



Deception, Arrest and Detention of Nepali Migrant Workers in Malaysia

Sadikshya Bhattarai, Jeevan Baniya
Sachin Karki & Chhatra Limbu



Centre for the Study of
Labour and Mobility

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ABBREVIATIONS AND ACRONYMS

BLMA	Bilateral Labour Migration Agreement
DoFE	Department of Foreign Employment
FEB	Foreign Employment Board
GCC	Gulf Cooperation Council
GoN	Government of Nepal
MoLESS	Ministry of Labour, Employment and Social Security
MoFA	Ministry of Foreign Affairs
MoU	Memorandum of Understanding
MRC	Migrant Resource Centre
PNCC	Pravasi Nepali Coordination Committee
PRA	Private recruitment agency
RMW	Returnee migrant worker
SaMi	Safer Migration Programme

CHAIRPERSON'S DESK

I am thrilled to present the report titled 'Deception, Arrest and Detention of Nepali Migrant Workers in Malaysia'. This report covers the service delivery data maintained by Pravasi Nepali Coordination Committee (PNCC) of Nepali migrant workers detained/jailed in Malaysia from 2020 to 2023 and presents the challenges and experiences of Nepali returnee migrant workers who faced imprisonment, detention and subsequent deportation in Malaysia. Ensuring access to justice and sustainable reintegration of migrant workers who have faced imprisonment, detention and deportation require collective action and careful decisions based on accurate information. PNCC supports migrant workers by providing paralegal services and implementing rescue, repatriation, and reintegration activities. Recognizing the importance of documentation, PNCC began recording migrant workers' cases in 2012 using Microsoft Excel. During COVID-19, a rescue form was created to address recording difficulties. Following its success, PNCC introduced the Case Management Information System (CMIS), which has recorded over 42,000 cases to date.



We extend our sincere gratitude to the Open Society Policy Centre for their invaluable financial support. We are also thankful to the study team at the Centre for the Study of Labour and Mobility (CESLAM) at Social Science Baha, including Bhimkala Limbu and Manju Gurung, for their support in data collection and Manesh Shrestha for reviewing the final paper. Special thanks to PNCC's Executive Director Som Prasad Lamichhane, Project Coordinator cum Data Analyst Bijaya Basyal, Aviman Singh Lama, PC and the Outreach Officer and case worker, who significantly contributed to this study. We also acknowledge the financial support from the Safer Migration Programme (SaMi) during the establishment of the shelter in 2013 as well as the support received from the FEB, NRNA, Qatar, Hamro Samman Project funded by Winrock/USAID, and Amnesty International, Sweden. Lastly, we are grateful to returnee migrant workers who participated in the interviews and gave their invaluable time and insights.

I expect the report to be a useful for policymakers, civil society, trade unions, and those who work in labour migration and believe it will help inform initiatives and programmes targeted at migrant workers who have faced imprisonment, detention and deportation.

A handwritten signature in black ink, appearing to read 'Padam Bahadur KC'. The signature is stylized and written over a horizontal line.

Padam Bahadur KC
Chairperson

EXECUTIVE SUMMARY

Labour migration is crucial for Nepali households and the national economy, providing vital income. However, despite the economic benefits of labour migration, migrant workers often encounter significant challenges pre-migration, in destination country and after returning home undermining their wellbeing and rights. Among the various challenges migrant workers face, imprisonment, their access to justice in destination country and at home and difficulties in economic and psychosocial reintegration after return remains crucial ones, making them unable to fully realise the benefits of their migration abroad. Focusing on migration of Nepali workers to Malaysia, this study seeks to examine the situation regarding access to justice of migrant workers imprisoned in Malaysia and their economic and psychosocial reintegration upon return to Nepal. This study was conducted using mixed method consisting of a review of existing policies, data and publications, an analysis of 758 individual cases of imprisonment in Malaysia registered between 2020 and 2023 recorded at the Pravasi Nepali Coordination Committee (PNCC), in-depth interviews with migrant workers, and key informant interviews.

Findings

Demographic description of migrant workers: Among migrant workers who were imprisoned in Malaysia between 2020 and 2023, 758 individual jail-related cases were registered at the PNCC during this period and 64 per cent of those were married. More than 60 per cent had completed secondary level education. Of them, 28 per cent were from Madhesh province followed by 27 per cent from Koshi province and 14 per cent from Lumbini province.

Migration process: Around 84 per cent of migrant workers used private recruitment agencies (PRAs) for their migration to Malaysia, while 15 per cent migrated independently or with help from relatives and/or agents. More than 50 per cent had paid between NPR 100,000 and 200,000 in recruitment fees. At the time of registration of their grievances at the PNCC, 72.5 per cent did not have a valid labour permit.

Reason for arrest: A significant number of Nepali migrant workers had been imprisoned in Malaysia due to issues related to documentation (61 per cent) followed by fights with colleagues or employers (8 per cent) and criminal activities such as murder, theft, illegal drug trafficking, gambling, the sale of counterfeit alcohol and kidnapping (3 per cent). More than 80 per cent of Nepali migrant workers arrested for document-related issues

lacked valid documents because they absconded from the employer with whom their work permit was tied and/or switched employers, 9 per cent did not have valid visa or work permit, 3 per cent were deceived by agents or recruitment agencies in Nepal and 1 per cent did not have a passport or identification with them. Most migrant workers were found to leave the employer or company due to exploitative employment conditions as well as contract substitution and wage theft.

Challenges faced during incarceration and in access to justice: The study finds that one of the major barriers preventing Nepali migrant workers from accessing justice is their lack of awareness regarding their rights, the legal processes and the available avenues for seeking support. Likewise, language barrier also hinders access to justice of imprisoned Nepali migrant workers. Nepali migrant workers also reported facing challenges in contacting their families and support networks while in jail in Malaysia. They were also victims of fraud and deception from law enforcement officials and other individuals who would offer them false promises of assistance in exchange for exorbitant fees.

Economic and psychosocial reintegration after return: Returnee migrant workers (RMWs) reported being either unemployed, engaged in subsistence farming, working as daily wage workers and/or planning to re-migrate for employment. They also reported feeling stressed because of their imprisonment. Some of the RMW interviewees in this study highlighted that they were able to cope with the significant psychosocial toll of their incarceration largely due to the support they received from their family and friends. But there is a lack of mechanism to access support for psychosocial health for imprisoned migrant workers in Malaysia or after their return to Nepal.

Recommendations

Based on the above discussion, the following recommendations are made.

Strengthen monitoring and regulation of recruitment agencies: It is crucial for the Government of Nepal (GoN) to enhance monitoring and regulation of recruitment agencies to prevent contract substitution and to ensure migrant workers receive promised salaries thus reducing the risk of imprisonment due to undocumented status. Additionally, private recruitment agencies (PRAs) should be held accountable for discrepancies in work, employer, or contract terms.

Reduce recruitment fees and associated expenses: The Nepali government must work with Malaysia to implement the 'employer pays' principle outlined in the Memorandum of Understanding (MoU) with Malaysia. Including civil society organisations, trade unions and other stakeholders in joint committees to oversee and evaluate the MoU with Malaysia is crucial for the protection of rights of migrant workers.

Incorporate information on rules and regulation of destination country in pre-departure orientation: The pre-departure orientation training (PDOT) for Nepali migrant workers must cover destination country's regulations including drug laws, risks of substance abuse, consequences of early job termination, and available support from organisations like Nepali diplomatic missions and Non-governmental Organisations (NGOs). Such information should be disseminated through digital platforms, employment service centres, and migrant resource centres (MRCs).

Provide post-arrival orientation for Nepali migrant workers: Nepali migrant workers in Malaysia should be provided with orientation on local rules, legal consequences of substance use, workplace conflicts and absconding from contracted work after arrival in Malaysia. The Embassy of Nepal in Malaysia can use its weekly Facebook programme to disseminate this information.

Enhance soft skills of Nepali migrant workers: Migrant workers should receive training in soft skills, including communication, destination countries' language, teamwork, adaptability, patience, negotiation, and cultural awareness, among others, before migrating to their destination countries. The GoN should include soft skill trainings for the migrant workers at the National Vocational Training Academy (NVTA).

Enhance monitoring for exploitation of Nepalis in jail and at detention centres: Nepali diplomatic missions should coordinate with local law enforcement agencies to monitor and combat exploitation of Nepali migrant workers in jails and at detention centres. Awareness campaigns in Nepali diaspora communities and partnerships with local organisations are essential to educate and raise awareness about these fraudulent practices.

Ensure access to legal services: Addressing legal challenges for Nepali migrant workers in Malaysia involves the high costs of legal representation which delay cases and stress workers and their families. Implementing the Directive for Legal Defence of Nepali Workers is vital, with funds needed for diplomatic missions to provide support, especially for workers lacking valid labour permits. Signing a MoU for mutual legal assistance with Malaysia is also essential for protecting Nepali migrant workers.

Facilitate return of Nepali migrant workers: The GoN should allocate funds to assist Nepali migrant workers without valid permits, particularly those from lower socio-economic backgrounds who face wage theft and lack the means to pay for their return home after experiencing various hardships abroad. The GoN should develop an action plan for the return and repatriation of Nepali migrant workers, including those in distress, undocumented, and in detention or jails.

Enhancing shelter support for RMWs: Providing shelter support for RMWs, especially those who have been incarcerated, is crucial for their reintegration. The GoN should establish shelter homes across provinces or enhance civil society organisations' (CSOs') capacity to provide shelter support for distressed migrant workers effectively.

Provide psychosocial support to RMWs: The GoN should expand the Safer Migration (SaMi) programme's psychosocial counselling to support RMWs in coping with stress and trauma from their experiences and facilitate their reintegration into family and the community.

Generate further evidence and knowledge on imprisoned migrant workers or those in detention in destination countries: Data and more evidence is needed on migrant workers in various destination countries' prisons and detention centres, especially regarding their access to justice, return processes, and reintegration back home. Data maintained by CSOs and trade unions, like the PNCC, can provide evidence to support policymaking.

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1. BACKGROUND

Labour migration has become a defining aspect of Nepal's socio-economic landscape, with a significant portion of its labour force seeking opportunities abroad.¹ In 2021, 77 per cent of the 2.1 million Nepali nationals abroad had migrated for employment purposes.² This pattern is further evidenced by the data from the Department of Foreign Employment (DoFE), which issued over 770,000 labour permits to Nepali workers seeking jobs overseas in 2022/23.³ Employment abroad has been a stable source of income for Nepalis who have dealt with limited (decent) job opportunities at home. As such, remittance has been playing a crucial role in the economic well-being of the migrant workers' households.⁴ However, despite the promise of better opportunities, migrant workers often encounter numerous challenges in destination countries including fraud and deception regarding salary and job, occupational safety and health risks, and forced labour, among others.⁵ It is evident that foreign employment will continue to be a significant part of Nepali households, making it crucial to ensure the safety, dignity, and benefit of Nepali migrant workers. The protection of migrants' rights, their dignified return and reintegration through the utilisation of social and economic remittances and the experiences and knowledge they gain, as well as ensuring their psychosocial wellbeing, has become increasingly important.⁶

1 Sadikshya Bhattarai, Bipin Upadhyaya and Sanjay Sharma, *State of Migration in Nepal* (Kathmandu: Centre for the Study of Labour and Mobility, 2023); Ministry of Labour, Employment and Social Security (MoLESS), *Nepal Labour Migration Report 2022* (Kathmandu: Government of Nepal, 2022).

2 Bhattarai, Upadhyaya and Sharma, *State of Migration in Nepal*.

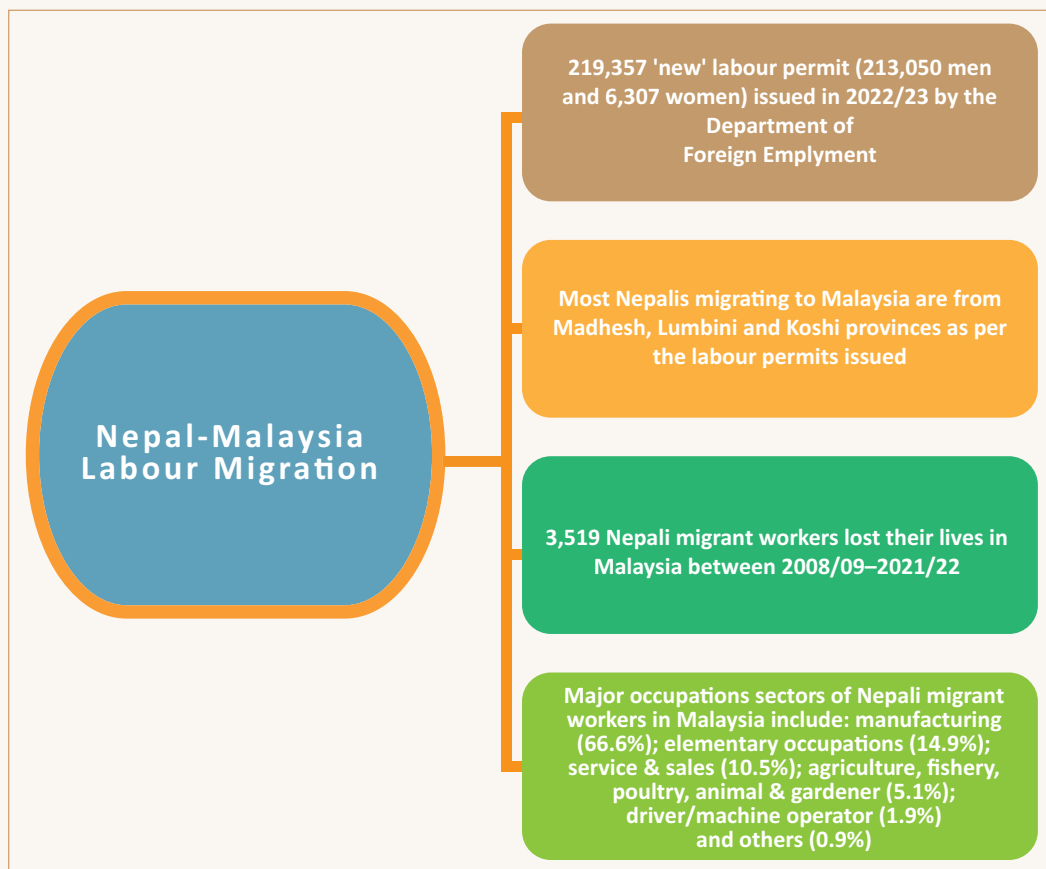
3 MoLESS, *Nepal Labour Migration Report 2022*. This figure does not include those headed to India or those who use irregular channels to migrate abroad.

4 Bhattarai, Upadhyaya and Sharma, *State of Migration in Nepal*; Dilip Ratha, Vandana Chandra, Eung Ju Kim, Sonia Plaza, and William Shaw, *Migration and Development Brief 39: Leveraging Diaspora Finances for Private Capital Mobilization* (Washington, DC: World Bank, 2023).

5 Jeevan Baniya, Sanjit Shrestha, Sadikshya Bhattarai, Dogendra Tumsa, Bipin Upadhyaya, Rajib Neupane and Prasansa Thapa, *Unscrupulous Recruitment and Precarious Employment of Nepali Migrant Workers* (Kathmandu: PNCC/CESLAM, 2023); Bhattarai, Upadhyaya and Sharma, *State of Migration in Nepal*; Arjun Kharel, Sudhir Shrestha, Sadikshya Bhattarai, Pauline Oosterhoff and Karen Snyder, 'Assessment of Outreach and Engagement with Prospective Migrants by the Agencies Recruiting Labourers for Foreign Employment,' *IDS Working Paper 571* (Brighton: Institute of Development Studies, 2022).

6 Baniya et al, *Unscrupulous Recruitment and Precarious Employment*; Sadikshya Bhattarai, Jeevan Baniya, Sanjit Shrestha, Prasansa Thapa, Rajib Neupane, Dogendra Tumsa, Sita Nepali and Sita Mademba, *Return, Weak Reintegration, and Remigration: A Study of Nepali Migrant Workers* (Kathmandu: PNCC/CESLAM, 2023); UN Women, *Returning Home: Challenges and Opportunities for Women Migrant Workers in the Nepali Labour Market* (Kathmandu: UN Women, 2019).

Figure 1: Snapshot: Migration from Nepal to Malaysia for employment



Source: Ministry of Labour, Employment and Social Security (MoLESS), 'Countrywise Labour Approval for FY 2079/80,' *Department of Foreign Employment*, accessed 9 June 2024, <https://dofe.gov.np/yearly.aspx>; Bhattarai, Upadhyaya and Sharma, *State of Migration in Nepal*; MoLESS, *Nepal Labour Migration Report 2022*.

Note: Recruitment agencies or the migrant worker themselves process the migration of workers who fall under the 'new entry' category of labour migration. Returning migrants are placed under the 're-entry' category since they only have to renew their labour permits and normally do it themselves or with minimal support from intermediaries. 'Re-entry' permits are issued to those migrant workers returning to the same job on a renewed contract.

Amidst the challenges Nepali migrant workers face during the migration cycle, studies in Nepal and elsewhere have highlighted the barriers in the access to justice of migrant workers in destination countries.⁷ Likewise, migrant workers who have faced distress in the destination country, resulting in a 'failed' migration experience and an inability to

⁷ Sadikshya Bhattarai, Jeevan Baniya, Dogendra Tumsa and Nilima Rai, *Return, Wage Theft and Access to Justice of Nepali Migrant Workers during COVID-19* (Kathmandu: SARTUC/ITUC-NAC/CESLAM, 2022); Sadikshya Bhattarai, Jeevan Baniya and Dogendra Tumsa, *Impact of COVID-19 on Nepali Migrant Workers: A Case Study of Migrant Workers in Saudi Arabia, the UAE, Qatar and Malaysia* (Kathmandu: PNCC/CESLAM, 2022); Eleanor Taylor-Nicholson, Renuka Balasubramaniam and Natasha Mahendran, *Migrant Workers' Access to Justice: Malaysia* (Kuala Lumpur: Bar Council Malaysia, 2019).

gain expected economic benefits, face further challenges in economic and psychosocial reintegration after returning home.⁸ However, there is paucity of studies that examines the situation of access to justice of migrant workers who are jailed in destination countries and the challenges they encounter in reintegrating into their communities, both economically and psychosocially, upon their release and return home.

A recent study reported that among the various challenges that Nepali migrant workers face, issues related to being jailed due to undocumented status in destination countries or criminal activities is a crucial one.⁹ Within this context, using the case study along the Nepal-Malaysia migration corridor, this study aims to explore the situation of access to justice of migrant workers who were jailed in Malaysia and the challenges of their economic and psychosocial reintegration upon returning home. More specifically, this study aims to:

- Identify the challenges migrant workers face in Malaysian jails and detention centres including legal, social and psychological aspects of the challenges.
- Explore the situation of the economic and psychosocial reintegration of migrant workers upon release and return home.
- Make policy recommendations for ensuring access to justice for these migrant workers and facilitating their reintegration after return.

8 Bhattarai et al, *Return, Weak Reintegration, and Remigration*.

9 Baniya et al, *Unscrupulous Recruitment and Precarious Employment*.

2. METHODOLOGY

This study primarily utilises a mixed-method approach for the collection, analysis and interpretation of data. It consists of a review of existing policies, data and publications, analysis of quantitative administrative data from the Pravasi Nepali Coordination Committee (PNCC), in-depth interviews with migrant workers and key informant interviews, which helped provide a grounded perspective regarding the challenges migrant workers in jail face including access to justice and reintegration in their home country.

Literature review

A review of existing literature, academic papers and reports of government and non-governmental organisations related to issues of migrant workers in jails in destination countries and their challenges in economic and psychosocial reintegration upon returning home was conducted. Similarly, policies related to complaint/grievance registration and handling and migrant workers' access to justice were also reviewed. The literature review enabled the triangulation and validation of findings from primary data collection by comparing and contrasting them with existing literature.

Analysis of quantitative administrative data

The PNCC has collected quantitative data through the cases registered with it requesting support for either rescue or shelter placement of migrant workers in distress. The data also includes support provided to migrant workers in jails in destination countries. A total of 758 individual jail-related cases for Malaysia were registered at the PNCC between 2020 and 2023. The study analysed this quantitative data to generate descriptive statistics of migrant workers who were jailed in Malaysia across different variables such as the organisation or individual who referred migrant workers (or the case) to the PNCC, documentation status of victims in Nepal and in the destination country at the time of case registration, process of migration, among others. While there were initially 758 cases in the PNCC record, some variables had missing data. Consequently, the analysis is based solely on the available data for each variable.

In-depth interviews

In-depth phone interviews were carried out with 13 male migrant workers who had been in jail in Malaysia and have returned to Nepal. They were identified through the PNCC

database. The PNCC has been providing paralegal services to migrant workers who encounter challenges and abuses during the labour migration process and their families since 2009. It also provides shelter support to extremely vulnerable men returnees, including those who were jailed in destination countries. The research participants were purposively selected from among the returnee migrant workers (RMWs) who were registered in the PNCC database or who have sought shelter service. Malaysia has a small proportion of Nepali women migrant workers compared to men.¹⁰ Also, the PNCC provides shelter services only to male migrant workers and opened up services for women migrant workers only during the COVID-19 pandemic. Hence, the overall share of women migrant workers who sought support from the PNCC in the case of Malaysia is small. However, all women migrant workers in the database were selected for the interview but the research team was not able to conduct interviews with them due to incorrect numbers or the listed numbers not being reachable.

Key informant interviews

Key informant interviews were carried out with the PNCC's outreach officers, a case worker and its Executive Director. Their insights were important to understand the various forms of challenges Nepali migrant workers who are in jail face, and the barriers to access justice as well as in developing concrete and practical recommendations for access to justice.

Limitations of the study

While this study provides valuable insights into the experiences of Nepali migrant workers who have been in jail in Malaysia, there are certain limitations that affect the generalisability of the findings and should be considered while interpreting the results. Firstly, the study focuses on one destination country, so its findings may not be applicable to Nepali migrant workers in other countries as experiences and challenges vary greatly depending on the legal, social and economic context of each country of destination. Likewise, the study conducted interviews with only 13 RMWs. This small sample size may not be representative of the broader population of Nepali migrant workers in jail, limiting the generalisability of the findings. And lastly, the study does not include women migrant workers, which results in a gap in understanding the gender-specific experiences of migrant workers.

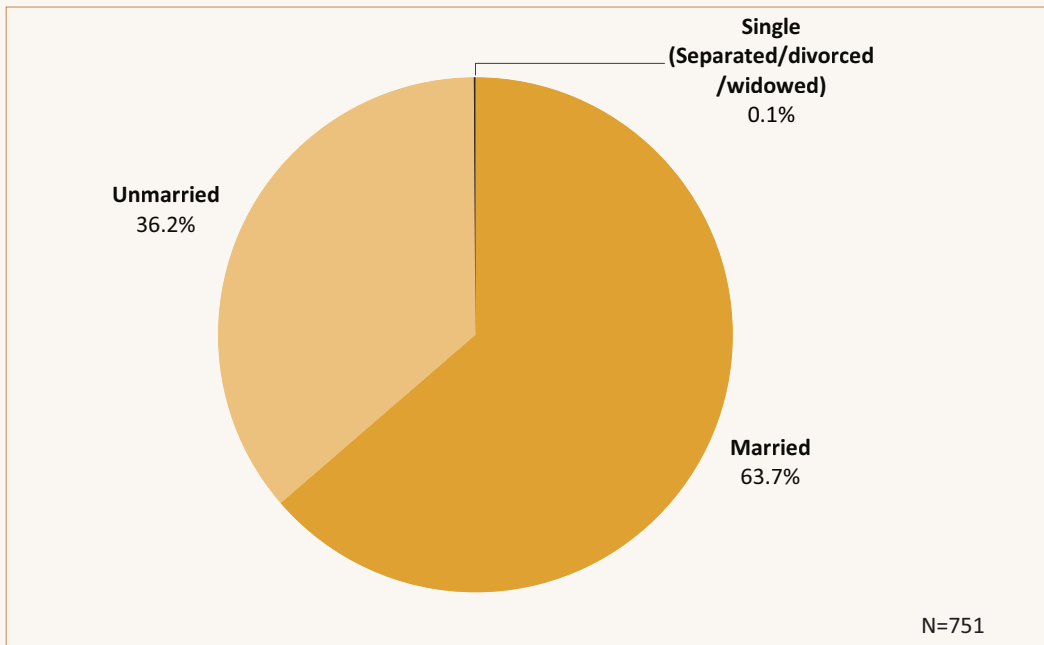
10 Bhattarai, Upadhyaya and Sharma, *State of Migration in Nepal*.

3. FINDINGS

3.1. Demographic description of migrant workers

This section delves into the demographic characteristics of migrant workers who were jailed in Malaysia and who have sought assistance from the PNCC. Almost two-thirds were married while one-third was unmarried (Figure 2). In regard to educational qualification, around 60 per cent of migrant workers had secondary level education (grades 6-10) (Figure 3). This supports previous research findings indicating that labour migration from Nepal to Malaysia typically involves individuals with lower levels of education and skills.¹¹

Figure 2: Marital status of migrant workers



11 Ibid.

Figure 3: Educational qualification of migrant workers

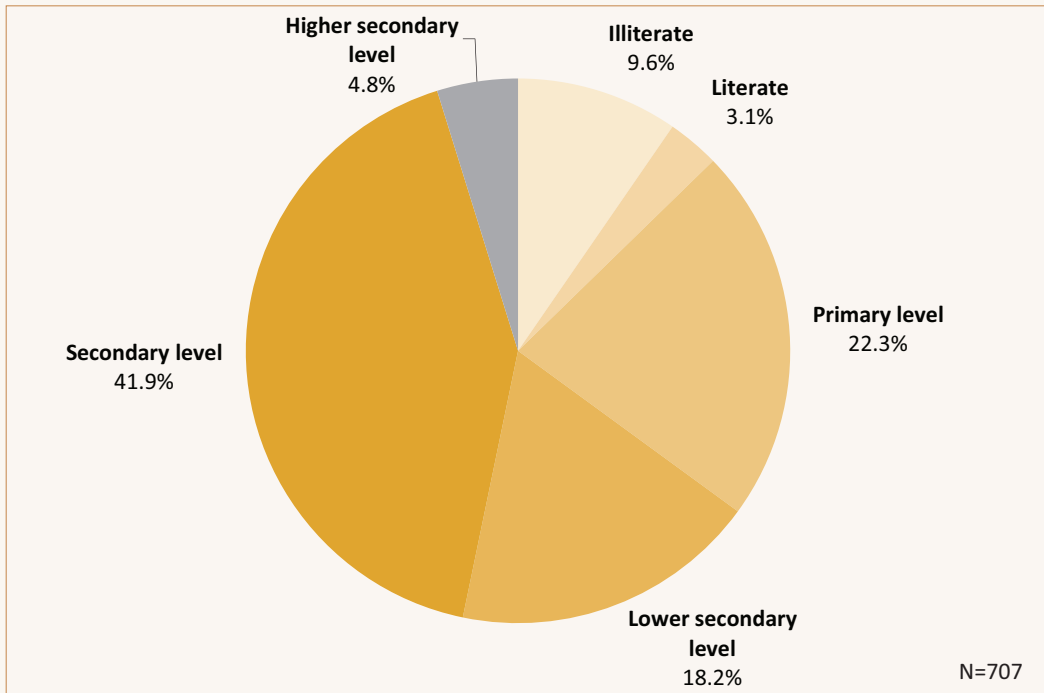
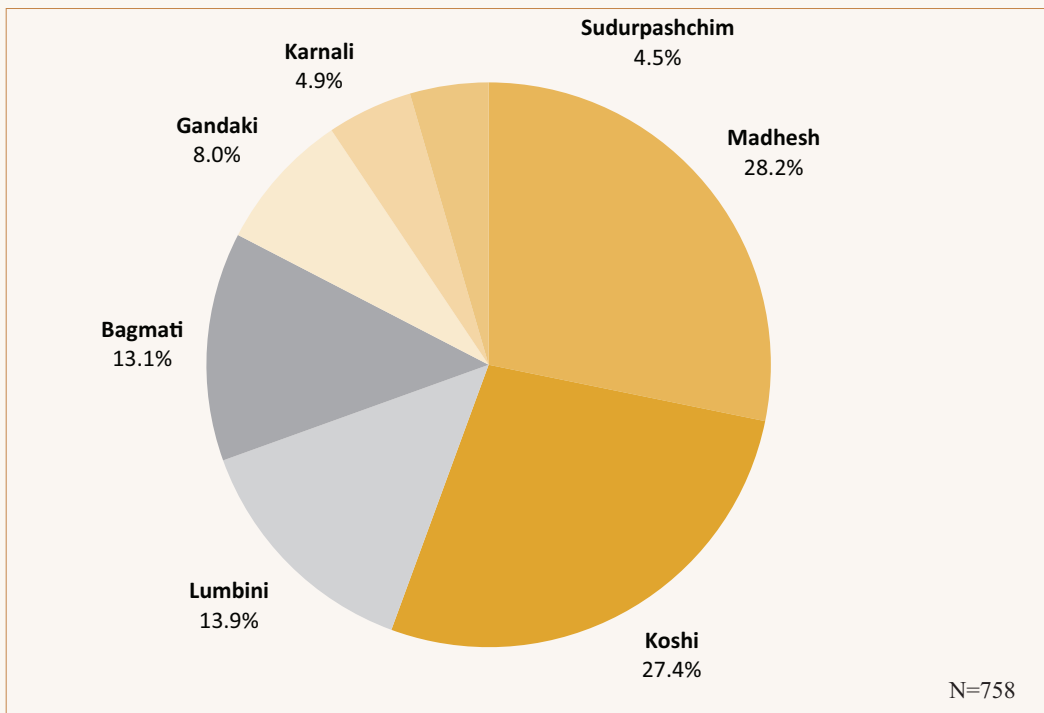


Figure 4: Origin (province) of migrant workers



3.2. Origin province of migrant workers

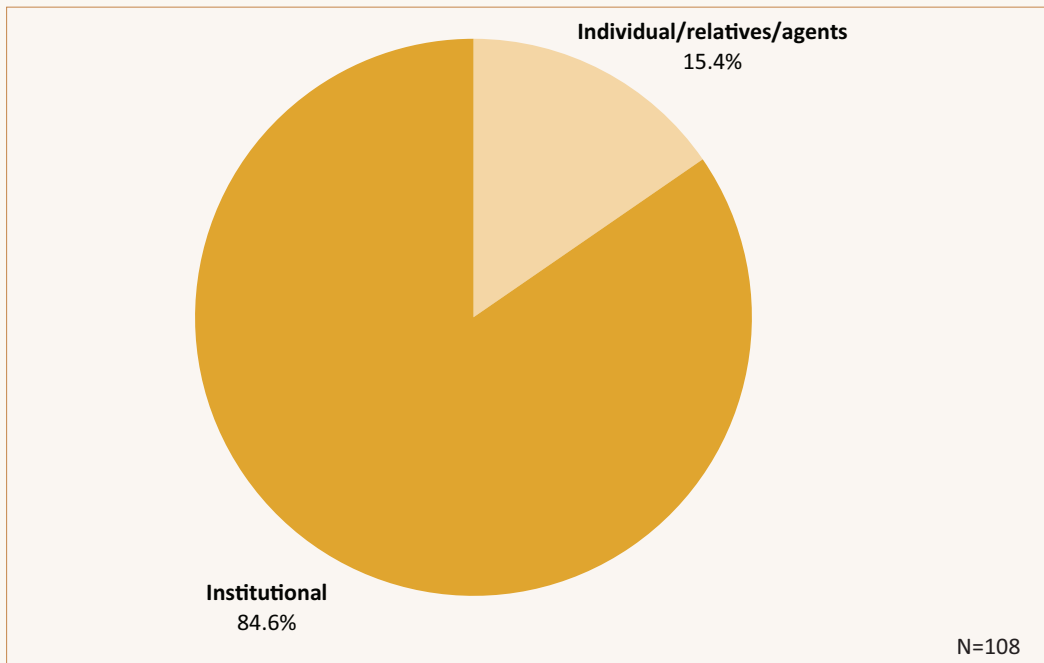
The highest share of the cases was among migrant workers from Madhesh province (28.2 per cent) and Koshi province (27.4 per cent). Data on labour permits issued by the DoFE of Nepal also shows that a higher number of migrant workers from Madhesh and Koshi are migrating to Malaysia for employment.¹²

3.3. Migration process

3.3.1. Channel of migration

Nepali migrant workers employ various mediums and channels to secure employment opportunities abroad. Many migrant workers rely on private recruitment agencies (PRAs) to facilitate their migration process. These agencies connect workers with overseas employers, handle their paperwork and logistics, among other services they provide. Some Nepali workers opt for independent migration, where they arrange their employment directly with overseas employers or through personal networks.¹³ Within the migration

Figure 5: Medium of migration to Malaysia



12 MoLESS, *Nepal Labour Migration Report 2022*.

13 MoLESS, *Nepal Labour Migration Report 2022*; Kharel et al, 'Assessment of Outreach and Engagement with Prospective Migrants.'

process, there also exist agents who not only help in facilitating foreign employment directly for migrant workers but also for mediating between the migrant worker and the PRA.¹⁴ Approximately 84 per cent sought services of PRAs for their migration to Malaysia, while 15 per cent went either independently or with assistance from relatives and/or agents.¹⁵

3.3.2. Recruitment fees

The Memorandum of Understanding (MoU) signed between the Government of Nepal (GoN) and the Government of Malaysia in 2018 on the recruitment, employment and repatriation of the workers requires the employer to pay the recruitment fees and related costs for migrant workers. Prior to the signing of the MoU, as per the ‘free visa, free ticket’

Table 1: Recruitment fees paid by migrant workers

	Per cent
<= NPR 10,000	1.5
NPR 10,001 - 50,000	1.7
NPR 50,001 - 100,000	32.6
NPR 100,001 -150,000	51.5
NPR 150,001 -200,000	10.0
> NPR 200,000	2.7
Total %	100
Total number	402

policy implemented in 2015, PRAs were allowed to take a service charge of no more than NPR 10,000 from migrant workers and employers were required to bear the costs of the visa and the roundtrip air ticket. Nevertheless, an analysis of the recruitment fees paid by

I had taken a loan from the bank to go to work in Malaysia. I am still paying it back. I already had a burden of a metre loan of 36 percent. To pay back that loan and to go abroad, I had taken another loan of five hundred thousand from the bank. I could not pay back that loan by working in Malaysia which is why I am still paying it at the rate of fifteen thousand per month.

– 39-year male returnee from Siraha district

14 Ibid.

15 The data collected by the PNCC does not separate between the labour permits processed on an individual basis and the use of relatives and/or agents for the recruitment process.

Figure 6: Documentation status of migrant workers in Nepal at time of grievance registration

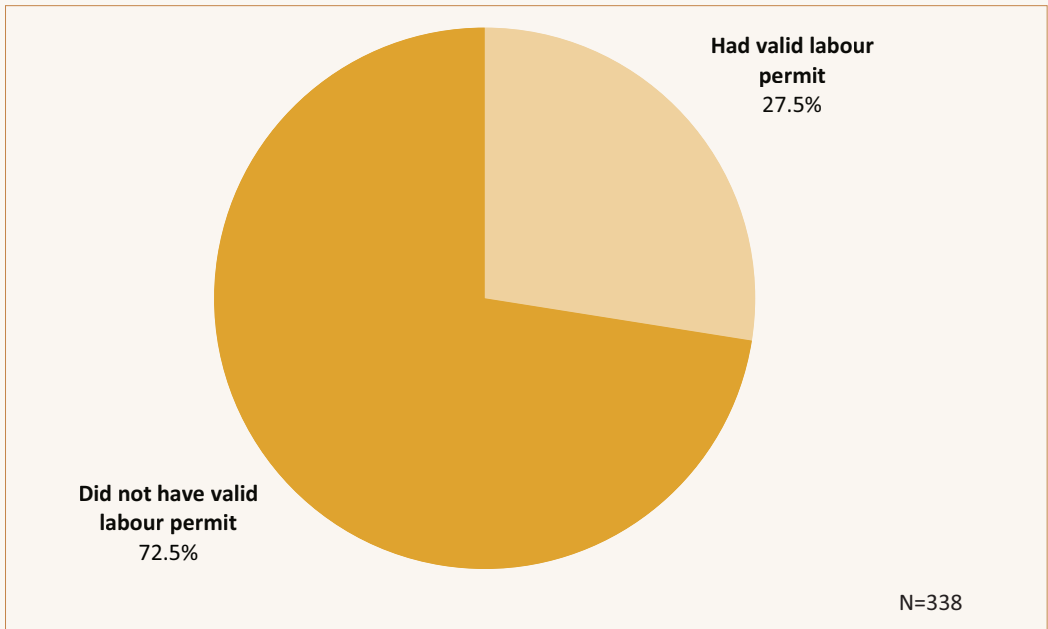
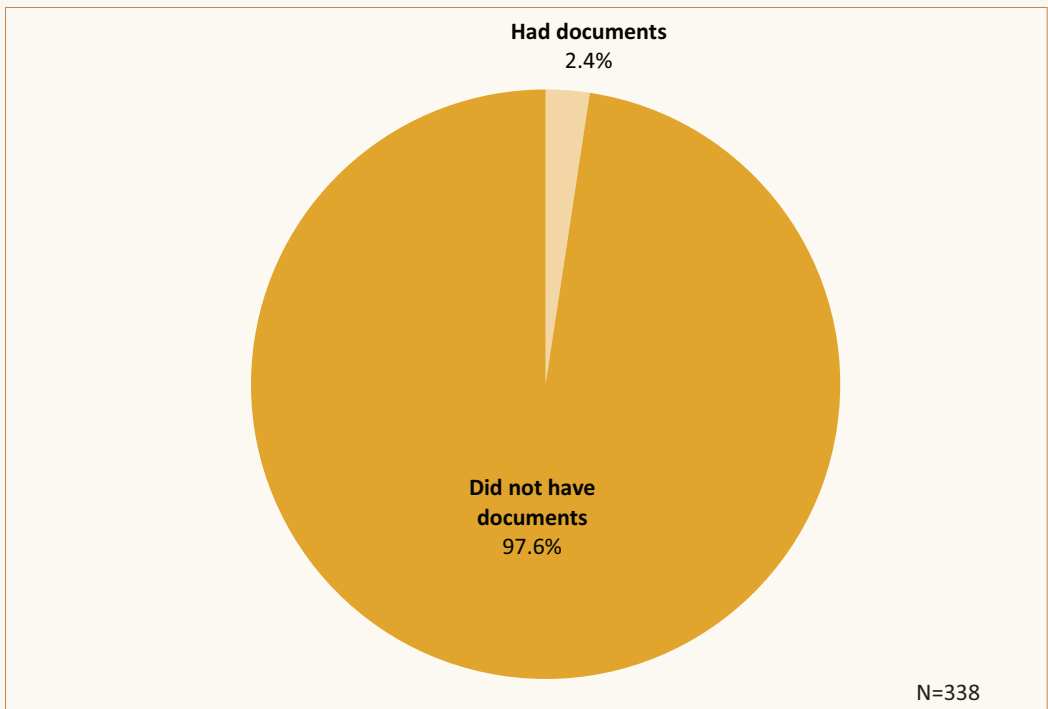


Figure 7: Documentation status of migrant workers in Malaysia at time of grievance registration



the migrant workers indicates that only a small portion of them had successfully migrated as stipulated by these policies, (Table 1) with only 1.5 percent paying NPR 10,000 or less for migration to Malaysia.

These findings were corroborated by migrant workers during the interviews, showing that most migrant workers pay a large sum of money to migrate to Malaysia despite policies such as the ‘free visa, free ticket’ and ‘employer pays’ in place.

3.3.3. Documentation status at the time of registration of grievances

A considerable number of migrant workers who reported cases to the PNCC, lacked proper documentation, i.e., a labour permit, when they registered their cases (Figure 6). A smaller proportion of migrant workers had valid documentation for working in Malaysia at the time of grievance registration (Figure 7).

Table 2: Occupation of migrant workers in Malaysia

	Per cent
Labour	36.1
Security guard	18.4
Hospitality and entertainment	8.9
Operator	3.8
Cleaner	3.3
Vocational/Skill-based industry	2.7
Agriculture	2.2
Cook	2.2
Driver	1.7
Service	1.4
Electrician	1.3
Salesman	1.3
Furniture/Carpenter	0.9
Hotel worker	0.9
Packing	0.6
Tailoring	0.6
Welder	0.6
Marketing	0.3
Supervisor	0.3
Technician	0.3
Waiter	0.3
Other	11.8
Total %	100
Total number	637

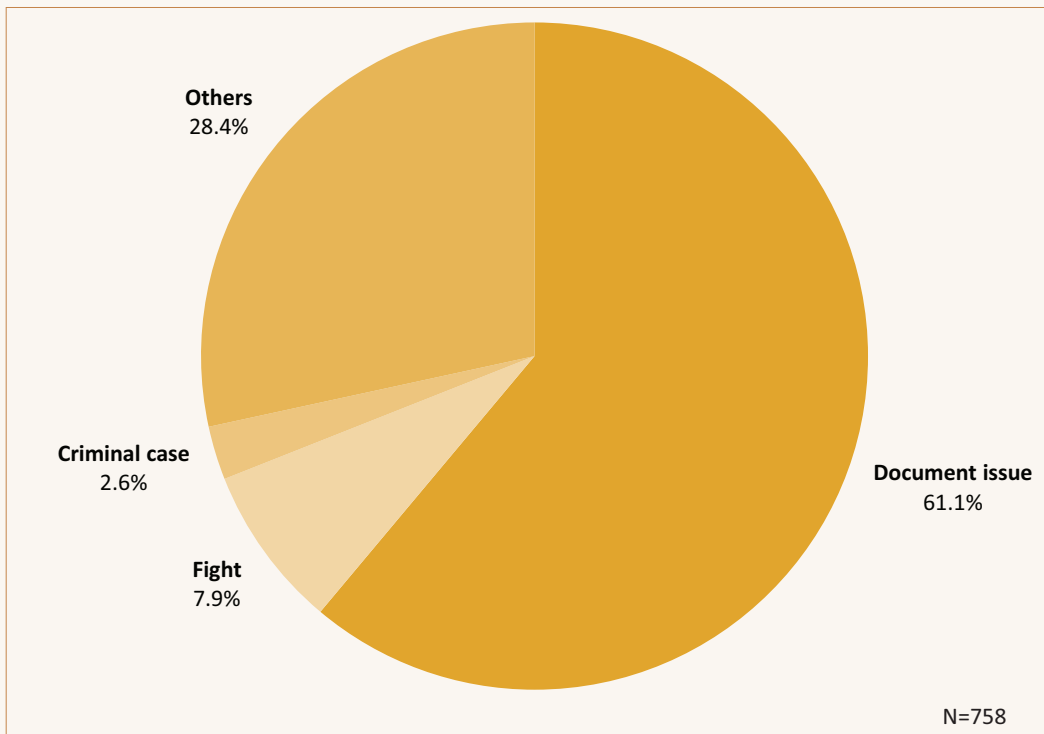
3.4. Occupation in Malaysia

Nepali migrant workers were engaged in a diverse range of occupations in Malaysia. More than one-third were working as labourers while 18 per cent were security guards (Table 2).

3.5. Reasons for arrest

There are multiple and intersecting reasons behind Nepali migrant workers being detained in Malaysian jails. The reasons can be broadly categorised into three major categories (Figure 8). The most common reason for migrant workers being arrested was not having valid documents for working in Malaysia, primarily the Visit Pass (Temporary

Figure 8: Reasons for being jailed in Malaysia



Note: 'Other' also includes cases with no record of the reason an individual was jailed in Malaysia.

Employment) [VP(TE)] (61 per cent). The other two major categories included being involved in fights with colleagues, friends and employers, among others and for criminal cases (Figure 8).

In Malaysia, employers are required to obtain a Visit Pass (Temporary Employment [VP(TE)]) for foreign nationals entering the country for employment on a temporary basis. The VP(TE) allows these workers to legally reside and work in Malaysia for the duration specified in the pass which is usually a year.¹⁶ Employers are required to conduct health examinations of foreign workers at the registered health centre in Malaysia within 30 days of the worker's entry and only after the foreign worker is certified healthy, will the immigration office issue the VP(TE). Additionally, employers are required to apply for the renewal of the VP(TE) at least three months prior to its expiration. In cases where the worker is found to be unfit and after the expiration or termination of employment contract the employer must promptly send the foreign worker back to the country of origin by applying the Check Out Memo (COM). The VP(TE) is typically tied to a specific employer and job position and migrant workers are generally not permitted to change employers or job roles without obtaining approval from the relevant authorities. The Immigration Act 1959/63 (Act 155) of Malaysia stipulates that undocumented migrant worker risk arrest, detention and fines.¹⁷ Overstaying workers are also deemed to have committed an offence, facing penalties such as a maximum fine of MYR 10,000 (c. USD 2100)¹⁸ or imprisonment for up to five years, or both. Amendment to the Act in 2002 introduced mandatory whipping for non-citizens convicted of illegal entry, among other charges.

A further analysis of cases where Nepali migrant workers were arrested due to document issues shows that a large majority did not have valid documents as they had left their legal company/employer, and were working for other companies/employers (Figure 9). As a result, their VP(TE) became invalid. There are also cases where companies/employers did not renew the VP(TE), leading to migrant workers working 'illegally' in the country which led to their arrest (2.1 per cent). Likewise, a small proportion (1.6 per cent) did not have valid documents with them because they were deceived by agents, recruitment agencies in Nepal or employer. Less than 1 per cent were jailed because they did not have a passport or other identification document with them leading them to being arrested while at a marketplace or when enforcement authorities raided their company.

Reasons for leaving the company/employer

Nepali migrant workers left their employer/company for various reasons. Contract substitution, i.e., work and benefits (57 per cent) and salary (14 per cent) not being according to the agreement, wage theft, i.e. underpayment, no payment and irregular payment of wages, were the two major reasons (Table 3).

Studies from Nepal and South Asia have reported that contract substitution and wage

16 See: <https://www.imi.gov.my/index.php/en/main-services/foreign-worker/>

17 International Organization for Migration (IOM), *Assessment of Causes and Contributing Factors to Migrant Workers Becoming Undocumented in Malaysia* (Geneva: IOM, 2023).

18 1 MYR = 0.212 USD (12 June 2024),
<https://www.oanda.com/currency-converter/en/?from=MYR&to=USD&amount=1>.

Table 3: Reasons for leaving employment

	Per cent
Work and benefits were not according to agreement	57.0
Wage theft	21.2
Salary was not according to agreement	13.9
Difficult job or over work	8.5
Other reasons	2.4
Violence and distress caused by company	3.0
Aspiration for higher salary	1.2
Fight or argument with company/boss	0.6
Total %	107.9
Total number	165

Note: Multiple answers

theft is a major challenge faced by migrant workers in Malaysia and Gulf Cooperation Council (GCC) countries—Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and United Arab Emirates—that host large numbers of South Asian migrant workers including Nepalis.¹⁹ As the migrant workers interviewed in this study reported, there is a tendency to provide different work after reaching the destination country.

As mentioned by two RMWs, they were provided the job in the same company as promised in Nepal, but the company did not provide overtime as per their contracts. Likewise, some research participants said they got the promised job, but the company they worked for was a different one. As a result, many migrant workers abscond from the employer and find another employment, in many cases lured by a higher paying job. This is also corroborated by the PNCC outreach officer in Malaysia who provides support to imprisoned migrant workers. According to the officer, Nepali migrant workers often pay substantial recruitment fees to secure employment abroad. However, they frequently do not receive the promised salary upon arriving in Malaysia. This situation persists despite policies like the ‘free visa, free ticket’ scheme and the ‘employer pays’ principle. When migrant workers arrive in Malaysia and find their salaries are lower than expected, they face significant pressure to repay the loans they took to cover recruitment costs. As a result, many feel compelled to leave their designated employers and work illegally, further exacerbating their vulnerability. A study

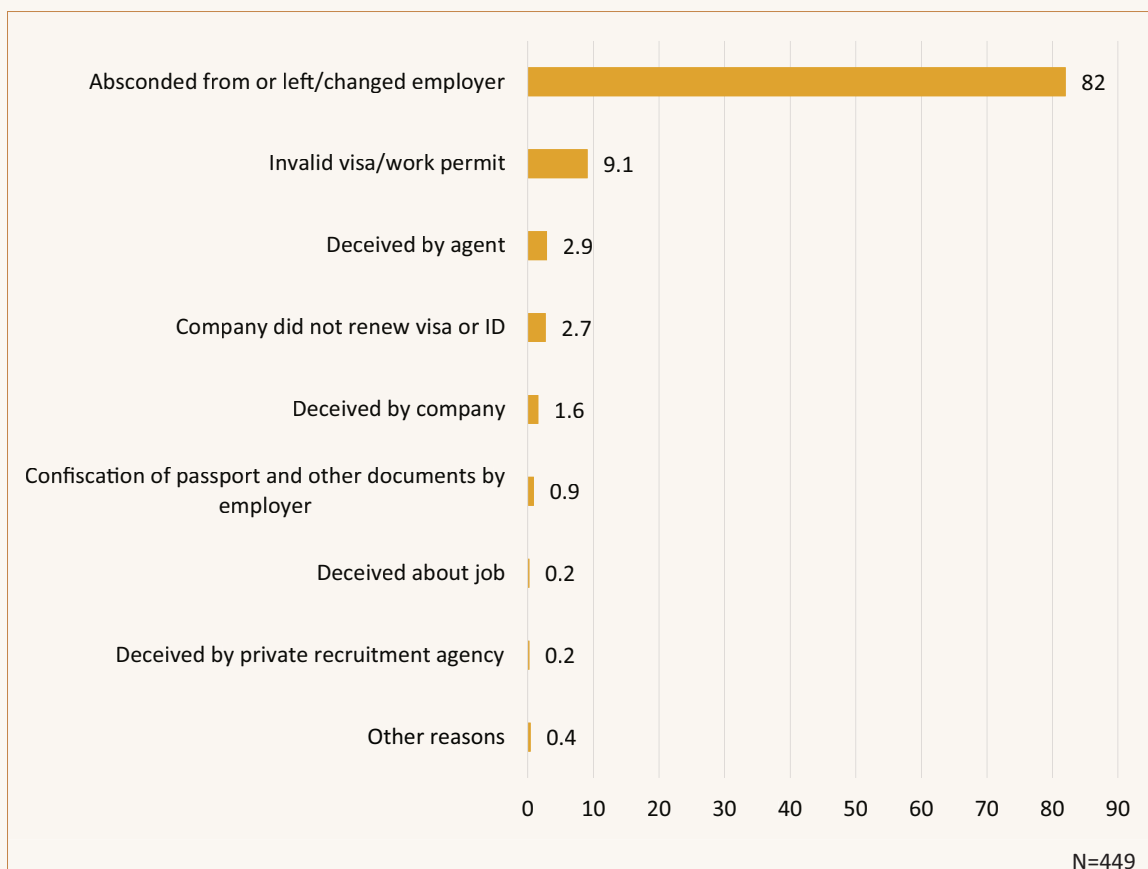
I was told I was being recruited to work in a supermarket as a supplier, but I had to work as a cleaner.

– 28-year male returnee from Sindhuli district



19 Jeevan Baniya and Sadikshya Bhattarai, *Analysis Report of Recruitment Reviews from Nepali Migrant Workers* (Kathmandu: General Federation of Nepalese Trade Unions, 2022); Jeevan Baniya, Sanjit Shrestha, Sadikshya Bhattarai, Dogendra Tumsa, Bipin Upadhyaya, Rajib Neupane and Prasansa Thapa, *Unscrupulous Recruitment and Precarious Employment of Nepali Migrant Workers: Findings from the Analysis of Data on PNCC’s Services* (Kathmandu: PNCC/CESLAM, 2023).

Figure 9: Reason for document issue in Malaysia (in %)



conducted by the International Organization for Migration (IOM) also reported that migrant workers in Malaysia, including Nepalis, left their employer mainly because they were experiencing exploitation, unethical recruitment or other rights violations such as lower salary received due to deception or failure of employer or recruiter to meet salary and working time obligations, long working hours or poor working conditions, non-payment of overtime wages; delayed payment of wages; unlawful salary deductions; dangerous or unsafe working conditions; and physical and verbal abuse.²⁰

The MoU between Nepal and Malaysia grants workers the right to change employers in cases of exploitation, abuse or physical and mental harassment, subject to the domestic laws of Malaysia, or if the business closes or ceases operations. To terminate the contract, both the employer and the worker must provide adequate written notice as required by labour laws. If the employer terminates the contract, it is obligated to cover the worker's airfare back to Nepal. Conversely, if the worker decides to terminate the contract, s/he is responsible for the airfare costs. The MoU signed with Malaysia also includes dispute

20 IOM, *Assessment of Causes and Contributing Factors to Migrant Workers Becoming Undocumented*.

resolution provisions allowing settlement of disputes through mutual consultation and negotiation between the migrant worker and employer through diplomatic channel. However, in practice, many migrant workers are not fully aware of their rights and the legal procedures available to them to change their employer and due to fear of retaliation they may not seek legal avenues and processes to change their employer. Another significant obstacle migrant workers seeking legal ways to change their employer face is the control exerted by the employers themselves. Employers often hold significant power over migrant workers due to their control over employment contracts, wages and passports or identity documents. This power dynamic can be exploited to prevent workers from leaving their jobs, as they face the risk of penalties and imprisonment if they leave the employment.²¹ Employers may use threats or intimidation to maintain control. The PNCC outreach officer in Malaysia also noted that migrant workers are unable to negotiate with employer or recruitment agencies due to various reasons. Firstly, coordinating with employers and recruitment agencies is difficult and time-consuming, making it hard for them to initiate the process for negotiations and their return. Additionally, if workers plan to return independently, they must bear the costs of airfare and related penalties themselves, which amounts to MYR 3,000-4,000 (c. USD 635-850). If employers refuse permission for return, workers resort to irregular methods, relying on informal agents to arrange necessary documents and tickets. However, these agents charge exorbitant fees. Migrant workers often lack the funds needed to return home legally and feel compelled to continue working undocumented in Malaysia. Also, as mentioned by a RMW, many migrant workers are not aware of the challenges that may arise if they change the employing company without due process.

In Nepal, I was told I would be working in tap company but when I reached Malaysia, I was taken to the supply [another] company. In my passport there was no stamp of the place where I was working but that of the tap company. I was arrested because I was not placed in the contracted job but elsewhere.

– 42-year male returnee from Bhojpur district

Nepali migrant workers coming to Malaysia may be told they would be earning 1500 [ringgits], but when they do not get the salary and benefits as promised or as they had hoped for, they abscond from their employer and work in another company.

– PNCC outreach officer

Confiscation of passport and other identity documents

Migrant workers are required to possess their passport or travel documents at all times, while in Nepal and after their migration. A range of international human rights instruments and labour agreements,

²¹ IOM, *Assessment of Causes and Contributing Factors to Migrant Workers Becoming Undocumented*; International Labour Organisation (ILO), *Situation and Gap Analysis on Malaysian Legislation, Policies, and Programmes and the ILO Forced Labour Convention and Protocol* (no place: ILO, 2019).

including the Global Compact for Migration (GCM), the ILO conventions such as the ILO Forced Labour Convention, and Bilateral Labour Migration Agreements (BLMAs), explicitly forbid the confiscation or retention of migrants' identity documents. The Malaysian Passport Act 1966 also states that no one can withhold the passport of anybody without any lawful authority.²² Despite these safeguards, many employers in destination countries adopt the practice of seizing passports and other documentation of migrant workers upon their arrival, to restrict their mobility.²³ As the data from the PNCC shows, confiscation of passports had led to many Nepali migrant workers being imprisoned. This has been further explained by one of the RMW, who said his passport and other documents were confiscated by the employer and when he had to show his documents to the police, he could not, which led to his arrest.

According to the PNCC outreach officer, there are only a few companies that do not confiscate or hold the passports of migrant workers. Most employers/companies only provide photocopies of the workers' passports and work permits. Companies that supply security guards are particularly known for confiscating migrant workers' passports and not providing the photocopy out of fear that the workers will leave. Consequently, when these workers are found without their original documents, they get arrested. According to the outreach officer, some workers, after being kept in jail for 14 or so days, are taken to court,



I shifted to another company... I made my own decision to move to another company without any permission from the company I was working at. But I was not aware of the hurdles that may arise if I changed companies. I got jailed for the second time because I left my second company without taking my passport from the boss. I asked for the passport from my boss, but the passport was not given to me.

– 45-year male returnee from Rukum East district.



where the employer presents the original document and secures their release. However, in some cases, the employer is unaware of the arrest, and these migrant workers, after being jailed for a few months, are deported to Nepal.

22 The Commercial Crime Investigation Department, the Malaysian Passport Act, 1966.

23 Jeevan Baniya and Sadikshya Bhattarai, *Analysis Report of Recruitment Reviews from Nepali Migrant Workers* (Kathmandu: General Federation of Nepalese Trade Unions, 2022); Andika Wahab and Mashitah Hamidi, 'COVID-19 pandemic and the Changing Views of Mobility: The Case of Nepal–Malaysia Migration Corridor,' *Comparative Migration Studies* 10, No. 1 (2022); Raveen Aingaran, 'Illegal for Employers to Retain Staff Passports,' *The Sun*, accessed 25 April 2024, https://thesun.my/local_news/illegal-for-employers-to-retain-staff-passports-AH11523344.

Conflicts and fights with colleagues and employers

In addition to issues of legalities like changing the employer and visa expiry, Nepali migrant workers are facing detention because of fights with colleagues, employers or friends at work, at their accommodation, or in public spaces. Analysis of cases where migrant workers were arrested for fighting shows that the majority of migrant workers have fought with their colleagues/friends at or outside of work (63 per cent) followed by their fight with the employer or human resource (HR) manager (23 per cent) (Figure 10).

I got jailed for the first time because my boss got scared and did not bring my passport when the police arrived at the building. When my boss brought the passport to release me from jail, the passport was not renewed.

– 28-year male returnee from Sindhuli district

It had been only three days since I was working at a new place. My friends from my workplace quarrelled while drinking. Someone from another room called the police. The police came and started interrogation. One of our friends started fighting with the police and then the police also started further examination asking for our passports. My boss had kept the passport so I could not submit it and got jailed. They jailed all of us.

– 32-year male returnee from Nawalparasi district

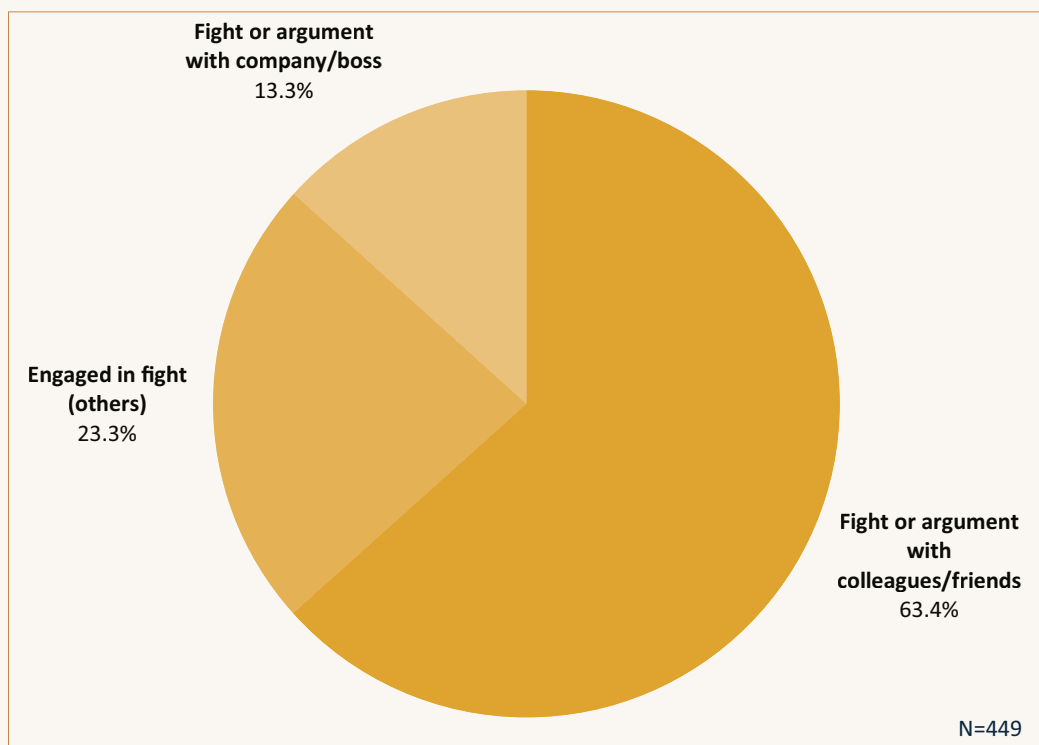
Engagement in criminal activities

Nepali migrant workers also face imprisonment due to engagement in criminal activities such as murder, theft, drug trafficking, gambling, the sale of counterfeit alcohol and

I had a dispute with a security guard who was a Malaysian. The guard tried to instruct me on how to pull a gate and I got infuriated. Due to this, the security guard conspired with another Nepali worker to put marijuana in tobacco so that he could set me up. I informed the police about the conspiracy of a Nepali worker and a Malaysian security guard. A Nepali worker who was working with us was interrogated and he related the real incident. After a long interrogation, they found nothing in my body and released me at midnight. When I returned to work the next day, the security guard saw me and got bemused seeing me again joining work. The security guard thought that I should have been in prison. Now, the guard spoke out against me to the manager and again police arrested me because my boss also listened to the guard and complained to the police.

45-year male returnee from Siraha district

Figure 10: Individuals migrant workers fought with leading to their arrest



kidnapping, albeit small in number.²⁴ According to the PNCC outreach officer, while alcohol consumption is not illegal in Malaysia, some Nepalis have been arrested on charges of selling counterfeit alcohol and drugs, which is considered a serious offence in Malaysia. The sale and consumption of drugs is also one of the major reasons for the arrest of Nepali migrant workers in GCC countries as well.²⁵ Illegal gambling is another reason why Nepali migrant workers find themselves in legal trouble. In Malaysia, gambling is strictly regulated and, according to the PNCC outreach officer, Nepalis have been arrested due to involvement in gambling through unregistered casinos or establishments or online gambling applications. Media report also shows that Nepali migrant workers in Malaysia have also been arrested for playing in streets, parks or public places with, or expressing admiration/touching, children.²⁶ While such behaviour or interaction may be perceived as innocent or positive in Nepal, it can lead to legal issues under child law in Malaysia.

24 Ramesh Khatiwada, 'Dui Saye 6 Nepali Malaysia Jailma [Two Hundred 6 Nepali in Malaysian Jail],' *Nagarik*, 23 February 2019, <https://nagariknews.nagariknetwork.com/diaspora/171726-1550883240.html>.

25 Surendrakumar Kamti, 'Chasaye 15 Nepali Saudi Kaaragaarmaa [615 Nepali in Saudi Jail],' *Naya Patrika*, 24 March 2024, <https://www.nayapatrikadaily.com/news-details/137539/2024-03-24>.

26 Ibid.

Figure 11: Criminal activities for which Nepali migrant workers are imprisoned in Malaysia



3.6. Challenges faced during incarceration and in access to justice

The challenges migrant workers face during incarceration in Malaysia are multifaceted and often exacerbated by systemic inequalities and barriers to accessing justice.

3.6.1. Lack of awareness about their rights and available avenues to seek support

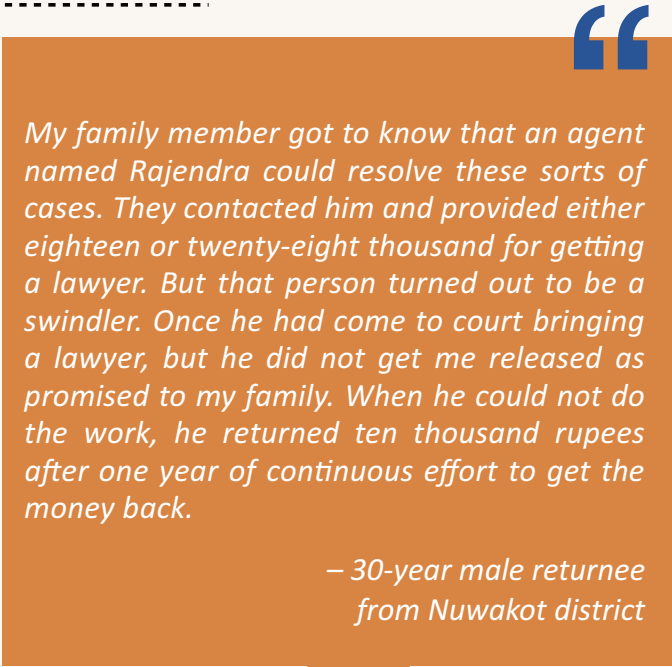
The lack of awareness among Nepali migrant workers about their rights and the legal processes and available avenues to seek support is a major barrier in their access to justice.²⁷ The 2019 Directive for the Legal Defence of Nepali Workers in Foreign Employment outlines measures to support migrant workers encountering legal challenges in their destination countries by deploying attorneys for their representation. This Directive provides guidelines for providing legal defence and advocacy for migrant workers with

²⁷ IOM, *Assessment of Causes and Contributing Factors to Migrant Workers Becoming Undocumented*; Muna Kunwar, '546 Nepali shramik khadi ra Malaysiaka jailma [546 Nepali in Gulf and Malaysia Jail],' *Nagarik*, December 22, 2021, <https://www.nayapatrikadaily.com/news-details/77114/2021-12-22>.

valid labour permits who confront criminal charges while under contract. The Foreign Employment Board (FEB) can furnish legal aid amounting to a maximum of NPR 1.5 million (c. USD 11,500). According to this Directive, Nepali diplomatic missions accept and assess applications from migrant workers or their families, examine the case vis-à-vis the laws of the destination country, forward legitimate applications to the Ministry of Foreign Affairs (MoFA), and subsequently to the FEB. They can also request funds from the FEB, appoint legal practitioners in the destination country and maintain comprehensive records of such applications. However, in many cases, migrant workers are not aware about their rights and resources available for their access to legal counsel. Besides, as the legal counsel from the GoN is only available for migrant workers holding valid labour permits and for criminal cases, most migrant workers,

especially if we consider the reason behind the imprisonment of migrant workers in Malaysia as discussed above, do not have valid labour permits to access these services. As a result, they depend on a third-party to get out of the prison and often become victims of fraud and deceit. The outreach officer also noted that in cases that requires a lawyer, due to high fees, which could range between MYR 10,000 to 15,000 (c. USD 2100-3200), migrant workers are not able to get a lawyer and the case gets delayed. Especially, for migrant workers and their families from low socio-economic background, the high cost of legal services presents a significant barrier.

The GoN has established a mechanism for complaint registration and to provide compensation to individuals who are deceived by employers and/or recruitment agencies or agents.²⁸ This can include scenarios where the job description is significantly different than the one promised, working conditions are not as agreed upon or the salary and



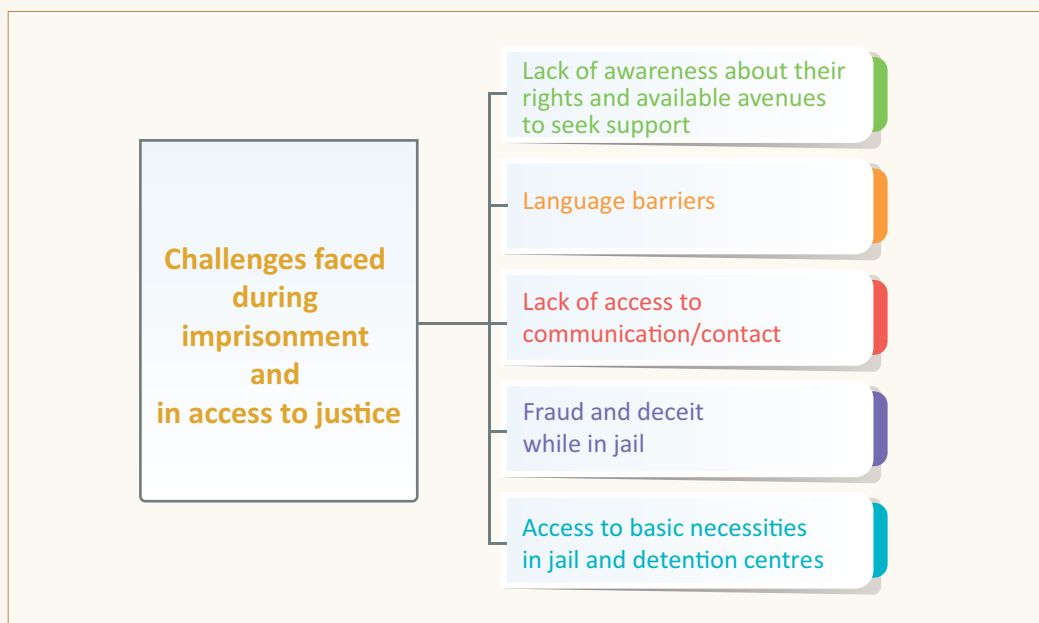
My family member got to know that an agent named Rajendra could resolve these sorts of cases. They contacted him and provided either eighteen or twenty-eight thousand for getting a lawyer. But that person turned out to be a swindler. Once he had come to court bringing a lawyer, but he did not get me released as promised to my family. When he could not do the work, he returned ten thousand rupees after one year of continuous effort to get the money back.

*– 30-year male returnee
from Nuwakot district*

28 MoLESS, *Nepal Labour Migration Report 2022*.

benefits fall short of what was initially agreed upon. However, many migrant workers who have been deceived by recruitment agencies, agents or employers are reluctant to file a complaint against them. According to the PNCC case worker, migrant workers who have returned after experiencing incarceration or ‘failed migration’ often hesitate to file complaints due to feelings of shame and stigma, fearing judgement or ostracisation from their peers and relatives. An IOM study also found that migrant workers refrained from reporting or seeking help due to fear of losing their employment or being detained by the authorities, language barrier and migration status.²⁹

Figure 12: Challenges faced during incarceration and in access to justice



3.6.2. Language barrier

Language barriers significantly hinder incarcerated migrant workers’ access to justice.³⁰ Language barriers can lead to misunderstandings, miscommunication and even unintentional self-incrimination. The outreach officer noted that when the police arrest a person, there are times when they are accused of something other than being undocumented, such as theft or entering restricted areas. Due to language barriers, many Nepali individuals may not be aware of or may inadvertently accept these charges because they cannot understand what they are being accused of.

29 IOM, *Assessment of Causes and Contributing Factors to Migrant Workers Becoming Undocumented*.

30 Taylor-Nicholson, Balasubramaniam and Mahendran, *Migrant Workers’ Access to Justice*.

3.6.3. Lack of access to communication/contact

During their incarceration, migrant workers often encounter significant challenges when it comes to maintaining communication with their families and support networks. These difficulties can exacerbate the already stressful and isolating experience of being in prison. One of the challenges, as mentioned by migrant workers, is not being able to contact someone when they are inside the jail. RMWs also talked about being asked to pay to make a phone call while in jail. For already financially constrained migrant workers, being asked to pay for phone calls in jail can place an undue burden hindering their ability to seek legal support or inform family, friends or other social networks of their situation. This hinders the right to communication of the migrant workers and also impacts their access to justice.

3.6.4. Fraud and deceits while in jail

I had no hope of returning home. Though I knew the Malaysian language, I could not get in touch with my family and friends because my purse and phone had been confiscated.

— 28-year male returnee from Dhanusha district

Police will take fifty to hundred ringgits to make a call to friends and family from their phone, but I could not remember anyone's number, so I did not make any calls.

— 32-year male returnee from Nawalparasi district

The police took my mobile and other accessories after I was imprisoned. To make a single call, you had to pay 100 ringgits. I had no money, so I did not call anybody from prison.

— 40-year male returnee from Jhapa

As discussed above, recruitment agents and agencies charge exorbitant amounts to send migrant workers to Malaysia. In addition, as a study from Nepal³¹ as well as the interviews with RMWs in this study show, many migrant workers depend on loans to pay for their migration. Further, most migrant workers get these loans at a high interest rate. For many

31 Arjun Kharel, Sadikshya Bhattarai, Dogendra Tumsa, Shalini Gupta and Pawan Sen, *Migration Profile: Province 1 of Nepal* (Kathmandu: Swiss Agency for Development and Cooperation and CESLAM, 2022); Bandita Sijapati, Ang Sanu Lama, Jeevan Baniya, Jacob Rinck, Kalpana Jha and Amrita Gurung, *Labour Migration and the Remittance Economy: The Socio-Political Impact* (Kathmandu: Centre for the Study of Labour and Mobility, 2017).

migrant workers, imprisonment is often a consequence of different circumstances. Once incarcerated, they become even more susceptible to exploitation, manipulation and fraud, particularly when they are desperate to secure their release and return to their families. As the following quotes from migrant workers shows in their vulnerable state, migrant workers may encounter individuals who prey on their desperation, offering false promises of assistance in exchange for exorbitant fees. There are multiple cases where jailed migrant workers are asked for bribes by the jailers themselves or other individuals telling them they will be released soon. The quotes below further highlight a distressing reality faced by migrant workers who are incarcerated abroad and their families as the latter face the burden of arranging money to get the migrant worker released from jail. As confirmed by the outreach officer, there are individuals or groups that ask MYR 3,000-4,000 (c. USD 635-850) from the workers or their families promising to send the workers home but then deceive them.



After I got arrested, the Malaysian police asked for a bribe of 10,000 ringgit to release me from jail.. The police tried to threaten me saying that I am illegal in Malaysia and no one would come to set me free. My friends who were working in Malaysia also asked my family for two hundred thousand rupees. They lied to my parents saying that they would get me released, but would require two hundred thousand. My family sent that money to them but when they received money, they threw away their phone number.

– 28-year male returnee from Dhanusha district

I had only 500 rupees while in jail. I had three to four thousand ringgits in my room. It would have been near about two hundred thousand rupees. There was a Tamil friend who asked for my money with my other friends reassuring me of my release, but he cheated and took all the money. The Tamil again tried to take money by calling my wife at home.

– 45-year male returnee from Siraha district

My parents were worried about me and my uncle who lives in Kathmandu enquired at the Nepal Embassy. A person who claimed to be Deepak or Roshan, an employee of the embassy, asked to send one hundred thousand rupees to get me released. After one month I was released. I don't know whether that employee got me released or if it was done by the Nepal Embassy itself.

– 28-year male returnee from Dhanusha district

3.6.5. Access to basic necessities in jail and detention centres

Nepali migrant workers often face significant challenges accessing adequate nutrition, safe lodging and access to basic medicines in jail and detention centre³² exacerbating their already vulnerable situation. RMWs interviewed in this study also reported congested accommodation, limited food and hygiene supplies and lack of access to health care while in the jail.

The food was average. The shelter inside the jail was very congested. The toilet was inside the cell. Water used in the toilet was also the drinking water.

– 45-year male returnee from Rukum East district

Medicine is not provided for any illness inside the jail. In case the detained one is on the verge of death, only then medicine is provided. Food portion is also provided by measuring its quantity. There is a clinic inside the jail, and they will provide panadol [a drug for treating moderate pain] for all illnesses. If that medicine cures, then it's ok but if it does not cure you then the jailed person will die inside the prison.

– 41-year male returnee from Balglung district

3.7. PNCC's support for migrant workers

The PNCC has been offering diverse support to migrant workers through collaboration with various stakeholders, including government bodies, such as the MoLESS, FEB, DoFE, Nepal Police, embassies in destination countries, and consulates, informal networks and civil society groups, diaspora organisations, People Forum, local governments, among others. The PNCC is also affiliated with the Safer Migration (SaMi) programme of the GoN and migrant resource centres (MRCs) established under the SaMi programme serve as the primary channels for incoming cases. Data from the PNCC shows that, it received information on cases of migrant workers being jailed primarily through the Nepal Embassy in Malaysia (54 per cent) followed by MRCs (20 per cent). Other organisations or individuals who referred the cases to the PNCC include Non-Resident Nepali Association (NRNA) Nepal and family and friends of migrant workers (Table 4).

Support in Malaysia and after return

The PNCC has provided various forms of support to imprisoned migrant workers in Malaysia. It provides assistance in releasing Nepali migrant workers from the prison in Malaysia through collaboration with the Nepal Embassy there. Likewise, they also help in identifying the family of the migrant worker and in cases where the migrant worker or their family cannot afford to arrange for return ticket, it supports them by providing return air ticket and other assistance as needed with support from diaspora organisations

32 Human Rights Watch, 'We Can't See the Sun' Malaysia's Arbitrary Detention of Migrants and Refugees (no place: Human Rights Watch, 2024); Hom Karki, 'Malaysia Jailma Nepali: Chutaidine Bhandai Lakhaun Thagi [Nepali in Malaysian Jail: Duped of Million in Name of Freedom],' *Kantipur*, 4 January 2019, <https://ekantipur.com/news/2019/01/04/154656629137611870.html>.

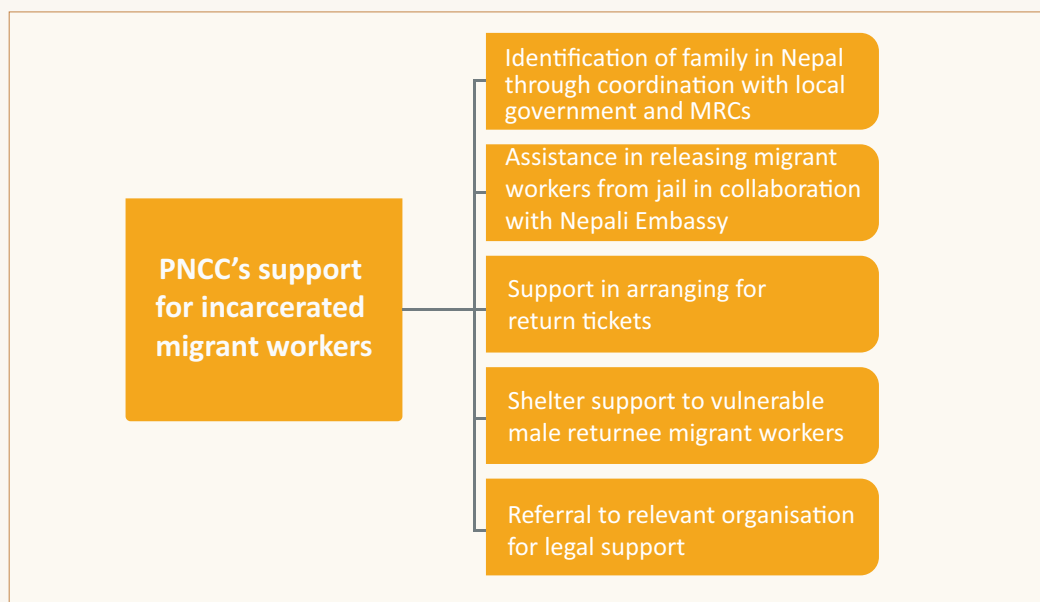
Table 4: Organisation who referred migrant workers to PNCC

	Per cent
Nepal Embassy in Malaysia	54.0
Migrant resource centres (MRC)	20.2
NRNA Nepal	6.3
Family and friends	6.1
PNCC outreach officer/Volunteer	5.5
IOM Nepal	3.7
AMKAS Nepal	1.2
Returnee migrant workers	0.9
Others	2.1
Total %	100
Total number	758

in Malaysia. The PNCC also supports Nepali migrant workers in Malaysia with the help of nine members or volunteers who are strategically located across nine different states in Malaysia. They provide localised assistance and support to migrant workers within their respective regions.

The PNCC also offers shelter support to highly vulnerable male returnees and assists in reuniting them with their families. In the past, it provided psychosocial counselling to RMWs at its shelter. Likewise, it has also collaborated with the Centre for Mental Health and Counseling-Nepal (CMC-Nepal), a non-governmental organisation providing

Figure 13: Major PNCC's support for incarcerated migrant workers



mental health and psychosocial counselling service, to provide psychosocial counselling Nepali migrant workers who returned from jail.

It has also been working in coordination with MRCs and local governments to identify families of migrant workers. The PNCC case officer handling cases related to Malaysia mentioned that, in districts with MRCs, their support is taken to locate the family of the migrant workers. In districts without MRCs, the officer coordinates with the local government, particularly the ward chair to find the family of migrant workers.

3.8. Economic and Psychosocial Reintegration after Return

The economic and psychosocial reintegration of migrant workers who have experienced truncated or ‘failed’ migration, is extremely crucial.³³ These individuals often return home facing significant financial hardship not being able to save money and emotional distress, which can severely impact their wellbeing and ability to reintegrate into their communities. Corroborating findings from other studies on RMWs in Nepal,³⁴ RMWs in this study

I am working as a mason in my village. I used to work as a mason earlier. One week after returning to Nepal, I started doing the same work.

– 40- male returnee from Jhapa district

My plan for now is to earn money by going abroad. Then I will come back and stay at home. I am inquiring about the recruitment costs to go to Poland, but I have not started the process for application. I want to go abroad by taking a loan.

– A male returnee from Panchthar district

I have been doing masonry work in Pokhara. I earn 1200 rupees per day. I had taken cook training provided by the PNCC but now I am staying in Pokhara, working as a mason. I can't find work as a cook, and I don't have the investment to open a restaurant either.

– 41-year male returnee from Baglung district

reported being either unemployed, engaged in subsistence farming, working as daily wage workers and/or planning to re-migrate for employment. Some migrant workers were planning to migrate again for employment, albeit to a different destination while some are planning to stay in Nepal. Also, as one of the RMW highlighted, not being able to

33 Bhattarai et al, *Return, Weak Reintegration, and Remigration*.

34 Bhattarai et al, *Return, Weak Reintegration, and Remigration*; Bhattarai, Baniya and Tumsa, *Impact of COVID-19 on Nepali Migrant Workers*.

I could not have a reconciliation after I came to Nepal. My wife used to entertain and love me when I was earning money. After I came to Nepal after being jailed, my relationship with her is not good. I have better relationship with my daughters... Within a few days of my arrival, my relationship with my wife worsened. I used to behave properly with my wife and my in-laws, but they spoke rudely with me. She kept on muttering and complaining about degrading prestige by facing a jail case in Malaysia. She used to mock me saying I had done a good job being imprisoned. My wife filed for divorce and recently it was concluded... No one respects people who have returned after being in prison. Friends and relatives also assume that I have nothing, and they have to pay for me which is why I am not welcomed anywhere.

—41-year male returnee from Baglung district

save money while working abroad means they do not have financial resources to invest in business either.

In addition to the economic instability, returning to Nepal after imprisonment presents other challenges, such as social stigma and psychological trauma. Upon release from jail in the destination country, migrant workers may face a range of psychological issues stemming from their experiences of imprisonment, including anxiety and depression. Likewise, reintegrating into society after incarceration can be a daunting process for migrant workers, as many struggle to cope with the stigma associated with imprisonment, as well as the

challenges of reconnecting with their families and communities. The case officer at the PNCC also mentioned that many RMWs who have been incarcerated do not want to return home due to the shame they feel because of the imprisonment, while some were planning to re-migrate to India or other countries without returning home.

The reintegration of jailed migrant workers upon their return home is a complex and sensitive process that demands robust familial and community support to help them transition back into their home environment and cope with the aftermath of their incarceration. Some RMWs interviewed in this study mentioned being able to cope with the psychosocial toll from their incarceration due to the support from their family and friends.

Returnee migrant workers mentioned not receiving mental health counselling or support both during their time in detention in the destination country and upon

My family and friends did not behave differently but made me comfortable in the same manner as before. My family was delighted to see me after a long time. No one discriminated against me.

— 42-year male returnee from Bhojpur district

Though I returned to Nepal after being imprisoned, my family, relatives and neighbours did not behave differently; rather I had the same as life before.

— 28-year male returnee from Bajhang district

their return home. Officials of the PNCC also corroborated this, mentioning that there is no mechanism to access services for psychosocial health in Malaysia for migrant workers in jail or detention centre. The GoN, through the SaMi programme, provides psychosocial counselling to families of migrant workers, and after the COVID-19 pandemic has been providing such support to RMWs as well. However, these services are only available in 156 local levels participating in the programme out of a total of 753. While the PNCC has been providing psychosocial health-related support to RMWs in the past, it was only available to those in its shelter.

CONCLUSION AND RECOMMENDATIONS

Nepali migrant workers face various challenges in destination countries, one of them being imprisonment. As this study finds, Nepali migrant workers in Malaysia face imprisonment for various reasons, the primary reason being a lack of documentation. The study also finds that these migrant workers face various challenges in accessing justice as well as psychosocial health. Based on the findings and discussion, the following recommendations have been put forth.

Strengthen monitoring and regulation of recruitment agencies

The study finds that many migrant workers who are imprisoned due to documentation issues related to leaving a company and working undocumented elsewhere. This often occurs as a result of being deceived by the employer or the recruitment agency about their job and salary. As such, it is important that the GoN enhance the monitoring and regulation of PRAs to address contract substitution, ensuring that migrant workers receive the promised salary and reducing the risk of being jailed due to undocumented status. Furthermore, PRAs should be made accountable in cases where the work or employer is different than as mentioned in the contract. The effective implementation of existing policies such as the 2017 Procedure on the Monitoring of Recruitment Agencies and Training Institutions, and the 2019 Directives for Monitoring Team Mobilisation, is essential for regulating institutions and individuals involved in the labour migration process.

Reduce recruitment fees and associated expenses

Despite paying hefty recruitment fees, migrant workers arriving in Malaysia from Nepal, as this study finds, often find themselves receiving salaries below what was promised. Pressure to repay loans taken for recruitment costs often forces workers to leave their designated employers and resort to work undocumented. Hence, it is crucial that the GoN implement the 'free-visa, free-ticket' policy and the 'employer pays' principle with robust monitoring. The Nepali government should collaborate with Malaysia to ensure proper implementation of the 'employer pays' principle as stipulated in the MoU between the two countries. Additionally, involving CSOs, trade unions and other stakeholders in joint committee meetings to monitor and review the MoU with Malaysia is essential for ensuring rights-based, gender-responsive and inclusive practices.

Incorporate information on rules and regulation of destination country in pre-departure orientation

The mandatory pre-departure orientation training (PDOT) required for Nepali migrant workers should include comprehensive counselling on the rules and regulations of the destination country. This should cover crucial aspects such as information on the laws regarding drug use and possession, risks and health implications associated with alcohol and drug abuse, the consequence of leaving employment prior to the completion of employment contract and organisations (such as Nepali diplomatic missions and I/NGOs) in the destination country that offer support to migrant workers. Such information can also be disseminated through digital mediums such as social media as well as through employment service centres and MRCs at the local level.

Provide post-arrival orientation for Nepali migrant workers

Nepali migrant workers should be given orientation after their arrival on the Malaysia's rules and regulations, legal consequences of alcohol and drug use, fights with employers or colleagues and absconding from the workplace which could include imprisonment and deportation. The Embassy of Nepal in Malaysia's weekly Facebook online programme can be utilised to disseminate this information.

Enhance soft skills of Nepali migrant workers

Skill training on soft skills such as communication, destination countries' language, teamwork, adaptability, patience, negotiation, and cultural awareness, among others should be provided to migrant workers prior to migration to destination countries. Proficiency of the destination country's language not only facilitates migrant workers' day-to-day interactions but also helps in understanding and following instructions and negotiating with employers. It can also help them to navigate the legal system of the destination country when needed. The GoN should include soft skill trainings for migrant workers at the National Vocational Training Academy (NVTa).

Enhance monitoring to check exploitation of Nepalis in jail and detention centres

Nepali diplomatic missions should work closely with local law enforcement agencies in Malaysia to identify and monitor individuals who double victimise and exploit Nepali migrant workers in jail and detention centres as well as their families luring them with the promise of their release. Awareness campaigns should be launched within Nepali diaspora communities to raise awareness about the issue of exploitation of Nepali migrant workers in prisons and detention centres. The Nepali diplomatic mission should work with Nepali diaspora organisations in Malaysia to spread awareness about such frauds and deceptions.

Ensure access to legal services

In addressing the legal challenges Nepali migrant workers face in Malaysia, it is crucial to consider the high cost of legal representation and the financial constraints experienced

by both workers' families and the Nepali Embassy. Due to the prohibitive costs of hiring lawyers, many cases involving Nepali workers experience significant delays and protracted legal proceedings, which can exacerbate the stress and uncertainty faced by affected individuals and their families. Furthermore, the Directive for the Legal Defence of Nepali Workers in Foreign Employment needs to be effectively implemented. Also, as this Directive excludes Nepali migrant workers without valid labour permits, funds should be allocated to diplomatic missions to hire lawyers enabling the missions to offer essential services, including legal support, to such Nepali migrant workers. Meanwhile, the GoN should make an effort to sign MoUs on mutual legal assistance for Nepali migrant workers.

Facilitate return of Nepali migrant workers

The MoU with Malaysia stipulates that the employer will pay for the return of Nepali migrant workers in the case of termination of contract due to non-compliance of terms and conditions by the employer. Besides, migrant workers in distress and with a valid labour permit can also receive support to return via the Foreign Employment Welfare Fund (FEWF).³⁵ However, as most of the migrant workers in the jail in Malaysia are without valid labour permits, they are not eligible for support from the FEWF. The GoN should allocate funds for Nepali migrant workers who do not possess valid labour permits to expedite their return process. This is especially relevant for migrant workers who come from lower socio-economic backgrounds and who have not been able to save during their employment abroad due to various distresses faced, including wage theft, and hence do not have the financial resources to pay for their return. Also, the GoN should make efforts to sign agreement with the Malaysian government to facilitate the transfer of Nepali workers who are sentenced to life imprisonment by the Malaysian government to Nepal with the understanding that they will get the same length of imprisonment in Nepal, allowing them the opportunity to occasionally meet with their families and work on self-improvement. The GoN should develop an action plan for the return and repatriation of Nepali migrant workers, including those in distress, undocumented, and in detention or jails.

Enhancing shelter support for RMWs

Providing shelter support for RMWs, especially those who were incarcerated, is a critical component of aiding their reintegration and recovery. Organisations like the PNCC have been able to support to RMWs who come in contact with them or are referred by other organisation including Nepali diplomatic missions through the shelter they run. As such,

35 All migrant workers are required to contribute to the Foreign Employment Welfare Fund (FEWF) to obtain their labour permits. Managed by the Foreign Employment Board (FEB), the FEWF is used by the government to provide various welfare and social protection services to migrant workers, such as death or injury compensation and scholarship for children of migrant workers, among others.

the GoN should establish shelter homes in all provinces and/or enhance the capacity of shelter homes run by CSOs to provide support to distressed and needy RMWs.

Provide psychosocial support to RMWs

Addressing the psychosocial counselling needs of migrant workers who were imprisoned is essential, as the experience of incarceration can lead to significant stress and trauma. The GoN should extend the existing psychosocial counselling provided through the SaMi programme to include RMWs to deal with stress and trauma due to their experience as well as in their psychosocial reintegration with family and community back home.

Establish a comprehensive system for recording data on imprisoned Nepali migrant workers

It is crucial to establish a comprehensive system for monitoring and recording data on imprisoned migrant workers to track the number of workers in jail, those returning and other relevant data to facilitate targeted assistance and policymaking.

Generate further evidence and knowledge on imprisoned migrant workers or those in detention in destination countries

There is a need for generating more evidence and knowledge for a better understanding of the situation of migrant workers who are in prison and/or detention centre in destination countries including Malaysia to provide them access to justice, their return and economic and psychosocial assistance for reintegration back home. Administrative databases maintained by CSOs and trade unions, like the PNCC, have the potential to bolster evidence-based policymaking by offering extensive data that can supplement existing information gathered by Nepali diplomatic missions. Additionally, CSOs and trade unions should enhance data sharing to maximise its impact.

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Pravasi Nepali Coordination Committee (PNCC) is a non-profit, non-political, non-governmental social organization dedicated to safeguarding and advancing the rights of Nepali migrant workers. It was founded in 2009 by returnee migrant workers with the mission of offering all possible support to migrant workers in hardship, particularly in the Gulf countries and Malaysia.

PNCC began its mission by establishing Migration Information Centers in Jhapa and Chitwan, partnering with the International Organization for Migration Nepal in 2011. Later, in 2012, we extended these services to seven more districts, including Jhapa, Mahottari, Makwanpur, Chitwan, Palpa, Rukum, and Kanchanpur, offering counseling and emergency support.

We opened an outreach office in Qatar in 2012 to better serve these workers, expanding to Saudi Arabia, Qatar, Malaysia, and the United Arab Emirates. Further, PNCC partnered with diaspora organisations to safeguard migrant workers and their families and to promote shared interests. This extension empowered PNCC to address worker complaints through external coordinators, partnering with the Nepali embassy and other stakeholders.

PNCC has provided support to around 42,000 distressed Nepali migrant workers. This humanitarian support has propelled PNCC to the forefront of the national and international arena, and has solidified its status as one of the most trusted and dedicated organisations for Nepali migrant workers.



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