



POLICY BRIEF

Nepal's Labour Migration Governance Through Business and Human Rights Perspective¹

Amidst the growing efforts to safeguard the rights of migrant workers and the heightened awareness of human rights concerns within the supply chains of various multinational corporations, the linkages between labour migration, business practices, and human rights have become increasingly significant. This requires a detailed exploration of the responsibilities, risks, and opportunities associated with labour migration within the context of business operations and broader human rights principles.

This policy brief provides a quick snapshot of labour migration governance through a business and human rights perspective.

POLICY CONTEXT

The Government of Nepal (GoN) has formulated policies and regulatory frameworks to govern foreign labour migration, with dedicated institutions mandated by law.² The Foreign Employment Act (FEA), 2007 provides the legislative foundation for governing foreign labour migration, addressing recruitment practices, and protecting workers' rights. Labour Agreements³ with major destination countries⁴ further ensure structured labour migration and better protection for Nepalese workers abroad. Nepal has endorsed the Global Compact for Safe, Orderly and Regular Migration (GCM), Sustainable Development Goals (SDGs), and international human rights and labour standards, including key conventions. The National Action Plan on Business and Human Rights (NAP+BHR) reinforces the government's commitment to promoting ethical recruitment, safeguarding migrant workers' rights, and tackling labour exploitation.

Nepal's adoption of NAP+BHR (2024-2028): An opportunity to strengthen accountable business

As part of its commitment to the United Nations Guiding Principles (UNGPs) on Business and Human Rights (BHR), the GoN launched NAP+BHR in January 2024. In alignment with the UNGPs, and out of the six major sectors of BHR, the NAP+BHR outlines specific measures that the GoN and businesses should take to uphold the responsibilities laid out in the UNGPs regarding the protection of Nepalese workers abroad. The NAP emphasizes the "Protect," "Respect," and "Remedy" pillars, which include strengthening labour rights monitoring, enforcing fair recruitment practices, and enhancing access to justice.

KEY CHALLENGES IN LABOUR MIGRATION GOVERNANCE

Nepal's Constitution, along with relevant policies and laws emphasize the need to regulate and manage foreign employment to ensure it is free from exploitation, safe, and systematic, and to guarantee decent employment and labour rights.⁵ Despite the existence of dedicated government mechanisms for labour migration, there are gaps in enforcing policies and laws and ensuring that private businesses respect the rights of migrant workers. These issues may be compounded by inappropriate practices among private businesses and ineffective/inadequate monitoring measures – both in Nepal as a Country of Origin (CoO) and in the Countries of Destination (CoDs), leaving Nepalese migrant workers vulnerable to a range of persistent risks, including exploitation, and deceptive practices throughout the labour migration cycle. While there has been gradual progress, multiple factors continue to

¹ This policy brief was drafted on the basis of desk research and summary discussions at the "National Policy Dialogue on Strengthening Labour Migration Governance: Integrating Business and Human Rights Perspectives for Protection of Migrant Workers," jointly organized by the Ministry of Labour, Employment and Social Security; European Union Delegation, Embassy of Japan; Embassy of Sweden; Swiss Agency for Development and Cooperation (SDC); International Labour Organization; International Organization for Migration and United Nations Development Program, and held on 07 August 2024 in Kathmandu.

² Including Nepal's Ministry of Labour, Employment and Social Security; Department of Foreign Employment; Foreign Employment Tribunal.

³ Including Bilateral Labour Migration Agreements (BLMAs), Memorandum of Understandings (MoUs), Memorandum of Cooperation (MoC), and Joint Declaration of Intent (JDol).

⁴ Qatar (2005), Republic of Korea (2007), Bahrain (2008), Japan (2009 and 2019), Jordan (2017), Malaysia (2018), Mauritius (2019), United Arab Emirates (2007 and 2019), Israel (2020), United Kingdom (2022), Germany (2023), and Romania (2023).

⁵ The Constitution of Nepal, 2015, Article 51 (I) (5).

contribute to the rights abuses faced by migrant workers such as:

Policy, Law and Implementation

Need to strengthen the rights-based approach in policies or governance system

Nepal has yet to ratify three ILO fundamental conventions, along with several key migration-related ILO conventions, including C97 (Migration for Employment Convention), C143 (Migrant Workers Convention), C181 (Private Employment Agencies Convention), C189 (Domestic Workers Convention), and C190 (Violence and Harassment Convention). The laws and policies on foreign labour migration including the FEA require more rights-based provisions for migrant workers. Some of the laws are yet to be aligned with the international standards to which Nepal is a party.⁶ On the other hand, initiatives from the regulating bodies including the Department of Foreign Employment (DoFE) to provide support to workers and enact existing laws and policies have been found to be inadequate, constrained by limited capacity and oversight mechanisms. Similarly, agencies like the Foreign Employment Board have mandates and resources to support the GoN and migrant workers but face challenges in utilizing them effectively.

Vulnerability of women in the labour migration cycle

Despite the Constitution of Nepal and the FEA that prohibit gender-based discrimination, the GoN has, over the past two decades introduced restrictive female mobility policies⁷, often based on factors such as age, employment sector, or destination countries. Such restrictions have inadvertently led many women to migrate irregularly, exposing them to heightened risks of exploitation and abuse throughout the migration cycle.⁸

Shortfall in the effective implementation of existing policies

The GoN introduced several “worker friendly” policies, covering topics such as recruitment fees⁹, effective use of quasi-judicial authority of DoFE in regulating recruitment agencies, prohibiting informal sub-agents, labour demand attestation by Nepalese diplomatic agencies abroad, and decentralization of complaints-lodging to the district level. However, there are concerns about these policies not being implemented effectively.

Few bilateral labour agreements and further need to strengthen the migrant rights and broader protection in existing agreements

Although the GoN issues institutional labour permits for 111 countries¹⁰ and individual permits for any country¹¹, Nepal has signed bilateral labour agreements/MoUs with only 12 destination countries. Some of these agreements spell out the protections for migrant workers, but many fall short in adequately addressing their rights and well-being. Key issues such as recruitment malpractices, employer accountability in CoDs to ensure ethical hiring by outsourced labour recruiters (LRs), legal protection for migrant workers in all stages of the migration cycle, and enforcement mechanisms are yet to be addressed more adequately in these agreements. There is a need for effective implementation, monitoring and evaluation of the existing bilateral labour agreements with timely review and renewals, including involving social partners (such as CSOs, trade unions, migrant networks) to promote transparency, accountability, and rights-based outcomes.

Limited resources and monitoring capacity of state agencies

The state agencies established to govern labour migration lack resources for monitoring, inspection, investigation and outreach. These institutions face shortages of human and other resources which limit their ability to function effectively. Their centralized presence in Kathmandu further restricts oversight of recruitment activities across all regions of Nepal. As a result, the monitoring

⁶ For example, as a party to the Forced Labour Convention, 1930 (No. 29) and the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Nepal has an obligation to align its law with these standards. However, Nepal's laws do not define some of the serious crimes including exploitation or forced labour. Neither the FEA nor the Human Trafficking and Transport (Control) Act, 2007 explicitly addresses these crimes against migrant workers. Consequently, such crimes are often treated as foreign employment frauds, leading to reconciliation without criminal prosecution of the offenders.

⁷ International Labour Organization, “A comprehensive analysis of policies and frameworks governing foreign employment for Nepali women migrant workers and migrant domestic workers”, October 2020, pp. 34-36.

⁸ - United Nations, “Report of the Special Rapporteur on the human rights of migrants on his mission to Nepal”, 30 April 2018, - CEDAW Committee's report of 23 October 2018.

⁹ - International Labour Organization, “A comprehensive analysis of policies and frameworks governing foreign employment for Nepali women migrant workers and migrant domestic workers”, October 2020 (Page 34-36).

¹⁰ Including “Free Visa Free Ticket” and “Employer Pays”.

¹¹ Website of Department of Foreign Employment, <https://dofe.gov.np/recognized.aspx>.

¹¹ Countries that GoN has not considered as restricted countries at the time of issuing permits.

of LR by regulatory bodies has been inadequate or ineffective. Additionally, staff managing labour migration require regular training and refresher courses on investigation techniques, labour rights, and human rights to strengthen institutional responses and ensure rights-based governance.

Lack of protection for workers migrating informally or in undocumented status

Thousands of Nepalese workers are recruited through informal channels and sent abroad without complying with the legal requirements to obtain labour permits from the GoN. These workers are exposed to greater vulnerabilities and risks of abuse and exploitation, both before departure and in the countries of destination.¹² In addition, because they migrate outside the formal system, these workers lack protection under Nepalese laws and are not eligible for compensation or remedies even in the unfortunate events of injury or death. These issues are more pertinent among domestic workers, primarily women migrant workers, who often face additional layers of risk due to the isolated and unregulated nature of their work.

Conduct of labour recruiters in Nepal

While recognizing the contribution of LR in obtaining employment opportunities for millions of Nepalese, several studies¹³ indicate that many LR have engaged in unfair, unethical or abusive practices.¹⁴ Heavy reliance on agents to secure job demands from Nepal and without direct contact with employers in CoDs is another element contributing to exploitation, deception, and rights violations.

Conduct of employers in countries of destination

Businesses in CoDs are often implicated in abusive practices including contract substitution, wage theft, confiscation of identity documents, restriction on workers' freedoms, and exploitation of their vulnerabilities. Employers frequently bypass fair recruitment principles, by failing to cover recruitment and migration-related costs for workers including services charges imposed by Nepalese LR. They neglect carrying out proper due diligence to ensure that the LR they use adhere to fair and ethical recruitment practices.

RECOMMENDATIONS



For the Government of Nepal:

- Amend Nepal's laws, including the Foreign Employment Act 2007 and the Human Trafficking and Transportation (Control) Act 2007 in line with international standards, which define a wider range of rights of migrant workers and offences such as human trafficking and forced labour that occur during the migration cycle.

¹² Chandan Kumar Mandal, "Authorities worried about migrant workers going abroad on visit visa", The Kathmandu Post, December 2020.

¹³ - Pravasi Nepali Coordination Committee and Equidem Nepal, "Clutches of Challenges: Abuse and Challenges of Nepali Migration Workers in labour migration cycle", 12 May 2023.

- National Human Rights Commission, Nepal, "Report on the Situation of Human Rights Situation of Migrant Workers", December 2022,

- National Human Rights Commission, Nepal, "National Report on Trafficking in Persons", September 2022.

- National Human Rights Commission, Nepal, "Research-Report on The Situation of the Rights of Migrant Workers : Recruitment Practices and Access to Justice of Migrant Workers", July 2019.

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- Legislative Parliament, International relations and Labour Committee "The Sub-Committee Report of a Field Monitoring and Inspection Carried out in Gulf Countries, 2074: Baishakh 2074 B.S. (2017).

- Amnesty International, "Turning People into Profits: Abusive Recruitment, Trafficking and Forced Labour of Nepali Migrant Workers", June 2017.

- Sarah Paoletti, Eleanor Taylor-Nicholson, Bandita Sijapati and Bassina Farbenblum, "Migrant Workers' Access to Justice at Home: Nepal", 2014.

- Amnesty International, "False Promises: Exploitation and Forced Labour of Nepali Migrant Workers", December 2011.

¹⁴ National Human Rights Commission, "Research Report on the Situation of the Rights of Migrant Workers", November 2019,

Amnesty International, "False Promises: Exploitation and Forced Labour of Nepali Migrant Workers", December 2011.

- Effectively implement laws and policies on recruitment costs and service charges as endorsed by the GoN and as agreed in the labour agreements between Nepal and CoDs. It should be in line with ILO General principles and operational guideline for fair recruitment and definition of recruitment fees and related costs.
- Ratify all fundamental ILO Conventions and those key migration related ILO Conventions - e.g. Migration for Employment Convention (Revised), 1949 (No. 97), Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), Private Employment Agencies Convention, 1997 (No. 181), Domestic Workers Convention, 2011 (No. 189) and Violence and Harassment Convention, 2019 (No. 190).
- Investigate and prosecute anyone involved in exploiting migrant workers according to the laws rather than settling the cases only by letting the offenders pay the victims.
- Strengthen support services targeting migrant workers including returnees (free legal support, health services including psychosocial support, information, skills training, shelter services, social protection mechanisms, rescue mechanisms, rapid response during pandemic/war and disasters) both in Nepal and countries of destinations.
- Lift the discriminatory restrictions or/and discouragement imposed on domestic workers and address their special needs for safer and dignified labour migration.
- Strengthen Nepal's diplomatic missions in terms of resources (including financial, technical, and human resources) to adequately assist migrant workers in need in countries of destinations.
- Expand the centralized roles related to monitoring, investigation, and redress in relation to foreign employment. Develop mechanisms for regulating informal intermediaries involved in labour migration.
- Strengthen coordination with Province governments, local governments and multi-stakeholder groups (whole of government and society approach) to understand the challenges and strengthen evidence-based learning through rigorous study.
- Scientifically review the licensing deposits provisioned by the GoN to the LR and their implications on overall recruitment costs to make the LR accountable to support the GoN's policies on recruitment costs.
- Engage with host governments, businesses, trade unions and other stakeholders for a constructive dialogue, to address malpractices in recruitment and employment stages.

For Businesses:

- Adopt a robust human rights standard, aligned with the General Principles and Operational Guidelines on Fair Recruitment and relevant international human rights and labour standards for Nepalese private businesses involved in foreign employment, and set up mechanisms to implement that standard across businesses.
- Adopt a Code of Conduct (CoC) for Nepal Association of Foreign Employment Agencies (NAFEA) and other associations based on international labour standards, to ensure that their members are accountable for abuses of human rights, by spelling out in detail the process of investigation, LR's right to present their defence, and effective remedies and compensation to the affected.
- Set up mechanisms to minimize unhealthy competition among the LR in obtaining job demands from CoDs, together with ways to minimize dependence on intermediaries.
- Work with GoN to agree on a roadmap for recruitment businesses to operate in a fair, ethical and responsible manner, following human rights standards.
- Facilitate convener role to create opportunities for stakeholders in Nepal and CoDs with a whole-of-society and whole-of-government approach to have constructive dialogues, share good practices and key learnings across labour migration corridors, and seek solutions to address and protect migrant workers' rights.

For Stakeholders:

- Enhance outreach efforts to ensure that migrant workers and their families are aware of their rights and existing support mechanisms.
- Engage in transparent monitoring of labour standards and migrant worker protections. Collaborate with employers and recruiters, governments, trade unions in countries of destination and other stakeholders to enhance accountability in recruitment and employment practices and promote policy reforms that uphold migrant workers' rights.
- Strengthen partnerships with legal aid providers and service provider institutions for effective access to justice and remedy.

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