**Submission By People Forum for Human rights(People Forum), Kathmandu, Nepal**

**Access to Justice of Nepalese Migrant Workers**

1. **Background**

Millions of young people are forced to go abroad every year due to lack of employment opportunities in the country. Foreign employment has become one of the alluring sources of income for many in today's Nepalese contexts. For the Nepalese traveling for foreign employment has become a necessity rather than a desire. Nepal is a labour sending country where foreign labour migration being a common livelihood strategy for many Nepalese.According to the statistics of National Census 2078, a total of 21,90,592 people is living abroad, of which 17,99,675 are men and 3,90,917 are women[[1]](#footnote-1). Nepalese have been migrating to several countries for employment. In the fiscal year 2021/22 a total of 6,30,089 migrant workers has received labour permit from the DOFE. However, the number do not include emigration or migration to India (where a labour permit is not necessary and boarders are open.) which is the most popular and easily accessible destination for Nepalese workers. While the number of labour approvals issued saw a significant decline during the COVID-19 pandemic i.e 2019/20-2020/21. The Government of Nepal has approved 111 countries for labour migration through recruitment agencies with temporary restriction to Iraq, Afghanistan and Libya. Nepalese are also been allowed to go to other countries after obtaining individual labor approvals[[2]](#footnote-2). In between 2019/20 – 2021/22 Nepalese has migrated to 150 countries with labour permit from Department of foreign employment. GCC countries along with Malaysia are the most prominent destination countries for migrant workers. While Nepali migrant workers continue to fill the labour gaps especially in Gulf Corporation Council (GCC) countries and Malaysia. Countries like Croatia, Cyprus, Maldives, Malta, Poland, Romania, Turkey, and Uk are emerging as important employment destination in the last few years. According to Nepal Economic Forum, 17 April 2023, in the first eight months of Fiscal year 2022/23, remittance inflows increased by 25.3% to NPR. 794.32 billion[[3]](#footnote-3).

Nepal has classified its labour migrant workforce into professional, skilled, unskilled, semi-skilled, and highly skilled categories according to the categorization mentioned in the demand letter. To benefit and empower the migrant workers in the international labour market. As per the data published by FEMIS in 2021/22, 0.06 percent are professional, 0.01percent are highly skilled, 38.3 percent are skilled, 7.4percent are semi-skilled and 54.2 percent are unskilled[[4]](#footnote-4). The unskilled percentage of Nepalese migrant workers are mostly employed in difficult, dirty and dangerous (3D) works, consequently are more prone to various forms of ill treatment in the entire cycle of migration.

Department of Foreign Employment website has listed 1524 recruitment agencies registered to facilitate foreign employment business. There are around 143 Orientation Center to provide two days pre – departure orientation. 15 Insurance companies for workers insurance and 223 health institution for health checkup.[[5]](#footnote-5)

Thirty diplomatic missions of Nepal, eight labour attache and four shelter homes are setup to hear the problem of migrant workers abroad. In 2021, a total of 360 Nepali migrant workers were imprisoned across the Gulf, according to data obtained from the Foreign Employment Board (FEB). The highest number of Nepali prisoners are in Saudi Arabia (143), followed by UAE (136), Kuwait (43), Qatar (31), Bahrain (4), and Oman (3). 200 migrant workers are languishing in the jail of Malaysia in 2020.[[6]](#footnote-6)

Foreign Employment Act 2007 and Foreign Employment Policy 2012[[7]](#footnote-7) govern foreign labour migration. Moreover, various institutional mechanisms have been established to regulate foreign labour migration in Nepal. Department of Foreign Employment (DoFE) is the key regulatory institution mandated with the oversight and monitoring of private sector actors involved in recruitment process, issuance of labour approvals, grievance handling and repatriation of migrant workers. Foreign Employment Tribunal (FET) is a special judicial body that provides justice to victims of fraudulent migration practices and Foreign Employment Board (FEB) has been formed to carry out welfare related activities for migrant workers and their families, including compensation for injuries and deaths as well as orientation and returnee integration programs. Besides the above-mentioned mechanisms, the fifth amendment of the Foreign Employment Rules 2008, the complaints can also be filed before the Chief District Officer of the concerned district and at the diplomatic missions in the countries of destination. The Foreign Employment Act, 2007 creates the liabilities of the state to provide access to justice of migrant workers abroad as well as in the country. The Department of Foreign Employment handles two types of complaints, one against individual and another against institutions involved in foreign employment business.

### Foreign Employment Act, 2007

The Foreign Employment Act 2007 is the major law that deals with the offenses related to Foreign Employment. This Act empowers migrant workers to file criminal complaints before the Department of Foreign Employment (DoFE) or the District Administration Office (DAO), against recruitment agencies and individual agents. As the cases related to foreign employment are state criminal cases, DoFE investigates and prosecutes the cases. The cases of foreign employment follow summary court procedure which states that cases need to be solved within ninety days of defendant’s statement.[[8]](#footnote-8) The complaints are investigated by a complaint investigation unit established within DoFE.[[9]](#footnote-9)DoFE has the right to investigate, prosecute and adjudicate compensation cases (non-payment or less payment of salary and other matters related to recruitment agencies). The complaints from the migrants and their families are recorded by DoFE’s registration and investigation section. DoFE has the authority to decide on the cases of compensation and even cancel the agencies’ license to operate.

DoFE deals with the complaints against the recruitment agencies whereas serious allegations[[10]](#footnote-10) against the individuals and recruiting agencies are registered to the FET. The cases registered in the FET are adjudicated after examining the necessary evidence. Regarding the decision by the DoFE, the unsatisfied party can lodge an appeal to the Government of Nepal and regarding the decision by the FET, the unsatisfied party can lodge an appeal in the Supreme Court within 35 days of the date of such decision.[[11]](#footnote-11) After, the final judgement is to be enforced/ implemented by the concerned district court.

As per the Act, the District Administration Offices (DAO) can also register any complaints regarding foreign employment.[[12]](#footnote-12) A mandate has also been given to the Chief District Officer (CDO) to deal with the individual cases.[[13]](#footnote-13) On the cases related to individuals, DAO can mediate and provide compensation to the victim. On the cases related to manpower agencies (institutional cases), DAO refers the case to DoFE within seven days of the registration of the complaint.

**Gaps/ Barriers of Access to Justice of migrant workers**

The Government of Nepal has enactment of laws, policies, guideline and has establish formal mechanisms, majority of migrant workers still face obstacles for accessing justice. There is inadequate legal provision to safeguard rights of migrant workers and legal procedure are not accessible to migrant workers.

* There is no adequate legal provision in law to regulate foreign employment and address the problem faced by migrant workers while accessing justice. Even the existing legal provisions are not implemented.
* The Migrant Workers who go for foreign employment are unaware about the legal rights, labour law and process of redress. This lack of knowledge acts as the barrier to justice as the migrant workers are likely to be more vulnerable to exploitation.
* High recruitment fee charged by recruitment agency is another barrier for access to justice. In 2015 Government of Nepal announce free visa free ticket scheme under the labour Migration Guideline which requires employers to bear the expenses associated with the visa and round-trip transportation cost for Nepali migrant bounded for Malaysia and GCC countries is largely unimplemented. The recruitment agency doesn’t follow the governmental standard of working thus, migrant workers are compelling to pay the desire recruitment fee asked by the recruitment agency.
* The restricted age ban for women migrant workers has created another significant barrier in the access to justice. As a result, women migrant workers choose irregular channels and become undocumented which leaves less ground to file a case and get justice.
* There is unbalance relationship between recruitment agency and migrant workers. Most of the Recruitment Agencies in Nepal possess a high ranking position. Similarly, they are well equipped with economic and other necessary resources whereas the innocent migrant workers are unknown of the facts. Migrant workers are often deceived by recruitment agencies.
* Social stigma also plays an important role in the access to justice of migrant workers. Especially women migrant workers often face unique challenges in accessing the justice system in general in Nepal. Various questions are raised on their character which leads female migrant workers into more vulnerable conditions.
* Most of the redress mechanisms related to foreign employment are located in Kathmandu, all licensed recruitment agencies as well as DoFE, Foreign Employment Tribunal, the Foreign Employment Board and the Private insurers are located in Kathmandu, Centralization and the associated distance of many migrant workers from redress mechanisms, creates significant barriers to access to justice for Nepali labor migrants, including time, travel expenses, and awareness.
* Lack of government owned legal aid scheme is another barrier for accessing justices. People Forum a non – government organization is providing free legal aid services to the sufferer regarding foreign employment cases which sustainability is based on donor funding and lack coverage up to destination countries.
* Migrant workers frequently do not have necessary evidentiary documents to bring claims through formal redress mechanisms. Many migrant workers also have their documents confiscated by employers abroad, and are not able to recover them if they leave in distress. Lack of adequate evidence is the top barrier to access justice by migrant workers.
* The act of mediation practice in Foreign Employment cases distress migrant workers as they are unaware about the redress mechanism. Even if they are aware they are unable to bargain their interest with Recruitment Agencies and have to be satisfied with what the RA offer.
* Migrant workers do not have knowledge on rights and process of remedy provided by destination countries. Pre- departure orientation training contain limited information regarding labour rights and redress mechanism and compensation.

**Recommendations**

The Government of Nepal should made laws, policy, institutional mechanism, programs and has taken various initiative to promote and ensure access to justice of migrant workers.

* Government should focus on strengthening law and policies which safeguard rights of migrant workers.
* Legal awareness programs should be conducted regarding laws of country of origin. Necessary measures should be taken to raise awareness among the workers
* The Government of Nepal should reform the law with adequate compensation and addressing governance issues. The Act should recognize migrant workers as the right holders. It should incorporate the key human rights protection provided by International Convention to which Nepal is a party.
* Expansion of legal aid scheme in district level as CDO has mandate for foreign employment case and in destination country in necessary to provide effective remedy to the victims of foreign employment cases.
* The role and responsibility of local government agencies including local labor offices to receive complaint of migrant workers. Decentralization of redress mechanism should be done at local, provincial and central level of government.

Coordination between embassies, DOFE and the FEB regarding handling cases should be strengthen. Migrant workers who have been charged with criminal cases should be ensure fair trial in the destination countries. Financial assistance should be provided to hire lawyers as per the FEB guideline for imprisonment.

* Strengthen capacity/ resource of diplomatic mission including labour attache capacity building. Government should take necessary step to clarify the mandate of Nepalese embassies and labor attache i.e monitoring working condition, referring appropriate case regarding violation of international law and local laws.
* The government of Nepal should ratify the UN Convention on the protection of the Rights of All Migrant Workers and Members of Their Families, the ILO Domestic worker Convention (189).

1. Nepal Labour Migration Report, 2022 published by MOLESS [↑](#footnote-ref-1)
2. Website Department of Foreign employment. [↑](#footnote-ref-2)
3. Nepal Economic Forum, 17 April 2023. [↑](#footnote-ref-3)
4. Nepal Labour Migration Report, 2022 published by MOLESS [↑](#footnote-ref-4)
5. www.dofe.gov.np [↑](#footnote-ref-5)
6. Source: Business and Human Right Resource Centre.30 March2023. [↑](#footnote-ref-6)
7. Foreign employment Act, 2007 [↑](#footnote-ref-7)
8. Section 10(1), Summary Procedure Act 1972. [↑](#footnote-ref-8)
9. Sarah Paoletti, Eleanor Taylor-Nicholson, Bandita Sijapati, Bassina Farbenblum, Migrant Workers’ Access to Justice at Home: Nepal, Open Society Foundation (2014), available at: https://www.opensocietyfoundations.org/publications/migrant-workers-access-justice-home-nepal (27 November 2021, 5:44 pm); Laxman Singh Kunwar, ‘*Foreign Labour Migraation and Governance in Nepal,’*Journal of Population and Development. 2020. [↑](#footnote-ref-9)
10. Jurisdiction has been defined based on the offence and punishment determined under the Act. The offences defined under Section 43 (Carrying foreign employment business without license), Section 44 (Sending workers by licensee without obtaining permission), Section 45 (Sending minors for foreign employment), Section 46 (Sending workers to the countries not opened by Government), Section 47 (Concealing or altering document or report), Section 52 (Sending workers by licensee on personal basis) of Foreign Employment Act 2007 falls under the FET’s jurisdiction. Section 43. Section 64 of Foreign Employment Act states the jurisdiction of FET. [↑](#footnote-ref-10)
11. Section 66, Foreign Employment Act 2007. [↑](#footnote-ref-11)
12. Section 21(A)(2), Foreign Employment Act 2007 [↑](#footnote-ref-12)
13. MoLESS, ‘*Nepal Labour Migration Report 2020,’* Government of Nepal, 2020. [↑](#footnote-ref-13)