

# **STUDY ON NEPAL'S BILATERAL LABOR AGREEMENTS WITH DESTINATION COUNTRIES**

Prepared by

**People Forum for Human Rights**

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## **Table of Abbreviations**

ADD	Abu Dhabi Dialogue
BLAs	Bilateral Labor Agreements
CoD	Country of Destination
CoO	Country of Origin
CP	Colombo Process
DoFE	Department of Foreign Employment
FEPB	Foreign Employment Promotion Board
G2G	Government to Government
GCM	Global Compact on Migration
GFMD	Global Forum on Migration and Development
GoN	Government of Nepal
ILO	International Labour Organization
MoC	Memorandum of Cooperation
MoLESS	Ministry of Labor, Employment and Social Security
MoU	Memorandum of Understanding
RA	Recruitment Agencies
UN	United Nations

## Table of Treaties and Conventions

ICERD	UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195.
ICCPR	UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171
ICESCR	UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3
CEDAW	UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13
CAT	UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85
ICMW	UN General Assembly, International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 18 December 1990, A/RES/45/158.
C087	Convention concerning Freedom of Association and Protection of the Right to Organize (Entry into force: 04 Jul 1950) Adoption: San Francisco, 31st ILC session (09 Jul 1948) " <b>Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)</b> "
C098	Convention concerning the Application of the Principles of the Right to Organize and to Bargain Collectively (Entry into force: 18 Jul 1951) Adoption: Geneva, 32nd ILC session (01 Jul 1949) " <b>Right to Organize and Collective Bargaining Convention, 1949 (No. 98)</b> "
C029	Convention concerning Forced or Compulsory Labour (Entry into force: 01 May 1932) Adoption: Geneva, 14th ILC session (28 Jun 1930) " <b>Forced Labour Convention, 1930</b> "
C105	Convention concerning the Abolition of Forced Labour (Entry into force: 17 Jan 1959) Adoption: Geneva, 40th ILC session (25 Jun 1957) " <b>Abolition of Forced Labour Convention, 1957 (No. 105)</b> "
C100	Equal Remuneration Convention, 1951 (No. 100), (Entry into force: 23 May 1953) Adoption: Geneva, 34th ILC session (29 Jun 1951) " <b>Equal Remuneration Convention, 1951</b> "
C111	Convention concerning Discrimination in Respect of Employment and Occupation (Entry into force: 15 Jun 1960) Adoption: Geneva, 42nd ILC session (25 Jun 1958) " <b>Discrimination (Employment and Occupation) Convention, 1958 (No. 111)</b> "
C138	Convention concerning Minimum Age for Admission to Employment (Entry into force: 19 Jun 1976) Adoption: Geneva, 58th ILC session (26 Jun 1973) " <b>Minimum Age Convention, 1973 (no. 138)</b> "
C182	Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Entry into force: 19 Nov 2000) Adoption: Geneva, 87th ILC session (17 Jun 1999) " <b>Worst Forms of Child Labour Convention, 1999 (No. 182)</b> "
C97	Convention concerning Migration for Employment (Revised 1949) (Entry into force: 22 Jan 1952) Adoption: Geneva, 32nd ILC session (01 Jul 1949) " <b>Migration for Employment Convention (Revised), 1949 (No. 97)</b> "
C143	Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (Entry into force: 09 Dec 1978) Adoption: Geneva, 60th ILC session (24 Jun 1975) " <b>Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)</b> "
C181	Convention concerning Private Employment Agencies (Entry into force: 10 May 2000) Adoption: Geneva, 85th ILC session (19 Jun 1997) " <b>Private Employment Agencies Convention, 1997 (No. 181)</b> "

C189	Convention concerning decent work for domestic workers (Entry into force: 05 Sep 2013), Adoption: Geneva, 100th ILC session (16 Jun 2011) " <b>Domestic Workers Convention, 2011 (No. 189)</b> "
R086	Recommendation concerning Migration for Employment (Revised 1949), Adoption: Geneva, 32nd ILC session (01 Jul 1949) " <b>Migration for Employment Recommendation (Revised), 1949 (No. 86)</b> "

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## 1. Background

People have migrated from one country to another country, or territory in search of work, and financial opportunities since time unknown. With the improvement in transportation facilities, eased by the development of air transportation mechanisms and the ease of flow of information from one destination to another, the possibility of traveling to foreign destinations in search of work, and better employment opportunities has only become easier and more accessible.

Nepal has a history of workers traveling across the border to India in search of work mostly, unskilled labor work even in colonized India. The end of the Rana regime in the 1950s and the liberalization policy pursued by Nepal in the 1980s increased the number of workers migrating to a foreign country for employment opportunities exponentially. The Foreign Employment Act was then introduced in 2042 B.S (1985 AD) to systematize the ongoing process and the 8<sup>th</sup> Five Year Plan (1992-1998) emphasized the need to increase access to destination countries for employment.

The increased demand for workers in the global market increased the tendency of Nepali people to look for better employment opportunities outside the country. Lack of adequate employment opportunities back home due to lack of access to quality education, poverty, and lower standard of living caused by lack of access to adequate infrastructure were identified as one of the major reasons behind the increase in the trend.<sup>1</sup> Hence, in 1999 the National Labor Policy was formulated and in 2007 the Foreign Employment Act was promulgated. In the following year, in 2009 the Department of Foreign Employment was established, and the Foreign Employment Promotion Board was constituted in accordance with the 2007 Act. Likewise, in 2012 the Foreign Employment Policy was enacted. Alongside these administrative bodies, Nepal also has established a Foreign Employment Tribunal (FET) in accordance with Chapter 9, Sec 64 of the Foreign Employment Act that handles the cases related to Foreign Employment Fraud. Similarly, labor attachés have been appointed as per Sec 68, who are responsible for carrying out different functions related to labor administration and welfare in the Embassies of Nepal in the destination countries. Nepal has appointed labor attaches to South Korea, Qatar, Malaysia, Oman, Kuwait, UAE, Bahrain, and Saudi Arabia.

Alongside these legal developments, the number of young migrant workers from Nepal traveling to a foreign destination for work has only been increasing. The Nepal Migration Report, 2020 reports that from 2008/2009 over 4 million labor approvals have been issued for 132 and 128 countries in the FY 2017/18 and 2018/19 respectively.<sup>2</sup> However, as of 2022, Nepal has anticipated and permitted institutional labor migration to a total of 110 countries.<sup>3</sup>

If we look at the labor migration trend, we can observe that the greatest number of labour migrants have been traveling to Malaysia and the GCC Countries. The Labour Migration

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<sup>1</sup> People Forum for Human Rights, *Nepal Labour Migration- Fact Sheet 2017*, p. 3-5. [hereinafter Fact Sheet 2017]

<sup>2</sup> GoN MoLESS, *Migration Report 2020*, p. 11. [hereinafter "Migration Report 2020"]

<sup>3</sup> See <https://dofe.gov.np/recognized.aspx>. Labour Migration for two countries, i.e. Iraq and Afghanistan has been put on hold for now. Accessed 1/12/2022



Report of 2018/2019 has however shown that the travel to Malaysia for work has decreased from 29.4% in 2017/2018 to only 4.2% in 2018/2019. However, the number again increased in 2019/2020<sup>4</sup> and decreased in 2020/2021<sup>5</sup>. The number of migrant workers going to the GCC Countries, especially Saudi Arabia, Qatar, and UAE has however always been stable. In terms of major destination countries for female labour migrants, a significant population has been traveling to Cyprus and Jordan in addition to the GCC Countries.<sup>6</sup>

While talking about numbers, it is also important to comment on the socio-economic contribution labor migration has made in the country. For the last 5 years, Remittance has been contributing towards more than a quarter of Nepal's total GDP, making Nepal the 19<sup>th</sup> country to receive remittance in the world in terms of received amount with about 8.1 billion US\$ received in the year 2020<sup>7</sup>. Further, the role of remittance has been so significant in the economy that labor migration is considered as one of the important contributing factors towards reducing poverty.<sup>8</sup>

Amongst these huge statistics of flow of migrant workers, since the earliest flow of migrant workers in the world history, mechanisms have been adopted to systematize and regulate the flow and protection standards have been adopted to secure the rights of foreign workers in a foreign jurisdiction. These include multilateral, regional and bilateral legal frameworks as well as International (GCM, GFMD) and Regional (ADD, CP) consultative process aiming to ensure safe, orderly, and regular migration. In this context, the role of bi-lateral relations leading to bi-lateral agreements and understandings have long been recognized and affirmed by ILO instruments as well as state practice. For Example, the ILO Migration for Employment Convention (Revised), 1949 (No. 97) recommends States with regular migration flow for employment to conclude agreements.<sup>9</sup> The Migrant Workers (Supplementary Provisions) Conventions 1975, that addresses the rights of migrant workers has recognized the necessity and possibility of countries entering into bilateral agreements to arrange for the rights of migrant workers.<sup>10</sup> Similarly, the ILO Recommendation no. 86<sup>11</sup> brought in the same year even contains a Model Agreement on Temporary and Permanent Employment in its annex inspiring Bilateral Agreements over a long period of time. Similarly, in 2013, the ILO Tripartite Technical Meeting (TTM) urged ILO to “assist governments and social partners with policy guidance in developing, negotiating and effectively implementing bilateral or other international agreements on labour migration, with a view to increasing positive outcomes for

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<sup>4</sup> Annual Review Report of DOFE for 2076/2077

<sup>5</sup> Annual Review Report of DOFE for 2077/2078

<sup>6</sup> Migration Report 2020, *supra note 2*, p. 14

<sup>7</sup> World Bank Migration and Remittance updated facts 2020.

<sup>8</sup> Maheshwor. Shrestha. *The Impact of Large-Scale Migration on Poverty, Expenditures, and Labor Market Outcomes in Nepal*. Policy Research Working Paper 8232, World Bank, Washington, DC, 2017.

<sup>9</sup> Art. 10, C97

<sup>10</sup> Art. 15, C143

<sup>11</sup> R. 86.

migrant workers, countries of origin and destination, and sustainable enterprises".<sup>12</sup> The same was affirmed in the 2014 ILO DG's report on Fair Migration presented to the ILO Conference in 2014.<sup>13</sup>

Despite the existence of these institutional mechanisms, migrant workers of Nepal have still been facing a lot of adversities in a foreign destination when they migrate to work. These adversities include inhumane working hours, non-payment or underpayment of salary and wages, improper rest hours, human trafficking, exploitation, forced or compulsory labor, unfair legal allegations and penalties and other forms of human rights violation<sup>14</sup>. Sometimes, fraudulent malpractices starting at home owing to unscrupulous recruitment agencies have caused migrant workers to resort to accept employment they wouldn't have accepted otherwise because of the aforementioned problems. Among other problems faced by the migrant workers, charging of high recruitment fees by the recruitment agencies with the promises of better income has been exploiting the uneducated migrant workers belonging to the lower economic strata in the country. In this context, the government has always negotiated for a recruitment model where the cost of the recruitment falls under the responsibilities of the Employer or the "Employer Pay Model" and have been able to sign MoUs with 4 countries to recruit workers on the model.

Further, given the current trends in labor migration and its role in the economy of the country, it is highly likely that young people in Nepal are going to migrate internationally for work in the years to come. Hence, the GoN must be in cognizance of this trend and play an active role in ensuring that the rights of its nationals in a foreign country is protected the government as well also receive long term benefits from the migration of its population for work. One of the effective ways of achieving these goals is by negotiating and entering into Bi-lateral labor migration agreements with destination countries to consolidate its aims and goals.

## 2. Objectives

The objective of this study is the following:

- To study the existing Bilateral Labor Agreements (inclusive of Memorandum of Understandings) and the provisions contained therein
- To understand whether the migrant workers have information concerning the existence of the BLAs and whether they have had any impact on the cycle of migration
- To analyze these agreements from an international good practice standard
- To study international good practices, compare it with Nepal's agreements, and provide recommendations thereof.

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<sup>12</sup> ILO Tripartite Technical Meeting on Labour Migration, *Conclusions*, TTMLM/2013/14 , Geneva, 4–8 Nov, 2013, available at [https://www.ilo.org/global/topics/labour-migration/events-training/WCMS\\_221809/lang--en/index.htm](https://www.ilo.org/global/topics/labour-migration/events-training/WCMS_221809/lang-en/index.htm).

<sup>13</sup> ILO, Report of the Director General in 103<sup>rd</sup> Session, I(b): Fair migration setting an ILO agenda, ILC.103/DG/IB (2014), ¶ 81.

<sup>14</sup> Fact Sheet 2017, p. 33.

### 3. Methodology

The present research has adopted several methods and techniques to provide a nuanced assessment of the Bilateral Labour Agreements and Memorandum of Understanding entered between Nepal and several destination countries:

#### Literature Review

The Research Team first conducted a literature review of the accessible and available literature published formerly that created certain assessment standards for assessing Bilateral Agreements and Memorandum of Understanding. The literature review included a review of the best practices standards identified by multiple authors and organizations. The literature review also includes a review of the Bilateral Migration Agreements and Memorandum of Agreements of other countries that could be accessible or were available in the ILO Online Repository and Database of Bilateral Agreements<sup>15</sup>. The literature review however is thematically limited to the Second-Generation Migration Agreements<sup>16</sup> created by the global economic migration wave following the 1990s. The best practice standards selected are the ones that could be easily applicable and peculiar to the South Asian context.

#### Questionnaire Survey with Migrant Workers.

To supplement the literature review and to assess the implications of Bilateral Labour Agreement, certain relevant variables were operationalized and a questionnaire survey for the migrant population was carried out. The sample was selected at random with 300 migrant workers surveyed from strategic location (DoFE, Office of Foreign Employment and Legal Aid Centers) identified for the purpose of research. The data collected through the questionnaire survey is then analyzed to evaluate the various data sets.

#### Semi-structured Qualitative Interview with Stakeholders

Following the good practices review and data set received from the Migrants workers, a semi structured qualitative interview was conducted with the stakeholders that include representatives from the Government institutions, National Human Rights Commission, Trade Unions, Social partners, CSO and Returnee migrants. The interviews included specific questions targeted to understand the role of relevant stakeholders and their involvement in the process of negotiating and administering BLA.

#### Consultative Meetings

Two consultative meetings were conducted on 25<sup>th</sup> November 2021 and 23<sup>rd</sup> February, 2022 to present the research objectives and research findings to relevant stakeholders. In the initial meeting the Survey Questionnaire and the objectives of the meetings was presented. After some feedback, the changes in the questionnaire were made and the research was carried further.

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<sup>15</sup>The online repository is available at: <http://www.oit.org/global/topics/labour-migration/policy-areas/measuring-impact/agreements/lang--en/index.htm> .

<sup>16</sup> The distinction between the First Generation and Second-Generation Migration Agreement is drawn from Piyasiri Wickramasekera, *Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A Review*, SSRN JOURNAL (2015), <http://www.ssrn.com/abstract=2636289> (last visited Oct 27, 2021). [hereinafter Wickramseker 2015]

Following the end of the research, the findings and the recommendations were presented in the consultative meetings, whose feedback has been incorporated into the paper.

#### Assessment of the agreements in relation to international standards.

In addition to the literature review, all the concentric international agreements and standards were taken as a base value to assess the consistency and adequacy of the Bilateral Migration Agreements. The human rights treaties and international principles were also reviewed and analyzed to provide a nuanced assessment.

#### Definition and Concepts

The definition of Bilateral Labor Migration Agreements or BLMAs as used in this research report has been borrowed from the ILO Report IV on Addressing Governance Challenges in a Changing Labour Migration Landscape<sup>17</sup> that has generically defined BLMAs to include "*bilateral agreements which create legally binding rights and obligations governed by international law that are usually more specific and action-oriented, as well as non-binding memoranda of understanding (MoUs) which set out a broad framework of cooperation to address common concerns, as well as to other arrangements, including between specific government ministries or agencies in destination and origin countries*"

#### Good Practice Standard

Since the review is concentrated on a desk review methodology, the good practices standards adopted in various past studies commissioned by ILO and other expert studies have been borrowed and adopted in a way that best comprehends Nepal's situation. For that reason, the standards adopted in *Bilateral Labour Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A Review* commissioned by ILO and Good Practices and Provisions in Multilateral and Bilateral Labour Agreements and Memoranda of Understanding commissioned by ILO Office of Bangladesh and Swiss Agency for Development and Cooperation. The latter report has further divided the assessment criteria into three broad categories, viz. migration governance, protection and empowerment of migrant workers, and migration and development linkages. In addition to the matters that has been identified as good practice assessment standard, some few assessment criteria have been included to address the national practice.

### **4. Limitations of the Study**

As the study is majorly a desk review, this doesn't adequately address the implementation aspect of the Bilateral Labor Agreements. The survey was conducted to understand the awareness and access to information about the BLAs and was limited to 300 People and the population was selected upon convenience by identifying strategic locations for migrant workers viz. Foreign Employment Office, Teku, DoFE and Legal Aid Clinics.

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<sup>17</sup>ILO, *Report IV Addressing governance challenges in a changing labour migration landscape*, 4<sup>th</sup> item on the agenda of International Labour Conference, 106th Session, 2017, p.32. [hereinafter ILO Report IV]

## **5. Overview of the International and National Legal Framework relevant to Bilateral Labor Agreements.**

The Bi-lateral Labor Agreements cannot exist in isolation. They form an inherent part of the robust international and national standards that provide framework for migration for work and are complimentary to these international, regional, bilateral, and national standards.

### **5.1. International Standards**

Since migration for work intersects with many human rights of an individual international human rights instruments as well as ILO Core Conventions enunciating principles of work and rights of workers/employees. Hence, the Nine Core Universal Human Rights Instruments and Eight Core ILO Conventions establish a normative framework for these Agreements to function. In addition, the following international standards have explicitly recognized bi-lateral labor agreements and facilitated for the development of these arrangements:

#### **i. Migration for Employment Convention, 1949 , (No. 097)**

This is one of the first convention to recognize and acknowledge the relevance and need of Bi-Lateral Labor Agreements between countries that share a high labor migration flow. Article 10 of this convention states "*in cases where the number of migrants going from the territory of one Member to that of another is sufficiently large, the competent authorities of the territories concerned shall, whenever necessary or desirable, enter into agreements for the purpose of regulating matters of common concern arising in connection with the application of the provisions of this Convention.*"

#### **ii. Migrant Workers (Supplementary Provisions) Convention, 1975(No. 143)**

This Convention was specifically agreed to provision to provide for the rights of migrant workers. The Article 15 of this Convention recognizes the complimentary role Bi-Lateral and Multi-lateral Labor Agreements could play in substantiating the protections offered under the ambits of this Convention specifically in terms of resolving the problems arising from the application of this Convention.

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

This convention is one of the nine core human rights instruments adopted by UN and the OHCHR. The preamble of this convention recognizes the progress made by "States on a regional or bilateral basis towards the protection of the rights of migrant workers and members of their families" as well as the "importance and usefulness of bilateral and multilateral agreements" in the sector. The Article 27 of the convention states that, "with respect to social security, migrant workers and members of their families shall enjoy in the State of employment the same treatment granted to nationals in so far as they fulfil the requirements provided for by the applicable legislation of that State and the applicable bilateral and multilateral treaties. The competent authorities of the State of origin and the State of employment can at any time establish the necessary arrangements to determine the modalities of application of this norm."

iv. ILO Conventions on Private Employment Agencies, 1997 (C no. 181)

Article 8 (2) of this Convention States that "where workers are recruited in one country for work in another, the Members concerned shall consider concluding bilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment."

v. Domestic Workers Convention, 2011 (C no. 189)

Article 15 (d) of Domestic Workers Convention, (No.189) provides in a context of international migration for work, where domestic workers are recruited in one country for work in another, abuses and fraudulent practices in recruitment, placement and employment must be avoided by concluding bilateral, regional or multilateral agreements among the sending and receiving state.

vi. Migration for Employment Recommendation, 1949

The Annex to R86, Model Agreement on Temporary and Permanent Migration for Employment, including Migration of Refugees and Displaced Persons, provides a comprehensive framework for the development of BLAs and MOUs and includes detailed text (Article 22) to guide the drafting of employment contracts.

vii. ILO Multilateral Framework on Labour Migration<sup>18</sup>

The ILO Multilateral Framework is a collection of "Non-binding principles and guidelines for a rights-based approach to labour migration". The document was prepared and developed on the basis of principles enunciated in multiple agreements and recommendations related to Labor Migration and was "negotiated through tripartite consultations".

## 5.2. GCM and Regional consultative process

Alongside the conventions, there exist international and regional consultative process that governs the matter of migration of work. Global Compact for Safe orderly and Regular Migration 2018 is a guiding document for managing labour migration which Nepal is a signatory party. This Compact in Object 5, 9 and 14 recognizes the role of bilateral agreement in managing mobility and migration. The issues dealt under it include the use of bilateral *mechanisms to share relevant information and intelligence on smuggling routes, modus operandi and financial transactions of smuggling networks, vulnerabilities faced by smuggled migrants, and other data to dismantle the smuggling networks and enhance joint responses; cooperate to build consular capacities, train consular officers, promote arrangements for providing consular services collectively where individual States lack capacity, including through technical assistance; develop bilateral or regional agreements on various aspects of consular cooperation; and bilateral or regional agreements on consular assistance and representation in places where States have an interest in strengthening effective consular services related to migration, but do not have a diplomatic or consular presence;*

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<sup>18</sup> ILO, MULTILATERAL FRAMEWORK ON LABOUR MIGRATION: NON-BINDING PRINCIPLES AND GUIDELINES FOR A RIGHTS-BASED APPROACH TO LABOUR MIGRATION, (Internationales Arbeitsamt ed., 2006). [hereinafter ILO Multilateral Framework]

Nepal has also been actively contributing for regional consultative process in Asia called Abu-dhabi Dialogue (ADD) and Colombo Process(CP). Those regional consultative processes aim to work as a platform for sharing best practices and mitigating challenges on labour migration. Specially in ADD where countries of destination and countries of origin Asian countries regularly meets and identifies thematic areas and projects to implement. Outcomes of the processes could be areas for bilateral negotiation and BLA. Regional allies like SAARC could be crucial to make common position on elements of BLA with destination countries. Recently SAARC nations have aligned in a common position on important governance issues such fair recruitment, minimum wage and skill qualification and recognition.<sup>19</sup>

### 5.3. National Standards

#### i. Constitution of Nepal

The Constitution of Nepal as fundamental rights have guaranteed the freedom of movement and freedom to chose's one's occupation as well as employment. It also declares any form of gender discrimination unlawful and has guaranteed freedom from forced labour and exploitation. Hence, this reflects the national policy of Nepal to always pursue it's citizens' freedom from exploitation, discriminatory treatment and liberty to chose one's form of employment. Similarly, the Art. 278 of the Constitution empowers the Federal Government to make any treaty or agreement. The Art. 279 states that the agreement must be accepted by simple majority of the House of Representatives to be applicable to Nepal. The Arts. 51(i), 51 (b) (3) and 51(m) (3) of the State Policies states the policy of the state to make foreign employment free from exploitation, safe and systematic and to guarantee employment. implement international agreements to which Nepal is a party and to make treaties and agreements based on equality and mutual interest. In this context, we can conclude that the Federal Government has authority to enter into Bi-Lateral Labor Agreements to make foreign employment free from exploitation, safe and systematic.

#### ii. Foreign Employment Act, 2007

The Section 4 of the Foreign Employment Act of Nepal states that the Government of Nepal may conclude Bilateral Agreement with Destination Countries in which its nationals migrate for employment. Similarly, Sec. 6 allows GoN to send workers following G2G mechanism after concluding an agreement. This Act provisions the process of migration for work and imposes safety standards to ensure that the recruitment process is fair, ethical and transparent. Further among the functions of the FEPB in Sec 39, the Act provides that the Board must carry out necessary functions in accordance with the BLAs. Similarly in Sec 68 on the duties of labor attaché, the Act imposes a function on the attaché to make attempts to facilitate a bilateral agreement between Nepal and labor receiving country.

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<sup>19</sup> Advocate Shom Luitel, *Nepal's Bilateral Agreement with Destination Countries*, 7(1) Sambahak – National Human Rights Commission (2017), p. 156-193.



### iii. Foreign Employment Policy, 2012

Under the heading of "Exploring employment opportunities in International Labor Market", the Foreign Employment Policy, 2012 states the strategy of Nepal to enter into Bilateral Agreement with Destination Countries and development JTC to monitor its implementation.

### iv. Treaty Act, 1990

The MoLESS is empowered to conclude Bi-lateral Labor Agreements with respect to Sec 6 of the Treaty Act which provides that a treaty may be signed following the decision of Government of Nepal. Similarly, Sec 9 of the Treaty Act states that in the Agreement or Treaty in which Nepal is a party, the Treaty provisions if ratified by parliament is as good as Nepal law but if not, Nepal has a duty to enact laws for its enforcement. However, Nepal as a signatory has a duty to be bound by its obligations under it.

In addition to the framework ascertained above, a lot of provisions of Foreign Employment Act, 2007 are applicable in the context of BLAs. Similarly, the Sec 4 and 5 of the Directives on the Management of Domestic Workers in Foreign Employment, 2073 states that the GoN may send domestic workers to foreign nations only after concluding a BLA except under G2G<sup>20</sup>

Similarly, to enforce the joint verification process and enforce practice of fair, ethical and transparent recruitment the GoN has also enacted Directives for verifying the Demand Letter for Foreign Employment in 2019.

### v. Directive Order by Supreme Court

In the year 2015, People's Forum for Human Rights had filed a writ petition (072-WO-0163)<sup>21</sup> before the Supreme Court of Nepal as a follow up on the enforcement of the Sec 68 of FEA to appoint labor attaches to destination countries. The petition cited various provisions of the BLMA to establish the source of GoN obligations. To that end, the Supreme Court had issued a directive order to the MoLESS to enter into a bi-lateral labor agreement with countries in which migrant workers have already been sent.

Some of the good practices from Bangladesh, Sri Lanka and India in acknowledgement of BLA and clearly defining the national policy under this heading<sup>22</sup> are:

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<sup>20</sup> As amended by the Third Amendment on March 2017

<sup>21</sup> Advocate Shom Prasad Luitel on behalf of People Forum for Human Rights v. Office of PM and CoM, Ministry of Foreign Affairs and MoLE, Writ no. 072-WO-0163. (2015)

<sup>22</sup> Ministry of External Affairs of India, *Bilateral co-operation for protection and welfare of emigrants*, 1<sup>st</sup> Jan, 2016 , available at [https://mea.gov.in/bilateral-documents.htm?dtl/26464/Bilateral\\_Cooperation\\_For\\_Protection\\_and\\_Welfare\\_of\\_Emigrants](https://mea.gov.in/bilateral-documents.htm?dtl/26464/Bilateral_Cooperation_For_Protection_and_Welfare_of_Emigrants).



Art 25 of the Overseas Employment and Migrants Act 2013 of Bangladesh which deals with bilateral agreement on migration and spells out the objectives of agreements and principles followed, migrant protection being the foremost.

Similarly, Sri Lanka national Migration Policy 2008 also clearly acknowledge the role of bilateral agreement and MoUs between Sri Lanka and host countries in the protection of migrant workers in the labour migration process and to ensure social security.

In line with this, Section 4 of Migrant Workers and Overseas Filipinos Act of 1995, Philippines under Deployment of Migrant Workers has asserted that the State shall deploy overseas Filipino workers only in countries where the rights of Filipino migrant workers are protected by concluding a bilateral agreement or arrangement with the government protecting the rights of their workers.

Similarly, India has a clear policy stance that is to be incorporated in its BLAs as published in the website of its Ministry of External Affairs

- Declaration of mutual intent to enhance employment opportunities and for bilateral cooperation in protection and welfare of workers.
- The host country to take measures for protection and welfare of the workers in unorganized sector.
- Statement of the broad procedure that the foreign employer shall follow to recruit Indian workers.
- The recruitment and terms of employment to be in conformity of the laws of both the countries
- A Joint Working Group to be constituted to ensure implementation of the MOU and to meet regularly to find solutions to bilateral labour problems

## 6. Overview of Bilateral Labour Migration Agreements and Memorandum of Understandings in Nepal

While the labour migration flow in Nepal as described earlier started from 1980s, it was only in the late 2000s that Nepal initiated diplomatic efforts to sign bilateral agreement with destination countries. This timeline coincides with time where the practice of entering Bilateral understandings reached its peak in Asia.<sup>23</sup> The agreements were signed in the context where a large number of migrant workers had already travelled to destination countries for work and did not contribute as much to facilitate the process.

If we are to locate the timeline for the finalization of Bilateral Labour Agreements in Nepal, we can divide the timeline into two distinct phases. The initial phase of 2005-2009 where Nepal first started signing Bilateral Labour Agreements/MoUs with destination countries. It starts with Qatar in 2005, South Korea and UAE in 2007, Bahrain in 2008 and Japan in 2009. In this phase the agreements that were signed were relatively short and more concerned with principles than actual protection. Broad frameworks were agreed upon in this phase without going to nuances and details of Labour Migration and their rights. Following these agreements, there remained almost a decade long hiatus in Nepal's labor diplomacy as the period saw no new agreements or arrangements.

The mark of the second phase can be attributed to the time when a General Agreement between Jordan and Nepal was reached with the technical support of International Labor Organization in the process of drafting in 2017. This was followed by the initiation of diplomatic efforts to sign a Memorandum of Understanding with one of the largest destination countries for Nepali migrant workers, Malaysia. Following the signing of the MoU with Malaysia, the Government of Nepal revised its initial MoU with UAE and signed an MoU with Mauritius. In the same year Nepal had also entered a Memorandum of Cooperation for sending specific skilled workers from Nepal to Japan under G2G. Following that year, in 2020 another G2G agreement was reached with Israel.

So far, Nepal has signed Labour Migration Agreements/ Understandings with 9 countries. We can further categorize these agreements based on the recruitment process and model it follows. While the agreement with Malaysia, Qatar, UAE, Mauritius, Jordan and Bahrain follows the recruitment through private recruiting agency model, the agreements with South Korea, Japan and Israel follows a government-to-Government (G2G) recruitment model. A short description of each agreement has been summarized below:

1. Qatar-Nepal	<p>Agreement Between His Majesty's Government of Nepal And the Government of The State of Qatar Concerning Nepalese Manpower Employment In The State Of Qatar, 2005</p> <ul style="list-style-type: none"> <li>- Signed on 21<sup>st</sup> March 2005 in Doha</li> <li>- First labour agreement signed by Nepal, contains 16 articles, talks about an "appended model agreement", wasn't accessible and haven't been brought to use</li> </ul>
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<sup>23</sup> Wickramasekara 2015, *supra note* 16, at 21.

	<ul style="list-style-type: none"> <li>- Supplemented by an "Additional Protocol to the Agreement on the Regulation of the Employment Of Nepalese Manpower signed on 21 March 2005 Between The Governments Of The State Of Qatar And Nepal," signed on 1<sup>st</sup> January, 2008</li> <li>- Recent Joint Committee meeting agreed to revise the agreement in Dec 2-3,2022.<sup>24</sup></li> </ul>
2. Korea-Nepal	<p>Memorandum of Understanding between the Ministry of Labor and Transport Management, Government of Nepal and the Ministry of Labor of the Republic of Korea on the Sending of Workers to the Republic of Korea under the Employment Permit System</p> <ul style="list-style-type: none"> <li>- Signed on July 23<sup>rd</sup> 2007 at Ministerial Level; 21 paragraphs in total</li> <li>- substantiated by the 2007 Implementation agreement signed in Nov.29, 2007 and Service Commitment Agreement signed in January 10, 2008 at Departmental Level.<sup>25</sup></li> <li>- First Nepal G2G agreement managed by the EPS system; has a dedicated website, best practice in G2G model</li> <li>- A designated DoFE EPS Korea Section established separately for administration, with a dedicated website</li> </ul>
3. Bahrain-Nepal	<p>Memorandum Of Understanding in the Areas Of Labor And Occupational Training Between The Government Of Nepal And The Government Of The Kingdom Of Bahrain</p> <ul style="list-style-type: none"> <li>- Signed on 29<sup>th</sup> April, 2008</li> <li>- 19 Articles.</li> </ul>
4. Jordan-Nepal	<p>General Agreement in the Field of Manpower between the Government of the Hashemite Kingdom of Jordan and the Government of Nepal</p> <p>-signed on 18<sup>th</sup> Oct, 2017</p> <ul style="list-style-type: none"> <li>- 20 Articles, and two Annexures containing two standard employment contract for regular temporary migrant workers and domestic migrant workers.</li> <li>- Marks the second phase of Labor Migration Agreements in Nepal</li> <li>- serves as a blueprint for all latter agreements, drafted under the technical support of ILO<sup>26</sup>, consistent with, the ILO General Principles and Operational Guidelines on Fair Recruitment (GPOG)</li> <li>- among the first BLAs in Nepal to be aligned to the ILO GPOG.</li> </ul>
5. Malaysia-Nepal	<p>Memorandum of Understanding between the Government of Nepal and Government of Malaysia on the Recruitment, Employment and Repatriation of Workers</p> <ul style="list-style-type: none"> <li>- Signed on 29<sup>th</sup> October, 2018</li> <li>- Drafting Committee from Ministry of Law, Labour and Foreign Affairs</li> <li>- Draft largely based on Global Compact on Migration</li> <li>- 16 Articles, Three Appendixes (Standard Employment Contract, Duties and Responsibility of Employer, Employee and Ras and ToR for Joint Committee)</li> </ul>

<sup>24</sup> ILO, Migrant- Labour Migrant Branch, Good Practice Database available at [https://www.ilo.org/dyn/migpractice/migmmain.showPractice?p\\_lang=en&p\\_practice\\_id=198](https://www.ilo.org/dyn/migpractice/migmmain.showPractice?p_lang=en&p_practice_id=198) ["ILO Good Practice Database"]

<sup>25</sup>The website for the EPS Section of DoFE is: <http://epsnepal.gov.np/np/about-us/>

<sup>26</sup> ILO Good Practice Database available at <https://www.ilo.org/dyn/migpractice/migmmain.home>

6. Japan-Nepal	<p>Memorandum Of Cooperation Between The Ministry Of Justice, The Ministry Of Foreign Affairs, The Ministry Of Health, Labour And Welfare And The National Police Agency Of Japan And The Ministry Of Labour, Employment And Social Security Of The Government Of Nepal On A Basic Framework For Information Partnership For Proper Operation Of The System Pertaining To Foreign Human Resources With The Status Of Residence Of “Specified Skilled Worker”</p> <ul style="list-style-type: none"> <li>- Signed on 25<sup>th</sup> March 2019;</li> <li>- Initially offered on private recruitment but GoN pushed for G2G model</li> </ul>
7. Mauritius-Nepal	<p>Memorandum of Understanding between the Government of Nepal and Government of Mauritius on the Recruitment, Employment and Repatriation of Workers</p> <ul style="list-style-type: none"> <li>- Signed on 11<sup>th</sup> June 2019 in Geneva when both parties were attending the ILO Conference</li> <li>- 11 Articles, 2 Appendixes (Standard Employment Contract and Responsibilities of Employer, Worker and NRA)</li> <li>- Similar to the Malaysia-Nepal and Jordan-Nepal agreement</li> <li>- 11 Articles, 2 Appendixes (Standard Employment Contract and Responsibilities of Employer, Worker and NRA)</li> </ul>
8. UAE-Nepal	<p>Memorandum of Understanding between the Government of Nepal and Government of UAE on the Recruitment, Employment and Repatriation of Workers</p> <ul style="list-style-type: none"> <li>- Signed on 11<sup>th</sup> June 2019 in Geneva when both parties were attending the ILO Conference</li> <li>- 8 Articles and an Annexure on Standard Employment Contract Similar to the Malaysia-Nepal, Mauritius- Nepal</li> <li>- Revision to the former MoU signed in 2007</li> </ul>
9. Israel-Nepal	<p>Agreement Between the Government of Nepal and the Government of the state of Israel on the Temporary Employment of Nepali workers in Specific Labor Market Sectors in the State of Israel,</p> <ul style="list-style-type: none"> <li>- Signed on 30<sup>th</sup> September 2020</li> <li>- Framework Agreement followed to be supplemented by Implementation Protocol signed on January 2021<sup>27</sup></li> <li>- G2G Model succeeded the Memorandum of Cooperation signed for the Joint Pilot Program for the Recruitment of Caregivers from Nepal to Treat Disabled Elderly Employers in Israel that was signed between Nepal and Israel for taking 50-60 caregivers from Nepal in 2015.</li> </ul>

<sup>27</sup><https://il.nepalembassy.gov.np/%E0%A4%88%E0%A4%9C%E0%A4%B0%E0%A4%BE%E0%A4%AF%E0%A4%B2%E0%A4%AE%E0%A4%BE-%E0%A4%A8%E0%A5%87%E0%A4%AA%E0%A4%BE%E0%A4%B2%E0%A5%80-%E0%A4%B8%E0%A4%B9%E0%A4%BE%E0%A4%AF%E0%A4%95-%E0%A4%95%E0%A4%BE/>

## 7. Assessment of the Bilateral Labour Agreements and Memorandum of Understandings

### 7.1. Governance of labor migration

#### 7.1.1. Evidence of normative foundations and respect for migrant workers' rights (based on international instruments)

Cholewinski suggests that any Bilateral Labour Agreement can be evaluated as a good practice only if the Agreement is in compliance with International Human Rights Instruments<sup>28</sup> and Conventions related to Labour and Migrant Workers.<sup>29</sup> Since they lay down the normative foundation for drafting these agreements, acknowledging these instruments in the Preamble or objectives of the Agreement reinstates the state parties' commitment to the treaties.<sup>30</sup> Hence, acknowledging any of these instruments in the Bilateral Agreement is a good practice.

In Nepali context, the only agreement that affirms state's commitment to other normative international foundations and framework is the Nepal-Jordan Agreement. The agreement in the preamble recognizes the commitments of the parties towards ICCPR, ICESCR and International Instruments on the rights and welfare of the labor.

One interesting thing to note is in the Objectives or in the portion dedicated to areas of cooperation all three MoUs with Malaysia, UAE and Mauritius mention the promotion of principles of transparency, ethical recruitment, fairness, and mutuality of benefits. A lot of other principles as such has been name-dropped in the BLMAs, though how much they are applied in reality is yet to be assessed. The agreement of Israel also exclusively declares their common goal to combat human trafficking, undocumented and illegal manpower recruitment practices, and illegal employment of foreign workers.

In addition, one interesting development that must be noted is the signing of Memorandum of Understanding between the National Human Rights Commission of Nepal and National Human Rights Committee of Qatar in 2015<sup>31</sup>, National Human Rights Commission of Malaysia in 2019<sup>32</sup> and National Human Rights Commission of South Korea.

Interview with the Key Informants from National Human Rights Commission revealed that the relationship between the Human Rights Commission in Nepal and Malaysia has been very good in a sense that there have been frequent meetings and conversations about formulating an

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<sup>28</sup> A four level foundation is ascertained to identify the normative standards:

- a. Nine UN Universal human rights instruments and associated Protocols
- b. Eight ILO Core Conventions on fundamental principles and rights at work pertaining to forced labour, freedom of association, child labour and discrimination.
- c. Three international Migrant worker specific Conventions.
- d. Other labour standards including Recommendations and Framework Agreements.

<sup>29</sup> Ryszard Cholewinski, *Evaluating Bilateral Labour Migration Agreements in the Light of Human and Labour Rights* in M PANIZZON ET AL., THE PALGRAVE HANDBOOK OF INTERNATIONAL LABOUR MIGRATION: LAW AND POLICY PERSPECTIVES (2016), last visited Oct 27, 2021).

<sup>30</sup> Wickramsakera 2015; ILO Report IV at 32.

<sup>31</sup> Text available at [https://www.nhrcnepal.org/uploads/law/MoU\\_NepalNHRC-QatarNHRC.pdf](https://www.nhrcnepal.org/uploads/law/MoU_NepalNHRC-QatarNHRC.pdf)

<sup>32</sup> Text available at [https://www.nhrcnepal.org/uploads/law/MoU\\_NHRC\\_Malaysia.pdf](https://www.nhrcnepal.org/uploads/law/MoU_NHRC_Malaysia.pdf)

Action Plan to effectively work to help migrant workers realize or satisfy the protections available to them. While nothing has been documented so far, the NHRC informed that the renewal of the 1-year MoU between NHRC and Human Rights Commission of Malaysia (SUHAKAM) that expired in November 2020 was in the process and the new signing date of March 28, 2022 in Kuala Lumpur had been agreed upon. The NHRC<sup>33</sup> also informed that in both Malaysia and Qatar a Nepal desk had been set up with Nepali speakers to hear the grievances of Nepali migrant workers in Nepali. Over 200 migrant workers are said to have been benefitted by the desk in Malaysia as informed by the NHRC officials in a year. The MoU between NHRC-SUHAKAM (Malaysia) has also been translated and published in Nepali for circulation.

Whereas more than 1700 Nepali Nationals received help from Qatar Human Rights Committee from 2015-2019.

Irrespective of what is written above, the Good Practices Standard that has been taken as a blueprint to evaluate the bilateral arrangements in Nepal has been prepared considering all the conventions and the provisions and principles enunciated therein. Hence, this standard should not be viewed as exhaustive in representing the normative standards included in the report.

Further, the commitment of both the parties can also be evaluated in context of the relevant treaties and agreements the two member states are parties to. Considering that, the ratifications of the State Parties to the relevant international human rights instruments, core labour conventions and international human rights instruments are tabulated in the Annex of this document.

#### 7.1.2. Transparency: Sharing of information with relevant stakeholders, dissemination and clear objectives.

One of the major purpose behind countries entering into a bilateral labor agreement is to secure the rights of its migrating nationals in the destination countries. This can be ensured only when all the relevant stakeholders in the entire labor migration process (workers, employers, recruitment agencies, NGOs/CSOs) are aware of the (a) contents of the agreements their state has signed with destination nations and (b) how these agreements have defined the rights and obligations of migrant workers and concerned agencies. The Art. 3 of C097 Convention, Art. 2 of R086 of ILO as well the ILO Model Agreement all reinforce this important condition in labor migration practices and further impose a duty on nation states to prevent any "misleading propaganda on emigration or immigration for work". There are essentially two aspects related with this element viz. availability of the texts of the agreements in public domain and the duty to disseminate information of the agreements to a wider public.

In the first aspect, the three MoUs entered by Nepal in 2018 and 2019, Malaysia-Nepal, Mauritius-Nepal and UAE-Nepal has been uploaded in the website of the MOLESS. The Qatar-Nepal, Bahrain-Nepal, Korea-Nepal and Jordan-Nepal BLAs for the purpose of this research

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<sup>33</sup> Key Informant Interview with the member Lily Thapa of National Human Rights Commission on 3<sup>rd</sup> February 2022

were accessed through the website of CESLAM<sup>34</sup>, a research think-tank based in Nepal working on rights of migrant workers. Following the unavailability of the other two agreements, the researcher had requested access to the remaining agreements under the Right to Information Application to MOLESS. The Ministry had responded within 15 days with a copy of Israel-Nepal agreement but denied access to the text of Japan-Nepal MoC on the grounds that the treaty contained a clause that prohibited the governments from sharing the treaty with general public or researchers without written consent.

The irony however is that the Ministry of Foreign Affairs of Japan has published a signed copy of the agreement on the website. The Article 3 of the MoC that the RTI reply had referred to meant that only "Confidential Information" shared by the states were confidential and not the entire agreement. Also, since the Japanese government has themselves uploaded the agreement, it seems highly unreasonable that the Government of Nepal treat the MoC as confidential document.

**In terms of good practices India<sup>35</sup>, Thailand and Philippines<sup>36</sup> practice transparency by making their bilateral labor agreements available in public domain.**

While current officials of the Ministry were a little reluctant in making the agreements available easily in the name of protecting bilateral relations, former secretary of the Ministry, representative from CSO as well as university, were of the opinion that since the agreements were rights oriented, they should be made available in public domain for the knowledge of the larger civil society.

Further, the information about the decisions of the Joint Committee meetings is also not available on the website in reservation to one exception, Press Release on December 5<sup>th</sup>, 2021 of the 4<sup>th</sup> JC Meeting of Nepal-Qatar on 3<sup>rd</sup>-4<sup>th</sup> December.

The second aspect, dissemination of information can be viewed under two lenses. The first one, concerned with labor governance is with regards to the dissemination of the contents of the agreement and the recruitment process to general public. The second one falls under the provision of information to applicants and migrant workers specifically on the process of recruitment, their rights, obligations and other matters relating to their employment. This section shall only address the former. The obligation to disseminate information has been acknowledged explicitly only in Qatar-Nepal and Korea-Nepal agreements. The Art. 5 of the Qatar-Nepal Agreement imposes a duty on GoN to provide migrant workers desiring to work in Qatar with "*adequate information on conditions of employment, cost and standard of living in Qatar.*"

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<sup>34</sup> Available at: <https://www.ceslam.org/governance/bilateral-arrangements>

<sup>35</sup> All Treaties can be accessed through : <http://mea.gov.in/TreatyList.htm?1>

<sup>36</sup> <https://www.poea.gov.ph/laborinfo/bLB.html>

The Korea-Nepal MoU has a dedicated provision in Para. 5 on "*Advertisement of EPS*" that imposes an obligation on MOLESS to "actively advertise the key contents and employment of EPS in Nepal", which is considered a good practice by international standards.

The rest of the agreements do not contain any such explicit provision on this subject matter. However, the Israel-Nepal Agreement in its Objectives (Art. 2(a)), Art 6 as well as the UAE-Nepal (Art.2) and Mauritius-Nepal (Art.4) in "Areas of cooperation" talk about transparency and well-informed recruitment process which correlates to the second lens talked above.

Some of the good practices of New Zealand-Kiribati and Spain-Columbia is tabulated below<sup>37</sup>:

In terms of good practice, the NZ-Kiribati Inter Agency Understanding [IAU] for Recognized Seasonal Employment Scheme in Art. 11 has provisioned on "Publicity" where parties have a duty to "*increase awareness and understanding*"; "*correct any and misleading information*"; and "*make IAU document publicly available on the website*".

Similarly, the Article 17 of the Columbia-Spain agreement reads " "*Facilitating the dissemination in both countries of timely information about the contents of the Agreement*" " which is also considered as a good practice in this arena.

With respect to dissemination of information, of the total sample population surveyed, 78% of them had received pre-departure orientation but none of the migrant workers were aware of the no of BLAs Nepal had signed with the destination countries, similarly 98% of the respondents reported that they had no information about the benefit of BLAs and 99.34% were not aware of the process of signing of BLA. This clearly shows a great gap in the process of signing the BLAs and any interventions being made to make. Further, all the non-government Key informants including RAs, CSOs and returnee migrants informed that the government was very reluctant to provide information about the BLA. The government officers responsible for investigating cases of foreign employment fraud at the DoFE affirmed that the reason why much fraud occurred was because of the lack of awareness in remote areas. This clearly shows that the Government of Nepal has not yet disseminated important information about Foreign Employment and existence of BLAs and the protections offer under it to the general population.

Similarly, since the duty to disseminate the information of the BLAs has not been imposed on the destination countries, they do not have an obligation to inform their RAs and Employers about the benefits they must guarantee. The duty to disseminate information is ideal when reciprocal.

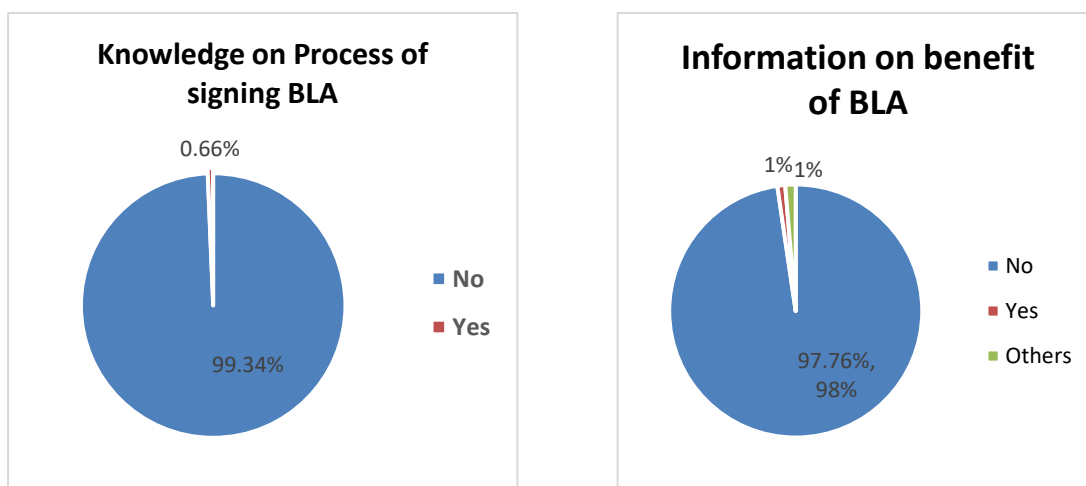
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<sup>37</sup> Wickramasekara 2015 *supra note 16*, at 24.



In terms of defining clear objective, all the agreement affirms the objective of the agreement to establish friendly relations between the parties and make provisions for organizing Nepalese human resources in the destination country and cooperate in the field of human resource development for mutual benefits.

The Nepal-Korea, Bahrain-Nepal, and Jordan-Nepal recognize the principle of equality. The post-2017 agreements talk about providing for the recruitment, employment, and repatriation of workers from COD and to protect the rights of both Workers and Employers. The Jordan-Nepal agreement has made a list of objectives in Article-1 that range from strengthening cooperation to ensuring *international labour standards of rights at work, decent work opportunities, enhance social protection and strengthen dialogue on work related issues*. The Israel-Nepal agreement is peculiar in the sense where it also acknowledges the role of the agreement in controlling illegal migration and human trafficking and makes it clear in the objective itself.



### 7.1.3. Defining clear responsibilities between parties

The identification of all the stakeholders for the agreement viz. State parties, employers in the COD, recruitment agencies in both countries, migrant workers, and relevant institution in the COO as well as COD and the clear division of responsibilities between them helps in ensuring accountability, responsibility and credibility of institutions involved in the recruitment process.

All the agreements have made it clear that the Ministries dealing with Labor Issues and Human Resources shall be the implementing institution for the signing, implementation, and administration of treaties.

Since the G2G agreements is entirely based on the cooperation of Ministry in the recruitment process the clear defining of responsibilities is essential for proper labor migration governance. There are supplementary guidelines, implementation protocols and working procedures already in system that clearly demarcates the responsibilities of concerned parties.

Qatar-Nepal and Bahrain-Nepal agreements roughly talk about the responsibilities of the two parties in the agreement, whereas the 2017-2019 agreements all have dedicated sections that

separates the responsibilities of stake holders. The Arts. 4,9,7 and 4 of the Jordan-Nepal, Malaysia-Nepal, Mauritius-Nepal and UAE-Nepal agreement separates and list the responsibilities of Government of Nepal and Jordan, Malaysia, Mauritius and UAE respectively. Similarly, the Appendix-B of both Malaysia-Nepal MoU and Mauritius-Nepal MoU lists the responsibilities of Employer, Worker and Recruitment Agencies<sup>38</sup>.

Despite some progress in the post-2017 agreements, yet the agreements are to acknowledge other relevant agencies working in the sector in the MoU. For example, while the DoFE, FEB all work under the MoLESS, they are hardly acknowledged in the agreement and neither their responsibilities defined.

In contrast the following good practice in Philippines has made the labor governance of Philippines ideal.<sup>39</sup>

The Philippines-Manitoba(Canada) agreement acknowledges the Philippines Overseas Employment Administration(POEA), the Overseas Workers' Welfare Agency (OWWA), the Technical Education and Skills Development Authority (TESDA), and the Professional Regulation Commission (PRC) on necessary articles.

#### 7.1.4. Concrete implementing, monitoring, evaluation procedures

One of the important aspects of Labor governance is the concrete implementing, monitoring and evaluation procedures. This correlates to the formation of Joint Working Group or Coordination Committee that assesses the implementation and effect of the Bilateral Labor Agreement. While under all the agreements there are Joint Committees that are supposed to meet annually to address the matters incorporated in BLMAs, it is essential that Nepal also set up these joint monitoring (monitoring to be consistent throughout the year) and evaluation mechanisms (evaluation to be done on an annual basis)to make its labor governance more efficient.

If we were to make a comparative of agreements entered into from 2005-2008 and the ones recently signed in 2017 and 2019, we see that we have come a long way in making concrete provisions in terms of protection of rights of migrant workers. We have also improved on the point of governance but one of the shortcomings in the BLAs has been the absence of proper impact assessment, gender-segregated data collection on critical variables like profiles of migrants, complaints statistics, systems of recruitment, OSH information, and the wage situation and a provisioning a proper system for a defined evaluation and monitoring procedures. Interviews with key informants also reveal the very concern. In principle the agreement are ideal, but monitoring on its implementation still has a long way to go.

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<sup>38</sup> The Mauritius-Nepal MoU puts a restriction on the use of Mauritian Recruitment Agencies.

<sup>39</sup> Piyasiri Wickramsekera, *Good practices and provisions in multilateral and bilateral labour agreements and memoranda of understanding* 104 (2018), [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms\\_683740.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms_683740.pdf) (last visited Nov 18, 2021). [hereinafter Wickramsekera 2018]

## Nepal Practice

Agreement	Art.	Composition	Frequency of Meeting	Functions specified	Working procedure	Validity and Renewal
Qatar-Nepal	14	3-rep from each side	Every two years or as necessary	<ul style="list-style-type: none"> <li>- Coordinate to implement and take necessary actions</li> <li>- Interpretation and remove difficulties</li> <li>- Submit recommendations for review or amendment if necessary</li> </ul>	As determined by the committee	Valid for 4 years, automatically renewed unless acted otherwise. (Art. 16)
Bahrain-Nepal	13	Not specified	"At least once a year or whenever there is a need"	<ul style="list-style-type: none"> <li>- Formulating the agreed co-operation program</li> <li>- Follow up the implementation and <b>evaluation</b> thereof</li> </ul>	Not specified	Valid for 3 years, automatically renewed unless acted otherwise. (Art. 15)
Korea-Nepal	X	X	X	X	X	2 years, extended with written consent
Jordan-Nepal	18	Joint Secretary Level, 3-rep from each side within 3 months of EIF of the agreement Also designate a national contact point to facilitate communication	"Joint consultative meetings" Annually or earlier if needed for committee	<ul style="list-style-type: none"> <li>- Periodic review, assessment and monitoring of the implementation of agreement</li> <li>- Necessary recommendations to resolve dispute</li> </ul>	Not specified	Valid for 4 years, automatically renewed unless acted otherwise. (Art. 16)
Malaysia-Nepal	10 ToR in App.C	Designate any office to act as contact point	Annual meeting as well as	<ul style="list-style-type: none"> <li>- Monitor the implementation of MoU or any program regarding the recruitment,</li> </ul>	As determined	Valid for 5 years, extended if agreed upon

		Ascertain a focal point  Appropriate government authorities	convened upon necessary	employment and repatriation of the Workers <ul style="list-style-type: none"> <li>- Monitor and obtain information on employment issues faced by the Workers and the Employees</li> <li>- Provide advisory services and technical assistance in employment</li> <li>- Interpretation, Remove difficulties, Dispute settlement on the MoU</li> <li>- Propose any amendment to the Standard Contract of Employment or to the MoU and its Appendices.</li> </ul>	by the committee	
<b>Mauritius-Nepal</b>	10 JWG	2 officials from both sides	At least once a year or as needed	<ul style="list-style-type: none"> <li>- Coordinate to implement and monitor MOU;</li> <li>- Recommend amendments to the MOU as needed</li> <li>- Jointly determine insurance coverage amount and other key items related to the recruitment, employment and repatriation of the Worker and review them periodically as needed;</li> <li>- Exchange information, expertise, research, and conduct joint projects pertaining to the development of technical education, mutual skills recognition, vocational training, and counselling for Worker and</li> <li>- Interpretation and remove difficulties, facilitate dispute settlement.</li> </ul>	Not specified	4 years valid and automatically renewed unless otherwise
<b>UAE-Nepal</b>	7	3 officials from each side	Not specified	<ul style="list-style-type: none"> <li>- Coordinate between the Parties for taking necessary measures implementation and monitoring of the MOU;</li> </ul>	Not specified	4 years valid and automatically

				<ul style="list-style-type: none"> <li>- Recommend amendments to the MOU as needed.</li> <li>- Agree on the recruitment process and itemize and identify all costs associated with the recruitment and employment of the UAE.</li> <li>- Make necessary recommendations to resolve dispute arising from the interpretation and implementation of the provisions of this MOU as needed</li> </ul>		renewed unless otherwise
<b>Israel-Nepal</b>	7 JCC	Not specified	Annual or upon required and even virtually	<ul style="list-style-type: none"> <li>- Review effective implementation of the agreement and its implementation protocol.</li> <li>- Agreed minutes to be drawn up after meeting</li> </ul>	Not specified	Valid for 3 years, automatically extended after a year.
<b>Japan-Nepal</b>	4(2)	Relevant ministries	"from time to time"	<ul style="list-style-type: none"> <li>- Achieve purposes and make efforts to correct problems to improve operation</li> <li>- Issues related to implementation and changes of the policies of both countries concerning the system.</li> <li>- Issues related to recruitment process and costs needed in such process</li> <li>- Issues related to corrective measures for the various examinations pertaining to sending and accepting workers and for improper accepting organizations in Japan</li> <li>- support for their work life, daily life and social life enabling them to engage in their social life</li> <li>- Improper activities of the concerned organizations in Nepal.</li> </ul>	Not Specified	Based in the review of the system to be implemented 2 years after commencement, the MoC is to be reviewed upon necessary. Validity upto 5 years, renewed by mutual consent.

				<ul style="list-style-type: none"><li>- Proper implementation of skill exams and tests to measure Japanese language proficiency</li><li>- Issues related to residence management of specified skilled workers in Japan</li><li>- Issues related to proper operation of the system and other related systems pertaining to immigration or labor of both countries other than the issues specified in(a) to (e) above</li></ul>		
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## Commentary on Nepal Practice

Almost all the agreements that provide for the Joint Committees assert the duty of Committee to monitor the implementation of the agreements, but how effective these committees have been difficult to evaluate. The Qatar-Nepal Joint Committee meetings have been held 4 times in the past 17 years.<sup>40</sup> The recent meeting was held on Dec 2-3, 2021. Following the meeting the GoN had made a press release revealing the decisions of the Committee to revise the old agreement and make efforts to establish skill development center in all 7 provinces to help upgrade the skills of migrant workers and to assist Nepal in the rehabilitation of returnee migrant workers<sup>41</sup>.

All the agreements ascertain the responsibility on the JC to properly monitor the implementation of the agreement, but the meetings have been very scarce and inconsistent. The Bahrain-Nepal and Jordan-Nepal agreement talks about evaluation of the implementation of Agreement, but no evaluation has been carried out so far. The JC under Japan-Nepal G2G also has a duty to review the progress of the implementation of the MoC two years after its commencement and to update the MoC upon review but nothing has been done so far. The JCs under some MoU have even been entrusted with important tasks like even determining, revising the recruitment costs and insurance coverage, hardly any benchmarks has been achieved by the Joint Committees. Further, the Joint Committee has not been able to work in close coordination with the relevant embassies to streamline efforts despite the presence of the labor attaches in the corresponding countries.

One of the Best practices in Labor Migration Governance on matters related to administration of BLAs has been the Philippine practice which has created institutional arrangement just to monitor the implementation of BLAs. The BLA Committee under the Dept. of Labor is highly representative consisting of members from all the relevant institution working in the sector of migration for employments. The committee provides guidelines for negotiation and is consistently working to monitor and evaluate the implementation of the agreements. Most importantly, the committee also coordinates with relevant agencies in carrying out its functions.<sup>42</sup>

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<sup>40</sup>Website of Nepali Embassy in Qatar, available at <https://qa.nepalembassy.gov.np/bilateral-relations/>

<sup>41</sup> Press Release published in the website of MoLESS.

<sup>42</sup> Wickramsakera 2018, *supra note* 39, at 23,24.

In terms of significant achievement of Joint Committees, the Sri Lanka-Qatar JC which convened three meetings of the Joint Committee in 2009, 2011 and 2012 is notable as it had led to the withdrawal of the need for Qatar-bound Sri Lankan migrant workers to acquire a compulsory police clearance certificate upon the request of Joint Committee.

The COVID crisis following the agreements post-2017 era has made it difficult to evaluate whether the frequency of the meetings is going to be the same. But, to learn from the best practices<sup>43</sup>:

Indonesia and Malaysia had Joint Working Group Meetings six times between 2006 and 2010 which is quite an achievement.

Another issue that comes with the Joint Committee's is the composition of the Committee, how inclusive it is and what role do social stakeholder's play in each meeting. To that end almost all the Key Informants informed that they had been invited to a discussion before the recent 4<sup>th</sup> Joint Committee meeting of Qatar-Nepal which is an incredible step towards ensuring inclusivity in the process. But none of the Key Informant reported being invited to any other Agenda setting meeting before any meetings of JC. The inter-ministerial as well inter-agency coordination and representation is essential in these meetings; hence it is ideal if the composition is already defined under the BLAs. In any case, flexibility in composition however does help to encourage more stakeholder participation in principle but, putting it in practice has still a long way to go.

One notable good practice is the Peru–Argentina agreement, that has defined the composition of the Joint Committee to include one representative of the Ministry of Foreign Affairs, International Trade and Worship, one from the Ministry of Labour and Social Security, one from the Sub secretariat for Population and one from the National Immigration Department in its capacity as executing agency from Argentina and two representatives of the Ministry of Foreign Affairs, one representative of the Ministry of Labour and Social Security and one representative of the Department of Immigration from Peru. (Article 22).

Another example of inclusive JC is Philippines–Germany nurse hiring agreement which has representatives from Trade Union to become members of the Joint Committee and to monitor the implementation of the bilateral agreements .

With proper monitoring and evaluation functions in the agreement, the agreement could also provision for ad-hoc committees to regulate specific aspects like the Columbia-Spain Agreement

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<sup>43</sup> Wickramsakera 2018, *supra note* 39, at 26.



in Art. 17 (d).<sup>44</sup> The proper monitoring and evaluation practices can be seen in the New Zealand RSE, as well as the Ukraine Portugal Agreement where even independent bodies like World Bank have carried out an independent evaluation process.<sup>45</sup>

**A good practice that must be highlighted in Nepalese context is the ToR in the Appendix C of the Malaysia-Nepal MoU that is similar to Bangladesh-Malaysia MoU and the provision of national focal point in both Jordan-Nepal and Malaysia-Nepal MoU.**

#### 7.1.5. Fair recruitment principles: Regulation of recruitment and reduction of recruitment and migration costs

One of the most important issues in the labor migration governance is the regulation and promotion of fair recruitment practice. Recruitment issues is affirmed as one of the most sensitive issues in labor migration in a sense that it directly links with the rights of migrant workers and the role of governments in ensuring these rights. While fair recruitment entails a plethora of concentric issues, 13 general principles on fair recruitment has been consolidated in the General principles and operational guidelines for fair recruitment (GPOGFR), adopted by the Meeting of Experts on Fair Recruitment in 2016.<sup>46</sup>

Similarly, compliance with the international human rights instruments, fundamental principles and rights at work, and guidelines relating to recruitment viz. ILO Model Agreement, Article 6; the ILO Private Employment Agencies Convention, 1997 (No. 181) and the GPOGFR, 2017 Colombo Declaration of the Abu Dhabi Dialogue<sup>47</sup> must be ensured.

To analyze Nepal's practice on enforcement of Fair Recruitment Principles, the agreements must be classified into two categories viz. G2G agreements and Agreements involving Private Recruitment Agencies.

The process of recruitment under G2G has been agreed upon with Korea, Israel and Japan through bilateral agreements. These G2G agreements provide that the migrant workers be selected and recruited in coordination of Public Agencies of the two countries. Broadly reviewing these agreements, the G2G agreements are more detailed on the operational process of recruitment and have comparatively less provisions on the rights and protections offered to the migrant workers. The rights and liabilities is covered in the Standard Employment Contract that the potential migrant

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<sup>44</sup> Agreement between Spain and Colombia on management and regulation of workers migratory flows. Madrid, 21 May 2001 Entry into force: provisionally on 21 May 2001 by signature and definitively on 11 March 2002 by notification.

<sup>45</sup> Wickramsakera 2018, *supra note 39* at 29.

<sup>46</sup> ILO, General principles and operational guidelines for fair recruitment & Definition of recruitment fees and related costs. (GPOGFR) International Labour Office - Fundamental Principles and Rights at Work Branch, Labour Migration Branch – Geneva: ILO, 2019

<sup>47</sup> Abu Dhabi Dialogue, The Colombo Declaration, adopted by the Fourth Ministerial Consultation of the Abu Dhabi Dialogue, Colombo, 24 Jan, 2017 [hereinafter "Colombo Declaration"]

worker must sign upon being selected. Currently, active recruitment is only occurring under the EPS system with Korea and Israel.

Nepal has a designated separate administration office under DoFE to select and send migrant workers under Korea-Nepal. The office has a dedicated website where most information on matters related to recruitment is made available<sup>48</sup>. The selection of candidates is done through rigorous language examination and the performance of the applicant on those examinations. Since the process is fully carried out by public agencies, fraudulent recruitment practices, contract substitution is avoided by a great extent. Further, Korea-Nepal agreement emphasizes on actively advertising (See Sec 1.2. Transparency) its recruitment process, even the recruitment costs (Paras 5, 6(4)) and hence the whole process is very transparent and secure. Since the migrant worker knows the language of the destination country, is at every point made aware of the agreement he is signing and his duties, responsibilities and rights, receives pre-departure and post-arrival trainings, the Korea-Nepal G2G also affirmed by many Key Informants is a good practice in terms of transparent and fair recruitment process.

Similarly, the Israel-Nepal Agreement signed in 2020, following the 2015 Joint Pilot Program for the Recruitment of Caregivers, acknowledges the problem of undocumented and illegal manpower recruitment practices and asserts its aim to eradicate them. The agreement makes it clear that Nepali migrant workers are only allowed to work in the capacity of caregivers after meeting necessary criterion (language and skills training) in the specified sector. Since the government is directly participating in the recruitment process, all the information that needs to be available to migrant worker is made available and the whole process is strictly regulated to follow fair and ethical recruitment standard.

Japan-Nepal MoC however is a little different in this regard as it does not lay down the process but is more concentrated on the formulation of principles. The commitments however look unique and promising. Since the MoC is a framework for "information partnership", it highlights that the MoC was signed majorly to remove all the malpractices that occurs in the process of recruitment of "specified skilled workers" and to ensure that the process is fair and free. The MoC is laden with principles of fair recruitment, discouraging fraudulent and malpractices, preparation of false and fraudulent documentation and taking immediate actions against recruitment malpractices and organizations that practice them. It also talks about maintaining transparency of costs and accountability for every amount charged in the process of recruitment. The MoC also talks about selection through language and "various examinations" or "skill exams". The agreement is also set to facilitate the residency process of the specified skilled workers and even their family members in addition to recruitment and talks about "human rights protection" and other important safeguards to ensure safety and security of Migrant workers. The MoC provides that MoLESS must also designate a unit under DoFE which shall manage the recruitment process and facilitate relevant

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<sup>48</sup> See: <http://epsnepal.gov.np/>

ministries and agencies of Japan to conduct skill exams and tests to measure Japanese language proficiency (Art. 5(2)).

On the other hand, the recruitment process facilitated by the private recruitment agencies is a little different. Hence, the Fair Recruitment Practice incorporated in each BLAs has been discussed below:

### **Qatar-Nepal Agreement**

The first agreement Qatar-Nepal has attempted to remove fraudulent practices by allowing joint verification where the employer has to verify its offer letter from both the Government of Qatar and Government of Nepal explain and regulate the whole process of recruitment. (Article 3(1)(2)) Similarly, the employment contract signed must also be authenticated by entities of both the governments and once authenticated is prohibited from making any alterations. (Article 7(2), 10). The Art. 4 of the Qatar-Nepal agreement states that the offers must state "required qualifications, experiences and specializations" as well as "contract term, salary, end of service gratuity, probationary period and work conditions and facilities regarding transport and accommodations as well as all information which enables workers to make a decision" ; basic employment conditions that do not contradict this Agreement or Qatari Labour Law. The Prevailing language of the Employment is Arabic according to the Qatar-Nepal Agreement.

### **Bahrain-Nepal MoU**

The Art. 6 of the Bahrain-Nepal MoU however only states that the employer and employee shall enter a contract stipulating rights and obligations of each side in accordance with applicable laws and regulations which must include name of the employer, his/her establishment, term of contract, type of work. Agreed details and any other details that both sides find appropriate to include. Similarly, Art. 10 of the same only includes that Bahraini employer take measures in Bahrain related to his/her employment and residence according to Bahraini laws.

### **Jordan-Nepal Agreement**

The Jordan-Nepal Agreement acknowledges the "international labour standards of rights at work", "decent work", "enhanced social protection" in its objectives and responsibilities itself (Art.2, Art. 4). The Agreement then clearly defines the responsibilities of both parties to control costs on recruitment, exchange information on blacklisted RAs, monitor RAs and even take actions when required, facilitate dispute settlement of contractual obligations before competent courts and eradicate illegal trafficking practices. (Art. 3) Similarly, Jordan has assumed responsibility to ensure that the hiring practices are in accordance with Jordanian law and the contracts signed are duly authenticated by both the parties (Art. 4, 6(2)). The contract signed by employer is first verified and approved by Jordan Ministry first and Nepali diplomatic mission and Ministry second before the worker signs the contract (Art. 8(2), 2) and include the terms and conditions (wages, allowances, hours of works, other benefits etc.) and rights and duties of employers and employee

and that such contract is enforced. (Art.4). The agreement also talks about receiving "prior and informed" consent to employment before signature. (Art. 8(4)). The signed agreement is pre-requisite for issuing Visa.

Similarly, the Agreement also imposes obligation on Nepal to ensure that the workers receive proper orientation of Jordanian culture, custom and law and are made "fully aware" of the terms and conditions prior to their departure. Further an important duty is imposed on Nepal to ensure that the recruitment agencies do not take any fees except as stipulated by GoN and provide necessary mechanisms in destination and home country to solve problems.

**The agreement also empowers Nepali diplomatic mission to visit workplaces of Nepali migrant worker to assess whether the principles of decent working conditions have been complied with.**

### **Malaysia- Nepal MoU**

The Malaysia-Nepal MoU while does not contain any explicit provisions on fair recruitment in the main body of the agreement it does ascertain the responsibility of Government of Malaysia to protect the safety and rights of workers in Malaysia and Nepal to ensure that the worker has completed the pre-departure orientation and follows Malaysian immigration laws. Further, it has clearly defined roles and responsibilities of Employer, Employees and Nepali and Malaysian Recruitment Agencies to ensure transparency and ethical practices. (Appendix B) The transparency is ensured by providing both the Demand Letter and Contract of Employment to Nepali Embassy as well DoFE for verification before and after signing. The Employer also has a duty to ensure that the worker understands the terms and conditions of employment before signing during the selection process. Further details on its fair recruitment practice shall also be discussed in the Section 2 on the Protection offered to Migrant Workers. The prevailing language of the employment contract is English which is quite an achievement for ensuring verifiability of the contracts and avoiding contract substitution.

### **Mauritius-Nepal MoU**

The Art.4 on Areas of Cooperation of the MoU clearly ascertains the fair recruitment practice to be followed by Mauritius-Nepal MoU which acknowledges the "principles of transparency", "ethical recruitment", "fairness and equality of benefits". The same article talks about controlling and regulating the recruitment costs and taking actions to ensure that only ascertained costs are taken and taking actions to address issues of irregular/illegal recruitment, trafficking and forced labor and sharing information on the licensing status of Nepali recruitment agencies. One notable aspect of the MoU is it prohibits the use of Mauritian Recruitment Agency of recruitment hence making the process more transparent and reducing the costs of recruitment. It insists upon the use of the Standard Contract of the Agreement as a template which can only be changed by the JWG of the MoU. The Art 7 (1) imposes the duty on the Government of Nepal to ensure that the workers fully understand the terms and conditions of Employment contract before signing and have received pre-departure orientation on basic knowledge of Mauritian culture and laws and that no

extra charges are received by the Recruitment Agency in the recruitment process. Similarly, the Gov. of Mauritius has assumed responsibility to ensure that the contract is enforced, demand letter and contract of employment are transparent, clear and adequately detailed.

### **UAE-Nepal MoU**

The UAE-Nepal MoU is similar to Mauritius-Nepal MoU in terms of including principles of transparency, ethical recruitment, fairness and mutual benefits in Art.2, Areas of Cooperation. What makes the UAE-Nepal MoU distinct is that it imposes an obligation on the government of UAE itself to ensure that the employment offer contains all the matters of employment contract (Art 3) and such employment offer unchanged and unaltered is transformed to Employment Contract in UAE. The offer must contain all matters including job specifications, required qualifications, types of jobs for which recruitment is proposed as well as the terms and conditions of employment offered including wages, non-wage benefits, accommodation and transportation when applicable, end-of-service entitlement, and any other details required by the Government of Nepal. Similarly it also imposes responsibility on UAE to ensure the application of the existing wage protection systems to monitor timely payment of wages and other benefits. (Art. 5) Ensure that the employment offer shall indicate the job specifications, required qualifications, types of jobs for which recruitment is proposed as well as the terms and conditions of employment offered including wages, non-wage benefits, accommodation and transportation when applicable, end-of-service entitlement, and any other details required by the Second Party. It also ensures that the offer and contract shall be written in all Arabic, Nepali and English languages, all being equally authentic, but Arabic text prevailing only in cases of divergence.

### **Recruitment costs**

One of the major issues under the good practice of Fair Recruitment practice also affirmed in multiple ILO Instruments is that migrant workers must not be caused to bear any costs related to recruitment. This corresponds to achieving the goals prescribed under Goal 10 of the Sustainable Development Goals to reduce income inequality between and within the Countries of Destination and Origin.<sup>49</sup>

In Korea-Nepal G2G, sending fee, the amount each worker pays for the process of selection, recruitment and sending is collected by the Department of Foreign Employment, the information of which is sent to Ministry of Labor in Korea. For its part, the MoL can request the DoFE to reduce the fee if it is assessed to be excessively high. In accordance with them MoU, the sending

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<sup>49</sup> Inter-Agency and Expert Group on Sustainable Development Goal Indicators (IAEG-SDGs), *Revised list of global Sustainable Development Goal indicators*, Annex III, Report of the Inter-Agency and Expert Group on Sustainable Development Goal Indicators, E/CN.3/2017/2, Statistics Commission, Economic and Social Council (New York, United Nations). Available at: <https://unstats.un.org/sdgs/indicators/official%20revised%20list%20of%20global%20sdg%20indicators.pdf> 2017.; ILO, General principles and operational guidelines for fair recruitment (GPOGFR), adopted by the Meeting of Experts on Fair Recruitment, Geneva, 5–7 Sep.(Geneva, International Labour Office), p.3, 2016.

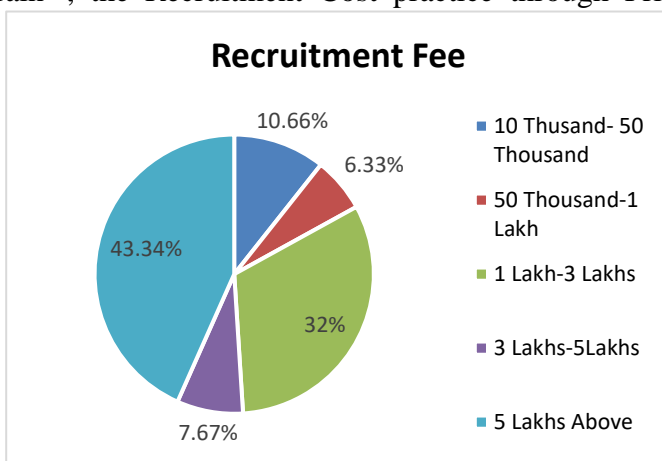
fee for each prospective migrant worker also needs to be made public by the MoLTM and the DoFE in Nepal.

Similarly, in Israel-Nepal G2G, the agreement allows for further enacting implementation protocol that also fixes the Recruitment fee for the Process of Recruitment which includes cost of travels as well as other costs, but apart from that and no other amount can be taken.

The MoC of Japan-Nepal while not clear on recruitment costs has elaborate provisions dedicated to ensuring that no extra or unaccounted fees are charged by any entities against recruitment.<sup>50</sup>

From this we can conclude that while the G2G is progressive on the aspect of Transparency of Recruitment Practice, but it still doesn't follow the best practice for recruitment costs as employees have to bear the costs of recruitment in the Korea-Nepal and Israel-Nepal G2G.

In contrast, with the exception of Bahrain<sup>51</sup>, the Recruitment Cost practice through Private Recruitment Agencies have become more progressive in the sense that following the post-2017 era, all the recruitment process have shifted to Employer Pay Model. Even the Qatar-Nepal Agreement in 2007 had provided for the expenses of air-travel even during holidays to be borne by Employer.



In 2072, (July 2015) the government of Nepal had enacted the Free Ticket, Free Visa Policy, that put a cap on the amount a migrant worker had to pay for the cost of travelling to a foreign country on employment. The cap that was imposed was NRs 10,000 on Malaysia, GCC countries (Bahrain, Qatar, and UAE) and Jordan, and NRs. 70,000 on Mauritius. The cap was imposed before the agreement between Malaysia, UAE, Jordan and Mauritius were concluded. To make sure that the cap materialized, the government did put down the commitment of Employers of Malaysia, UAE, Jordan and Mauritius to bear the airfare, and visa fee in writing.

MoU	Art	Costs to be borne by employer
Qatar	6	Airfare during travel to and from work and also during leaves

<sup>50</sup> Art. 3, 4(1) of MoC; In addition, as per the JITCO agreement with Japan, in its directive limits the promotional cost that the sending organizations or licensees can collect from the interns to NPR 50,000<sup>50</sup>. This amount is to be inclusive of health check-up fees, orientation training and other expenses. Further, the Directive also mentions that any transaction related to sending technical interns to Japan needs to be transparent, fair and managed properly.

<sup>51</sup>Art. 10 of MoU of Bahrain does state that before arrival of a Nepalese employee in Bahrain, an employer shall take all the necessary measures related to his/her employment and residence but it is not transparent on who bears the cost of such measures taken.

Jordan-Nepal	10	Visa, Travel expense, Insurance, Medical Expenses, Home Leave Every Two Years, Other process related to recruitment
Malaysia-Nepal	Ann. B	Security deposits as required by Immigration Dept. of Malaysia, processing fees imposed by Gov. of Malaysia, visit pass, insurance of workers, medical examination in Malaysia, single entry visa, round trip-air ticket, Recruitment service charge of 50% of one month minimum wage of the worker per person, and medical examination and security screening (the latter too shall be borne by employee and later re-imbursed by the Employer)
Mauritius-Nepal	7(2)(vi)	Costs to be incurred including but not limited to, travel expenses, insurance, medical expenses, work permit/ labour card fees, service fees paid to the Nepali Recruitment Agency, non-exhaustive as it includes costs associated with "other processes related to the recruitment of Worker in Mauritius".
UAE-Nepal	5(13)	Costs associated with not just recruitment but also " <i>employment and residency</i> ", including but not limited to recruitment agency fees, air ticket costs, insurance fees, visa fees, medical examination fees and all other recruitment related costs and fees.

*Conversation with the Nepal Recruitment Agencies representatives revealed that while these commitments have been put down in writing, it is very difficult to enforce it in reality. Sometimes, despite the demand letter including such commitments, the employers or recruitment agents in the destination country do not send the airfare as promised much later in the recruitment process, i.e. after the workers have already been selected. In those cases, the Nepali Recruitment Agency have no mechanism to claim compensation for the expenses incurred or enforce the commitment the Employer or Foreign Recruitment Agency make in demand letter. They strongly recommend that the Bilateral Agreements provide for a dispute resolution or monitoring mechanisms that ensure that such payment be secured.*

*Conversation with the former Ambassador of Qatar revealed that the problem could be easily solved by requiring the recruitment agency to furnish the evidence of deposits for airfare and visa before providing the labor permit. However, it has been the shortcomings of the Government of Nepal on its part for not being able to enforce such mechanisms.*

It is interesting to note that despite the absence of Bilateral Agreement with other GCC Countries that include Kuwait, Saudi Arabia and Oman, the cap on the cost for employment has been same for countries with Bi-Lateral Agreement. While the Agreement of Qatar-Nepal states that cost of airfare shall be borne by employer, it is silent on other costs including the recruitment service agency fee, the agreement with Bahrain is silent on this matter.

In terms of good practices, apart from an exclusive contract substitution avoidance clause which is implicit, the agreements in Nepal do reflect good practices.

Further, one essential good practice that needs to be highlighted is:

**Paragraph 20(3) of the Korea-Nepal MoU proposes that MoLESS operate a complaints center to settle recruitment malpractices: “The MOLESS (sic) shall take active efforts to eliminate malpractices in the process of sending workers such as operating a complaint center where malpractices can be reported”.**

#### 7.1.6. Social dialogue and consultative processes

The infamous rights revolution talked about in civil liberties jurisprudence highlight the role of a strong civil society and the social dialogue and practice process that helped institutionalize the constitutional promises in almost all democracies.<sup>52</sup> Since then, every social and development initiatives have recognized the importance of social dialogues to bring any policies into reality. In International Labor practices, social dialogue and consultation have long been informed as one of the important steps in policy reform. The principles 6 and 7 of the ILO Multilateral Framework also stress on the role of social dialogue.<sup>53</sup>

In Nepal, recently before the Joint Committee of Qatar-Nepal in December 2021 meeting was convened, a consultative meeting was organized inviting social partners and Civil Society Organizations in the meetings asking them what to do further. One of our Key informants noted that these efforts were initiated upon the insistence of UN agencies and IGOs, INGOs and NGOs. Key informants commonly reported that it completely depended on the leadership of the administrative bodies to consult social partners.

Philippines–Germany nurse hiring agreement (2013) represents a good practice as it is the first time trade union were invited as member of JC to monitor the implementation of BLAs. Post-negotiations the trade unions from both countries (PS Link and ver.di) were included as members of the Joint Committee and to monitor the implementation of the bilateral agreements It is the first time that trade unions from both parties have been accorded oversight work in a BLA.<sup>54</sup>

#### 7.2. Protection and empowerment of migrant workers

The core of any instrument of labor migration is the rights and benefits they offer for the protection of the rights of the migrant workers. For the purpose of considering the best practices for this section however, a more generic approach has been taken keeping in mind the needs of Nepali migrant workers that are dominantly unskilled and semi-skilled migrant workers travelling to the GCC Countries where working conditions were formerly known to be draconian and exploitative. Hence, we need to go into layers of protection offered to Nepali migrant workers in each BLAs

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<sup>52</sup> CHARLES R. EPP, THE RIGHTS REVOLUTION: LAWYERS, ACTIVISTS, AND SUPREME COURTS IN COMPARATIVE PERSPECTIVE (1998), <http://archive.org/details/rightsrevolution0065eppc> (last visited Oct 25, 2021).

<sup>53</sup> ILO Multilateral Framework.

<sup>54</sup> Public Services International (PSI). 2017. Bilateral Agreement Between the Germany and the Philippines on the Deployment of Filipino Health Professionals to Germany: Documentation of the Triple Win Project, unpublished draft mentioned in Wickramakera 2018 *supra note 39*.



that benefit the migrant workers directly. In doing so we have identified the following criteria to make an assessment.

### 7.2.1. Equal Treatment

The researcher has ascertained this element first in assessing the agreement for two specific reasons, firstly, a lot of provisions related to wages, social security benefits, working hours, overtime payment intertwines with the equality of treatment provisions; secondly the principle is one of an important principle advocated for in international instruments creating standards for migration for work. The two core ILO Conventions C100 and C111 renunciate the principle.

None of the Agreements before 2017 Jordan-Nepal agreement have incorporated this principle. **The Jordan-Nepal agreement in Article 14 guarantees treatment no less favorable than availed to its nationals in the context of applying Jordanian Labour Law (national treatment). The equality has been guaranteed in terms of providing decent working conditions, clean habitation, healthy work environment, remuneration, hours of work, weekly leaves, overtime payments. One important highlight of the very clause is the admission to training institution for vocational and technical training. A similar national treatment has been guaranteed in the Mauritius-Nepal MoU in Article 7(2(iii)) in terms of wages, overtime, working conditions and access to justice.**

The Malaysian-Nepal MoU, however, accords equal treatment alongside other foreign migrant workers in terms of wages, overtime, working conditions and access to justice.<sup>55</sup> A similar stance is taken in UAE-Nepal MoU in Article 5(3) which states that the worker shall not be subjected to unlawful discrimination and shall receive *equal treatment against other foreign workers on matters including wage protection, working conditions, grievance handling and access to justice.*

The G2Gs and agreements prior to 2017 have however no such provisions on equality of treatment.

This is indeed an achievement when one of the major problems reported by reporters reporting on issues of Migrant Labor is the discriminatory treatment of Nepali migrant workers against other migrant workers.

### 7.2.2. Wages, Overtime, Deductions, Taxes and Remittance

Interviews with migrant workers have suggested that wages are the most important concern of migrant workers travelling abroad. One of the most pertinent problems that arises when it comes to wages are unfair, unequal wages in comparison to foreign migrant workers and the lack of timely payment of wages to the migrant workers.<sup>56</sup> To that end, very minimum protections had been covered by the agreements signed in 2005-08 on the subject matter of wages.

The agreement with Qatar and former UAE-Nepal 2007 MoU stated that the recruitment offers must state the salary and end of service gratuity. The agreement also states that the worker shall

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<sup>55</sup> Art 6 (2)(iv) of Malaysia-Nepal MoU.

<sup>56</sup> Fact Sheet 2017 at p. 32.

be entitled to remit his salary savings in accordance with the financial regulations of the state of Qatar (Article 13). Similarly, the Bahrain-Nepal MoU only guarantees the rights of the workers to convert their salary and remit it but has no provision on wages. (Art. 8). However, some leap has been made since the Jordan-Nepal agreement where the obligation extend to facilitate the opening of bank account and depositing the amount in the account along with furnishing a deposit voucher to the worker as well as to the Nepalese diplomatic mission if requested. (Article 12) before the seventh day of each month (Clause 4 Standard Employment Clause). The standard employment contract even ascertains the minimum overtime wages that is voluntary to be 125% of the regular wage on normal working days and 150% on weekends or holidays. Further the employer is also obligated to provide a detailed monthly financial wage sheet including the worker's wage, allowances, increases, deductions as well as the overtime details.

The Mauritius-Nepal agreement guarantees similar rights in terms of wage protection like the Jordan-Nepal agreement. For example, a migrant worker in Nepal shall be ensured fair and equal treatment accorded to nationals in terms of wages, overtime, working hours and access to justice (Article 7(iii)). Further, the Government of Mauritius have taken responsibility to "*establish proper mechanisms to monitor timely payment of wages.*" (Article 7 (viii)). As the Jordan-Nepal agreement, the wages are to be paid in the Worker's bank account within the time limit prescribed by labour legislation (Clause 3 of Standard Employment Contract of Mauritius-Nepal MoU). One ideal clause in the standard employment contract is the cap on deductions that cannot be more than 15% in a month. (Clause 8)

While the Malaysia-Nepal MoU does not ensure equal treatment, it does ensure that Nepali migrant workers receive at least the national minimum wage. The wages are paid before the seventh day of every week in the employee's bank account. The employer must assist in opening bank account for the migrant worker. The standard employment contract provides that the employer shall have to be pay for overtime if the worker has to work beyond the designated 8 hours per day or when the workers work on their rest day. The cap on deductions has also been ascertained, such that more than 50% of the worker's salary may not be deducted for any purposes with an allowable deduction of RM 50 or as prescribed by the government of Malaysia on accommodation. The duty to pay the levy has been imposed on the Employer. To ensure the payment of wages, the standard employment contract imposes a duty on the employer to further issue a statement card that reveals the wages, allowance, OT-payment due and paid to the employer on a regular basis. (Clauses 3,8.2,10,11,12,13 of Standard Employment Contract).

The Article 5(6) of the UAE-Nepal MoU has created a responsibility on UAE to ensure extensive and close oversight over the application of existing wage protection systems to monitor timely payment of wages and other benefits. Similarly, the sixth article of standard employment contract allows for clarification of the wages (daily, work basis, commission based), allowances (housing, transport, travel allowance for family, nature of work, cost-of living et. al).

The G2G agreements with Korea, Israel and Japan do not have a clause that talks about wages but the standard employment contract that the selected migrant workers clarify the amount of wage to be paid.

### 7.2.3. Accommodation and Living Conditions

The Clause-9 of the Mauritius-Nepal Standard Employment Contract creates an obligation on the Mauritian Employer to provide for decent accommodation with basic amenities as well as food allowances. Similarly, the Clause 12 of Malaysia-Nepal Standard Employment Contract while creates a responsibility on the Employer to provide decent accommodation, the employer may deduct wages against such provision up to 50 RM or deductions approved by Malaysian Employment Act. The UAE-Nepal contract is progressive in this aspect as it does not just create a duty on the Employer to provide for accommodation and transport but also causes the Employer to bear the expenses of accommodation.

**In terms of supervision the Article-7 of the Jordan-Nepal agreement follows a good practice. It allows officials of Nepali diplomatic mission in Jordan to visit the workplace and living quarters of workers. Further it also ascertains a duty on the Government of Jordan to ensure that the migrant workers are provided with good living conditions.**

The Qatar-Nepal and Bahrain-Nepal state that these matters must be included in the employment contract. The G2Gs in contrast are silent in this regard.

### 7.2.4. Leaves, Family visits.

The Clause 7 of the Jordan-Nepal Standard Terms of Contract even specifies the days of leaves; 14 annual paid leaves increased to 21 if the worker works for more than 5 consecutive years, separate weekend, religious and official holiday leaves, 14 full paid sick leave and 14 additional hospitalization paid leaves if approved by a medical committee. Further the Article 4(f) of the Standard Employment Contract creates a responsibility on the Government of Jordan to ensure that workers are permitted to travel home to visit families every two years and the travel cost shall be borne by the Employer.

The leaves have been clearly ascertained in the Malaysia-Nepal MoU as well. The workers are entitled to one rest day every week and if not provided with such rest day, may accumulate the leave. Leaves on public holidays are provided in accordance with labour law. (Clause 6,7,8, 13 of Standard Employment Contract) The sickness and hospitalization leave is also paid, provided according to the Malaysian labour law and the worker is also given 15 day leave upon the death of a close relative. The leaves however must be taken from accumulated leaves or may be granted unpaid leaves. The Clause 6 of the Standard Employment Contract of Mauritius deals with leaves which are to be given in accordance with Mauritian Employment Act.

The UAE-Nepal standard contract however only talks about weekly leave of one/two days.

The Qatar-Nepal agreement does talk about the employer bearing the airfare during leaves but leaves it up to the Employment Contract to determine the number and days of leaves. Bahrain-Nepal as well as G2Gs are silent in this regard.

#### 7.2.5. Repatriation

The post-2017 MoUs have read repatriation as the cost to send the migrant workers back to their country of origin. All the agreements provide that the employers must bear the cost of air-passage unless the contract was terminated at the fault of the employee or their convenience.

Similarly, repatriation is also associated with the repatriation of death body of the migrant worker, if he happens to die during his period of employment, the cost of which must again be borne by the employer. The Jordan-Nepal Agreement talks about the post-mortem as well as repatriation of the dead body of the deceased worker. Whereas, Malaysia, Mauritius and UAE-Nepal MoUs only talk about the repatriation, funeral expenses, and the settlement of wages, insurance and other benefits. (Standard Contract Clauses of all the MoUs). The Malaysia-Nepal MoU states that the Employer has the duty to inform the Embassy of Nepal upon the death and injury of the workers. No provisions as to investigation upon the cause of death has been agreed upon. This, as affirmed by the key stakeholders has been an important point that must be addressed in the Bilateral Agreements and Understandings as this establishes the prima facie evidence of exploitation if there has been any and directly correlates to the safety and security of the migrant worker. Facilitate expeditious repatriation and settlement of benefits.

Qatar-Nepal does talk about airfare arrangement by the employer but Bahrain-Nepal and the rest of G2Gs are silent on this matter.

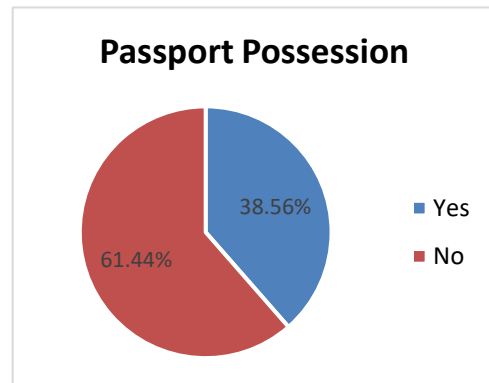
#### 7.2.6. Withholding of documents and passport and ability to change one's employer

One of the major breaches of the rights of the migrant workers earlier used to be withholding of travel documents, passports and other identity documents by the employer as well as the inability of the employee to change its employers. The ILO General principles and guidelines on fair recruitment contain two references to this practice.<sup>57</sup>

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<sup>57</sup> Under “General Principles”, paragraph 11 and Under “Responsibilities of enterprises and public employment services”, paragraph 18 reads: “Enterprises and public employment services should not retain passports, contracts or other identity documents of workers.”

While the Jordan-Nepal agreement mentions that the work is voluntary and return upon desire must be ensured, it does not essentially talk about travel documents. The Standard Employment Contract Clause 11 however states that the Employer shall not withhold any identification documents of the worker which include the passport and the residency, and the work permits. The Malaysia-Nepal MoU is more peculiar in this subject as the MoU clearly states that the worker shall be always in hold of their passports. Further, to avoid confusions, the MoU has elaborated the instances when the Employer may receive the passport of the worker, for receiving permits and documentation purpose, and the employer must bear the charges of replacement of the passport when the passport is lost under its custody. The term used is the "custody" of the passport. (Article 20)



Similarly, the Article 5(9) of UAE-Nepal Agreement ensures that the worker is able to exercise his/her right to maintain possession of personal identification of documents. The Article 7(2)(x) of the Mauritius-Nepal MoU and Clause 16 of the Standard Employment Contract states that the passport shall be always in the possession of the worker.

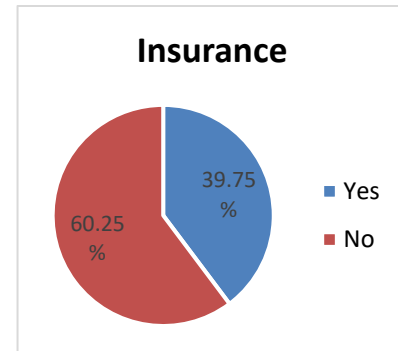
While some relaxation has been made towards avoiding kafala or sponsorship in the MoU between Malaysia and Nepal, the limitations are that a migrant worker may change their employer only upon the dissolution of the employer due to financial limitations or when the employer has committed an abuse, physical/mental harassment against the worker in accordance with domestic laws. (Art 5 of MoU, Clause 19.5 of the Employment Contract). Similar provisions has been maintained in the Mauritius-Nepal MoU in (Article 6(3-5)) and Clause 15.2. The UAE-Nepal MoU also reinstates similar understanding in article 3(4) that also allows the worker to change its employee if the Employer fails to meet its contractual obligation due to winding up or closure of the business or the violation of the worker's rights under the law of UAE. The Jordan-Nepal Agreement in Article 4(g) talks about granting permission to migrant worker to change the employer if work is not as per contract or if the company is closed. The agreements before 2017 and G2G are again silent on this matter.

### 7.2.7. Insurance

The Article 13 of the Jordan-Nepal Agreement deals with the provisions on insurance where the Government of Jordan has assumed responsibility to ensure that the employer provides life and disability insurance as well as medical care to the worker during employment period and the monitor its responsibility. Similarly the Standard Employment Contract Clause 10 deals with routine medical examinations and free health care facilities of diagnosis and treatment of any acute illnesses. The Clause (i) of the Standard Domestic Worker's Service Agreement states that a minimum of life and accident insurance amounting to 10,000 USD shall be arranged for by the employer to the migrant worker. In case of Malaysia-Nepal MoU , the Standard Employment Contract specifies that the Employer must insure the worker and even pay for the insurance of the

Migrant worker on the Foreign Workers Compensation Scheme and Foreign Workers Health Insurance Scheme and any applicable scheme adopted by the Government of Malaysia. (Clause 10 of the Contract). Similarly, in Mauritius-Nepal MoU the Clause 7 ensures insurance in accordance with the laws of Mauritius as well as medical facilities and rest until recovery with appropriate compensation and salary. The Joint Working Group of the Mauritius-Nepal for administration of the MoU have been entrusted with a responsibility to determine the insurance coverage amount (Article 10(1)(iii))

In the UAE-Nepal MoU however, the Clause 5(12) and 5(13) mentions provision of insurance in a way that the state has the responsibility to ensure that the employer immediately expedites the process of handing over the insurance benefits to the worker upon accidents and also to ensure that the insurance fee shall be borne by the Employer. The agreements before 2017 and G2G are silent on this matter.



#### 7.2.8. Social Security

The Art. 21 of ILO Model Agreement recommends parties to determine a method of applying social security systems so as to make sure that the migrant workers fall within the ambits of Social Security Scheme of at least one country, preferably the destination country. This is recommended to be arranged in in a separate bilateral agreement.

In the context of Asian and Middle Eastern and GCC Countries, labour and social security legislation have usually excluded temporary migrant workers from comprehensive social security coverage.

The only agreement that talks about Social-Security benefits is the Jordan-Nepal agreement that ensures that social security benefits provided to nationals shall be made available to Nepali migrant workers in accordance with Jordan national labor laws. (Clause 9, Standard Employment Agreement). However, Nepal and Malaysia have recently in March 2021, entered into an SSF Agreement.

Amongst this two notable good practices are<sup>58</sup> :

In the context of reluctancy amongst Asian and Gulf destination countries with large populations of temporary migrant workers to sign any social security commitments, India and the Philippines have been able to sign social security agreements with around 18 developed countries where they have a sizeable diaspora, each accounting for 18 agreements.

<sup>58</sup> Wickramsakera 2018, *supra note 39* at 72.

### 7.2.9. Incorporation of concrete mechanisms for complaints and dispute resolution procedures, and access to justice

The ILO General principles on fair recruitment state in Item 13: “Workers, irrespective of their presence or legal status in a State, should have access to free or affordable grievance and other dispute resolution mechanisms in cases of alleged abuse of their rights in the recruitment process, and effective and appropriate remedies should be provided where abuse has occurred” .

The G2G agreements do not have a provision on dispute settlement between the employee and the employer. But the Korea-Nepal MoU does talk about a complaint center where complaints can be lodged by the Nepali migrant worker. The Israel-Nepal mentions that any dispute between the Employer and the Employee shall be subject to the exclusive jurisdiction of Israeli courts and shall be settled by them. (Article 12)

The Qatar-Nepal Agreement first provides for amicable settlement under Ministry of Labour and Social Affairs for amicable settlement but if an amicable settlement is not reached, the competent judicial authorities of Qatar settle the dispute. (Article 11)

The Bahrain-Nepal MOU follows standard practice, and makes clear which law is applicable: Amicable settlement if fails then internal arbitration of referring the matter to a competent court in accordance with the procedures set forth in the Labour Law for the Private Sector in the Kingdom of Bahrain (Art. 14)

The Article 17 of the Jordan-Nepal Agreement deals with the Worker's Dispute Settlement that states that the complaints may be filed with the Jordanian Ministry of Labor which shall inform the Nepali Diplomatic Mission. If the dispute goes to courts than the Article provides that the migrant worker shall have access to appropriate and effective remedies that include access to courts, legal advice and compensation. Further, Government of Jordan also assumes a responsibility to facilitate expeditious settlement of workers in contract violation cases. Similarly, Clause 20 of the Standard Contract of Jordan-Nepal agreement states that the dispute settlement shall be in accordance with Jordan Labor Law and collective agreements with the trade union and shall be heard by the competent courts in the work areas.

The Malaysia-Nepal MoU does not specify the forum for the dispute settlement between the employee and the worker but the Article 6(2) of the MoU on the responsibilities of the Government of Malaysia states that the government shall issue a Special Pass to the Worker who has filed a complaint against their employer until the settlement of labor dispute.

Similarly, the Article 5(10) of the UAE-Nepal MoU states that on the complaint filed through diplomatic channel the government of UAE shall ensure that effective monitoring and inspection measures to be taken to resolve the issue. In addition to that, the Article 6 of the MoU states that the complaint shall be filed with the competent department of the UAE Ministry of Human Resources and Emiratization for amicable settlement and if it's not reached then, competent judicial authorities shall try the case. The MoU ensures that UAE provides access to Labor Court



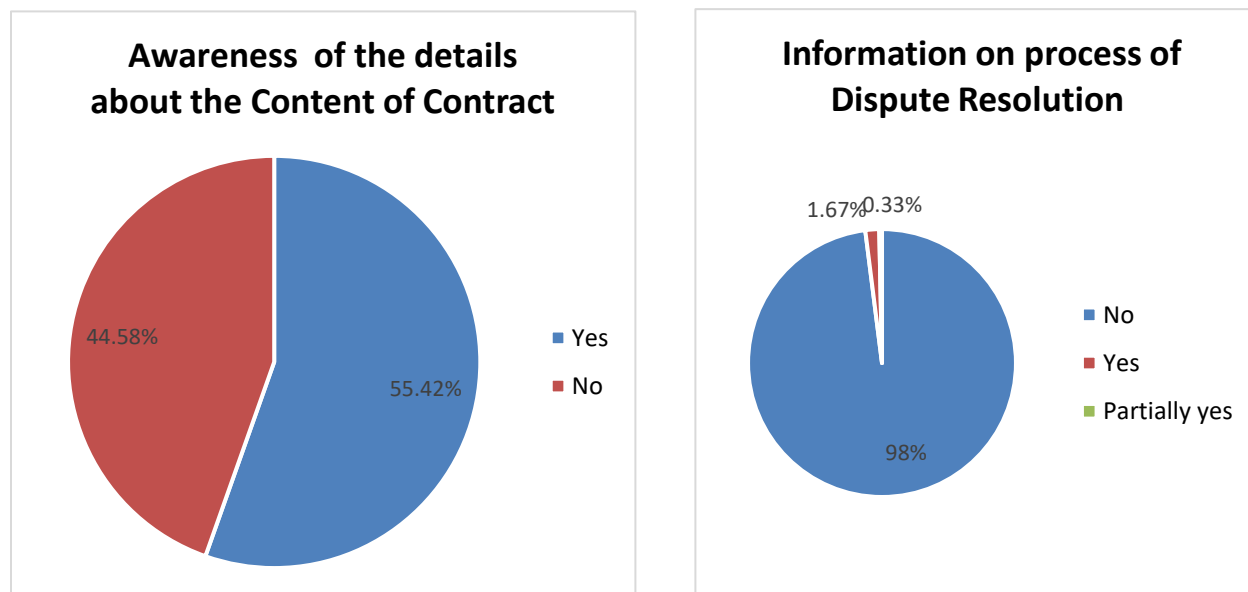
without any cost until the case is resolved. Further, the employee is also entitled to apply for a temporary work permit until the case is resolved.

The Mauritius-Nepal MoU echoing similar provisions in Article 9 goes further to provide legal assistance, free legal representation, and translation services as well as temporary visa to legally reside and work in Mauritius until the settlement of dispute.

#### 7.2.10. Pre-Departure Orientation and availability of Relevant information to migrant workers.

All the MoUs and agreements talk about coordination and cooperation in the exchange of information. The MoUs also impose that the workers departing for work in the destination country must take a pre-departure orientation, but there has been hardly exchanges of information on what should be the contents of the pre-departure orientation. Jordan-Nepal MoU and Korea-Nepal G2G provide for post-arrival orientation as well. The key informant at the FEPB informed us that returnee migrants, former diplomats were consulted in the process of drafting the syllabus of the Orientation syllabus, but hardly coordination with the destination country is carried out to specify the subject matter that must be known before one leaves for work in the foreign country.<sup>59</sup>

Article 2(9) of the UAE-Nepal MoU states that the countries shall cooperate and undertake joint collaborative programs on "pre-departure and post-arrival orientation" as well. But hardly any



exchange of information or cooperation has been carried out.

<sup>59</sup> Key Informant Interview with FEPB representative taken on Jan 11, 2022



### 7.2.11. Address gender issues and concerns of vulnerable migrant workers, particularly those not covered by labour laws in destination countries

One of the essential elements of 'fair migration' is to "incorporate a gender perspective and give particular attention to the groups of vulnerable migrant workers including domestic migrant workers"<sup>60</sup>.

Two types of protections benefitting the women migrant workers, viz. a) general protective measures for all migrant workers; and b) gender-specific provisions, especially those targeting vulnerable workers such as migrant domestic workers.<sup>61</sup>

The Article-15 of the Jordan-Nepal Agreement is specifically designed to address the rights of female workers. This Article ensures that proper arrangements for specific vulnerabilities of female workers and their protection against any violence, threats, and physical/sexual abuse. Similarly, the Article also allows GoN to establish any appropriate mechanisms to provide viable services to its citizens. The protection ascertained includes non-gender specific protections like protection from withholding passports, restriction of movement and communication and so on as well as specific protection like provision of separate room as well as medical care facilities and privacy.

All the three Malaysia, Mauritius and UAE MoU follow similar line wherein in all the article of responsibilities. (Article 2(iii); Art. 2(vii); Art. 5(4)) the clause of special protection required by women workers have been mentioned. This has been agreed upon in principle but very limited translation into practice. In addition to this, the Annex B- No. 11 of the Mauritius-Nepal MoU address specific vulnerabilities of female worker and her protection against any violence, threats and physical, mental and/or sexual abuse.

In terms of vulnerabilities that a domestic migrant worker faces, none of the agreement really covers these aspects. The only exception is the Jordan-Nepal agreement which has a separate standard employment contract for domestic migrant workers that indicates the minimum wage, the fooding, lodging, clothing arrangements, as well as the provision of proper ventilated and illuminated rooms with good bedding arrangements and right to privacy. Further, the contract also puts a cap of deduction of salary on damages to equipment's or belongingness that can't be more than 5 days wages in total upon the worker's negligence. Similarly, the contract also ensures minimum sleeping hours and weekly leave.

The Domestic Workers Directives issued by the GoN is the governing law in this matter. The Section 4 of the Directives state that Nepal shall send Domestic Workers to destinations only after

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<sup>60</sup> ILO, Gender sensitivity in labour migration-related agreements and MOUs, Research Series, Global action programme on migrant domestic workers and their families (Geneva, International Labour Office) based on a report by Lin Lean Lim, 2016 ; UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General recommendation No. 26 on women migrant workers*, 5 December 2008, CEDAW/C/2009/WP.1/R; ILO C189; UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), *General comment no. 1 on migrant domestic workers*, 23 February 2011, CMW/C/GC/1,

<sup>61</sup> Id; Organization for Security and Co-operation in Europe (OSCE). Guide on gender-sensitive labour migration policies (Vienna), 2009 available at: <http://www.osce.org/secretariat/37228?download=true>.

finalizing a separate MoU or BLA with them, however none of such agreements have been finalized till date.

Dedicated agreements for domestic workers introduced by Saudi Arabia, has been model agreements for good practice in this sector. The Saudi Arabia agreement even proposes the establishment of a mechanism that shall provide 24-hour assistance to domestic workers.<sup>62</sup>

#### 7.2.12. Trade union rights and access to support mechanisms from civil society

The Guideline 2.6 of the ILO Multilateral Framework has emphasized the need of “bilateral and multilateral agreements between workers’ organizations in origin and destination countries providing for the exchange of information and transfer of membership”

None of BLAs with the exception of Jordan-Nepal Agreement facilitates for access to trade union rights or support mechanisms from civil society. The Art. 13 of the Jordan-Nepal avails the Trade Union and collective bargaining rights which allows any work who wants to affiliate with a registered Trade Union of their sector in Jordan and the employer must respect the worker's right to do so. Even the standard employment contract refers to the “collective agreement” of concerned trade unions with regard to wages, other remuneration, other benefits, and dispute settlement. This must be understood in a context where Nepal's maximum migrant workers' travel to GCC and Malaysia and of the GCC only Bahrain, Kuwait and Oman have legalized trade union.

Even in this context, Trade Unions of Nepal in their union capacity have had established relationship with unions in the destination country for promotion of rights of migrant workers. However, the contents of this fall outside the scope of this research.

### 7.3. Migration and development linkages

It is without any reservation that Nepal has and will continue to benefit from the sending migrant workers to foreign countries. A quarter of Nepal's GDP comes from earnings and Remittance and so far we do not have any long term plans to effectively generate employment opportunities within the territory. Hence, Foreign labour Migration will continue to be one of the major economic opportunities for Nepal in the days to come.

In this context, it is high time for Nepal to not see foreign labour migration as an unfortunate consequence but as a potential opportunity. Once the government starts approaching foreign labour migration as a strategic option to link with development indicators, we can move in a direction of constructive acceptance and progress. The importance of Labour Migration in development has also been recognized in the Principle 15 of the ILO Multilateral Framework on Labour “The contribution of labour migration to employment, economic growth, development and the

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<sup>62</sup> Wickramsakera 2018 , *supra note* 39 at 44

alleviation of poverty should be recognized and maximized for the benefit of both origin and destination countries”.

Countries like Philippines, India, Sri Lanka are already in cognizance of this strategic importance and have been working towards achieving it. The biggest strength of Nepal at the present moment is its youth population with more than 40.68% of the total population<sup>63</sup> and hence this is right time to adopt strategy that link labor migration with development linkages.

### 7.3.1. Human resource development and skills improvement

Bilateral Labour Agreements are seen to have contributed to human resource development by prioritizing a certain set of skills for employment. For example the Israel G2G that recruits caregivers previously under the Joint Pilot Program caused them to train for at least 3 months to admit them for recruitment. Similarly, under EPS, the Language Proficiency Training in itself is a development of linguistic skills.

The Bahrain-Nepal MoU talks about cooperation in occupation training in the title, objectives, Art. 4 and Art. 12 which is very ideal in principle but has not been brought into practice. Rest of the agreements do not address this subject which is quite a discouragement considering high necessity of BLAs to incorporate this element as soon as possible.

In addition to this however, Jordan-Nepal Agreement in Art. 14. Equality of Treatment does talk about admission to training institution for vocational and technical training for Nepali migrant workers. These skills learnt and upgraded can be very useful if these skills are translated to assist in development activities in Nepal. A good practice in this element can be the agreement between Italy and Sri Lanka entered in 2011<sup>64</sup>:

Art. 12 of the Agreement reads

"The Contracting Parties, in compliance with their national legislation, will promote the linguistic and vocational training of candidate migrant workers, to meet the requirement of the labor Market for qualified professional profiles.

The linguistic training will be organized by Italian officially authorized centres to attest the linguistic competences of candidates according to European standards.

The vocational training will be organized by Italian certified training bodies and Authorized Bodies. Linguistic and vocational training courses started in Sri Lanka and to be completed in Italy."

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<sup>63</sup> Brabim Kumar, *Country of the Young* in The Kathmandu Post, 12<sup>th</sup> August 2015, at <https://kathmandupost.com/opinion/2015/08/12/country-of-the-young>

<sup>64</sup> Wickramsakera 2018, *supra note* 39 at 16; Agreement on bilateral cooperation on labour migration between the Government of the Italian Republic and the Government of the Democratic Socialist Republic of Sri Lanka, 2011.

### 7.3.2. Recognition of skills and qualifications and competencies in destination country, and on return in the origin country

It is not enough that the migrant workers' skills be upgraded. The skills must also be recognized to have some value in the destination country. This can only be done by mutual recognition of skills in COO and COD so that the skills learnt can be of some value in any destination is good in both the countries. The regional consultative process in Asia- The Colombo Process and the Abu Dhabi Dialogue– recognize the need to implement this to promote better regional cooperation. The Colombo Ministerial Declaration of the Abu Dhabi Dialogue declared on 24 January 2017 made pledges so as to “Cooperate bilaterally and explore multilateral cooperation in aligning our respective qualification standards” and to “facilitate the certification of skills and up-skilling and document and mutually recognize the skills of departing workers, those acquired in the place of work and the accumulated skills of returnees”<sup>65</sup>

The Art. 12 of the Bahrain-Nepal MoU also has deliberated in this matter to coordinate in the area of occupation training " especially in the training plans, methods, studies and research and skill level measurement systems and the methods of the implementation in accordance with needs of the labour market in both countries; to seek the recruitment of skilled technical employees in all fields and benefit from training institutes in both countries."

The Mauritius-Nepal MoU has included creating mechanisms on mutual skills recognition as one of the functions of the Joint Working Group of Jordan-Nepal in Art. 10. The rest of the agreements do not have any provisions in this matter.

### 7.3.3. Facilitation of transfer of savings and remittances at low cost

Reducing the cost of migrant remittances has been one of goals under Goal 10(c) of UN Sustainable Development Goals Agenda 2030. The relative cost of transfer of remittance in Nepal is lower in comparison to South Asian and Global averages.<sup>66</sup>

All the agreements except the G2G agreements have empowered migrant workers to remit their incomes back to the country but no specific policies have been agreed to reduce these costs. This must be because the Nepal average is already low, but it has yet to achieve the target of 3%.

A good practice in this regard can be seen the Philippine practice where they have uniquely signed bilateral agreements with Japan, United States to improve access to financial institutions and facilitate remittances.<sup>67</sup>

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<sup>65</sup> Colombo Declaration at p. 2.

<sup>66</sup> Migration Report 2020, *supra note 2*, at 95.

<sup>67</sup> ILO Good Practices Database.

#### 7.3.4. Exchange of relevant information between country of origin and country of destination

The Article 1 of the 1940 Model Agreement prescribes a provision on "exchange of related information" between COO and COD related to

- a. legislative and administrative provisions relating to entry, employment, and residence of migrants and of their families (COD) and information relating to emigration (COO);
- b. the number, the categories, and the occupational qualifications of the migrants desired (COD) and available (COO);
- c. the conditions of life and work for the migrants relating to remuneration, housing, and living conditions; and
- d. social security laws and their applicability to migrant workers. The information should also cover arrangements for protection of those not usually covered by labor laws, such as workers in agriculture and domestic work.

The information exchange can be classified in two categories, one under the area of providing adequate information to the migrant workers, and the other, the information exchange between the two states entering into the bilateral agreement. Officers from the Foreign Employment Board (FEB) note that some embassy's have been consulted when preparing the materials, but there is hardly an exchange of information in a more formalistic manner. Usually, returnee migrant workers are consulted when preparing such handbook. Setting up of proper communication challenge communicating any change in important and relevant laws could be one of the best practices in this heading.

The Mauritius-Nepal MoU in Article 4(iii) talks about the exchange of updated information on licensing status of NRAs, and among the responsibilities of the JWG in Article 10 (1)(iv) talks about the exchange information for development of mutual skills recognition, vocational training for Worker.

Of the two G2G agreements, the Korea-Nepal agreement in several articles talk about the exchange of information but mostly the exchange is also with regards to the pre-departure orientation then for the purpose of making policies to train manpower in the long run to meet the labor market needs of the two countries. The entire process of migration for employment is under the scrutiny and control of the two governments which requires proper information exchange between the two parties. In addition to that, the Paragraph 4 of the agreement enunciates that the entire employment process shall be actively advertised by the Government of Korea with proper assistance of the Government of Nepal.

The active recognition and responsibility of the government of both sides on this aspect has shown that very few cases is registered at the Department of Foreign Employment regarding fraudulent or propagandist activities concerning employment opportunities in Korea.

Finally, the Qatar-Nepal agreement does not contain any provisions that explicitly state the responsibility of parties to exchange and disseminate the information stated above or take actions to discourage propaganda. The Article 4 and 5 of the Qatar Agreement does talk about enabling migrant workers to make a decision to sign the employment agreement by providing necessary information but the "information" is used as a part of exhaustive list in specifying terms of conditions of the agreement.

The best practice identified by the Wickramsekera 2018 report<sup>68</sup> is similar to the Art. 2 of Nepal-Qatar Additional Protocol<sup>69</sup> that reads

"The Parties shall review from time to time, through the Joint Committee referred to in Article (14) of the Agreement, the possible employment opportunities in the State of Qatar, including the general information regarding development plans in the State of Qatar, projected employment opportunities thereunder for particular labour categories or skills, the expected duration of these employment opportunities and the availability of the desire of Nepalese citizens to make use of them."

However, this provision has yet to be materialized in practical terms.

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<sup>68</sup> WICKRAMASEKARA, 2018 *supra note 39*, at, 21.

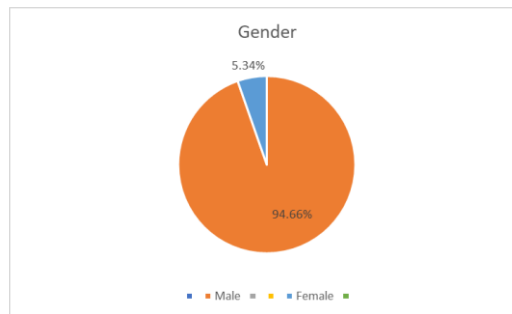
<sup>69</sup> Protocol is Available at <https://www.almeezan.qa/AgreementsPage.aspx?id=1422&language=en>

## 8. Findings

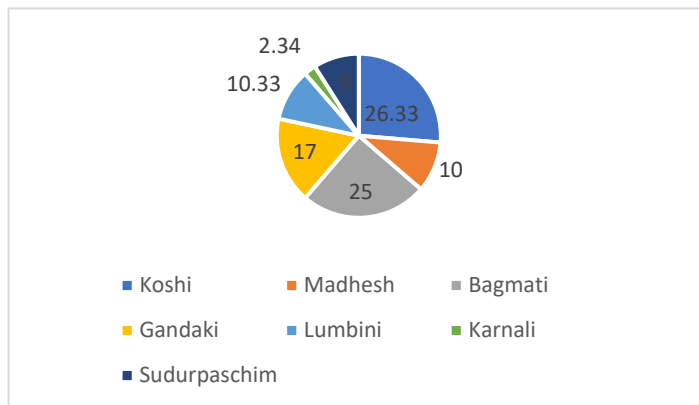
### Findings under the Questionnaire Survey

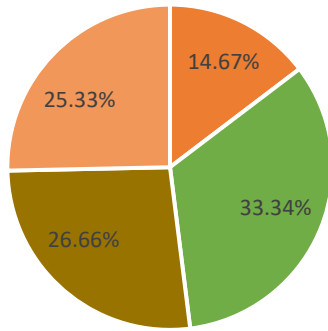
For the research on Bilateral agreement (BLA) a short interview was conducted with 300 aspirant and stranded migrant workers from 26<sup>th</sup> Mangsir, 2078 to 22<sup>nd</sup> Poush, 2078 to assess the awareness of Nepali migrant workers on the subject matter of BLAs. To that end, strategic locations like the Department of Foreign Employment (DoFE) and People Forum's legal aid clinic were selected to identify survey participants. The survey was conducted among 300 migrant workers. 83 of the 300 survey participants were returnee migrant workers and the remaining 217 were aspirant migrant workers.

A sex-wise disaggregation of the migrant workers who were interviewed showed that 94.66% of them were male and 5.34% were female.



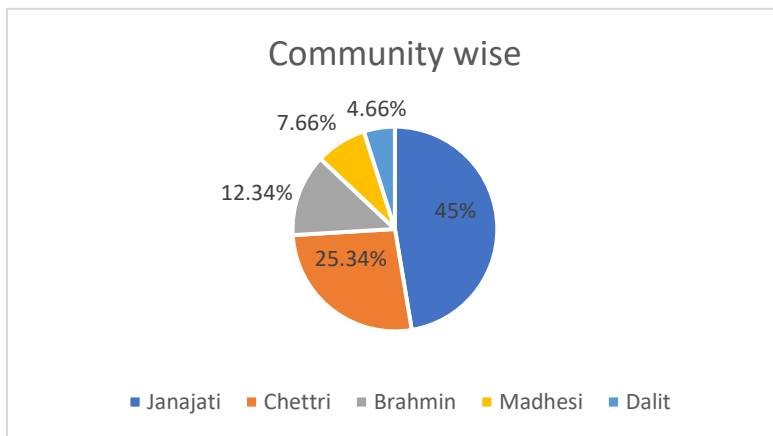
Out of total participants 26.33% of the participants belonged to Koshi Province, 10% to Madhesh, 25% to Bagmati, 17% to Gandaki, 10.33% to Lumbini, 2.34% to Karnali and 9% of the survey participants belonged to Sudurpaschim



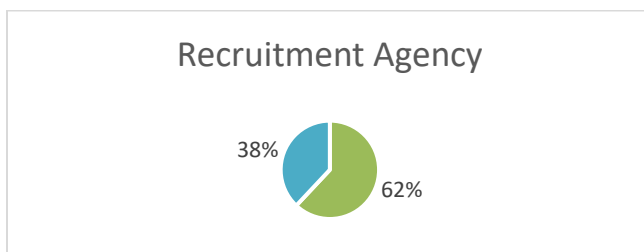


Among the 300 individuals surveyed, 33.34% of the participants belonged to the age group of 30-40, 26.66% belonged to the age group of 25-30 years, 25.33% belonged to the age group of 20-25 years and 14.67% were above 40 years.

Likewise, upon assessing the findings of the survey, it was found that 45% of the total survey participants belonged to the Janajati community. Similarly, 25.34% of the participants belonged to the Chettri community, 12.34% to the Brahmin, 7.66% to the Madhesi, and 4.66% participants belonged to the Dalit community.



Similarly, 62% of the total survey participants were recruited through Agents and 38% through Recruitment Agencies.





The research showed the most favored destinations of the participants were Gulf countries (53.33%), Europe (38%), Asian (7.34%), and Malaysia (1.33%).

In the context of returnee migrant workers, 30.13% of the migrant workers had returned following the end of their contract, 9.63% had returned due to the pandemic, and 60.24% of the workers had returned due to various other reasons. When asked about the rescue process of migrant workers, 65% of the survey population responded that they knew how the rescue process would work, were they to be stuck in the Destination Country. Regarding the same, 62.66% of the total survey population did not seek support from the Embassy to go back home. In case of accessibility of the source of information about employment opportunities, 52.67% of the survey participants responded that they had sought employment opportunities on their own, whereas 33.67%, 13%, 0.33% and 0.33% of the survey participants responded that they had been informed about the employment opportunities through manpower companies, agents, advertisement and government notice respectively.

None of the participants had any knowledge regarding the status of Bilateral Labor Agreement of Nepal with other countries. Similarly, 97.76% of the participants had no clue about the benefits of BLA, and only handful of participants had some form of information regarding BLAs. 99.34% of the survey participants did not have any idea regarding the procedure involved in concluding Bilateral Labor Agreement. When asked about the benefits facilitated by the BLA and its implementation, similar form of response was received.

For example, 98% of the surveyed participants had no clue of Dispute Settlement Mechanism and only 1.67% of them were aware of the Dispute Settlement Mechanism if any disputes were to arise among the employers and migrant workers in destination countries. Likewise, 95.18% of the 83 returnee migrant workers responded that they did not experience any change in the management procedure of the destination countries even after the conclusion of the Labor Agreement.

Of the total survey participants, 73.49% had availed pre-departure orientation training and 26.51% had not taken pre- departure orientation training. Upon the assessment of the collected data, it was found that 65% of the total participants did not know about the rescue procedure. Similarly, 62.66% of the returnee migrant workers did not even contact the embassy, only 33.37% got the information of foreign employment through manpower, 61.44% were not allowed possession over their passports and 61.34% of the total participants did not know where they could file a complaint in Nepal. -(data in book

On access to institutional arrangement, 81.34% of the participants did not have knowledge about the support availed by FEB, 17% had partial information about the role of FEB and 1.66% had some information regarding the services provided by FEB. Similarly, 94% of the survey participants had no clue about the compensation mechanism under the DoFE and 61.34% of the participants had no clue regarding the Complaint Mechanism in Nepal, while 38% of the participants had, however, partial knowledge about complaint mechanism under DoFE.

55.42% of the total survey participants had signed contracts whereas only 39.75% of survey population were insured or had knowledge of insurance. Of the total survey participants, 61.44% were not allowed possession over their passports. Out of them, 43.34% of the participants had paid more than 5 lakhs as recruitment fee, 32% had paid 1-3 lakhs, 7.67% had paid 3-5 lakhs, 10.66% had paid 10,000-50,000 NRs and 6.33% had paid 50,000 to 1 lakh Nepali Rupees.

On matters relating to BLAs, only 4.82% of the surveyed population reported positive changes to have occurred after signing of BLAs. Almost 99% of the participants had no idea on the existence of BLAs of Nepal with destination countries or the knowledge on the process of signing BLAs. Marginal population of 1%, (0.66%) had some awareness regarding the benefits inscribed in the BLA.

When the migrant workers were asked about their major while making a decision to choose a destination country, 265 out of 300 participants responded that good income, secured working conditions and Social Security Benefits were amongst the top influencing factors. 168 participants responded that requirement of skill-set as another influential factor. Other factors such as Recruitment costs and Existence of Bilateral relations came after the aforementioned factors with the mutual responses of 140 and 100 participants respectively.

Similarly, the migrant workers expressed that the BLAs must primarily address the issues on non-payment of wages and matters related to access to justice and rescue of workers caught in problems. Issues such as visa related issues, issues of non-payment of wages, matters of equality, right to retain one's passport were some of the other issues that the migrant workers wished that the BLAs addressed. Most of the returnee migrants as well as probable migrants expressed that legal aid was one of their top needs while leaving for as well as upon returning from their destination country of work. This also established the lack of access to adequate legal information and legal aid services in the migrant workers.

### Major Findings of Bilateral Agreement

Looking at the study of Nepal's bilateral labor agreements and Memorandum of Understanding (MOU) on labor agreements, mixed results were seen. Nepal bilateral agreements with Jordan, Malaysia, U.A.E and Mauritius in management of foreign employment and protecting the rights of migrant workers were found to be excellent. In the government-to-government agreements signed by Nepal, there is less possibility of labor exploitation and fraud but it is weak in terms of protection of rights of migrant workers. The study also found that Nepal's bilateral labour agreements with Qatar and Bahrain are weak from every point of view and even the arrangements mentioned in the agreement have not been implemented in practice. After a detailed study of all the bilateral agreements, the following are the results of this research.

### Labor management and governance

1. One of the biggest shortcomings with Nepal's labor governance mechanism is that it lacks a policy coherent position when it comes to labor migration. Despite the great contribution of foreign employment in social and economic development of Nepal, the sector has been facing vulnerability and is ignored. In the present context foreign labor migration is an unavoidable truth which the country must admit and Nepal must clarify its position in relation to its bilateral relations with the destination countries. Nepal has not been able to identify the minimum bargaining power with the destination country. As Nepal has not been able to truly evaluate the capacity of its human resources and conduct the labor management effectively, the country has not been able to clearly present its expectation while concluding the bilateral agreements.

2. Due to Nepal's frequently changing administrative structure, the officers of Government of Nepal keep on changing, and due to lack of documentation, there is no institutional memory. Moreover, as there is no established policy regarding bilateral agreements, as soon as the leadership in the ministry changes, the policy approach changes and the related topic do not get adequate follow up. Other than the recent Qatar and Nepal's joint committee meeting, no information or press release of any other joint committee meeting could be obtained.
3. Only three MoUs – between Malaysia, Mauritius and UAE – have been published in the Ministry's website from the view of transparency. There is no clarification as to why other MoUs and BLAs have not been uploaded. The MoU between Nepal and Israel was made available upon request through right to information application, but when enquired about the agreement concluded with Japan, while it was denied on the ground to maintain confidentiality, the same agreement was to be found in Japan's Ministry of Foreign Affairs' website.
4. Even the migrant workers who have received pre-departure orientation do not have any information regarding the provisions of protections offered in the bilateral labor agreements.
5. As the Department of Foreign Employment does not have segregated records/data of the complaints registered from all over the country, the officials of the joint working committee have not been able to identify the problems that need to be addressed. Thus, due to the lack of adequate data, the meetings could not set significant agendas.
6. Nepal has not been able to include the destination country's human resource and market demand as the main agenda in the Joint Working Committee Meeting.
7. During the drafting of the agreement, during the joint working committee meeting, and even during the implementation stage of other agreements, only limited number of stakeholder (migrant workers associations, civil societies, social organizations, trade unions) organizations are invited, and even the participation of government stakeholders' is minimal.
8. There is lack of mutual coordination between the various agencies of the government. For example, the fact that National Human Rights Commission has been contributing in the protection of human rights of migrant workers and in their rescue, in collaboration with the Human Right Commissions of South Korea, Qatar and Malaysia are not known to the migrant workers, this information is not shared in the orientation training, and these partnerships are not even mentioned in any agreements.
9. Information regarding the number of Joint Committee Meetings under various agreements, the subject matters discussed in the meetings and the achievements derived from those meetings have not been disclosed.
10. Despite the directive order issued by the Supreme Court regarding bilateral agreements (prioritize to conclude bilateral agreements with the countries where migrant workers have

been sent) in writ no. 072-WO-0163, there is no initiation to conclude bilateral agreements at a fast pace in compliance with directive orders.

11. The responsibility to publish information regarding the employment process has been assigned to the Government of Nepal in every bilateral labor agreement, but the government has not been able to do so. Likewise, Nepali migrant workers lack information about the facilities that have been ensured through its diplomatic initiatives. Even the copy of Social Security Agreement concluded between Malaysia and Nepal has not been made available anywhere.
12. During the attestation of the demand letter, it is not checked if it is consistent with the bilateral labor agreement/MoU.
13. No provisions have been established in order to study the impact of the signing and implementation of the bilateral agreement and the joint working committee too does not have groundwork for monitoring and evaluation.
14. The study also revealed that Nepal's bargaining power seems to be weak when negotiating the Bilateral Labour Agreements.

### Protection of the rights of Migrant Workers

1. The recruitment and management approach concluded under the government to government (G2G) provisions that all the expenses related to the recruitment shall be beared by the migrant workers, which is against the international standards related to International Labour Organization (ILO) and other fair recruitment practices.
2. Migrant workers should be aware of all the terms and conditions of their employment in the contract. And as per the agreements, the responsibility to ensure this provision lies on Nepal government. But study shows that the migrant workers are not aware of the terms of their employment and even the facilities that they shall be receiving.
3. From the key informant interview with workers and stakeholders, it was found that the workers have not received the services (insurance, air tickets, etc.) guaranteed by the bilateral labor agreement. Also, the migrant workers were not able to keep their passports with them, which implies a violation of their human rights.
4. The agreements concluded with Jordan, UAE and Mauritius provisions to provide free legal assistance to Nepali workers in relation to the labor related cases in the destination country. The workers in respective countries do not have any information regarding such provision.
5. No any agreements have addressed the provisions regarding the subject matter of domestic workers, except in the agreement with Jordan.
6. In the recruitment done under the Government-to-Government agreements, the provisions to provide protection and rights to the migrant workers are negligible.
7. With regards to the rights of women migrants, except in the agreement with Jordan, all other agreements provide "Special Protection shall be provided". No other provisions have been mentioned.

8. Except in the bilateral agreement with Jordan, no other agreements mention the responsibility to perform autopsy of the deceased. Similarly, there is no provision regarding the timeframe for the settlement of the accounts and providing insurance and compensation in case of death of migrant workers.
9. Despite the availability of the format of the Standard Employment Contract in the bilateral labor agreement and MoU, employment contract concluded on the other formats have been approved.

### Inter-relationship between labor migration and development

1. Most of the bilateral agreements have been signed without proper research on the long-term impact of labor migration.
2. Except in the agreement with Jordan, none of the bilateral agreements have provisions regarding mutual skills recognition, skill enhancement, and certification for migrant workers.
3. No provisions have been made as to which country or agency shall be responsible to provide social security in the old-age of the migrant workers who have returned to Nepal due to various problems, after dedicating their energetic youth in the destination country
4. There is no provision in any of the bilateral agreements for the reintegration of the returnee migrants.

## 9. Recommendations

1. Nepal should acknowledge that foreign employment is an unavoidable aspect for the economic development of the nation and by constructing affirmative concept regarding foreign employment, Nepal must formulate stable policies with regards to the bilateral labor agreements.
2. In the initiation of MoLESS, DoFE and Foreign Employment Board, while appointing new officials to look into the foreign employment issues, all the documented labor agreements, progress reports and meeting minutes must be handed over to the respective official.
3. The labor agreements concluded should be translated in Nepali language, and should be made accessible by disseminating it, publicizing in the website and even publishing the information by preparing citizen's charter. For this, the local government and civil societies should be mobilized after training and empowering them.
4. The course of orientation training must be reviewed to include protections prescribed in the labor agreements. And, exercise should be done with civil societies in order to effectively implement the orientation training. For this, the returnee migrants should be mobilized by involving them as trainers.
5. Department of Foreign Employment must record the data by segregating the complaints as per the countries to understand the problems faced by workers in their respective destination countries. The data must also be collected from the Embassies in the respective countries.
6. Nepal should play pioneer role to organize joint committee meetings, ensure proper exercise in advance to set agendas and document all the decisions and achievements of the committee meetings.
7. MoLESS should collect written feedback and suggestions by inviting related government authorities, parliamentary committee members, related embassy representatives and others stakeholder (migrant workers network, Civil society, trade union, organizations of the social activists), in the initial drafting of the labor agreement, during or before joint committee meetings and during the implementation of the labor agreement. The feedback and suggestions should be studied and implemented through participatory approach by involving all the stakeholders.
8. Supreme Court's decision on the case *Advocate Shom Prasad Luitel v. Prime Minister Council*, Writ no 072-WO-0169, related to bilateral labor agreement should be implemented. Nepal should prepare a draft labor agreement by involving the experts and stakeholders of the foreign employment sector, and should negotiate with the destination country based on the same draft.
9. In the government to government (G2G) employment management model, the provision should be initiated to ensure Employer Pays Principle. Also, additional provisions for the protection and rights of foreign migrant workers should be mentioned in the agreements done under G2G model.

10. It is necessary to ensure that migrant workers are aware of all the terms and conditions of their employment contracts and it is also necessary to monitor the obligation of recruitment agencies to clarify the employment contracts to workers.
11. A study should be conducted on the implementation of facilities (insurance, no recruitment fee, air ticket) ensured to the Nepali workers in bilateral labor agreements.
12. The provision to provide free legal assistance to Nepali workers in the destination countries in labor related cases should be included in other agreements as well, as done in the agreement concluded with UAE and Mauritius. The workers should also be informed regarding the same.
13. It is necessary to conclude separate agreements for the matters related to domestic workers, women workers, and social security.
14. Explicit provisions should be introduced to avoid the contract substitution. In the case of recruitment in the countries where the labor agreement has been concluded under Employer Pays Principle, DoFE should issue labor permit only after verifying the receipts regarding the service fees and tickets concerning the Nepali foreign employment businesses
15. Nepal should conduct extensive study about its human resource and labor market of the destination country, and take steps towards enhancing skills of the Nepalese migrants in accordance with the demand of destination's labor market. The meeting minutes of joint committee meeting should be systematically documented and kept on the website of the Ministry.
16. The labor agreement should also include the obligation of the destination country to disseminate information and obligate the destination country to inform the employer and the recruitment agencies regarding the provisions of the bilateral agreements (especially regarding the recruitment process and employer pays principle in the recruitment).
17. The Guidelines related to the Demand Attestation must be amended in order to make it consistent with the labor agreements. In order to implement Employer Pays Model, the Nepali Diplomatic Missions should only attest those demand letters which ensures that all the recruitment costs are beared by the employers.
18. In order to draft the labor agreements and to enhance the negotiating capacity of the officials, organizational capacity should be empowered and enhanced by providing training, initiating excursions, and conducting intensive study and research in Nepal.
19. The provisions regarding the study on the impact of labor agreements and periodic review of the agreements should be included in the agreement itself, or should be provisioned in the joint committee meetings, or, the responsibility might also be given to an independent body such as the National Human Rights Commissions.
20. In the context of any pandemic such as COVID, a national focal person should be appointed to coordinate virtual meetings.
21. A handbook should be prepared including the protections for migrant workers ensured under the labor agreements and the labor laws of the destination country, in order to make

it available for the migrant workers during the pre-departure orientation or to distribute it in the destination country.

22. The responsibility to conduct a postmortem of the workers who died during employment should be ensured in the labor agreement. The agreements should also include a provision to conduct a re-postmortem in Nepal in case of suspicious death.
23. Standard Employment Contract should be made part of the labor agreement and it should be implemented effectively.
24. The labor agreements should include provisions regarding mutual skills recognition, skills enhancement, and skill certification of the migrants.
- 25.
26. While concluding the labor agreement, the government should take initiatives to include provisions related to reintegration of the migrant workers after their return to Nepal.
27. The government should take initiative to include provisions regarding the control of human trafficking and smuggling of migrants and provide compensation/justice to the affected, in the bilateral labor agreements to be concluded in future, and while amending the existing agreements.
28. Bilateral labor agreement should be taken as a significant part of a greater bilateral relationship with the destination country. The government should acknowledge MoUs related to the protection of migrant workers, concluded by the National Human Rights Commission with the Human Right Commissions of the destination countries, by including national approach.



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## Annex-A

### Normative Framework of Nepal and Destination Country

Core International Human Rights Instruments									
Treaty	Nepal	Bahrain	Israel	Japan	Jordan	Korea	Malaysia	Mauritius	UAE
ICERD	R, D	R, D	R, D	R, D	R	R, D	x	R	R
ICCPR	R	R (OP), D	R(OP),D	R(OP),D	R(OP)	R(OP2), D	X	R(OP2)	X
ICESCR	R(OP)	R (OP), D	R(OP)	R(OP),D	R(OP)	R(OP)	X	R(OP)	X
CEDAW	R	R (OP), D	R(OP),D	R(OP)	R(OP),D	R, D	R(OP),D	R, D	R(OP),D
CAT	R(OP)	R (OP), D	R(OP),D	R(OP),D	R(OP)	R(OP),D	X	R	R(OP),D
ICMW	X	X	X	X	X	X	X	X	X
Eight ILO Core Conventions									
C087	X	X	R	R	X	R	X	R	X
C098	R	X	R	R	R	R	R	R	X
C029	R	R	R	R	R	R	R	R	R
C105	R	R	R	X	R	X	X	R	R
C100	R	X	R	R	R	R	R	R	R
C111	R	R	R	X	R	R	X	R	R
C138	R	R	R	R	R	R	R	R	R
C182	R	R	R	R	R	R	R	R	R
Core Migrant Worker Convention									
C97	X	X	R	X	X	X	R.D	R.D	X
C143	X	X	X	X	X	X	X	X	X
Soft, Non Binding Instruments									
ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration <sup>70</sup>									
R086 - Migration for Employment Recommendation (Revised), 1949 (No. 86) <sup>71</sup>									
R151 - Migrant Workers Recommendation, 1975 (No. 151) <sup>72</sup>									

Index:

R= Ratified

R(OP)= Convention ratified without ratifying optional protocol

R(OP2)= Convention and Optional Protocol ratified , optional protocol 2 not ratified

<sup>70</sup> ILO Multilateral Framework

<sup>71</sup> R86

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