



**LAPSOJ**  
Law and Policy Forum For Social Justice



An Organization of returnee women migrant  
सुरक्षित वैदेशिक रोजगार, हामी सबैको साझा सरोकार

## Access to Justice of Nepalese Migrant Workers: Present-Day Problems and Challenges

Submitted to

Mr. Felipe González Morales

Special Rapporteur on the Human Rights of Migrants

Joint Submission by:

Law and Policy Forum for Social Justice (LAPSOJ)

Pourakhi Nepal

**Date: February 4, 2018**

## INTRODUCTION

### BACKGROUND

Nepal is one of the least developed countries in South Asia<sup>1</sup>, with a population of around 28.98 million. The number of Nepalese leaving the country to work abroad has grown exponentially over the past decade. Almost half of all households in Nepal have at least one family member who is currently working, or has previously worked, abroad.<sup>2</sup> According to the National Population and Housing Census, 2011, the total absentee population of Nepal is 1,924,494, approximately 7.3% of the total population.<sup>3</sup> The highest proportions (44.81%) of these are in the age group 15 to 24 years i.e. mostly people of working age. Similarly, the recorded proportion of male migrants is significantly higher: 95.72% in the fiscal year 2014/15, in contrast to a mere 4.28% of female migrants.<sup>4</sup>

According to the report of the Ministry of Labor and Employment, Malaysia and the Gulf Cooperation Council countries have been the most popular destinations, receiving 85% of all male and female labor migrants in the past seven fiscal years.<sup>5</sup> Of the total 2,723,587 labor permits issued by the Department of Labor and Employment from 2008/09 through 2014/15<sup>6</sup>, 33.3% were for employment in Malaysia, followed by Qatar (19%), Saudi Arabia (18.9%), United Arab Emirates (9.8%), Kuwait (2.5%), Bahrain (0.9%) and Oman (0.6%). These figures, however, do not include the number of undocumented migrants traveling via various illegal channels. In particular, the number of women traveling to the Middle East via irregular channels is much larger than the recorded number described above.<sup>7</sup>

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<sup>1</sup> The World Bank Group, 'Least Developed Countries: UN Classification', available at <https://data.worldbank.org/region/least-developed-countries-un-classification?view=chart>

<sup>2</sup> Sarah Paoletti et.al, 'Migrant Workers' Access to Justice at Home: Nepal', Centre for the Study of Labor and Mobility (CESLAM), 2014, p. 18.

<sup>3</sup> GoN, Central Bureau of Statistics, Nepal Population and Housing Census, 2011.

<sup>4</sup> GoN, Ministry of Labor and Employment, 'Labor Migration for Employment: A Status Report for Nepal 2014/15', 2016, p. 8.

<sup>5</sup> GoN, Ministry of Labor and Employment, 'Labor Migration for Employment: A Status Report for Nepal 2014/15', 2016, p. 9.

<sup>6</sup> GoN, Ministry of Labor and Employment, 'Labor Migration for Employment: A Status Report for Nepal 2014/15', 2016, p. 7.

<sup>7</sup> Sarah Paoletti et.al, 'Migrant Workers' Access to Justice at Home: Nepal', Centre for the Study of Labor and Mobility (CESLAM), 2014, p. 18.

The exponential rise in foreign labor migration has produced a snowball effect on the economy of the nation. The growing tendency of foreign migration has led Nepal to become a remittance-led economy today. As documented by the World Bank, remittances received by Nepal in 2000 was recorded as 2.029% of Gross Domestic Product (GDP), while in 2015 it had significantly increased to 31.753%.<sup>8</sup>This now ranks it as the third highest remittance receiving country, in terms of contribution to GDP<sup>9</sup>. The overseas migration and remittances have been instrumental in alleviating poverty, as well as in improving the living standards of the population.<sup>10</sup>

While international migration has had a positive impact on the country's economy, the migrant workers themselves are suffering from poor working and living conditions, including: low wages, an unsafe working environment, a virtual absence of social protection, denial of the freedom of association (the right to form and join trade unions) and workers' rights, discrimination and xenophobia while in their countries of destination.<sup>11</sup>In the absence of decent work opportunities at home, an increasing number of Nepalese feel that they have no choice but to look for work abroad.<sup>12</sup>Thousands of Nepalese continue to migrate in search of employment, despite many reported cases of fraud perpetrated by recruitment agencies, abuse, exploitation, injury and even death during employment.<sup>13</sup>

Such abuses persist due to a lack of transparency, government oversight, and accountability in the private recruitment and placement of migrant workers.<sup>14</sup>It has become a matter of great concern that, despite the significant contribution of overseas migration and remittances in

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<sup>8</sup> The World Bank, Personal remittances, Received (% of GDP), World Bank Staff Estimates Based on IMF Balance of Payments Data, March 7, 2017 <http://data.worldbank.org/indicator/BX.TRF.PWKR.DT.GD.ZS?locations=NP>

<sup>9</sup> World Bank Group, 'Migration and Remittances Factbook 2016', 3<sup>rd</sup> edition, p. 14.

<sup>10</sup> Prof. Bijaya Shrestha, 'Contribution of Foreign Employment and Remittances to Nepalese Economy', p. 2, available at [https://nrb.org.np/ecorev/pdf/vol20\\_art1.pdf](https://nrb.org.np/ecorev/pdf/vol20_art1.pdf)

<sup>11</sup> International Labor Migration: A Right Based Approach, Cornell University ILR School(2010), Geneva, International Labor Office, available at <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1086&context=intl>

<sup>12</sup> Amnesty International, 'Nepal: Unscrupulous recruiters given free rein to exploit migrants', 6 June 2017, available at <https://www.amnesty.org/en/latest/news/2017/06/nepal-unscrupulous-recruiters-given-free-rein-to-exploit-migrants/>

<sup>13</sup> GoN, Ministry of Labour and Employment, 'Labour Migration for Employment: A Status Report for Nepal 2014/15', 2016, p. 23

<sup>14</sup> Open Society Foundations, 'Migrant Workers Access to Justice at Home: Nepal', Centre for the Study of Labor and Mobility (CESLAM), 2014, p. 18.

alleviating poverty,<sup>15</sup> migrant workers have been facing numerous challenges with regards to accessing justice. As such, it has become necessary to look into the existing domestic, as well as international, normative framework governing foreign labor migration, and to identify the major challenges for Nepalese migrant workers accessing justice.

## **NORMATIVE AND INSTITUTIONAL FRAMEWORK**

### **National laws governing foreign labor migration**

The rights of migrant workers are protected and guaranteed under the constitution and various national laws of Nepal. The constitution of Nepal guarantees the fundamental rights, whereas domestic laws protect other labor-related rights of migrant workers. In this regard, the primary instruments governing the rights of migrant workers include: the Constitution of Nepal, the Foreign Employment Act, 2007, Foreign Employment Rules, 2017 and the Foreign Employment Policy, 2012.

- i. Foreign Employment Act, 2007:** This is the primary act governing the sector. It mainly governs aspects related to licensing, orientation training, government approval, service charges and employment contracts, rather than focusing on the rights of workers. The act has prescribed various role of the government in the management of foreign employment through the overall regulation of foreign employment, including the procedures. It has given primary authority to the government to manage as well as to regulate foreign labor migration from Nepal. Some of the key provisions in the Act include: the power of government to make bilateral agreements with the destination countries,<sup>16</sup> minimum remunerations, contracts, insurance coverage, orientation training, a foreign employment welfare fund, complaints,<sup>17</sup> investigation and enquiries, punishment, and the trial and settlement of cases,<sup>18</sup> the sending of migrant workers to their destination countries only through the national airport<sup>19</sup>, having a labor desk in the national airport<sup>20</sup>, labor attaches in the destination countries<sup>21</sup>, permitting

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<sup>15</sup> Prof. Bijaya Shrestha, 'Contribution of Foreign Employment and Remittances to Nepalese Economy', p. 2, available at [https://nrb.org.np/ecorev/pdf/vol20\\_art1.pdf](https://nrb.org.np/ecorev/pdf/vol20_art1.pdf)

<sup>16</sup> Foreign Employment Act (FEA), 2007, section 4

<sup>17</sup> FEA 2007, section (23 - 36)

<sup>18</sup> FEA, chapter (9 - 11)

<sup>19</sup> FEA, section 22

<sup>20</sup> FEA, section 73

<sup>21</sup> FEA, section 68

only the license holders to undertake foreign employment dealings<sup>22</sup>, pre-departure orientation training<sup>23</sup>, insurance to be procured prior to going for foreign employment<sup>24</sup>, contracts to be made between the employers or their agents, workers and licensees regarding the terms and conditions of employment.<sup>25</sup>It has also incorporated some protective provisions, such as the prohibition of sending minors for employment<sup>26</sup> and protection against gender discrimination.<sup>27</sup>.Article 9 of the Act specifically provides that the government of Nepal may provide special facilities to women, Dalit, indigenous nationalities, oppressed, victims of natural calamities and people from remote areas who go for foreign employment. Sub-article (2) of the Section has accordingly stated the provision for reservation a certain number of people from such groups while sending them for foreign employment.

Similarly, the Act has established two institutional mechanisms, namely a Complaint Registration and Investigation Section within the Department of Foreign Employment (DoFE) and a Foreign Employment Tribunal. Section 61 of the Act provides jurisdiction to the Department to conduct investigation and inquiry upon receiving a complaint on offenses enlisted under the Act. It has the power to make orders and impose penalties in certain cases brought against recruitment agencies, and to refer other cases to the tribunal. The tribunal was established in 2010 under the Foreign Employment Act, 2007 and its procedure has been outlined in the Foreign Employment Tribunal Rules, 2012. In addition to these, various diplomatic missions offer assistance to workers abroad. Section 64 of the Act provides the Foreign Employment Tribunal with the jurisdiction to adjudicate more serious violations of the Act and the rules'.

Despite such mechanisms, various challenges are faced by migrant workers accessing justice in Nepal. Firstly, the implementation of the Act poses a critical challenge with the everyday instances of migrant workers being the victims of exploitation. Similarly, the act neglects the rights and concerns of migrant workers as the structure and content are foreign employment-

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<sup>22</sup> FEA, section 10

<sup>23</sup> FEA, section 27

<sup>24</sup> FEA, section 26

<sup>25</sup> FEA, section 25

<sup>26</sup> FEA, section 7

<sup>27</sup> FEA, section 8

and business- oriented. Even the mechanisms established by the Act are largely inadequate and ineffective in ensuring access to justice.

A survey report by the Open Society Foundations found the following challenges in the existing DOFE mechanism with regards to migrant workers accessing justice in Nepal. Out of the 2305 cases filed in the fiscal year 2012/13, the DOFE resolved only 552 and registered 178 at the tribunal. Similarly, in contrast to the number of cases received, the numbers of DOFE investigation officers are far too few. The majority of the cases filed are against individual agents, whom are often more difficult to locate, can abscond more easily than the recruitment agencies, and mostly unable to pay the compensation themselves, to which the worker is entitled.

Furthermore, the Foreign Employment Tribunal also faces various challenges. Firstly, the process of taking a case to the Tribunal is a lengthy and complicated one. Similarly, the most common cases received by the Tribunal are regarding compensation claims. This is the most problematic of all the claims, since it is mostly against unlicensed brokers, so a recruitment company cannot be made liable, and the broker usually does not have a deposit or is difficult to locate.

**ii. Constitution of Nepal, 2015:** The Fundamental Rights of individuals enshrined in the Constitution of Nepal protects and guarantees the constitutional rights of migrant workers. Article 29 guarantees the right against exploitation, whilst Article 29 (3) provides a preventive clause against trafficking, slavery, serfdom or any form of forced labor. Similarly, the following articles guarantee different rights:

- Article 16-the right to live with dignity
- Article 17 - the right to freedom
- Article 18 - the right to equality
- Article 20 - rights relating to justice
- Article 22 - right against torture
- Article 33 - the right to employment
- Article 34 -right to labor

Also, according to Article 51(i)(5) of the Constitution, the state is required to pursue policies to regulate and manage the foreign employment sector in order to make it free from exploitation, safe and systematically guarantee the employment and rights of workers. In addition to these, in the case of violations of the rights guaranteed under the Constitution or, in the case of absence of any other effective remedy, there is the provision of the right to constitutional remedy, as documented in Articles 46 and 133

Besides these, the sector is indirectly governed by other national laws and policies, including the Labor Act, 2017, Labor and Employment Policy, 2005, Immigration Act, 1992 and Foreign Employment Policy, 2012. The Labor Act, 2017 in *Section 9* specifically provides the right to remedy in the case of violations of the rights provided for in the Act, and in *Section 64* even enlists the duties of the employer in protecting the rights of workers.

Although the prevailing acts of Nepal have been instrumental in governing and protecting the rights of migrant workers, they still fall short in a variety of ways. The primary legislations governing foreign employment, the FEA and FER, are less concerned with rights-based protection, focusing more on the procedural and regulatory aspects of foreign employment instead. The concerns of undocumented migrant workers and the protection of their rights, the provisions governing the safety and security of workers while in destination countries, procedures of repatriating the dead bodies of workers and the legal basis of defending the rights of workers abroad are yet to be adequately addressed.

In addition to these domestic legislations, there are a number of international instruments which serve as an important framework for the protection of the rights of migrant workers.

### **International Legal Framework Governing Labor Migration**

- i. International Treaties and Conventions signed by Nepal:** Nepal is a party to most of the core international human rights treaties which provide normative standards and protect the rights of all human beings, including migrant workers. Such international treaties and conventions, which have been ratified by Nepal, are equally as applicable in Nepal as national laws according to *Section 9* of the Nepal Treaty Act, 2047.

These treaties include: the Universal Declaration on Human Rights (UDHR), 1948, the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966 and the International Covenant on Civil and Political Rights (ICCPR), 1966. Collectively, these provide the normative standards and outline the fundamental rights of all human beings, including migrant workers. Nepal has also ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 1965, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984, the Convention on the Rights of the Child (CRC), 1989, and the Convention on the Rights of Persons with Disabilities (CRPD). These constitute key international instruments in protecting the rights of migrant workers beyond the boundary of a particular state.

- ii. Bilateral Instruments and MOUs:** In accordance with Section 4 of the Foreign Employment Act, 2007, the Nepalese government has so far signed bilateral agreements to regulate labor migration with five major destination countries (Bahrain, Qatar, UAE, South Korea and Japan)<sup>28</sup>. The government is also taking into consideration signing labor agreements with Oman, Lebanon and Malaysia.<sup>29</sup> Such bilateral treaties and MOUs have a significant role in establishing the norms and obligations that guide the overall procedures for protecting the rights of migrant workers in their countries of destination. Agreements of this sort help to bridge the gaps in governing international instruments. Furthermore, in the case of Nepal, such bilateral agreements are also considered as treaties and are therefore as binding as domestic laws in accordance with *Section 9(1)* of Treaty Act, 2047.

Despite being a party to the above mentioned conventions and instruments, Nepal has yet to ratify some of the most important instruments that protect the rights of migrant workers, such as the International Convention on the Protection of Rights of all Migrant Workers and Members of their Families, 1990, the major instrument for the specific protection of the rights of migrant workers. The Convention establishes the obligations of the state of origin countries, in addition to the obligations of the states of employment, as well as the states of transit. Despite the

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<sup>28</sup> CESLAM (Centre for the Study of Labour and Mobility), 'Governing Labour Migration in Nepal: An Analysis of Existing Policies and Institutional Mechanisms', p. 70.

<sup>29</sup> Labor and Migration in Nepal, Centre for the study of Labor and Mobility (CESLAM), accessed March 21, 2017, <http://www.ceslam.org/index.php?pageName=content&contentId=148>

increasing number of Nepalese migrant workers, non-ratification of the most important international instrument in establishing a pro-migrant workers regime internationally is a major concern for migrants' rights protection.

Similarly, despite being involved with numerous ILO Conventions, Nepal has yet to ratify the two major ILO Conventions governing the rights of migrant workers, namely the ILO Convention, 1997 - Migration for Employment Convention (Revised) and the ILO Convention 143- Migrant Workers (Supplementary Provisions) Convention, 1975. Ratifying these Conventions is necessary since it provides important provisions regarding undocumented migrant workers. It states that, on the condition that a worker has resided legally in the territory for the purpose of employment, the migrant worker shall not be regarded as in an illegal or irregular situation by the mere fact of the loss of his or her employment, a major problem currently faced by Nepalese migrant workers in the Gulf region.

The prevailing domestic and international legal frameworks mark a significant development in labor migration governance in Nepal, but the protectionist approaches and current concerns of migrant workers demand the ratification and consideration of other international instruments, most significantly the Migrant Workers Convention, including the aforementioned ILO Conventions.

#### **VIOLATIONS OF RIGHTS AND ACCESS TO JUSTICE OF NEPALESE MIGRANT WORKERS**

With the increase in the number of workers migrating for foreign employment, more and more incidents of human rights violations and atrocities due to fraud, exploitation, fragmentation of families, torture and inhumane treatment have been taking place in the countries of destination.<sup>30</sup> In this regard, the most serious violations of the rights of migrant workers with the greatest detrimental effects on their lives, as well as their families, have been listed in this submission.

The most commonly reported cases of violations include fraud perpetrated by recruitment agencies and abuse, exploitation, injury or death during employment in destination

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<sup>30</sup> NHRC (National Human Rights Commission), 'Rights of Migrant Workers – An Overview', 2012, p. 2. available at [http://www.nhrcnepal.org/nhrc\\_new/doc/newsletter/Rights%20Migrant%20Workers.pdf](http://www.nhrcnepal.org/nhrc_new/doc/newsletter/Rights%20Migrant%20Workers.pdf)

countries.<sup>31</sup>The major obstacles in ensuring access to justice for migrant workers are as follows:

- **Dual Contracts**

One of the most common problems faced by migrant workers abroad is related to deception about the terms and conditions of their contracts.<sup>32</sup>The main form of deception in this regard is related to salaries<sup>33</sup>, but a number of migrant workers are also deceived about the nature of their work. Most reported disputes are over salary, typically about under, late or non-payment of wages.<sup>34</sup>

- **Lack of effectiveness of pre-departure orientation training**

Another major challenge faced by migrant workers is the lack of awareness about their rights and redress mechanisms. This is largely due to the ineffectiveness and inadequacy of the pre-departure orientation training conducted as a requirement under *Section 27* of the Foreign Employment Act, 2007. The aim of the orientation training should be to facilitate the migration process and ensure that Nepalese migrant workers understand their rights and responsibilities in their countries of destination. However, the curriculum of the orientation training, prepared by the FEPB, has proven to be largely ineffective in terms of disseminating information about the rights of migrant workers in foreign countries.

In a group interview conducted by Amnesty International with 46 returnee migrant workers in Nepali, it was stated that:

"Some of us attended orientation training while others did not. It was held one and a half months prior to our departure. They were one hour each over two days. They told us about HIV/AIDS, what to expect at airport immigration and how to eat inside an airplane. The only thing we knew about Libya was that it was in Africa."

- **Centralization of Redress Mechanisms in the capital**

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<sup>31</sup> GoN, Ministry of Labour and Employment, 'Labour Migration for Employment: A Status Report for Nepal 2014/15', 2016, p. 23

<sup>32</sup> Amnesty International, 'False Promises: Exploitation and Forced Labor of Nepalese Migrant Workers', December, 2011, p. 52, available at <http://www.amnestynepal.org/downloads/English-Nepal-MW-Report.pdf>

<sup>33</sup> Amnesty International, 'Turning People into Profits: Abusive Recruitment, Trafficking and Forced Labor of Nepali Migrant Workers', p. 56, available at <https://www.amnesty.org/en/documents/asa31/6206/2017/en/>

<sup>34</sup> Amnesty International, 'False Promises: Exploitation and Forced Labor of Nepalese Migrant Workers', December, 2011, p. 52, available at <http://www.amnestynepal.org/downloads/English-Nepal-MW-Report.pdf>

Another hurdle faced by victims is the physical accessibility to these institutions. The DOFE, as well as the Foreign Employment Tribunal, are both situated in the capital of the country. Most migrants, however, belong to the southern plains and rural hilly regions of Nepal<sup>35</sup>. The time and expense incurred in the travel and accommodation therefore represents a large obstacle faced by migrant workers. While the most common claims are for compensation, the expense to be incurred therein leads to further victimization of the migrant workers seeking redress.

- **Legal Assistance/ legal representation to the migrant workers abroad**

Legal assistance or legal representation given to migrant workers represents another large concern. The most severe violations of their rights occur mainly in the destination countries, with many Nepalese workers even serving sentences in foreign jails. The question of legal assistance and representation arises in such situations. The right to legal representation is the right of those workers in accordance with Article 20(2) of the Constitution of Nepal, and Article 14 of ICCPR. In most of these cases, the migrant workers do not receive any legal assistance. In some countries, embassies provide ad hoc assistance to migrant workers with legal problems, but they are unable to provide widespread assistance to access justice due to financial, human resources, and legal limitations.<sup>36</sup> In this regard, Rule 26 of the new Foreign Employment Regulation, 2074 provides that one of the uses of the Foreign Employment Regulation shall be in providing legal aid to Nepalese workers in foreign countries; this represents significant progress, but its implementation is yet to be seen.

- **Undocumented/ Irregular migrants**

Another major challenge is faced by migrants of undocumented or irregular status. While the most common cases are regarding the payment of compensation, another major challenge faced is that they are not entitled to receive money from the welfare fund set up by the foreign employment promotion board. It must however be noted that their

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<sup>35</sup> GoN, Ministry of Labour and Employment, 'Labour Migration for Employment: A Status Report for Nepal 2014/15', 2016, p. 14.

<sup>36</sup> Bandita Sijapati et. al, 'Overseas Assistance for Nepali Migrant Workers Seeking Justice Abroad', Policy Brief, No 6, CESLAM (Centre for the Study of Labour and Mobility), 2014, p. 5.

irregular status makes them more vulnerable to abusive treatment.<sup>37</sup> In 2013, of the approximately 3.2 million Nepalese workers in countries other than India, more than half were undocumented or irregular migrants. According to UN Women, among those classified as undocumented, approximately 90% are women.<sup>38</sup> The ban on female migrant workers imposed by the Nepalese government has inadvertently led to this situation.

With half of all migrant workers being undocumented or irregular, and in the absence of any Nepalese laws recognizing irregular migrants as rights holders, their access to justice has become a faraway dream. This is particularly true for female migrant workers as, in addition to traveling via irregular channels, they mostly work in domestic households, where they face an increased risk of physical and sexual abuse.<sup>39</sup> This matter requires immediate attention since their status as female, undocumented migrants puts them at even higher risk of exploitation, especially when working as domestic workers.

As a result of such instances, a number of the rights of migrant workers, as well as of their families, are violated: the right to live with dignity (Article 16 of Constitution of Nepal, 2015, Article 6 (ICCPR), Article 3 (UDHR)), the right to equality and non-discrimination (Article 18 (Constitution), Article 3, 14, 26 (ICCPR), Article 1, 7 (UDHR)), the right to health (Article 35 (Constitution), Article 12 (ICESCR), Article 25 (UDHR)), the right to work and to just and favorable conditions of work (Article 6, 7 (ICESCR), Article 23 (UDHR), Article 34 (Constitution)), and the right against exploitation (Article 29, Constitution of Nepal).

Access to justice for these migrant workers has therefore become a myth. Article 7 of the UDHR and Article 26 of ICCPR guarantee that all individuals are afforded equal protection by the law. Article 8 of UDHR furthermore provides for an effective remedy, with determination by a competent tribunal, for all violations of national laws. The existing justice mechanisms, however, have proven to be largely ineffective, as well as inadequate, in ensuring their access to justice.

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<sup>37</sup> Amnesty International, 'False Promises: Exploitation and Forced Labor of Nepalese Migrant Workers', December, 2011, p. 52, available at <http://www.amnestynepal.org/downloads/English-Nepal-MW-Report.pdf>

<sup>38</sup> Sarah Paoletti et al, 'Migrant Workers' Access to Justice at Home: Nepal', Centre for the Study of Labor and Mobility (CESLAM), 2014, p. 46.

<sup>39</sup> Amnesty International, 'False Promises: Exploitation and Forced Labor of Nepalese Migrant Workers', December, 2011, p. 47, available at <http://www.amnestynepal.org/downloads/English-Nepal-MW-Report.pdf>

## **ENFORCEMENT INDICATORS (IMPLEMENTATION CHALLENGES)**

The major laws governing labor migration in Nepal include the Foreign Employment Act and the Foreign Employment Regulation, which focus on the procedural aspects rather than ensuring the rights of migrant workers. With the absence of any specific national laws guaranteeing the specific rights of migrant workers, access to justice will remain problematic. Even the existing mechanisms established by these laws face major problems in their implementation, as discussed in earlier points.

### **Implementation Status of Foreign Employment Act and Regulations**

The implementation of these legislative provisions poses a significant challenge with the everyday instances of migrant workers being the victims of exploitation. The two major mechanisms established by the Foreign Employment Act, 2007 are the Department of Foreign Employment (DOFE) and the Foreign Employment Tribunal. While the process of filing cases at the Foreign Employment Tribunal is already complicated, onerous and time-consuming for victims,<sup>40</sup> the major challenge here lies in the implementation of the decision. This is because the tribunal does not have the power to enforce its decisions, and the victim has to make a separate application to the district court for implementation.

Even when the cases are filed, accessing justice is not always guaranteed. Some of the most common claims are the claims for compensation in cases of death or injury, in which the victims may resort to two sources of financial redress i.e. private insurance or the Foreign Employment Welfare Fund managed by the Foreign Employment Promotion Board. Both of these redress mechanisms cannot be utilized by irregular migrants, when it is in fact they who are the ones whose rights are most violated.

### **Other challenges of enforcement**

It is evident that the government has given less priority to this sector in terms of budget allocation. Even when remittances sent by migrant workers stood at around 30% of the total

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<sup>40</sup> Sarah Paoletti et.al, 'Migrant Workers' Access to Justice at Home: Nepal', Centre for the Study of Labor and Mobility (CESLAM), 2014, p. 113.

GDP of Nepal, the government allocated less than 0.2% of the total government budget to the Ministry of Labor and Employment (MOLE).<sup>41</sup> Similarly, ensuring timely updates of the Foreign Employment Act, 2064 has been stated as a priority of the MOLE<sup>42</sup>, but is yet to be enacted. Major problems arise due to the pervasive unregulated system of individual agents. Also, these principal institutions charged with assisting migrant workers are deeply under-funded and under-resourced, with specialized training to the officials assisting migrant workers often found lacking.<sup>43</sup> Similar constraints exist in embassies seeking to support large numbers of migrant workers abroad. Furthermore, the ban on female migrants imposed by the government of Nepal breaches General Recommendation 26 of the CEDAW, according to which women should not be discriminated against in any form. Although the government imposed the ban with the aim of protecting women, it has led to problems such as an increase in the number of undocumented female migrants, causing further challenges in ensuring access to justice.

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<sup>41</sup> ILO, 'Analysis of Labor Market and Migration Trends in Nepal', ILO & GIZ Nepal, 2015, p. XI

<sup>42</sup> GoN, Ministry of Labor and Employment, <http://mole.gov.np/Work-Priority.aspx/lan/ne-NP>

<sup>43</sup> Sarah Paoletti et.al, 'Migrant Workers' Access to Justice at Home: Nepal', Centre for the Study of Labor and Mobility (CESLAM), 2014, p. 152.

## **PROFILE OF ORGANIZATIONS MAKING THE JOINT SUBMISSION**

### **LAW AND POLICY FORUM FOR SOCIAL JUSTICE**

Among the various organizations discussed above, the Law and Policy Forum for Social Justice (LAPSOJ) is a non-governmental organization dedicated to legal and policy reform, specifically in the sector of foreign labor migration. The organization has been working in strengthening the current foreign labor governance sector in Nepal and improving access to justice for migrant workers, primarily through strategic litigation. As of yet, the organization has filed four Public Interest Litigations in the Supreme Court of Nepal with the aim of bringing about structural and legal reform in the sector. One of the most significant decisions brought about by a case filed by LAPSOJ is the court order to ratify the International Convention on the Protection of Rights of All Migrant Workers and Their Families, 1990.

In addition to strategic litigation, the organization has also been involved in meeting with stakeholders, preparing draft laws, media campaigning and publications. LAPSOJ has furthermore been actively engaged in the advocacy for the rights of migrant workers, and in bringing the most pressing concerns of migrant workers' rights violations into the public knowledge through various publications.

The approach of LAPSOJ is different to other organizations as, instead of focusing on individual rights violations (which are also important issues), their focus lies in identifying the major causes behind the emergence of such individual violations, and in bringing about policy reform to address the broader issues, so as to minimize such individual violations in the future.

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## **POURAKHI-NEPAL:**

**POURAKHI** (meaning “self-reliant” in Nepali), is an NGO of women migrant workers, established in 2003 with the objective of ensuring the right of women migrant workers in the entire process of foreign labor migration; namely through pre-employment, pre-departure, employment and post arrival support programs. It is an organization proactively working to ensure the rights of women migrant workers in the entire phase of foreign labor migration through the process of information counseling, advocacy and empowerment.

It has also been working as a very active organization in various national, international and regional networks. Since POURAKHI Nepal's inception, it has been recognized as a partner by the Government of Nepal and has actively participated in the process of policy making and implementation. Additionally, it is an invitee member of the Foreign Employment Promotion Board as well as an invitee member of the High Level Task Force for Foreign Employment Reform. It is also a member of national committees such as the CEDAW Shadow Report Committee, Megna meet Human Rights, Women Human Rights Defender Committee and the Violence Against Women Pressure Group etc.

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### **Rationale of the Submission:**

As the country report prepared by Special Rapporteur is of vital significance for CSOs, we took liberty of submitting a written submission on the issues we believe to be pertinent in the scope of report. The content of the submission is non-exhaustive concerns relating to the plight of migrant workers of Nepal, as we are focused on areas our organizations are directly involved in. We hope this submission will be of use for the Special Rapporteur and team to understand some aspects of labour migration and its embodied challenges in context of Nepal.

## **RECOMMENDATIONS**

### **General Recommendations**

The following are the recommendations that LAPSOJ and Pourakhi-Nepal would like to highlight before the Special Rapporteur to be accessed in the report. The report of Special Rapporteur would help in lobbying and other activities of our organizations aimed at improving and strengthening the various concerns of Nepalese Migrant Workers including access to justice:

- Analyze the existing laws and regulations governing labor migration in Nepal and determine its compatibility with the international laws and standards while addressing the concerns of migrant workers, irrespective of their status.
- Access the current laws that regulate recruitment agencies and individual agents (sub-agents) and recommend for prospective amendment if necessary.
- Highlight necessity of internationally recognized civil and political rights of migrant workers with special reference to external voting rights, mutual legal assistance and legal aid to migrant workers in destination countries.
- Request government to conduct necessary studies and update the existing curriculum of the pre-departure orientation training according to the current needs of migrant workers.
- Call government of Nepal to abide by international commitments it has made in form of treaty ratifications, more specifically effective implementation of CEDAW General Recommendation No. 26 and respective ILO instruments.
- Highlight the specific protection required for Women Migrant Worker due to the increased vulnerability. Also, emphasize on protection of sexual and reproductive right of Women Migrant Worker in destination country.
- Recommend government to make necessary arrangements for children born to Women Migrant Worker in destination countries to avoid prospective case of statelessness.
- Call upon the government to establish a functional rapid response mechanism to assist migrant workers in distress.

