agency that refuses to provide compensation where necessary. In such cases, the DoFE is required to provide compensation to the worker from the cash deposit of the licensee. In case the cash deposit is insufficient and the licensee is unable to pay the additional amount within 60 days, the amount is to be realised from the assets of the licensee.

Similarly, the recruitment agency can be fined NPR 100,000-300,000 or have its licence revoked or both for sending workers on a personal basis. In case a worker is charged excess visa fees, service charges and/or promotional costs, the DoFE can order the company to return the extra charge and levy a fine of NPR 100,000. In case a licensee fails to observe the provisions mentioned in the Act, it is first given a warning, followed by a fine of NPR 50,000 the second time, and a fine of NPR 100,000 the third time and revocation of the licence as well. If a company provides foreign employment under conditions that violate the contract, it can be fined NPR 100,000. An accomplice is liable to half the punishment, and once the licence is revoked, it will not be re-issued. However, the company would be given an opportunity to defend itself prior to the licence being revoked. (See Table 2.2 below for a comparative analysis of changes in the nature of liabilities/punishments in the Foreign Employment Acts and their amendments.)

The Act of 2007 continues with the provision to reward the best licensee. It also specifies the institutions that can provide health check-up facilities. The Act states that workers are to return to Nepal after the expiry of their visa. In case the workers fail to return, the Act holds the company responsible for bringing them back. Subsequently, such workers would also be barred from going abroad for three years. (See Annex 9 for full content of the Foreign Employment Act 2007.)

Table 2.2: Changes in the Nature of Liabilities/Punishments in Foreign Employment Act(s) and Their Amendments

	Foreign Employment Act 1985	First Amendment 1992	Second Amendment 1998	Foreign Employment Act 2007
Non-compliance with the Act	<ul style="list-style-type: none"> <li>• Fine up to NPR 5000</li> </ul>		<ul style="list-style-type: none"> <li>• Fine of NPR 25,000-100,000</li> <li>• Licence revoked</li> </ul>	<ul style="list-style-type: none"> <li>• Warning for the first instance</li> <li>• Fine of NPR 50,000 for the second instance</li> <li>• Fine of NPR 100,000 and revocation of licence for the third instance of the same offence</li> </ul>
Failure to obtain licence, and giving false assurance	<ul style="list-style-type: none"> <li>• Fine up to NPR 10,000 or imprisonment up to 2 years or both</li> </ul>	<ul style="list-style-type: none"> <li>• The amount taken along with 18 per cent interest added</li> <li>• Two-way travel expenses</li> <li>• Fine of NPR 50,000-200,000 or imprisonment of 1 to 5 years or both</li> <li>• Half of the above mentioned punishment if the person has not been sent abroad</li> </ul>	<ul style="list-style-type: none"> <li>• The amount taken along with 50 per cent of that amount</li> <li>• Two-way travel expenses</li> <li>• Fine of NPR 300,000-500,000 and imprisonment of 3 to 7 years</li> <li>• Half of the above-mentioned punishment if the person has not been sent abroad</li> </ul>	<ul style="list-style-type: none"> <li>• The amount taken along with 50 per cent of that amount</li> <li>• Two-way travel expenses</li> <li>• Fine of NPR 300,000-500,000 and imprisonment of 3 to 7 years</li> <li>• Half of the above-mentioned punishment if the person has not been sent abroad</li> </ul>
Falsification of documents	<ul style="list-style-type: none"> <li>• Fine up to NPR 5000 or 1 year imprisonment or both</li> </ul>	<ul style="list-style-type: none"> <li>• Fine of NPR 25,000-100,000 or imprisonment of 6 months to 3 years</li> </ul>	<ul style="list-style-type: none"> <li>• Fine of NPR 25,000-250,000 or imprisonment of 6 months to 3 years</li> </ul>	<ul style="list-style-type: none"> <li>• Fine of NPR 100,000-300,000 and imprisonment for 6 months to 1 year</li> <li>• Punishment to be doubled and licence revoked if the offence is repeated</li> </ul>
Sending workers without permission				<ul style="list-style-type: none"> <li>• The amount taken along with 50 per cent extra of that amount</li> <li>• Two-way travel expenses</li> <li>• Fine of NPR 300,000-500,000 or imprisonment of 3 to 7 years</li> <li>• Revocation of licence</li> </ul>

Nature of Offence	Foreign Employment Act 1985	First Amendment 1992	Second Amendment 1998	Foreign Employment Act 2007
Sending minors or women			<ul style="list-style-type: none"> <li>• Fine up to NPR 500,000 and imprisonment of up to 10 years or both for sending minors and women (without permission of guardians and government)</li> </ul>	<ul style="list-style-type: none"> <li>• Fine of NPR 300,000-500,000 or imprisonment of 3 to 7 years for sending minors</li> </ul>
Sending workers to countries not opened by Government of Nepal				<ul style="list-style-type: none"> <li>• Fine of NPR 300,000-700,000 and imprisonment of 3 to 5 years</li> <li>• Half of the above mentioned punishment if the person has not been sent abroad</li> </ul>
Opening branch without permission				<ul style="list-style-type: none"> <li>• Fine of NPR 200,000 for each branch and closure of that office</li> </ul>
Failure to publish advertisement				<ul style="list-style-type: none"> <li>• Fine of NPR 50,000 and cancellation of such advertisement</li> </ul>
Failure to publish selection list or publish it without informing DoFE				<ul style="list-style-type: none"> <li>• Fine of NPR 50,000 and order to (re) publish the list</li> </ul>
Refusal to return amount or provide compensation				<ul style="list-style-type: none"> <li>• Provide the amount or compensation from the deposit made by the licensee</li> <li>• Fine of NPR 100,000</li> <li>• Licence revoked</li> </ul>
Sending workers on personal basis				<ul style="list-style-type: none"> <li>• Fine of NPR 100,000-300,000 or revocation of licence, or both</li> </ul>

Nature of Offence	Foreign Employment Act 1985	First Amendment 1992	Second Amendment 1998	Foreign Employment Act 2007
Collecting visa fees where free visa has been received or charging excess service charges and other costs				<ul style="list-style-type: none"> <li>• Return fees that are not to be charged or return fees/costs collected</li> <li>• Fine of NPR 100,000</li> </ul>
Doing/causing acts contrary to contract				<ul style="list-style-type: none"> <li>• Fine of NPR 100,000</li> <li>• Licensee to pay the shortfall amount of such remuneration and facilities</li> </ul>

With the establishment of regulatory bodies, namely, the Department of Foreign Employment, the Foreign Employment Promotion Board, the Foreign Employment Tribunal and the Foreign Employment Welfare Fund; the appointment of labour attachés in several destination countries; signing of labour agreements with major labour-receiving countries; setting up of the Labour Desk at the home airport; and, most importantly, the enactment of the Foreign Employment Act 2007, the government has taken significant steps in making migration for work more transparent, convenient and accessible to the public. The 2007 Act has made clear the government's intention to systematise the process of foreign employment as well as protect the rights and interests of Nepali migrant workers even though the effectiveness of such institutional and legal frameworks is yet to be fully demonstrated.

### ***Foreign Employment Rules 2008***

The Foreign Employment Rules 2008 sets out the rules and regulations for the implementation of the 2007 Foreign Employment Act. It deals with the selection of companies and their licensing, including requirements such as bank guarantee, their renewal and cancellation. It also lists provisions on the selection of workers, including the need for advertising and an application process, and also on issues such as registering workers at the point of departure, insurance, and pre-departure orientation training and skill training. It provides details on the establishment and utilisation of the Foreign Employment Welfare Fund; the formation and duties of the Foreign Employment Promotion Board; the establishment and functions of a Foreign Employment Tribunal; regarding agents and branch offices of licensed agencies; remittances; and awarding the best agency; among others.

In addition, the 2008 Rules requires the appointment of a woman labour attaché in countries where 1000 or more Nepali women workers are employed even though it is not mentioned in the Act. It also contains more instances than mentioned in the Act of how the Welfare Fund can be used, such as allowing the Fund to be spent on the educational development of families of migrant workers, including returnees; medical care assistance to families of those who have

gone for foreign employment; reimbursement of the orientation fees paid by women selected for foreign employment; establishment and operation of child-care centres for the protection of children of female migrant workers; starting programs in the interests of workers and their families; launching public awareness programs with regard to foreign employment; and running the day-to-day activities of the Foreign Employment Board. In 2016, the government increased the compensation in the event of death to Rs 300,000 and an amount of up to NPR 300,000 in case of mutilation of workers, an increase from the earlier stipulated amount of NPR 100,000 in the Foreign Employment Rules 2008. (See Annex 10 for the full content of the Foreign Employment Rules 2008.)

### ***Foreign Employment Policy 2012***

The Foreign Employment Policy of 2012 has been formulated to give direction to the effective management of foreign employment, to make the process of migration safe and accessible, and to overcome the shortcomings of the prevailing Acts and Rules in addressing problems related to foreign employment. The new policy finds its roots in the need to incorporate the provisions of various international conventions, including the Universal Declaration of Human Rights; International Covenant on Civil and Political Rights, 1966; Convention on the Elimination of All Forms of Discrimination Against Women, 1979; Convention on the Rights of Child, 1989; and ILO Convention 97 – Migration for Employment Convention (Revised), 1949; and ILO Convention 143 – Migrant Workers (Supplementary Provisions) Convention, 1975, within Nepal’s foreign employment laws. Similarly, the Policy also plans to implement the commitments made in the Interim Constitution of Nepal 2007; the Three-Year Interim Plan (2010/11 to 2012/13); the National Human Rights Action Plan 2004; and the Beijing Action Plan 2005 with regard to migrant workers and migration. Given the attraction to foreign employment and the significant contribution migrant workers make to both home and destination countries, it mentions the need for greater security for migrants in both places.

### ***Goal***

The goal of the Foreign Employment Policy is to make foreign employment safe, organised, respectable and reliable; and to utilise

the economic and non-economic benefits to alleviate poverty and maximise the contribution of foreign employment for the country's sustainable economic and social development.

### *Objective*

The objective of the Policy is to provide knowledge and skill as demanded by the international labour market and develop a skilled, capable and competitive labour force so as to make the entry of Nepali workers into the international market safe, organised and respectable.

### *Policies*

The Foreign Employment Policy 2012 spells out seven specific policies to achieve its goals and objectives:

- To recognise and promote employment opportunities in the international labour market;
- To produce a competitive labour force in order to maximise the benefits of foreign employment;
- To make the entire process of foreign labour migration simple, reliable, organised and safe;
- To address issues faced by women labour migrants and to secure their rights in the entire cycle of migration;
- To ensure good governance with regard to the management of foreign labour migration;
- To utilise regional, national and international networks to promote regional cooperation in managing foreign employment; and
- To mobilise remittances for human development and in the manufacturing sector.

The Policy provides detailed strategies for each of these policies. Unlike the earlier Acts and Rules, the Policy has focused on the entire process of migration. It highlights the importance of information dissemination regarding foreign employment and the necessity to develop programmes to address all the stages of migration, including pre-employment, pre-departure, departure, on the job and reintegration. It also points out the need for more research as well as programmes to address the social and familial relationships of those associated with labour migration. It calls for encouraging and

monitoring corporate social responsibilities of organisations benefitting from labour migration such as recruitment agencies, training institutions and financial institutions involved in remittances; incorporation of foreign employment in school and university curricula; encouraging the involvement of intellectuals and commercial organisations in the study of foreign employment; and protection of Nepali migrant workers against trafficking, etc. In addition, the Policy aims to conclude agreements to return Nepali migrant workers from prisons abroad to allow them to continue their remaining prison time in Nepal itself. It identifies strategies to establish and expand networks with concerned organisations in destination countries to strengthen and ensure the rights of Nepali migrant workers. It identifies strategies to recognise and identify the skills and earnings of returnee migrant workers and use them for poverty alleviation and the development of the country and also for the economic and social reintegration of returnees.

#### *Organisational structure*

To provide direction to the effective management of foreign employment, the Policy provides for the formation of a high-level foreign employment coordination committee with the Minister of Labour and Transport Management as the Coordinator and representatives from various ministries, the National Planning Commission, Nepal Rastra Bank, foreign employment entrepreneurs associations and migration experts among the other members. The Policy allows for representatives of international and local NGOs to be invited to the committee meetings. An executive committee is to oversee the effective implementation of programmes related to foreign employment and to resolve related problems.

#### *Legal aspects*

For the effective implementation of the Policy, it has a provision for the formulation of related Acts, Rules or Regulations. The Foreign Employment Act 2007 and the Foreign Employment Rules 2008 are to be amended according to changing trends in foreign employment. It also provides for the mobilisation of international organisations by making the necessary legal changes.

The Policy is to be revised every five years but if the need arises due to changes in the international labour market, such changes



Table 2.3: A Comparative Review of Provisions in the Directive for Kuwait, Qatar, Saudi Arabia and the UAE.

SN	Topic /Issue	Kuwait	Qatar	Saudi Arabia	UAE
1.	Basic Monthly Salary	Housemaid/boy: KWD* 50 Cook: KWD 60 Driver: KWD 75 Security Guard: KWD 100 Gardener: KWD 70	Housemaid/boy: QAR* 1000	Housemaid: SAR* 700 or more	Housemaid: AED* 100 or more
2.	Insurance: Before migrants reach their destination country the prospective employer is to provide the concerned embassy with various documents covering the entire contract period	<ul style="list-style-type: none"> <li>Documentary evidence that s/he has insured the worker, and also covered health insurance and insurance of legal support</li> </ul>	<ul style="list-style-type: none"> <li>Insurance coverage</li> <li>Medical facility</li> <li>Deposit as stipulated by the embassy</li> </ul>		
3.	Employers' financial status	<p>The prospective employer is to provide the following details to the embassy:</p> <ul style="list-style-type: none"> <li>Financial status and social standing of the employer,</li> <li>Permission from the Kuwaiti government to hire a migrant domestic worker</li> <li>Details about the employer's profession and name of employing organisation.</li> </ul>	<ul style="list-style-type: none"> <li>The prospective employer's monthly salary has to be at least QAR 12,000</li> <li>The employer must be a non-Nepali with a Qatari citizenship ID</li> </ul>	<p>Employer is to mention the following details in the form provided by the embassy</p> <ul style="list-style-type: none"> <li>Financial and social status of the employer</li> <li>Letter from the Saudi Arabian government giving permission to hire a migrant domestic worker</li> <li>Work and work organisation details of the employer</li> </ul>	<p>The prospective employer's monthly salary has to be AED 10,000, excluding house rent, and a security of AED 5000 has to be deposited with the embassy.</p>



SN	Topic / Issue	Kuwait	Qatar	Saudi Arabia	UAE
4.	Safe accommodation	<ul style="list-style-type: none"> <li>Employer is to provide accommodation as stipulated by the embassy</li> <li>Employer is to provide a separate room and bathroom if the domestic worker is a woman</li> </ul>		<ul style="list-style-type: none"> <li>permission from the Saudi</li> </ul>	
5.	Employers' Social Status	Employer is to provide details of their family, occupation and employing organisation			The prospective employer must provide a certified police report. An unmarried man is prohibited from hiring a female domestic worker.
6.	Approval or Agreement Letter from Concerned Authority to Employ Domestic Worker	The law in all these countries requires the prospective employer to provide a letter of approval from an authorised authority to the concerned embassy.			
7.	Safety Assurance	The employer is to provide details on the kind of security that will be provided to the worker and the embassy has to be satisfied with the details provided.			
8.	Regular Contact (with Family and Embassy)	The employer has to submit a written commitment stating that s/he will provide facilities to the domestic worker to keep in regular touch with the embassy and his/her family back home.	This provision is to be mentioned in the contract	The employer is to provide for the domestic worker to contact the embassy at least once a month	This provision is to be included in the contract.
9.	Other provisions considered appropriate by the embassy	<ul style="list-style-type: none"> <li>The embassy may acquire the domestic worker's passport from the employer should it be required for official purposes</li> <li>The embassy should forward the endorsed contract to DoFE** only if the domestic worker's security is assured.</li> </ul>	<ul style="list-style-type: none"> <li>Nepali female workers have to be above 30 years of age.</li> </ul>	<ul style="list-style-type: none"> <li>Domestic workers cannot be forced to work in industries and other organisations. If employed, they have to be provided three months' salary and a return ticket home</li> </ul>	

\* KWD—Kuwaiti Dinar; QAR—Qatari Riyal; SAR—Saudi Arabian Riyal; AED—United Arab Emirates Dirham. 1 KWD = USD 3.56; 1 QAR = USD 0.27; 1 SAR = USD 0.27; 1 AED = USD 0.27; as of 01 June 2012.

\*\* Department of Foreign Employment, [www.dofoe.gov.jp](http://www.dofoe.gov.jp)

can be made immediately. It requires different ministries to keep the Policy in mind while formulating their programmes. Similarly, sector-wise strategies are to be prepared and implemented as per the Policy.

#### *Monitoring and evaluation*

The Ministry of Labour and Transport Management is responsible for the periodic monitoring and evaluation of the Policy and submitting a report to the high-level committee. Since the Foreign Employment Policy 2012 had just been adopted at the time of writing, its implementation and effectiveness is yet to be evaluated.

#### ***Directive for Sending Domestic Workers on Foreign Employment 2015***

The objective of the Directive for Sending Domestic Workers on Foreign Employment 2015 is to make foreign employment safe, systematic and decent by making the issuance of labour permits to domestic workers systematic and transparent, and by protecting the rights of workers and their family. The Directive lays down a number of requirements to be fulfilled by the government, recruitment agencies, agency of the destination and the employer.

It sets the age limit at 25 years for women to take up domestic work in Saudi Arabia, Qatar, Kuwait, the UAE, Oman, Bahrain, Lebanon and Malaysia. In line with the prevailing foreign employment laws, the domestic workers are also required to obtain a labour permit to migrate for work. However, the Directive prohibits migrating for domestic work on individual labour permit except in the availability of attested verification of relationship, demand letter from the mission, and contract. Institutions interested to send domestic workers must make a separate application to the Department of Foreign Employment for enlistment. The placement agencies at the destination countries interested to hire/supply domestic workers from Nepal must similarly apply for enlistment at the Nepali embassy in the respective country. The enlisted recruitment agencies in Nepal and the enlisted agency of the destination must enter into a bilateral agreement regarding the workers facilities, rights, responsibilities, and work, duties and responsibilities and rights of both parties to send domestic workers. However, domestic workers can only be sent to countries where the government enters into a bilateral

labour agreement (BLA) or memorandum of understanding (MOU) to send domestic workers.

The Directive details out the procedures for attestation of demand letter issued by the employer, process for sending domestic workers including application for pre-approval by the recruitment agencies in Nepal to select workers and final labour permit to send workers. Domestic workers must attend the domestic worker orientation training as well as the 2-day pre-departure orientation training.

Domestic workers must be sent abroad free of cost, and neither the recruitment agency in Nepal, the agency in destination or the employer is allowed to take or deduct any charges. The aforementioned training must also be borne by the recruitment agency. The Directive also lays down the responsibility on the recruitment agency to open a bank account in the worker's name in a bank that also has a branch office in the destination country. The Directive also has a provision that requires domestic workers to respect the religion and culture and practices of the destination country, and abide by the laws as well as the contract, and protect the employer's goods and property.

The agency of the destination country is responsible for monitoring and inspection of domestic worker's situation (salary, leaves, access to information, unsolicited or work including elements of violence, work schedule, among others) every four months and must submit the details to the Nepali mission. The agency is also required present the worker in the mission every four months. In event of different work terms and conditions, change in job/employer by the employer, illness, violence, or conditions stipulated by the mission, the Directive makes the recruitment agency and the agency of the destination responsible for rescue and repatriation of such workers. The Department of Foreign Employment, Nepali mission, recruitment agency and agency of the destination are also responsible for preparing online database of domestic workers.

Even though the directive provides for the safety of domestic workers and tries to make the employer more accountable towards the domestic workers, it lacks mention of the maximum number of working hours, overtime compensation, and daily and weekly rest periods. The directive has also been criticised for having lengthy formalities to be fulfilled by employers and for discouraging agencies from recruiting domestic workers, hence, pushing domestic workers to seek informal channels for migration.

### **Other National Laws**

Apart from legislations that directly govern the migration of Nepalis for foreign employment, there are other national laws that in one way or the other regulate such movement. These laws are applicable within Nepal only with the exception of the Trade Union Act that allows Nepal-based trade unions to be associated with international bodies of trade unions to protect the rights of workers. Some of these key national laws have been summarised below. As these are prevailing laws, the Foreign Employment Act 2007 in one way or the other is guided by them.

#### ***The Interim Constitution of Nepal 2007***

The Interim Constitution of Nepal 2007 was promulgated on 15 January, 2007 and has been amended 12 times, the latest on 19 May, 2012.<sup>81</sup> It accords citizens fundamental rights such as the right to live with dignity and not be deprived of personal liberty, freedom of opinion and expression, peaceful assembly, form political parties, form unions and associations, move and reside in any part of Nepal, practise any profession, etc. Further, it confers Nepali citizens with the right to equality before law; prohibits discrimination on grounds of religion, race, caste, tribe, sex, origin, language or ideological conviction; prohibits discrimination with regard to remuneration and social security between men and women for the same work; and provides the right to social security to women, the aged, the disabled, the incapacitated and the helpless; the right to information and the right to justice. Unlike the laws of some countries where many Nepali migrate for employment, the Constitution of Nepal forbids death penalty.

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81 'Interim Constitution Amended for the 12th time', ekantipur.com, 19 May, 2012.

The Foreign Employment Act 2007 is fundamentally based on the provisions of the Interim Constitution, and where there is discrepancy, the Constitution prevails. Notably, in accordance with the Interim Constitution, the 2007 Act has incorporated provisions of special priority and reservations to indigenous groups, Dalits and women; social security in the form of insurance and compensation; and migrants' right to information by requiring that migrants be furnished with adequate information prior to signing their contracts.

### ***Labour Act 1992***

The Labour Act of 1992 was amended by the Labour (First Amendment) Act 1998 and Child Labour (Prohibition and Regulation) Act 2000. This Act deals with the rights, interests, facilities and safety of workers and other employees in various sectors and provides for protective mechanisms for permanent workers such as prohibition on termination of service without following proper procedures. It limits the working hours for minors<sup>82</sup> and women to between 6 am and 6 pm only. Prior to appointing workers to any position, the Act requires that these positions be advertised and also that appointment letters be given to the appointees. Workers cannot be made to work more than five continuous hours without providing a half-hour break. They cannot work more than eight hours per day or 48 hours per week. They are entitled to at least one day off every week, and also extra wages for overtime work.

The Act states that the minimum remuneration, dearness allowances and facilities to be provided to workers or employees will be fixed by the government on the recommendation of the Minimum Remuneration Fixation Committee. Permanent employees are to receive an increment every year. The Act has fixed the age of retirement at 55 and has provisions for the establishment of a Labour Court. It continues to uphold the provision of giving priority to Nepalis by prohibiting non-Nepalis from being employed unless a Nepali citizen cannot be found for any skilled technical post even after advertising the position.

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82 Persons between the ages of 16 and 18, as amended by the Child Labour (Prohibition and Regulation) Act.

In accordance with the Labour Act, the Foreign Employment Act has provisions regarding advertisements and minimum remuneration. The Labour Act also requires other details of hours of work, extra wages, etc, to be submitted to the government in order to obtain approval for the selection of workers. Unlike the Labour Act, the Foreign Employment Act, however, does not specify the limitation of working hours with regard to women labour migrants.

### ***National Labour Policy 1999***

The National Labour Policy of 1999 has general provisions on labour issues but it deals with four major aspects that have a bearing on labour migration: ensuring the rights and security of Nepali migrant workers working in foreign countries through labour attachés and other diplomatic missions; setting up a committee consisting of the Ministries of Labour, Home and Finance, the National Planning Commission and foreign employment entrepreneurs to promote foreign employment; providing loans to send skilled workers abroad; and broadening the scope of foreign employment by sending Nepalis to newer destinations. The Policy also aims to establish a gender-based-discrimination-free work environment and provide skills and training opportunities to women. It calls on the government to make attempts to ratify various international instruments in order to make foreign employment more secure. With these provisions, the policy aims to provide security to the migrant workers.

In many regards, it can be argued that the Foreign Employment Act of 2007 was introduced to further strengthen the rights of Nepali labour migrants. The Act, in general, has incorporated the above-mentioned provisions of the National Labour Policy even though ratification of important international conventions on migration or migrant workers is yet to be completed.

### ***Labour and Employment Policy 2005***

The Labour and Employment Policy 2005 attempted to provide social and professional security to all the citizens without discrimination. The Policy was introduced in accordance with the International Labour Organisation's guidelines for organising the labour

sector and promoting cordial labour relations. In tune with the objectives of the Ninth and Tenth Five-Year Plans, the 2005 Policy also aims at alleviating poverty through the creation of income-generating activities.

The goal of the Policy was to provide productive, non-discriminatory, exploitation-free, decent, safe and healthy working opportunities to people by building an investment-friendly environment, and a labour market that contributes to the national economy to enable it to compete at the global level.

The Labour and Employment Policy had seven objectives:

- paving the way for sustainable economic development;
- enhancing productivity by eliminating forced labour practices, including bonded labour, and introducing international labour standards in both the formal and informal sectors;
- making the labour market safe, healthy, competitive and open by developing a social security system;
- augmenting the prospects of employment and self-employment by producing skilled human resources;
- ensuring equal access of women, Dalits, indigenous peoples and the displaced to employment;
- eliminating child labour; and
- making labour and employment administration efficient, up-to-date and effective.

In order to achieve its objective of sustainable economic development, the Policy envisioned the formulation and enforcement of a separate policy on labour migration for the promotion of safe and decent foreign employment. In addition, it aimed to provide vocational training and skills to individuals as per the needs of the foreign labour market.

### ***Trade Union Act 1992***

Amended by the Trade Union (First Amendment) Act 1999, this Act serves individuals engaged in self-employment as well as working in various industries, trades, professions and services. As per the Act, trade unions have to be registered with the government. In order for an enterprise-level trade union to be recognised at least 25 per cent of the workers of the concerned enterprise have to be members of the union. A worker cannot be a member of more than one



enterprise-level trade union at the same time. Likewise, membership of at least 50 enterprise-level trade unions is required for the registration of an association of trade unions and membership of at least 10 trade union associations is necessary to be able to register as a federation of trade unions.

Among others, the objectives of the Trade Union Association and the Trade Union Federation is also to establish relations with international institutions for the benefit of workers, to provide necessary advice to the government in formulating the Labour Policy, and negotiate with the government and take other necessary measures to protect and promote the rights and interests of workers.

Trade unions and their associations have an important role to play in establishing networks with Nepali labour migrants overseas. A start has been made by the General Federation of Nepalese Trade Unions (GEFONT) by establishing links with trade unions in destination countries such as Malaysia, Kuwait and Bahrain.

### ***Child Labour (Prohibition and Regulation) Act 2000***

The Child Labour (Prohibition and Regulation) Act 2000 recognises a 'child' to be a minor who has not completed 16 years of age. This definition of a minor replaces the one in the Labour Act 1992, which defined a child as someone who has not completed 14 years of age. The Act also prohibits children who have not attained 14 years of age being engaged in work as a labourer and children from engaging in any risky business or work.<sup>83</sup>

### ***Children Act 1992***

The Children Act 1992 defines 'child' as a person who has not completed 16 years of age. This Act has provisions on the protection of the rights and interests of children and also on their welfare (such as the establishment of welfare homes). Some sections of the Children Act of 1992 were repealed by the Child Labour (Prohibition and Regulation) Act 2000 mentioned above.

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83 It is noteworthy that while this Act prohibits the labour of children below the age of 14, the Foreign Employment Act sets the limit for obtaining foreign employment at 18 years of age.

The Foreign Employment Act complements the protective mechanism of this Act in terms of the rights and interests of children by prohibiting them from taking up foreign employment.

### ***Human Trafficking and Transportation (Control) Act 2007***

This Act prohibits human trafficking and transportation in any manner or form. More specifically, it not only aims to control acts of human trafficking and transportation, but also seeks to protect and rehabilitate victims of such acts. Its provisions are applicable not only to Nepali citizens but to anyone committing an offence against Nepali citizens in foreign territory. According to this Act, the government is responsible for managing the rescue of any Nepali citizen trafficked in foreign countries.

The Act defines Human Trafficking as follows: 'If anyone commits any of the following acts, that shall be deemed to have committed human trafficking: (a) To sell or purchase a person for any purpose, (b) To use someone into prostitution, with or without any benefit, (c) To extract human organ except otherwise determined by law, (d) To go for/in prostitution'; and Transportation as: 'If anyone commits any of the following acts, that shall be deemed to have committed human transportation: (a) To take a person out of the country for the purpose of buying and selling, (b) To take anyone from his / her home, place of residence or from a person by any means such as enticement, inducement, misinformation, forgery, tricks, coercion, abduction, hostage, allurements, influence, threat, abuse of power and by means of inducement, fear, threat or coercion to the guardian or custodian and keep him/her into ones custody or take to any place within Nepal or abroad or handover him/her to somebody else for the purpose of prostitution and exploitation.'

The Foreign Employment Act has provisions for the punishment of any person involved in unlawful activities that indicate trafficking. For instance, a recruitment agency sending workers abroad using false information or assurances is liable to punishment, and so is anyone sending minors for foreign employment.

Of late, incidents related to trafficking of Nepali migrant workers are occasionally reported in the news. A prominent figure of

trafficking of Nepali migrant workers include sending migrant workers, particularly women to work as domestic helps in the Gulf countries, via India without the knowledge or consent of the government.

### ***Immigration Act 1992***

The Immigration Act of 1992 (amended in 1993) aims to regulate and control the entry of foreigners into Nepal, their presence and departure; and also to manage the arrival and departure of Nepali citizens. The Act prohibits the use of false information regarding name, age, nationality and other details or the use of fake passports and visas, or make someone do the same.

In accordance with this Act, the Foreign Employment Act, too, requires Nepali labour migrants to obtain labour permit and visas before leaving the country.

### ***Passports Act 1967***

This Act governs the issuance of passports to Nepali citizens who intend to visit foreign countries. A Nepali citizen can travel abroad only after receiving a valid passport issued in his/her own name unless it is to a country where a treaty or an agreement between the two governments does not require Nepali citizens to carry a passport to visit such a country.<sup>84</sup>

A passport can only be issued by the Government of Nepal or a Nepali embassy or any other mission stationed in foreign countries which has received prior authorisation from the government to issue passports. Any act of fraud such as receiving or attempting to receive a passport by providing false details; visiting or attempting to visit a foreign country without a passport or misusing the purpose of the passport; providing one's passport for use by someone else; or using others' passports, etc, is punishable by imprisonment up to one year or a fine up to NPR 5000, or both.

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84 India is the only country where Nepalis do not require a passport to travel to.

The Passport Act has a direct bearing on foreign employment because of the increasing incidents of passport fraudulence. As per the Passports Act 1967, any migrant worker possessing a fake passport is liable to punishment. Though there are laws against providing fake passports, the Passport Act does not have any provision to prosecute the one furnishing fake passports and it is the migrant worker in possession of a fake one, intentionally or unintentionally, who is punished. In contrast, the Foreign Employment Act 2007 has provisions for the abetter to be liable to half the punishment imposed on the offender for any offence related to foreign employment (Article 56, 'Punishment to be imposed on accomplice'). Likewise, in such cases where the employee of a firm, company, institution or licensee who commits an offence is not identified, the Foreign Employment Act 2007 holds the head of such an institution liable (Article 57, 'Punishment to person who acts as chief').

### ***Nepal Citizenship Act 2006***

The first Nepal Citizenship Act was promulgated in 1964 and amended for the fifth time in 1992 before being replaced by the Nepal Citizenship Act 2006.

The 2006 Citizenship Act allows the acquisition of Nepali citizenship by descent, by birth and by naturalisation. In terms of acquisition of citizenship by descent, the following categories of individuals are eligible: a person born at the time his/her father or mother is a citizen of Nepal; a child born out of wedlock to a Nepali female citizen and a foreign national; and also every child found in Nepal whose paternal and maternal addresses are undetermined. Likewise, citizenship can be acquired by naturalisation by a foreign woman married to a citizen of Nepal; by a child born to a Nepali female citizen from marriage to a foreign citizen in Nepal, having permanent domicile in Nepal and not having acquired citizenship of a foreign country; and by foreign citizens who have made special contributions to the country.

Nepal does not allow its citizens to possess dual citizenship and thus any citizen who voluntarily acquires the citizenship of any foreign country automatically loses the citizenship of Nepal.

Also, despite the provisions in this Act, there have been increasing numbers of reported cases where a female migrant, who has given birth to a child out of wedlock while abroad has had difficulty acquiring citizenship for her child.

### ***Non-Resident Nepali Act 2008***

The Non-Resident Nepali Act 2008 was formulated with the aim of motivating non-resident Nepalis to take part in the development of Nepal by enhancing their attachment towards the home country. The Act defines a 'non-resident Nepali' as a foreign citizen of Nepali origin or a Nepali citizen residing abroad. By 'foreign citizen of Nepali origin', the Act refers to a person who has acquired the citizenship of any foreign country other than a member country of SAARC (South Asian Association for Regional Cooperation) and who him/herself or whose father, mother, grandfather or grandmother was a citizen of Nepal at any time. Likewise, a Nepali citizen who has lived in a foreign country for at least two years and engaged in any profession, occupation, business and employment (except diplomats and students) is referred to as 'Nepali citizen residing abroad'.

This Act allows for the registration of non-resident Nepalis, who are issued an identity card recognising them to be so. A non-residential visa can be issued for a period not exceeding 10 years to the foreign citizen of Nepali origin or his/her family, and the Act also entitles such a foreign citizen of Nepali origin to make investments or run any industry or business at par with Nepali citizens. It also allows the formation of a union of non-resident Nepalis within Nepal.

Since many labour migrants usually stay away for about two years or more, they also fall within the category of non-resident Nepalis and hence can avail themselves of the rights conferred by the Non-Resident Nepali Act. But, unless these labour migrants seek to relinquish their Nepali citizenship, most of the provisions in this Act will not be applicable to them.

### **Implications of the Prevailing Foreign Employment Act**

Overall, the discussion on the national legal regime related to foreign employment suggests that Nepal has made significant progress

in addressing the concerns of labour migrants by introducing various Acts and policies to maximise the benefits of foreign employment while gradually minimising and resolving the risks and problems often associated with the rights and welfare of workers. There are still a few loopholes or inconsistencies between the prevailing Foreign Employment Act and Rules and other national legal instruments.

First, the equal emphasis by the Act on the protection of the rights of migrant workers and entrepreneurs involved in foreign employment serves to work against the rights exclusively of migrant workers. Secondly, in case the Foreign Employment Act or Rules does not cover certain aspects related to issues of foreign employment or if there is any confusion due to the vagueness of its provisions, reference is made to the Civil Code to make final decisions or to carry out any procedures – which can be a lengthy process and also does not capture all the complexities related to foreign employment.

Despite having adequate national laws to govern foreign employment, Nepal cannot exercise extraterritorial jurisdiction to protect its migrant workers in destination countries or prosecute foreign individuals or organisations under its law. There is very little Nepal can do in terms of protecting the rights of workers in a foreign country. Moreover, in most cases, the government's provisions are applicable to documented migrant workers only and it recognises workers as documented only if they have received approval from the government. There are no provisions allowing an undocumented worker to be able to benefit from the security, justice or compensations enshrined in these policy frameworks. It is perhaps time for the government to revisit these policy measures that are targeted only for documented workers given that both regular and irregular migrants contribute significantly to the economy. This becomes particularly pertinent at a time when many Nepalis are knowingly or otherwise going for foreign employment through irregular means, usually via India. In fact, many willingly choose to go abroad through India to avoid the hassles associated with legal formalities while many are duped by recruitment agents and agencies.

Even otherwise, it is important to note that the protection, rights and interests that migrant workers can enjoy on the basis of national instruments is fairly limited. The bilateral agreements and international conventions are central in ensuring the rights and protection

accorded by national policies and instruments. There are a number of international laws that protect the rights of the documented migrant workers as well as the fundamental rights of irregular migrant workers, and Nepal could definitely invoke these instruments in the case of destination countries that have ratified them. By signing bilateral agreements with major destination countries, Nepal could also have in place, better protective mechanisms for its citizens working abroad. The bilateral agreements and the major international conventions are discussed in the next two chapters.

## CHAPTER 3

# Bilateral Instruments

The extent to which governments can directly intervene to protect the rights and interests of its citizens, including those who have left the country for foreign employment, often ends at the borders. While precautions can be taken by encouraging its migrant population to seek employment in countries where the work environment is relatively safer and more favourable to migrants, that in itself is certainly not sufficient to ensure the safety and rights of migrant workers. Yet, there are some mechanisms that a sending country like Nepal can adopt to protect the rights and welfare of its migrant citizens in a foreign country. Governments the world over have adopted various policy measures and strategies to make up for the limits on state sovereignty and to give migrants a legal basis to defend their rights in foreign countries. Some of these include bilateral labour agreements, minimum standards and foreign employment contracts, International Labour Organisation (ILO) conventions and recommendations, the UN Convention on Rights of Migrant Workers, exit control measures, order and discipline in recruitment, licensing of recruitment agencies, and recruitment standards and restrictions.<sup>85</sup>

This chapter focuses exclusively on the bilateral agreements Nepal has signed and analyses their effectiveness in securing and protecting the rights of Nepali migrant workers. Briefly, bilateral instruments are considered more convenient tools since it involves only two parties and thus have traditionally been used to reach a certain level of cooperation between two countries over various issues. In general, bilateral instruments may be in the form of a treaty or an agreement. In the case of labour migration, these often include

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85 Abella and Abrera-Mangahas, 1997.



bilateral labour agreements, bilateral social security agreements, or Memorandums of Understanding (MoUs). MoUs are, however, not legally binding on the signatory parties; rather they provide a softer option with a broad framework and are hence easier to negotiate and implement and also to modify, unlike bilateral labour agreements that are more specific, action-oriented, more formal and binding.<sup>86</sup> Agreements between two countries can also take the form of a statement of mutual labour cooperation or assurances.

Broadly speaking, bilateral labour agreements are considered effective policy tools in pursuing national objectives related to foreign employment. Contrary to general perception, these instruments enable *both* the receiving and sending country to follow their shared concerns through cooperative action by formalising each side's commitment to ensuring that migration takes place in accordance with established rules, terms and conditions.<sup>87</sup> Generally, for a receiving country, among the reasons for signing a bilateral agreement is to ensure continued access to labour markets, and protect the rights and interest of migrant workers, whereas for a sending country, the main objectives are to meet the labour demands of the other party while addressing unemployment at home, manage regular migration, promote and exchange cultural ties, and protect its citizens' interests in a foreign country. Apart from agreements between labour-sending and -receiving countries, such agreements can also be reached between two labour-sending countries as is the case of Indonesia and the Philippines.

The Government of Nepal has signed instruments to regulate labour migration with five major destination countries, namely, Bahrain, Qatar, the United Arab Emirates (UAE), South Korea and Japan (see Table 3.1). These bilateral understandings deal with systematising recruitment procedures, contracts, accommodation and other facilities to the workers; identification of mechanism for settlement of disputes; etc. Although not specifically related to labour migration, the 1950 Treaty of Peace and Friendship with India governs Nepali labour migration to India. The bilateral instruments regulating Nepal's labour migration are given in Table 3.1. (See also Annexes 11 to 16 for the full content of these agreements.)

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86 Wickramasekara, 2006.

87 Abella and Abrera-Mangahas, 1997.

Table 3.1: Bilateral Instruments Regulating Nepal's Labour Migration

SN	Bilateral Instrument with	Date of Signature	Type of Instrument
1.	India	31 July, 1950	Treaty
2.	Qatar	21 April, 2005	Labour Agreement
3.	United Arab Emirates	3 July, 2007	MoU
4.	South Korea	23 July, 2007	MoU
5.	Bahrain	29 April, 2008	MoU
6.	Japan	2009	Letter of Exchange

### India and Nepal: Treaty of Peace and Friendship

The governments of Nepal and India signed the Treaty of Peace and Friendship in Kathmandu on 31 July, 1950, with the objective of strengthening the historical ties that have existed between the two countries and to provide continuity to peace and harmony between them. Within the broader framework of bilateral relations between the two countries, Article 7 of the Treaty reads, 'The Governments of India and Nepal agree to grant, on a reciprocal basis, to the nationals of one country in the territories of the other the same privileges in the matter of residence, ownership of property, participation in trade and commerce, movement and other privileges of a similar nature.'

The 1950 Treaty has not only institutionalised the free movement of people across the Nepal-India border, but has also provided Nepalis in India the same privileges as the Indian citizens. Hence, Nepalis are legally allowed to enter India, settle down, seek employment, own property and conduct business and trade at par with Indian citizens in India. Till date, the 1950 Treaty is the only legal document that governs the mobility of citizens between the two countries.

While the provisions in the 1950 Treaty envisages equal treatment to Nepalis in India, it does not directly address the issue of Nepali migrants in India nor does it include any protective mechanisms to ensure the rights and interests of the migrants. Moreover, most of India's legal instruments address employees in the formal sector only.<sup>i</sup>

Despite these drawbacks, an unprecedented number of Nepalis

<sup>i</sup> Samuels and Wagle, 2011.

have migrated to India historically and continue to do so seasonally, temporarily and permanently for employment. As discussed above, the only policy provisions available to these workers is the 1950 Treaty, which, however, is completely silent on the working conditions, remuneration and benefits for hundreds of thousands of Nepalis working in India.<sup>ii</sup>

<sup>ii</sup> CESLAM's forthcoming Policy Brief 3 'Taken for Granted: Policies Governing Migration of Nepalis to India' delves further into the Nepal-India Migration corridor.

### **Agreement between Nepal and Qatar**

The 'Agreement between the Government of Nepal and the Government of the State of Qatar concerning Nepali Manpower Employment in the State of Qatar' was signed on 21 April, 2005, in Doha by the Government of Nepal and the Government of Qatar. The aim of the Agreement is to 'further strengthen the already existing friendship ties and cooperation' between the two governments and to organise Nepali migrant workers in the State of Qatar. The agreement came into force on the date it was signed with a validity of four years, renewable automatically for subsequent periods unless either party decides to terminate the contract. Prior to termination, either party is required to notify the other in writing at least six months prior to expiry. Further, the agreement also specifies that the provisions contained therein can be amended by mutual consent.

### **Recruitment**

According to the Agreement, recruitment offers from employers in Qatar for the employment of Nepali labourers have to be presented by Qatar's Ministry of Civil Service Affairs and Housing to Nepal's Ministry of Labour and Transport Management (MoLTM). The recruitment offers are required to mention all the necessary information, including the required qualifications and work experience; specialisations; duration of contract; terms of employment, namely, remuneration, end-of-service gratuity, probationary period and working conditions; and facilities regarding transport and accommodation, so that the workers can make an informed decision prior to taking up employment and signing the contract. For

its part, the MoLTM is required to take the necessary measures to facilitate the procedures required for medical tests, acquiring passports and travel permits, and to provide workers with adequate information on the conditions of employment and cost and standards of living in Qatar.

Upon entering an employment contract for the first time, the onus lies on the employer to bear all the travel expenses of the workers from Nepal to the place of work in Qatar as well as the return trip. In addition, the employer is also responsible for bearing the round-trip travel costs of the employee during periods of leave as specified in the contract.

### ***Contract***

The Agreement requires that the terms and conditions of employment of Nepali workers in Qatar be defined in the individual employment contract between the employer and the worker. In particular, the contract needs to specify the basic conditions of employment, and the rights and obligations of both parties. The Agreement specifies that the contract will expire after the duration of employment. While prior notice is not required when the contract ends, the employer needs to notify the worker in writing at least 30 days before the expiry of the contract if the employer wishes to extend the contract.

The Agreement also states that the contract has to be drafted in Arabic, Nepali and English, and four copies of the same made, with one each kept by the employer, the worker and the ministries of both countries.

The responsibility for authenticating the employment contracts concluded in Qatar is given to Qatar's Ministry of Civil Service Affairs and Housing and the Nepali embassy in Doha. Similarly, the contracts concluded in Nepal are required to be authenticated by the MoLTM and the embassy or Consulate of Qatar in Nepal.<sup>88</sup>

### ***Remittance***

The Agreement entitles the worker the right to remit his/her salary to Nepal. However, the remittances are to be subject to the financial regulations of Qatar.

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88 The Embassy of Qatar had just been set up in Kathmandu at the time of writing.

***Settlement of Disputes***

The Agreement addresses issues related to disagreements or disputes between the employer and the worker. When a dispute arises, the Agreement specifies that complaints be filed with the concerned body within the Ministry of Civil Service Affairs and Housing in Qatar for an amicable settlement. In case of failure to reach a settlement, the dispute is to be referred to the competent judicial authorities in Qatar.

***Monitoring and Implementation***

The main responsibility for monitoring the implementation of this Agreement rests with a competent body within the Ministry of Civil Service Affairs and Housing in Qatar. There are also provisions to form a joint committee comprising not more than three representatives each to coordinate between the two governments, particularly to implement the Agreement and take necessary actions, interpret the provisions in the event of differences, and submit recommendations for review or amendment of sections of the Agreement.

**Memorandum of Understanding between Nepal and the United Arab Emirates**

The 'Memorandum of Understanding between the Government of Nepal and the Government of the United Arab Emirates in the Field of Manpower' was signed in Kathmandu on 3 July, 2007. The Memorandum of Understanding (MoU) came into force on the day it was signed and was valid for a period of up to four years. While the MoU specifies that the MoU will automatically extend for another four years, it can also be terminated in writing by either country by providing a three-month advance notice.

***Definition***

Article 1 of the MoU defines 'manpower' as all expatriates, employed in a temporary contractual basis, including skilled and semi-skilled workers, who nonetheless have to leave the UAE after the termination of individual contracts. Recruitment of such human resource and their entry to the UAE is regulated by relevant laws, rules and procedures of both countries.

***Recruitment***

Prior to recruiting workers, the MoU requires the employer in the UAE to issue a letter to licensed recruitment agencies requesting workers from Nepal. The 'demand letter' needs to state specifically the qualifications of the worker, specifications of the job, type of job and the conditions of employment, including details of salary, accommodation, transportation and any other relevant terms. Upon receiving the letter, the Nepali recruitment agency is to submit it to the Department of Foreign Employment (DoFE) for approval, and once the DoFE approves the employment offer and the terms and conditions of the employment contract, the recruitment can proceed by following the procedures outlined in Nepal's Foreign Employment Act 2007. Only those recruitment agencies recognised by the Government of Nepal are authorised to carry out the recruitment process.

***Contract***

The employer in the UAE is responsible for the recruitment and placement of workers from Nepal which can be done through a mutual selection process depending on needs and requirements. After the selection process is over, the employer and the employee can proceed to sign a written contract that clearly states the rights and obligations of the two parties. For the contract to be valid, it needs to be authenticated by the Ministry of Labour in the UAE. Only contracts written in Nepali, English or Arabic are recognised as authentic texts by the Ministry of Labour and law courts in the UAE.

As per the agreement, it is the responsibility of the employer to provide the Nepali workers in the UAE with protection in terms of placement of service, accommodation facilities, social and health services and other facilities in accordance with the rules and regulations of the UAE. Additionally, the MoU requires the employer in the UAE to provide periodic information about Nepali expatriate workers to the Nepali embassy in Abu Dhabi.

***Remittance***

Nepali expatriates have the right to transfer earnings and savings from the UAE to Nepal as long as they are consistent with applicable rules and regulations of the UAE. The government of Nepal is held responsible for ensuring these rights by taking appropriate measures to facilitate such transfers.

***Settlement of Disputes***

The concerned department within the Ministry of Labour of the UAE is responsible for settling any cases of dispute between the employer and the worker. If no amicable settlement is reached, the complaint is referred to the competent judicial authorities in the UAE.

***Monitoring and Implementation***

It is the responsibility of the Ministry of Labour in the UAE and the MoLTM in Nepal to implement the provisions of the MoU. However, these have to be in concordance with the prevailing laws and regulations of both countries. The MoU has proposed the formation of a joint committee comprising at least three members each from Nepal and the UAE. It is expected that such a committee would be responsible for the implementation of and follow up to the MoU. The committee is also recommended to meet annually or when it is deemed necessary, in Nepal and the UAE alternately.

***Memorandum of Understanding between Nepal and South Korea***

The 'Memorandum of Understanding between the Ministry of Labour and Transport Management, Government of Nepal and the Ministry of Labour of the Republic of Korea on the Sending of Workers to the Republic of Korea under the Employment Permit System' was signed on 23 July, 2007, to regulate the sending of Nepali workers to South Korea. The MoU sets out provisions for sending Nepali workers under the Employment Permit System (EPS) and came into effect on the date of signature, with a validity of two years, to be extended with mutual consent.

***Recruitment***

The Ministry of Labour and Transport Management (MoLTM) is the primary Nepali government agency responsible for the selection, recruitment and sending of Nepali workers to South Korea. The responsibility of the actual implementation of the MoU was given to the Department of Labour and Employment Promotion (DoLEP),<sup>89</sup> and, at present, the Department of Foreign Employment (DoFE) has

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89 As per the Foreign Employment Act 2007, the Department of Labour and Employment Promotion was separated into the Department of Labour (DoL) and the Department of Foreign Employment (DoFE) in 2008. The DoFE is now the primary administrative entity responsible for all matters relating to the migration of Nepalis for foreign employment.

been designated by the MoLTM to act as the sending agency. Besides the DoFE, no other organisation can be involved in selecting, recruiting and sending Nepali workers to South Korea.

In South Korea, the Ministry of Labour (MoL) is the primary government agency responsible for receiving Nepali workers, and implementing matters pertaining to the entry of workers into the country; the Human Resource Development Service has been designated by the MoL to act as the receiving agency.

### ***Sending Fee***

The MoU has designated the DoFE (previously, the DoLEP) as the primary recipient of the 'sending fee', that is, the money that each worker pays for the process of selection, recruitment and sending. It is the responsibility of the DoFE to provide information to the MoL in South Korea about the total amount collected from each worker as sending fee. For its part, the MoL can request the DoFE to reduce the fee if it is assessed to be excessively high. In accordance with the MoU, the sending fee for each prospective migrant worker also needs to be made public by the MoLTM and the DoFE in Nepal.

### ***Advertisement***

As per the agreement, the MoLTM and DoFE are required to advertise the key contents and details of the employment procedure under the EPS in Nepal.

### ***Korean Language***

In order to be eligible for selection, individuals seeking employment in South Korea are required to take the EPS Korean Language Proficiency Test (EPS-KLT). According to the MoU, the test is to be conducted by the MoL and general matters regarding the EPS-KLT, such as public notification, question selection and administration of the test, is to be carried out by an agency authorised and announced by the MoL. Only individuals between the ages of 18 and 39 years who do not have any criminal records or records of deportation and are free to leave Nepal, are eligible to take the EPS-KLT.

### ***Selection of Job-Seekers***

The DoFE is required to prepare a roster of job-seekers and submit it to the Human Resource Development Service of South Korea. The



roster, among others, needs to include personal information, desired employment conditions such as wage and type of occupation, personal and career background, and information on EPS-KLT such as test agency, test date and results. Further, the MoU also requires the DoFE to take the necessary steps to expedite the process of obtaining a passport; and also inform job-seekers that their inclusion in the job-seekers' roster will not guarantee them a job in South Korea.

### ***Contract***

The MoU holds the DoFE responsible for announcing the names of job-seekers selected via public media in Nepal. However, this is to be done only after receiving the employer's draft of the labour contract from the Human Resource Development Service of South Korea. The labour contracts are not to exceed one year even though a worker can be allowed to work in South Korea for up to three years after the date of entry. The DoFE is also required to explain the content of the labour contract to each worker so that he/she can make an informed and voluntary decision about accepting or declining the employment offer. Once the worker makes the decision, the DoFE is required to forward the information to the Human Resource Development Service.

If someone refuses to sign the contract or does not want to take up the job offer, any reason(s) for the refusal is to be forwarded to the Human Resource Development Service. In case a job-seeker cancels the already signed labour contract or does not sign the contract again after being selected, as required, without providing due explanation, the MoU authorises the MoL to remove the name of the worker from the job-seekers' roster. The MoU also requires that the worker be given the original copy of the contract to take along with him/her while travelling to South Korea.

### ***Preliminary Education***

The MoLTM and the DoFE have agreed to provide 'preliminary education' (which covers aspects such as religion, customs, social system, regulations, safety and technical education) to workers who sign the labour contract. Failure to take preliminary education could potentially lead to the worker being deported from South Korea. The agreement specifies that the content and period of education will be decided by the MoLTM/DoFE but prior consultation with the MoL is required. Further, while the preliminary education can be given

through a public agency selected by the MoLTM, the selection of such an agency has to be done in consultation with the MoL.

***Visa***

After receiving the Certificate for Confirmation of Visa Issuance (CCVI) from the Human Resource Development Service of South Korea, the DoFE is required to immediately inform the workers in Nepal as well as carry out the necessary procedures required for them to apply for a visa within three months. Similarly, the MoL in South Korea has also been given the authority to reduce the allocated number of job-seekers if a certain percentage of those receiving the CCVI do not take the employment offer. Again, no other organisation besides the DoFE is authorised to assist in the visa application process.

***Information on Sending Process***

According to the MoU, the responsibility of providing regular updates on the progress of the selected workers' preparations for entry into South Korea, including purchase of insurance, completion of preliminary education, and application for visa, lies with the DoFE. The update, as stated in the MoU, has to be provided by entering such information into the 'EPS Network' at every stage of the process.

***Entry of Workers***

After signing the contract a worker is authorised to enter the Republic of Korea on the date given by the MoL and the Human Resource Development Service of South Korea. S/he is required to carry along the original copies of the employment contract and medical examination certificate. To prevent delays in the workers' entry, the DoFE is required to make advance flight reservations.

***Employment and Sojourn Management***

The MoL is responsible for providing employment-related training and conducting medical examination of workers before they begin working in Korea. The worker is to bear all the expenses, including travel costs, if s/he decides to return home prior to the termination of the labour contract or is disqualified for any medical reason or is unable to adjust to the environment at the workplace. In case the worker is unable to afford such expenses, the MoLTM is to assist in his/her return to Nepal. Similarly, the MoL is also given

the responsibility of ensuring the protection of the rights of foreign workers in accordance with the related labour laws of South Korea.

### ***Efforts to Eliminate Illegal Stay of Workers***

The MoU requires the two parties to make concerted efforts to ensure the departure of any worker staying illegally in South Korea and to prevent other workers from doing so in the future.

### ***Support in Sending Process***

In order to support the process of sending Nepali workers to South Korea, the MoL is authorised to despatch officers after consulting the MoLTM and the DoFE. Further, the MoU also grants the MoL the authority to supervise, assess, advise and coordinate the labour-sending process.

### ***Memorandum of Understanding between Nepal and Bahrain***

The 'Memorandum of Understanding in the Areas of Labour and Occupational Training between the Government of Nepal and the Government of the Kingdom of Bahrain' was signed on 29 April, 2008, in Kathmandu. The agreement aims to strengthen mutual cooperation and the mutual interests of both the parties in the areas of labour migration and occupational training. The MoU was effective for three years from the date of signing and is renewed automatically unless otherwise notified by either party. If either party wishes to terminate the MoU or amend it, prior notification (at least three months before the date of expiry) has to be submitted in writing.

### ***Recruitment***

As per the MoU, the government of Bahrain agrees to provide all possible facilities to Nepali recruitment agencies registered with the Nepali government to establish offices or companies in Bahrain in order to carry out recruitment-related activities.

### ***Contract***

A written contract is to be drawn up between Bahraini employers and Nepali recruitment agencies, laying down the basic principles of cooperation between them. In addition, another contract is required between a Bahraini employer and a Nepali employee. This contract

needs to identify the rights and obligations of both the parties in accordance with the labour laws for the private sector and other rules and regulations of Bahrain while also specifying the names of the employer, term of the contract, type of work, agreed wage and other details.

***Remittance***

As per the MoU, a Nepali employee has the right to convert his/her salary to any other currency recognised in Bahrain and also remit it to any other country, including Nepal.

***Accommodation***

The Bahraini employer is responsible for making the necessary arrangements required for the employment and accommodation of the Nepali employee prior to his/her arrival in Bahrain.

***Settlement of Dispute***

The MoU specifies that all disputes arising from the implementation of a contract signed by a Nepali recruitment agency and a Bahraini employer will be settled in an amicable manner. However, the settlement of these disputes needs to conform to the laws and regulations of Bahrain. If no settlement is reached such cases are referred to a competent court by the parties involved.

***Cooperation***

In addition to issues that directly concern individual labour migrants, the MoU also makes mention of exchange of data, information, statistics as well as expertise related to the integration of the young in the labour market. Exchange of research, programmes, studies and visits by officials and experts are also outlined in the agreement in order to explore each country's capabilities and resources. In addition, the MoU mentions that both parties are to cooperate in the area of occupational training, especially in developing training plans, methods, studies, research and skills measurement systems and the methods of implementation of the same in both countries. Considering the importance of technical expertise and training institutes, both parties seek to benefit from the recruitment of skilled technical employees in both countries.

**Directive (with First Amendment, 2010), 2009 for Sending Nepalis Technical Interns to Japan**

The Government of Nepal works within the framework of the Japan International Training Cooperation Organisation (JITCO) to send technical interns to Japan. JITCO is a Japanese government agency founded in 1991 to develop the human resource capacity in developing countries by supporting technical intern trainees in Japan. The Directive was amended in 2010.

***Provisions Related to Sending Organisation or Licensee****Licence*

Foreign employment agencies or institutions interested in sending technical interns from Nepal to Japan need to apply for a licence by paying an amount of NPR 20,000 to the Foreign Employment Promotion Board (FEPB). Only those agencies recognised by the MoLTM can send technical interns to Japan.<sup>90</sup>

*Pre-approval*

After obtaining a licence from the DoFE, the licensed agency is required to submit an application to the DoFE for pre-approval to send technical interns to Japan. Along with the application, the agency also needs to include a demand letter attested by the Nepali embassy in Japan; a copy of the agreement between the agency and the supervising organisation in Japan; contact details of the supervising organisation; type and duration of the training; lodging and food facilities; salary, allowance and leave; insurance and medical facility, among others. Once these requirements are met, permission to advertise for interns is to be issued by the DoFE. The advertisement is required to mention the date and reference number of pre-approval from the DoFE; details of the sending agency as well as the supervising organisation; post of the technical interns and the number of interns required; minimum qualification and work experience required; provision for lodging and food; monthly salary and allowance; daily/weekly training schedule; insurance and medical facilities; service charge; the quota reserved by the Government of

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90 As of 3 June, 2012, there were 142 recruitment agencies licensed by the DoFE to send technical interns to Japan, [www.jitco.org.jp](http://www.jitco.org.jp).

Nepal; documents required from the applicants; details on the selection process; and the place and last date for submission of applications. The licensed agency can make the final selection of the applicants, and once the interns are selected, the agency is required to get a bond from the intern stating that s/he will return to Nepal at the end of the contract period. In case the intern fails to return to Nepal, it is the duty of the agency to inform the Nepali embassy in Japan or the DoFE. To assist the technical interns in Japan, the agency is also required to have a contact person or office in Japan approved by the MoLTM.

#### *Promotional cost*

The Directive limits the promotional cost that the sending organisations or licensees can collect from the interns to NPR 50,000. This amount is to be inclusive of health check-up fees, orientation training and other expenses. Further, the Directive also mentions that any transaction related to sending technical interns to Japan needs to be transparent, fair and managed properly.

#### *Representatives*

The licensed sending agency is also required to appoint representatives in Japan to work for the welfare of the interns. The representatives are given the responsibility of facilitating the interns' stay in Japan, resolving any problems that may arise, providing relevant information to the Nepali embassy in Japan and JITCO as well as helping the interns return to Nepal at the end of their contract period.

#### *Foreign Employment Permit Sticker*

To receive a Foreign Employment Permit sticker,<sup>91</sup> the licensed agency is required to submit an application to the DoFE along with relevant documents, including letter of pre-approval from the DoFE; contract between the agency and the intern; contract between intern and the receiving organisation; copy of the bond from the interns to return to Nepal after the contract period; certificates of training on language and culture as well as pre-departure orientation; health certificate; insurance; receipt of welfare fund deposit; and receipt

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91 The sticker contains basic information such as name of the destination country, date of issue and signature of the Director General of the DoFE.

of the promotion fee paid to the licensee, among others. After the formalities are completed, the DoFE can then send the list of the approved technical interns to the Nepali embassy in Japan.

### ***Provisions Related to Technical Interns***

#### *Qualification*

To be eligible for employment under JITCO, job aspirants are required to be between the ages of 18 and 40, have at least two years of working experience in a registered industry, cooperative or community-based organisation in Nepal, and undergo training in Japanese language and culture.

#### *Responsibilities*

The Directive strictly forbids the submission of false information or documents by the technical interns and makes it mandatory for them to return back to Nepal after the training. While in Japan, the interns are prohibited from joining the company other than the one assigned to them, upon returning to Nepal, they are expected to work in the same industry in which they took training in Japan. The technical interns are also required to be in regular contact with the Nepali embassy in Japan as well as the sending agency in Nepal.

### ***Other Provisions***

#### *Pre-departure training*

Once the shortlist of potential interns has been finalised, applicants are required to appear for the language and culture test administered by the JICA<sup>92</sup> Alumni Association of Nepal (JAAN). The DoFE is required to make the necessary arrangements for the test, after receiving the list of shortlisted candidates from the licensed agency, which is also responsible for inviting representatives from the receiving organisations to participate in the final selection from among those who have successfully completed their JAAN test. The Directive, however, requires that the final selection be done in the presence of a representative from the DoFE.

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92 Japan International Cooperation Agency.

*Responsibilities of the industrial institution*

The industrial institution in Nepal whose employee is interested in going to Japan as a technical intern is required to recommend its employee or technical intern to the agencies enlisted under JITCO. The institution also has to send a description of the intern to the DoFE and include the necessary details such as name, address, age, post and the number of years the nominee has worked in the institution. It is also responsible for providing employment to the recommended interns after completion of the training. In case of false recommendation provided or 'wrong' candidate sent or failure to provide employment after return, the industry will be liable for legal action from the DoFE.

*Role of the supervising organisation*

The Directive holds the supervising organisation responsible for providing information about the technical interns to the Nepali embassy in Japan on a bi-annual basis at least. The information required include: when the technical interns are expected to join work; and when s/he leaves the work place, is on leave, and/or intends to return to Nepal. It is also the responsibility of the supervising organisation to receive the technical interns at the airport on arrival.

*Role of Nepali embassy in Japan*

The Nepali embassy in Japan is expected to coordinate and facilitate with JITCO and the supervising organisations in Japan as well as the concerned authorities of Nepal. More specifically, it is given the responsibility of certifying the demand letter under JITCO; reporting to the Ministry of Foreign Affairs and the MoLTM after monitoring the trainees; and providing information on the legal provisions about labour, employment and visa in Japan. On the whole, the embassy is responsible for protecting the technical interns and resolving any problems they may face.

*Renewal of enlisted agencies*

The licensee is required to renew its licence by January every year by paying NPR 10,000 annually to the FEPB. Failure to do so will result in the removal of the licensee from the list maintained by the DoFE. Those institutions that fail to send interns to Japan within six months



of collecting fees or within three months of obtaining the labour permission are also removed from the sending list. In addition, these institutions are also required to pay compensation to the technical interns in accordance with the Foreign Employment Act 2007.

### *Monitoring*

According to the Directive, a high-level committee is to be formed under the Minister of the MoLTM to send interns under JITCO. It will be the responsibility of the committee to monitor activities concerning the interns, including receiving reports and providing suggestions for reform. The committee is also required to work towards creating a conducive environment to allow for the proper and transparent management of interns and advise the MoLTM whenever necessary.

### *Action against irregularities and corruption*

The Directive also states that sending agencies that fail to send interns to Japan on time and are found to be involved in illegal activities are to be punished according to the provisions of the Foreign Employment Act 2007 and the Foreign Employment Rules 2008. Action is also taken against institutions charging excess service fees.

The MoLTM holds the right to resolve any problems and confusion related to the process of sending technical interns to Japan under JITCO. It also holds the right to amend or cancel the Directive.

## **Comparing the Bilateral Agreements**

The agreement signed between Nepal and Qatar in 2005 is the first of its kind between Nepal and a migrant-receiving destination. Since then, Nepal has formalised similar agreements with the United Arab Emirates, South Korea, Bahrain and Japan, the first three of which are all major destination countries for Nepali workers. As summarised above, each agreement lists out provisions related to the recruitment procedures, contracts, responsible governmental authorities, and areas of cooperation between the parties. All the agreements clearly state their validity and the terms and conditions for mutually agreed extensions.

There are, however, a few key differences between the agreements. The MoU with Bahrain allows the licensed Nepali recruitment agencies to establish offices in Bahrain but does not specifically envisage a role for the MoLTM. On the contrary, the other agreements hold

the MoLTM solely responsible for the recruitment procedure. All the agreements require the employer-employee labour contract to be legally signed by both parties and to specify the terms and conditions of employment, including wage, hours of work, duration of contract and details about the employers. The agreements with Bahrain and the UAE specify that migrant workers can avail of accommodation facilities provided by the employers. In the case of the agreement with Qatar, such facilities, if available, are to be stated in the employment contract itself. The agreements with Bahrain, Qatar and the UAE outline the process for an amicable settlement in cases of disputes between the employer and the employee, which, in most cases, are handled by the receiving country's concerned ministry, and only if the dispute is not settled, the case is to be referred to competent judicial authorities. The directive on Japan does not directly specify settlement of disputes though it has a provision for action against irregularities and corruption. The MoU with South Korea does not have any such clause.

Among the bilateral agreements signed by Nepal with destination countries, the agreement with South Korea is comparatively more elaborate in that it addresses the procedures for recruitment and the requirements to be fulfilled by the respective authorities. Unlike other agreements, it stipulates that workers take the Korean Language Proficiency Test as well as undertake preliminary education about Korean culture. The agreement also specifies that the Ministry of Labour of South Korea protect the rights of foreign workers in accordance with the related labour laws of the country. Similar to the bilateral agreement with South Korea, the technical interns selected to go to Japan also need to take a language and culture test, and the directive lists specific responsibilities of the interns and also of the sending organisation, the industrial organisation of Japan, the supervising organisations as well as the Nepali embassy in Japan.

### **Implications of the Bilateral Agreements**

The bilateral agreements signed by Nepal with destination countries have wide implications on the migration process as a whole. While the overall purpose of these agreements is to enhance relations between the countries by developing cooperation in the field of human resources, they also facilitate the procedures and knowledge dissemination while holding particular institutions in Nepal as well

as destination countries responsible for migrants. More importantly, they aim to contribute to the protection of the rights and interests of the migrants in destination countries. The agreements list provisions that enable Nepali migrant workers to undergo a safe and smooth transition to their destinations through legal and systematic procedures. Specific government institutions and departments are assigned the responsibility of overseeing the migration process for employment and are also expected to work towards making the overall procedure of obtaining foreign employment short as well as convenient.

The bilateral agreements also facilitate the exchange of knowledge and information between the two governments on issues related to foreign labour migration. The details of the employment to be provided by employers enable prospective migrants to become better aware of the terms and conditions of their employment prior to accepting contracts. This makes it possible for migrants to have an idea of what to expect at the destination which can help reduce the number of workers returning home owing to maladjustment in the workplace. The agreements establish the legality of migration of Nepalis to the respective countries and make the migrant workers the responsibility of the governments of the destination countries as well as of Nepal. In this regard, Nepalis working in destinations that have entered into such agreements are comparatively safer because of the systematic employment-seeking procedures, better knowledge dissemination and accountability of the governments.

Understanding the significance of bilateral agreements with major destination countries, the Government of Nepal is considering signing labour agreements with Jordan, Israel, Lebanon and Malaysia as well.<sup>93</sup> In fact, according to the Foreign Employment Promotion Board, drafts of the agreements are ready, and have already been exchanged with Malaysia and Israel. The agreement with Malaysia has been in the pipeline since 2009 but delayed due to conflicting positions between the two governments. For instance, Nepal is in favour of having separate provisions for women, while Malaysia wants a general agreement for both males and females. Similarly, Israel is keen on involving the International Organisation on

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93 As mentioned by Sthaneshwor Devkota, Director of the Foreign Employment Promotion Board, 24 February, 2012.

Migration (IOM) in the recruitment process, a provision not mentioned in the Foreign Employment Act 2007. In fact, in the case of Israel, at least for now, even recruitment through a process like the EPS to South Korea might not be very feasible as the number of migrants to Israel is relatively very few.<sup>94</sup>

Evidently, the bilateral agreements are important policy instruments the Nepali government can resort to for securing the rights and interests of its citizens in a foreign country. Though only five agreements have been signed by Nepal so far, some of these countries are major recipients of Nepali workers. The effectiveness of these agreements, however, depends largely on the implementation of the provisions in the agreements by both the parties, and the contents of the agreements and their conformity with international norms.

Some gaps in the implementation as well as in the content of the bilateral agreements have already been noted. For instance, the joint committee mentioned in the agreements with Qatar and the UAE have yet to be established. Neither has Nepal been able to send technical interns to Japan as per the demand.<sup>95</sup> The fact that the technical interns are required to have at least two years' work experience in an industry oftentimes means that those who can meet the criteria are reluctant to leave their jobs while others are unable to meet the requirements. The procedures for recruitment are not uniform either, and so, while the recruitment agencies play a crucial role with respect to other countries, the DoFE is directly involved in recruiting and sending workers to South Korea. Further, while the bilateral agreements deal with the recruitment process, contracts, settlements of disputes, and monitoring and implementation, none mentions the rights and freedom of the workers, including the freedom to practise their religion and culture, the freedom of mobility and the right to dignity.

In addition to bilateral agreements, for a migrant-sending country

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94 Based on an interview with Sthaneshwor Devkota, Director of the Foreign Employment Promotion Board, 24 February, 2012. In the fiscal year 2010/11, 3703 migrant workers went to South Korea through the EPS and only 273 to Israel. In the eight months of the current fiscal year 2011/12, 1689 went to South Korea through EPS and 572 to Israel, [www.dofe.gov.np](http://www.dofe.gov.np)

95 'JITCO programme fails to yield desired results', *ekantipur.com*, 2 November, 2011.

like Nepal, ratification of international conventions by the destination countries also serves as an entry point that can be leveraged to ensure the welfare of its citizens seeking employment in foreign countries. These international conventions set out standard norms whose provisions are to be respected and adopted by the signatories, and if the destination country has ratified them, they can be used to bring the rights and interests of Nepali migrant workers within the framework of accepted universal standards. The welfare of Nepali migrant workers is hence undeniably also affected by the ratification of such conventions by destination countries, and this will be discussed in the next chapter.

### **Additional Policy Changes**

#### *Labour law reforms in Saudi Arabia, Qatar and the United Arab Emirates*

On November 2015, Saudi Arabia issued a new provision to regulate working conditions in the private sector. This includes regular payment to workers, 30 minutes break every five hours, work hours limited to 12 hours, and non-transfer of workers to another employer without the worker's consent.<sup>96</sup>

The government of Qatar reformed the Sponsorship system in October 2015 to enable migrant workers to change jobs and leave the country. As per the new changes, migrant workers can now change jobs at the end of their contract whereas previously they were permitted to return only after two years.<sup>97</sup> Similarly, while migrant workers previously required the permission of their employers to leave the country, they can now apply to the Interior Ministry.

The government of the UAE, on September 2015, introduced new reforms in the labour sector to increase transparency in job terms and employment contracts. As per the new provision, the migrant workers' contracts will now be lodged with the Ministry rather than with the employer.<sup>98</sup>

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96 'Saudi Arabia introduces new employment laws', *Outlaw.com*, 7 October 2015; 'Saudi to implement new labour reforms on October 8', *Gulf Business*, 24 September 2015.

97 'Qatar emir approves labour law reforms', *The National*, 28 October 2015.

98 'UAE announces labour reforms to protect foreign workers', *Aljazeera*, 29 September 2015.

*Closure of the shelter house in Kuwait*

The Nepali Embassy in Kuwait closed down its shelter for migrant workers in April 2015. Migrant workers will be referred to the Expatriate Lodging Centre established by the government of Kuwait.<sup>99</sup>

*Nepal-Qatar Human Rights bodies agreement*

The National Human Rights Committee (NHRC) of Qatar and National Human Rights Commission (NHRC) of Nepal signed an agreement on 16 November 2015 to guarantee the human rights of Nepali workers in Qatar. Nepali workers in Qatar can now file complaints at the NHRC Qatar. NHRC Qatar will establish a separate desk for Nepali workers to ensure effective investigation into the cases. However, there are skepticism on the agreement mainly because the NHRC agreements are non-binding and because it may only be a move by Qatar to improve its image amidst controversies surrounding the world cup. The agreement will be in effect for four years with the opportunity for renewal on mutual consent.<sup>100</sup>

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99 'Nepal to shut down shelter for migrants in Kuwait', *The Kathmandu Post*, 8 April 2015.

100 Karki, H. 'NHRC, Qatar's Rights Body Sign 10-PT Deal', *The Kathmandu Post*, 17 November 2015; Shrestha, S. 'Will New Agreement In Qatar Benefit Nepali Migrant Workers?' *Republica*, 18 November 2015; 'Nepal, Qatar rights bodies sign deal on protecting migrant workers', *The Himalayan Times*, 16 November 2015.

## CHAPTER 4

# International Instruments Guiding Nepal's Labour Migration

Transnational labour migration is regulated by a number of international instruments that provide the framework for the protection of the rights of migrant workers. More specifically, the international conventions on migrants, the human rights instruments of the United Nations, and the labour standards of the International Labour Organisation (ILO) constitute the most important of such instruments.

The International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966 and the International Covenant on Civil and Political Rights (ICCPR), 1966, are by far the most important international human rights conventions as they provide normative standards and outline the fundamental rights to all human beings, and, by extension to migrant workers as well. Similarly, the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), 1979; the Convention on the Rights of the Child (CRC), 1989; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW), 1990; and the Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 1966, specify the rights of women, children and migrants while also prohibiting discrimination on the basis of race. The Universal Declaration of Human Rights (UDHR), 1948, despite being a non-binding document, is also one of the most important legal frameworks worldwide. Many, if not most, principles of human rights enshrined in other international conventions, declarations, etc, are derived from the UDHR. The ILO conventions specifically take up the cause of workers and also of the employers. Among the 189 different ILO conventions adopted so far, two, namely, ILO Convention 97 – Migration for Employment

Convention (Revised), 1949, and ILO Convention 143 – Migrant Workers (Supplementary Provisions) Convention, 1975 relate directly to labour migrants.

The ICMW generally referred as the UN Migrant Workers Convention is considered the most comprehensive international treaty on migrant worker rights till date, and ILO C97 and C143 deal directly with migrant workers. These international instruments set moral standards for member states to abide by and serve the promotion of migrant rights. They hold more significance today when international migration has become such an essential feature of globalisation. The welfare of labour migrants is a significant and sensitive issue for the international community, and these conventions are major policy tools used to address the rights of migrant workers. In many regards, they also provide the basis for the formulation of national, bilateral or regional instruments related to labour migration.

Nepal is party to some of the major UN Conventions and has also ratified 11 ILO Conventions till date (see Table 4.1). But of the three instruments that relate directly to labour migration – ICMW, ILO C97 and the ILO C143 – neither Nepal nor many of the major destination countries hosting Nepali workers (India, Qatar, Saudi Arabia, the United Arab Emirates, Lebanon, Jordan, Kuwait, Malaysia, Japan or South Korea) has ratified them.

### **International Conventions Ratified by Nepal**

The international conventions guiding Nepal's migration experience are listed in the table below, followed by a brief description of each.

#### ***Universal Declaration of Human Rights (UDHR), 1948***

The UDHR prohibits anyone to be held in servitude, slavery or slave trade and allows freedom to peaceful assembly and association; right to work, freedom to choose employment and protection against unemployment; right to equal pay for equal work; right to form and join trade unions for the protection of interests; right to leisure, limitation of working hours and provision of paid holidays; right to a standard of living adequate for the health and well-being of an individual and of his/her family; and special care and attention to motherhood and childhood.



Table 4.1: Major International Conventions Ratified by Nepal

SN	International Convention	Date of Ratification/ Accession (a)*
1.	Universal Declaration of Human Rights, 1948	Non binding
2.	International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966	1991 a
3.	International Covenant on Civil and Political Rights (ICCPR), 1966	1991 a
4.	Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949	2002 a
5.	International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 1966	1971 a
6.	Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979	1991
7.	Convention on the Rights of the Child (CRC), 1989	1990
8.	ILO Convention 14 – Weekly Rest (Industry), 1921	1986
9.	ILO Convention 29 – Forced Labour, 1930	2002
10.	ILO Convention 98 – Right to Organise and Collective Bargaining, 1949	1996
11.	ILO Convention 100 – Equal Remuneration, 1951	1976
12.	ILO Convention 105 – Abolition of Forced Labour, 1957	2007
13.	ILO Convention 111 – Discrimination (Employment and Occupation), 1958	1974
14.	ILO Convention 131 – Minimum Wage Fixing, 1970	1974
15.	ILO Convention 138 – Minimum Age, 1973	1997
16.	ILO Convention 144 – Tripartite Consultation (International Labour Standards), 1976	1995
17.	ILO Convention 169 – Indigenous and Tribal Peoples, 1989	2007
18.	ILO Convention 182 – Worst Forms of Child Labour, 1999	2002

\* 'Ratification defines the international act whereby a state indicates its consent to be bound to a treaty if the parties intended to show their consent by such an act. The institution of ratification grants states the necessary time-frame to seek the required approval for the treaty on the domestic level and to enact the necessary legislation to give domestic effect to that treaty.' 'Accession is the act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states. It has the same legal effect as ratification.' (Source: 'Glossary of terms relating to Treaty actions', United Nations Treaty Collection.)

See also Annex 17 for a list of international conventions ratified/not ratified by some major destination countries of Nepali labour migrants: Qatar, Saudi Arabia, the United Arab Emirates, Lebanon, Jordan, Malaysia, Japan, South Korea and India.

Source: United Nations Treaty Collection and NORMLEX Database of International Labour Standards, accessed on 21 December, 2011.

### ***International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966***

The ICESCR outlines provisions on the right to work and to freely choose and accept work in order to earn a living. Signatories to this Covenant are also called upon to ensure just and favourable

conditions of work, social security, fair wages, equal remuneration and safe and healthy working conditions along with rest and leisure. State parties are also entrusted with ensuring the right of everyone to form trade unions and join the trade union of their choice, the right of trade unions to function freely without any objection and to strike but in conformity with the laws of the country. In addition, the Covenant also calls on signatory states to recognise the right of everyone to an adequate standard of living.

***International Covenant on Civil and Political Rights (ICCPR), 1966***

The ICCPR calls for state parties to prohibit slave trade and ensure that no one is held under slavery or servitude or required to perform forced or compulsory labour. The Covenant also has provisions for the right to liberty of movement, freedom to choose residence within the territory of the state and the right to leave a country, including one's own. Further, the ICCPR also specifies that all criminally charged persons are equal before the courts or tribunals and are entitled to equal protection before the law without discrimination. It also recognises the right to peaceful assembly, freedom of association with others, including the right to form and join trade unions.

The Optional Protocol to the ICCPR contributes to the legal strength of the ICCPR by allowing the Human Rights Committee of the ICCPR to receive and consider complaints from individuals regarding any violation of rights provided by the ICCPR. This Protocol was ratified by Nepal in 1991. Similarly, the Second Optional Protocol to the ICCPR of 1989, which prohibits the execution of any individual belonging to signatory states and also calls for state parties to take all measures to abolish the death penalty, was ratified by Nepal in 1998.

***Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949***

The Convention requires signatory countries to punish any person who 'procures, entices, leads away, for purposes of prostitution, another person even with the consent of that person', and 'exploits the prostitution of another person'. The Convention also recommends member states to cooperate in combating international traffic for the purpose of prostitution, including in the extradition of offenders.

***International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 1966***

Signatories to the ICERD agree to prohibit and eliminate all forms of racial discrimination. Member countries agree to 'guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law in the enjoyment of the right to freedom of peaceful assembly and association, the right to work, to free choice of employment, to just and favourable conditions of work, to equal pay for equal work, to just and favourable remuneration, the right to form and join trade unions, etc'. Similarly, the Convention encourages state parties to review policies and amend or repeal laws and regulations which create or perpetuate racial discrimination. Further, the ICERD also requires the signatories to 'encourage integrationist or multiracial organisations and movements and other means of bridging gaps between races, as well as discourage anything which tends to promote racial division'.

***Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979***

State parties to CEDAW are entrusted to take all appropriate measures to eliminate discrimination against women in the field of employment to ensure the same rights to men and women on the basis of equality. More specifically, Article 11 of the Convention recognises the right of women to work as an inalienable right of all human beings; to the same employment opportunities in matters of employment; to free choice of profession and employment, the right to promotion, job security and all the benefits and conditions of service and the right to receive vocational training and retraining; to equal remuneration, including benefits, and to equal treatment in respect of work of equal value as well as equality of treatment in the evaluation of the quality of work; to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work as well as the right to paid leave; and to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

***CEDAW General Recommendation No. 26 on Women Migrant Workers, 2008***

The CEDAW committee issued a general recommendation on women migrant workers who may be at risk of abuse and discrimination

at its 32nd session in January 2005. The recommendation identifies three specific categories of migrant women: (a) women migrant workers who migrate independently; (b) those who join their spouses or other family members who are workers; and (c) undocumented women migrant workers. Recognising that migration presents new opportunities for women and gives them a means for economic empowerment, and at the same time also places their human rights and security at risk, it highlights situations that gives rise to the vulnerability of women migrant workers and their experience of sex- and gender-based discrimination as causes and consequences of the violation of their rights. It addresses migrant women who are in low-paid jobs, who may be at high risk of abuse and discrimination, and who may never acquire eligibility for permanent stay.

The recommendation elaborates on applying principles of human rights and gender equality to migrant women as provided for by the UDHR and the many human rights treaties ratified by member countries of the UN. It foregrounds various factors that influence women's migration such as globalisation, desire to seek new opportunities, poverty, gendered cultural practices, gender-based violence in country of origin, natural disasters, wars, conflict, etc, and also raises concerns about sex- and gender-based human rights issues related to migrant women at different stages – in country of origin before departure and upon return, in country(ies) of transit, and in country of destination.

Similarly, the recommendation requires state parties in both origin and destination to adopt common responsibilities to formulate comprehensive gender-sensitive and rights-based policies through the involvement of women migrant workers and relevant non-government organisation and basing them on research, data collection and analysis. It recommends that the country of origin protect and respect the rights of female migrant workers by lifting discriminatory bans and restrictions on migration; providing education, awareness-raising and training; adopting regulations and monitoring systems, and implementing programmes; providing health services, travel documents, legal and administrative assistance; safeguarding remittances of income; and facilitating their return. It recommends that the country of destination lift discriminatory bans or restrictions on immigration; provide legal protection to women

migrant workers, and freedom of movement; grant access to remedies; introduce non-discriminatory family reunification schemes and residency regulations; provide training and awareness-raising, monitoring systems, access to services, rights while in detention for both documented and undocumented women, and protection of undocumented women migrant workers. It recommends that countries of origin, transit and destination enter into bilateral or regional agreements, and adopt the practice of sharing information and best practices. The recommendation also calls for ratification of or accession to relevant human rights treaties.

### ***Convention on the Rights of the Child (CRC), 1989***

The CRC defines a child as someone below the age of 18 and recognises the need for special provisions for the welfare and protection of children. The CRC provisions specifically relevant to migration states that a child must immediately be registered after birth and that the child has the right to acquire a nationality and a name from birth. Further, it calls upon member countries to ensure that a child is not separated from his parents against his/her will, except in special cases. If separated, state parties are required to respect the right of the child to maintain personal relations and direct contact with both the parents on a regular basis, except if it is against the interests of the child.

The CRC also recognises the right of the child to be protected from economic exploitation and from performing work that is likely to interfere with the child's education or is hazardous or harmful to the child's health or physical, mental, spiritual, moral or social development. Therefore, it also asks member countries to take appropriate measures to provide for a minimum age; minimum wages for admission to employment; appropriate regulation of the hours and conditions of employment; and appropriate penalties and sanctions.

## **ILO Conventions Ratified by Nepal**

### ***ILO Convention 14 – Weekly Rest (Industry) Convention, 1921***

ILO Convention 14 deals with the weekly rest day in industrial employment, allowing all staff employed in an industry, public or private, to enjoy at least 24 consecutive hours of rest in a period of seven days.

***ILO Convention 29 – Forced Labour Convention, 1930***

ILO Convention 29 calls for an end to the use of forced or compulsory labour in all its forms. According to the Convention, 'forced or compulsory labour refers to all work or service exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily'.

Convention 29, however, allows the use of forced or compulsory labour, if the work is of imminent necessity to the community and it is impossible to obtain voluntary labour by offering prevailing wages and conditions of employment. But these provisions are applicable only if the said labourer is an 'adult able-bodied male' between the ages of 18 and 45. The Convention requires that the maximum length of such labour not exceed 60 days in one period of 12 months, including the time spent going to and from the place of work. Normal working hours are to be the same as those prevailing in the case of voluntary labour with remuneration to be paid for extra hours worked. A person engaged in forced labour also needs to be granted a weekly day of rest. The Convention also forbids a forced labourer to be transferred to a location that differs significantly in terms of food and climate and poses a threat to his health, except in cases of special necessity.

***ILO Convention 98 – Right to Organise and Collective Bargaining Convention, 1949***

ILO Convention 98 grants provisions for workers to 'enjoy adequate protection against acts of anti-union discrimination in their employment'. It also has provisions for both workers' and employees' organisations to 'enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration'. Depending on national conditions, the Convention also calls for the establishment of mechanisms that would help ensure and respect the right of workers to organise. It also requires measures be taken to encourage and promote the full development of such mechanisms, especially to allow for voluntary negotiation between employers' and workers' organisations.

***ILO Convention 100 – Equal Remuneration Convention, 1951***

This Convention calls for equal remuneration for male and female workers for work of equal value by 'means of national laws or regulations, legally established or recognised machinery for wage

determination, collective agreements between employers and workers or a combination of these various means'. However, it does have provisions that allows for differential rates between workers, without regard to sex, if determined by objective appraisal.

***ILO Convention 105 – Abolition of Forced Labour Convention, 1957***

ILO Convention 105 requires member countries to undertake measures to 'suppress and not use any form of forced or compulsory labour' and also take effective measures to ensure the immediate and complete abolishment of forced or compulsory labour.

***ILO Convention 111 – Discrimination (Employment and Occupation) Convention, 1958***

In accordance with national conditions and practice, ILO Convention 111 calls upon all member states to declare and implement a national policy designed to promote equality of opportunity and treatment with respect to employment and occupation as a means to eliminate any form of discrimination, especially based on gender.

***ILO Convention 131 – Minimum Wage Fixing Convention, 1970***

The Convention requires all members to establish a system of minimum wage applicable to all groups of wage earners commensurate with their terms of employment. It also provides for the minimum wage to have the same status as the law of the land and not be subject to any kind of abatement. Failure to uphold the minimum wage would make the concerned persons liable to penal or other sanctions. To the extent possible, the elements to be taken into consideration while determining the level of minimum wages are: national practice and conditions, including the needs of workers and their families, and economic factors. It also allows for appropriate measures to be taken to ensure the effective application of all provisions relating to minimum wages. It assigns a competent authority in each country with the responsibility 'to determine the groups of wage earners to be covered, in agreement or after full consultation with the representative organisations of employers and workers'.

***ILO Convention 138 – Minimum Age Convention, 1973***

The Minimum Age Convention requires all members to develop a national policy that would help ensure the 'effective abolition of

child labour and to progressively raise the minimum age for admission to employment to a level consistent with the fullest physical and mental development of young persons'. The Convention also obliges members to ensure that no one under that age is admitted to employment in any occupation. In terms of age limits, it specifies the minimum age be not less than the age of completion of compulsory schooling, and not less than 15 years in any case. However, it notes that for a member country whose economy and educational facilities are insufficiently developed, the minimum age might be set at 14 years but this is to be specified only after consulting relevant organisations of employers and the workers.

***ILO Convention 144 – Tripartite Consultation (International Labour Standards) Convention, 1976***

ILO Convention 144 specifies that all members take measures to ensure effective consultations on matters concerning ILO activities among representatives of the government, employers and workers. However, the nature and form of procedures to be followed can be determined on the basis of national practice. The Convention also has provisions for 'employers and workers to be represented on equal footing on any bodies through which consultations are undertaken'.

***ILO Convention 169 – Indigenous and Tribal Peoples Convention, 1989***

The Convention holds the governments responsible for 'developing, with the participation of the peoples concerned, coordinated and systematic action to protect the rights of the indigenous peoples and to guarantee respect for their integrity'. The Convention seeks to facilitate 'special measures to be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned' as long as they are 'not contrary to the freely-expressed wishes of the peoples concerned'.

The Convention specifies that the people concerned have the right to decide their own priorities for the process of development. In addition, it allows for them to participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly. With regards to indigenous peoples, the governments are also required to adopt



special measures to ensure their effective protection in matters relating to the recruitment and working conditions of workers who belong to different indigenous groups. However, these provisions have to be adopted within the framework of national laws and regulations.

***ILO Convention 182 – Worst Forms of Child Labour Convention, 1999***

The Convention calls for all members to take immediate and effective measures to prohibit and eliminate the worst forms of child labour (here, 'child' refers to persons below the age of 18). The worst forms of child labour specified in this Convention comprise: all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom, and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; and work that is likely to harm the health, safety or morals of children. It also calls upon each member state to design and implement programmes of action to eliminate the worst forms of child labour and establish or designate appropriate mechanisms to monitor its implementation.

**Major Migration Conventions Not Ratified by Nepal**

As mentioned earlier, there are three major international conventions that deal directly with migration but which have not been ratified neither by Nepal nor the major receiving destinations of Nepali workers. These are the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990; ILO Convention 97– Migration for Employment Convention (Revised), 1949; and ILO C143 – Migrant Workers (Supplementary Provisions) Convention, 1975.

***International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW), 1990***

This Convention, also called the UN Migrant Workers Convention, was adopted by the UN General Assembly in 1990 and came into force in 2003. It is regarded as the most comprehensive treaty drafted for the welfare of migrant workers. At present, the Convention has been

ratified by 45 countries, most of which are primarily countries of origin of migrants, such as Mexico, Morocco and the Philippines.<sup>101</sup>

As per the provisions of the treaty, signatory countries are required to respect and ensure the rights of migrant workers and their families without making any distinction on the basis of sex, race, colour, language, religion, ethnicity, nationality or other status. It gives freedom to the migrant workers and their families to leave or enter at any time any state, including their own, without being subject to torture or inhuman treatment. Similarly, the Convention forbids any migrant worker to be held in slavery or engaged in forced labour. In addition, it also gives the workers and their families, freedom of thought, conscience and religion, and equal rights before the law, courts and tribunals. More importantly, it forbids any collective expulsion of migrant workers and ensures their equal treatment at par with nationals on matters of remuneration, hours of work, overtime, weekly rest, leave, health facilities, termination of contract, and social security. The Convention gives migrant workers the freedom to be associated with trade unions as well as in the political process of their origin country, including voting and to be elected.

The Convention also grants every child of migrant workers the right to a name, registration of birth, and to a nationality. Further, these children are also given the right to access basic education at par with nationals. An important provision in this Convention is that it guarantees fundamental rights to all migrant workers, including irregular migrants, and their families.

### ***ILO Convention 97 – Migration for Employment Convention (Revised), 1949***

According to this Convention, every member state is to treat migrants in no less favourable terms than its nationals and without discrimination with respect to sex, race, religion or nationality in matters of remuneration, working hours, overtime, leave, etc. Migrants are also accorded with the right to enjoy equal rights with respect to joining trade unions, accommodation, social security, legal provisions, unemployment, etc. This Convention has so far been ratified by 49 countries.

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101 None of the migrant-receiving countries in Western Europe or North America has ratified the Convention.

***ILO Convention 143 – Migrant Workers (Supplementary Provisions) Convention, 1975***

This Convention requires member states to respect the basic human rights of all migrant workers. States are to determine whether there are illegally employed migrant workers within their territory and ‘adopt necessary and appropriate measures, both within its jurisdiction and in collaboration with other members, to suppress clandestine movements of migrants for employment and illegal employment of migrants’. The Convention also calls on members, in consultation with representative organisations of employers and workers, to take appropriate measures at the national and international levels for systematic contact and exchange of information on the prevention of clandestine movement of migrants and their illegal employment. The Convention allows for ‘manpower traffickers’ to be prosecuted in whatever country they conduct their activities. Accordingly, it allows migrants to enjoy equality of treatment at par with nationals in matters of security of employment, the provision of alternative employment, relief work and retraining. Each member is to ‘declare and pursue a national policy designed to promote and to guarantee, equality of opportunity and treatment with respect to employment and occupation, social security, trade union and cultural rights and of individual and collective freedoms for persons who as migrant workers or as members of their families are lawfully within its territory’. The Convention has been ratified by 23 countries to date.

**Major International Conferences on Migration**

The International Conference on Population and Development held in Cairo in 1994, among others, addressed issues related to internal and international migration. Since then, migration has taken centre stage in national and international public policy debates, including at the World Summit for Social Development in Copenhagen in 1995, the Fourth World Conference on Women held in Beijing in 1995, the Second United Nations Conference on Human Settlements in Istanbul in 1996, and the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban in 2001, and the Fourth United Nations Conference on the Least Developed Countries (LDC-IV) in Istanbul in 2011.

The fact that migration has been addressed quite extensively at international fora indicates its growing significance for all countries

and regions. It also shows that migrant workers are a matter of concern to world governments and confirms the fact that migrant workers are a vulnerable group that need international cooperation in order to protect them from discrimination and exploitation. The conferences highlighted the need for policies to manage migration process, promote regular migration and discourage irregular migration; focused mainly on the rights, interests, dignity and safety of migrant workers; and placed special emphasis on the safety of female migrant workers.

### ***World Summit for Social Development, 1995, Copenhagen***

The Summit highlighted 'the need for intensified international cooperation and national attention to the situation of migrant workers and their families'. It urged governments to ratify instruments related to migrant workers, particularly the ICMW. It also urged the receiving countries to treat documented migrant workers and their families at par with their own nationals, especially in terms of the enjoyment of basic human rights, including equality of opportunity and treatment, respect of religious practices, working conditions, social security, participation in trade unions and access to health, education, cultural and other social services as well as equal access to the judicial system and equal treatment before the law.

Similarly, it called for 'governments of countries of origin, transit and destination to cooperate in reducing the causes of undocumented migration, to safeguard the basic human rights of undocumented migrants and prevent their exploitation'. It recommended governments of both receiving countries and countries of origin to 'adopt effective sanctions against those who organise undocumented migration, exploit undocumented migrants or engage in trafficking in undocumented migrants'.

The governments of countries of origin were also urged to facilitate the return of migrants and assist in their reintegration into their home communities and to devise ways of effectively utilising their skills upon return. Likewise, the governments of both countries of origin and destination were encouraged to collaborate in promoting voluntary return migration.

### ***Fourth World Conference on Women, 1995, Beijing***

The Conference called for ensuring 'the full realisation of the human rights of all female migrants, including female migrant workers, and

their protection against violence and exploitation; introduce measures for the empowerment of documented women migrants, including women migrant workers; facilitate the productive employment of documented migrant women through greater recognition of their skills, foreign education and credentials, and facilitate their full integration into the labour force’.

Relevant government institutions, including local governments, community organisations, non-governmental organisations, educational institutions, the public and private sectors, particularly enterprises and the mass media, were also encouraged ‘to establish linguistically and culturally accessible services for migrant women and girls, including women migrant workers, who are victims of gender-based violence; and to recognise the vulnerability to violence and other forms of abuse of women migrants, including women migrant workers, whose legal status in the host country depends on employers who may exploit their situation’.

***Second United Nations Conference on Human Settlements (Habitat II), 1996, Istanbul***

Along with population growth, employment opportunities, changing consumption and production patterns, and disparities between regions, the Conference identified voluntary and involuntary migration as a major factor for rapid urbanisation. The conference highlighted the positive impact of an orderly international migration on both countries of origin and destination. It recognised that international migration facilitates the transfer of skills to destination countries but can also give rise to political, economic or social tensions. International migration was also characterised by a loss of human resources in the origin countries. The Conference recognised the need for international cooperation to address the impacts of international migration.

***World Conference Against Racism, Racial Discrimination, Xenophobia and related Intolerance, 2001, Durban***

The Conference recognised migrants, among others, as victims of racism, racial discrimination, xenophobia and related intolerance. It recommended that countries address issues that lead to the rejection of migrants and to discourage acts that give rise to xenophobic behaviour and negative sentiments towards them. It urged

countries to formulate and implement policies to bridge the differences between its citizens and migrants and to promote harmony between the two. The Conference recommended that countries treat migrants with dignity and in accordance with international standards of human rights, irrespective of their legal status. It also highlighted the need to focus on women migrants, not only to address issues such as discrimination and violation of their rights but also to recognise their contribution to the economies of both the origin and destination countries.

***Fourth United Nations Conference on the Least Developed Countries (LDC-IV), 2011, Istanbul***

The countries participating in the Conference affirmed their decision to ‘undertake measures to enhance understanding, coordination and cooperation with regard to climate change-induced displacement, migration and planned relocation, where appropriate, at the national, regional and international levels’. The Least Developed Countries (LDCs) were urged to adopt policies and other measures to simplify migration procedures in order to minimise the cost of outmigration, and also focus on information dissemination to those seeking foreign employment. It also highlighted the need for the LDCs to facilitate the transaction of remittances through improved access to financial and banking services, and to make efforts to utilise the knowledge, skills and earning of the returning migrants.

The Conference recommended that developed countries adopt policies and other measures to develop a system of short-term migration from the LDCs, and to facilitate outward remittances by lowering the cost of transfer of remittances and removing unnecessary restrictions. In addition, these countries were also urged to oppose discrimination of migrant workers and restrictions on labour migration.

**Implications of the International Instruments on Labour Migration in Nepal**

The ratification of international conventions has major implications on Nepali migrant workers both within the country and in the destination. By ratifying international conventions, the origin and destination countries also directly or indirectly contribute to the welfare of migrant workers. Nepal has taken strides in addressing the

rights of the labour migrants by incorporating some of the provisions of these international conventions and ensuring standards to its citizens seeking foreign employment. Nepali migrant workers can hence avail of the protective mechanisms contained in the national foreign employment policies, which are derived from international standards of rights and welfare.

However, the conventions ratified by Nepal have not all been ratified by the major countries that receive Nepali labour migrants. CEDAW and CRC are the most widely ratified international UN conventions (see Annex 17) among the top destinations, namely, Qatar, Saudi Arabia, the United Arab Emirates, Lebanon, Jordan, Malaysia, Japan, South Korea and India. Similarly, the ICERD has been ratified by all the afore-mentioned countries except Malaysia. Among the ILO conventions, the C29 on Forced Labour has been ratified by all the top destinations, excluding South Korea, while apart from Qatar, all the other destinations have ratified the C100 on Equal Remuneration. Likewise, the C182 on Worst Forms of Child Labour has been ratified by all, except India.

Since Nepal is a source country the effectiveness of these international instruments to a large extent depends on whether the destination countries have adopted these conventions or not. But a significant aspect of the ratification of international conventions is that the standards therein can be incorporated into Nepal's own foreign employment policies.

### ***Incorporation of International Standards in the Foreign Employment Act/Rules of Nepal***

Nepal has incorporated the standards set by the international conventions in its Foreign Employment Act 2007 and Rules 2008. In tune with the provisions of the CEDAW, Nepal prohibits any form of discrimination against women in taking up foreign employment, and the ILO C111 on Discrimination (Employment and Occupation) is respected in prohibition against any discrimination between males and females where there is a demand from an employer for both men and women. According to the provisions of the ILO C131 on Minimum Wage Fixing, the Act has a system of minimum wages for Nepali migrant workers; as per the ILO C138 on Minimum Age, the Act/Rules specifies a minimum age for obtaining foreign employment; the minimum age of 18 years falls within the definition of a child according

to the Convention on the Rights of the Child; and incorporating the provisions of the ILO C169 on Indigenous and Tribal Peoples, the Act gives special priority as well as reservation to indigenous peoples while obtaining foreign employment. With regard to trafficking, the Act allows complaints to be registered with the Department of Foreign Employment for legal action, which follows the provisions of the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.

***Problems and Prospects of the Three Major Conventions on Migration Not Ratified by Nepal***

The three conventions, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW), 1990; ILO Convention 97– Migration for Employment Convention (Revised), 1949; and ILO C143 – Migrant Workers (Supplementary Provisions) Convention, 1975, are by far the most significant international instruments on migrant workers. They also complement each other in terms of their objectives to address the concerns of migrant workers and their families. By providing for the rights of migrant workers and their families, advocating for acceptable standards in employment, and encouraging effective consultations between employers, employees and governments, etc, the three conventions contribute to enhancing the productiveness of the workers. Thus, the ICMW, ILO C97 and ILO C143 also play a significant role in maximising the benefits of labour migration in all respects. Ratification of these conventions ensures migrant workers their dignity and protection from exploitation while also guaranteeing the facilities that are due to them. More importantly, they lay out the legal foundation for national policies and practices regarding migrant workers.

These conventions advocate international standards of rights for migrants which, if ratified, impose a lot of responsibility on both labour-sending and receiving countries. All three conventions require member countries to submit periodic reports regarding the implementation of the conventions. They also require members to take effective measures to check the clandestine movement of migrants and to cooperate with other countries to promote sound, equitable, humane and lawful conditions for the international migration of migrant workers and members of their families. Despite the restrictions on irregular migration, the conventions provide a wide



range of fundamental rights to all migrant workers, irrespective of their legal status. Moreover, all three conventions provide equal rights to migrant workers at par with nationals in terms of employment, including remuneration, emergency medical care, social security, respect for their culture and identity, right to join trade unions, etc. The ICMW, in addition, provides the children of migrant workers the right to education, and addresses the children's right to a name, registration of birth and to a nationality.

None of these conventions have been ratified by Nepal or by the destination countries to which the majority of Nepalis migrate for employment. It is apparent that the comprehensive nature of these conventions has deterred Nepal and the major destination countries from adopting these conventions and fulfilling the obligations therein. The wide range of provisions set forth by the ICMW, ILO C97 and ILO C143 pose administrative and financial burdens on both the origin and destination countries for implementation, particularly since these three conventions are also legally binding. The other obstacle to ratification of these three instruments is the difficulty of making national legislation compatible with them. For instance, it would be very difficult for governments not to give preference to its own citizens in employment whereas the conventions call for non-discrimination.

Some of the sending countries also regard these three instruments as a way to address the labour shortage in receiving countries rather than meeting the needs of the sending countries.<sup>102</sup> More specifically, with reference to the ICMW, sending countries have concerns about losing the labour market for its migrant workers in destination countries to non-ratifying states; and the receiving countries are apprehensive of providing rights to irregular migrants that the ICMW would grant them, and also because of the perception that the Convention would force them to admit families of migrant workers as well.<sup>103</sup>

In terms of the legal difficulties in the implementation of the ILO conventions, the most problematic articles for the governments are Article 6 (equality of treatment between foreign workers and national workers) and Article 8 (maintenance of residence rights in the event of incapacity for work) of ILO C97; and Articles 8 (protection in the event of loss of employment), 10 (equality of opportunity

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102 Cholewinski, 2005.

103 Ibid.

and treatment) and 14(a) (right of migrant workers to occupational mobility) of ILO C143.<sup>104</sup>

Since the instruments were first adopted, there have been significant changes in the field of labour migration. First, the role of governments has been decreasing in the recruitment of migrant workers while that of the private sector, mainly recruitment agencies and agents, has been increasing; there has been a rise in female migration, particularly for domestic work, contrary to the earlier periods when male migration was the dominant trend; growth of irregular migration; increase of temporary or short-term labour migration; and pressure on countries to protect migrant workers.<sup>105</sup> These changing dimensions also bring along challenges such as fraudulent practices by recruitment agencies and agents; problems of abuse of female domestic migrant workers; unavailability of facilities like residence and social security to temporary migrant workers; and overall difficulty in managing the scale of migration.

While the problems in ratification of the ICMW, ILO C97 and ILO C143 apply to Nepal as well, it is to be noted that none of the major destinations which receive Nepali migrant workers have ratified these conventions, in particular, the ICMW. Thus, even if Nepal were to ratify the ICMW without any of the major destinations doing likewise, the provisions of the ICMW would be almost moot as far as Nepali migrant workers are concerned. There is also the fear that once Nepal ratifies the ICMW, Nepal will have to provide equal rights to incoming migrant workers, particularly those from India, who are employed in large numbers in Nepal. There is thus the view that ratification of the ICMW will result in significant burdens and constraints on the government.

Despite these challenges, efforts are underway by the Government of Nepal to ratify the ICMW. Along with the global campaign for the ratification of the ICMW, there is also active lobbying in Nepal by local and international non-government organisations working on migration. In a sense, by ratifying the ICMW, ILO C97 and ILO C143, Nepal could begin the process of ensuring the desired standard of rights to its citizens in destination countries. It could also have the effect of setting the pace for their ratification by other countries.

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104 International Labour Organisation, 1999b.

105 Ibid.

## CHAPTER 5

# Conclusion

The rise of labour migration as an alternative livelihood strategy has become possible for a large section of the country's population because Nepal could benefit from the global phenomenon of an increased mobility of capital and resources, including human resources. Government policies have also contributed to changing the form of labour migration from Nepal itself, whether it is in the increasing flow of Nepali migrant workers towards the Gulf countries and East and Southeast Asian countries rather than the majority heading to India; in the higher amount of remittances entering the country; or in the rising incidents of fraudulent practices related to foreign employment. Beginning with the Foreign Employment Act in 1985 to the Act of 2007 and the recently formulated Foreign Employment Policy 2012, Nepal has indeed taken some firm strides in adopting relevant policies to ensure the rights of its citizens migrating for foreign employment. The government has also utilised bilateral instruments in the form of labour agreements and MoUs to protect its citizens in destination countries and relied on international human rights treaties and labour conventions to formulate national policies on labour migration.

While the Foreign Employment Act 2007 and the Foreign Employment Rules 2008 have been used to regulate labour migration from Nepal, their implications need to be assessed and analysed with a view to making them more effective and in tune with the changing trends in labour migration globally. Today, the majority of the countries across the world are, in one way or another, affected by the cross-border movement of people for employment. Relations between states are increasingly characterised by interdependencies economically or politically along with the growing

prominence of regionalism. In fact, the phenomenon of labour migration has escalated to such an extent that policies to address them have become issues of major concern in international relations as well as domestic affairs. On the international front, there is an increasing role for organisations like the International Organisation for Migration (IOM) and the International Labour Organisation (ILO). Labour migration has also become one of the salient topics of discussions at major international conferences. At the national level, separate departments and ministries have been established to oversee foreign labour migration, and non-government organisations working on migration have made significant contributions as well in highlighting issues of concern to migrants.

This review of national, bilateral and international policy instruments provides a number of lessons and accordingly allows for some recommendations for the future. This last section will deal with these.

### **Obligation of the Sending and Destination Countries**

The obligations of both the sending and receiving countries are of paramount importance while seeking to address issues of labour migration. At the destination countries, Nepali migrant workers come within the purview of the national policies of the respective countries, while the national policies of Nepal do not hold much significance for labour migrants once they depart. Hence, this calls for a more active cooperation between the governments of origin and destination countries.

A top priority for the Government of Nepal should be to encourage migrants to go to countries where human rights provisions are better. Similarly, seeking avenues to address the needs and concerns of workers in destination countries should also be of concern to the Nepali government. For instance, the government needs to take immediate action to repatriate stranded workers irrespective of their legal status in the destination countries. Existing evidence suggests that Nepali labour migrants in various destination countries are subject to different forms of exploitation and their remuneration are among the lowest paid to migrant workers. It should be the obligation of both the governments to ensure that the migrants are not subject to such problems and that they receive due remuneration and respect. The governments of Nepal and destination countries need to ensure that Nepali migrants at the destination have rights

at par with international standards with respect to facilities at work, access to justice, freedom of mobility, health and sanitation.

Since labour migration is beneficial to the destination countries as well, the concerned governments should also be obliged to take effective measures to protect and promote the rights of migrant workers. Foreign labour migration policies, whether national or bilateral, should particularly emphasise the obligation of both countries with regard to migrant workers, and this can be achieved only through better coordination between the two governments.

### **Weak Implementation of Existing National Policy Framework**

The Foreign Employment Act 2007 and the Foreign Employment Rules 2008 are comprehensive policy instruments formulated to address foreign labour migration. However, the effective implementation of these policy provisions is a major challenge for Nepal. There are a large number of private institutions involved in labour migration process and the ineffective monitoring of these institutions has been one of the major causes of malpractices associated with foreign employment. Similarly, pre-departure orientation training institutions are not effectively monitored even though their roles are considered central to preparing migrants for employment abroad. It is often reported that certificates of orientation can be obtained without sitting for the classes. Despite measures to prohibit the overseas departure of migrant workers via another country, the government has also been unable to put a check on the irregular migration of a large number of workers, particularly female migrants, who depart via India in order to evade the Nepali government's regulations and requirements.

The national policy framework has provisions for the government of Nepal to enter into bilateral agreements with destination countries, and also appoint labour attachés in countries which host more than 5000 Nepali workers and female labour attachés in countries where 1000 or more Nepali women have migrated for work. On both fronts, the implementation has been either very slow or absent. Nepal has signed bilateral agreements with only five countries so far and has appointed only six labour attachés – in the UAE, Qatar, Malaysia, Kuwait, Saudi Arabia and South Korea. Among the major destinations, Nepal still does not have a diplomatic presence in Bahrain and Oman.

To cite another instance of weak implementation of existing policies, the government has not been able to effectively utilise the large amount accumulated in the Foreign Employment Welfare Fund. Besides repatriating workers and providing compensation for death and mutilations, efforts to utilise the Fund for other purposes as mentioned in the prevailing Acts and Rules, such as providing skill-oriented training to prospective migrants, launching employment-oriented programmes for returnees and initiating public awareness programmes about foreign employment, have been either very slow or ineffective.

### **Decentralisation of Foreign Labour Management System**

The process of seeking foreign employment is indeed an expensive venture for many Nepalis. One of the main reasons for that is the need for prospective migrants to come to the capital for various purposes during the course of obtaining employment abroad. The Foreign Employment Act has allowed for the operation of recruitment agencies and agents to facilitate the recruitment of individuals for foreign employment as well as for the establishment of institutions to provide skills training and pre-departure orientation. However, the vast majority of these institutions are located within the Kathmandu Valley. The relevant government agencies such as the Department of Foreign Employment (DoFE), the Foreign Employment Promotion Board (FEPB) and the Foreign Employment Tribunal are all located in Kathmandu. The Migrant Resource Centre, which focuses on information dissemination to migrants, is also located within the FEPB although more of such centres are also being gradually set up at the local levels.<sup>106</sup>

Because of this centralised system, individuals from outside Kathmandu are deprived of the kind of support required to facilitate their

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106 The Migrant Resource Centre was first established in Kathmandu in February 2010, followed by the Foreign Employment Information Centres in two places outside the capital, in Jhapa in December 2010 and in Chitwan in January 2011. The Migrant Resource Centre was set up jointly by the Ministry of Labour and Transport Management and IOM. Initially supported by the IOM, the Centre is now entirely operated by the FEPB. The two Foreign Employment Information Centres in Jhapa and Chitwan were set up by the Pravasi Nepali Coordination Committee (PNCC) with the support of IOM. They are now operated solely by PNCC.

migration. More often than not these individuals rely on agents or middlemen to link them to recruitment agencies in Kathmandu or other urban areas. They are also unable to access information or support provided by the migrant resource centres. There is also the need to invariably come to Kathmandu in order to take skills training, to be interviewed for employment, undergo pre-departure orientation, or file cases with the DOFE or access other mechanisms of justice, including the Foreign Employment Tribunal. In this process, the migrants are thus forced to incur heavy expenses to travel to the capital and pay for their living expenses while following the requisite procedures, the duration of which in most cases are uncertain and often last months.

It is therefore essential to amend the centralised mechanism of foreign labour management and to every extent possible decentralise it. By doing so, the institutional mechanisms of foreign employment would become more accessible to all the people across the country, whether in terms of access to information, recruitment agencies, pre-departure orientation, skills training, obtaining passports and labour permits, and even accessing justice.

### **Information Dissemination**

There exists a significant gap in terms of information available to a large majority of the migrants in Nepal. In general, they do not have the relevant information about seeking employment overseas; are not fully informed about their working conditions, and the general rules and regulations in the destination countries, including the rights and responsibilities accorded to them; and are unaware of the problems and prospects of foreign employment.

To address this issue, migrant resource centres have been established in three different parts of Nepal to facilitate information dissemination to the migrants. These centres provide a range of services to the migrants before they leave Nepal in the form of counselling and guidance, and basic information on the general laws in destination countries. The centres also entertain queries and calls from migrant workers abroad through a toll-free number. The establishment of the centres is a significant step in terms of information dissemination to potential migrants as well as those who have already left for employment abroad. However, according to counsellors at the Migrant Resource Centre in FEPB, the majority of visitors they

receive are those who are already in the final stages of migrating for employment or those who are leaving the country for the second or more time. Evidently, the centres have yet to attract and provide services to potential migrants or those who are in the initial phases of migrating, which is what the main motive for their establishment was. The FEPB is also making an effort to distribute pamphlets on five major countries, namely, Malaysia, Kuwait, Qatar, Saudi Arabia and the United Arab Emirates, containing information on foreign employment in these destination countries. The strategy thus far has been to distribute them to individuals who obtain their passports from the Ministry of Foreign Affairs. While this is a significant effort, those who obtain their passports from the districts instead of the Ministry, are unable to access these materials.

Evidently, the Kathmandu-centric nature of the current arrangement has been a major hurdle in the dissemination of information to migrants. Individuals, particularly from outside the Kathmandu Valley, are unable to access accurate and adequate information prior to making the decision to migrate. This is despite the provisions of the Foreign Employment Act that requires migrants be given all relevant information about the work, geographical location, culture, labour laws as well as the economic, political and social conditions of the destination country. Instead, many migrants leave the country with very little knowledge about the precise nature of their work, remuneration or the general rules and regulations of the countries they are headed to.

It is, therefore, essential to develop information dissemination strategies or policies that reach a much wider audience across all the regions of Nepal. Only thus will aspiring migrants be able to make independent and conscious decisions regarding foreign employment; gain an understanding of the requirements and process of seeking employment abroad without being totally dependent on the agent; and be better informed about the nature of the work and other general details on the destination countries.

### **Recruitment Practices**

Despite policy measures to make the process of seeking foreign employment more manageable and systematic, the recruitment process is still beset with various forms of malpractices. Much of the fraudulence related to foreign employment is rooted in the



recruitment phase itself. Migrant labourers are charged exorbitant amounts as service fees and many fall prey to fraudulent agents and recruitment agencies. The practice of providing migrant workers with more than one contract with different terms and conditions is usually linked to the recruitment agencies as well as agents who are known to provide false promises to migrant workers. As of December 2016, there are 693 agents registered with the DoFE<sup>107</sup> compared to thousands who operate in villages all over the country. (Experts working on labour migration estimate more than 80,000 agents to be working across Nepal).

In many cases, prospective migrants are unaware of the process of recruitment and usually lack adequate information to secure a job that is to their satisfaction. To cite one example, in order to go to countries that do not have an embassy in Nepal, a migrant worker's passport is taken outside the country by recruitment agencies or agents for visas. It can take months for the agency/agent to get a visa and when the passport does arrive, workers are usually informed only a few days prior to their date of departure.

Such erratic recruitment processes need to be made more systematic and convenient for workers. The introduction of e-governance could lead to transparency and acceleration of the application process and reduction in fraudulent activities. Similarly, establishing a government online database that provides information on the types of jobs available and particulars such as number of applicants, names of applicants and date of visa issuance would enable the recruitment process to be transparent and systematic since the database would provide information about everything from pre-approval to insurance to final approval, rather than rely on the recruitment agencies alone for such information.

Decentralisation of recruitment agencies could give migrants direct access to the process of obtaining employment abroad, lowering the chances of being cheated by agents or middlemen. It is also crucial for migrant workers to be given periodic information about the state of their application.

The current agency/agent-led recruitment process calls for stricter regulation by the government as well, particularly given that there are recruitment agencies still in operation despite their

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107 (<http://dofe.gov.np/new/uploads/article/agenttillfalgun2071.pdf>)

licences having been suspended. Given the large number of cases filed against individuals (agents), there is a need to focus on licensing agents as well.

### **Irregular Migration**

The problem of undocumented and irregular migration often finds root in the recruitment stage itself. Many workers choose to migrate without fulfilling all the legal requirements in order to avoid the lengthy and troublesome administrative procedures involved in obtaining foreign employment while others become victims of unscrupulous agents and recruitment agencies. Migrants are sent to a country other than the one they were seeking to go to while some head out with false documents or without all the necessary papers. Those without complete documents, or undocumented migrants, as they are known, are usually sent via Indian airports even though the Foreign Employment Act forbids migrant workers to leave via another country unless prior permission has been received.

From the increasing number of people stranded in various destination countries, it is clear that the prevailing policies on foreign employment in Nepal have not been able to prevent such illegal or irregular activities. Despite strict policy measures aimed at punishing those involved in foreign employment-related malpractices and mechanisms for monitoring and inspection, not much has been achieved in these aspects. Moreover, the laws of both the origin and destination countries punish the migrant for his/her fake documents and illegal status rather than the recruitment agency/agent. In many cases, it is difficult to bring such agencies/agents under the scrutiny of the law.

Furthermore, the (high-interest) loans migrant workers take out to go for foreign employment usually ends up as a burden, especially if the migrant is forced to return to Nepal due to unexpected circumstances such as fraudulence at the hands of recruitment agencies/agents.

It is irresponsibility on the part of the Nepali government to ignore the irregular migrant workers and not address their welfare given that they contribute equally to the country's economy. An important entry point for efforts to reduce irregular migration is during the recruitment process itself. Doing so would also help avoid the possible monetary, legal, diplomatic and other hassles that arise in the

later stages of labour migration. Migrant workers could benefit significantly from policy measures that regulate the recruitment process on the whole, making the process short, systematic and convenient, so as to discourage irregular migration. Thus, the policies need to be analysed and amended to better manage the migration process and strictly discourage irregular migration with a view to eliminating such movements.

### **Promoting Coordination among Stakeholders**

The Foreign Employment Act 2007 has provisions for the incorporation of representatives from various sectors in the Foreign Employment Promotion Board such as the Ministry of Labour and Transport Management; Ministry of Agriculture and Cooperatives; Ministry of Home Affairs; Ministry of Foreign Affairs; Ministry of Finance; Ministry of Law, Justice and Parliamentary Affairs; Ministry of Women, Children and Social Welfare; National Planning Commission; Nepal Rastra Bank; foreign employment entrepreneurs' association; orientation training institutions and trade unions. The priority needs to be on effective and regular consultations between these stakeholders as well as effective coordination with other stakeholders such as civil society and international organisations working on various aspects of labour migration. The efforts by different non-government organisations, trade unions and the media should be recognised and further emphasised. Only a coordinated effort by all concerned can help secure the rights and welfare of migrant workers.

### **Enhancing the Role of Government Missions in Destinations**

In the destination countries, the embassies and consulates are the only avenues that provide Nepali workers with access to any government mechanism. Hence, the role of Nepali foreign missions cannot be ignored when it comes to labour migration. The Nepali missions abroad are directly responsible for Nepali migrant workers, and hence their services should be available as and when necessary to the migrants. Given the increasing number of problems encountered by migrant workers in various destination countries, it is clear that the foreign missions of Nepal have been unable to adequately address those concerns of the workers. One of the major obstacles has been the lack of sufficient manpower in these missions.

Furthermore, the absence of any form of Nepali government presence in many countries (see Annex 7), including those with a high number of Nepali migrants, is also a matter of major concern. Among the top countries that receive a large number of Nepali labour migrants, Oman and Bahrain are two without an embassy or consulate. Thus, efforts should be made at the policy level to bring about an effective diplomatic presence in the destination countries to allow the Nepali government to address the concerns of Nepali workers. There needs to be greater emphasis on making the services of embassies, consulates and labour attachés easily accessible and on orienting them towards promoting and protecting the rights and interests of Nepali workers.

### **Enhancing Migrant Workers' Access to Justice**

The Foreign Employment Act 2007 has provided for an institutional mechanism in the form of the Foreign Employment Tribunal to provide justice to migrant workers. It also has provisions for compensation to migrants through the DoFE without going to the Tribunal. In fact, the emphasis has been more on resolving cases through mutual understanding and providing compensation to the victim. Only such cases that cannot be resolved through mediation by the DoFE are forwarded to the Tribunal for further legal action.

Owing to the usually lengthy legal procedures involved in any litigation, resolving cases through mediation may benefit both the victim and the accused. But such a mechanism of dispute resolution cannot be considered justice in the real sense. The accused is let off after simply paying compensation and completely bypassing due judicial process. Thus, policies that provide justice to the migrant workers may need to be reconsidered. Similarly, decentralisation could enhance access to justice since migrants will not have to bear the economic burden of travelling to and living in Kathmandu in order to get justice or compensation, and which could affect their decision to accept a compromise that is not in their favour.

Likewise, without regulations to guide the functioning of the Tribunal, the legal proceedings are dependent on the Muluki Ain (Country Code) of 1963, which often is a long process and not always contextual. Hence, regulations to direct the proceedings and functioning of the Tribunal are of utmost importance.

**Role of Bilateral and International Policy Instruments**

Bilateral agreements are important policy tools to address foreign labour migration. For this reason, the five bilateral instruments signed by Nepal are quite inadequate, especially in light of the hundred or so countries to which Nepalis migrate for work. There is a need, therefore, for the government to enter into bilateral agreements with other major destination countries and also speed up the conclusion of those agreements that are under consideration. Efforts should also be made to ensure that these agreements are comprehensive and regularly monitored. As is the case with all the bilateral agreements the Nepali government has entered into thus far, the government should undertake measures to oblige the destination countries that receive a large number of Nepali workers to protect and promote their rights.

The process begun recently by the government of Nepal to ratify the International Convention on Migrant Workers should be concluded at the earliest, and initiatives ought to be underway to ratify the two ILO conventions on migration – the C97 on Migration for Employment and the C143 on Migrant Workers (Supplementary Provisions). Although Nepal's adoption of these conventions may not have a direct bearing on the welfare of its citizens abroad, Nepal should not be swayed from ratifying them. If Nepal wants the destination countries to ratify them as well, it would serve to lead the way by ratifying these conventions first. Needless to say, the government will also be responsible to meet the obligations that come along with adopting these conventions, but will also be better placed to seek such standards for Nepali migrants in destination countries.

**Promoting Inter-Regional Cooperation**

Amidst the growing significance of regionalism, particularly with the examples set by the success of the European Union and the Association of Southeast Asian Nations (ASEAN), regional platforms could also be used to take up the issue of labour migration. Most of the South Asian countries are labour-sending countries while the countries in the Gulf are major labour-receiving countries. Nepal, along with the other SAARC (South Asian Association for Regional Cooperation) countries, could develop a common agenda and propose certain minimum standards for all labour migrants in the destination

countries. This would help ensure that the countries that are dependent on migrant labourers from South Asia are compelled to adopt measures that would ensure the rights and welfare of the workers. Towards this end, efforts can be initiated at the regional level to incorporate the concerns of labour migrants within the policy frameworks of the regional associations, for instance between SAARC and the GCC, or with ASEAN or the Arab League.

### **Alternative Means of Employment and Livelihoods**

Concomitant with the national and international policy instruments adopted by Nepal (Table 4.1), the government has done very little to provide alternative means of livelihood and employment. Today, almost half the households in Nepal depend on a labour migrant and the country is becoming increasingly dependent on remittances sent back by the workers. With macro-level statistics, such as GDP growth rates, poverty, health and education, showing an improvement over the years despite a decline in manufacturing and the decade-long conflict (from 1996 to 2006), an increase in policy laxity has become evident with the government taking an almost nonchalant attitude towards the country's overall growth and welfare.

Since labour migration is generally a short-term phenomenon, it is essential that the government seek ways of reducing dependence on labour migration by focusing on human resource development, job creation, skills training, manufacturing, the service sector, etc.

### **Return Migration and Future Prospects**

From poverty alleviation to development, labour migration has had a significant impact on the country. There is thus a need for Nepal to develop policies that would allow it to reap the benefits of migration for its long-term development. Significant among these is the education sector that has benefitted extensively from migration with a large proportion of the income being invested by migrants in their children's education. It will thus be in Nepal's best interests to take advantage of this investment and utilise it for productive purposes.

To the extent possible, policies should also be adjusted to address the future implications of migration, and geared towards encouraging return migration and allowing for a comfortable assimilation into the local job market by opening up opportunities for returnees to utilise their overseas experience and skills in Nepal. In order to

achieve such an objective, the government needs to focus on creating a vibrant job market in the country.

Thus far, the existing policies and regulations have failed to incorporate issues of return migration and the future prospects of returnees. The Foreign Employment Act 2007 has focused almost exclusively on the initial recruitment phase, put little emphasis on destination countries, and virtually ignored the last phase of migration – the return. It mentions returnees in just the one clause on utilising the Foreign Employment Welfare Fund to start employment-oriented programmes for returnees.

The return of migrants to Nepal poses important questions: What kind of future do returnees have in Nepal? What are their prospects for employment and livelihood opportunities? Will they be able to utilise their expertise and experience to earn a living in the country or will foreign employment continue to remain the only viable option? Moreover, can the government benefit from the increasing flow of remittances, and can it come up with long-term measures to address issues of labour migration such that the outflow of workers becomes a matter of choice as opposed to compulsion? All in all, it should be noted that, without job opportunities within the country, and the pressure to make a living and provide for their family, for a large number of Nepalis seeking employment abroad foreign labour migration will continue to be the only choice available.

## Annexes





**Annex 1: Number of Work Permits Issued for Foreign Employment  
from Fiscal Year 1993/94 to 2010/11**

Fiscal Year /Countries	1993/94	1994/95	1995/96	1996/97	1997/98	1998/99	1999/00	2000/01	2001/02	2002/03	2003/04	2004/05	2005/06
Malaysia	0	0	0	0	89	151	171	11,306	52,926	43,812	45,760	66,291	75,526
Qatar	391	245	505	477	1,802	9,030	8,791	14,086	19,895	26,850	24,128	42,394	55,892
Saudi Arabia	2,290	1,041	1,469	1,959	4,825	14,948	17,867	17,966	21,094	17,990	16,875	13,366	15,813
U.A.E	132	0	23	95	284	1,417	6,360	8,950	8,411	12,650	12,760	12,726	15,317
Kuwait	361	13	18	107	137	609	465	885	378	907	3,194	1,789	640
Bahrain	91	0	0	0	111	787	583	904	695	818	606	536	540
Hong Kong	63	86	59	67	155	301	209	331	482	564	672	523	140
Israel	0	0	0	0	0	0	0	10	16	55	433	815	876
Oman	43	0	0	0	7	90	32	68	96	44	73	330	28
Macau	0	0	0	0	0	102	119	82	50	41	68	83	122
Afghanistan	0	0	0	0	0	0	0	0	0	72	327	0	32
Others	234	774	60	554	335	361	946	437	693	1,240	1,764	865	177
<b>Total</b>	<b>3,605</b>	<b>2,159</b>	<b>2,134</b>	<b>3,259</b>	<b>7,745</b>	<b>27,796</b>	<b>35,543</b>	<b>55,025</b>	<b>104,736</b>	<b>105,043</b>	<b>106,660</b>	<b>139,718</b>	<b>165,103</b>

Source: Department of Foreign Employment, Ministry of Labour and Transportation Management Nepal, Government of Nepal

Fiscal Year /Countries	2006/07			2007/08			2008/09			2009/10		
	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total
Malaysia	73,998	31	74,029	50,395	159	50,554	35,011	59	35,070	113,733	249	113,982
Qatar	59,642	63	59,705	85,247	195	85,442	75,862	313	76,175	55,656	284	55,940
Saudi Arabia	39,279	0	39,279	42,355	39	42,394	48,618	131	48,749	63,217	183	63,400
U.A.E	25,152	20	25,172	44,881	461	45,342	30,911	777	31,688	31,506	1,682	33,188
Kuwait	2,441	0	2,441	1,573	394	1,967	1,421	870	2,291	6,067	2,188	8,255
Bahrain	1,198	2	1,200	4,878	221	5,099	6,102	258	6,360	3,617	617	4,234
Hong Kong	353	8	361	174	25	199	58	7	65	84	18	102
Israel	182	223	405	20	90	110	1,251	2,127	3,378	82	234	316
Oman	509	0	509	2,503	123	2,626	4,105	142	4,247	2,678	607	3,285
Macau	330	0	330	267	5	272	165	394	559	99	1	100
Afghanistan	182	0	182	1,398	2	1,400	1,521	17	1,538	733	2	735
Others	877	43	920	10,675	2,971	13,646	6,346	3,499	9,845	6,566	3,991	10,557
<b>Total</b>	<b>204,143</b>	<b>390</b>	<b>204,533</b>	<b>244,366</b>	<b>4,685</b>	<b>249,051</b>	<b>211,371</b>	<b>8,594</b>	<b>219,965</b>	<b>284,038</b>	<b>10,056</b>	<b>294,094</b>

Source: Department of Foreign Employment, Ministry of Labour and Transportation Management Nepal, Government of Nepal

Fiscal Year /Countries	2010/11			Total From 1993/94 to 2010/11		
	Male	Female	Total	Male	Female	Total
Malaysia	104,520	1,386	105,906	673,689	1,884	675,573
Qatar	102,653	313	102,966	583,546	1,168	584,714
Saudi Arabia	70,960	156	71,116	411,932	509	412,441
U.A.E	42,553	1,911	44,464	254,128	4,851	258,979
Kuwait	9,392	5,795	15,187	30,397	9,247	39,644
Bahrain	4,441	206	4,647	25,907	1,304	27,211
Hong Kong	47	23	70	4,368	81	4,449
Israel	122	151	273	3,862	2,825	6,687
Oman	2,385	57	2,442	12,991	929	13,920
Macau	360	9	369	1,888	409	2,297
Afghanistan	653	2	655	4,918	23	4,941
Others	6,214	407	6,621	39,267	10,911	50,178
<b>Total</b>	<b>344,300</b>	<b>10,416</b>	<b>354,716</b>	<b>2,046,893</b>	<b>34,141</b>	<b>2,081,034</b>

## Annex 2: Foreign Employment Act, 1985

### Foreign Employment Act, 2042 (1985)

Date of Royal Seal

2042/7/14/4

(1985/10/30/4 A.D)

Date of Publication in Nepal Gazette

2042/7/14/4

(1985/10/30/4 A.D)

Act No. 26 of the year 2042 BS

(Eulogy of His Majesty the King)

An Act made to Provide for the Matters Relating to Foreign  
Employment

#### Preamble

Whereas it is expedient to control and manage foreign employment to maintain financial interests and facilities of the general public;

Now, therefore, His Majesty King Birendra Bir Bikram Shah Dev has made this Act on the advice and with the consent of the National Panchayat.

#### 1. Short Title and Commencement:

- (1) This Act may be called the 'Foreign Employment Act, 2042 BS (1985)'.
- (2) This Act shall come into force on the date prescribed by His Majesty's Government, by notification published in the Nepal Gazette.

#### 2. Definitions: Unless the subject or context otherwise requires, in this Act,

- (a) 'Worker' means a Nepali citizen employed in accordance with this Act in a foreign country specified in the notification published by His Majesty's Government.
- (b) 'Foreign Employment' means the employment to be obtained by a worker.
- (c) 'Foreign Employment Business' means the act of providing foreign employment to Nepali citizens and this term shall also include the act of selection of worker as a representative of employment providing institution.
- (d) 'Licence-holder' means the institution obtaining the licence pursuant to Section 6.

- (e) 'Employment Providing Institution' means an institution providing foreign employment to workers.
- (f) 'Prescribed' or 'as prescribed' means prescribed or as prescribed in the Rules framed under this Act.

**3. Prohibition to Operate Foreign Employment Business without Licence:** No one shall be entitled to operate foreign employment business without obtaining licence under this Act.

**4. Countries Relating to Foreign Employment Business to be Prescribed:** Operation of Foreign employment business under this Act shall be permitted only in the foreign countries specified in the notification published in the Nepal Gazette by His Majesty's Government.

**5. Licence not to be Issued Except for Institution:** No licence shall be issued for the operation of foreign employment business other than the institution established under the existing laws.

**6. Licence:**

- (1) Any institution intending to operate foreign employment business shall have to make an application to His Majesty's Government setting out the details as prescribed.
- (2) If, it appears that the institution so making application for operation of foreign employment business pursuant to Sub-section (1) is competent and appropriate, His Majesty's Government may issue licence with conditions after receiving prescribed fee and the deposit pursuant to Section 8 from such institution.
- (3) The licence issued pursuant to Sub-section (2) shall have to be renewed by the licence-holder in each financial year by paying fee as prescribed.

**7. Licence may be Cancelled:** His Majesty's Government may give an order to cancel the licence if the licence-holder fails to abide by the conditions or fails to abide by this Act or the Rules, Orders or Directives issued under this Act.

**8. Deposit to be Given:**

- (1) An institution intending to obtain licence pursuant to Section

6, shall have to deposit the prescribed amount to His Majesty's Government before obtaining such licence.

- (2) If, after obtaining licence by depositing the deposit pursuant to Sub-section (1), the amount so deposited is found to be proportionately insufficient to the transaction of the licence-holder, His Majesty's Government may give an order to deposit additional deposit as per necessity. If the additional amount is not deposited within the prescribed time frame the licence shall be cancelled.

**9. Prior permission to be Obtained:**

- (1) While selecting workers for foreign employment by the licence-holder, he or she shall have to obtain prior approval of His Majesty's Government and an application setting out the following particulars shall have to be submitted for such approval:
- (a) Name and address of the employment providing institution,
  - (b) Type of foreign employment,
  - (c) Copy of the agreement entered into between the employment providing institution and the licence-holder regarding sending of workers abroad,
  - (d) Copy of the contract to be entered into between the employment providing institution and the worker,
  - (e) Other particulars as prescribed.
- (2) While scrutinizing the details submitted pursuant to Sub-section (1), His Majesty's Government shall not give approval to select workers under any of the following circumstances:
- (a) If the person having qualification demanded by the employment providing institution is required for the economic development of Nepal,
  - (b) If the proposed foreign employment is not regularised by the laws of the concerned country,
  - (c) If the services, terms and facilities are found unsatisfactory in proportion to the qualification demanded by the employment providing institution,
  - (d) If the proposed foreign employment is against the value, dignity or health of the worker, or
  - (e) If other conditions as prescribed are found.

**10. Publication of Advertisement:** After obtaining approval from His Majesty's Government pursuant to Section 9, the licence-holder

shall have to make an advertisement, publicly setting out the details as prescribed for the selection of workers.

**11. Selection of Worker:**

- (1) Selection of worker shall have to be done impartially.
- (2) While selecting workers, the licence-holder shall have to include the representative of His Majesty's Government and the representative of foreign employment providing institution, if such institution intends to be included in such selection.

**12. Control in providing Foreign Employment:** Notwithstanding anything mentioned elsewhere in this Act, the licence-holder shall not provide foreign employment to children and women without the consent of her guardian.

**13. Service Charge:** The licence-holder shall be allowed to take service charge as prescribed for providing foreign employment.

**14. Contract Relating to Foreign Employment:**

- (1) The licence-holder has to explain in the language understood by the worker, full content of the contract and facilities to be obtained from it as well as the consequence thereto, before the worker and employment providing institution enter into a contract.
- (2) Only if the worker agrees to the contract explained fully to him pursuant to Sub-section (1), each copy of such contract shall have to be provided to the worker and His Majesty's Government after the contract has been signed by both the parties.
- (3) The contract to be entered into between the worker and the employment providing institution shall not differ from the contract submitted by the licence-holder pursuant to clause (d) of Sub-Section (1) of Section 9.
- (4) His Majesty's Government may give permission to the licence-holder to send worker abroad for foreign employment after receiving the contract pursuant to Sub-section (2).

**15. Information on the Subject of the Country to be visited for Foreign Employment to be given:** After obtaining licence pursuant to Subsection (4) of Section 14, the licence-holder shall inform the worker to be sent for foreign employment about the geographical location, culture, labour law as well as economic, political and social



conditions of the concerned country. No worker shall be sent for foreign employment without giving such information.

**16. Record to be maintained:** The licence-holder shall maintain up-to-date record as prescribed of the worker sent for foreign employment.

**17. Provision relating to worker's income:** The licence-holder shall make arrangement to deposit prescribed amount from the income of the workers at prescribed place or send to his home country in the prescribed way, for the welfare or maintenance of the workers and their dependents.

**18. Investigation to be done:**

- (1) His Majesty's Government may investigate or cause to be investigated if the worker files a complaint regarding the employment providing institution, which has not fulfilled its contract responsibility or the licence-holder who has not taken necessary and appropriate action to make the contract conditions fulfilled.
- (2) If it has been found necessary to call the concerned worker back home for conducting investigation pursuant to Sub-section (1), His Majesty's Government may give an order to the licence-holder to provide necessary amount for the return of such worker.
- (3) In case the licence-holder does not abide by the order of His Majesty's Government pursuant to Sub-section (2), the return fare of the worker shall be met from the deposit of the licence-holder deposited pursuant to Section 8.

**19. Inspection:** His Majesty's Government may inspect documents and other concerned papers kept by the licence-holder regarding the compliance of this Act and the Rules framed or Orders of Directives issued under this Act.

**20. Power to Direct:**

- (1) His Majesty's Government may, from time to time issue necessary directions to the licence-holder concerning foreign employment.
- (2) It shall be the duty of the licence-holder to abide by the direction given pursuant to Sub-section (1).

**21.Special Power of His Majesty's Government:** Notwithstanding anything mentioned elsewhere in this Act, under special circumstances, His Majesty's Government may, at any time cancel the licence provided under this Act.

**22.Advisory Committee:** An Advisory Committee shall be constituted as prescribed to advise His Majesty's Government concerning foreign employment.

**23.No Restriction to go in Personal Capacity:** Nothing mentioned in this Act shall be considered to have restricted anyone going for work in any foreign country after obtaining work permit.

**24.Punishment:**

- (1) His Majesty's Government may fine up to a sum of rupees five thousand to the licence-holder who does not observe the provisions of this Act or rule, order or direction issued under this Act.
- (2) If someone conducts foreign employment business without obtaining a licence under this Act, such person shall be fined up to a sum of rupees ten thousand or imprisonment up to two years or both.
- (3) If any person knowingly or maliciously, conceals, changes or falsifies facts of any documents, reports, audit or details to be kept, prepared or submitted under this Act or attempts to do such things, such person shall be liable to a fine up to a sum of rupees five thousand or one year imprisonment or both.
- (4) A licence-holder liable for punishment for offence as per this Act shall have his/her licence cancelled and in accordance with sub-section (2) and (3), the punished offender shall not be issued another licence.

**25.His Majesty's Government to be the Plaintiff:** His Majesty's Government shall be the plaintiff in the cases under this Act and the cases under this Act shall be deemed to be included in Schedule 1 of State Cases Act, 2017 BS (1960).

**26.Delegation of Power:** His Majesty's Government may delegate some or all of the power conferred upon it by this Act to any official by notification published in the Nepal Gazette.

**27. Power to Frame Rules:**

(1) His Majesty's Government may frame rules to carry out the objectives of this Act.

(2) Without prejudice to the power conferred by Sub-section (1), such rules may provide for the following:

(a) Details to be given in the application to be submitted for licence

(b) Qualification of the institution needed to operate foreign employment business

(c) Format of the licence, fee and renewal fee

(d) Conditions to be kept in the licence

(e) Procedure for cancellation and conditions of cancellation of the licence

(f) Details to be given in the application for approval to select workers

(g) Details to be mentioned in the advertisement by licence-holder

(h) Provision relating to service charge

(i) Conditions to be mentioned in the contract relating to foreign employment

(j) Provision relating to the functioning of office of the institution operating foreign employment business

(k) Investigation procedure relating to the complaint of worker

(l) Procedure and provision for returning workers to their homes

(m) Procedure relating to inspection

## **Annex 3: Foreign Employment (First Amendment) Act, 1985**

**Foreign Employment Act, 2042 BS (1985)  
Date of Royal Seal and Publication: 2042/7/14  
Foreign Employment (First Amendment) Act,  
2049 BS (1992)**

An Act made to provide for the matters relating foreign employment.

### **Preamble:**

Whereas it is expedient to control and manage as well as to maintain economic interest and convenience of the general public,

Now, therefore, His Majesty's King Birendra Bir Bikram Shah Dev has made this Act on the advice and with the consent of the National Panchayat.

### **(1) Short Title and Commencement:**

- (1) This Act may be called the 'Foreign Employment Act, 2042 BS (1985)'.
- (2) This Act shall come into force on the such date prescribed by His Majesty's Government, by a notification published in the Nepal Gazette.

**(2) Definitions:** Unless the subject or context otherwise requires, in this Act-

- (a) 'Worker' means a Nepali Citizen employed in accordance with this Act in a foreign country specified in the notification published by His Majesty's Government.
- (b) 'Foreign Employment' means the employment to be obtained by a worker abroad.
- (c) 'Foreign Employment Business' means the act of providing foreign employment to Nepali citizens and the meaning of this expression also includes the act of selection of workers by the representative of employment providing or cause to be given institution.
- (d) 'Licence-holder' means the institution obtaining the licence pursuant to Section 6.
- (e) 'Employment Providing Institution' means the institution providing foreign employment to workers.

- (e1) 'Association' means any association established under prevailing laws having industrial, commercial or service conducting purpose.
- (e2) 'Department' means the Department of Labour of His Majesty's Government.
- (f) 'Prescribed' or 'As prescribed' means prescribed or as prescribed in Rules framed under this Act.

**(3) Restriction to operate Foreign Employment Business without Licence:** No one shall be entitled to operate foreign employment business without obtaining licence under this Act.

**(4) Countries relating to Foreign Employment Business to be prescribed:** Operation of foreign employment business under this Act shall be permitted only in the foreign countries specified in the notification published in the Nepal Gazette by His Majesty's Government.

**(5) Licence not to be issued except for Institution:** Except for institution established under the existing laws, no licence shall be issued for the operation of foreign employment business.

**(5a) Ownership and liability of the Institution:** Notwithstanding anything contained in the prevailing laws 'without the approval of His Majesty's Government, the licence-holder its'. Cannot transfer or alter its ownership or liability.

**(6) Licence:**

- (1) Institution intending to operate foreign employment business shall have to submit an application with prescribed particulars to His Majesty's Government.
- (2) His Majesty's Government may issue licence with conditions after receiving prescribed fee and the deposit pursuant to Section 8 from such institution if the institution applying for licence in accordance with Sub-section (1) is deemed competent and fit to operate foreign employment business.
- (3) The licence issued pursuant to Sub-section (2) shall have to be renewed by the licence-holder in each financial year by paying fee as prescribed.

**(7) Licence may be cancelled:** His Majesty's Government may order to cancel the licence if the licence-holder fails to abide by the conditions or fails to abide by this Act or the Rules, Orders or Directives issued under this Act.

**(8) Deposit to be kept:**

- (1) Institution intending to obtain licence pursuant to Section 6 shall have to deposit prescribed amount of money to His Majesty's Government before obtaining the licence.
- (2) His Majesty's Government may, as necessary order to deposit additional deposit, if the licence obtained by depositing the deposit pursuant to Sub-section (1) is found to be proportionately insufficient to the transaction of the licence-holder. The licence shall be cancelled if the additional amount is not deposited within the prescribed period.

**(9) Prior permission to be obtained:**

- (1) In order to select workers for foreign employment, the licence-holder shall have to obtain prior permission of His Majesty's Government, and for such permission, an application with the following particulars shall have to be submitted:-
  - (a) Name and address of the employment providing institution,
  - (b) Type of foreign employment,
  - (c) Copy of the agreement entered into between the employment providing institution and the licence-holder regarding sending of workers abroad,
  - (d) Copy of the contract to be entered into between the employment providing institution and the worker,
  - (e) Other particulars as prescribed.
- (2) His Majesty's Government shall not provide permission for selecting workers if the particulars submitted pursuant to sub-section (1), when scrutinised show the followings:-
  - (a) If the person with the qualification demanded by the employment providing institution is required for the economic development of Nepal,
  - (b) If the proposed foreign employment is not regularised by the laws of the concerned country,
  - (c) If the services, terms and facilities are found unsatisfactory in proportion to the qualification demanded by the employment providing institution,

- (d) If the proposed foreign employment is against the value, dignity or health of the worker, or
- (e) If other conditions as prescribed are found.

**(10) Advertisement:** After obtaining permission of His Majesty's Government pursuant to Section 9 the licence-holder shall have to advertise publicly with particulars as prescribed for the selection of workers.

**(11) Selection of Worker:**

- (1) Selection of worker shall have to be done impartially.
- (2) The licence-holder while selecting workers shall have to include the representative of His Majesty's Government and the representative of foreign employment providing institution, if such institution wants to be included in the selection.
- (3) The description along with the name list of the selected labours shall be submitted to the concerned authority within seven days from the date of selection of the labour under Sub-section (1).
- (4) The labours selected under Sub-section (1) shall be sent for foreign employment within four months from the date of selection. His Majesty's Government may extend the period up to two times not exceeding 15 days at one time, if there is reasonable cause of failure to send the labours within the given period.
- (5) In case of failure to send the selected labours within the period mentioned in Sub-section (4), the concerned agency shall pay back the amount received from such labours and the interest thereof at the rate of 18 per cent within fifteen days.

**(12) Control in providing Foreign Employment:** Notwithstanding anything mentioned elsewhere in this Act, the licence-holder shall not provide foreign employment to children and to women without the consent of her guardian.

**(13) Service Charge:** The licence-holder is allowed to take service charge as prescribed for providing foreign employment.

**(14) Contract relating to Foreign Employment:**

- (1) The licence-holder shall have to explain in the language understood by the worker, the full content of the contract and

the facilities to be obtained from it as well as the consequence thereto, before the worker and employment providing institution enter into a contract.

- (2) Only if the worker agrees to the contract explained fully to him pursuant to Sub-section (1), one copy of such contract shall have to be provided each to the worker and His Majesty's Government, after the contract has been signed by both the parties.
- (3) The contract to be entered into between the worker and the employment providing institution shall not differ from the contract submitted by the licence-holder pursuant to clause (d) of Sub-section (1) of Section 9.
- (4) His Majesty's Government may give permission to the licence-holder to send worker abroad for foreign employment after receiving the contract pursuant to Sub-section (2).

**(15) Information on the Subject of the country to be visited for Foreign Employment to be given:** After obtaining licence pursuant to Sub-section (4) of Section 14, the licence-holder shall inform the worker to be sent for foreign employment about the geographical location, culture, labour law as well as economic, political and social conditions of the concerned country. No worker shall be sent for foreign employment without giving such information

**(16) Record to be kept:** The licence-holder shall keep up to date record of the worker sent for foreign employment as prescribed.

**(17) Provision relating to worker's income:** The licence-holder shall make arrangement to deposit the prescribed amount of money from the income of the workers at the prescribed place or send to his home country in the prescribed way, for the welfare or maintenance of the workers and their dependents.

**(18) Investigation to be done:**

- (1) His Majesty's Government may investigate or cause to be investigated if the worker files a complaint regarding the employment providing institution which has not fulfilled its contract responsibility or against the licence-holder who has not taken necessary and appropriate action to make the contract conditions fulfilled.



- (2) From the investigation conducted pursuant to Sub-section (1), if it is been found necessary to call the concerned worker back home, His Majesty's Government may order the licence-holder to provide necessary amount of money for the return of such worker.
  - (3) In case the licence-holder does not abide by the order of His Majesty's Government pursuant to Sub-section (2), the return fare of the worker shall be met from the deposit of the licence-holder deposited pursuant to Section 8. The concerned licence-holder shall be informed as soon as possible to reimburse the amount borne as expenditure from the deposit and the licence- holder shall deposit that amount within 15 days of receiving such notice.
  - (4) In case the amount deposited under Section 8 is insufficient to meet the expenses necessary for the return of the workers to the home country, the licence-holder shall pay the balance amount within the time notified by His Majesty's Government and if such amount is not paid within the notified time, it shall be realised from the assets of the licence-holder pursuant to prevailing laws.
- (19) Inspection:** His Majesty's Government may inspect documents and other concerned papers kept by the licence-holder regarding the compliance of this Act and the Rules framed or Orders or Directives issued under this Act.
- (20) Power to Direct:**
- (1) His Majesty's Government may, from time to time, issue necessary direction to the licence-holder concerning foreign employment.
  - (2) It shall be the duty of the licence-holder to abide by the direction, given pursuant to Sub-section (1).
- (21) Special Power of His Majesty's Government:** Notwithstanding anything mentioned elsewhere in this Act, in special circumstance His Majesty's Government may, at any time cancel the licence provided under this Act.
- (22) Advisory Committee:** An advisory committee shall be constituted as prescribed to advise His Majesty's Government concerning foreign employment.

**(23) No Restriction to go in Personal Capacity:** Nothing mentioned in this Act shall be considered to restrict anyone going for work in any foreign country after obtaining work permit.

Provided that the person going so shall notify the Department explaining the details of the country of destination, nature of job and conditions and facilities of the employment.

**(24) Punishment:**

- (1) His Majesty's Government may fine a sum of rupees five thousand to rupees fifty thousand to the licence-holder who does not follow the provisions of this Act or Rule, Order or Direction issued under this Act.
- (2) If someone conducts foreign employment business without obtaining a licence under this Act or sends anybody abroad for foreign employment by providing false assurance or attraction or takes any money on such pretence, the money so taken and 18 per cent of interest to that amount and the two way expenses of such person shall be reimbursed by the person sending him and the same shall be punished with a fine of rupees fifty thousand to two lakh or imprisonment of one year to five years or both. If such person has not been sent abroad half of the above mentioned punishment shall be made.
- (3) If any person knowingly or maliciously conceals, changes or falsifies facts of any document, report, audit or particulars to be kept, prepared, or submitted under this Act or attempts to do such things, such person shall be liable to a fine of rupees twenty-five thousand to one lakh or imprisonment of six months to three years.
- (4) The licence of the licence-holder who has been liable for punishment for offence proved, shall be cancelled and the offender punished in accordance with sub-section (2) and (3) shall not be provided another licence.
- (5) Person being abetter in the offence under this act or conspiring to commit such offence shall be liable to half of the punishment of the offence if such offence was committed and such offender shall not be given any licence for conducting foreign employment business.

**(25) His Majesty's Government to be the Plaintiff:** His Majesty's Government shall be the plaintiff in cases under this Act and the

cases under this Act shall be deemed to be included in Schedule 1 of State Cases Act, 2017 BS (1960).

**(26) Delegation of Power:** His Majesty's Government may delegate some or all of the power conferred upon it by this Act to any official by notification published in the Nepal Gazette.

**(27) Power to Frame Rules:**

- (1) His Majesty's Government may frame rules to carry out the objectives of this Act.
- (2) Without prejudice to the power conferred by Subsection (1) such rules may provide for the following:
  - (a) Particulars to be given in the application to be submitted for licence,
  - (b) Qualification of institution needed to operate foreign employment business,
  - (c) Format of the licence, fee and renewal fee,
  - (d) Conditions to be kept in the licence,
  - (e) Procedure for cancellation and conditions of cancellation of the licence,
  - (f) Particulars to be given in the application for permission to select workers,
  - (g) Particulars to be mentioned in the advertisement by licence-holder,
  - (h) Provision relating to service charge,
  - (i) Conditions to be mentioned in the contract relating to foreign employment,
  - (j) Provision relating to the functioning of office of the institution operating foreign employment business,
  - (k) Investigation procedure relating to the complaint of worker,
  - (l) Procedure and provision for returning workers to their homes,
  - (m) Procedure relating to inspection.

## **Annex 4: Foreign Employment (Second Amendment) Act, 1998**

### **Foreign Employment (Second Amendment) Act, 2054 BS (1998)**

**Date of Royal Seal and Publication**

**2054/10/15 B.S. (28 January, 1998)**

**Act No. 23 of the Year 2054 BS (1998)**

**(Eulogy of His Majesty the King)**

**An Act Made to Amend the Foreign Employment Act, 2042 BS (1985)**

#### **Preamble:**

Whereas, it is expedient to amend the Foreign Employment Act, 2042 BS (1985),

Now, therefore, be it enacted by Parliament in the 26th year of the reign of His Majesty King Birendra Bir Bikram Shah Dev.

#### **1. Short Title and Commencement:**

- (1) This act may be called 'The Foreign Employment (Second Amendment) Act, 2054 BS (1998)'.
- (2) This Act shall come into force immediately.

#### **2. Amendment to Section 2 of the Foreign Employment Act 2048 BS (1992):**

Clause (e1) of Section 2 of the Foreign Employment Act, 2042 BS (1985) (hereinafter referred to as the 'Principal Act') has been substituted by the following clause (e1): '(e1) 'Institution' means the institution established under the prevailing law with an objective of operating foreign employment business'.

#### **3. Amendment to Section 4 of the Principal Act:**

Section 4 of the Principal Act has been substituted by the following Section 4:-

'4. His Majesty's Government to Specify the Countries:

- (1) His Majesty's Government shall, by publishing a notification in the Nepal Gazette, specify the countries permitted to operate the foreign employment business.
- (2) The licence-holder may operate foreign employment business only in the countries specified under sub-section (1) with permission to operate the foreign employment business'.

**4. Amendment to Section 5 of the Principal Act:**

The words 'established under the prevailing law' appearing in Section 5 of the Principal Act have been deleted.

**5. Amendment to Section 5A. of the First Amendment:**

The words 'without the approval of His Majesty's Government, the Association conducting the foreign employment such' appearing in Section 5A of the Principal Act have been substituted by the words 'without the approval of His Majesty's Government, the licence-holder its'.

**6. Amendment to Section 8 of the Principal Act:**

In Section 8 of the Principal Act,

(1) Sub-section (2) has been substituted by the following sub-section (2):-

'(2) After having obtained licence by keeping deposit pursuant to sub-section (1), His Majesty's Government shall issue an order to furnish an additional deposit amount if such deposit is found insufficient in proportion to the transactions of the licence-holder'.

(2) The following sub-section (3) has been inserted after sub-section (2):-

'(3) His Majesty's Government may accept immovable assets as well for additional deposit to be furnished pursuant to sub-section (2)'.

**7. Amendment to Section 9 of the Principal Act:**

Clause (b) of sub-section (1) of Section 9 of the Principal Act has been substituted by the following clause (b):-

'(b) Type of foreign employment and a duplicate copy of the requisition notice of the institution providing the employment relating thereto, and the licence granted in such respect by the Government of the concerned country or by the official or agency authorised by such Government'.

**8. Amendment to Section 10 of the Principal Act:**

Section 10 of the Principal Act has been substituted by the following Section 10:-

'10. Advertisement Required:

(1) The licence-holder shall, after having obtained the permission

of His Majesty's Government pursuant to Section 9, have to publish an advertisement in any journal of national level by calling applications to select the workers for foreign employment.

- (2) In addition to the other particulars as prescribed, the terms of service and facilities of such worker and the fees to be paid to the licence-holder shall also have to be specified in the advertisement to be published pursuant to sub-section (1).
- (3) After the publication of advertisement pursuant to sub-section (1), the person desirous of going for foreign employment shall have to submit an application before the licence-holder by specifying the particulars as prescribed, within the time-limit referred to in such advertisement'

#### **9. Insertion of Sections 10A. and 10B. in the Principal Act:**

The following Sections 10A. and 10B. have been inserted after Section 10 of the Principal Act -

'10A. Merit List To Be Prepared

- (1) The licence-holder shall have to prepare the merit list of the persons, who have submitted application before the licence-holder for foreign employment response of the advertisement published under Section 10 for the selection of workers, on the basis of their professional qualifications and experience.
- (2) The names of alternative persons for not more than five per cent of the total number of posts that have been requisitioned shall be included in the merit list to be prepared pursuant to subsection (1).
- (3) While selecting the workers pursuant to Section 11, the licence-holder shall have to select the persons, whose names have been included in the merit list, for foreign employment in accordance with the number of order of such merit list.
- (4) The merit list as referred to in sub-section (1) shall be required to be submitted before the Department.

10B. Advertisement Not Required:

- (1) Unless the persons whose names have been included in the merit list as referred to in Section 10A have been sent for foreign employment, no advertisement shall be required to be done pursuant to Section 10 in order to select the workers for the foreign employment to be obtained on the basis of professional qualifications and experience of such persons.

- (2) In case the persons, whose names have been included in the merit list as referred to in Section 10A have been selected for foreign employment without the advertisement pursuant to sub-section (1), the licence-holder shall have to give information of such matter to the Department’.

**10. Amendment to Section 11 of the Principal Act:**

In Section 11 of the Principal Act -

- (1) Sub-section (1) has been substituted by the following sub-section (1):-  
 ‘(1) While selecting the workers for foreign employment by the licence-holder, it shall have to be done on the prescribed basis’.  
 (2) The words ‘prescribed authority’ appearing in sub-section (3) have been substituted by the word ‘Department’.

**11. Amendment to Section 12 of the Principal Act:**

Section 12 of the Principal Act has been substituted by the following Section 12:-

‘12. Foreign Employment should not be provided: Notwithstanding anything contained elsewhere in this Act, the licence-holder shall not have the authority to provide foreign employment to minors and women.

Provided that foreign employment may be provided to women by obtaining permission of His Majesty’s Government and guardians.

Clarification

- (1) For the purpose of this Section, ‘minor’ means a person who has not attained the age of 18 years.  
 (2) For the purpose of this Section, ‘guardian’ means the following relative of the woman who is desirous of going for foreign employment:-  
 (a) Father or mother in respect of an unmarried woman and husband in respect of a married woman,  
 (b) In cases where the relative as referred to in clause (a) above is not available, the elder brother or younger brother of the same home and joint family, who has attained the age of 21 years, in respect of an unmarried woman and the father-in-law or mother-in-law living in the same joint family in respect of a married woman,  
 (c) In respect of a woman who does not even have the relatives mentioned in clause (b) above, the person recommended

by the concerned Village Development Committee or Municipality stating him or her as her nearest relative’.

**12. Amendment to Section 14 of the Principal Act:**

In Section 14 of the Principal Act, -

(1) Sub-section (4) has been substituted by the following sub-section (4):-

‘(4) After entering into a contract pursuant to subsection (2), the licence-holder shall, at least seven days prior to sending the worker abroad for foreign employment, have to submit an application along with all the documents relating thereto before His Majesty’s Government for permission’.

(2) The following sub-section (5) has been inserted after sub-section (4):-

‘(5) If the documents submitted pursuant to subsection (4) are not found different from the particulars submitted under Section 9, His Majesty’s Government shall grant approval to send such worker for foreign employment. Provided that it may bar such sending if any difference there has been found’.

**13. Amendment to Section 15 of the Principal Act:**

The words ‘after obtaining permission’ appearing in Section 15 of the Principal Act have been substituted by the words ‘after the submission of documents to His Majesty’s Government’ and the words ‘social condition of’ appearing in the same Section have been substituted by the words ‘social condition and regarding the nature of works to be performed by him’.

**14. Insertion of Section 16A. in the Principal Act:**

The following Section 16A. has been inserted after Section 16 of the Principal Act:-

‘16A. Annual Description:

The licence-holder shall, within thirty-five days after the end of each fiscal year, have to submit before His Majesty’s Government the annual description of all the acts and proceedings done and taken by it in respect of foreign employment business in the previous fiscal year’.

**15. Insertion of Section 19A. in the Principal Act:**

The following Section 19A. has been inserted after Section 19 of the Principal Act:-



'19A. Inquiry and Investigation of the Offences Relation to Foreign Employment

- (1) If His Majesty's Government is informed directly or indirectly, by way of a complaint filed by any person or by any other manner, of the fact that any offence has happened or committed or is about to happen or about to be committed in contravention of this Act or the Rules framed under this Act, His Majesty's Government may cause to take proceedings on inquiry and investigation of the offence relating thereto by designating at least a Gazetted third class officer as the investigation officer.
- (2) While conducting inquiry and investigation on the offence pursuant to sub-section (1) or collecting the proofs and evidence thereof, the investigation officer shall have all the powers equal to those conferred to the Police under the prevailing law such as arresting the person involved in the offence, making searches in any places in respect of the offence, taking in his custody the documents and other articles and things related with the offence, causing to make depositions and preparing the deeds.
- (3) While conducting inquiry and investigation pursuant to sub-section (2), the investigation officer shall cause the accused to make deposition and, if there is sufficient ground to show him as an offender from the evidence available beforehand, may release him on bail or on guarantee or, if he could not provide bail or guarantee, may take action by keeping him detained in custody with the approval of the authority hearing the case or may detain him in custody for a maximum period of up to thirty days not exceeding seven days at a time.  
Provided that a recidivist (persistent offender) shall not be released on bail.
- (4) The investigation officer may have consultations with the government lawyer, if it is so required, in conducting the acts of inquiry and investigation as set-forth in this Section.
- (5) It shall be the duty of all the concerned including the Police to provide necessary assistance to the investigation officer in performing the acts of inquiry and investigation as set-forth in this Section'.

**16. Amendment to Section 23 of the Principal Act:**

Section 23 of the Principal Act has been substituted by the following

Section 23:-

'23. Permission to go in Personal Capacity:

- (1) If any person desires to go abroad in personal capacity for foreign employment, he shall be required to submit an application, for obtaining approval, before His Majesty's Government by specifying therein the following particulars:-
  - (a) The country desired to go,
  - (b) The nature of the works to be performed abroad,
  - (c) The institution providing the employment, acceptance granted by the institution and the terms and facilities of the employment,
  - (d) His nearest relative in the native country who consents to bear responsibility of the migrant worker.
- (2) His Majesty's Government shall, upon receipt of the application as referred to in sub-section (1), conduct necessary inquiry and examination and grant approval to the applicant to go abroad in personal capacity for foreign employment'.

#### **17. Amendment to Section 24 of the Principal Act:**

In Section 24 of the Principal Act,

- (1) Sub-section (1) has been substituted by the following sub-section (1):-
  - '(1) In case any licence-holder acts in contravention of this Act or the Rules framed under this Act or does not comply with the order or directions of His Majesty's Government, His Majesty's Government may punish him with a fine of an amount ranging from twenty thousand rupees to one hundred thousand rupees and may revoke the licence of such licence-holder'.
- (2) The following sub-section (1A) has been inserted after sub-section (1)
  - '(1A) Notwithstanding anything contained in subsection (1) above, the person who does an act in contravention of Section 12 shall be liable to a fine of up to five hundred thousand rupees and imprisonment of up to ten years or both punishments'.
- (3) Sub-section (2) has been substituted by the following sub-section (2):-
  - '(2) In case any person operates foreign employment business without obtaining a licence under this Act or sends a person

abroad by giving false assurances or putting temptation on such person by explaining that he was being sent for foreign employment or takes any amount on such pretence, the amount so taken and the amount to be set by fifty per cent of such amount shall be realised for compensation from him and the expenses incurred to such person in two way travel to and from such foreign country shall also be recovered from him and made available to such person, and he shall be liable to a fine ranging from fifty thousand rupees to five hundred thousand rupees or imprisonment for a term ranging from three years to seven years or both punishments. He shall be liable to the half of such punishment if the person is yet to be sent abroad’.

- (4) The words ‘one hundred thousand’ appearing in sub-section (3) has been substituted by the words ‘two hundred fifty thousand’.
- (5) Sub-section (4) has been substituted by the following sub-section (4):- ‘(4) His Majesty’s Government shall revoke the licence of such licence-holders who are held liable to punishment under sub-sections (2) and (3) and such licence-holders shall not be provided with another licence’.

**18. Amendment to Section 25 of the Principal Act:**

The phrase ‘and the cases under this Act shall be deemed to have been included in Schedule - 1 of the State Cases Act, 2017 (1960)’ appearing in Section 25 of the Principal Act has been deleted.

**19. Repeal:**

Section 7 of the Principal Act and ‘Serial No.29’ of Schedule - 1 of the State Cases Act, 2017 BS (1960).

## Annex 5: Comparative Review of the Foreign Employment Act, 1985 and Its Two Amendments

Topic /Issue	Foreign Employment Act, 1985	Foreign Employment (First Amendment) Act, 1992	Foreign Employment (Second Amendment) Act, 1998
Preamble	To control and manage foreign employment so as to maintain financial interests and facilities of the general public.	To amend the Foreign Employment Act.	To amend the Foreign Employment Act.
Operation of Foreign Employment Business	<p>Art 3. Prohibits operation of foreign employment business without obtaining license.</p> <p>Art 4. Operation of Foreign Employment Business to be permitted only in the countries specified by the government.</p>		<p><i>Amendment to Art 4 of original Act</i>            In addition, permission is required to operate foreign employment business.</p>
Licensee/License	<p>Art 5. License not to be issued except for institution other than those established under the existing laws.</p> <p>Art 6.1. Any institution intending to operate Foreign employment business is to make an application to the Government setting out the details as prescribed.</p> <p>Art 7. License is to be cancelled if the licensee fails to abide by the conditions or fails to abide by this Act or the Rules, Orders or Directives issued under this Act.</p>	<p><i>Art (5a) added</i> that states that the licensee-holder cannot transfer or alter its ownership or liability without the approval of the government.</p>	<p><i>Art 7. repealed</i></p> <p><i>Art 8.2 substituted and (3) added</i>            (3) After obtaining licence the Government is to issue an order to furnish an additional deposit amount if such deposit is found insufficient in proportion to the transactions of the licence-holder.            (4) The Government is to accept immovable assets as well for additional deposit to be furnished.</p>

Topic /issue	Foreign Employment Act, 1985	Foreign Employment (First Amendment) Act, 1992	Foreign Employment (Second Amendment) Act, 1998
	<p>Art 8. Deposit to be given</p> <p>(1) An institution intending to obtain licence is to deposit prescribed amount to the Government before obtaining such licence.</p> <p>(2) If after obtaining licence, the amount so deposited is found to be insufficient to the transaction of the licence-holder, the Government is to give an order to deposit additional necessity. If the additional amount is not deposited within the prescribed time frame the licence is to be cancelled.</p>		
Prior permission	<p>Art 9. Prior permission is to be obtained</p> <p>(1) while selecting workers for foreign employment by the licensee, by making an application and giving details like</p> <p>(a) name and address of the employment providing institution,</p> <p>(b) type of foreign employment,</p> <p>(c) copy of the agreement entered into between the employment</p>		<p>Clause (b) of 9.1 of the <i>Principal Act</i> substituted by</p> <p>(b) Type of the foreign employment and the duplicate copy of the requisition notice of the institution providing the employment relating thereto, and the licence granted in such respect by the Government of the concerned country or by the official or agency authorised by such Government.</p>

Topic /Issue	Foreign Employment Act, 1985	Foreign Employment (First Amendment) Act, 1992	Foreign Employment (Second Amendment) Act, 1998
	<p>providing institution and the license-holder regarding sending of workers abroad</p> <p>(d) copy of the contract to be entered into between the employment providing institution and the worker</p> <p>(e) other particulars as prescribed</p> <p>(2) Government is not to give approval to select workers if:</p> <p>(a) the person having qualification demanded by the employment providing institution is required for the economic development of Nepal,</p> <p>(b) if the proposed foreign employment is not regularized by the laws of the concerned country</p> <p>(c) if the services, terms and facilities are found unsatisfactory in proportion to the qualification demanded by the employment providing institution.</p> <p>(d) if the proposed foreign employment is against the value, dignity or health of the worker, etc</p>		

Topic /issue	Foreign Employment Act, 1985	Foreign Employment (First Amendment) Act, 1992	Foreign Employment (Second Amendment) Act, 1998
Advertisement	<p>(e) If other condition as prescribed are found</p> <p>Art 10. Advertisement is to be made after obtaining approval from the government setting out the details as prescribed for the selection of workers.</p>		<p><i>Art 10 of Principal Act substituted by</i>  <b>ART 10. Advertisement Required</b>                      (1) The licensee, after obtaining permission is to publish an advertisement in national daily calling applications to select the workers for foreign employment.                      (2) In addition to the other particulars as prescribed, the terms of service and facilities of such worker and the fees to be paid to the licensee is to be specified in the advertisement.                      (3) The person desirous of going for foreign employment is to submit an application to the licensee specifying the particulars, within the time-limit referred in the advertisement.   <i>Art 10A and 10B added</i>  <b>10A. Merit List To Be Prepared</b>                      (1) The licensee is to prepare merit list of the applicants                      (2) The names of alternative persons for not more than 5 per cent of the total number of posts requisitioned to be included in the merit list.                      (4) Selection to be made in accordance with the order of such merit list.</p>

Topic /Issue	Foreign Employment Act, 1985	Foreign Employment (First Amendment) Act, 1992	Foreign Employment (Second Amendment) Act, 1998
Selection	<p>Art 11.1. Selection of worker is to be done impartially.</p> <p>Art 11.2. The licensee is to include the representative of the government and the representative of foreign employment providing institution, if such institution intends to be included in such selection.</p>	<p>Subsections (3), (4) and (5) added</p> <p>(3) The description along with the name list of the selected labours to be submitted to the prescribed authority within 7 days from the date of selection of the labour.</p> <p>(4) The selected labours are to be sent for foreign employment within 4 months from the date of selection. The Government may extend the period up to two times not exceeding 15 days at one time, if there is reasonable cause for failure to send the labours within the given period.</p>	<p>(5) The merit list is to be required to be submitted to the Department.</p> <p>10B. Advertisement Not Required:</p> <p>(1) Unless the persons whose names have been included in the merit list could be sent for foreign employment, no advertisement is to be done in order to select the workers for the foreign employment. Selection to be obtained on the basis of professional qualifications and experience of such persons.</p> <p>(2) In case the persons, whose names have been included in the merit list, have been selected without advertisement, the licensee is to inform the Department.</p> <p>Art 11.1 substituted by</p> <p>(1) While selecting the workers for foreign employment by the licence-holder, it is to be done on the prescribed basis.</p> <p>In Art 11.3 'prescribed authority' substituted by Department</p>



Topic / Issue	Foreign Employment Act, 1985	Foreign Employment (First Amendment) Act, 1992	Foreign Employment (Second Amendment) Act, 1998
Women and Children	Art 12. Prohibits providing foreign employment to children and to women without the consent of her guardian.	(5) In case of failure to send them within the period mentioned, the agency is to pay back the amount received from such labours and the interest at the rate of 18 per cent within 15days.	<p>Art 12. <i>Substituted</i> The license-holder is not to provide foreign employment to women and minors (who have not attained the age of 18).</p> <p>Provided that the foreign employment may be provided to women by obtaining permission of the Government and guardians.</p>
Service charge and promotional costs Contract And information to workers	<p>Art 13. Allows for licensee to take service charge as prescribed for providing foreign employment.</p> <p>Art 14. Contract relating to foreign employment (1) The full content of the contract is to be explained in the language understood by the worker, along with facilities to be obtained from it, and the consequence thereto, before the conclusion of contract between the worker and employment providing institution. (2) If the worker agrees to the</p>		

Topic /Issue	Foreign Employment Act, 1985	Foreign Employment (First Amendment) Act, 1992	Foreign Employment (Second Amendment) Act, 1998
	<p>contract explained fully to him each copy of such contract is to be provided to the worker and the government after the contract has been signed by both the parties.</p> <p>(3) The contract to be entered into between the worker and the employment providing institution is not to differ from the contract submitted by the licence-holder.</p> <p>(4) Government is to give permission to the licensee to send worker abroad for foreign employment after receiving the contract.</p> <p>Art 15. Information about the geographical location, culture, labour law as well as economic, political and social conditions of the concerned country to be given to the worker after obtaining license sent for foreign employment without giving such information.</p>		<p><i>Sub-section (4) substituted by</i></p> <p>(4) After entering into a contract the licence-holder, at least 7 days prior to sending the worker abroad for foreign employment, is to submit an application along with all the documents relating thereto before the Government for permission.</p> <p><i>Sub-section (5) added</i></p> <p>(5) If the documents submitted are not found different from the particulars submitted, the Government is to grant approval to send such worker for foreign employment. Provided that it may bar such sending if there has been found any difference.</p> <p>The words 'after obtaining permission' appearing in Section 15 of the Principal Act have been substituted by the words 'after the submission of documents to the Government' and the words 'social condition of appearing in the same Section have been substituted by the words 'social condition and regarding the nature of works to be performed by him'.</p>
Record	Art 16. Record is to be maintained by the licensee of the worker sent		<p><i>Sub-section A added</i></p> <p>16 A. The licence-holder, within 35 days</p>

Topic /Issue	Foreign Employment Act, 1985	Foreign Employment (First Amendment) Act, 1992	Foreign Employment (Second Amendment) Act, 1998
	for foreign employment.		after the end of each fiscal year, is to submit before the Government, the annual description of all the acts and proceedings done and taken by it in respect of foreign employment business in the previous fiscal year.
Going abroad for foreign employment on Personal Capacity	Art 23. No Restriction to go in personal capacity: Holds no restriction to go in personal capacity to anyone going for work in any foreign country after obtaining work permit.		<p>Art 23 substituted by</p> <p>23. Permission to go in Personal Capacity</p> <p>(1) If any person desires to go abroad in personal capacity for foreign employment, s/he is to submit an application, for obtaining approval, before the Government, specifying the following:</p> <p>(a) The country desired to go,</p> <p>(b) The nature of the works to be performed abroad,</p> <p>(c) The institution providing the employment, the acceptance granted by the institution and the terms and facilities of the employment,</p> <p>(d) Nearest relative in the native country and the consent to bear liability.</p> <p>(2) The Government, after necessary inquiry and examination is to grant approval to the applicant to go abroad in personal capacity for foreign employment.</p>
Arrangement for Remittance	Art 17. Provision relating to worker's income The licence-holder is to make		

Topic /Issue	Foreign Employment Act, 1985	Foreign Employment (First Amendment) Act, 1992	Foreign Employment (Second Amendment) Act, 1998
<p>Inspection, Monitoring and Inquiry, Investigation</p>	<p>arrangement to deposit prescribed amount from the income of the worker or to send home.</p> <p>Art 18. Investigation to be done</p> <p>(1) If the worker files a complaint regarding the employment providing institution.</p> <p>(2) If it has been found necessary to call the concerned worker back home from the investigation conducted pursuant to Sub-section (1), the Government may give an order to the licence-holder to provide necessary amount for the return of such worker</p> <p>(3) In case the licence-holder does not abide by the order of the government, the return fare of the worker shall be met from the deposit of the licence-holder deposited.</p> <p>Art 19. Inspection: The Government may inspect documents and other concerned papers kept by the licence-holder regarding the compliance of this Act and the Rules framed or Orders of Directives issued under this Act.</p>	<p><i>Added a sentence to 18(3) and (4) inserted</i></p> <p>(3) The concern licence-holder to be informed as soon as possible to reimburse the amount borne as expenditure from the deposit and the licence holder to deposit that amount within fifteen day of receiving notice.</p> <p>(4) In case the amount deposited under Section 7 is insufficient to return back the labours to the native country the licence-holder shall pay the due expenditure within the time notified by the Government and if such amount is not paid within the time limit it shall be realized with pursuant to prevailing laws from the assets of the licence-holder.</p>	<p><i>Section 19A. inserted</i></p> <p>19A. Inquiry and Investigation of the Offences Related to Foreign Employment</p> <p>(1) If the Government is informed directly or indirectly, by way of a complaint filed by any person or by any other manner, of the fact that any offence has happened or committed or is about to happen in contravention of this Act or Rules framed under this Act, the Government may cause to take proceedings on inquiry and investigation of the offence relating thereto by designating at least a Gazetted third class officer as the investigation officer.</p> <p>(2) While conducting inquiry and investigation on the offence or collecting the proofs and evidence thereof, the investigation officer will have all the powers equal to those conferred to the Police under the prevailing law such as arresting the person involved in the offence, making searches in any places in respect of the offence, taking in his custody the documents and other articles and things related with the offence, causing to make depositions</p>

Topic / Issue	Foreign Employment Act, 1985	Foreign Employment (First Amendment) Act, 1992	Foreign Employment (Second Amendment) Act, 1998
Power to direct	Art 20. Power to Direct (1) Power of the government to direct license-holder from time to time concerning foreign employment.		<p>and preparing the deeds.</p> <p>(3) While conducting inquiry and investigation, the investigation officer shall cause the accused to make deposition and, if there is sufficient ground to show him as an offender from the evidence available beforehand, may release him on bail or on guarantee; or if he could not provide bail or guarantee, may take action by keeping him detained in custody with the approval of the authority hearing the case or may detain him in custody for a maximum period of up to 30 days not exceeding seven days at a time. Provided that a recidivist (persistent offender) is not to be released on bail.</p> <p>(4) The investigation officer may have consultations with the government lawyer, if it is so required, in conducting the acts of inquiry and investigation.</p> <p>(5) It is the duty of all the concerned to provide necessary assistance to the investigation officer in performing the acts of inquiry and investigation.</p>

Topic /issue	Foreign Employment Act, 1985	Foreign Employment (First Amendment) Act, 1992	Foreign Employment (Second Amendment) Act, 1998
	<p>(2) It is to be the duty of license-holder to abide by the directions.</p> <p>Art 21. Special Power of His Majesty's Government: Government may, at any time cancel the license provided under this Act.</p>		
Advisory Committee	<p>Art 22. An Advisory Committee is to be constituted to advise the government concerning foreign employment.</p>		
Action for non compliance	<p>Art 24. Punishment</p> <p>(1) May include a fine up to a sum of NPR 5000 to the licence-holder who does not observe the provisions of this Act or</p> <p>(2) NPR 10,000 or imprisonment up to two years or both if someone conducts foreign employment business without obtaining a licence.</p> <p>(3) A fine up to a sum of NPR 5,000 or one year imprisonment or both if conceals, changes or falsifies facts of any documents,</p>	<p><i>Sub-section (2) substituted</i></p> <p>(3) If someone conducts foreign employment business without obtaining a licence under this Act or sends anybody abroad by providing false assurance or attraction or takes any money on such pretence, the money so taken and 18 per cent of interest to that amount and the two way expenses of such person is to be reimbursed by the person sending him. The offender is to be punished with a fine of NPR 50,000 to 200,000 or imprisonment of one 1 to 5 years or both. If the victim has not been sent abroad, half of the above mentioned punishment is to be made.</p> <p>3) Fine increased NPR 25,000 to 100,000 or imprisonment of six months to three years.</p>	<p><i>Sub-section (1) substituted and 1A inserted</i></p> <p>(1) In case any licence-holder does any act in contravention of this Act or the Rules framed under this Act or does not comply with the order or directions of His Majesty's Government, the Government may punish him with a fine of an amount ranging from NPR 20,000 to 100,000 and may revoke the licence of such licence-holder.</p> <p>(1A) Notwithstanding anything contained in subsection (1) above, the person who does an act in contravention of Section 12 shall be liable to a fine of up to NPR 500,000 and imprisonment of up to 10 years or both punishments.</p>

<p><b>Topic / Issue</b></p>	<p><b>Foreign Employment Act, 1985</b> reports, audit or details to be kept, prepared or submitted.  (4) The licence of the licence-holder liable for punishment for offence proved, is to be cancelled and the offender punished in accordance with sub-section (2) and (3) is not to be issued another licence.</p>	<p><b>Foreign Employment (First Amendment) Act, 1992</b> <i>Sub-section (5) inserted</i> (5) Person being abetter in the offence under this act or conspiring to commit such offence shall be liable to half of the punishment of the offence if such offence was committed and such offender is not to be given any licence for conducting foreign employment business.</p>	<p><b>Foreign Employment (Second Amendment) Act, 1998</b> <i>Sub-section (2) substituted</i> (2) In cases any person operates a foreign employment business without obtaining a licence or sends a person abroad by giving false assurances or putting temptation on such person by explaining that he was being sent for foreign employment or takes any amount on such pretence, the amount so taken and the amount to be set by 50 per cent of such amount is to be realised for compensation from him and the expenses incurred to such person in two way travel to and from such foreign country is also to be recovered from him and made available to such person, and he is to be liable to a fine ranging from NRs 50,000 to 500,000 or imprisonment for a term ranging from 3 to 7 years or both punishments. He is to be liable to the half of such punishment if the person is yet to be sent abroad. NPR 100,000 in sub-section (3) has been substituted by the NPR 250,000.  Sub -section (4) substituted (4) His Majesty's Government is to revoke the licence of such licence-holders who are held liable to punishment under sub-sections (2) and (3) and such licence-</p>
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Topic /Issue	Foreign Employment Act, 1985	Foreign Employment (First Amendment) Act, 1992	Foreign Employment (Second Amendment) Act, 1998
Government to be the Plaintiff	Art 25. Government to be the Plaintiff in the cases under this Act and the cases under this Act are deemed to be included in Schedule 1 of State Cases Act, 2017 (1960 A.D.).		holders are not to be provided with another licence. Government to be the Plaintiff in the cases under this Act. <i>(the rest deleted)</i>



## Annex 6: **Foreign Employment Rules, 1999**

Nepal Recorder

Year 23, No. 21

Kathmandu: 23 November, 1999

Ministry of Labour

Nepal Rajapatra, Vol. 49, No. 23 (E), 31 Bhadra, 2056 (16 September, 1999).

### **Foreign Employment Rules, 1999**

His Majesty's Government has framed the following rules in exercise of the power conferred by Section 27 of the 1985 Foreign Employment Act.

#### **Chapter 1**

##### **Preliminary**

##### 1. Short Title and Commencement

- (1) These rules shall be known as the **Foreign Employment Rules, 1999**.
- (2) These rules shall come into force immediately.

##### 2. Definitions

Unless otherwise meant with reference to the subject or context, in these rules,

- (a) Act means the 1985 Foreign Employment Act.
- (b) Work Permit means a permit issued by the empowered authority of the country providing foreign employment to an employee authorising him to work in the country.
- (c) Licence means a licence issued under Sub-Section (2) of Section 6 of the Act.
- (d) Employee Demand Form means a demand form sent by the person providing foreign employment to a licensee mentioning the number, type and qualifications of employees, their remunerations, facilities and other conditions of service.

#### **Chapter 2**

##### **Provisions Concerning Issuance and Renewal of Licence**

##### 3. Application to be Filed for Operating Foreign Employment Business

- (1) Any institution which possesses the following qualifications and is desirous of undertaking the foreign employment business must submit an application to HMG for a licence in the form indicated in Schedule 1.

- (a) It must have a working capital of at least NPR 2.5 million.
  - (b) It must not have been declared bankrupt.
  - (c) Its promoters must have gained at least one year's experience of work as manager in any financial, professional, commercial or industrial concern.
- (2) HMG shall conduct investigations into the application filled under Sub-rule (1), and may issue a licence in the form indicated in Schedule 3 by collecting NPR 500,000 as deposit and NPR 10,000 as licence fee.

#### **4. newal of Licence**

- (1) The licensee must renew the licence obtained by him under Sub-rule (2) of Rule 3 within 90 days from the date of expiry of each fiscal year.
- (2) A fee of NPR 5,000 must be paid while having the licence renewed under Sub-rule (1).
- (3) In case the licence is not renewed within the time limit mentioned in Sub-rule (1), the licensee may have it renewed within 30 days from the date of expiry of that time limit on payment of a fee double that amount.

#### **5. Cancellation of Licence**

- (1) HMG may cancel a licence in the following circumstances:
- (a) In case it is proved that the licence had been obtained by presenting false particulars.
  - (b) In case the conditions prescribed in the licence are not complied with.
  - (c) In case the additional deposit demanded under Sub-section (2) of Section 6 of the Act is not furnished.
  - (d) In case it is proved that the licensee had given false particulars or statements to the Inspection Officer deputed under Rule 23.
  - (e) In case (the licensee) fails to send at least 50 employees for foreign employment within one fiscal year.
  - (f) In case (the licensee) acts in violation of the Act, and the rules.
- (2) Before cancelling a licence under Sub-rule (1), HMG must provide the licensee with an opportunity to submit his explanations.
- (3) In case (the licensee) does not submit his explanations under Sub-rule (2) or in case the explanations submitted by him are not found to be satisfactory, HMG may cancel his licence.

- (4) The concerned institution must be informed about the cancellation of its licence under Sub-rule (1).

## **6. Money to be Returned**

In case the licence is cancelled under Rule 5, the licensee must return to the concerned persons within a month from the date of cancellation of the licence the service charge or any other amount obtained by him before such cancellation for sending them for foreign employment.

## **7. Deposit to be Returned**

- (1) In case the licence is cancelled under Rule 5, the licensee may apply for the refund of the deposit furnished by him under Sub-rule (2) of Rule 3. The application must also explicitly mention whether or not the money to be returned by the licensee under Rule 6 has been returned.
- (2) In case an application is received under Sub-rule (1), HMG must publish a notice in at least two national level daily newspapers, and if necessary, in other means of communication also, explicitly mentioning that the licence obtained by the licensee has been cancelled and the licensee has demanded the refund of the deposit furnished by him under Sub-rule (2) of Rule 3, and providing a time limit of 60 days to anybody from whom the licensee has obtained the service charge or any other amount in consideration of foreign employment but whom the licensee has not yet sent for foreign employment, to make a claim for the refund of such service charge or amount along with evidence thereof.
- (3) In case anybody files a claim within the time limit mentioned in the notice published under Sub-rule (2), and in case investigations into the claim prove that the licensee had obtained the service charge for providing foreign employment but not sent the concerned person for foreign employment, HMG shall order the licensee to refund the amount to the concerned person within 15 days.
- (4) In case the licensee does not refund the money as per the order issued under Sub-rule (3), HMG shall deduct the amount from his deposit and hand it over to the person who has made the claim under Sub-rule (2).
- (5) In case no claim is filed within the time limit mentioned in Sub-rule (2), or in case a claim is filed and the licensee refunds the

money within the time-limit mentioned in Sub-rule (3), HMG shall refund the deposit (to the licensee).

- (6) In case the deposit furnished by the licensee is not enough to refund the money under Sub-rule (4), the deficit shall be realised from the personal property of the licensee according to current law.

## **8. Application to be Filed for Prior Approval**

- (1) The licensee must submit the following particulars, in addition to those mentioned in Sub-Section (1) of Section 9 of the Act, while applying for prior approval for the selection of employees:
- (a) Name of the manager of the institution providing employment.
  - (b) In case employees are to be sent to a country where work permit is necessary, the guarantee that work permit will be available, and the basis thereof
- (2) On receipt of an application under Sub-rule (1), HMG may, if it finds it appropriate to do so after necessary investigations, grant its approval.
- (3) Notwithstanding anything contained in Sub-rule (2), HMG shall not grant approval to select employees in the following circumstances:
- (a) In case the monthly remuneration of the employee going for foreign employment is less than USD 125.
  - (b) In case the service conditions and facilities of employment do not meet the minimum limit determined by the law of the concerned country.
  - (c) In case the Royal Nepali Ambassador submits a report to HMG to the effect that it will not be appropriate to send employees to the country providing foreign employment.
  - (d) In case HMG deems it inappropriate to send employees to any country due to public policies.

## **9. Public Advertisement to be Published**

While publishing advertisements for the purpose of Section 10 of the Act, the licensee must do so in a national level daily newspaper by providing a time limit of not more than seven days and explicitly mentioning the following points:

- (a) Name, address and licence number of the institution publishing the advertisement,
- (b) Name of the country providing employment,

- (c) Posts of the employees,
- (d) Number of employees demanded,
- (e) Details of the work to be done by the employees,
- (f) Minimum qualifications needed of the employees,
- (g) Number of hours per day for which the employees have to work.
- (h) Daily or monthly remuneration to be paid to the employees,
- (i) Arrangements concerning food and lodging facilities to be provided to the employees,
- (j) Procedure of selecting employees,
- (k) Tentative date by which the selected employees have to depart,
- (l) Amount to be paid by the employees to the licensee as service charge,
- (m) Place where the application is to be filed and the last date for doing so,
- (n) Arrangements concerning employees' insurance and medical facilities,
- (o) Arrangements concerning air tickets needed by the employees to go to and return from the country providing employment,
- (p) Particulars of the expenses to be borne by the employees while going to the country providing employment,
- (q) Arrangements concerning leaves,
- (r) Other necessary particulars.

### **10. Application to be Filed**

Any Nepali national possessing the qualifications mentioned in advertisement published under Rule 9 may apply in the form indicated in Schedule 3.

### **11. Criteria of Selecting Employees**

- (1) For the purpose of selecting employees under Section 11 of the Act from among those who have applied under Rule 10, the following criteria shall be adopted.
  - (a) Necessary qualifications for the concerned job and the period of experience thereof,
  - (b) Age of the employee,
  - (c) Physical fitness of the employee.
- (2) The licensee must affix to the notice board of his office a copy of the list containing the names of employees selected on the basis of the criteria mentioned in Sub-rule (1) and send another copy to the Department.

**12. Medical Examination**

Every employee selected for foreign employment under Rule 11, or every employee going abroad for foreign employment on a personal basis under Section 23 of the Act, must submit a certificate of medical examination conducted by a doctor recognised by HMG before going abroad for foreign employment.

**13. Matters to be Mentioned in the Contract Relating to Foreign Employment**

The following matters, in addition to other matters, must be mentioned in the contract relating to foreign employment to be signed between the employee/worker and the institution providing employment:

- (a) Post of the worker and details of the work to be done by him,
- (b) Remuneration and facilities of the employee, working hours, additional remuneration for additional hours of work, and other facilities,
- (c) Details regarding the probation period,
- (d) Circumstances in which the contract is to be deemed to have been violated,
- (e) Details of compensation to be paid to the employee or his rights holder in case he suffers a physical injury or disability or dies,
- (f) Arrangements regarding medical treatment in case the employee falls ill,
- (g) Arrangements for bringing back to the country the dead body and the belongings of the employee in the event of his death,
- (h) Procedure of settling disputes between the employee and the institution providing employment,
- (i) Actions which the employee may not perform,
- (j) Arrangements concerning leaves,
- (k) Arrangements concerning insurance.

**14. Approval for Sending Employees for Foreign Employment**

(1) For the purpose of securing approval for sending an employee who has been selected under Rule 11 for foreign employment, the licensee must submit an application to HMG along with a recent passport size photograph of the concerned employee and the following particulars:

- (a) Name and address of the employee,
- (b) Passport number and date of issue,

- (c) Details of the qualifications of the employee,
  - (d) Name and address of the closest relative in Nepal who is to be forwarded information about the employee,
  - (e) Details of the prior approval secured by the licensee for sending employees (for foreign employment) under Rule 8,
  - (f) Criteria adopted for selecting the employee under Rule 11,
  - (g) A copy of the health certificate of the employee,
  - (h) The original copy of the contract signed between the institution providing foreign employment and the employee,
  - (i) Arrangements regarding air tickets needed by the employee to reach the concerned country and to return to Nepal after the expiry of the contract period,
  - (j) Certificate of insurance, and
  - (k) Details of the date of flight.
- (2) In case HMG finds in the course of conducting necessary investigation into the application filed under Sub-rule (1) that the necessary formalities have been fulfilled, it shall grant approval for sending the employee for foreign employment.
- (3) The approval to be granted under Sub-rule (2) shall ordinarily be granted within seven days from the date of application.

#### **15. Information About the Condition of Workers to be furnished on a Periodic Basis**

The concerned licensee must provide to HMG in every six months, information about the condition in which the workers sent abroad for employment are living there.

#### **16. Records to be Maintained**

The licensee must keep records of every worker sent for foreign employment in the form indicated in Schedule 4.

#### **17. Service Charge**

In consideration of providing foreign employment to a worker, the licensee may collect from the concerned worker a service charge at the rate of 25 per cent of the monthly remuneration to which the employee is entitled in the first month.

#### **18. Obligations of Licensed Institutions**

The obligations of the licensee, in addition to those mentioned in the Act and these Rules, shall be as follows:

- (a) To acquire information about the country and the institution providing foreign employment on a regular basis and provide such information to the worker,
- (b) To acquire information on a regular basis about whether or not the institution providing employment has paid remuneration and allowances and provided other facilities to which the worker is entitled under the contract relating to foreign employment,
- (c) To protect the rights and interests of the workers sent (for foreign employment) by it,
- (d) To maintain contacts with the workers sent by it (for foreign employment) and be informed about them on a regular basis,
- (e) In case the worker sent by it for foreign employment does not get the job mentioned in the contract, or in case the contract is terminated during the probation period, or in case the employee is stranded (abroad) for any other reason, or dies for any reason, to bring him or his dead body back to the country,
- (f) To pay compensation according to the contract in case the job mentioned in the contract is not available.

### **19. Establishment of Offices**

Every institution desirous of operating foreign employment business must, within three months from the date of obtaining the licence, establish an appropriate office equipped with at least one set of telephone, telex, fax, email and other basic physical facilities and at least five employees.

## **Chapter 4 Miscellaneous**

### **20. Formation of an Advisory Board**

(1) An Advisory Board has been formed as follows for the purpose of Section 22 of the Act:

Minister or Minister of State for Labour	Chairman
Secretary, Ministry of Labour	Member
Secretary, Ministry of Law and Justice	Member
Secretary, Ministry of Home	Member
Secretary, Ministry of Foreign Affairs	Member
Director General, Immigration Department	Member
Representative, Police Headquarters	Member
President, Federation of Nepalese Chambers	



of Commerce and Industry	Member
Two experts on foreign employment nominated by HMG	Member
Two representatives of the Foreign Employment Businessmen's Association	Member
A representative of the foreign employment institution paying the highest amount of income tax from among institutions operating foreign employment business	Member
Director General, Department of Labour	Member Secretary

(2) Members under Clause (1) of Sub-rule (1) shall have a term of two years.

(3) Meetings of the Advisory Board may be held according to need.

(4) The Advisory Board may invite according to need any local or foreign expert to attend its meeting in the capacity of an observer.

## **21. Insurance**

Every employee going abroad for foreign employment must insure himself for at least NPR 100,000 for the period covering the term of the contract relating to foreign employment before leaving for the concerned foreign country.

## **22. Employees to Send Money Home**

Every employee must send at least 10 per cent of the money earned by him to his dependent family in Nepal through a bank or institution.

## **23. Working Procedure Relating to Inspection**

(1) For the purpose of conducting inspection under Section 19 of the Act, HMG may depute any officer. Before conducting inspection, the officer so deputed must show to the licensee the authority received by him to do so.

(2) The officer conducting inspection under Sub-rule (1) must submit a report of his findings in the course of inspection to HMG.

(3) It shall be the duty of the licensee to furnish all such information that is demanded by the Inspection Officer deputed under this Rule.

## **24. Power to Appoint Labour Attaché**

HMG may appoint and depute an officer of at least a Gazetted rank as Labour Attaché in countries where 5000 or more Nepali employees are working.

**25. Provisions for Rewards**

- (1) HMG may evaluate the functions and activities of licensed institutions and grant rewards to the institution found to be the best.
- (2) The criteria of evaluating the institutions and the amount of reward under Sub Rule (1) shall be as prescribed by HMG.

## Annex 7: Nepali Missions Abroad

SN	Place	Mission Abroad	Labour Attaché
1.	Abu Dhabi, United Arab Emirates	Embassy	Yes
2.	Bangkok, Thailand	Embassy	
3.	Beijing, China	Embassy	
4.	Beirut, Lebanon	Consulate	
5.	Berlin, Germany	Embassy	
6.	Brasilia, Brazil	Embassy	
7.	Brussels, Belgium	Embassy	
8.	Cairo, Egypt	Embassy	
9.	Canberra, Australia	Embassy	
10.	Colombo, Sri Lanka	Embassy	
11.	Hellerup, Denmark	Embassy	
12.	Dhaka, Bangladesh	Embassy	
13.	Doha, Qatar	Embassy	Yes
14.	Geneva, Switzerland	Permanent Mission of Nepal to the United Nations and Other International Organisations	
15.	Hong Kong, China	Consulate	
16.	Islamabad, Pakistan	Embassy	
17.	Kolkata, India	Consulate	
18.	Kuala Lumpur, Malaysia Selangor, Malaysia	Embassy Consulate	Yes
19.	Kuwait City, Kuwait	Embassy	Yes
20.	Lhasa, Tibet	Consulate	
21.	London, England	Embassy	
22.	Moscow, Russia	Embassy	
23.	New Delhi, India	Embassy	
24.	New York, USA	Permanent Mission of Nepal to the United Nations	
25.	Ottawa, Canada	Embassy	
26.	Paris, France	Embassy	
27.	Pretoria, South Africa	Embassy	
28.	Riyadh, Saudi Arabia	Embassy	Yes
29.	Seoul, South Korea	Embassy Consulate	Yes
30.	Tel Aviv, Israel	Embassy	
31.	Tokyo, Japan Osaka, Japan	Embassy Consulate	
32.	Washington DC, USA	Embassy	
33.	Yangon, Burma	Embassy	

Source: Ministry of Foreign Affairs, Government of Nepal.

## Annex 8: Destinations recognized by the Government of Nepal for Foreign Employment

SN	Country	SN	Country	SN	Country
1.	Afghanistan	2.	Albania	3.	Algeria
4.	Argentina	5.	Armenia	6.	Australia
7.	Austria	8.	Azerbaijan	9.	Bahrain
10.	Bangladesh	11.	Belarus	12.	Belgium
13.	Bolivia	14.	Bosnia Herzegovina	15.	Brazil
		17.	Bulgaria	18.	Canada
		20.	China	21.	Columbia
22.	Cambodia	23.	Costa Rica	24.	Croatia
25.	Cuba	26.	Cyprus	27.	Czech Republic
28.	Denmark	29.	Democratic Republic of the Congo	30.	Egypt
31.	Estonia	32.	Fiji	33.	Finland
34.	France	35.	Germany	36.	Great Britain (UK)
37.	Greece	38.	Guano	39.	Holy See
40.	Hong Kong	41.	Hungary	42.	Iceland
43.	Indonesia	44.	Iran	45.	Iraq
46.	Ireland	47.	Israel	48.	Italy
49.	Japan	50.	Jordan	51.	Kazakhstan
52.	Kenya	53.	Kosovo	54.	Kuwait
55.	Laos PDR	56.	Latvia	57.	Lebanon
58.	Libya	59.	Luxemburg	60.	Macau
61.	Malaysia	62.	Maldives	63.	Malta
64.	Macedonia	65.	Mexico	66.	Moldova
67.	Mongolia	68.	Mauritius	69.	Morocco
70.	Mozambique	71.	Myanmar	72.	Netherland
73.	New Zealand	74.	Nicaragua	75.	Nigeria
76.	Norway	77.	Oman	78.	Pakistan
79.	Panama	80.	Peru	81.	Poland
82.	Portugal	83.	Qatar	84.	Republic of Korea
85.	Republic of Slovakia	86.	Romania	87.	Russia
88.	Saipan	89.	Saudi Arabia	90.	Singapore
91.	Slovenia	92.	South Africa	93.	Spain
94.	Sri Lanka	95.	Sweden	96.	Switzerland
97.	Seychelles	98.	Tanzania	99.	Thailand
100.	Philippines	101.	Tunisia	102.	Turkey
103.	Uganda	104.	Ukraine	105.	United Arab Emirates
106.	United States of America	107.	Uzbekistan	108.	Venezuela
109.	Vietnam	110.	Zambia		

Source: Department of Foreign Employment, Government of Nepal. (<http://fepb.gov.np/content.php?id=1001> [http://fepb.gov.np/downloadfile/110countries\\_1416299569.pdf](http://fepb.gov.np/downloadfile/110countries_1416299569.pdf))

## **Annex 9: Foreign Employment Act, 2007**

**Foreign Employment Act, 2064 BS (2007)**

**Date of Authentication and Publication**

**2064/05/19 (5 September, 2007)**

**Act number 18 of the year 2064 BS (2007)**

### **An Act Made to Amend and Consolidate Laws Relating to Foreign Employment**

**Preamble:** Whereas, it is expedient to amend and consolidate laws relating to foreign employment in order to make foreign employment business safe, managed and decent, and protect the rights and interests of the workers who go for foreign employment and the foreign employment entrepreneurs, while promoting that business;  
Enacted by the Legislature-Parliament.

#### **Chapter-1**

##### **Preliminary**

#### **1. Short title, extension and commencement:**

- (1) This Act may be called 'Foreign Employment Act, 2064 BS (2007)'.
- (2) It shall extend throughout Nepal and apply to one who stays outside Nepal and commits any act contrary to this Act.
- (3) This Act shall come into force immediately.

#### **2. Definitions:** Unless the subject or context otherwise requires in this Act,

- (a) 'Foreign employment' means employment that a worker gets abroad.
- (b) 'Worker' means a citizen of Nepal who goes for foreign employment.
- (c) 'Foreign employment business' means a business carried on to provide employment to citizen of Nepal abroad.
- (d) 'Department' means the Department of Foreign Employment.
- (e) 'Institution' means an institution established under the prevailing Companies Act to carry on the foreign employment business.
- (f) 'Licence' means a licence granted under Section 11 to carry on the foreign employment business.
- (g) 'Licensee' means an institution having obtained licence pursuant to Section 11.
- (h) 'Service charge' means a sum of money charged by a foreign

employment entrepreneur for sending a worker abroad.

- (i) 'Executive Director' means the Executive Director as referred to in Section 41.
- (j) 'Employer institution' means an abroad-based institution providing a worker with employment abroad.
- (k) 'Board' means the Foreign Employment Promotion Board constituted pursuant to Section 38.
- (l) 'Labour attaché' means the labour attaché appointed pursuant to Section 68; and this term also includes an officer employee, in an abroad-based diplomatic mission, entrusted with the responsibility for the promotion of the interests of Nepali workers.
- (m) 'Prescribed' or 'As prescribed' means prescribed or as prescribed in the Rules framed under this Act.

## Chapter-2

### Provisions Relating to Foreign Employment

#### 3. **Specification of countries for carrying on foreign employment business:**

- (1) The Government of Nepal shall, by a notification in the Nepal Gazette, specify countries for carrying on the foreign employment business.
- (2) Out of the countries specified pursuant to Sub-section (1), the Government of Nepal may prohibit carrying on foreign employment business in any country and suspend such business for a certain period.

#### 4. **Power to make bilateral agreement:** The Government of Nepal may make a bilateral labour agreement with a foreign country where its citizens have gone or may go for foreign employment.

#### 5. **Selection of institution:**

- (1) If any foreign country or employer institution makes a request to the Government of Nepal to select and send workers, the Government of Nepal may select any licensee institution through open competition and send workers through such institution.
- (2) The Department shall demand additional cash deposit or bank guarantee from the institution selected pursuant to Sub-section (1).
- (3) The grounds and procedures for the selection of institution pursuant to Sub-section (1) shall be as prescribed.

**6. Power to send workers by making a treaty or an agreement:**

(1) Notwithstanding anything contained elsewhere in this Act, the Government of Nepal may make a treaty or an agreement with the government of a country having diplomatic relations with Nepal and send workers to such country through any office, institution of the Government of Nepal or any institution fully owned by the Government of Nepal.

(2) There shall be a steering committee as follows for formulating policies and making other arrangements required to make systematic, competitive, and transparent the procedures to be followed while sending workers by the Government of Nepal pursuant to Sub-section (1):

a. Minister or Minister of State for Labour and Transport Management	Chairperson
b. Secretary, Ministry of Labour and Transport Management	Member
c. Representatives (Joint Secretary level), Ministry of Finance	Member
d. Representatives (Joint Secretary Level), Ministry of Industries Commerce and Supplies	Member
e. Representatives (Joint Secretary Level), Ministry of Home Affairs	Member
f. Representatives (Joint Secretary Level), Ministry of Foreign Affairs	Member
g. Executive Director	Member
h. Women Representative, National Women Commission	Member
i. One representative from each recognised Trade Union Federation	Member
j. One representative of Foreign Employment Entrepreneurs' Association	Member
k. Director General, Department	Member Secretary

(3) The steering committee referred to in Sub-section (2) may, as required, invite any native or foreign expert in the field of foreign employment as an observer to its meeting.

(4) The steering committee referred to in Sub-section (2) shall manage its procedures on its own.

- (5) The selection of persons required as workers to be sent pursuant to this Section shall be made from amongst the persons who have fulfilled the prescribed standards and procedures based on impartiality and transparency.
- (6) It shall be the obligation of the Government of Nepal to solve any problem arising for any worker going on foreign employment pursuant to this 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.
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.
9. **To provide special facility and reservation:**
- (1) The Government of Nepal may provide special facility to the women, Dalit, indigenous nationalities, oppressed, victims of natural calamities and people of remote areas who go for foreign employment.
- (2) In sending workers for foreign employment, any institution shall provide reservation to the women, Dalit, indigenous nationalities, oppressed class, backward area and class, and people of remote areas in the number as prescribed by the Government of Nepal.

### Chapter-3

#### Provisions Relating to Licence

10. **Prohibition on carrying on foreign employment business without licence:** No one shall carry on the foreign employment business without obtaining a licence pursuant to this Act.
11. **Provisions relating to licence:**
- (1) An institution intending to carry on the foreign employment business shall make an application to the Department for licence setting out the details as prescribed.
- (2) If, upon making necessary inquiry into an application made



pursuant to Sub-section (1), it appears appropriate to grant the licence to such institution to carry on the foreign employment business, the Department shall grant the licence, upon collecting the licence fees as prescribed and a sum of three million rupees in cash or seven hundred thousand rupees in cash and a bank guarantee of the remaining two million three hundred thousand rupees as a deposit.

**Explanation:** For the purposes of this Act, the term 'bank guarantee' means a bank guarantee so issued by the bank specified by the Department that cash payment is made by the bank as and when so demanded by the Department.

- (3) The institutions having obtained licence prior to the commencement of this Act shall make the deposit as referred to in Sub-section (2) within one year from the date of commencement of this Act.
- (4) If, after the licence has been obtained by furnishing the deposit pursuant to Sub-section (2), the deposit appears to be insufficient in proportion to the transactions of the licensee, the Department shall issue an order to furnish additional deposit, as required.
- (5) The Department may accept a bank guarantee for the additional deposit to be furnished pursuant to Sub-section (4).
- (6) If, on inquiring into the application pursuant to Sub-section (2), it appears that the licence cannot be granted, the Department shall give information thereof, along with the reason, to the applicant within seven days of the decision not to grant the licence.
- (7) The applicant who is not satisfied with the decision made by the Department pursuant to Sub-section (6) may make an appeal to the Government of Nepal within thirty-five days after the date of receipt of such information and a decision made by the Government in relation to the appeal shall be final.

## 12. Period and renewal of licence:

- (1) Except where the licence is cancelled pursuant to Section 13, the licence shall remain valid for up to one financial year. The period of such licence shall expire at the end of that financial year despite the fact that the licence has been issued on any date whatsoever.
- (2) A licensee who intends to get the licence renewed may get the licence renewed by furnishing the details and fees as prescribed within the prescribed time in each financial year.
- (3) Notwithstanding anything contained in Sub-section (1) or (2),

any licensee may get the licence renewed for three financial years by paying the renewal fees for three financial years at the same time.

**13. Revocation of licence:**

- (1) If a licensee fails to renew its licence within the period referred to in Section 12, such licence shall be revoked.
- (2) If a licensee does any of the following acts, the Department may revoke the licence obtained by the licensee:
  - (a) Obtaining the licence by submitting fake documents or details;
  - (b) Failing to furnish cash deposit within the period referred to in Sub-section (3) of Section 11;
  - (c) Failing to furnish additional deposit pursuant to the order issued under Sub-section (4) of Section 11;
  - (d) Failing to reimburse the deposit pursuant to Sub-section (3) of Section 35;
  - (e) Doing any action contrary to this Act or the rules framed under this Act.
- (3) Prior to revoking the licence pursuant to Sub-section (2), the Department shall provide the concerned licensee with an opportunity for defence.
- (4) The licensee, who is not satisfied with the decision made to revoke the licence pursuant to this Section, may make an appeal to the Government of Nepal within thirty-five days of the date of receipt of information of the decision to revoke the licence; and the decision made by the Government of Nepal in relation to the appeal shall be final.

**14. Prohibition on transfer of or change in ownership or liability:**

Notwithstanding anything contained in the prevailing laws, no licensee shall, without approval of the Department, transfer or change the ownership or liability of the institution.

**Chapter-4**

**Provisions Relating to Prior Approval and Selection of Workers**

**15. Prior approval to be obtained:**

- (1) A licensee shall make an application setting out the following details, based on the agreement or understanding made with an employer institution, to the Department for prior approval to

send workers for foreign employment:

- (a) Name and address of the employer institution and country where workers are to be sent,
  - (b) Type of foreign employment,
  - (c) Type and number of workers,
  - (d) Salary, facilities and leave to be obtained by workers,
  - (e) Workers' working days and time,
  - (f) Original copy of the demand letter and authority certified by the authentic body or diplomatic mission or labour attaché or chamber of commerce or notary public of the country where workers go for foreign employment,
  - (g) A copy of the contract to be made between the employer institution and workers,
  - (h) A copy of the contract to be made between the licensee and workers,
  - (i) Other matters as prescribed.
- (2) If, on inquiring into the application made pursuant to Sub-section (1), the demand of the licensee appears appropriate, the Department shall, no later than four days after the date of application, give prior approval to start action to send Nepali workers for foreign employment.
- (3) Notwithstanding anything contained in Sub-section (2), the Department shall not give prior approval to select workers under any of the following conditions:
- (a) The terms and conditions of service and facilities are not satisfactory in proportion to the qualification of the worker demanded by the employer institution,
  - (b) The proposed foreign employment seems to be of such nature as to have adverse effect on the dignity, prestige, or health of workers,
  - (c) It appears inappropriate from security perspective,
  - (d) There exist other conditions than prescribed.
- (4) If a decision is made not to give prior approval pursuant to Sub-section (3), information thereof, accompanied by the reason for the same, shall be given to the applicant.

#### **16. Publication of advertisement:**

- (1) On receipt of approval pursuant to Section 15, the licensee shall publish an advertisement in Nepali in a daily newspaper of national circulation, setting out the details as prescribed and

giving the time limit of at least seven days, for the selection of the workers.

- (2) The concerned licensee shall post a notice of advertisement published pursuant to Sub-section (1) on the notice board of its office and submit a copy of that notice to the Department on the same day.
- (3) After the publication of advertisement pursuant to Sub-section (1), a person who intends to go for foreign employment shall make an application, accompanied by the prescribed details, to the licensee.

**17. List to be prepared after selecting workers:**

- (1) Upon receipt of an application pursuant to Sub-section (3) of Section 15, the licensee shall select workers on the grounds of qualification and experience of applicants and other matters as prescribed, according to the nature of work demanded. The licensee shall prepare a list of selected persons, post such list on the notice board of the office of the licensee, and submit a copy thereof to the Department.
- (2) If a complaint is made by any person or the Department itself receives information in any manner that any irregularity has been made in the preparation of workers list pursuant to Sub-section (1), the Department may immediately make necessary inquiry therein; and if, in making such inquiry, it appears that any irregularity has been made as mentioned in the complaint or petition, the Department shall give order to immediately stop all acts relating to the selection of workers.

**18. Approval required to take passports abroad:** If a licensee has to take passports of those persons who have been selected for foreign employment pursuant to Section 17 outside Nepal for visas, approval of the Department has to be obtained.

**19. Provisions relating to labour permission sticker:**

- (1) Upon receiving visas of workers selected pursuant to Section 17 and before sending such workers for foreign employment, the licensee shall make a submission, accompanied by the following details, to the Department for labour permission sticker:
  - (a) In the event that skill-oriented training is required for any work, a certificate of such training and a certificate of

- orientation training,
- (b) Health certificate,
  - (c) Insurance certificate,
  - (d) Contract made between the licensee and the worker,
  - (e) Contract made between the employer institution and the worker,
  - (f) A receipt or bank voucher of amount paid by the worker to the licensee,
  - (g) Other matters as prescribed.
- (2) If, in examining the details submitted pursuant to Sub-section (1), the details are found to be in conformity with the details submitted pursuant to Section 15, the Department shall affix the labour permission sticker on the passport of such worker.
- (3) If the information provided pursuant to Sub-section (1) is found to be inconsistent with the details submitted pursuant to Section 15, the Department may prevent the licensee from sending workers for foreign employment, and the information, accompanied by the reason for such prevention, shall be given to the licensee.

**20. To send for foreign employment:**

- (1) Upon giving information pursuant to Section 19, the licensee shall send the concerned worker for foreign employment within the specified period to enter into the concerned country, if any, and within three months if such period is not specified.
- (2) In the event of failure to send a worker for foreign employment within the time limit as referred to in Sub-section (1), the concerned licensee shall return the amount received from the concerned worker, as well as an interest on that amount at the rate of 20 per cent per annum, to the concerned worker within 30 days.
- (3) If, after having obtained a visa, any worker refuses or is not able to go for foreign employment, the licensee shall, in returning the amount to the worker, return the remaining amount to be set after deducting the visa fee only.  
Provided that if the worker refuses to go by the reason of any terms different than those advertised by obtaining prior approval, the visa fee shall not be deducted.

**21. To go for foreign employment on personal basis:**

- (1) If any person intends to go abroad for foreign employment on

personal basis, such person shall make an application, setting out the following matters, to the Department for approval:

- (a) Country intended to be visited for employment,
  - (b) Nature of work to be done abroad,
  - (c) Letter of approval granted by the employer institution,
  - (d) Agreement letter clearly mentioning the terms and facilities of employment,
  - (e) Certificate showing that orientation training has been taken,
  - (f) Health certificate.
- (2) If, in making necessary inquiry on receipt of the application referred to in Sub-section (1), the request of the applicant appears to be appropriate, the Department shall give permission to the applicant to go abroad for employment, and in so giving permission, the Department shall require the applicant to submit an insurance certificate.
- (3) Notwithstanding anything contained in this Section, no licensee shall send workers on personal basis.

**22. National airport to be used:**

- (1) While sending workers for foreign employment, the licensee shall so send them that they use the national airport.
- (2) Where workers have to be sent through any foreign airport showing reasons such as non-availability of air tickets for sending workers by using the national airport pursuant to Sub-section (1), approval of the Department has to be obtained.
- (3) While going outside Nepal to use a foreign airport by obtaining approval of the Department pursuant to Sub-section (2), registration, as prescribed, has to be made with the immigration office of the departure point.

**23. Power to specify minimum remuneration:** The Government of Nepal may, by publishing a notification in the Nepal Gazette, specify the minimum remuneration to be received by workers who go for foreign employment.

**24. Service charge and promotional costs:**

- (1) The Government of Nepal may, in relation to any specific country or company, specify the upper limit of amount, including the service fee and promotional costs that the institution can collect from each worker.

- (2) After the licensee has given information that visa has been received from the concerned country for a worker selected for foreign employment, the worker shall deposit the amount as referred to in the contract with the office or in the bank account of the licensee.
- (3) In the event that amount is deposited with the office of the licensee pursuant to Sub-section (2), a receipt thereof shall be given to the worker.

**Explanation:** For the purposes of this Section, 'promotional costs' means the visa fee chargeable for sending a worker for employment and miscellaneous expenses made within and outside the country, in the course of receiving the quota of workers.

#### **25. Foreign employment contract to be made:**

- (1) Prior to the departure of a worker for foreign employment, a contract shall be made between the employer institution or its representative and the worker, and the licensee and the worker on the facilities and conditions of employment, conditions to be observed by both parties, and remuneration to be received by the worker, after getting the worker to clearly understand such terms and conditions and provisions of remuneration.
- (2) The licensee shall translate the contract referred to in Sub-section (1) into Nepali and submit two copies thereof to the Department and the Department shall certify copies of such contract, retain one copy thereof in the Department and provide the other copy to the worker.

#### **26. Insurance to be procured:**

- (1) The licensee shall, prior to sending a worker for foreign employment, procure insurance of at least five hundred thousand rupees with validity for the term of the worker's contract so that such worker can claim damages for death or mutilation, if such worker who has gone for foreign employment pursuant to this Act dies from any cause at any time or gets mutilated.
- (2) Even a person who goes for foreign employment personally pursuant to Section 21 shall, prior to going for foreign employment, make insurance equivalent to the amount set forth in Sub-section (1).
- (3) Other provisions relating to insurance shall be as prescribed.

**Chapter-5****Provisions Relating to Classification of Training and Workers**

- 27. Training to be taken:** Any worker who goes for foreign employment shall, prior to going for foreign employment, take orientation training, as prescribed, from the institution having obtained permission from the Department pursuant to Section 28.
- 28. Provisions relating to institution running orientation training:**
- (1) An institution intending to provide orientation training to workers who go for foreign employment shall make an application to the Department for permission to run such orientation training.
  - (2) The Department shall submit the application received pursuant to Sub-section (1) to the Board.
  - (3) If, in making necessary inquiry into the application received pursuant to Sub-section (2), the infrastructures, human resources as well as other means and resources of the institution providing the orientation training appear adequate, the Board shall write to the Department to provide licence to the applicant to run the orientation training to be given to workers who go for foreign employment.
  - (4) If so written to provide the licence pursuant to Sub-section (3), the Department shall provide the applicant with the licence to run the orientation training by collecting the deposit and licence fees, as prescribed.
  - (5) If any institution that is running the training after having obtained permission at the time of commencement of this Act meets the criteria and terms as referred to in this Section, the Department shall make renewal.
  - (6) Provisions relating to the renewal of licence provided to any institution to run the orientation training pursuant to this Section and the renewal fees shall be as prescribed.
- 29. Fixation of curriculum and standard of orientation training:** The Board shall determine the curriculum and standard of the orientation training to be provided by the institution running the orientation training that has obtained a licence pursuant to Section 28.
- 30. Skill-oriented training to be taken:** A worker going for foreign employment to do any work requiring any skill-oriented training



shall obtain such training from an institution recognised by the Government of Nepal.

**Explanation:** For the purposes of this Section, 'institution recognised by the Government of Nepal' means the Council for Technical Education and Vocational Training and any other institution that has been established under the prevailing law to provide similar training that is affiliated with that Council.

- 31. Classification of workers:** The Government of Nepal may, by a notification in the Nepal Gazette, specify the provisions relating to the classification of workers who go for foreign employment and the skill-oriented training to be taken according to the classification.

## **Chapter-6**

### **Provisions Relating to Foreign Employment Welfare Fund**

**32. Establishment of foreign employment welfare fund:**

- (1) A foreign employment welfare fund shall be established under the Board for the social security and welfare of the workers and the families of the workers who have gone for foreign employment and returned from foreign employment
- (2) The following amounts shall be credited to the fund referred to in Sub-section (1):
  - (a) Amount deposited as prescribed by the workers prior to going for foreign employment,
  - (b) Interest amount earned by mobilising, as prescribed, the deposits furnished pursuant to Sub-section (2) of Section 11,
  - (c) Amount received by way of licence fees and licence renewal fees,
  - (d) Fees for licence provided to the institutions running training pursuant to Section 28 and the licence renewal fees,
  - (e) Amounts received by the fund from time to time from the institutions related with the foreign employment business,
  - (f) Grants and assistance received from any native or foreign persons or bodies.
- (3) Prior to receiving assistance from any foreign person or body pursuant to clause (f) of Sub-section (2), approval of the Government of Nepal shall be obtained.

**Explanation:** For the purposes of this Act, the term 'family' means the husband or wife, son, daughter or mother, father and in the case of a female worker, her father-in-law and mother-in-

law, whom the worker who has gone for foreign employment and returned from foreign employment himself or herself has to subsist.

**33. Use and operation of foreign employment welfare fund:**

- (1) The foreign employment welfare fund shall be used for the following purposes:
  - (a) Providing skill-oriented training to the workers going for foreign employment,
  - (b) Repatriating workers to Nepal due to mutilation or reason referred to in Sub-section (1) of Section 75, providing compensation to workers and providing financial assistance to the workers who have so come back or their families,
  - (c) Launching employment-oriented programmes for the workers who have come back from foreign employment,
  - (d) Where a worker who has gone abroad for foreign employment dies there and his or her dead body is not attended by any one, bringing the dead body to Nepal and providing financial assistance to his or her family,
  - (e) Carrying out actions relating to foreign employment promotion,
  - (f) Carrying out other actions as prescribed.
- (2) Other provisions relating to the operation of the foreign employment welfare fund shall be as prescribed.

**Chapter-7**

**Provisions Relating to Monitoring and Inspection**

**34. Monitoring:**

- (1) The Department shall monitor and inspect, from time to time, the office of the licensee in relation to whether this Act or the rules framed under this Act or direction given under this Act have been observed or not and for this purpose, it may inspect the records and other relevant documents maintained by the licensee.
- (2) It shall be the duty of the licensee to provide such details and records as demanded at the time of monitoring or inspection pursuant to Sub-section (1).

**35. Inquiry:**

- (1) In cases where a complaint is made by a worker that the employer institution has not fulfilled the contractual obligation

or the licensee has not taken necessary and appropriate action to fulfill the terms and conditions set forth in the contract, the Department may make, or cause to be made, necessary inquiry thereinto.

- (2) If, upon an inquiry made pursuant to Sub-section (1), it appears necessary to bring the concerned worker back to Nepal, the Department shall order the licensee to provide such amount as is needed to bring the worker back to Nepal.
- (3) In the event of failure to provide such amount in pursuance of the order issued by the Department pursuant to Sub-section (2), such worker shall be brought back to Nepal by spending the deposit furnished by the licensee pursuant to Section 11. Where the deposit is so spent, a notice shall be given to the concerned licensee to reimburse the amount as soon as possible, and the licensee shall reimburse that amount into the deposit no later than fifteen days of the receipt of such notice.
- (4) If the expenses required to bring the worker back to Nepal cannot be met from the deposit furnished pursuant to Section 11, the licensee shall pay such shortfall amount within the time-limit specified by the Department and in the event of failure to make payment within such time-limit, the amount shall be realised as if it were a governmental due.

### **36. Complaint for compensation:**

- (1) If any employer institution does not provide employment in accordance with the terms prescribed in the agreement, the worker or his or her agent may make a complaint, along with evidence, with the Department for compensation.
- (2) If, in making necessary inquiry into the complaint made pursuant to Sub-section (1), the contents seem to be reasonable, the Department may give an order to the licensee to provide compensation for all expenses incurred in going for foreign employment.

### **37. Power to give direction:**

- (1) The Government of Nepal may, from time to time, give necessary direction to any licensee in relation to foreign employment.
- (2) It shall be the duty of the concerned licensee to observe the direction given pursuant to Sub-section (1).

**Chapter-8****Constitution, Functions, Duties, and Powers of Board****38. Formation of Board:**

(1) A Foreign Employment Promotion Board shall be constituted as follows, also for the purpose of carrying out actions required to promote the foreign employment business and make this business safe, systematic, and decent and to protect the rights and interests of workers going for foreign employment and the foreign employment entrepreneurs.

- |    |  |                  |
|----|--|------------------|
| a) | Minister/Minister of State for Labour and Transport Management Ministry of Agriculture and Cooperatives                                | Chairperson      |
| b) | Minister of State/Assistant Minister for Labour and Transport Management   | Vice-Chairperson |
| c) | Member, National Planning Commission (responsible for the concerned sector)  | Member           |
| d) | Secretary, Ministry of Labour and Transport Management   | Member           |
| e) | Secretary or Gazetted First Class level representative designated by the Secretary, Ministry of Home Affairs                           | Member           |
| f) | Secretary or Gazetted First Class level representative designated by the Secretary, Ministry of Foreign Affairs                        | Member           |
| g) | Secretary or Gazetted First Class level representative designated by the Secretary, Ministry of Finance                                | Member           |
| h) | Secretary or Gazetted First Class level representative designated by the Secretary, Ministry of Law, Justice and Parliamentary Affairs | Member           |
| i) | Secretary or Gazetted First Class level representative designated by the Secretary,  | Member           |
| j) | Director General, Department   | Member           |
| k) | Representative (equivalent to First Class), Nepal Rastra Bank  | Member           |
| l) | Two persons including one woman nominated by the Government from amongst foreign employment experts                                    | Member           |

m)	Two persons consisting of the chairperson of the foreign employment entrepreneurs' association and one woman representative nominated by that association	Member
n)	Two persons consisting of one woman nominated by the Government of Nepal from amongst the operators of skill-oriented and orientation trainings on foreign employment	Member
o)	One person nominated by the Government of Nepal from amongst the doctors, who have passed at least MBBS, of a health institute recognised pursuant to Section 72	Member
p)	Chairpersons of four recognised trade union federations designated by the Government of Nepal or four persons consisting of one nominated by each such federation	Member
q)	Representative, Federation of Nepalese Chamber of Commerce and Industries	Member
r)	Representative, Council for Technical Education and Vocational Training	Member
s)	Executive Director	Member Secretary

(2) Tenure of office the members nominated by the Government of Nepal pursuant to Sub-section (1) shall be of two years.

**39. Functions, duties and powers of the Board:** The functions, duties and powers of the Board, in addition to its functions, duties and powers set forth elsewhere in this Act, shall be as follows:

- (a) To do, or cause to be done, studies of international labour market and explore, or cause to be explored, new international labour market,
- (b) To collect, process and publish information for the promotion of foreign employment,
- (c) To mobilise, or cause to be mobilised, the Foreign Employment Welfare Fund,
- (d) To do, or cause to be done, acts required for the protection of interests of the workers who have gone for foreign employment,
- (e) To formulate, implement, monitor and evaluate programmes to utilise the skills, capital of, and technology learnt by, the workers

who have come back from abroad and use the same for the national interests,

- (f) To do necessary acts in relation to labour agreements to be entered into with various countries,
- (g) To prescribe qualifications for the registration of institutions providing foreign employment orientation trainings,
- (h) To formulate and approve curricula of foreign employment orientation trainings,
- (i) To formulate such short-term and long-term policies as required to be pursued to make the foreign employment business safe, systematic and decent and in relation to the protection of the rights and interests of the foreign employment entrepreneurs and submit such policies to the Government of Nepal,
- (j) To carry out a comprehensive study on the implementation of the Foreign Employment Act and give suggestions to the Government of Nepal,
- (k) If it appears necessary to review the laws relating to foreign employment, to review the same and give suggestions to the Government for necessary improvements,
- (l) To give advice to the Government of Nepal in relation to the fixation of the service charges and promotional costs,
- (m) To give advice to the Government of Nepal to make necessary arrangements on importing earnings made by Nepali workers abroad into Nepal in a simple and easy manner,
- (n) If it is found that any person has done or taken any act or action contrary to the laws relating to foreign employment, to write to the concerned body for necessary action,
- (o) To monitor the institutions licensed to operate the foreign employment business,
- (p) To monitor, or cause to be monitored, the institutions having obtained licence or permission to provide orientation trainings and skill-oriented trainings,
- (q) If, in carrying out or causing to be carried out monitoring, it is found that any person has done any act in contrary to this Act or the rules framed under this Act, to write to the concerned body for necessary action,
- (r) To submit to the Government of Nepal an annual report of the activities carried out by it,
- (s) To do, or cause to be done, other actions as prescribed.

**40. Meetings and decisions of the Board:**

- (1) Meeting of the Board shall be held as required.
- (2) The meeting of the Board shall be held at such place, time and date as specified by the chairperson.
- (3) The presence of more than fifty per cent out of the total number of members of the Board shall be deemed to constitute a quorum for a meeting of the Board.
- (4) The meeting of the Board shall be presided over by the chairperson of the Board, by the vice-chairperson in the absence of the chairperson, and by the member selected by the members present at the meeting from amongst themselves, in the absence of even the vice-chairperson.
- (5) A majority opinion shall prevail at the meeting of the Board. In the event of a tie, the person presiding over the meeting shall exercise the casting vote.
- (6) The decisions of the Board shall be authenticated by the member-secretary.
- (7) The Board may invite any relevant expert or office-bearer as an observer at its meeting.
- (8) Other procedures relating to the meeting of the Board shall be as determined by the Board itself.
- (9) The chairperson and member of the Board shall, for having participated in the meeting of the Board, receive such meeting allowance as prescribed by the Government of Nepal.

**41. Appointment, functions, duties, and powers of Executive Director:**

- (1) The Government of Nepal shall appoint one Executive Director through open competition, as prescribed, from amongst the persons who have possessed the prescribed qualification and are not involved in the foreign employment business, to carry out day-to-day business of the Board, as its administrative chief.
- (2) Notwithstanding anything contained in Sub-section (1), until the office of the Executive Director is filled up, the Government of Nepal may designate any officer employee of at least Gazetted First Class to act as the Executive Director for a maximum period of three months.
- (3) The tenure of office of the Executive Director shall be of four years.
- (4) The provisions relating to the remuneration, terms of service and facilities of the Executive Director shall be as prescribed.

- (5) The functions, duties, and powers of the Executive Director shall be as follows:
- (a) To implement, or cause to be implemented, the decisions of the Board,
  - (b) To perform such other functions as prescribed.

**42. Secretariat of the Board:**

- (1) The Board shall have a separate secretariat of its own.
- (2) The Executive Director shall be the chief of the secretariat.
- (3) The Government of Nepal shall provide necessary employees for the secretariat of the Board.

**Chapter-9**

**Offence and Punishment**

- 43. Punishment to be imposed in the event of carrying on foreign employment business without licence:** If any person carries on the foreign employment business in contrary to Section 10 or collects any amount with intent to engage a person in foreign employment or sends a person abroad by giving false assurance or lures a person to be engaged in foreign employment, the amount so received and an amount to be set by fifty per cent of that amount shall be recovered from that person as compensation and the expenses incurred by that other person in going to and coming from abroad shall also be realised and that person shall be punished with a fine of three hundred thousand rupees to five hundred thousand rupees and with imprisonment for a term of three years to seven years. In the event that such person has not yet sent that person abroad, half the punishment shall be imposed.
- 44. Punishment to be imposed in the event of sending workers by licensee without obtaining permission:** If any licensee sends any worker abroad without obtaining permission from the Department or collects any amount by giving false assurance or showing enticement that the licensee would engage any person in foreign employment but does not send that person abroad, the amount so collected and an amount to be set by fifty per cent of that amount shall be recovered from that licensee, and such licensee shall be punished with a fine of three hundred thousand rupees to five hundred thousand rupees and with imprisonment for a term of three years to seven years; and the licence of such licensee shall also be revoked.



- 45. Punishment to be imposed in the event of sending minors for foreign employment:** If any licensee sends any minor for foreign employment in contravention of Section 7, the licensee shall be punished with a fine of three hundred thousand rupees to five hundred thousand rupees and with imprisonment for a term of three years to seven years.
- 46. Punishment to be imposed in the event of sending workers to countries not opened by Government:** If any licensee sends any worker to any country which has not been opened by the Government of Nepal for foreign employment or obtains a visa from any country which has been opened but sends any worker to a country which has not been opened, the licensee so sending a worker shall be punished with a fine of three hundred thousand rupees to seven hundred thousand rupees and with imprisonment for a term of three years to five years. In case the licensee has collected any amount for sending the worker but has not yet sent the worker, the licensee shall be subject to half the punishment.
- 47. Punishment to be imposed in the event of concealing or altering document or report:**
- (1) If any licensee knowingly conceals any document or report required to be maintained under this Act or the Rules framed under this Act or alters any matter therein or makes any false contents or causes any one to prepare false details, such licensee shall be punished with a fine of one hundred thousand rupees to three hundred thousand rupees and with imprisonment for a term of six months to one year.
  - (2) If any licensee who has been punished pursuant to Sub-section (1) is held to have repeated the offence, such licensee shall be subject to double the punishment, and the licence obtained by such licensee shall be revoked.
- 48. Punishment to be imposed in the event of opening branch office without permission:** If any licensee opens a branch office without obtaining permission of the Department, the Department may issue an order to punish the licensee with a fine at the rate of two hundred thousand rupees for each branch and to close that office.

**49. Punishment to be imposed in the event of failure to publish advertisement:**

- (1) If any licensee fails to publish an advertisement pursuant to Section 16 or publishes an advertisement without obtaining permission of the Department, the Department shall punish such licensee with a fine of fifty thousand rupees and cancel such an advertisement.
- (2) If any licensee fails to set out such details in an advertisement as required to be set out as per the permission received pursuant to Section 15, the Department shall cause that licensee to correct and republish the advertisement.

**50. Punishment to be imposed in the event of failure to publish selection list:**

If any licensee fails to publish a selection list of workers pursuant to Section 17 or publishes it but fails to give information thereof to the Department, the Department may punish such licensee with a fine of fifty thousand rupees and order to republish the selection list.

**51. Punishment to be imposed in the event of refusal to return amount or provide compensation:**

- (1) If any licensee fails to return the amount set forth in Sub-section (2) of Section 20 within the time set forth in that sub-section or refuses to provide compensation referred to in Sub-section (2) of Section 36, the Department may get such amount or compensation returned or provided to the concerned worker from the cash deposit made by that licensee pursuant to Section 11, punish such licensee with a fine of one hundred thousand rupees and revoke the licence.
- (2) If the amount or compensation is to be returned or provided pursuant to Sub-section (1) and the cash deposit made by the licensee pursuant to Section 11 is not sufficient to cover such amount or compensation, the Department shall give a time-limit of sixty days to the licensee to pay the shortfall amount and if the licensee fails to pay the amount within that time-limit, the amount shall be realised from the assets of the licensee.

**52. Punishment to be imposed in the event of sending workers by licensee on personal basis:** If any licensee sends any worker on

personal basis in contravention of Sub-section (3) of Section 21, such licensee shall be punished with a fine of one hundred thousand rupees to three hundred thousand rupees or with revocations of licence or with both punishments.

- 53. Punishment to be imposed in the event of collecting visa fees, service charges and promotional costs in excess:** If any licensee collects visa fees where free visa has been received or collects fees or costs in excess of the fees or costs as prescribed, the Department shall require the licensee to return such fees not to be charged or such excess fees or costs to the concerned person and punish such licensee with a fine of one hundred thousand rupees.
- 54. Punishment to be imposed in the event of failure to observe order or direction:** Except as otherwise provided for in this Chapter, the Department may warn for the first instance any licensee who fails to observe this Act and the rules, orders or directions framed or issued under this Act, punish such licensee with a fine of fifty thousand rupees for the second instance, and with a fine of one hundred thousand rupees, along with revocation of licence, for the third instance of the same offence.
- 55. Punishment to be imposed in the event of doing or causing to be done act contrary to the contract:** If any licensee, after making a contract with any worker for work in a company, engages the worker in work for remuneration or facilities lower than that or in another company for a work of such nature as is different than that specified in the contract or does not engage the worker in the work for which the worker has been sent for foreign employment but engages the worker in another work or engages the worker in work for remuneration and facilities less than the remuneration and facilities offered previously, the Department shall punish such licensee with a fine of one hundred thousand rupees and require the licensee to pay the shortfall amount of such remuneration and facilities.
- 56. Punishment to be imposed on accomplice:** A person who is an accomplice in any offence referred to in this Act or aids and abets the commission of such offence shall be subject to half the punishment to be imposed in the case of that offence.

- 57. Punishment to person who acts as chief:** If any firm, company, institution or licensee commits any offence punishable under this Chapter and the office-bearer or employee who has committed such offence is identified, then such office-bearer or employee shall, and if such office-bearer or employee cannot be identified, the person who has acted as the chief of such firm, company or institution at the time of commission of the offence shall, be subjected to punishment.
- 58. No licence to be re-issued:** After the licence of any licensee has been revoked pursuant to this Chapter, no licence shall be re-issued to the same institution and operator.
- 59. Opportunity for defence:** Prior to revoking the licence pursuant to this Chapter, the concerned licensee shall be provided with an opportunity for defence.

## Chapter-10

### Investigation and Inquiry

- 60. Limitation for complaint:** Except in cases of the offences punishable under Sections 43, 44, 45, 46 and 47, no complaint shall be entertained if it is not made within one year from the date of commission of any other offence punishable under this Act.

Provided that this Section shall not be deemed to bar the making of a complaint by a worker, who has gone for foreign employment, within one year after the date of his or her arrival in Nepal.

- 61. Investigation and inquiry of offence relating to foreign employment:**

- (1) If the Department receives information directly or indirectly upon a complaint made by any person or in any other manner that any offence has been or is going to be committed in contravention of this Act or the Rules framed under this Act, the Department may designate any officer of at least Gazetted Third Class as the investigation officer for the investigation of, and inquiry into such offence.
- (2) In making investigation of, and inquiry into any offence pursuant to Sub-section (1), the investigation officer shall have the same power as the police have under the prevailing laws, which include powers to arrest the person involved in the offence, search any

place in relation to the offence, take custody of documents or other things related with the offence, record depositions and execute recognisance deeds.

- (3) In making investigation of, and inquiry into any offence pursuant to Sub-section (2), the investigation officer may get the accused to make deposition, and in the event that the immediately available evidences constitute sufficient grounds to show the accused as offender, get the accused to appear on the appointed dates, assigning the reasons for the same, release the accused on bail or guarantee or detain the accused, with the permission of the case trying authority, if the accused fails to furnish such bail or guarantee or detain the accused, with the permission of the case trying authority, for a maximum period of thirty days, not exceeding seven days at a time.
- (4) In filing a case in his or her name after making investigation of, and inquiry into pursuant to this Section, the investigation officer shall get advice of the government attorney.
- (5) It shall be the duty of all the concerned, including the police, to provide necessary assistance to the investigation officer in the investigation and inquiry under this Section.
- (6) The investigation officer investigating of and inquiring into an offence relating to foreign employment pursuant to this Section may, if there are appropriate and adequate reasons in the course of investigation, submit a report, accompanied by appropriate and adequate reasons, to the Department for the suspension of the licence of any licensee.
- (7) The Department may, based on the report referred to in Sub-section (6), suspend the licence of such licensee for a maximum period of six months.

## **62. Power to arrest:**

- (1) Where any person has committed an offence referred to in Section 43 of this Act, the police employee may, if he or she considers that the person could abscond if that person is not arrested immediately, may arrest such person without warrant.
- (2) The person arrested pursuant to Sub-section (1) shall be produced before the case trying authority within twenty-four hours excluding the time required for journey.

**Chapter-11****Trial and Settlement of Cases**

**63. To be state cases:** The cases under this Act shall be state cases.

**64. Provisions relating to Foreign Employment Tribunal:**

- (1) For originally trying and settling cases other than those punishable by the Department as mentioned in this Act, the Government of Nepal shall, by a notification in the Nepal Gazette, constitute a three-member Foreign Employment Tribunal, under the chairpersonship of the Judge of Appellate Court, comprising the case trying authority of the Labour Court and the First Class Officer of Judicial Service recommended by the Judicial Service Commission.
- (2) The tenure of the chairperson and members of the Foreign Employment Tribunal shall be of four years.
- (3) The terms and conditions of service and facilities of the chairperson and members of the Foreign Employment Tribunal shall be as prescribed.
- (4) The Foreign Employment Tribunal shall exercise its jurisdiction as prescribed.
- (5) Pending the constitution of the Tribunal as referred to in this Section, the acts and action to be done and taken by the Foreign Employment Tribunal pursuant to this Act shall be done and taken by the concerned District Court.
- (6) The Government of Nepal shall provide such employees as may be required for the Foreign Employment Tribunal.

**65. Procedures of cases:** The cases to be filed under this Act shall be tried and settled in accordance with the Summary Procedures Act, 1971 (2028 BS).

**66. Appeal:**

- (1) A party who is not satisfied with a decision made by the Department pursuant to this Act may make an appeal to the Government of Nepal within 35 days from the date of such decision.
- (2) A party who is not satisfied with a decision made by the Foreign Employment Tribunal pursuant to this Act may make an appeal to the Supreme Court within 35 days from the date of such decision.

**Chapter-12**  
**Miscellaneous**

**67. Department of Foreign Employment:** There shall be Foreign Employment Department under the Ministry of Labour and Transport Management to carry out functions relating to foreign employment.

**68. Appointment of Labour Attaché:**

- (1) The Government of Nepal shall appoint at least a Gazetted officer as the Labour Attaché for a country where 5000 or more workers have been sent for foreign employment.
- (2) The functions, duties, and powers of the Labour Attaché shall be as follows:
  - (a) To give information to the Government of Nepal about the condition of labour and employment, factual information about immigration of the country where Nepali workers are working and steps taken by that country for the protection of labour and international human rights and interests of workers,
  - (b) If there arises any dispute between a worker, employer institution or licensee, to assist in the resolution of such dispute,
  - (c) To make necessary arrangements for bringing back to Nepal any worker who has been helpless in the course of foreign employment,
  - (d) If any work corresponding to the skills of the Nepali worker is available in the concerned country, to provide information thereon to the Government of Nepal,
  - (e) To take initiation in sending back the dead body of any worker, who has been a victim of natural calamity or who has died due to any cause, to Nepal with the assistance of the concerned country or employer institution,
  - (f) To make efforts to make a bilateral agreement at the governmental level for the supply of workers from Nepal,
  - (g) To provide necessary consultancy to workers, and discourage them to do any work other than that set forth in the agreement,
  - (h) To supervise any activity that may affect the workers, and
  - (i) To perform such other functions as prescribed by the Government of Nepal from time to time.
- (3) If both diplomatic mission and Labour Attaché are in any foreign

country, the Labour Attaché shall have the obligation to perform the functions and duties set forth in Sub-section (1).

**69. Repatriation of income of workers:**

- (1) Saving amounts earned by the Nepali workers who have gone for foreign employment shall be repatriated to Nepal through a bank or an institution licensed to provide banking service.
- (2) Notwithstanding anything contained in Sub-section (1), any worker may carry with him or her, the saving amount earned by him or her in the course of foreign employment when he or she comes back to Nepal.
- (3) If any Nepali worker repatriates the earning, earned by him or her abroad within the period set forth in the agreement, to Nepal through a bank or an institution licensed to provide banking service, the facility as prescribed shall be provided to such worker.

**70. Prohibition on issuance of licence:** Notwithstanding anything contained elsewhere in this Act, if a person who has been punished by the court for any offence under this Act is a manager or director of any company and a period of five years has not elapsed after the service of such punishment, no licence shall be issued to such institution.

**71. Power of Government of Nepal to reward:**

- (1) On recommendation of the Board, the Government of Nepal may, each year, make reward, along with a letter of appreciation, to one excellent licensee, based on the prescribed criteria.
- (2) Other provisions on making reward to the licensee shall be as prescribed.

**72. Provisions relating to health check up:**

- (1) A worker who goes for foreign employment shall, prior to going abroad, get his or her health checked up by a health institution having obtained permission from the Government of Nepal.
- (2) If a person who has gone for foreign employment after having undergone health check up pursuant to Sub-section (1) is compelled to return to Nepal because of a false health check up report given knowingly or recklessly or maliciously, the institution which has given such false health check up report shall bear the expenses incurred in going for foreign employment and returning to Nepal.



- (3) There shall be an expert committee as prescribed to make decision whether a false health check up report has been given or not pursuant to Sub-section (2).

**73. Provision of Labour Desk:**

- (1) The Government of Nepal shall establish a Labour Desk at the international airport and other place, as required, in order to examine whether workers proceeding for foreign employment are going for such employment in accordance with this Act or not.
- (2) The Labour Desk referred to in Sub-section (1) shall examine whether the workers have the labour permit, orientation certificate, receipt or voucher of payment of money and other necessary documents.
- (3) The Labour Desk referred to in Sub-section (1) shall send a report, accompanied by the records of workers who have gone for foreign employment, to the Ministry each week.

**74. Provisions relating to opening of branch and appointment of agent:**

- (1) A licensee may open its branch or appoint its agent in a country where it has sent workers by obtaining permission, as prescribed, from the Department.
- (2) A licensee may open its branch or appoint its agent within Nepal by obtaining permission, as prescribed, from the Department.
- (3) In appointing an agent pursuant to Sub-section (1) or (2), deposit as prescribed shall be furnished and the licensee itself shall be responsible for any acts and actions done and taken by such an agent.

**75. Provisions on sending workers back to Nepal:**

- (1) Where any worker becomes helpless by the reason that the worker has not got such facilities as set forth in the contract and such worker has to return to Nepal, the concerned licensee shall arrange for the returning of such worker to Nepal.
- (2) Where Nepali workers have to be immediately brought back to Nepal due to a war, epidemic, natural calamity in the country where such workers are engaged in employment, the Government of Nepal shall make arrangements for repatriating such workers through the diplomatic mission or Labour Attaché.

**76. Returning to Nepal after expiry of term of visa:**

- (1) A worker who has gone for foreign employment pursuant to this Act shall return to Nepal after the expiry of the term of visa issued by the concerned country.
- (2) It shall be the obligation of the licensee to get a worker, who does not return to Nepal pursuant to Sub-section (1), to return to Nepal, with the assistance of the Department.
- (3) The Government of Nepal may restrict the worker who has been so returned to go abroad for three years after the worker has been returned to Nepal pursuant to Sub-section (2).

**77. Provision of facilities to licensee:** The facilities, as prescribed, shall be provided to the licensee while carrying out transaction of foreign currency in the course of carrying on the foreign employment business.

**78. To make public, details relating to licensee:**

- (1) The Department shall, from time to time, make public through various newspapers or its website, details including the name, address, telephone number of the institution which has obtained licence pursuant to this Act, details of agent or branch, if any, it has appointed or opened and the term of its licence.
- (2) Where any licensee is being subject to investigation for an offence referred to in this Act or the licence of any licensee has been revoked, such details shall also be updated while making public the details pursuant to Sub-section (1).

**79. Provisions relating to activities of Department:**

- (1) The Department shall submit a monthly report of the activities that it has carried out pursuant to this Act to the Ministry of Labour and Transport Management, Government of Nepal.
- (2) The Ministry may, from time to time, give necessary direction to the Department in relation to the activities to be carried out pursuant to this Act.

**80. Record and report:**

- (1) A licensee shall maintain, as prescribed, the records of workers sent for foreign employment. The Department may, at any time, inspect, procure, and examine such records.
- (2) Each licensee shall submit an annual report setting out the

prescribed details to the Department within 30 days after the expiry of each financial year.

**81. Delegation of powers:**

- (1) The Government of Nepal may, by a notification in the Nepal Gazette, delegate any power conferred to it under this Act to any governmental body or authority.
- (2) The Board may delegate any power conferred to it under this Act to the Executive Director.

**82. Power to remove difficulties:** If there arises any difficulty with the implementation of the objectives of this Act, the Government of Nepal may, by a notification in the Nepal Gazette, issue necessary orders for the removal of such difficulty.

**83. Saving of acts done in good faith:** No governmental employee shall be personally liable in relation to any act done in good faith in exercise of the power conferred by this Act.

**84. Prevalence of Act:** The matters contained in this Act shall be governed by this Act, and the prevailing laws of Nepal shall govern any other matters.

**85. Powers to frame Rules:** The Government of Nepal may frame necessary Rules for the attainment of the objectives of this Act.

**86. Repeal and saving:**

- (1) The Foreign Employment Act, 2042 BS (1985) is hereby repealed.
- (2) All acts done and actions taken pursuant to the Foreign Employment Act, 2042 BS (1985) shall be deemed to have been done and taken under this Act.

**87. Transfer of cases:** The cases which have been investigated and inquired by the Department under the Foreign Employment Act, 2042 BS (1985) and filed with the District Court at the time of commencement of this Act shall be transferred to the Tribunal referred to in Section 64 after the constitution of that Tribunal.

## Annex 10: Foreign Employment Rules, 2008

### The Foreign Employment Rules, 2064 (2008)

Date of Publication in Nepal Gazette  
2064.9.30

In exercise of the powers conferred by Section 85 of the Foreign Employment Act, 2064 BS (2007), the Government of Nepal has framed the following Rules:

#### Chapter- 1 Preliminary

**1. Short title and commencement:**

- (1) These Rules may be called as the 'Foreign Employment Rules, 2064 BS (2008).'
- (2) These Rules shall come into force immediately.

**2. Definitions:** Unless the subject or the context otherwise requires in these Rules,

- (a) 'Act' means the Foreign Employment Act, 2064 BS (2007);
- (b) 'Contract' means a contract made between an employer institution or its agent and a worker, and a licensee and a worker in relation to the terms and conditions of service and remuneration of the worker and the terms to be observed by both parties;
- (c) 'Fund' means the Foreign Employment Welfare Fund established pursuant to Section 32 of the Act;
- (d) 'Tribunal' means the Foreign Employment Tribunal constituted pursuant to Section 64 of the Act;
- (e) 'Demand letter' means a demand letter sent by an employer institution to a licensee, indicating the number, type, qualification of workers, remuneration, facilities to which workers are entitled and other terms of service of workers;
- (f) 'Director' means a director of an institution or licensee, and this term also includes alternate directors.

#### Chapter- 2

##### Provisions Relating to Selection of Institution or Worker

- 3. Criteria for selection of institution:** In case a request is made to the Government of Nepal to select and send workers pursuant to Section 5 of the Act, the Government of Nepal may select an

institution based on the grounds set forth in Schedule 1 and send workers through such institution.

**4. Procedures for selection of institution:**

- (1) The Government of Nepal shall, for the purpose of selecting an institution through open competition based on the grounds set forth in Rules 3, publish a notice setting out the following details in a daily newspaper of national circulation, by giving a time-limit of at least fifteen days:
  - (a) Name of the foreign country and employer institution where workers are to be sent,
  - (b) Number of workers demanded for,
  - (c) Grounds for the selection of an institution,
  - (d) Details to be submitted along with application,
  - (e) Place for the submission of application.
- (2) Out of the applications received as per the notice published pursuant to Sub-rule (1), the weightage shall be fixed according to each ground set forth in Rule 3; and the institution which secures the highest mark shall be selected.

**5. Criteria and procedures for sending workers by making treaty or agreement:**

- In selecting required persons for the purpose of sending workers by the Government of Nepal by making a treaty or agreement with the government of a country having diplomatic relations with Nepal pursuant to Section 6 of the Act, selection shall be made in accordance with the matters, if any, set forth in such treaty or agreement and selection shall be made from amongst the persons who have fulfilled the following criteria and procedures in the case of the matters not set forth in such treaty or agreement:
- (a) Being able to read and write,
  - (b) Having general information about the law, language, culture and lifestyle of the destination country,
  - (c) Having general information about occupational safety and health,
  - (d) Having obtained the certificate of orientation training,
  - (e) Having obtained certificate of good health from a recognised health institution,
  - (f) Having fulfilled other procedures and criteria as prescribed by the Steering Committee referred to in sub-Section (2) of Section 6 of the Act.

**Chapter-3****Provision Relating to Licence****6. Provision relating to licence:**

- (1) An institution intending to carry out foreign employment business shall make an application in the form prescribed in Schedule 2, accompanied by the following documents and details, to the Department for the licence:
  - (a) A copy of the company registration certificate,
  - (b) A certified copy of the articles of association and article of memorandum of the institution,
  - (c) A certified copy of the Permanent Accounts Number certificate,
  - (d) A detailed business action plan of the institution,
  - (e) A certified copy of the citizenship certificate of the director,
  - (f) A certified copy of the certificate showing that the director has gained at least two years of experience as a director, proprietor or manager in an institution related to foreign employment or a financial, business, trade or industrial institution which has been in operation continuously for the past five years,
  - (g) A proof showing the settlement of tax payable to the Government pursuant to the prevailing laws,
  - (h) The promoter or director should not have been punished for a criminal offence involving moral turpitude,
  - (i) The promoter or director should not have been a director of an institution whose licence has been cancelled.
- (2) If, upon making necessary inquiry into an application made pursuant to Sub-rule (1), it appears appropriate to grant the licence to such institution to carry out the foreign employment business, the Department shall grant the licence in the form prescribed in Schedule 3, upon collecting the licence fee of twenty thousand rupees and a proof indicating the submission of the deposit or bank guarantee referred to in Sub-section (2) of Section 11 of the Act.

**7. Term of bank guarantee:**

- (1) The term of bank guarantee as referred to Sub-section (2) of Section 11 of the Act shall be a minimum of five years.
- (2) The term of such bank guarantee shall be renewed for another term and the renewed bank guarantee shall be submitted to the

Department prior to one year of the expiration of the term of bank guarantee.

**8. Renewal of licence:**

- (1) A licensee shall get its licence renewed by submitting the following details no later than the last day of the month of Ashad (about Mid July) of each financial year:
  - (a) A receipt of submission of the income return for the previous financial year or evidence showing the payment of income tax,
  - (b) Number of workers sent for foreign employment in the previous financial year and their condition,
- (2) A licensee who gets the licence renewed for three years at the same time pursuant to Sub-Section (3) of Section 12 of the Act shall get the licence renewed no later than the last day of the month of Ashad (about Mid July) of the year when the renewal period expires.
- (3) The licence renewed shall be renewed by paying a renewal fee at the rate of ten thousand rupees for one financial year.
- (4) A licensee who intends to get renewed the licence which has not been renewed within the time-limit as referred to in Sub-rule (1) may get the licence renewed no later than the last day of the month of Aswin (about Mid October) of the same financial year by paying the additional renewal fee at the rate of ten thousand rupees for each month, in addition to the renewal fee referred to in Sub-rule (3). A licensee who fails to get such licence renewed shall not be entitled to carry on the foreign employment business.
- (5) Notwithstanding anything contained elsewhere in these Rules, if a licensee who has not been able to get the licence renewed owing to the occurrence of an event beyond control from 16 *Bhadra* 2061 BS (. 1 September, 2004) to the date of commencement of this Regulation, pays back the advance, if any, taken from the deposit furnished by it, makes an application setting out that matter to the Department for the renewal of the licence no later than ninety days after the date of commencement of this Regulation and the contents of the application appears reasonable, the licence may be renewed for one time, by collecting the renewal fee at the rate of Fifty Thousand Rupees for each year.

- 9. Information on cancellation of licence to be given:** In the event of the cancellation of licence pursuant to Section 13 of the Act,

information thereof shall be given to the licensee.

**10. Refund to be made:** If the licence obtained by a licensee is cancelled pursuant to Section 13 of the Act and it is proved that the licensee has collected the service fee or any amount from any person to send a worker for foreign employment prior to such cancellation, the amount so collected shall be refunded to the concerned person no later than one month of the date of cancellation of licence.

**11. Deposit to be refunded and bank guarantee released:**

- (1) If any licence is cancelled pursuant to Section 13 of the Act, the licensee shall make an application to the Department to have the deposit furnished while obtaining the licence refunded or the bank guarantee released.
- (2) An application made pursuant to Sub-rule (1) shall also indicate whether any amount is due and payable to any person or not.
- (3) If an application is received pursuant to Sub-rule (1), the Department shall publish or broadcast a notice in at least two daily newspapers of national circulation and other means of communication as required, indicating that such licensee has applied for the refund of the deposit or the release of bank guarantee furnished by it by the reason of the cancellation of the licence obtained by it, inviting any one to make claim, accompanied by proof and evidence, for the refund of the service charge or any amount where such licensee has not sent for foreign employment by collecting such charge or amount, within thirty five days.
- (4) Where any person makes a claim within the time-limit of the notice published or broadcast pursuant to Sub-rule (3) and upon examination of the claim, it is proved that the licensee has not sent the claimant for foreign employment by collecting an amount for foreign employment, the Department shall order the licensee to refund such amount to the concerned person within fifteen days.
- (5) Where the licensee does not refund the amount in pursuance of the order referred to in Sub-rule (4), the Department shall deduct the amount from the deposit or bank guarantee amount furnished by the licensee and provide it to the person making claim pursuant to Sub-rule (4).
- (6) Where no one makes a claim within the time-limit of the notice published or broadcast pursuant to Sub-rule (3) or where a claim is made and the licensee refunds such amount within the time-



limit set forth in Sub-rule (4), the Department shall refund the remaining deposit or release the bank guarantee.

- (7) Where the deposit or bank guarantee amount of the licensee is not sufficient to refund the amount, the shortfall amount shall be recovered from the director in accordance with the prevailing laws.
- (8) The expenses incurred in publishing or broadcasting the notice pursuant to Sub-rule (2) shall be deducted from the deposit or bank guarantee amount of the concerned licensee.

#### **Chapter- 4**

##### **Provision Relating to Prior Approval and Selection of Workers**

**12. Application for prior approval:** A licensee shall make an application, setting out the following details, in addition to the details set forth in Sub-section (1) of Section 15 of the Act, to the Department, in the form referred to in Schedule 4, for prior approval to send workers for foreign employment:

- (a) Deed of authorization given by the director to his or her agent to appear before the Department and do acts pertaining to it,
- (b) A copy of the identity card of the agent of the institution, as issued by the Department,
- (c) A sample of advertisement to be published after prior approval has been given,
- (d) A copy of the licence,
- (e) The service charge and promotional expenses which the licensee is entitled to collect.

**13. Conditions where prior approval is refused:** The Department shall not give prior approval to select workers on any of the following conditions, in addition to the conditions set forth in Sub-section (3) of Section 15 of the Act:

- (a) The details set forth in the documents submitted by the licensee for prior approval are found to have been corrected, are mutually inconsistent, altered or added or deleted,
- (b) Foreign based Nepali diplomatic mission or Labour Attaché gives information in writing to the Department that it is not appropriate to send workers to the country or employer institution providing foreign employment.

**14. Details to be set out while publishing advertisement:** In publishing an advertisement pursuant to Section 16 of the Act, the

following details shall be set out:

- (a) Date of prior approval obtained from the Department and reference number thereof,
- (b) Name, address and licence number of the licensee,
- (c) Name and address of the employer country and employer institution,
- (d) Post of worker,
- (e) Number of workers demanded,
- (f) Description of work to be done by the worker,
- (g) Required minimum qualification of the worker,
- (h) Provisions relating to quarter and food facilities to be provided to the worker,
- (i) Monthly remuneration to be received by the worker,
- (j) Period of daily and weekly work to be done by the worker,
- (k) Place and deadline for submission of application,
- (l) Provisions relating to insurance and medical facilities of the worker,
- (m) Provision relating to air ticket expenses to be incurred by the worker to go for and return from employment,
- (n) Total expenses including the service charge and promotional expenses to be paid by the worker,
- (o) Method, place and date for the selection of workers,
- (p) The number of reservations made as prescribed by the Government of Nepal to the women, *Dalit*, indigenous nationalities, oppressed class, backward area and class and people of remote areas and victims of natural calamities pursuant to Section 9 of the Act,
- (q) Other matters as specified by the Department.

**15. Application to be made:** After an advertisement is published pursuant to Rule 14, a person who intends to go for foreign employment shall make an application, accompanied by the details of his or her qualification, training and experience, in the form referred to in Schedule 5, to the licensee.

**16. Grounds for selection of workers:**

- (1) The licensee shall select workers on the following grounds, from amongst the application made pursuant to Rule 15:
  - (a) Qualification, training and experience set forth in the demand letter,
  - (b) Age and physical fitness of the applicant,

- (c) Skill-oriented training in case of skilled and semiskilled worker,
  - (d) Reservation provided in the number as prescribed by the Government of Nepal to the women, Dalit, indigenous nationalities, oppressed class, backward area and class and people of remote areas and victims of natural calamities pursuant to Section 9 of the Act.
- (2) The Department may give necessary direction in writing to the licensee in relation to the criteria and procedures for the selection of workers in addition to the grounds set forth in Sub-rule (1).
- (3) It shall be the duty of the concerned licensee to observe the direction given pursuant to Sub-rule (2).

### **Chapter-5**

#### **Provisions Relating to Approval for Sending Workers**

- 17. Provisions relating to labour permission sticker:** While writing to the Department for the labour sticker pursuant to Sub-section (1) of Section 19 of the Act, the licensee shall also set out the following particulars:
- (a) A list of selected workers,
  - (b) Receipt of payment to the Fund on behalf of workers,
  - (c) Copies of passport and visas of workers,
  - (d) In the event of the need to use a foreign airport, details of exit point and flight schedule,
  - (e) Status of implementation of the direction given by the Department on complaints made in relation to the selection of workers,
  - (f) Other matters as may be specified by the Department.
- 18. To make registration at departure point while going outside Nepal:**
- (1) While going outside Nepal with the permission of the Department to use a foreign airport pursuant to Sub-section (2) of Section 22 of the Act, the worker shall make registration setting out the following details with the immigration Office at the departure point:
- (a) Name, surname and address of the worker,
  - (b) Country to which the worker is going for foreign employment,
- (2) In making registration pursuant to Sub-rule (1), the following documents shall also be submitted with the immigration office at the departure point:

- (a) Copies of passport and visa,
- (b) A copy of the labour permission sticker.

**19. Other provisions relating to insurance:**

- (1) A licensee shall, while sending workers for foreign employment, procure insurance from an insurer recognised under the prevailing laws.
- (2) The provisions relating to the premium payable for procuring insurance pursuant to Sub-rule (1) and payment thereof shall be as provided in the agreement made between the insured and the insurer.
- (3) If there is a difference in the insurance premium and liability by the reason that any licensee, who has made a contract with any worker to work in one company, has engaged the worker in another company or work that is different than that set forth in the contract, the licensee shall bear such different liability.

**Chapter-6**

**Provisions relating to Training**

**20. Orientation training to be taken:**

- (1) A worker who goes for foreign employment shall, prior to going for foreign employment, take orientation training on the following matters:
  - (a) Foreign employment law of Nepal,
  - (b) Geographical situation, culture, life style, economic, social and political situation of the country where the worker goes for foreign employment,
  - (c) Language of the country where the worker goes for foreign employment,
  - (d) Labour, immigration laws and traffic rules of the country where the worker goes for foreign employment,
  - (e) H.I.V/AIDS, communicable diseases, sexual and reproductive health,
  - (f) Occupational safety and health,
  - (g) Easy and safe travel,
  - (h) Conduct, treatment and security of workers,
  - (i) Repatriation of earning made abroad to Nepal in a simple, easy and safe manner.
- (2) Notwithstanding anything contained in Sub-rule (1), a worker who has taken orientation training once and gone for foreign

employment shall not be required to take the orientation training again to go to the same country for foreign employment.

**21. Submission of details to Department by institution providing orientation training:**

- (1) An institution providing the orientation training to the workers who go for foreign employment shall, prior to providing the training, submit the following details to the Department:
  - (a) A list of names of persons taking training,
  - (b) Names of trainer.
- (2) After providing the orientation training, the institution providing the orientation training shall submit to the Department the details of attendance of the persons who have taken the training.

**22. Deposit and licence fee:** Any institution providing the orientation training to the workers who go for foreign employment shall, in obtaining the licence, furnish cash deposit of one hundred thousand rupees and licence fee of ten thousand rupees.

**23. Term of licence and renewal fee:**

- (1) The licence obtained by an institution providing the orientation training shall remain valid for one financial year. Notwithstanding that the licence has been provided at any date whatsoever, the term of such licence shall expire at the end of that financial year.
- (2) An institution providing the orientation training may get the licence renewed by submitting the following details no later than the last day of the month of Ashad (Mid-July) of each financial year:
  - (a) Progress of the previous financial year,
  - (b) Physical, financial and human resources of the institution,
  - (c) Evidence showing the payment of tax for the previous financial year in accordance with the prevailing laws,
  - (d) Other necessary details as may be specified by the Department.
- (3) Pursuant to Sub-rule (2), a fee of five thousand rupees shall be paid while renewing the licence.
- (4) Any institution which has obtained the licence and been operating the training at the time of commencement of the Act may make an application to the Department for the renewal of the licence obtained by it within one year after the date of commencement of this regulation; and if the Department, upon examination of such

application, considers that the infrastructures, human resources as well as other means and resources are adequate, it shall renew the licence of such institution by collecting the deposit and the licence fee referred to in Rule 22. The licensee who fails to renew within such time limit shall not be allowed to carry on the training business.

- (5) If the license is not renewed pursuant to Sub-rules (2) and (4), such licence shall be cancelled.
- (6) Notwithstanding anything contained elsewhere in this Rule, if an institution providing the orientation training is found to have committed any act contrary to the Act and this Regulation, the Department may suspend the licence of such institution for a certain period or cancel it.
- (7) Prior to cancelling the licence pursuant to Sub-rule (6), the Department shall give a reasonable opportunity to the concerned institution for defence.

## Chapter- 7

### Provisions Relating to Fund

**24. Worker to deposit amount to the Fund:** Any worker who goes for foreign employment shall, prior to going for foreign employment, deposit in the Fund the amount as may be specified by the Government of Nepal.

**25. Mobilization of deposit:**

- (1) The Department shall deposit seventy five per cent amount of the cash deposit received pursuant to Sub-section (2) of Section 11 of the Act in a fixed deposit account to be opened with a commercial bank.
- (2) Interest accrued from the amount deposited in the fixed deposit account pursuant to Sub-rule (1) shall be deposited in the Fund.

**26. Use of Fund:**

- (1) The Fund shall be used for the following activities, in addition to the activities set forth in Section 33 of the Act:
  - (a) For educational development of the families of the workers who have gone for foreign employment and those who have returned from foreign employment,
  - (b) For assistance in medical treatment of the families of the workers who have gone for foreign employment,

- (c) For the reimbursement of the fees paid by women who have been selected for foreign employment to obtain the orientation training,
  - (d) For establishment and operation of child care centres for proper protection of the children of the women workers who have gone for foreign employment,
  - (e) For launching various programmes in the interest of the workers and their families,
  - (f) For launching public awareness programmes about foreign employment,
  - (g) For running day-to-day activities of the Board.
- (2) Notwithstanding anything contained in clause (f) of Sub-rule (1), the operational expenses of the Board shall not be more than twenty five per cent of the interest earned pursuant to Sub-rule (2) of Rule 25.

**27. Operation of Fund:**

- (1) The amount to be deposited in the Fund shall be deposited in any commercial bank specified by the Board.
- (2) The account of the Fund shall be operated by countersignature of the Executive Director and the Chief Accountant of the Board.

**28. Financial assistance to be provided:**

- (1) If any worker who has gone for foreign employment in accordance with the Act or these Rules dies due to any cause during the contract period, the nearest rights-holder to the deceased worker may make an application to the Board for financial assistance, no later than six months after the certification of the death of the deceased worker.
- (2) If, upon making necessary examination of the application received pursuant to Sub-rule (1), the contents are found reasonable, the Board shall provide a financial assistance of one hundred thousand rupees from the Fund to the rights-holder to the deceased worker.
- (3) If any worker who has gone for foreign employment in accordance with the Act or these Rules gets mutilated due to any cause during the contract period, such worker may make an application, accompanied by the following details, to the Board for financial assistance, no later than sixty days after such worker has returned to Nepal:

- (a) A copy of the contract,
  - (b) The prescription of hospital proving mutilation.
- (4) If, upon making necessary examination of the application received pursuant to Sub-rule (3), the contents are found reasonable, the Board shall provide a financial assistance not exceeding One Hundred Thousand Rupees from the Fund, based on the prescription of hospital, nature and gravity of mutilation.

## Chapter- 8

### Provisions Relating to Board and Executive Director

- 29. Other functions, duties and rights of the Board:** The functions, duties and rights of the Board, in addition to the functions, duties and rights set forth in Section 39 of the Act, shall be as follows:
- (a) To do or cause to be done, study and research on the opportunities and risks of foreign employment,
  - (b) To broadcast and publish, or cause to be broadcast and publish, awareness programmes on foreign employment through radio, television and newspapers in a regular manner,
  - (c) To prepare, or cause to be prepared, strategies and action plans on social security of workers,
  - (d) To establish safe homes for the women workers who have gone for foreign employment and operate, or cause to be operated, such homes.
- 30. Qualification of Executive Director:** One shall have the following qualification to be appointed to the post of Executive Director:
- (a) Be a citizen of Nepal,
  - (b) Having gained at least masters degree in any subject among economics, law, management and public administration from a recognised educational institution,
  - (c) Having completed the age of thirty five years,
  - (d) Having acted in the post of at least officer level in a governmental or non-governmental organization for ten years,
  - (e) Not having been punished for a criminal offense involving moral turpitude,
  - (f) Not being a member of any political party or organization at present,
  - (g) Having good mental health.



**31. Fulfilment of post of Executive Director:**

- (1) For the fulfilment of the post of the Executive Director, there shall be a post fulfilment committee under the chairmanship of the secretary of the Ministry of Labour and Transport Management, consisting of the representatives of at least Gazetted First Class of the Public Service Commission and the Ministry of General Administration.
- (2) The post fulfilment committee referred to in Sub-rule (1) shall, while making recommendation for the fulfilment of post, follow the procedures specified by the Public Service Commission.

**32. Circumstances where post falls vacant:** The post of the Executive Director shall be deemed vacant in any of the following circumstances:

- (a) If he/she tenders resignation to the Government of Nepal,
- (b) If his/her term expires,
- (c) If he/she dies,
- (d) If he/she ceases to possess the qualification referred to in Rule 30.

**33. Power to remove Executive Director:** The Government of Nepal may, at any time, remove the Executive Director from the post of Executive Director on the ground that he or she has committed any act contrary to the interest of the Board or committed bad conduct or has failed to perform duties honestly or suffered from incompetence.

Provided that, prior to so removing from the post, he or she shall not be deprived of an opportunity for defence.

**34. Remuneration, terms and conditions of service and facilities of Executive Director:** The monthly remuneration of the Executive Director shall be equivalent to that receivable by the Gazetted First Class officer of the Government of Nepal, and the other facilities receivable by him/ her shall be as prescribed by the Government of Nepal.**35. Other functions, duties and rights of Executive Director:** The other functions, duties and rights of the Executive Director, in addition to the functions, duties and rights set forth in Sub-section (5) of Section 41 of the Act, shall be as follows :

- (a) To run the day-to-day activities of the Board,

- (b) To prepare short-term and long-term plans, annual programmes and budget of the Board and submit the same to the Board,
- (c) To call the Board meetings at such place, time and date as specified by the chairperson of the Board,
- (d) Other functions as may be specified by the Board.

## Chapter- 9

### Provisions Relating to Tribunal

#### 36. Exercise of jurisdiction of Tribunal:

- (1) The three members shall jointly exercise the jurisdiction of the Tribunal. Provided that the bench attended by one member may hear a case and the bench attended by two members may hear and settle a case.
- (2) In the event that the bench is attended by all the three members, the unanimous opinion of the three members or the majority opinion of two members shall be deemed to be the decision of the Tribunal.
- (3) In the event that the bench is attended by two members only and the two members have the same opinion, that opinion shall be the decision of the Tribunal. Where they lack unanimity in opinion, the opinion of the chairman, where the chairperson is present, and where the other bench except the chairperson is present, the opinion of the senior member shall prevail in the matters of proceedings; and in the case of judgment or final order, it shall be submitted to the member who was absent first and the opinion supported by him or her shall be deemed to be the decision of the Tribunal.
- (4) Where each of the three members has a different opinion and majority cannot be established even after making submission to the member who was absent first pursuant to Sub-rule (3), a reference shall be made to the Supreme Court for decision.

#### 37. Terms and conditions of service and facilities of chairperson and member of Tribunal: Allowance as prescribed by the Government of Nepal shall be provided to the chairperson and members of the Tribunal for the day on which the bench is held.

#### 38. Designation of registrar: The Government of Nepal shall designate the officer of at least Gazetted Second Class of the Nepal Judicial

Service as the registrar to carry out administrative functions of the Tribunal, subject to general direction and control of the tribunal.

**39. Functions, duties and rights of registrar:** The functions, duties and rights of the registrar shall be as follows :

- (a) To examine and check documents including charge sheets, complaints and petitions, and *vakalatnama* to be registered with the Tribunal and register them if they are found in order or to refuse to register them indicating the reason for the same if they cannot be registered,
- (b) To verify the documents submitted in relation to cases with their originals and certify the same if they are found in consonance, and if some inconsistencies are found in the originals, to mark the same and get the concerned parties to sign them,
- (c) To issue the summons and get the same served,
- (d) To appoint dates for the appearance showing reasonable cause in relation to cases,
- (e) To maintain diary of each case and maintain updated records of proceedings also indicating the date appointed for making presence for proceedings of each case,
- (f) To record attorney and have cases taken over in accordance with the prevailing laws,
- (g) To implement, cause to be implemented, the acts and actions in pursuance of orders made by the bench,
- (h) To receive bail or guarantee in pursuance of orders made by the bench,
- (i) To safely retain case-files and documents of cases, look after and cause to be looked after the same and dispose documents required to be disposed in accordance with the prevailing laws,
- (j) To allocate functions among the employees on the basis of workload,
- (k) To perform such other administrative functions as required.

**40. Venue:** The venue of the Tribunal shall be situated within the Kathmandu Valley. Its venue may also be held outside the Kathmandu Valley in the event of necessity in view of the nature and subject of cases.

**41. Enforcement of decision:** The decision made by the Tribunal shall be enforced, or cause to be enforced, by the District Court in accordance with the prevailing laws.

- 42. Prevailing laws to govern:** In relation to the trial and settlement of cases by the Tribunal, the matters contained in this Chapter shall be governed by this Chapter, and the other matters shall be governed by the prevailing laws.

### **Chapter-10 Miscellaneous**

- 43. Power to appoint woman Labour Attaché:** In appointing the Labour Attaché pursuant to Sub-section (1) of Section 68, a woman Labour Attaché may be appointed from amongst the qualified women officers to a country where one thousand or more women workers have been sent for foreign employment.

- 44. Provision of facility for repatriation of earning to Nepal:** If any Nepali worker repatriates the earning earned by him/her abroad, to Nepal through a bank or an institution licensed to provide banking service pursuant to Sub-section (3) of Section 69 of the Act, the Government shall provide the worker with such facility as prescribed by publishing a notification in the Nepal Gazette.

**45. Criteria for rewarding the licensee:**

- (1) On recommendation of the Board, the Government of Nepal shall, pursuant to Section 71 of the Act, reward the excellent licensee, on the basis of the criteria set forth in Rule 3.
- (2) A licensee that has been rewarded once pursuant to Sub-rule (1) shall generally not be rewarded until another three years.

**46. Expert committee:**

- (1) There shall be an expert committee as follows to make decision as to whether a false health check up report has been given or not pursuant to Sub-section (3) of Section 72 of the Act:

- |   |             |
|---|-------------|
| (a) Doctor of eleventh or twelfth level designated by the Ministry of Health and Population | Chairperson |
| (b) Doctor designated by Nepal Medical Council  | Member      |
| (c) Law officer of the Ministry of Labour and Transport Management                          | Member      |
| (d) Chairperson or representative of Nepal Health Practitioners' Federation                 | Member      |

- (e) A person designated by the Ministry of Labour and Transport Management from amongst those who have returned from foreign employment Member
- (2) If the expert committee formed pursuant to Sub-rule (1) so considers necessary, it may invite an expert in the concerned field to participate in its meeting as an observer, and seek his/her opinion or advice.
  - (3) The chairperson and members of the expert committee formed pursuant to Sub-rule (1) shall receive such meeting allowance as specified by the Board.
  - (4) The expert committee formed pursuant to Sub-rule (1) may form a Sub-committee consisting of experts in the concerned field to perform such functions as required to be performed by it pursuant to the Act or this Regulation.
  - (5) The other provisions relating to the meeting of the expert committee formed pursuant to Sub-rule (1) shall be as determined by the committee itself.
  - (6) The Law Section at the Ministry of Labour and Transport Management shall act as the secretariat of the expert committee formed pursuant to Sub-rule (1).

#### **47. Provisions relating to branch office:**

- (1) If a licensee intends to open a branch office in a country to which it has sent workers, the licensee shall make an application, setting out the following details, to the Department for approval to that effect:
  - (a) The country and place where the branch office is to be opened,
  - (b) Detailed action plan, physical infrastructures and human resources for the operation of the branch office,
  - (c) Description that at least five hundred Nepali workers have been set to the country where the branch office is intended to be opened and such workers are involved in foreign employment there,
  - (d) Certified copies of the certificate showing that the main person operating the branch office has obtained at least bachelor's degree and his or her citizenship certificate.
- (2) If a licensee intends to open a branch office within Nepal, the licensee shall make an application, setting out the following details, to the Department for approval to that effect:

- (a) The place where the branch office is to be opened,
  - (b) Detailed action plan, physical infrastructures and human resources for the operation of the branch office,
  - (c) Certified copy of the main person's citizenship certificate
- (3) If, upon making necessary examination of any application received pursuant to Sub-rules (1) and (2), the Department considers it reasonable to give approval to open a branch office as demanded by the applicant, it may give approval to open the branch office.

**48. Provisions relating to appointment of agent:**

- (1) If any licensee intends to appoint an agent within Nepal, it shall make an application, setting out the bio-data of the person proposed to be appointed as agent, to the Department.
- (2) The qualification of the person proposed to be appointed as an agent pursuant to Sub-rule (1) shall be as follows:
- (a) Able to read and write Nepali language fluently,
  - (b) Able to make others understand matters relating to foreign employment,
  - (c) Not punished for a criminal offence involving moral turpitude.
- (3) If, upon making examination of any application received pursuant to Sub-rule (2), the Department considers the demand of the licensee to be reasonable, it may give permission to appoint an agent within Nepal, by collecting a cash deposit of two hundred thousand rupees from the licensee.
- (4) If any licensee intends to appoint any agent in a country where it has sent workers, it shall make an application, setting out the bio-data of the person proposed to be appointed as the agent, to the Department.
- (5) The qualification of the person proposed to be appointed as an agent abroad pursuant to Sub-rule (4) shall be as follows:
- (a) Being a citizen of Nepal,
  - (b) Having obtained at least bachelor's degree,
  - (c) Not being punished for a criminal offense involving moral turpitude.
- (6) If, upon making examination of any application received pursuant to Sub-rule (4), the Department considers the demand of the licensee to be reasonable, it may give permission to appoint an agent in the country where the licensee has sent workers, by collecting a cash deposit of two hundred thousand rupees from the licensee.

- (7) If, upon making examination of any application received pursuant to Sub-rule (1) or (4), the Department does not consider it reasonable to give permission for the appointment of agent as per the demand of the applicant, it shall give information thereof, setting out the reason for the same, to the licensee.
- (8) The licensee shall give the identity card as prescribed to the agent appointed pursuant to this Rule.
- (9) The identity card given pursuant to Sub-rule (8) shall be renewed each year.
- (10) Notwithstanding anything contained elsewhere in this Rule, no person shall be an agent of more than one licensee.
- (11) If any licensee intends to remove any of its agents, the licensee may remove such agent, by giving information that such agent has settled its obligations.
- (12) If any licensee makes an application, along with the information of the removal of an agent pursuant to Sub-rule (11), for the refund of deposit furnished by it, the Department shall refund such deposit.
- (13) The licensee shall publish a notice each year in a national daily setting out the names, surnames and addresses of agents appointed pursuant to this Rule.

**49. Facilities to be provided to licensee:** The facilities prescribed by the Government of Nepal upon a notification in the Nepal Gazette shall be provided to the licensee while conducting transaction of foreign currency in the course of carrying on the foreign employment business pursuant to Section 77 of the Act.

**50. To maintain records:** The licensee shall maintain records of each worker sent by it for foreign employment, in the form referred to in Schedule 6.

**51. Details to be set out in annual report:** A licensee shall set out, inter alia, the number and condition of workers sent by the licensee for foreign employment throughout the year, details relating to prior approval and labour permit, details of branch offices and agents, amounts collected from workers as the service fees or promotional expenses and details of improvements to be made in the future in relation to foreign employment in the annual report to be submitted pursuant to Sub-section (2) of Section 80 of the Act.

**52. Alteration or change in Schedule:** The Ministry of Labour and Transport Management shall, by a notification in the Nepal Gazette, make necessary alteration or change in the Schedule.

**53. Repeal and saving:**

- (1) The Foreign Employment Rules, 2056 BS (1999) is, hereby, repealed.
- (2) All acts done and actions taken pursuant to the Foreign Employment Rules, 2056 BS (1999) shall be deemed to have been done and taken under these Rules.



## **Annex 11: India and Nepal Treaty**

### **Treaty of Peace and Friendship between the Government of India and the Government of Nepal Signed at Kathmandu, on 31 July 1950**

The Government of India and the Government of Nepal, recognising the ancient ties which have happily existed between the two countries;

Desiring still further to strengthen and develop these ties and to perpetuate peace between the two countries;

Have resolved therefore to enter into a Treaty of Peace and Friendship with each other, and have, for this purpose, appointed as their plenipotentiaries the following persons, namely,

The Government of India:

His Excellency Shri Chandreshwar Prasad Narain Singh, Ambassador of India in Nepal.

The Government of Nepal:

Mohun Shamsher Jang Bahadur Rana, Maharaja, Prime Minister and Supreme Commander-in-Chief of Nepal,

who having examined each other's credentials and found them good and in due form have agreed as follows:—

#### *Article 1*

There shall be everlasting peace and friendship between the Government of India and the Government of Nepal. The two Governments agree mutually to acknowledge and respect the complete sovereignty, territorial integrity and independence of each other.

#### *Article 2*

The two Governments hereby undertake to inform each other of any serious friction or misunderstanding with any neighbouring State likely to cause any breach in the friendly relations subsisting between the two Governments.

#### *Article 3*

In order to establish and maintain the relations referred to in Article 1 the two Governments agree to continue diplomatic relations with each

other by means of representatives with such staff as is necessary for the due performance of their functions.

The representatives and such of their staff as may be agreed upon shall enjoy such diplomatic privileges and immunities as are customarily granted by international law on a reciprocal basis: Provided that in no case shall these be less than those granted to persons of a similar status of any other State having diplomatic relations with either Government.

#### *Article 4*

The two Governments agree to appoint Consuls-General, Consuls, Vice-Consuls and other consular agents, who shall reside in towns, ports and other places in each other's territory as may be agreed to.

Consuls-General, Consuls, Vice-Consuls and consular agents shall be provided with exequaturs or other valid authorization of their appointment. Such exequatur or authorization is liable to be withdrawn by the country which issued it, if considered necessary. The reasons for the withdrawal shall be indicated wherever possible.

The persons mentioned above shall enjoy on a reciprocal basis all the rights, privileges, exemptions and immunities that are accorded to persons of corresponding status of any other State.

#### *Article 5*

The Government of Nepal shall be free to import, from or through the territory of India, arms, ammunition or warlike material and equipment necessary for the security of Nepal. The procedure for giving effect to this arrangement shall be worked out by the two Governments acting in consultation.

#### *Article 6*

Each Government undertakes, in token of the neighbourly friendship between India and Nepal, to give to the nationals of the other, in its territory, national treatment with regard to participation in industrial and economic development of such territory and to the grant of concessions and contracts relating to such development.

#### *Article 7*

The Governments of India and Nepal agree to grant, on reciprocal basis, to the nationals of one country in the territories of the other the same privileges in the matter of residence, ownership of property, participation in trade and commerce, movement and other privileges of a similar nature.

*Article 8*

So far as matters dealt with herein are concerned, this Treaty cancels all previous Treaties, agreements, and engagements entered into on behalf of India between the British Government and the Government of Nepal.

*Article 9*

This Treaty shall come into force from the date of signature by both Governments.

*Article 10*

This Treaty shall remain in force until it is terminated by either party by giving one year's notice.

DONE in duplicate at Kathmandu this 31<sup>st</sup> day of July 1950.

*(Signed)*

Chandreshwar Prasad  
Narain Singh  
For the Government of India

*(Signed)*

Mohun Shamsher  
Jang Bahadur Rana  
For the Government of Nepal

## **Annex 12: Agreement between Nepal and Qatar**

### **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**

Desirous of strengthening the already existing friendship ties and cooperation between the His Majesty's Government of Nepal and the Government of the State of Qatar,

And in order to organize Nepalese manpower employment in the State of Qatar, the Governments of the two countries agreed as follows:-

#### *Article (1)*

The Ministry of Civil Service Affairs and Housing 'MOCSA and H' of the State of Qatar and the Ministry of Labour and Transport Management 'MOLTM' of His Majesty's Government of Nepal 'HMG/N' shall lay down necessary rules and regulations for the implementation of the provisions of this Agreement.

#### *Article (2)*

Recruitment of manpower from the Kingdom of Nepal and its entry and employment in the State of Qatar shall be regulated in accordance with the relevant laws and procedures of the two countries.

#### *Article (3)*

1. The Ministry of Civil Service Affairs and Housing in the State of Qatar shall present to the Ministry of Labour and Transport Management, His Majesty's Government of Nepal the recruitment offers from employers in the State of Qatar for employment of Nepalese manpower. The Ministry of Labour and Transport Management, His Majesty's Government of Nepal shall endeavour to meet such applications within its available means and resources.
2. If an employer in the State of Qatar wishes to recruit and employ manpower of special qualifications, he shall specify these in his application to the Ministry of Civil Service Affairs and Housing in the State of Qatar.
3. The Qatari employer may, either by himself or by authorising a representative from among his staff/ or through a recruitment office licensed to so by the Ministry of Civil Service Affairs and Housing, follow

up and complete all the procedures required to select the workers and their travel from the Kingdom of Nepal to the State of Qatar.

*Article (4)*

Recruitment offers must state the required qualifications, experiences, and specializations. It must also include the duration of contract, the conditions of employment, especially the salary, end of service gratuity, probationary period, work conditions and the facilities regarding transport and accommodation, as well as all information which may enable the workers to decide on signing employment contract.

*Article (5)*

The Ministry of Labour and Transport Management, His Majesty's Government of Nepal shall take necessary measures to facilitate the procedures of medical tests, acquiring passports or travel permits for workers desiring to work in the State of Qatar and shall provide them with adequate information on conditions of employment, cost and standard of living in Qatar.

*Article (6)*

- 1) 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.
- 2) The employer shall be exempted from paying the return passage of the worker in the following two cases:
  - I- In case of resignation before the expiration of the contract
  - II- In the event he commits a breach resulting in his dismissal from work without notice and without end of service gratuity in accordance with the provision of the Qatari Labour Law.

*Article (7)*

1. The terms and conditions of employment of Nepalese workers in the State of Qatar shall be defined in individual employment contract between the employer and the worker as in the appended model. The contract shall specify the basic employment conditions, and the rights and obligations of both parties, provided they do not contradict with

those stipulated in the provisions of this agreement and the Qatari Labour Law.

2. The employment contract shall be in four (4) original copies in both Arabic, Nepali and English languages. One copy shall be kept by the employer and one copy shall be given to the worker. The third copy shall be filed at the Ministry of Civil Service Affairs and Housing in the State of Qatar, and the fourth copy at the Ministry of Labour and Transport Management of His Majesty's Government of Nepal.

*Article (8)*

The individual employment contract shall also provide in detail the employer's obligations regarding the worker's accommodation, the kind of this accommodation or paying accommodation allowances to the workers, and medical treatment.

*Article (9)*

The Arabic text of the employment contract shall prevail and will be the one recognized by the Ministry of Civil Service Affairs and Housing and the competent courts in the State of Qatar. The employer is not allowed to introduce any changes in the provisions of the employment contract unless it gives more benefit to the worker, subject to the approval of the Ministry of Civil Service Affairs and Housing of the State of Qatar.

*Article (10)*

Employment contracts concluded in Qatar shall be authenticated by the Ministry of Civil Service Affairs and Housing and the Embassy of the Kingdom of Nepal in Doha. Contracts concluded in the Kingdom Nepal shall be authenticated by the Ministry of Labour and Transport Management and the Embassy or Consulate of the State of Qatar in the Kingdom of Nepal.

*Article (11)*

The competent body within the Ministry of Civil Service Affairs and Housing in the State of Qatar shall monitor the implementation of this agreement.

In the event of any dispute between the employer and the worker arising from the employment contract, the complain (claim) shall be submitted to the concerned body within the Ministry of Civil Service Affairs and Housing for amicable settlement. In the event this amicable settlement fails, the dispute shall be referred to the competent judicial authorities in the State of Qatar.

*Article (12)*

The employment contract expires at the date of expiry of its duration without the need for a prior notice. If however, the employer desires the continuation of the contract, he shall notify the worker in writing expressing his desire to renew the employment contract at least thirty (30) days before the expiry date of the contract.

*Article (13)*

The worker is entitled to remit his salary savings to the Kingdom of Nepal in accordance with the financial regulations of the State of Qatar.

*Article (14)*

The parties hereto shall form a Joint Committee comprised of not more than three (3) representatives from each side to undertake the following:

1. Coordination between the two Governments in connection with the implementation of this Agreement and to take the necessary actions in this regard.
2. Interpretation of the provisions of this Agreement in the event of any difference related thereto; and settle any difficulty which may arise from its implementation.
3. Submission of recommendations for review or amendment of all, or in any of the articles of this Agreement, or part thereof, whenever it is necessary, and the Joint Committee shall meet once every two years, or as may be necessary, at a time and place may be agreed upon. The Committee should set up its working procedures.

*Article (15)*

The provisions of this Agreement may be amended by mutual consent of the government.

*Article (16)*

This Agreement enters into force from the date the two countries exchange the instruments of ratification, and shall remain valid for a period of four years and thereafter renewed automatically for other subsequent periods, unless either party notifies the other party in writing about its desire for termination at least (6) months prior to its expiry date.

IN WITNESS WHEREOF, the undersigned being duly authorized by their respective Governments have hereunto signed and sealed this Agreement.

Done at Doha on 11/2/1426 A.H. corresponding to 21\3\2005 in the Arabic, Nepali and English languages, both being equally authentic. In case of divergence, the English text shall prevail.

For His Majesty's  
Government of Nepal

For the Government of  
the State of Qatar



## **Annex 13: Memorandum of Understanding between Nepal and the United Arab Emirates**

### **Memorandum of Understanding between the Government of Nepal and the Government of United Arab Emirates in the Field of Manpower**

The Government of Nepal (GoN) and the Government of United Arab Emirates (UAE) (herein after referred to as the 'Parties').

Bearing in mind the friendly and cooperative relations existing between the two countries and their people;

Desiring to enhance the existing friendly relations between the two countries by developing the cooperation in the field of manpower based on the principles of mutual benefit;

Recognizing the benefit to be derived by both countries from close cooperation in the field of manpower;

Pursuant to the prevailing laws and regulations in the respective countries. Have agreed as follows:

#### *Article 1*

The term 'manpower' means the entire temporary contractual expatriate workers employed in the UAE, which includes skilled, semi-skilled as well as workers who have to leave UAE to the country of origin after termination of individual labour contract.

#### *Article 2*

The provisions of this Memorandum of Understanding (MoU) shall be implemented by the Ministry of Labour in the UAE and the Ministry of Labour and Transport Management in Nepal.

#### *Article 3*

Recruitment of manpower in Nepal and its entry into UAE shall be regulated in accordance with the relevant laws, rules and procedures of the two countries.

#### *Article 4*

1. Employer shall be responsible for Placement and Recruitment of

- manpower from Nepal and such placement and recruitment shall be done through mutual selection process according to the needs.
2. The Nepalese expatriate workers shall enjoy protection in relation to the placement of service, accommodation, social and health service as well as other facilities prevailing according to the rule and regulation in UAE.
  3. The employer shall provide the periodic information about Nepalese expatriate workers to the Embassy of Nepal in Abu Dhabi. Such information should be shared first when an expatriate is selected as workers.
  4. When a demand letter is issued by UAE employer to the Nepalese manpower agencies recognized by the government of Nepal, that information shall be published for the notice of the concerned authorities in Nepal.

#### *Article 5*

The application for workers shall state the required specifications and qualifications for the jobs and types of jobs needed. It shall include the conditions of employment especially the salary, accommodation, transportation and any other relevant terms.

#### *Article 6*

The terms and conditions of employment of workers in UAE shall be defined by a contract between the worker and the employer. This contract shall clearly state the rights and obligations of two sides and shall be in line with the provisions of the Labour law and regulations and shall be authenticated by the Ministry of Labour of UAE.

#### *Article 7*

The Nepali, Arabic and English texts of contract shall be equally authentic texts recognized by the Ministry of Labour and the law courts in the UAE. In case of any dispute arising in relations to the provisions of the Labour contract between the employer and the worker; the Arabic texts shall prevail when the dispute is referred to the authorities concerned in UAE.

#### *Article 8*

1. Nepalese expatriate workers shall have the right to transfer their earnings and savings from the state of employment to their state of origin. Such transfer shall be made in conformity with applicable rules and regulations of the state concerned.

2. UAE shall take appropriate measures to facilitate such transfers.

*Article 9*

In case of any dispute raised between the employers and the workers, complaint shall be presented to the competent department in the Ministry of labour in UAE to endeavor for an amicable settlement. If no amicable settlement is reached, the complaint shall be referred for settlement to the competent judicial authorities in the UAE.

*Article 10*

1. The two parties shall establish a joint committee to take care of the follow up of the implementation of this Memorandum of Understanding (MoU).
2. The committee shall be composed of at least, three 3 members from each party, and shall meet annually or when it is deemed necessary, alternately in Nepal and UAE.

*Article 11*

1. This Memorandum of Understanding (MoU) shall enter into force on the date of signature and shall be in force for a period of four years and shall be automatically extended for four years (4) consecutively unless it is terminated in writing by either party giving three months (3) notice in advance.

In witness thereof the undersigned being duly authorized by their respective governments have signed this Memorandum of Understanding (MoU).

Done in Kathmandu, Nepal on July 3 in the year of Two Thousand and Seven. Done in Arabic, English and Nepali languages, all the texts are being equally authentic.

For the Government of the  
United Arab Emirates

Dr. Ali Bin Abdullah Al-Kaabi  
Minister for Labour

For the Government of Nepal  
Ramesh Lekhak

State Minister of Labour  
Transport Management

## **Annex 14: Memorandum of Understanding between the Government of Nepal and the South Korea**

### **Memorandum of Understanding between the Ministry of Labor and Transport Management, Government of Nepal and the Ministry of Labor of the Republic of Korea on the Sending of Workers to the Republic of Korea under the Employment Permit System**

The Ministry of Labor and Transport Management, Government of Nepal and the Ministry of Labor of the Republic of Korea (hereinafter referred to as the 'Parties'),

- Respecting the principle of equality and mutual benefit,
- Desiring to enhance the existing friendly relations between the two countries through cooperation in the field of labor affairs and human capacity building, and
- Recognizing the benefits to be derived from such cooperation by both countries,

Have reached the following understanding.

#### ***Paragraph 1. Purpose***

The purpose of this Memorandum of Understanding (hereinafter referred to as 'MOU') is to establish a concrete framework for cooperation between the Parties and to increase transparency and efficiency in the process of sending Nepali workers to the Republic of Korea, by setting out the provisions for the Parties to follow concerning the sending of workers under the Employment Permit System for Foreign Workers (hereinafter referred to as the 'EPS') in the Republic of Korea.

#### ***Paragraph 2. Definitions***

For the purposes of this MOU

- (1) The term 'employer' refers to a business owner who obtains permission from the Ministry of Labor of the Republic of Korea (hereinafter referred to as the 'MOL') to employ foreign workers pursuant to the Act on Foreign Workers' Employment of the Republic of Korea (hereinafter referred to as the 'Foreigner Employment Act') or a person who carries out specific tasks as a proxy of the business owner.
- (2) The term 'job seeker' refers to a Nepali national who wants to work

- in the Republic of Korea pursuant to the Foreigner Employment Act.
- (3) The term 'worker' refers to a person who has signed or intends to sign a labor contract with an employer in the Republic of Korea for the purpose of working in the Republic of Korea for a certain period pursuant to the Foreigner Employment Act.
  - (4) The term 'sending agency' refers to an agency, which has the authority to recruit, select and send workers who want to be employed in the Republic of Korea pursuant to the Foreigner Employment Act.
  - (5) The term 'receiving agency' refers to an agency which has the authority to coordinate and manage with sending agency matters pertaining to the entry of workers in the Republic of Korea pursuant to the Foreigner Employment Act.
  - (6) The term 'steering committee' refers to a committee formed under the Ministry of Labor and Transport Management, Government of Nepal (hereinafter referred to as the 'MOLTM') to look after matters pertaining to recruitment, selection and sending of the Nepali job seeker to the Republic of Korea under the EPS.

Both Parties will comply with the following provisions to meet the purpose of this MOU.

***Paragraph 3. Sending Agency and Receiving Agency***

- (1) The MOLTM shall be the primary Nepali government agency responsible for recruiting, selecting and sending Nepali workers to the Republic of Korea. However, in implementing this MOU, the Parties agree that the Department of Labor and Employment Promotion (hereinafter referred to as the 'DOLEP') will be designated by the MOLTM to act as the sending agency.
- (2) The DOLEP, as a department under the control of the MOLTM, is directly involved in recruiting, selecting and sending Nepali workers and no other organization than the DOLEP can take part in the process under this MOU.
- (3) The MOL shall be the primary Korean government agency responsible for receiving Nepali workers to the Republic of Korea. However, in implementing matters pertaining to entry of workers, the Parties agree that Human Resource Development Service of Korea (hereinafter referred to as the 'HRD Korea') will be designated by the MOL to act as the receiving agency.

***Paragraph 4. Sending Fee***

- (1) The DOLEP shall receive the actual amount of money (hereinafter

- referred to as 'sending fee') that will be spent in carrying out recruiting, selecting and sending operations from each worker.
- (2) Pursuant to item 1 of this Paragraph, the DOLEP shall provide the MOL with information on the total amount of sending fee to be collected per worker as well as a breakdown of the sending fee upon signing of MOU. The MOL can request the DOLEP to reduce the sending fee if the MOL deems that the sending fee includes unnecessary items or is assessed to be excessively high when considering Nepali economic situation (such as national income) and other countries' sending fees.
  - (3) The MOLTM and the DOLEP shall publicly announce in Nepal the sending fee that was agreed with the MOL.
  - (4) When changes in the sending fee which has originally been agreed upon are inevitable due to inflation or other reasons, the DOLEP shall inform the MOL and consult on the matter in advance.

**Paragraph 5. Advertisement of the EPS**

- (1) The MOLTM and the DOLEP shall actively advertise the key contents and employment procedure of the EPS in Nepal. Specifics such as the advertisement method and date shall be jointly decided by the Parties and carried out accordingly.
- (2) The MOLTM and the DOLEP shall assist the MOL or the HRD Korea in advertising the EPS through various means in Nepal.

**Paragraph 6. Conduct and Administration of the Korean Language Proficiency Test**

- (1) The MOL shall conduct the EPS Korean Language Proficiency Test (hereinafter referred to as the 'EPS-KLT') for an objective selection of job seekers.
- (2) General matters concerning the execution of the EPS-KLT such as public notification of the test, question selection and the conducting of the test shall be carried out by a test agency authorized and announced by the MOL.
- (3) Qualifications for the EPS-KLT are as follows:
  - (a) Persons aging from 18 to 39 (inclusive);
  - (b) Persons who have not been convicted of a crime punishable by imprisonment of a more severe punishment;
  - (c) Persons who have no record of deportation or departure orders from the Republic of Korea ; and
  - (d) Persons who are not restricted from departure from Nepal
- (4) The MOLTM and the DOLEP shall advertise the EPS-KLT via public

media for its smooth implementation and support the execution of the EPS-KLT pursuant to the 'implementing Agreement between the MOLTM and the MOL on the Conduct and Administration of the EPS-KLT' to be signed later by the Parties.

- (5) Other various matters related to the conduct and administration of the EPS-KLT such as the frequency, the execution procedure, test contents and limits of examinees shall be decided by the parties and carried out accordingly.

**Paragraph 7. Recruitment and Selection of Job Seekers**

- (1) The DOLEP shall prepare job seekers' roster and send it to the HRD Korea.
- (2) When the DOLEP prepare the job seekers' roster, the DOLEP shall select job seekers who satisfy the following qualifications:
- (a) Persons who have passed the EPS-KLT recognized by the MOL; and
  - (b) Persons who have passed the medical examination determined by the MOL

If the number of qualified job seekers exceeds the total number allocated to Nepal, the selection shall be made according to a method agreed on by the Parties.

- (3) The job seekers' roster prepared by the DOLEP shall include the following information:
- (a) Personal information (name, nationality, date of birth, identification number, passport number, etc.);
  - (b) Desired employment conditions (wage, type of occupation, etc.);
  - (c) Personal and career background (education, work experience, etc.); and
  - (d) Information on the EPS-KLT taken by the jobs seekers (test agency, test date and score).
- (4) The DOLEP shall actively cooperate to shorten the time incurred in issuing a passport to facilitate a job seeker to obtain one in advance and submit its copy when making a job application.
- (5) The DOLEP shall inform the job seekers that their inclusion in the job seekers' roster shall not guarantee them a job in the Republic of Korea.

**Paragraph 8. Management of Job Seekers' Roster**

- (1) The job seekers' roster is valid for one year.
- (2) The DOLEP shall confirm the willingness to find jobs, the contact address, etc. of the job seekers listed in the job seekers' roster every four months, and shall inform the HRD Korea of any changes

- and the reason for the changes.
- (3) The HRD Korea can return the roster to the DOLEP if there is any error in the job seekers' roster; and the DOLEP shall correct those mistakes and send the roster back to the HRD Korea.
  - (4) If there is any misconduct or false declaration in the process of the recruitment and selection of job seekers, the MOL can impose certain restrictions such as exclusion of the job seeker in question from the job seekers' roster or reduction of the allocated number of job seekers to Nepal.
  - (5) The MOL shall inform the MOLTM of the types of occupations allowed under the EPS and the allocated number of job seekers each year.

#### ***Paragraph 9. Labor Contract***

- (1) The DOLEP shall announce job seekers selected by employers via public media in Nepal immediately after receiving the employer's draft of the labor contract from the HRD Korea.
- (2) The DOLEP shall explain the content of the labor contract to each worker so that he/she can fully understand it and shall decide whether or not to sign the labor contract at his/her own will.
- (3) The DOLEP shall inform the HRD Korea whether the labor contract has been signed by the worker, and if not, the reason for not signing within 14 days of receiving the contract. If the position on signing of the labor contract is not conveyed within the given period, the HRD Korea make it not signed through consultation with the employer.
- (4) If any job seeker cancels the already signed labour contract or does not sign the labor contract two times without any due reason, the MOL can exclude him/her from the job seekers' roster.
- (5) The DOLEP shall provide the original copy of the labor contract to the worker who signed it and have him/her bring it when arriving in the Republic of Korea.

#### ***Paragraph 10. Preliminary Education***

- (1) The MOLTM and the DOLEP shall conduct a preliminary education immediately for the workers who signed the labor contract, and shall decide the content and period of the education through prior consultation with the MOL.
- (2) The MOLTM shall select a public agency (agencies) to be entrusted with the preliminary education through prior consultation with the MOL.



- (3) If any worker is found, after his/her arrival in the Republic of Korea, not to have received the preliminary education or have but not from the designated agency, the MOL can deport the worker and take necessary measures such as reduction of the allocated number of job seekers.

***Paragraph 11. Visa Issuance***

- (1) The DOLEP shall inform the workers immediately after receiving the Certificate for Confirmation of Visa Issuance (hereinafter referred to as 'CCVI') from the HRD Korea and apply for visa for the worker at the Korean diplomatic mission in Nepal with the required documents.
- (2) The HRD Korea can cancel the labor contract of any worker who does not apply for visa within the three months of the validity period of the CCVI.
- (3) If any worker issued with the CCVI decides not to enter the Republic of Korea or is unable to enter the Republic of Korea due to reasons such as the employer's cancellation of the labor contract, the DOLEP shall return the CCVI of the worker to the HRD Korea.
- (4) If the number of workers with the CCVI who decide not to enter the Republic of Korea for personal reasons exceeds a certain percentage or the returning of the CCVI is not carried out in accordance with item 3 of this Paragraph, the MOL may take necessary measures such as reduction of the allocated number of job seekers.
- (5) The DOLEP is the single organization authorized to assist in visa application, and no other organizations can intervene in the process.

***Paragraph 12. Entry of Workers***

- (1) Any worker who has signed a labor contract shall enter the Republic of Korea on the date determined by the MOL and the HRD Korea according to each employment training schedule. The Parties shall actively cooperate to ensure that he/she enter the Republic of Korea on that date.
- (2) The DOLEP, in order to prevent the postponement of the entry of any worker into the Republic of Korea due to shortage of flights, shall take necessary measures such as making advance flight reservations.
- (3) All workers shall carry the original copies of his/her labor contract and medical examination certificate when entering the Republic of Korea and submit them at the request of the relevant public officials.

**Paragraph 13. Provision of Information on the Sending Process**

The DOLEP, in order to provide information on the progress of the workers' preparations for their entry into the Republic of Korea, shall input it into the EPS Network at every stage. Information shall include the purchase of social insurance, the completion of preliminary education, the application for visa, etc.

**Paragraph 14. Employment and Sojourn Management**

- (1) The MOL shall conduct employment training and medical examination for workers before they start to work. The organization(s) in charge of the employment training and medical examination shall be determined by the MOL.
- (2) If a worker is found unfit according to the result of the medical examination, the MOL can take adequate measures such as notifying the Ministry of Justice of the Republic of Korea.
- (3) If a worker returns to Nepal prior to the termination of his/her labor contract period due to disqualification in the medical examination, maladjustment to the workplace, and etc, he/she shall bear the general expenses including the airfare for his/her departure from the Republic of Korea. If he/she is unable to afford such expenses, the MOLTM shall assist the cost of his/her return to Nepal.
- (4) A worker can be allowed to work in the Republic of Korea for up to three years after the date of entry, and each labor contract period shall not exceed one year.
- (5) The MOLTM and the DOLEP shall ensure that all workers observe all laws of the Republic of Korea including the Foreigner Employment Act and the Immigration Control Act. The MOL shall protect foreign workers' rights in accordance with related labor laws of the Republic of Korea.
- (6) The MOLTM and the DOLEP shall make active efforts to prevent a worker's absence without leave from his/her workplace and to provide post-managerial support such as facilitating his/her voluntary departure from the Republic of Korea upon the expiry of employment period.
- (7) If the number of Nepali workers absenting themselves from their workplace without leave exceeds a certain percentage, the MOL may take necessary measures such as reduction of the allocated number of job seekers.
- (8) The MOLTM and the DOLEP shall make active efforts for efficient post-

management via measures such as dispatching post-management officers to the Republic of Korea. The specifics such as the date and process concerning the dispatching of the post-management officers as well as their roles shall be determined by future consultations between the Parties.

***Paragraph 15. Computer Infrastructure***

- (1) The DOLEP shall establish a computer infrastructure in consultation with the MOL to facilitate the transmission of the job seekers' roster, the signing of each labor contract between every worker and employer, and the protection of their personal information.
- (2) The MOL shall provide the DOLEP with the necessary information and programmes to facilitate the establishment of the computer infrastructure.

***Paragraph 16. Preferential Treatment for Voluntary Leavers***

The DOLEP shall make efforts for the reemployment of workers that voluntarily left the Republic of Korea via Korea's Program for Voluntary Departure by listing them first in the job seekers' roster.

***Paragraph 17. Efforts to Eliminate the Illegal Stay of Workers***

- (1) The Parties will make active efforts to ensure the departure of any worker illegally staying in the Republic of Korea and to prevent future workers from staying illegally.
- (2) If the number of the Nepali workers staying illegally in the Republic of Korea exceeds a certain percentage, the MOL may take necessary measures such as reduction of the allocated number of job seekers.

***Paragraph 18. Support in the Sending Process***

- (1) The MOL, in order to support the process of sending Nepali workers to the Republic of Korea, may dispatch officers of the MOL and the HRD Korea (hereinafter referred to as 'resident officer') to Nepal.
- (2) The resident officers, through consultations with the MOLTM and the DOLEP, may supervise, assess, advice and coordinate the labor sending process at all times.
- (3) The MOLTM and the DOLEP shall provide active cooperation such as issuance of long-term visa and provision of related materials in order to facilitate the tasks of the resident officers.
- (4) The specific roles and duties of the resident officers in the sending

process shall be determined through future consultations between the Parties.

- (5) The EPS Steering Committee shall monitor and assess the duties and roles of the DOLEP and parties involved in the sending process; and report to the concerning authorities.

**Paragraph 19. Grandfather Clause Due to Abolishment of the Industrial Trainee System**

With the abolishment of the Industrial Trainee System starting January 1, 2007, the status of Nepali workers who have entered the Republic of Korea under the system shall be decided by the Korean government.

**Paragraph 20. General Provisions**

- (1) The MOLTМ shall actively cooperate when a Ministry's labor attache or a resident officer requests information or consultation in order to perform their work.
- (2) The representatives of the Parties, jointly with relevant authorities if necessary, may visit and assess each other's organizations at times decided on by the Parties to appraise the implementation of Paragraphs 2 through 18.
- (3) The MOLTМ shall make active efforts to eliminate malpractices in the process of sending workers such as operating a complaint center where malpractices can be reported.
- (4) In the process of sending workers, the Parties may add supplementary provisions in writing by mutual consent.
- (5) The DOLEP and the HRD Korea may sign an implementing instrument regulating specific matters regarding the process of sending Nepali workers to the Republic of Korea.
- (6) Any differences or disputes which may arise in the interpretation or implementation of this MOU shall be resolved through consultations between the Parties.

**Paragraph 21. Effectuation and Term of Validity**

- (1) This MOU shall come into effect on the date of the signature by the Parties.
- (2) This MOU will remain in effect for two years; however, if either side does not comply with the terms of the MOU or if there is any justifiable reason such as occurrence of irregularities in the process of sending and receiving workers, the Parties may decide to suspend or terminate the validity of this MOU.

(3) This MOU may be amended or extended based on mutual written consent between the Parties.

Signed in two original copies on July 23, 2007 in the English language.

Minister of State for Labor  
and Transport Management

*For the Ministry of Labor and  
Transport Management*

Minister of Labor

*For the Ministry of Labor  
of the Republic of Korea*

## **Annex 15: Memorandum of Understanding between Nepal and Bahrain**

### **Memorandum of Understanding in the Areas of Labour and Occupational Training between the Government of Nepal and the Government of the Kingdom of Bahrain**

#### **Introduction**

The Government of the Kingdom of Bahrain and the Government of Nepal (hereinafter referred to as the 'Party' or 'Parties'), considering the strong ties between the two countries and their strong belief in the importance of the further development of such ties to serve their mutual interests and based on their desire to enhance mutual co-operation in the areas of labour and occupational training on the basis of the principles of equality and mutual interests, in accordance with this Memorandum and the laws applicable in both countries.

The parties agreed as follows:

#### *Article 1*

The introduction shall be an integral part of this Memorandum.

#### *Article 2*

The Government of the Kingdom of Bahrain authorizes the Ministry of Labour and the Government of Nepal authorizes the Ministry of Labour and Transport Management to sign this Memorandum and to put it into effect.

#### *Article 3*

For the purposes of this Memorandum of Understanding:  
'Employees' shall mean all expatriate workers employed in the Kingdom of Bahrain under temporary employment contracts for a fixed period of time, following the expiry of which such workers shall leave the Kingdom of Bahrain to Nepal.

#### *Article 4*

The parties shall co-operate and exchange expertise between them in the areas of labour and occupational training, benefit from human resources in the two countries and make use of the services of Nepalese

Recruitment Agencies specialized in the areas of labour permitted by the Government of Nepal to provide their services to employers in the Kingdom of Bahrain who wish to avail of their services.

*Article 5*

Contracts shall be entered into between Bahraini employers and Nepalese Recruitment Agencies mentioned in the preceding Article which shall stipulate the basic principles of co-operation between them.

*Article 6*

A contract shall be entered into between a Bahraini employer and the Nepalese employee, which shall stipulate the rights and obligations of both employer and employee in accordance with the provisions of the laws and regulations applicable in the Kingdom of Bahrain.

*Article 7*

A contract signed by a Bahraini employer and a Nepalese employee shall include the fundamental details provided for in the Labour Law for the private sector applicable in the Kingdom of Bahrain and it shall mention the name of the employer, his/her establishment, term of the contract, type of work, agreed wage and any other details that both employer and employee deem appropriate to include therein.

*Article 8*

A Nepalese employee shall have the rights to convert his/her salary to any currency recognized in the Kingdom of Bahrain and to remit to any other country in accordance with the laws and regulations applicable in the Kingdom of Bahrain.

*Article 9*

A Nepalese Recruitment Agencies shall ensure that the contracted employees are trained properly before their departure to the Kingdom of Bahrain and that they are medically fit in accordance with the laws and regulations applicable in the Kingdom of Bahrain. A Bahraini employer shall have the rights to test the competence and suitability of an employee during the probationary period set forth in the Labour Law for the Private sector. If it is proved that an employee is not suitable in accordance with the requirements of the contract, the Nepalese Recruitment Agencies shall be responsible for replacing him immediately upon receiving notice from the employer.

*Article 10*

Before the arrival of a Nepalese employee in the Kingdom of Bahrain, a Bahraini employer shall take all the necessary measures related to his/her employment and residence in accordance with the laws and regulations applicable in the Kingdom of Bahrain.

*Article 11*

The Government of the Kingdom of Bahrain shall provide all possible facilities for the Nepalese Recruitment Agencies registered with the Government of Nepal if they need to establish offices or companies in the Kingdom of Bahrain.

*Article 12*

In the area of exchange of labour and occupational training, the Parties mutually agreed as follows:

- A. To exchange data, information and statistics related to the labour market; exchange of expertise, research, programmes and studies related to integrating young men and women in the labour market; exchange of visits by officials and experts with a view to exploring the capabilities and resources of either Party and to benefit therefrom.
- B. To co-operate in the area of occupational training especially in the training plans, methods, studies and research and skill level measurement systems and the methods of the implementation in accordance with needs of the labour market in both countries; to seek the recruitment of skilled technical employees in all fields and benefit from training institutes in both countries.

*Article 13*

The Parties agreed to set up a joint technical committee to be entrusted with formulating the agreed co-operation programmes and follow up the implementation and the evaluation thereof and solve all problems arising from the implementation of this Memorandum. The Committee shall hold meetings at least once in a year, or whenever there is a need therefore alternately in the capitals of the two countries.

*Article 14*

All disputes arising from the implementation of a contract signed by a Nepalese Recruitment Agencies and a Bahraini employer shall be settled in an amicable manner. If such settlement is not reached, the parties may agree upon an internal arbitration of referring the matter to a competent



court in accordance with the laws and regulations applicable in the Kingdom of Bahrain. All disputes arising from the implementation of a contract signed between a Bahraini employer and a Nepalese employee shall be settled in accordance with procedures set forth in the Labour Law for the Private Sector in the Kingdom of Bahrain.

*Article 15*

The provisions of this Memorandum shall come into effect for a period of three years commencing one month after the signing thereof by the Parties. The Memorandum shall be automatically renewed for the same period unless either party gives notice to the other in writing of its desire to terminate or amend it at least three months before the expiry date thereof.

*Article 16*

This Memorandum is made on 29th Day of April 2008 A.D. at Kathmandu, Nepal in three counterparts in Arabic, Nepali and English, each of which shall have the same force and validity. In case of a dispute in connection with the interpretation of any provision of this Memorandum, the committee referred to in Article 13 of this Memorandum shall settle such dispute.

Ramesh Lekhak  
Minister of Labour and  
Transport Management

Dr. Majeed Bin Muhsin Al Alawi  
Minister of Labour

For the Government of Nepal

For the Government of the  
Kingdom of Bahrain

## Annex 16: Directive for sending Nepalis Technical Interns to Japan

### Directive (With First amendment, 2067), 2066 for sending Nepalese Technical Interns to Japan

This directive has been prepared under the provision of Article 45 of Governance Act, 2064.

(1) **Brief Name, Extension, Beginning**

- (1) Name of this directive will be remain', Directive 2066, to send Nepalese † Technical Interns (TI) in Japan.
- (2) This directive will be applicable to all Nepalese within or out side Nepal if people go against this directive.
- (3) This directive will be effective from the date of approval by the Government of Nepal.

(2) **Definition:** Unless the subject or the contexts otherwise requires in this directive

- (A) **Act Refers:** to Foreign Employment Act, 2064 (2007)
- (B) **Regulation Refers:** to Foreign employment Regulation, 2064 (2007)
- (C) **Contract Refers:** to contract in between † Technical Interns and license holder agencies or institutions.
- (D) **Agency Refers:** to agencies approved and authorized under Article 11 of Foreign Employment Act, 2064 and enlisted in this program.
- (E) **Institutions Refers:** to Federation of Nepal Chamber of Commerce and Industries (FNCCI).
- (F) **JITCO Refers:** to Japan International Training Corporation Organization.
- (G) ⊗ .....
- (H) **TIP Refers:** to Technical Internship Program.

(3) Agency/ institution Enlisting process to send † Technical Interns in Japan under JITCO,: The foreign employment agencies/ institution must be enlisted in the Ministry of Labor and Transport

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† Added by first amendment

⊗ Omitted by first amendment

Management to send † Technical Interns in Japan under JITCO.

(4) Process to send the Intern under JITCO

(1) **Pre-approval:** The enlisted sending agencies should submit application to Department of Foreign Employment (DoFE) for the pre-approval to send † Technical Interns in Japan under JITCO. It should full fill the following procedures for preapproval:-

- (a) The demand of † Interns received from supervising organization must be attested by the Nepalese Embassy of Nepal in Japan.
- (b) The copy of 'agreement' in between the agency of Nepal and Japan supervising organization of Japan concerned to † Technical Interns.
- (c) ⊗ .....
- (d) The bond as per this directive.
- (e) The name, address, phone number, Email and website of the † supervising organization.
- (f) Type and duration of training for † Technical Interns
- (g) Facility of lodging and food to the † Technical Interns.
- (h) Salary, allowance and provision of leave to the † Technical Interns
- (i) Insurance and other facility to the † Technical Interns
- (j) Medical facility for the † Technical Interns
- (k) Statement of the total expenditure to send † Technical Interns in Japan.

(2) **Permission for Advertisement:** Department of Foreign Employment (DOFE) will issue permission to advertise to the † TI sending agency which has fulfilled the requirements mentioned in the clause (1) within three days from the date of application submitted in the Department.

(3) **Subjects to be Mentioned in the Notice** : (1) The sending agencies as per the clause (2) should publish a 15 days notice to send † TI in the national daily news paper with following details:

- i. Date and reference number of pre-approval from the department
- ii. Name, address and license number along with date of the sending agency.
- iii. Name, address, phone number, E - mail and website of the

- ✦ supervising organization.
- iv. Post of the ✦ Technical Interns
- v. Number of the demand for the ✦ Technical Interns
- vi. Description of training to be taken by the Technical Interns
- vii. Minimum qualification and work experience of the ✦ Technical Interns
- viii. Provision of the lodging and food for ✦ Technical Interns
- ix. Monthly salary and allowance for ✦ Technical Interns.
- x. Daily/weekly training schedule for ✦ Technical Interns.
- xi. Required documents to be submitted with the application.
- xii. Place and last date of submission of the application.
- xiii. Insurance and medical facilities for the ✦ Technical Interns.
- xiv. The total expenditure to be paid by the ✦ Technical Interns for service charge, transportation, visa and other promotional charges.
- xv. Date, place and selection process of the ✦ Technical Interns,
- xvi. Reserved seats allocated for women, marginalized, indigenous, victim of disaster and backward etc. by the Government of Nepal as mentioned in Article (9) of the Foreign Employment Act.
- xvii. Other requirements determined by the DOFE.

**(4) Minimum qualification for the potential ✦ Technical Interns to participate in the Japan International Training Cooperation (JITCO) program**

The ✦ Technical Interns with following qualification can apply for JITCO program.

- (a) ✦ TI must be a Nepalese citizen,
- (b) One must be in between 18 to 40 years of age,
- (c) One must have working experience in the registered industries under the Ministry of Industry, industrial institution, industrial business, factories, agriculture, cooperatives, social organizations, hotel, tourism industry sector etc. The above mentioned organizations must be in operation and have been registered for at least 3 years,
- (d) The agricultural Interns must have the work experience of 2 years in the concerned area under registered institution in the Industry, Cooperative or Community based organization,
- (e) The ✦ Technical Interns must be working in same industry, business, and institution of Nepal relevant to the intended

field of the training in Japan.

- (f) The † Technical Interns must have training on Japanese language and culture,
- (g) The recommendation and the promissory letter to deploy returnee † TI must be submitted from the working organization.

#### **(5) Arrangement for Foreign Employment Permit Sticker (FEPS)**

- 1 The sending organization (SO), after the fulfillment of the above mentioned selection process must submit the application for obtaining FEPS with the following details in the Foreign Employment Department-
  - a. Pre - approval letter of the Foreign Employment Department,
  - b. Contract or agreement in between † Technical Interns and the sending agencies.
  - c. Contract or agreement paper in between † Technical Interns and the receiving organization,
  - d. copy of the bond of the Interns to come back to Nepal after the contract period,
  - e. Certificates of trainings on Japanese language and culture as well as pre-departure orientation training,
  - f. Copy of health certificate,
  - g. Copy of Insurance as per the Article 19, Sub Article 1(c) of Foreign Employment Act, 2064.
  - h. Receipt of the welfare fund fee deposited,
  - i. Copy of receipt of the promotion fee paid to the sending agency by the interns.
  - j. † Receipt of the amount paid by Technical Interns to the sending agency.
- 2 The DOFE should send the list of the approved † Technical Interns to the Nepalese Embassy, Japan as per the annex -1.

#### **(6) Responsibilities of Sending Organization (SO),**

- (1) Selection should be made for the Technical † Interns through advertisement based on the demand of JITCO from the demand of Receiving Organization (RO).
- (2) † Technical Interns interested to go under JITCO for training or Internship course in Japan should apply with the qualifications mentioned in the Article (5) and 4(3), and the advertisement of sending organization and the recommendation letter as per

Article (8) from working organization must be submitted as mentioned in the Foreign Employment Act, 2064.

- (3) The sending organization must have promissory letter from the ✦ Technical Interns that they will return back to Nepal after the contract period of training or Internship in Japan.
- (4) The working organization must assure job to the returnee Interns after Internship in Japan.
- (5) The ✦ Technical Interns must come back to the country after Internship. If not returned, the Sending Organization (SO) should inform to the Nepalese Embassy in Japan or in DOFE in Nepal. The MoLTM, Government of Nepal will cancel the certificate of the SO for JITCO program if the SO did not follow the rules.
- (6) ⊗ .....
- (7) The sending organization must have contact person or office in Japan by the approval of MOLTM in order to facilitate the ✦ Technical Interns in Japan. The contact person or office will be monitored by the Nepalese Embassy in Japan and the person is not allowed to work other than the assigned job.

**(7) Responsibilities of Industrial Institutions and Organization.**

The following requirements must be followed by the agencies to send the Technical ✦ Interns in Japan through JITCO -

- (1) Recommend the ✦ Technical Interns who have been working from last two years to the enlisted agencies. The description of the ✦ Technical Interns should be sent to the DOFE.
- (2) In the recommendation the industry should mention the name, address, age, post and working period of the Interns.
- (c) The industry must provide employment to the recommended Interns after the completion of training.
- (d) Failure to comply with article 7 (c) will lead to the legal action against the concerned industry by DOFE as well as it will also charge the total expenses of the concerned ✦ Technical Interns in case of wrong recommendation and failure to provide employment. The DOFE will take legal action if the industries recommend the wrong candidate.

**(8) Responsibilities of the Technical Interns: -**

- (1) False description should not be submitted by the applicants. If the trainees are selected on the false documents, they will be called back from Japan. The cost incurred will be charged from

- the † Technical Interns and legal action will be taken from the DOFE. These recalled will have no right to claim fee paid by him.
- (2) The † Technical Interns should return back compulsorily after they finish their training in Japan under JITCO. If not return back the legal action will be taken against the † Technical Interns as per Foreign Employment Act and regulation of the Government of Nepal.
- (3) The industrial † Technical Interns must be well disciplined at work while living in Japan and should work honestly and sincerely.
- (4) † During the training period the † Technical Interns should follow the existing rules and the regulation of Japan in addition to the followings:-
- † a) Follow the immigration rules of Japanese Government.
  - † b) Should not join the company or organization other than assigned company.
  - † c) Should not work in extra time in any company other than assigned company.
  - † d) Should not work against technical Internship Training Program guideline issued by JITCO.
- (5) The Interns must have good conduct, moral and should honor the Nepalese and Japanese culture as well.
- (6) ⊗.....
- (7) One should work compulsorily in the same industry after they return back from Japan.
- (8) † One should have training on Japanese language and culture from the authorized training institutes.
- (9) The † Technical Interns should not leave the assigned work and are not allowed to work in another company. If they do so, they have to pay back the incurred expenses and will be penalized according to the Foreign Employment Act as well.
- (10) The † Technical Interns should be in regular contact with the Embassy of Nepal in Japan and sending agency.
- (9) **The Role of Nepalese Embassy in Japan:**
- 1 The Embassy will coordinate and facilitate with JITCO & supervising organizations in Japan.
  - 2 Sending agency should certify their demand letter under JITCO from the Embassy of Nepal in Japan.
  - 3 ⊗.....

- 4 The Embassy will report to the Ministry of Foreign Affairs and MoLTM after monitoring the trainees at work.
- 5 The Embassy will undertake special efforts for the protection and solution of the † Technical Interns.
- 6 The Embassy will provide information on existing legal provision, about labor, employment immigration and visa provision of Japan to the MoLTM and Ministry of Foreign Affairs about the Technical Interns.
- 7 The Embassy will inform about the visa fee of the Technical Interns to the MoLTM.
- 8 The Nepalese Embassy will be in contact and coordinate with JITCO and the concerned authorities of Nepal and Japan to insure return of Interns incase they left assigned place or not returned after the completion of contract period.

**(10) The Role of the Supervising Organization (SO):**

- a. They will report to the Embassy of Nepal in Japan after the Technical Interns join the organization.
- b. They will provide half yearly report of the Technical Interns to the Nepalese Embassy.
- c. They will arrange to receive the † Technical Interns in the airport.
- d. They will report to the Nepalese Embassy incase the † Technical Interns left the working place, is on leave or intended to return Nepal.
- e. ⊗.....

**(11) Promotion Charge:**

- (1) Sending organizations can charge up to NRs 50,000/- as a promotion charge. It includes fee for health check up, orientation training, casual expenses, monitoring and managerial expenses.
- (2) Financial transaction and income & expenditure of sending agency (including amount from receiving organization) must be transparent, fair and well managed as per the Nepalese rules and regulation.

(12) ⊗.....

(13) ⊗.....

- 14 **Representatives:** The enlisted sending agency for JITCO should appoint the representative in Japan with the approval



of the MoLTM to take care of trainee, to monitor, to manage & to promote the labor market. The ministry will decide the number of the representatives as per the location and number of Technical Interns. The representatives will have following duties under the supervision of the Embassy-

- (a) To facilitate the † Technical Interns,
- (b) To help to solve if any problem arises,
- (c) If the † Technical Interns violated the contract and left the assigned job and worked out side, he will inform to JITCO and the Nepalese Embassy in Japan and the Government of Nepal through concerned agencies.
- (d) To help the Interns to return back Nepal after the completion of the contract period.
- (e) To promote the market for † Technical Interns in Japan.

**(15) Pre -departure Training:**

- † 1. Enlisted agencies should obtain prior approval from the Department of Foreign Employment to send technical Interns under Japan International Technical Cooperation Organization (JITCO) and publish notice in this regard. It should conduct primary selection from among applications submitted within the stipulated time period.
- † 2. Language test of the primarily selected applicants should be done by the JICA ALUMNI ASSOCIATION OF NEPAL (JAAN). Sending organizations should submit the list of the primarily selected applicants to the Department of Foreign Employment.
- † 3. Department of Foreign Employment should make arrangement for conducting Japanese language and culture test after getting list of the primarily selected applicants from the sending organizations.
- † 4. Sending organizations should invite representative from the receiving organization to conduct final selection from among successful applicants in JAAN test in the presence of the representative from the Department of the Foreign Employment (DOFE).

**(16) Renewal of the Enlisted Agencies:**

1. Followings are the criteria for the renewal of the authorized agencies or institutions:
  - a. Sample of certificate of the enlisted agencies or institutions authorized to send Nepalese technical Interns under JITCO will be as mentioned in the annex-2.
  - ✦ b. Sending agency should renew the enlisted certificate within January of every year from the Department of Foreign employment. If failure to do this will automatically lead to their removal from the list.
  - c. Agencies or institutions fulfilling the criteria for the renewal should pay ✦ NRS 10,000 annually to the Foreign Employment Promotion Board (FEPB).
  - d. Federation of Nepal Chamber of Commerce and Industries (FNCCI) should renew its Memorandum of Understanding (MOU) with the Ministry of Labor and Transport Management (MoLTM) annually.
  - e. The MOU entered between MoLTM and FNCCI before the promulgation of this directive will be recognized as the authority certificate as per this directive and it should be renewed annually within July 16 (at the end of Srawan) for every year beginning from fiscal year 2067/68 (2010/11).
  - ✦ f. If any agency or institution fails to send technical Interns to Japan under JITCO within 6 months of collecting fee from the technical Interns or within 3 months of obtaining labor permission, it will be removed from the sending list and it will have to pay compensation to the technical Interns as per the Foreign Employment Act 2064 (2007). If the concerned agency or institution fails to provide the compensation to the technical Interns, Department of Foreign Employment will provide compensation from its collateral or bank guarantee.
  
- ✦ **2. Enlistment Management:** Department of Foreign Employment will publish public notice to enlist the interested agencies authorized to conduct foreign employment business as per the Article 11 of Foreign Employment Act 2064 and eligible as per the Foreign Employment Regulation 2064 on January of every year. Among the applicants the Department can select and enlist the agencies as per the existing rules. Within the valid period of

renewal, once enlisted agencies will not require to renew its certificate.

- ✦ 3. Institutions interested to be enlisted as per this directive will have to pay NRS 20,000 to the FEPB and should submit application with required documents.

**(17) Monitoring**

A high level official monitoring committee will be formed as mentioned below to send ✦ Technical Interns under JITCO-

- |   |                    |
|---|--------------------|
| (a) Minister: Ministry of Labor, Transport, and Management                    | -Coordinator       |
| (b) Secretary – Ministry of Home Affair                                       | -Member            |
| (c) Secretary – Ministry of Foreign Affair                                    | -Member            |
| (d) Secretary – Ministry of Industry  | -Member            |
| (e) Secretary – Ministry of Agriculture and Cooperatives                      | -Member            |
| (f) Representative, Foreign Employment Agencies/Organizations (one from each) | -Member            |
| (g) Secretary Ministry of Labor, Transportation, and Management               | -Member Secretary. |

2 The Duties, Responsibilities & Rights of Monitoring Committee

- (a) The committee will monitor the activities concerned with the ✦ Technical Interns, receive report & give direction to reform. It will also give direction to create conducive environment and proper management of the program in a transparent manner.
- (b) It will advise the MoLTM to overcome the hurdles and ambiguity in the proper implementation of this directive.

**(18) Action Against the Irregularities and Corruption.**

- (i) Action will be taken against the sending agencies for illegal & irregular activities and not sending trainees on time as per the Foreign Employment Act and Regulation, 2064.
- (ii) Legal action will be taken against both parties involved in charging & paying service charges in excess of what has been stipulated in this directive as a matter of corruption.

**(19) Miscellaneous**

Miscellaneous activities not mentioned in the directive will be done as

per the Foreign Employment Act & Regulation 2064 and the agreement between MoLTM & JITCO.

(20) **Rights to Resolve the Hurdles**

The right to resolve the hurdles & confusion will remain with the MoLTM.

(21) **Amendment and Cancellation:**

The right of amendment and cancellation of the directive will remain with MoLTM.

## Annex 17: Status of Ratification of Some Major International Conventions by Nepal and Destination Countries

Countries	Ratification, Accession (a) (with date of ratification)										
	Nepal	Qatar	Saudi Arabia	United Arab Emirates	Lebanon	Jordan	Malaysia	Japan	Republic of Korea	India	
International Convention on the Rights of All Migrant Workers and Members of their Families, 1990	x	x	x	x	x	x	x	x	x	x	
International Covenant on Economic, Social and Cultural Rights, 1966	√ 1991a	x	x	x	√ 1972a	√ 1975	x	√ 1979	√ 1990a	√ 1979a	
Optional Protocol to the International Covenant on Civil and Political Rights, 1966	√ 1991a	x	x	x	x	x	x	x	x	x	
Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, 1989	√ 1998a	x	x	x	x	x	x	x	x	x	
International Covenant on Civil and Political Rights, 1966	√ 1991a	x	x	x	√ 1972a	√ 1975	x	√ 1979	√ 1990a	√ 1979a	
Convention on the Elimination of All Forms of Discrimination Against Women, 1979	√ 1991	√ 2009a	√ 2000	√ 2004a	√ 1997a	√ 1992	√ 1995a	√ 1985	√ 1984	√ 1993	
Convention on the Elimination of All Forms of Racial Discrimination, 1966	√ 1971a	√ 1976a	√ 1997a	√ 1974a	√ 1971a	√ 1974a	x	√ 1995a	√ 1978	√ 1968	
Convention on the Rights of Child, 1989	√ 1990	√ 1995	√ 1996a	√ 1997a	√ 1991	√ 1991	√ 1995a	√ 1994	√ 1991	√ 1992a	

Note: '√' indicates 'ratified' followed by 'the year of ratification'

'x' indicates 'not ratified'

Conventions denounced after ratification have also been indicated along with the year of denunciation.

Countries Conventions	Ratification, Accession (a) (with date of ratification)									
	Nepal	Qatar	Saudi Arabia	United Arab Emirates	Lebanon	Jordan	Malaysia	Japan	Republic of Korea	India
Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1950 (a)	√ 2002a	x	x	x	x	√ 1976a	x	√ 1958a	√ 1962a	√ 1953
Final Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1950 (b)	x	x	x	x	x	x	x	√ 1958a	√ 1962a	√ 1953
Convention relating to the Status of Refugees, 1951	x	x	x	x	x	x	x	√ 1981a	√ 1992a	x
Protocol Relating to the Status of Refugees, 1967	x	x	x	x	x	x	x	√ 1982a	√ 1992a	x
Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime, 2000 (b)	x	x	√ 2007	x	√ 2005	x	x	Signed 2002, not ratified	Signed 2000, not ratified	√ 2011
Convention on the Reduction of Statelessness, 1961	x	x	x	x	x	x	x	x	x	x
Convention relating to the Status of Stateless Persons, 1954	x	x	x	x	x	x	x	x	√ 1962a	x
<b>ILO Conventions</b>										
No. 1 — Hours of Work (Industry) Convention, 1919	x	x	√ 1978	√ 1982	√ 1977	x	x	x	x	√ 1921
2 — Unemployment Convention, 1919	x	x	x	x	x	x	x	√ 1922	x	Denounced in 1938

Countries Conventions	Ratification, Accession (a) (with date of ratification)										
	Nepal	Qatar	Saudi Arabia	United Arab Emirates	Lebanon	Jordan	Malaysia	Japan	Republic of Korea	India	
4 — Night Work (Women) Convention, 1919 (shelved)	x	x	x	x	x	x	x	x	x	V 1921	
5 — Minimum Age (Industry) Convention, 1919	x	x	x	x	x	x	x	Denounced in 2000	x	V 1955	
6 — Night Work of Young Persons (Industry) Convention, 1919	x	x	x	x	x	x	x	x	x	V 1921	
7 — Minimum Age (Sea) Convention, 1920	x	x	x	x	x	x	x	Denounced in 2000	x	x	
8 — Unemployment Indemnity (Shipwreck) Convention, 1920	x	x	x	x	V 1993	x	x	V 1955	x	x	
9 — Placing of Seamen Convention, 1920	x	x	x	x	V 1993	x	x	V 1922	x	x	
10 — Minimum Age (Agriculture) Convention, 1921	x	x	x	x	x	x	x	Denounced in 2000	x	x	
11 — Right of Association (Agriculture) Convention, 1921	x	x	x	x	x	x	x	x	x	V 1923	
14 — Weekly Rest (Industry) Convention, 1921	V 1986		V 1978	x	V 1962	x	x	x	x	V 1923	
15 — Minimum Age (Trimmers and Stokers) Convention, 1921 (shelved)	x	x	x	x	Denounced in 2003	x	x	Denounced in 2000	x	V 1922	
16 — Medical Examination of Young Persons (Sea) Convention, 1921	x	x	x	x	x	x	x	V 1924	x	V 1922	
17 — Workmen's Compensation (Accidents) Convention, 1925	x	x	x	x	V 1977	x	x	x	x	x	

Countries Conventions	Ratification, Accession (a) (with date of ratification)										
	Nepal	Qatar	Saudi Arabia	United Arab Emirates	Lebanon	Jordan	Malaysia	Japan	Republic of Korea	India	
18 — Workmen's Compensation (Occupational Diseases) Convention, 1925	x	x	x	x	x	x	x	√ 1928	x	√ 1927	
19 — Equality of Treatment (Accident Compensation) Convention, 1925	x	x	x	x	√ 1977	x	x	√ 1928	√ 2001	√ 1927	
21 — Inspection of Emigrants Convention, 1926 (shelved)	x	x	x	x	x	x	x	√ 1928	x	√ 1928	
22 — Seamen's Articles of Agreement Convention, 1926	x	x	x	x	x	x	x	√ 1955	x	√ 1932	
26 — Minimum Wage-Fixing Machinery Convention, 1928	x	x	x	x	√ 1962	x	x	√ 1971	√ 2001	√ 1955	
27 — Marking of Weight (Packages Transported by Vessels) Convention, 1929	x	x	x	x	x	x	x	√ 1931	x	√ 1931	
29 — Forced Labour Convention, 1930	√ 2002	√ 1998	√ 1978	√ 1982	√ 1977	√ 1966	√ 1957	√ 1932	x	√ 1954	
30 — Hours of Work (Commerce and Offices) Convention, 1930	x	x	√ 1978	x	√ 1977	x	x	x	x	x	
32 — Protection against Accidents (Dockers) Convention (Revised), 1932	x	x	x	x	x	x	x	x	x	√ 1947	
41 — Night Work (Women) Convention (Revised), 1934 (shelved)	x	x	x	x	x	x	x	x	x	Denounced in 1950	
42 — Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934	x	x	x	x	x	x	x	Denounced in 1974	x	√ 1964	
45 — Underground Work (Women) Convention, 1935	x	x	√ 1978	x	√ 1962	x	x	√ 1956	x	√ 1938	



Countries Conventions	Ratification, Accession (a) (with date of ratification)										
	Nepal	Qatar	Saudi Arabia	United Arab Emirates	Lebanon	Jordan	Malaysia	Japan	Republic of Korea	India	
50 — Recruiting of Indigenous Workers Convention, 1936 (shelved)	x	x	x	x	x	x	√ 1957	√ 1938	x	x	
52 — Holidays with Pay Convention, 1936	x	x	x	x	√ 1962	x	x	x	x	x	
53 — Officers' Competency Certificates Convention, 1936	x	x	x	x	x	x	x	x	√ 2003	x	
58 — Minimum Age (Sea) Convention (Revised), 1936	x	x	x	x	√ 1993	x	x	Denounced in 2000	x	x	
59 — Minimum Age (Industry) Convention (Revised), 1937	x	x	x	x	√ 1977	x	x	x	x	x	
64 — Contracts of Employment (Indigenous Workers) Convention, 1939 (shelved)	x	x	x	x	x	x	√ 1957	x	x	x	
65 — Penal Sanctions (Indigenous Workers) Convention, 1939 (shelved)	x	x	x	x	x	x	√ 1957	x	x	x	
69 — Certification of Ships' Cooks Convention, 1946	x	x	x	x	x	x	x	√ 1975	x	x	
71 — Seafarers' Pensions Convention, 1946	x	x	x	x	√ 1993	x	x	x	x	x	
73 — Medical Examination (Seafarers) Convention, 1946	x	x	x	x	√ 1993	x	x	√ 1955	√ 1992	x	
74 — Certification of Able Seamen Convention, 1946	x	x	x	x	√ 1993	x	x	x	x	x	
77 — Medical Examination of Young Persons (Industry) Convention, 1946	x	x	x	x	√ 1977	x	x	x	x	x	

Countries Conventions	Ratification, Accession (a) (with date of ratification)										
	Nepal	Qatar	Saudi Arabia	United Arab Emirates	Lebanon	Jordan	Malaysia	Japan	Republic of Korea	India	
78 — Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946	x	x	x	x	√ 1977	x	x	x	x	x	
80 — Final Articles Revision Convention, 1946	x	x	x	x	x	x	x	√ 1954	x	√ 1947	
81 — Labour Inspection Convention, 1947	x	√ 1976	√ 1978	√ 1982	√ 1962	√ 1969	√ 1963	1953	√ 1992	√ 1949	
87 — Freedom of Association and Protection of the Right to Organise Convention, 1948	x	x	x	x	x	x	x	√ 1965	x	x	
88 — Employment Service Convention, 1948	x	x	x	x	√ 1977	x	√ 1974	√ 1953	√ 2001	√ 1959	
89 — Night Work (Women) Convention (Revised), 1948	x	x	√ 1978	√ 1982	√ 1962	x	x	x	x	√ 1950	
90 — Night Work of Young Persons (Industry) Convention (Revised), 1948	x	x	√ 1978	x	√ 1962	x	x	x	x	√ 1950	
95 — Protection of Wages Convention, 1949	x	x	x	x	√ 1977	x	√ 1961	x	x	x	
96 — Fee-Charging Employment Agencies Convention (Revised), 1949	x	x	x	x	x	x	x	Denounced in 1999	x	x	
97 — Migration for Employment Convention (Revised), 1949	x	x	x	x	x	x	x	x	x	x	
98 — Right to Organise and Collective Bargaining Convention, 1949	√ 1996	x	x	x	√ 1977	√ 1968	√ 1961	√ 1953	x	x	
100 — Equal Remuneration Convention, 1951	√ 1976	x	√ 1978	√ 1997	√ 1977	√ 1966	√ 1997	√ 1967	√ 1997	√ 1958	

Countries Conventions	Ratification, Accession (a) (with date of ratification)										
	Nepal	Qatar	Saudi Arabia	United Arab Emirates	Lebanon	Jordan	Malaysia	Japan	Republic of Korea	India	
102 — Social Security (Minimum Standards) Convention, 1952	x	x	x	x	x	x	x	√ 1976	x	x	
105 — Abolition of Forced Labour Convention, 1957	√ 2007	√ 2007	√ 1978	√ 1997	√ 1977	√ 1958	Denounced in 1990	x	x	√ 2000	
106 — Weekly Rest (Commerce and Offices) Convention, 1957	x	x	√ 1978	x	√ 1977	√ 1979	x	x	x	x	
107 — Indigenous and Tribal Populations Convention, 1957	x	x	x	x	x	x	x	x	x	√ 1958	
108 — Seafarers' Identity Documents Convention, 1958	x	x	x	x	x	x	x	x	x	√ 2005	
109 — Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958	x	x	x	x	√ 1993	x	x	x	x	x	
111 — Discrimination (Employment and Occupation) Convention, 1958	√ 1974	√ 1976	√ 1978	√ 2001	√ 1977	√ 1963	x	x	√ 1998	√ 1960	
115 — Radiation Protection Convention, 1960	x	x	x	x	√ 1977	x	x	√ 1973	x	√ 1975	
116 — Final Articles Revision Convention, 1961	x	x	x	x	x	√ 1963	x	√ 1971	x	√ 1962	
117 — Social Policy (Basic Aims and Standards) Convention, 1962	x	x	x	x	x	√ 1963	x	x	x	x	
118 — Equality of Treatment (Social Security) Convention, 1962	x	x	x	x	x	√ 1963	x	x	x	√ 1964	
119 — Guarding of Machinery Convention, 1963	x	x	x	x	x	√ 1964	√ 1974	√ 1973	x	x	

Countries Conventions	Ratification, Accession (a) (with date of ratification)										
	Nepal	Qatar	Saudi Arabia	United Arab Emirates	Lebanon	Jordan	Malaysia	Japan	Republic of Korea	India	
120 — Hygiene (Commerce and Offices) Convention, 1964	x	x	x	x	√1977	√1965	x	√1993	x	x	
121 — Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980]	x	x	x	x	x	x	x	√1974	x	x	
122 — Employment Policy Convention, 1964	x	x	x	x	√1977	√1966	x	√1986	√1992	√1998	
123 — Minimum Age (Underground Work) Convention, 1965	x	x	√1978	x	x	Denounced in 1998	√1974	x	x	√1975	
124 — Medical Examination of Young Persons (Underground Work) Convention, 1965	x	x	x	x	x	√1966	x	x	x	x	
127 — Maximum Weight Convention, 1967	x	x	x	x	√1977	x	x	x	x	√2010	
131 — Minimum Wage Fixing Convention, 1970	√1974	x	x	x	√1977	x	x	√1971	√2001	x	
133 — Accommodation of Crews (Supplementary Provisions) Convention, 1970	x	x	x	x	√1993	x	x	x	x	x	
134 — Prevention of Accidents (Seafarers) Convention, 1970	x	x	x	x	x	x	x	√1978	x	x	
135 — Workers' Representatives Convention, 1971	x	x	x	x	x	√1979	x	x	√2001	x	
136 — Benzene Convention, 1971	x	x	x	x	√2000	x	x	x	x	√1991	
138 — Minimum Age Convention, 1973	√1997	√2006	x	√1998	√2003	√1998	√1997	√2000	√1999	x	

Countries Conventions	Ratification, Accession (a) (with date of ratification)										
	Nepal	Qatar	Saudi Arabia	United Arab Emirates	Lebanon	Jordan	Malaysia	Japan	Republic of Korea	India	
139 — Occupational Cancer Convention, 1974	x	x	x	x	√2000	x	x	√1977	x	x	
141 — Rural Workers' Organisations Convention, 1975	x	x	x	x	x	x	x	x	x	√1977	
142 — Human Resources Development Convention, 1975	x	x	x	x	√2000	√1979		√1986	√1994	√2009	
143 — Migrant Workers (Supplementary Provisions) Convention, 1975	x	x	x	x	x	x	x	x	x	x	
144 — Tripartite Consultation (International Labour Standards) Convention, 1976	√1995	x	x	x	x	√2003	√2002	√2002	√1999	√1978	
147 — Merchant Shipping (Minimum Standards) Convention, 1976	x	x	x	x	√1993	√2004	x	√1983	x	√1996	
148 — Working Environment (Air Pollution, Noise and Vibration) Convention, 1977	x	x	x	x	√2005	x	x	x	x	x	
150 — Labour Administration Convention, 1978	x	x	x	x	√2005	√2003	x	x	√1997	x	
152 — Occupational Safety and Health (Dock Work) Convention, 1979	x	x	x	x	√2004	x	x	x		x	
155 — Occupational Safety and Health Convention, 1981	x	x	x	x	x	x	x	x	√2008	x	
156 — Workers with Family Responsibilities Convention, 1981	x	x	x	x	x	x	x	√1995	√2001	x	

Countries Conventions	Ratification, Accession (a) (with date of ratification)										
	Nepal	Qatar	Saudi Arabia	United Arab Emirates	Lebanon	Jordan	Malaysia	Japan	Republic of Korea	India	
159 — Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983	x	x	x	x	√2000	√2003	x	√1992	√1999	x	
160 — Labour Statistics Convention, 1985	x	x	x	x	x	x	x	x	√1997	√1992	
162 — Asbestos Convention, 1986	x	x	x	x	x	x	x	√2005	√2007	x	
169 — Indigenous and Tribal Peoples Convention, 1989	√2007	x	x	x	x	x	x	x	x	x	
170 — Chemicals Convention, 1990	x	x	x	x	√2006	x	x	x	√2003	x	
172 — Working Conditions (Hotels and Restaurants) Convention, 1991	x	x	x	x	√2000	x	x	x	x	x	
174 — Prevention of Major Industrial Accidents Convention, 1993	x	x	√2001	x	√2005	x	x	x	x	√2008	
176 — Safety and Health in Mines Convention, 1995	x	x	x	x	√2000	x	x	x	x	x	
181 — Private Employment Agencies Convention, 1997	x	x	x	x	x	x	x	√1999		x	
182 — Worst Forms of Child Labour Convention, 1999	√2002	√2000	√2001	√2001	√2001	√2000	√2000	√2001	√2001	x	
185 — Seafarers' Identity Documents Convention (Revised), 2003	x	x	x	x	x	√2004	x	x	√2007	x	
187 — Promotional Framework for Occupational Safety and Health Convention, 2006	x	x	x	x	x	x	x	√2007	√2008	x	

Source: United Nations Treaty Collection and NORMLEX Database of International Labour Standards <accessed on 21 December 2011>

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*Governing Labour Migration in Nepal* looks at the legal and policy framework that regulates migrant labour originating in Nepal. It examines the country's laws related to foreign employment, bilateral agreements signed with destination countries and international conventions ratified, all of which directly or indirectly govern labour migration from Nepal. Analysing the implications and relevance of the legal and policy regimes currently in place and identifying the gaps therein, the book provides recommendations to help in the convergence of the welfare and rights standards enshrined in the various instruments. This volume will be a valuable addition to the literature on foreign labour migration, a subject that is gaining greater significance the world over. First published in 2012, the book has been updated to reflect all developments till the time of its publication in August 2017.



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