

Living the Golden Dreams:

# The Gulf and Nepalese Women



“SHUBHA YATRA” -A Safe Journey



Austrian  
Development Cooperation



Dedicated to the thousands of Nepalese women who travel to Gulf countries each year in search of better opportunities for their children and families.

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Although many have contributed help and advice for this book, any mistakes and errors are solely mine.

Ganesh Gurung, PhD  
Sociologist

## Preface

Nepalese migration for work is a centuries-old practice, although during the past two decades the dynamics of this phenomenon have shifted dramatically. These changes have occurred in tandem with democratization and the liberalization of Nepalese migration policy since 1990, and with the increasing integration of Nepal into the global cash economy.

One major change has been in the destinations of migrant workers. Whereas Nepalese migrants once primarily travelled to India or mercenary postings with the British or Indian armies, today Nepalese migrants travel all over the world for work. The Arab states of the Persian Gulf – Kuwait, Bahrain, Oman, Qatar, the Kingdom of Saudi Arabia, United Arab Emirates (UAE) and Iraq – have become some of the most important destinations for Nepalese migrants. In UAE alone, for example, it is estimated that there are 150,000 Nepalis.

Another major change in the migration phenomenon is related to the demographics of Nepalese migrant workers, particularly gender representation. Although traditionally women were not heavily involved in migration, today it is estimated that around 30% of Nepalese migrant workers are female (although official data, which omit undocumented workers, put this figure much lower). Among women migrant workers, approximately 80% end up doing some form of domestic work in private households – as housemaids, cooks, cleaners, caretakers, etc.

While for many domestic workers in the Gulf, migration has provided good opportunities for cash income that are simply not available in Nepal today, many female migrants also become victims of exploitation and abuse. Migrants sometimes become victims of trafficking during the travel process, especially when they go undocumented using informal channels. Additionally, migrant women, especially those engaged in domestic work, often face exploitation and abuse in the workplace. Female domestic workers are especially at risk due to the informal and isolated nature of their work and because of the lack of appropriate legal protections for informal sector workers in destination countries.

The issue of how to better assist female migrant domestic workers, to ensure both their safety and their livelihoods, is a topic of serious debate. Often, the issue has been raised in the aftermath of serious cases of abuse (such as the mysterious death of Kani Sherpa in Kuwait in 1998), leading to rushed government reactions such as bans and age restrictions on women migrating

to work. These responses have been criticized for violating women's rights, unduly hurting young women, and driving more women migrants underground, which further increases their vulnerability to abuse. A number of alternative strategies have been implemented and/ or proposed by various stakeholders, including preventative measures and other actions to be undertaken by the government, NGO sector, and private sector involved in the migration process.

This book provides an overview of the situation regarding female migrant domestic workers in the Gulf, in order to better inform decision making on this topic. Chapter 1: Introduction includes an overview of the history of Nepalese migration in general and women's migration in particular. Chapter 2: Literature Review provides more detail on the underlying causes of women's migration to the Gulf, the problems they face, and past and present efforts to combat both abuse of workers and trafficking. Although precise data on female migrant domestic workers is very difficult to obtain due to the frequent use of unofficial channels for migration, Chapter 3: Enumerating Nepalese Female Domestic Workers in the Gulf includes data gleaned from a variety of sources in an effort to better understand the demographics and other characteristics of this population. Chapter 4: The Kafala System discusses the sponsorship system used for migrant workers in the Gulf, and other legal frameworks pertaining to female migrant domestic workers used in destination countries. Chapter 5: Process and Routes of Migration looks at the roles of various actors involved in the migration process, and the routes that migrants take to reach Gulf countries. Chapter 6: Bilateral Agreements looks at Memorandums of Understanding (MoUs) that have been signed between the Nepalese government and the UAE, Bahrain, and Qatar. Chapter 7: Cost of Migration considers both the official and unofficial costs migrants must pay to secure work in the Gulf. Chapter 8: Rescue and Reintegration discusses various efforts that have been undertaken to benefit women rescued from exploitative work situations or trafficking. Chapter 9: Issues and Challenges discusses some strategies to reduce abuse and trafficking. Finally, Chapter 10: Conclusion and Way Forward puts the issue in perspective and provides some ideas for the future. This publication will be useful for students, researchers, and the various stakeholders interested in improving the situation for female migrant domestic workers in the Gulf.

Ganesh Gurung, PhD  
Sociologist

## Foreword

or reasons abundant, a noteworthy percentage of rural women of Nepal are migrating to other countries and big cities in search for a much better livelihood and improved lives for their families. Such manifestations are very common among the developing countries, however, very largely noticeable in Nepal. These phenomena will continue to exist until an unbending system to address the concerns of women are not identified at the right time.

Dr. Ganesh Gurung, a veteran in the field of migration has contributed remarkably in ascertaining the areas concerned with employment, migration and livelihood. Dr. Ganesh Gurung's profuse knowledge and his enduring contribution in various researches has become an asset in identifying gaps in policies concerned with migration. Two of his researches "Qualitative Research on experiences of Nepalese Women Migrants to the Gulf States and Assessment of gaps in policy framework along mobility continuum (source country Nepal, transit country India and three destination countries UAE, Saudi Arabia and Kuwait" will give a significant detail on position of women migrant workers and analyze the risks of gaps in the existing policy concerned with migration.

I congratulate, Dr. Ganesh Gurung and his team for his commendable work and the efforts that has been invested in these areas. I hope the researches would bring out findings that would help to excel the position of migrant workers and developing strategies to making a comprehensive policy in context to migration.

Anuradha Koirala  
Chairperson  
Maiti Nepal

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## Abbreviations

CEDAW	Convention to Eliminate All Forms of Discrimination Against Women
DOFE	Department of Foreign Employment
EPS	Employment Permit System
GCC	Gulf Cooperation Council
GDP	Gross Domestic Product
GON	Government of Nepal
IDIs	In-depth Interviews
IIDS	Institute of Integrated Development Studies
ILO	International Labor Organisation
JITCO	Japan International Training Cooperation Organization
KSA	Kingdom of Saudi Arabia
KD	Kuwaiti Dinar
MOL	Ministry of Labor
MOLTM	Ministry of Labour and Transport Management
MOU	Memorandum of Understanding
NGO	Non-Governmental Organisation
NIDS	Nepal Institute of Development Studies
RAs	Recruiting Agencies
TI	Technical Interns
TIA	Tribhuvan International Airport
WMWs	Women Migrant Workers
UAE	United Arab Emirates
UN	United Nations
UNIFEM	United Nations Development Fund for Women
UN Women	United Nations Entity for Gender Equality and Empowerment of Women
USA	United States of America

## Chapter I

# Introduction

Migration has been a part of Nepalese life for centuries. The beginning of this practice in the modern period was marked by the signing of the Anglo-Nepalese Sugauli treaty of 1816, which permitted the British to employ Nepalis in their army. British rulers found the Nepalese recruits to be suitable in helping to achieve their ambitions of territorial expansion as well as maintaining control over conquered lands<sup>1</sup>. The trend of foreign army service as an attractive option for employment continued with the Sikh King Ranjit Singh of Punjab who, also as a result of a treaty signed by the Nepal government, began recruiting Gorkhalis into his army<sup>2</sup>. More than a century later, the signing of the Peace and Friendship Treaty between India and Nepal (1950) granted movement of workers on a reciprocal basis, thus enabling Nepalis to gain employment in India without necessitating a permit. Nepalis began to be recruited into the Indian army, police force, and civil service, as well as the private sector. Nepal's slow pace of development accompanied by high population growth and increased employment opportunities in India have increased the momentum of out-migration to India.

Historically, opposition against this drain of domestic labour has been sparse. The Rana regime never thought of emigration of enterprising able-bodied men as a setback for the development of the country. Rather, it was seen as a safety mechanism for the country's growing population problem as well as security against political challenges that might ensue if those emigrant populations were to remain in the country without employment<sup>3</sup>. Yet, over half a century after the initial installation of democracy, the outlook of the Nepalese government seems to not have shifted at all, a situation resulting from the nation's struggles in the field of economic development<sup>4</sup>.

Present migration patterns differ from past ones in terms of destinations and nature of work. Whereas past foreign employment options were usually limited to either India or a mercenary posting, recent developments in transportation and communication technologies have rendered foreign employment one of Nepal's most significant contributions to an increasingly globalized economy. With the enactment of the Foreign Employment Act of 1985, Nepalis started to migrate beyond India, particularly to the Gulf countries, where the oil boom has created a massive demand for foreign labour.

Both a labour surplus due to high population growth rates in the past two centuries and the effects of globalization have caused foreign employment migration to rapidly increase. Notably, the migration of Nepalese youths for foreign employment speedily increased after the restoration of multi-party democracy and the initiation of liberalization policies. Although those migrating overseas early on were primarily unskilled manual labourers, now technically qualified personnel such as medical doctors and engineers are also leaving

the country due to low income prospects for their professions at home. Increasingly, many Nepalis who have returned from employment abroad are regretting this decision to come home due to high domestic unemployment rates and the disappointing political and socio-economic condition of the country. This regret often pushes many returnees to undertake work-related migration once again.

As the Nepalese economy faces a recession resulting from prolonged conflict, political instability, increasing inefficiency, and corruption, acceleration in overseas migration and remittances have served as important adaptation strategies to deal with the dismal condition of the Nepalese economy. Indeed, remittances can be considered blessings as they have prevented the economy from virtual collapse brought on by declines in both agricultural and industrial production<sup>5</sup>. Presently, foreign employment's magnitude and contributions have increased to become far more significant to the nation than ever before<sup>6</sup>. Studies completed in 2010 revealed that remittances accounted for 23 percent of Nepal's GDP, while Ministry of Foreign Employment data indicates that upwards of 200,000 Nepalis leave the country each year in search of employment. This number does not include those who depart for work in India through the open border.

Although Nepalese migrant workers have historically been almost exclusively male, this trend is changing. Increasing demand for female migrant workers, mainly in the sector of domestic work, has caused more Nepalese women to go abroad to earn an income. Though the increase in women's migration is also attributed to increased economic pressures at home as well as increased acceptance of women's ability to work outside the home, the determinant of their destination countries is strongly linked to the demand for domestic workers. The most frequent destinations for women migrant workers are Lebanon, Kuwait, UAE, Israel, Bahrain, Oman, Qatar, Malaysia, Macau, and Saudi Arabia, although in this paper focus is allocated to the Persian Gulf countries. Official statistics indicate that women account for only 3 percent of Nepalese migrant workers, although other estimates put that figure closer to 30%, with 80% being employed in domestic work<sup>7</sup>. The discrepancy between recorded women migrants and the estimated reality is the result of a number of laws and bans which have been placed on women migrants both in Nepal and in destination countries, with particular conditions against informal or domestic work. These bans have been largely ineffective, as they have simply forced women to go underground to take riskier alternative routes abroad. The issue of protecting women migrants from trafficking and exploitation, then, remains a point of debate across legislative bodies both in Nepal and in various countries abroad.

## Chapter II

# Literature Review

Unemployment is a major problem in Nepal and has been cited as one of the underlying causes of Nepal's conflict. There is no doubt that migration plays an important role in dealing with this problem. Widespread access to increased income through remittances, which account for about a quarter of Nepal's GDP, has the potential to significantly affect the country's economic growth for the better. On the other hand, experience has shown that migration often carries high risks of trafficking and exploitation that are problematic to oversee and thereby control. Women who migrate are often at especially high risk. While the government of Nepal has implemented different policies, acts and regulations with the intent of minimizing these risks and promoting safe migration and safety of its citizens working abroad, these actions have sometimes had unintended negative consequences.

Due to high growth in the labour force as well as poor economic opportunities domestically, Nepalis continue the historical trend of looking abroad for work. A 2010 study by NIDS estimated that 300,000 workers left the country to work abroad that year; however, this figure does not include those who left without government permission through illegal channels or those who crossed the border into India. If one includes migration through irregular channels, which accounts for about 40% of migration, this figure would be around 412,000, still excluding the workers departing for India.

If one considers official figures, only about 3% of Nepalese migrant workers are female. However, NIDS estimates indicate that women actually account for up to 30% of migrant workers, while POURAKHI Nepal estimates that 80% of women migrants end up employed as domestic workers<sup>8</sup>. The discrepancy between official and estimated figures of female migrants points to the fact that many of them go through informal channels while seeking employment abroad. Amnesty International estimates that about 80% of female migrants leave the country undocumented<sup>9</sup>. The most frequent destinations for women migrant workers are Lebanon, Kuwait, UAE, Israel, Bahrain, Oman, Qatar, Malaysia, Macau, and Saudi Arabia.

Popular discussion surrounding women's migration is principally tied to employment in Gulf countries and Malaysia, areas that recently opened their borders to foreign workers and have seen a huge influx of workers from abroad. The attention paid to these countries by the media and political entities stems from the high number of migrant domestic workers employed in these nations, whose labour laws often do not include provisions for them.

Female migrant domestic workers are at especially high risk of exploitation during the

migration process and once they have arrived in destination countries and begun work. The National Human Rights Commission (2011) suggests that “the wide gap between the Government record and the informal sources reveals that an overwhelming majority of females have moved via India to third countries” highlighting the fact that those who do so, “often lack proper travel and work permit documents, and are engaged in domestic or unorganized sectors. Thus, they are most at risk of trafficking and sexual or labour exploitation<sup>10</sup>.” Domestic work, part of the unorganized sector, lacks the oversight and security that positions in the organized sector have to offer, thereby leading to the individuals involved being at a high risk of exploitation or abuse by their employer. UN agencies and NGOs have released multiple studies exposing the high risk of abuse that migrant domestic workers face, whether physical or sexual in nature or exploitation through forced labour<sup>11</sup>.

Many entities have pointed to a myriad of push factors leading to informal migratory paths, including lack of awareness and misconceptions of migration laws regarding women, a general lack of social protections for women, as well as the government’s failure to publicize, implement and enforce effective anti-trafficking policies, acts, regulations and practices<sup>12</sup>. Pervasive corruption across the country is also mentioned as worsening prospects to decrease trafficking<sup>13</sup>.

Other literature suggests that women’s increased risk of trafficking stems from Nepal being a traditionally patriarchal society, where discrimination against women ranges from the family sphere up to the government level<sup>14</sup>. Though very little literature deeply examines the impact of this concept, conversations with migration and trafficking experts have highlighted the important influence of patriarchal cultural values in shaping anti-trafficking efforts at the state level. For example, Dr. Meena Poudel, of the International Organisation on Migration, and Helen Sherpa, of World Education<sup>15</sup>, suggest that a strong moralistic stance is apparent in much legislation pertaining to sex trafficking, connected to the negative social stigmas attached to victims<sup>16</sup>.

Other sources find that trafficking’s popular association with the sex trade, and women’s migration’s associations with trafficking, mean that female migrant workers often face social stigmas that lead to discrimination regardless of whether they are trafficked or not. They also reveal that studies and reports concerning trafficking and migration seem to make no distinction between the words “trafficking,” and “migration”, only serving to increase or solidify the misconceptions surrounding women’s migration, and making its participants more vulnerable at the hands of swaths of society that hold false perceptions<sup>17</sup>.

This lack of distinction between migration and trafficking is evident in numerous policies intended to eliminate human trafficking<sup>18</sup>. This misconception makes implementing and enforcing effective anti-trafficking prevention, protection, and rehabilitation initiatives difficult to achieve. Much of the enacted legislation has mainly targeted prostitution while disregarding other aspects of trafficking such as forced labour, abuse, and exploitation not related to the sex trade<sup>19</sup>. This has meant that many migrants’ exploitation has been neglected, and has resulted in reduced general awareness regarding the risks of migration unrelated to the sex trade, potentially leading to migrants being unaware of warning signs of exploitation.

Generally, the factors leading to Nepalese individuals and women in particular to be at a high risk of trafficking need further research<sup>20</sup>. Nevertheless, several factors have been identified by most sources as increasing this risk: lack of awareness, unstable family and home lives, lack of education and employment opportunities, patriarchal structures of decision making, death in the family, and debt. The National Human Rights Commission in Nepal (2010) found that “the majority of rural women still are not fully aware about the travel documents that they need or require while going to another country on employment”<sup>21</sup>. In addition, NIDS contends that poverty hits women harder due to patriarchal cultural structures and gender discrimination, “therefore women experience greater livelihood insecurity than men do, both for themselves as well as for their families”<sup>22</sup>. This pressure to find employment, combined with a lack of awareness of the migration process, leads to many female migrants unknowingly becoming involved in unsafe migration that can lead to trafficking. Available estimates for the number of women being trafficked yearly differ in their figures, and often have not been updated recently<sup>23</sup>, although it is thought to be about 5000-7000<sup>24</sup>.

It is important to take note of Nepal’s legislative precedents and how they have shaped the current environment surrounding women’s migration and trafficking.

The Nepal Government has ratified numerous documents that theoretically should increase gender equality and reduce discrimination, the most obvious being the Interim Constitution of 2007, which pledges to do so within the domains of government participation, labour rights, the development of social protections, and an overall elimination of discriminatory policies and practices. Such promises are also added to by the government being a signatory of the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which Nepal ratified in April of 1991. In Article 1 of CEDAW, “discrimination against women” is defined to include “distinction, exclusion, or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying recognition, enjoyment, or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights, and fundamental freedoms in the political, economic, social, cultural, civil or any other field”<sup>25</sup>. It also includes specific provisions related to non-discrimination in work, including the right to the same employment opportunities and selection criteria for work<sup>26</sup>. Keeping in mind the provisions of these documents makes the situation concerning women migrant workers (WMWs) all the more concerning.

Nepal’s citizenship policies and practices go against the provisions listed above, because they contain many discriminatory elements that limit women’s rights, contributing to their vulnerability to trafficking. Citizenship requirements stem from a patriarchal model, which also extends to the domain of property and inheritance rights. To gain Nepalese citizenship, a woman must obtain endorsement from her father, husband, brother, or other male family member. Through such paternal lineage requirements, “thousands of Nepali men and women whose fathers have abandoned their families, or do not cooperate with the mother, are rendered stateless”<sup>27</sup>. This increases vulnerability to trafficking, because, “without citizenship papers, they are not eligible to apply for jobs, hold property or get a

passport to travel abroad”<sup>28</sup>. Discussions with experts in the field highlight this as a crucial weakness in efforts to address trafficking issues<sup>29</sup>, but little literature exists concerning the subject.

Widespread corruption or intimidation by low-level government officials and by brokers<sup>30</sup> often leads to women facing difficulty in acquiring documents and instead acquiring false documents. Many girls in these situations are dependent on their fraudulent brokers throughout the process, since they are unable to read the documents and navigate the processes of migration, leading to higher risk of trafficking and exploitation<sup>31</sup>.

Once such legal processes are completed (if they are at all), the next step is the path chosen for migration, which often goes through India. When it comes to facilitating the operations of traffickers, the 1950 Open Border Agreement between Nepal and India is a clear factor. Initially set up to promote economic cooperation and ease the cross border traffic, it now also serves to make the borders between the two countries extremely difficult to survey for illegal migratory practices. As a result, migration through India has become almost impossible to record<sup>32</sup>.

Reports by Amnesty International, IIDS and UNIFEM<sup>33</sup> all point to the fact that many brokers take advantage of the open border between Nepal and India by arranging for female migrant workers to travel overland into India and then to fly to their destination countries and that women are more vulnerable to resorting to this kind of irregular channel due to the various restrictions (or misconceptions about existence of restrictions) and other barriers placed on women’s migration<sup>34</sup>. All reports stated that women migrants using irregular channels are at a much higher risk of being trafficked and exploited because of a lack of proper documentation<sup>35</sup>.

The difficulty of controlling the flow of migrants at the border has been answered by a few initiatives, though these have not been effectively carried out. The unsuccessful border control efforts can be attributed to corrupt border officials, short surveillance hours, and the fact that enforcement is heavily concentrated on a few border crossings, leaving 1000 km of unmonitored border for traffickers to more easily cross instead<sup>36</sup>. Although the enforcement situation should be improved along with reconsiderations of the Open Border Agreement, much literature concerning trafficking asserts that tighter monitoring of borders will simply lead traffickers to “devise increasingly innovative and underground ways of transporting women and girls across the border,” perhaps rendering victims even more vulnerable due to increased invisibility and the illegality of movement<sup>37</sup>.

The most notable government policy and acts concerning migration are the Foreign Employment Acts and Regulations, the first of which was the Foreign Employment Act of 1985. It outlined various measures to be taken to ensure safe migration, such as “requiring manpower agencies to go through a registration process in order to get licensure, limiting the fees agencies can charge clients, and setting up various procedures aimed at promoting the transparency of said agencies for monitoring and safe migratory practices.”<sup>38</sup> As much as requiring manpower agencies (hereafter referred to as recruiting agencies [RAs]) to register may be preventative to trafficking, their local representative agents and independent brokers are not subject to similar regulation. In 2004, an ILO



report stated that this may put independent brokers in a position of “a breeding ground for malpractice”<sup>39</sup>, as they play a pivotal role in the recruitment process and later on as well, as migrants often come to rely on brokers to make their travel arrangements. This dependency has been identified as an important factor in making migrants more vulnerable to trafficking<sup>40</sup>, yet current legislation still does not address the problem of unregulated brokers.

This Foreign Employment Act was amended in 1989 and once more in 1998 with the intent of protecting women migrants, but the amendments were counterproductive in these efforts since they discriminated against women while not cracking down on trafficking, such as by not allowing women to go for foreign employment without permission from their guardians as well as the government (1998, Section 12).

A report by NIDS on “Nepali Women and Foreign Labour Migration” (2006) highlights that the Labour Act (1992), which also placed similar restrictions on women’s ability to work, often resulted in women being forced to go through illegal, riskier channels. In addition, a study by Horizons, The Asia Foundation, and The Population Council on “Trafficking Intervention Models” (2000) has pointed out that it has been recorded that traffickers themselves may, in some cases, be relatives of the trafficked person, further limiting the effectiveness of such legislation.<sup>41</sup> The usefulness of guardians’ permission is also called into question by the fact that many victims of trafficking and their families may not realize they are being trafficked until after they have already left the country.<sup>42</sup>

A new Foreign Employment Act appeared in 2007, followed by the Foreign Employment Regulation in 2008, which both tried to counteract these problems. The new legislation took an overt stance against gender discrimination, stating: “No gender discrimination shall be made while sending workers for foreign employment pursuant to this Act provided that where an employer institution makes a demand for either male or female workers, nothing shall prevent the sending of workers for foreign employment according to that demand” (2007 Act, Article 8). However, this has been found by Amnesty International (2011) to be merely restricted to rhetoric, since women are still being asked to provide written consent from their husbands, parents, or close family members before undertaking migration. This is not due to low level employees not being informed of policy shifts, as policy makers themselves acknowledge this practice and defend it. For example, in an interview Amnesty conducted with the Department of Foreign Affairs (DoFE) Director General, Chandra Man Shrestha, he stated that “in practice, family permission is required ‘for the sake of the women’s security’<sup>43</sup>, in direct contradiction with the new laws. Such consistently discriminatory practices, despite the government’s commitment to end them, heavily influences women’s vulnerability to trafficking, as migrants that cannot comply with such demands simply look to alternative, underground routes to go abroad. This discrepancy between law and practice also fuels misconceptions among the population as to the legality of women’s migration, breeding confusion that gives unscrupulous brokers and traffickers an advantage in deceiving prospective migrants. Again, one of the key factors which the literature has identified in fostering women’s vulnerability to trafficking is the lack of clarity and failure of effective enforcement of migration and trafficking policies, leaving women without knowledge or access to proper processes, protections, and preventative measures regarding trafficking and migration.

Other counterproductive approaches to reducing the risk of trafficking stem directly from the Foreign Employment Act, such as the requirement for migrant workers to depart from a “native airport” (Article 22), in this case Tribhuvan International Airport (TIA). The intention of this Article is to guarantee that the flow of migrants is monitored and ensure that the legal requirements for foreign employment are followed. However, Amnesty International estimated in 2010 that 40-50% of migrant workers went through irregular channels<sup>44</sup>, likely a result of the confusion concerning the necessary requirements for women, social stigmas attached to women’s migration, and other de facto barriers to women’s migration. It has been recorded that many women face extra hassles at the airport, including an extra ‘setting fee’, which is the term used for the bribe that must be paid to immigration officials to ensure passage through the airport; this is another factor that discourages financially distressed women from using the airport. Over a hundred cases of women paying NRS 10,000-60,000 to immigration officials at the airport have been documented by POURAKHI, an NGO working with female migrant returnees<sup>45</sup>. This further indebts them, increasing their vulnerability to exploitative employment.<sup>46</sup> Brokers and traffickers are able to take advantage of such practices by convincing prospective migrants that taking irregular channels costs less than taking formal ones. Thus, although the Acts and Regulations may have been well intended, they are mostly ineffective in achieving their goals of discouraging trafficking. Other notable issues with the current acts and regulations are:

- Difficulties in persuading migrant workers to attend orientation sessions even when these are made mandatory.
- Inability to hold agents to legal requirements.
- Lack of coordination between police and the Foreign Employment Board in bringing fraudulent individuals and those involved in trafficking to justice.
- Recruitment procedures of the labour officers lack clear legal procedures and guidelines.
- There is no clear legal provision to combat the practice of “double contracts,” whereby RAs or brokers provide a contract to Nepalese officials that differs from the real one used with the employer in the foreign country.
- The lack of interest-specific branches of the Foreign Employment Board is an added reason for unsuccessful and inefficient implementation of Acts and Regulations.

On an ad-hoc basis, the Government of Nepal (GON) has often gone against commitments to ending gender discrimination in labour migration practices by implementing several bans on foreign employment for women. Such bans are “entirely inconsistent with Nepal’s obligations under CEDAW<sup>47</sup>”. These bans add to discriminatory restrictions on women’s right to movement and create more confusion regarding the process and legality of migration for women. A timeline of these bans are as follows:

- Ban on foreign employment in the unorganized sector for women in Gulf countries following the mysterious death of Kani Sherpa in Kuwait: 1998
- Ban lifted in Gulf countries on the basis of full security guarantee of the migrant worker, duly certified by Nepalese Embassy or Consulate in Gulf countries: Jan 2003

- Condition imposed for female migrants to get re-approval from the government for continuation of foreign employment after returning home for the holidays or other reasons: March 2003
- Conditions imposed for getting prior approval from local Government and family: May 2003
- Four conditions imposed on female migrant workers seeking to travel to Malaysia: May 2005
- Conditions imposed on female migrant domestic workers: Jan 2007
- Conditions lifted for female migrant domestic workers: Sep 2007
- Stopped issuing Labour Permits to Lebanon: Nov 2009
- Ban on women under 30 years of age traveling to work in the informal sector in the KSA, UAE, Kuwait, and Qatar: 2012

The government has not made efforts to inform the general public of the changes that have taken place regarding bans, creating a lack of awareness and raising the risk of trafficking for women. Furthermore, unofficial ‘discouragement’ is still an important factor in perceptions of women’s migration from Nepal. This is apparent in the hassling experienced at airports, government reluctance to approve women’s migration requests, and aforementioned increase in confusion about the legality of foreign employment for women<sup>48</sup>.

The ad-hoc bans began after the mysterious death of the Nepalese domestic worker Kani Sherpa in Kuwait in 1998, when public outcry and street protests led the Ministry of Labour and Employment to issue a ban on women’s employment in the unorganized sector in Gulf countries. The “unorganized sector” constitutes all firms with less than nine employees, but the ban was really aimed at preventing women from taking up domestic work abroad. As previously mentioned, this constitutes the majority of work that women migrant workers do. The Nepalese government later rescinded the ban in January 2003, but the issue of safety for migrant women workers remained an important topic of debate in Nepal. In 2012, the government decided to implement a new ban, preventing women under 30 years of age from working in the informal sector in the Kingdom of Saudi Arabia, UAE, Kuwait, and Qatar. Like the original ban, this has become an issue of debate between various actors from the government, NGOs, and the private sector. Some arguments for and against the new ban are considered here.

The government and other proponents of the most recent ban have argued that it is a necessary, if imperfect step to curb abuse of female migrant domestic workers in the Gulf. They contend that once women reach the age of 30, they have reached a level of maturity and confidence that enables them to better avoid and deal with exploitative situations. There is also a sense, not always voiced explicitly, that women who are over the age of 30 are not as vulnerable because they are not as desirable by those who commit acts of sexual abuse. Proponents of the ban argue that the government is thus simply trying to play a protective role and has only good intentions.

However, critics of the new ban argue that it has done more harm than good. They point out that women under the age of 30 have the highest rates of unemployment, and so they are the most in need of employment opportunities that the Gulf countries provide.

For example, a Maiti-Nepal study that was conducted before the ban was announced found that all women traveling through Tribhuvan International Airport to do domestic work in the Gulf were under age 30. The ban therefore hurts this age group where the rate of unemployment is especially high. Similarly, critics argue that after reaching age 30, many women prefer to stay at home in Nepal to care for their children and families. They also point out that reaching the age bar is not a guarantee of safety; women can become victims of sexual abuse at any age. Furthermore, they posit that the ban constitutes a violation of women's human rights by denying them mobility and access to employment. Finally, they argue that on a practical level, the ban is likely to increase the proportion of women who undertake unofficial migration, which is riskier and leaves them even more exposed to abuse. Overall, they argue, the Nepalese government is trying to go against the tide and will fail to benefit female migrant domestic workers if it continues to implement this ban.

NIDS acknowledges that the government has acted on good intentions, but it also believes that the ban is ultimately counterproductive. We argue that solutions are instead to be found by better preparing female domestic workers for their migration, and by establishing better systems to support these workers in the Gulf. Before departure, all female potential migrants should be offered training in language, skills, and orientation to the countries of destination. Better skills will enable workers to find better work, and language will enable them to better communicate and thus to avoid conflict and abusive situations. The Nepalese government and NGOs could collaborate to provide these sorts of trainings. At the same time, labour agreements guaranteeing benefits for migrant workers in Gulf countries should be honoured and widened to include provisions for female domestic workers in the informal sector. Finally, the Nepalese government and its Labour Attaches need to improve support systems for domestic workers in the Gulf, including protocols for rescue and insurance systems. In this regard, the quality assistance provided by the Philippines government to its citizens working in the Gulf should be taken as an example.

In a separate attempt to protect female migrant domestic workers in the gulf, the Government of Nepal (GON) in 2067 BS created a set of 9 points that must be fulfilled by employers in the UAE, KSA and Kuwait (Table 13). The following provisions were made:

1. Minimum salary for domestic workers
2. Insurance for domestic workers
3. Disclosure of the economic status of the employer
4. Provision of a separate room for domestic workers
5. Disclosure of social status of the employer
6. Approval of the concerned authority to employ the domestic worker
7. Assurances of her security
8. Assurances to contact regularly to her home and the Embassy official
9. Any other provision made by the embassy

These points, and their application relative to each destination country, are described in the table below.

**Table 1.1: Provisions for Nepali domestic workers in UAE, KSA and Kuwait, 2067 Section 4 (1)**

S.N	Provisions of Government	Countries		
		UAE	KSA	Kuwait
1	Minimum Salary	900 Dirham or more	Basic 700 Rial monthly for house maid	<ul style="list-style-type: none"> <li>• For House maid and house boy minimum 50 KD monthly</li> <li>• For house cook 60 KD monthly</li> <li>• For house driver 75 KD Monthly</li> <li>• For house security guard 100 KD monthly</li> <li>• For Gardener 70 KD monthly</li> </ul>
2	Insurance	Employer has to submit documents such as insurance, medical facility and certain deposit that embassy has determined in the name of worker for the approval to bring worker	Employer has to submit documents such as insurance, medical facility and certain deposit that embassy has determined in the name of worker for the approval to bring worker	Employer has to submit documents such as insurance, legal help, medical facility and certain deposit that embassy has determined in the name of worker for the approval to bring worker
3	Economic Standard of Employer to keep domestic helper	Minimum monthly salary has to be 10,000 Dirham (Excluding house rent) and 5,000 Dirham should be deposited in Embassy in UAE	On the basic of economic and social status, with the certificate provided by Government of Saudi to keep domestic worker and employers' occupation, name of working institutions should mentioned in the form provided by Nepal embassy.	On the basic of economic and social status, with the certificate provided by Government of Saudi to keep domestic worker and employers' occupation, name of working institutions should mentioned in the form provided by Nepal embassy.
4	Provisions of safe room for worker	Employer has to clearly mentioned about the accommodations of worker in the form provided by embassy Regarding women worker employer has to provide different room and toilet.	Employer has to clearly mentioned about the accommodations of worker in the form provided by embassy Regarding women worker employer has to provide different room and toilet.	Employer has to clearly mentioned about the accommodations of worker in the form provided by embassy Regarding women worker employer has to provide different room and toilet.

5	Social Requirement of the employer	Employer should be married. Police should verify the moral of the employer.	Employer has to clearly mentioned about family description, occupation, name of working institutions should mentioned in the form provided by Nepal embassy.	Employer has to clearly mentioned about family description, occupation, name of working institutions should mentioned in the form provided by Nepal embassy.
6	Approval letter and agreement letter from the related institution	Employer has to give the consent application to embassy through an authorized institution to keep domestic worker.	Employer has to give the consent application to embassy through an authorized institution to keep domestic worker.	Employer has to give the consent application to embassy through an authorized institution to keep domestic worker.
7	Assurance of Security	For the security of the worker the employer has to clearly assured in the form provided by embassy and embassy has to convince on it.	For the security of the worker the employer has to clearly assured in the form provided by embassy and embassy has to convince on it.	For the security of the worker the employer has to clearly assured in the form provided by embassy and embassy has to convince on it.
8	Regular communication (Embassy and Family)	Employer should give commitment in written form to make contact regularly with family and Nepal embassy. It has to be mentioned in contract paper.	Employer should give commitment in written form to make contact regularly with family and Nepal embassy at least once in a month.	employer should give commitment in written form to make contact regularly with family and Nepal embassy
9	Elements that Nepali Embassy thinks appropriate	Nepal embassy can take the passport of the MDW through employer. After checking the security documents, Nepal embassy will verify and send it to Foreign Employment Department.	Nepal embassy can take the passport of the MDW through employer. After checking the security documents, Nepal embassy will verify and send it to foreign Employment Department. Domestic workers are not allowed to forcefully used in other factory or institution if used, the employer has to pay salary of three months including air fare to return Nepal	Nepal embassy can take the passport of the MDW through employer. After checking the security documents, Nepal embassy will verify and send it to foreign Employment Department

## Chapter III

# Enumerating Nepalese Female Domestic Workers in the Gulf

It is very difficult to obtain exact data on the number of female migrant domestic workers employed in the Gulf and related demographic data. Lack of government oversight, rampant trafficking of women and gaps in legal infrastructure governing the migrant workers contribute to the lack of good data. However, information can be gleaned from some reports and other studies that help outline the scale of the phenomenon and the demographic characteristics of the female migrant domestic worker population in the Gulf.

The population census of Nepal, conducted every 10 years, has been the major source of statistics on internal and foreign migration. As reported in the census (Table 3), the number of persons absent from their households has been increasing over time. In 1981, 402,977 persons were absent from their households. The number increased to 658,290 in 1991 and then 762,181 in 2001. And in 2011, the number reached 1,917,903. Many, though not all, of these absentees are migrant workers abroad.

The absolute number of female absentees increased from 74,529 in 1981 to 118,288 in 1991 but declined to 82,712 in 2001. Then, it tripled over the next decade to 254,666 in 2011. Females formed 18.5 % of the absentee population in 1981, 16.8 % in 1991, 10.9 % in 2001, and 13.3% in 2011.

However, the number of female absentees may be under reported in the census data as there are some social stigmas surrounding sending women outside of the home for work.

**Table 2.1: Total and absentee population by Development Regions, 2001 and 2011**

Details	2001		2011	
	Population	Absentees	Population	Absentees
Sex				
Male	11,563,921	679,469	12,927,431	1,663,237
Female	11,587,502	82,712	13,693,378	254,666
Total	23,151,423	762,181	26,620,809	1,917,903
Dev. Region				
Eastern	23.3%	16%		
Central	35.1%	14.1%		
Western	20.1%	43.5%		578,849
Mid-western	11.9%	12.4%		223,076
Far-western	9.6%	13.9%		
Ecological Region				

Mountain				107,936
Hill				998,087
Terai				811,880
Area				
Urban area				14.6 %
Rural area				85.4 %

Source: *Nepali Women and Foreign Labour Migration-2006 by UNIFEM/NIDS (page no 15) and CBS Interim Report – 2011*

Likewise, the official data obtained from the DoFE indicates only the formal migration, i.e. only those who obtain permission from DoFE to migrate and work abroad. According to the data of DoFE (2009), the number of Nepalese female migrant workers has been increasing in recent years; it was 316 in 2007, 11,007 in 2008, and 11,507 in 2009. The table below shows the number of total migrant workers and of women migrant workers to specific countries for the Nepalese years 2067-2070.

**Table 2.2: Details of migrant workers with labour permission**

Country	Total migrant workers FY 2067-068	Female	Total migrant workers FY 2068-069	Female	Total migrant workers FY 2069-070	Female
Malaysia	105,906	1,386	98,367	2,210	195,998	8,992
Qatar	102,966	313	105,681	996	232,835	1,489
Saudi Arabia	71,116	156	80,455	237	90,081	349
UAE	44,464	1,911	54,482	4,523	92,225	10,345
Kuwait	15,187	5,795	24,575	12,495	16,408	1,348
Bahrain	4,647	206	5,865	532	9,086	321
Oman	2,442	57	3,163	295	5,113	342
South Korea	3,728	1	5,627	312	-	-
Lebanon	151	84	243	205	240	152
Israel	273	151	574	472	-	-
Afghanistan	655	2	823	1	45	-
Japan	603	53	1,144	108	413	222
Other	2,578	301	3,666	572	-	-
Brunei Darussalam	-	-	-	-	50	-
Cyprus	-	-	-	-	1,366	798
Great Britain (UK)	-	-	-	-	28	-
Hong Kong	-	-	-	-	168	17
Jordan	-	-	-	-	775	555
Laos PDR	-	-	-	-	35	-
Macau	-	-	-	-	432	21
Mauritius	-	-	-	-	40	-
Portugal	-	-	-	-	229	-
Romania	-	-	-	-	120	100
Seychelles	-	-	-	-	17	-
Republic of Congo	-	-	-	-	46	-
<b>Total</b>	<b>354,716</b>	<b>10,416</b>	<b>384,665</b>	<b>22,958</b>	<b>645,750</b>	<b>25,051</b>

Source: *Department of Foreign Employment (DoFE), 2013*



The following table shows the number of male, female, and total migrant workers during 11 months in 2069-2070 BS who received permission from DoFE, with percentages of each gender in terms of the total number of migrants for each month (note: the data was published before the end of the fiscal year, so there is not information for the month of Asar).

**Table 2.3: Migrant workers who received permission from DoFE in 2069-070 BS**

FY / Month	Male		Female		Total
	Migrants	%	Migrants	%	
2069 Shrawan (July-Aug)	56,294	95.3	2,761	4.7	59,055
2069 Bhadra (Aug-Sept)	41,932	95.1	2,176	4.9	44,108
2069 Asoj (Sept-Oct)	64,722	96.6	2,263	3.4	66,985
2069 Kartik (Oct-Nov)	35,586	95.0	1,869	5.0	37,455
2069 Mangsir (Nov-Dec)	58,898	94.7	3,278	5.3	62,176
2069 Poush (Dec-Jan)	54,747	96.6	1,942	3.4	56,689
2069 Magh (Jan-Feb)	49,624	95.8	2,154	4.2	51,778
2069 Falgun (Feb-Mar)	53,694	93.8	3,537	6.2	57,231
2069 Chaitra (Mar-Apr)	66,726	97.4	1,789	2.6	68,515
2070 Baisakh (Apr-May)	72,246	97.5	1,849	2.5	74,095
2070 Jestha (May-Jun)	66,230	97.9	1,433	2.1	67,663
<b>Total</b>	<b>620,699</b>	<b>96.1</b>	<b>25,051</b>	<b>3.9</b>	<b>645,750</b>

Source: Department of Foreign Employment (DoFE), 2013

Considering the official data from 1993-94 to 2009-2010, 1.39 percent of total migrant workers were women. This is in stark contrast to the study conducted by NIDS and UNIFEM, which reported that women migrant workers (WMWs) abroad constitute around 30% of migrant workers from Nepal, taking into account those who travel via irregular channels.

POURAKHI Nepal<sup>49</sup> suggested that 80% of all women working abroad end up as domestic helpers, and that 80% of female migrants are also without proper documentation. Most of them belong to the informal sector and are so excluded from the protection of laws and regulations of the hosting country. At POURAKHI Nepal's Shelter Home, 269 women had travelled without proper documentation while only 122 had received legal status for their initial travel. Upon return, 271 were undocumented and 120 were documented with legal status.

A NIDS survey suggested that a large majority (66%) of women migrant workers had undertaken "Domestic Work" when they were in foreign countries, and especially in Gulf countries. Other important jobs were work in factories, offices and restaurants. About three quarters of respondents reported that they had had no prior experience in the type of work that they had done in overseas countries (Table 4).

**Table 2.4: Types of work done by Nepalese female migrant workers**

Types of work done	Frequency (Percentage)
Domestic Work	66.3
Factory Work	11.6
Restaurant Work	9.3
Office Work	7.0
Cleaner	2.3
Labourer	1.2
Nursing Home Staff	1.2
Work in shopping center	1.2
<b>Total</b>	<b>100</b>

Source: Field survey in July – Dec 2002. N - 86

As described in “Nepali Women and Foreign Labour Migration”<sup>50</sup>, a report published by NIDS and UNIFEM in June 2006, about 78% of the women participating in foreign labour migration had not passed the SLC examination, which means that they had relatively limited educational background.

Some of the migrant women workers were completely illiterate and about 23% were barely literate. These low levels of literacy and educational attainment affect not only the kinds of jobs women can obtain abroad, but also makes it difficult for them to cope in the complex process of migration and in working and living abroad.

Some data is also available about interventions made by Nepalese Embassies to rescue women domestic workers abroad. From 2009 to April 2011, 2,820 women migrant workers were rescued from respective Embassies of destination countries, including 1,000 from Saudi Arabia, 900 from Lebanon and 700 from Kuwait (Table 6).

**Table 2.5: Status of rescued women migrant workers**

Country	No of women	Percentage
Saudi Arabia	1,000	35.46
Lebanon	900	31.82
Kuwait	700	24.83
Bahrain	74	2.63
Oman	70	2.48
UAE	58	2.06
Qatar	18	0.64
<b>Total</b>	<b>2,820</b>	<b>100</b>

Source: Respective Embassies and Councilor offices of destination countries.

According to a 2012 NIDS report<sup>51</sup>, women migrant workers did not know much about workers’ rights. They often had to work throughout the night, especially during the Muslim holy month of Ramadan. They were also not informed about the system of labour unions. Usually they reported that they did not care much about it, as their attention was focused only on spending some time there and returning after the completion of the work.

Only 25 % of the respondents had an adequate knowledge about the process of migration. Other respondents reported that they hired or went through an agent or asked their friends and kin members to intervene on their behalf. As they were not aware about the process of migration, they had to spend more money than was actually required. Establishing and obtaining the necessary documentation – passports, certificates, contracts, and other paper work – proved more difficult than they had expected. They also had no previous knowledge or experience of the recruitment agencies. Nepalese Government is organizing pre-departure orientation courses in Kathmandu but most of the migrants come from other regions of the country and they cannot afford the costs of the travel to reach the capital.

Concerning the distribution of foreign labour migration per district, official data suggests that women from the eastern Terai region are more involved in foreign employment (Table 7). However, it should be kept in mind that this data reflects documented migration.

**Table 2.6: Distribution of origin districts of foreign labour migration 2012**

Districts	No. of Districts	No. of Migrants in range	Male (%)	Female (%)	Total (%)
Nepal	75	-	339,773 (100)	3,959 (100)	343,732 (100)
Mahottari	1	34,045	34,045 (10.0)	56 (1.4)	34,101 (9.9)
Dhanusha, Jhapa, Siraha, Morang, Kailali, Saptari and Nawalparashi	7	10,000 – 20,000	69,465 (28.5)	792 (20.0)	97,257 (28.3)
Sunsari, Sarlahi, Dang, Tanahu, Chitwan, Rupandehi, Ilam and Dhading	8	6,000 – 9,999	57,642 (16.9)	641 (16.1)	58,283 (16.8)
Paanchthar, Udaypur, Syangja, Sindhuli, Makwanpur, Gorkha, Kaski, Baglung, Salyan, Khotang, Rolpa, Bara, Palpa, Dhankuta and Bhojpur	15	4,000 – 5,999	72,825 (21.4)	896 (22.5)	73,721 (21.5)
Sindhupalchowk, Kavre, Sankhuwasabha, Nuwakot, Lamjung, Kapilvastu, Rautahat, Gulmi, Taplejung and Banke	10	3,000 – 3,999	45,838 (10.6)	818 (20.7)	36,565 (10.8)
Ramechhap, Parbat, Myagdi, Terathum, Kathmandu, Arghakhanchi, Okhaldhunga, Rukum, Dolakha, Parsa, Bardia and Kanchanpur	12	2,000 – 2,999	29,904 (8.7)	545 (13.9)	30,449 (8.9)
Pyuthan, Solukhumbu, Surkhet, Lalitpur, Dadeldhura and Bhaktapur	6	1000 – 999	8,402 (2.4)	150 (3.8)	8,552 (2.4)
Jajarkot, Rasuwa, Dailekh, Baitadi, Darchula, Achham, Bajhang, Bajura, Kalikot, Doti and Manang	11	100-999	4,414 (1.2)	56 (1.4)	4,470 (1.1)
Humla, Jumla, Mugu, Mustang and Dolpa	5	20 – 99	238 (0.0)	5 (0.2)	243 (0.0)

Source: Foreign Labour Department

The findings of research conducted by POURAKHI in Bara, Chitwan, Jhapa and Kailali during 2012 revealed information about the marital status of women migrant workers. Of the respondents, 40.0% were married, 45.0% were unmarried, and 15.0% were divorced (Table 8).

**Table 2.7: Marital status of women migrant workers**

Marital Status	No of Women	Percentage (%)
Unmarried	45	45.0
Married	40	40.0
Divorced	15	15.0
<b>Total</b>	<b>100</b>	<b>100</b>

*Source: Field study conducted by POURAKHI Nepal 2012.*

According to the same study, 39.47 % of migrant women respondents had 2 children whereas 28.95 % had 3 children who were left behind in Nepal during migration.

The respective Nepalese Embassies have provided data on the number of women migrant workers who are in custody in different destination countries. Kuwait has the highest number, with 45 women in custody, followed by 40 in Saudi Arabia.

**Table 2.8: Number of Nepalese women migrant workers in custody in foreign countries**

Country	No of women	Percentage (%)
Kuwait	45	40.54
Saudi Arabia	40	36.03
Oman	16	14.41
Lebanon	10	9.00
<b>Total</b>	<b>111</b>	<b>100</b>

*Source: Respective Embassies and Councilor offices of destination countries.*

It is said that in each and every returnee centre in Saudi Arabia, 30 to 40 women are kept for 3 months before they return to their home country. The main reasons for being jailed are illegal stay and work and accusations of theft.

According to the Nepalese Embassy in Saudi Arabia and those of other countries, an increasing number of women migrant workers are suffering from mental illness. Mental illness is contributed to by physical exploitation by the employer, mental torture, family separation, and other difficulties associated with the migrant domestic worker experience. The following table shows cumulative data of cases of mental illness dealt with by Nepalese Embassies in the Gulf (Table 10).

**Table 2.9: Cases of mental illness of Nepalese female migrant workers dealt with by Nepalese Embassies in Saudi Arabia, Lebanon, and Kuwait**

Country	No of women	Percentage (%)
Saudi Arabia	400	96.39
Lebanon	12	2.89
Kuwait	3	0.72
<b>Total</b>	<b>415</b>	<b>100</b>

*Source: Respective Embassies and Councilor offices of destination countries.*

According to the Nepalese Embassy in Kuwait, about 45% of female migrant workers travel with fake passports, which can result in difficulty if intervention by the Embassy is required. It is also estimated that 99% of women are working illegally.

According to POURAKHI's records, 647 women migrant workers have received service from their Home since its establishment. During the period September 2011 to March 2013, 397 returnee women migrant workers used the Home, among whom 11 women returned after becoming pregnant, 30 suffered from mental illness, and 125 were physically unwell. There were 11 cases of abortion.

## Chapter IV

# The Kafala System

The Kafala system is deeply rooted in the ancient Bedouin Arab tradition. It was a custom to host the strangers travelling across the desert whenever they reached a family's camp. The guest was usually fed and invited to stay as long as he would have liked. It is surprising that such a benevolent practice could have developed into a system that today is widely considered as a new kind of slavery.

The Kafala sponsorship system emerged in many countries of Western Asia during the 1950s to regulate the relationship between employers and migrant workers who came to the region in the wake of its economic boom. Nowadays it is the principal practice of labour migration management in the Persian Gulf and other Arab states, including Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, the United Arab Emirates, Jordan and Lebanon.

Although each country developed variations of the system, the main structure and the consequences are similar: under the Kafala, the status of the migrant worker is bound to an employer or sponsor (the Kafeel). The employee can neither quit the job nor leave the country without a written permission of his Kafeel, who has complete legal and economic responsibility over him/her. It is commonplace to sequester passports and other documents belonging to the worker, constituting a violation of his/her basic human rights. If the worker decides to leave the job without signed consent, in most of the countries it will be considered as 'absconding'. The migrant will be labeled as a criminal, putting him/her at risk of detention and deportation. These dynamics often force migrants to remain for years in vulnerable conditions, suffering psychological, verbal, and also physical and sexual abuses.

Among Arab States, only Egypt, Libya, Morocco and Syria have signed the 2003 United Nations International Convention on the "Protection of the Rights of all Migrant Workers and Members of their Families" that ensures the same work conditions that nationals have. In June 2013, Saudi Arabia, Kuwait and the UAE voted to support the ILO Convention 189 Concerning "Decent Work for Domestic Workers" that established the first global standards on domestic work, although two more ratifications are required for the treaty to come into force. On January 14th, 2013, the Under Secretaries of the Gulf Cooperation Council's Ministries of Labour adopted a unified draft law on domestic workers. Although unified terms could help to stop abuses and help the mobility of workers, and although the new regulation provided a weekly day off and a few more important measures, it failed to meet international standards in many respects.

Although there are Nepalese Embassies in Saudi Arabia, Kuwait and the UAE, domestic workers in these countries often lack information about the services the embassies

provide or their employers may obstruct them from contacting the embassy, so it remains difficult for domestic workers to get help or benefits through them. In Saudi Arabia the national laws even bar the embassy from rescuing domestic workers by entering into the houses of Saudi nationals.

The remainder of this chapter discusses labour laws, the Kafala system and proposed reforms in several Gulf countries.

In the Kingdom of Saudi Arabia, where it is estimated there are 50,000 Nepalese women, all nationalities need an appropriate visa and 6 months-valid passport. Everyone who arrives in Saudi Arabia also needs a sponsor during the visit.

The main Saudi Arabian work law entered into force on the 26th of April 2006. It states that the percentage of Saudi employees inside a company must be not less than 75% of the total. It also states that all the employment contracts have to be in writing and that they should specify the salary, the benefits and the length of the probationary period<sup>52</sup>. The working hours should be eight per day for six days a week and work in excess of this amount has to be compensated. For all the non-Saudi employees the health benefits have to be provided by the employer and if the worker is injured while carrying out his/her duties the employer is responsible and has to bear the expenses for the treatments. In case of early conclusion of the contract, the employee should receive the benefits proportional to the number of years he worked with the sponsor. If the employee resigns within the first two years of service he will not get any benefits. However, none of these regulations cover farmers, herdsmen or domestic workers.

On June 18th, 2011 the new Nitaqat Law came into effect. It aims to increase Saudi representation in the workforce<sup>53</sup>. Businesses are now divided into four different categories on the basis of percentage of Saudi employees; depending on the category the business belongs to, owners will receive privileges or sanctions.

On May 10th, 2013 the government, trying to reduce unemployment and encourage legal work, announced a 'mass amnesty scheme' that offered to illegal migrants workers the possibility regularize themselves or to return home without being penalized. According to the data of the Nepalese Embassy of Riyadh, none of the 26,000 Nepalese applicants for amnesty were women. The reason could be the aforementioned difficulties domestic workers face in getting information about and access to embassies.

Almost all migrant women domestic workers enter Saudi Arabia illegally. As a consequence, their rights are not protected by the government's laws and these women are at the mercy of their Kafeel. They often suffer "nonpayment of wages, working for periods in excess of the 48-hour week, working for periods longer than the prescribed eight-hour workday, and restrictions on movement due to passport confiscation. There were also reports of physical and verbal abuse<sup>54</sup>". But the monarchy is making some efforts to change the plight of domestic migrant workers within the country.

In April 2012, after a five-year study, the Labour Ministry put forth a proposal to abolish the Kafala System, which has yet to be acted upon. The reform would transfer the sponsorship from the individuals to recruitment agencies based in the Kingdom of Saudi Arabia. The abuses suffered by migrants often start before getting into the system; one of the main

reasons is that the agencies often substitute a new contract for the original contract without informing the worker. Another problem is that the contract is in both Arabic and English, but only the terms and conditions contained in the Arabic one are legally accepted.

According to the amendment, the agencies will be monitored by a new ‘Foreign Workers Affairs Office’ of the government that will have divisions all around Saudi Arabia. It will also eliminate some ‘privileges’ of employers, such as the ability to sequester workers’ documents. The migrant will receive six months of wages in case the employer fails to pay and money for the air ticket in case of deportation.

The amendment also proposes to create 1,000 labour inspectors under the Foreign Workers Office who will examine all labour violations. The government will work with the embassies of the labour sending countries in dissemination campaigns about worker’s rights and the duty of the employers to treat workers well.

But Human Rights Watch has argued that “to tackle Kafala-related abuses, Saudi Arabia would also need to amend its Residency Law so that a migrant worker no longer would require a sponsor’s consent to change jobs or leave the country”<sup>55</sup>. And if one considers that the recruitment agencies have also been engaged in abusive practices, it remains a question if they will be better sponsors than the direct employers.

Organizations working on behalf of migrant workers hope that the study’s conclusions will be recognized by the Saudi monarchy, which will in turn create an alternative to the sponsorship system in order to better protect the human rights of domestic workers.

In Kuwait, reforms have been made to labour laws to provide better conditions for workers, but like in many countries, domestic workers remain uncovered by these protections. In February 2010, in order to come closer to meeting international labour standards, the government approved a new Private Sector Labour Law to replace the old one, which had been promulgated in 1964. The 2010 law set maximum working hours (48 per week) and provided a weekly rest day, better annual leave and end-of-service indemnities. It also included penalties for employers who recruit foreign workers and then fail to pay their salaries. But the new law excludes completely the migrant domestic workers, leaving their work conditions under the control of the sponsorship system. Although the Minister of Social Affairs and Labour announced a specific labour law for domestic work to be ratified in May of the same year, at the time of writing this law had not been proposed.

**As stated in the US State Department’s 2012 Country Report on Human Rights:**

“Since labour standards did not apply to domestic workers, such workers had little recourse when employers violated their rights. There were no inspections of private residences, the workplace of the majority of the country’s domestic workers, nor did the government make significant efforts to address working conditions for these workers. Reports commonly indicated employers forced domestic workers to work overtime without additional compensation. There were frequent reports of domestic workers committing or attempting suicide due to desperation over abuse or poor working conditions.”<sup>56</sup>

The Kuwaiti Kafala system has seen some modest reforms in recent years. In September 2010, marking the anniversary of the liberation from the Iraqi occupation, the government



announced the abolishment of the sponsorship system by February 2011. The system was to be replaced by a public-private recruitment authority. Unfortunately, only one day later the Labour Minister declared that the system would not be abolished but just reformed. Nonetheless, the reforms have had some good effects and today it is easier for migrant workers in Kuwait to switch sponsors.

According to the Report of the Migrant Forum in Asia, “The two states that have made the greatest attempt to reform the Kafala in their respective countries are Bahrain and Kuwait”<sup>57</sup>. For instance, “in February, a Kuwaiti court sentenced a Kuwaiti woman to death and her husband to ten years in prison for beating and killing a Filipina domestic worker”<sup>58</sup>.

In the UAE, which hosts 150,000 Nepalese migrant workers, some attempts have been made to reform labour laws to better protect workers but unfortunately they have had little impact for domestic migrant workers. In 2009, the government implemented an electronic system for wage protection : all the wages have to be paid into bank account avoiding cases of non-payments. Despite this requirement, abuses are still widespread.

In 2011, the old labour law promulgated in 1980 received important amendments. The aim of the changes was to increase the flexibility of the labour market and to comply with global standards provided by the ILO. The old law worked hugely in favor of the employer. The employee had to complete three years of service before switching jobs and he/she needed written permission to do so. Quitting the job before the three years used to put workers at risk of a ban of six months from the UAE’s labour market. Today, due to the new law, professional and skilled workers find it easier to change jobs and are provided an annual holiday, a maximum of 48 hours of work per week and health insurance.

Unfortunately, these provisions are not valid for unskilled and semi-skilled workers. Domestic workers in the UAE still need the sponsor’s consent during the first two years of employment to change jobs. At the time of writing, a minimum wage has not been set for them.

The UAE Ministry of Labour announced in 2010 that the country would reform the Sponsorship system in the 2011 labour law.

Accordingly, in 2011, the UAE ratified Recommendation 201 of the ILO on Decent Work for Domestic Workers. On this basis, in January 2012 the Cabinet approved the draft of a new law which protects the rights of the domestic workers by specifying respectable work standards. However, at the time of writing, the law had not come into effect even though in April of this year the assistant Foreign Minister for legal affairs declared that it would be approved soon.

As stated by a 2013 Human Rights Watch Report: “Many female domestic workers in the UAE suffer unpaid wages, food deprivation, long working hours, forced confinement, and physical and sexual abuse.”<sup>59</sup> And “although the law requires the government to monitor job-related injuries and deaths, in practice the government registered the cases but did not consistently follow-up on them. In at least one case, the government imposed a significant fine for negligence after a worker was permanently injured at his workplace.”<sup>60</sup>

## Chapter V

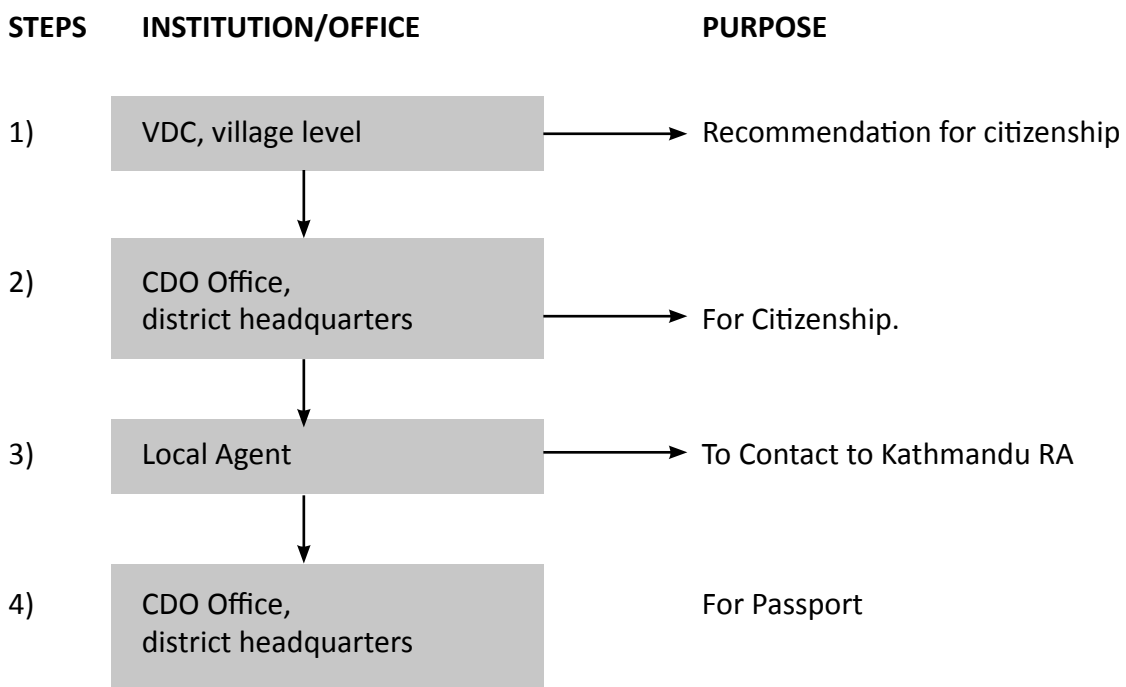
# Process and Routes of Migration

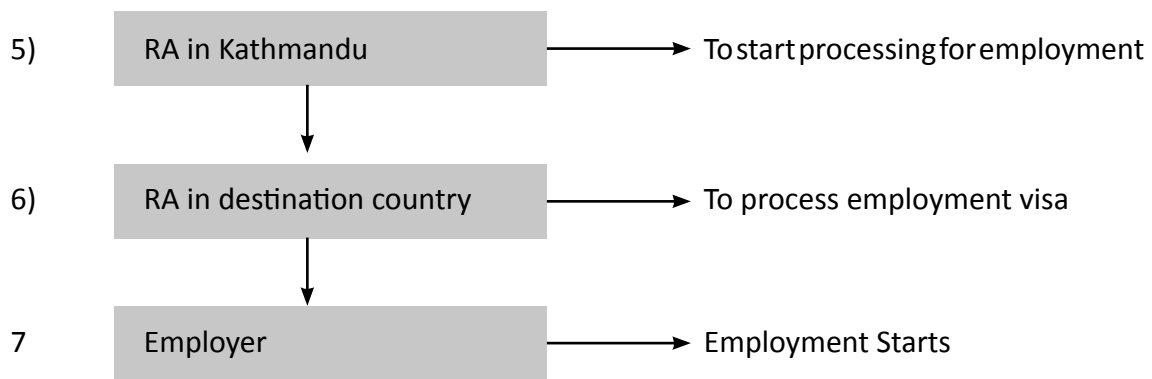
The economic boom in Gulf Countries has created a large demand for female domestic workers and this demand is largely not met. Migrant domestic workers from Nepal have been a part of this workforce throughout Gulf countries, usually playing vital roles as caregivers for middle and upper middle class families. As a result, a plethora of recruiting agencies (RAs) have been established in the Gulf countries, which, together with Nepal-based RAs and brokers, match workers with households. When households submit their demand to the RA, they are required to show an income certificate to prove that they are capable of hiring domestic workers. Most countries have set their own criteria that the household must fulfill in order to hire a foreign domestic worker.

With the documents of the individuals, the Gulf country based RA goes to obtain a permit for the worker in the necessary government offices. Once the government permit is obtained, the RA will apply to the Nepal embassy or consulate for endorsement. After receiving this, the destination country RA will contact RAs in Kathmandu.

Nepalese RAs will ask their local agents (known as representative agents in DoFE language) in districts to find potential domestic workers.

**Figure 5.1 Process of Migration**





As shown in the chart, citizenship papers are required in order to obtain a passport. The local agent will ask potential migrant workers to first obtain citizenship, then a passport. There is degree of vulnerability for women going through this process because most of them are from rural villages and are not fully aware of all the requirements they need to fulfill. Many pay more to RAs and other brokers than is required, and some are sexually abused in this process.

#### **TRAVEL ROUTES OF DOMESTIC WORKERS:**

The travel routes used by domestic workers completely depend upon the agents who are managing the travel. If the domestic workers have all the proper documents and are age 30 or above, then they can go through Kathmandu airport without any hesitation.

If the female migrant domestic workers are going without the permit of DoFE, then either they depart from Tribhuvan International Airport after arranging a “Setting” fee (bribe), or they are taken through Indian airports.

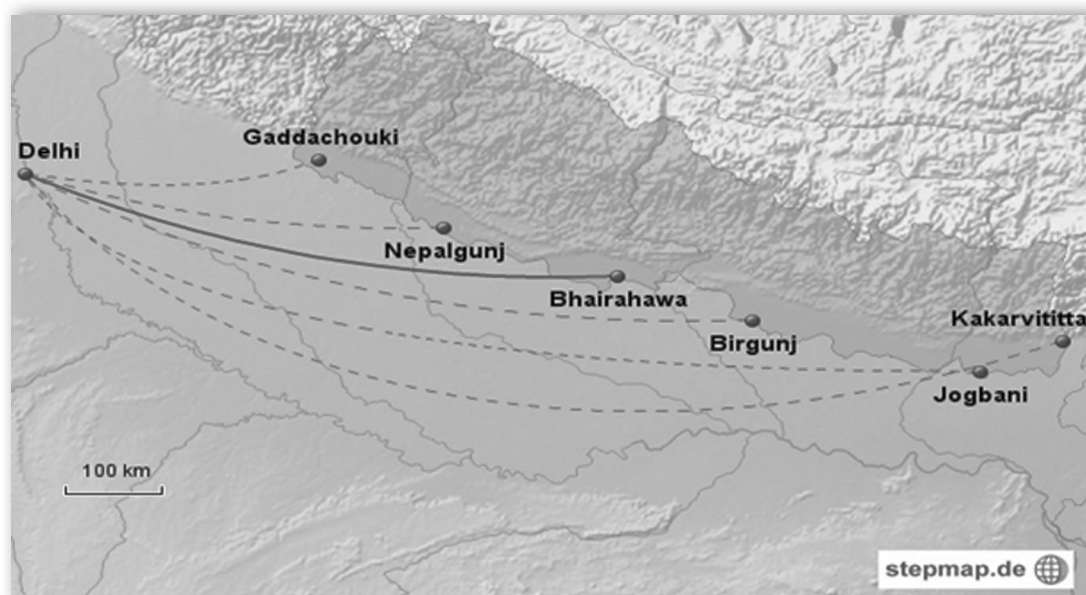
In order to get first hand information for this chapter, recently a Focus Group Discussion (FGD) and In Depth Interviews (IDIs) with returnee female migrant workers were conducted where the following results were found.

Most participants in the FGDs and IDIs said that they used Indian routes (Delhi and Mumbai) to go Gulf countries as per the direction of the brokers. Only a few had used the Tribhuvan International Airport. The brokers use the Indian routes due to various reasons such as low cost accessibility, and in order to avoid the complicated and time-consuming process of government approval.

Participants indicated that in most cases, a female escorted them when crossing the border into India. The women migrants pretend to be visiting relatives in India or to be going for medical treatment or for religious purposes. This facilitates movement across the border, allowing the women and brokers to avoid being stopped by police or NGOs. Similarly, the brokers have arranged for “setting fees” (bribes) to be paid at major check points in Nepal and India.

The major bordercrossing points for migration of Nepalese female migrant workers are Kakarvitta, Jogbani, Birgunj, Bhairahawa, Nepalgunj, and Gaddachouki. The most convenient exit point is Bhairahawa, due to easy access to bus services directly serving Delhi (Map 1).

**Map 5.1: Major border crossing points and travel route through India used by the women migrant workers to go to Gulf States**



Participants in the FGD and IDIs also reported encountering preventative efforts by NGOs in Nepal like Maiti Nepal (national NGOs that have offices and volunteers at borders to stop trafficking). In suspected cases, representatives of the NGOs, police, and border authorities ask questions for screening, and if subjects fail to respond properly, authorities take the required action and rescue them.

*"I crossed the Raxual border pretending to be a patient going for medical checkups in Delhi with the security personnel".*

*A returnee from Makawanpur*

*"I crossed the Sunauli border with other women migrant workers pretending to be pilgrims with the security personnel and others".*

*A returnee from Rupandehi*

According to the participants, the agents/brokers change border exit points according to prevailing conditions. The routes can shift very fast, consistent with the convenience and comfort of the agents/brokers and the costs involved. Thus there is not one specific route used, as the choice of the route depends upon the situation at hand. From Delhi, the potential female migrant domestic workers are sent to Gulf countries at the convenience of the agents/brokers.

Generally, the migration of women in India is organized by a combination of efforts of Nepalese and Indian agents/brokers. The networks of RAs including agents, sub-agents, and brokers play a key role in initiating the process of migration at the grassroots level and motivating potential women migrant workers. Indian brokers based in Delhi play a key role in arranging immigration and facilitating the migration process with the Nepalese agents located there.

In Delhi, instead of staying in lodges or hotels, migrant workers are often kept in rented houses or in newly constructed but unfinished apartments or houses during their transit. These are much cheaper than lodges and hotels and attract less attention to the group. In such places the migrant workers cook for themselves and most stay in one room to minimize costs. The major neighborhoods where migrant workers are kept during transit are Mahilapur, Pahadgunj, Munirka Majnutika (near the Kathmandu bus stop), although it was also reported that brokers constantly shift these locations.

Almost all the participants in the FGD and IDIs were unaware of the illegitimacy of the Indian route and the high risk of trafficking, loss of cash or property, and insufficient personal security.

## Chapter VI

# Bilateral Agreements

### **MOU with the Government of United Arab Emirates**

An MOU between the Government of Nepal (GON) and the Government of the United Arab Emirates in the field of manpower was signed on 3rd July, 2007. The MOU does not specifically address women workers, but rather discusses issues pertaining to both genders or just to male migrant workers. However, it clearly states that the employer will be responsible for placement and recruitment of migrant workers from Nepal through a mutual selection process. It mentions that the expatriate workers should get placement of service, accommodation, social and health services as well as other facilities according to the rules and regulations of the UAE. And, they are to be monitored through periodic reports sent to the embassy of Nepal in Abu Dhabi by the employers.

The MOU also mentions that the required specifications and qualifications for jobs must be clearly stated in the application, which should also include conditions of employment such as salary, accommodation, transportation and other relevant terms. It also explicitly states that the terms and conditions of employment of workers must be defined by a contract between the worker and the employer. This contract must clearly state the rights and the obligations of the two sides in line with the provisions of the labour law and regulations and it must be authenticated by the Ministry of Labour of UAE. This provision seems to have the potential to protect the workers from being abused.

It also states that Nepalese workers will have the right to remit their earnings and savings to their country according to the rules and regulations of the states concerned and the UAE will take appropriate measures to facilitate such transfers. And, in case of any dispute between the employer and employee, a complaint can be presented to the competent department of the Ministry of Labour in UAE for an amicable settlement. If a settlement is not reached, the complaint can be referred to the competent judicial authorities in the UAE. This provision has the potential to protect those workers who have valid documents and are courageous enough to pursue a complaint against their employers.

### **MOU with the Government of Kingdom of Bahrain**

The MOU in the areas of labour and occupational training between the Government of the Kingdom of Bahrain and the GON was signed on 29th April, 2008. This MOU also does not differentiate between male and female workers but rather uses the words “young men and women”. It states that the terms and conditions of employment, and each party’s rights and obligations, must be defined by a contract between the worker and

the employer that conforms to the laws and regulations of the Kingdom of Bahrain. The contract should include fundamental details provided for in Bahrain's Labour Law for the private sector and should also mention the name of employer, his/her establishment, term of the contract, type of work, agreed wages and any other details that both the employer and the employee deem appropriate to include.

The MOU clearly mentions that Nepalese workers will have the right to transfer their earnings and savings to their home country according to the rules and regulations applicable in the Kingdom of Bahrain. However, the employee is required to pass through a probationary period as set forth in the Labour Law for the private sector. If he/she fails in his/ her work duties during the probationary period, the Nepalese RAs will be responsible for replacing him/her immediately upon receiving notice from the employer. It is the responsibility of the Bahraini employer to take all the necessary measures related to the employee's employment and residence in accordance with the laws and regulations applicable in the Kingdom of Bahrain before his/her arrival.

In case of any dispute between the employer and employee, an attempt will be made to settle in an amicable manner. If this is not possible, the complaint can be referred to the competent judicial court in accordance with the laws and regulations applicable in the Kingdom of Bahrain and shall be settled in accordance with procedures set forth in the Labour Law for the Private Sector in the Kingdom.

#### **MOU the Government of the State of Qatar**

The MOU between His majesty's Government of Nepal and the Government of the State of Qatar concerning Nepalese migrant worker employment was signed on 21st March, 2005. This is the only MOU that contains a standard employment contract. Similar to the other MOUs between Nepal and Gulf countries, this MOU does not specifically address female workers.

However, it seeks to guarantee some benefits that are relevant to both genders. The recruitment agency, apart from including the required qualifications, experiences and specializations for jobs, also must include information on the duration of the contract, conditions of employment, salary, end of service gratuity, probationary period, and the facilities such as transport and accommodation, as well as all other information to enable workers to make informed decisions about signing employment contracts.

According to the MOU, it is the duty of the Ministry of Labour and Employment of the GON to facilitate procedures for medical testing and acquiring passports or travel permits required for Nepalese citizens to work in the State of Qatar. It is also the GON's duty to provide adequate information on conditions of employment and costs and standard of living in Qatar. It is clearly stated in Article (6) that the employer should bear all the travel expenses of the worker from Nepal to the place of work in the State of Qatar upon entering service for the first time as well as the expenses of the return passage. The employer should also bear the round-trip travel costs of the worker on leave periods as provided for in the employment contract. However, if the employee resigns before the expiration of the contract or commits a breach resulting in his dismissal from work, the employer will be exempted from paying the return passage of the worker and the end of service gratuity.

The terms and conditions of employment of workers must be defined by a contract between the worker and the employer. This contract must clearly state the basic employment conditions, and the rights and obligations of the two sides in line with the laws and regulations, such as the Qatari Labour Law. Article (8) clearly states that the contract should include the details of the employer's obligations regarding the worker's accommodation, the kind of accommodation, and medical treatment.

The employer can change the text of the contract only if the change results in a benefit to the worker and is subject to approval by the Ministry of Civil Service Affairs and Housing of the State of Qatar. Nepalese workers will have the right to transfer their earnings and savings to their country according to the rules and regulations applicable in the State of Qatar. The competent body within the Ministry of Civil Service Affairs and Housing of the State of Qatar will monitor the implementation of the agreement. In case of any dispute between the sides, an amicable settlement will be sought by submitting a complaint to the concerned body within Ministry of Civil Service Affairs and Housing of the State of Qatar. If a settlement is not reached in this manner, the complaint can be referred to the competent judicial authorities in the State of Qatar.

If the employer wants to extend the term of contract, the worker should be informed at least thirty days prior to the expiry date of the contract.

To date, the State of Qatar has ratified only six of the International Labour Conventions<sup>61</sup>. Out of these ratifications, none of them is directly related to female migrant workers.

### **Conclusion**

Though Nepalese migrant workers travel to countries throughout the Gulf<sup>62</sup>, only the above mentioned Gulf states have signed MOUs with the Nepalese government (outside the Gulf, the Nepalese government has also signed MOUs with Korea and Japan). The MOU that has been signed with the government in Qatar seems to be stronger than other MOUs since it contains a standard contract. The others do not mention the rights and responsibilities of the workers, limiting their real impact on the ground. In the future, all MOUs should include standard contracts, which should clearly state the basic standards, terms and conditions, minimum wage, provisions for housing, working hours per day, rest hours per day, rest days per week, payment for overtime work etc.



## Chapter VII

# Cost of Migration

Ideally, there should not be any cost for any employment – either inside the country or outside the country. But due to too many stakeholders' involvement in the process and the domestic and foreign laws involved, migrants often have to pay large sums of money to secure work abroad. The Nepalese government (Ministry of Labour and Employment) has fixed maximum fees that any recruiting agency can charge migrant workers.

**Table 7.1 Maximum fees for various countries**

S. No.	Country	Maximum fee	Minimum salary
1	Malaysia	Rs. 80,000	US \$125
2	Gulf Countries	Rs. 70,000	US \$125
3	South Korea, USA, UK, Hong Kong (China), Afghanistan	Maximum equal to six months' salary	
4	Libya	Rs. 90,000	US \$175 – US \$250 with or without food/accomodation
5	Mauritius	Rs. 19,900	
6	Algeria a) Skilled worker	Rs. 118,000	Monthly US\$ 300-400
7	Israel 7.1 Agricultural sector <sup>1</sup> 7.2 Caregiver <sup>2</sup>	US\$ 915 Rs. 75,000	
8	JITCO- Japan	Rs. 50,000	
9	EPS- Korea	US\$970	
10	Russia	Rs. 80,000	
11	Poland	Rs. 80,400	US\$ 400
12	Uganda	Free	
13	Canada	Rs. 136,000	US\$ 2720
14	Turkey <sup>3</sup>	Rs. 86,232- Rs.90,552	Euro 320
15	Romania <sup>4</sup>	Rs. 65,700	US \$300

Source: FEPB website taken on 30 Nov 2013

Note:

*Apart from Air Ticket*

*Apart from Air Ticket*

*Depending upon contract period*

*Only for textile workers*

The above costs are only the official costs for immigration, which the government states should be charged by the RAs. Employers in the Gulf countries often provide RAs payments for air tickets, visa fees, processing fees and RA fees in the destination country.

Nonetheless, domestic workers also often pay large sums ranging from Rs. 30,000 to one million, depending on the country, to secure work. Only one recruiting agency, British Overseas Employment Services (BOES), was found by NIDS to be charging fees as described by the government standards. All others were found to be over-charging fees to domestic workers. During a NIDS study trip to Israel, it was found that some caregivers (a type of domestic worker) paid Rs. one million to secure their jobs. The reason for such a high fee is the prospect of high salaries in Israel (up to Rs. 100,000-150,000 per month). However, as seen in the table above, the official fee for domestic workers to Israel is only Rs. 75,000. It was also found that some domestic workers, after paying money up front to the Nepalese RA, were also required to pay every month to the RA in the destination country even though they had not been informed they would have to do so.

There is no monitoring from DoFE to check the fees paid by female migrant domestic workers going to the Gulf. Implementation of the officially stated maximum fees remains a major challenge.

## Chapter VIII

# Rescue and Reintegration

Rescuing domestic workers who face abusive employment situations in Gulf countries is a major challenge. Rescue of domestic workers in Gulf countries should be looked at under the framework of the role of Nepalese embassies, labour agreements and destination countries' local police arrangements.

The Nepalese government has established embassies in the Kingdom of Saudi Arabia, Qatar, Kuwait, UAE and recently in Oman and Bahrain. There are also embassies in Israel and Egypt. However, there is no Nepalese Embassy in Lebanon; instead, there is an honorary consulate, but this is not capable of serving Nepalese female domestic workers working there and presently the Nepalese government has stopped issuing labour permits for female domestic workers to go to Lebanon. Thus, there is practical ban without any official notice.

Rescue of female domestic workers from private houses is a difficult task for Nepalese Embassies and local police unless there is concrete evidence of abuse. Through financial support from the Foreign Employment Promotion Board (FEPB), Nepalese Embassies have vehicles for Labour Attaches and shelter homes under the embassies. However, the best way to protect domestic workers is to take preventative measures, such as by teaching them the language and skills before they go to work as domestic workers in destination countries. Women who are equipped with good skills are more likely to find good employment opportunities, and those with proficient language skills will better be able to communicate with employers and others, thus avoiding potential conflicts.

POURAKHI, an association of women returnees, claims that every day two or three rescued women are sent by Nepalese Embassies or Nepalese associations to Nepal. They come in very desperate situations (often they are mentally ill, pregnant, or with children) and frequently they do not want to go back to their villages. Such women are allowed to stay in MAITI Nepal, POURAKHI and other shelter homes run by many other organisations.

Reintegration into society for returned migrants, especially for those who have been rescued, is a complex process. Re-integration is often overlooked and government and civil society organisations have not given enough priority to this issue. As a result, returned migrants who have been rescued become frustrated and frequently they see returning abroad as their best option. Only recently, the NGO POURAKHI and UN Women started a re-integration program as a pilot project with the Foreign Employment Promotion Board (FEPB). The program has provided a few women

returnees with a ten day long entrepreneurship training, although there was a lack of discussion about access to technology, monitoring, marketing skills and loan opportunities.

Re-integration is a very important component of the migration cycle. The FEPB is officially responsible to implement this component. However, failure to properly address the re-integration issue may result in returnee domestic workers who faced abuse seeking to go abroad again. Thus, there is need to help them re-integrate and to provide self-employment opportunities and other jobs in Nepal.

## Chapter IX

# Issues and Challenges

A number of challenges remain in the effort to secure safer and better livelihood opportunities for Nepalese women who migrate to the Gulf for domestic work. Some challenges are considered below.

- **UNEMPLOYMENT IN NEPAL:** The highest unemployment rate is among young people in Nepal. Many of the unemployed youth are women from rural backgrounds who have not passed the SLC and lack skills and training that could secure them with good work in Nepal. Until the problem of unemployment at home is addressed properly, many young women will continue going to Gulf countries in seek of domestic work.
- **SKILLS TRAINING:** As shown in this report and by many other reports, the great majority of female domestic workers do not receive any training before they go to destination countries. Due to lack of training in relevant skills such as ironing, laundry, dish washing, use of foreign household appliances, cooking of foreign cuisine, and so forth, these women end up in low-paying jobs where there are often greater threats to their safety.
- **LANGAUGE TRAINING:** Language is another skill needed by female domestic workers in the Gulf. Nearly all of these workers lack language abilities to competently communicate with their employers when they first arrive. Because of this, problems can occur easily. Efficiency of work is often lower due to miscommunication, and pay is reduced accordingly.
- **INEFFECTIVENESS OF THE PRESENT ORIENTATION AND PRE-DEPARTURE PROGRAM:** Presently, the Nepalese government has made mandatory a two day-long orientation course for all migrants, including domestic workers, prior to their departure. To encourage women migrants to attend, the orientation fee is reimbursed through Foreign Employment Promotion Board (FEPB). However, very few female migrants take part in the mandatory orientation course and instead pay a small bribe at the airport for the certificate stating that they attended.
- **AWARENESS:** Most recruiting agencies' offices are located in Kathmandu, whereas most female migrant domestic workers come from rural areas of Nepal. Thus, the information services provided by these recruiting agencies are often inaccessible. Furthermore, there are only limited radio and other awareness programs that reach rural areas of Nepal in order to increase the awareness level of issues pertaining to female migration.

- **AGE BAR AND OTHER CONDITIONS:** Since 1998, the Nepalese government has imposed various bans restricting female employment in the informal sector in the Gulf, including the current age bar of 30 in the name of protecting Nepalese women. These restrictions have increased the degree of vulnerability of Nepalese women migrants in general, and domestic workers in particular. Serious questions about the legality of these bans remain, including whether they are a violation of human rights. Unfortunately, the Nepalese government has not conducted any evaluation on these ad-hoc policies, including the age bar. Conducting such an evaluation is a priority.
- **NEW MARKETS:** Nepalese female migrant domestic workers are currently concentrated in the Gulf countries, where they have a high degree of vulnerability. There has not been an effort made by the FEPB or Nepalese Embassies based in Europe and North America to open these new markets for Nepalese domestic workers, where there is potential for better salaries and facilities. Nepal's neighbouring countries have already begun to explore these opportunities.
- **MOUs AND INTERNATIONAL CONVENTIONS:** Nepal has not yet ratified important UN and other international agreements on domestic workers working within Nepal. Until Nepal does so, it is difficult to pressure foreign countries to respect all the rights of Nepalese domestic workers abroad.
- **INSURANCE:** Insurance is another crucial aspect of foreign employment in general and particularly for housemaids. Presently, insurance and rescue are not linked and coordinated. The insurance system should be redesigned and should include rescue as well.
- **NEPALESE EMBASSIES AND ECONOMIC DIPLOMACY:** All Nepalese Embassies in the Gulf countries, such as in the Kingdom of Saudi Arabia, United Arab Emirates (UAE), Qatar, Kuwait, Bahrain and Oman (proposed) are due to the presence of Nepalese labourers in these countries. Therefore, the main function of these embassies is, or at least should be, to protect Nepalese migrant workers. Labour Attaches in the embassies are sent through the labour ministries. At present, only the Labour Attaches play active roles on behalf of migrant workers, whereas for the rest of the staff at the embassies, ceremonial diplomacy has taken precedent over more important duties. The embassies as a whole need to take more proactive roles in creating labour agreements or MoUs for the benefit of Nepalese migrants, and for female migrant domestic workers in particular.
- **LOAN PROGRAMS:** In the absence of low-interest loan programs, migrants have been required to take loans at high interest rates. Thus, large amounts are spent to pay back the interest and principal of the loan. More low-interest loan programs are needed by all migrant workers and by female migrant domestic workers in the Gulf in particular.
- **RESCUE, SHELTER, AND CITIZENSHIP OF CHILDREN:** Rescue of domestic workers from abusive or exploitative employment situations is the most urgent and important part of the whole migration process. Because most domestic workers are in private households where it is difficult or impossible to complain to the police or other

authorities, rescue is a difficult task. After the rescue, shelter homes in destination countries and in Kathmandu play an important role in caring for the women. Connected to this, it is a complicated process to acquire Nepalese citizenship for children who are born to female domestic workers in the Gulf. It will be important to continue and expand upon rescue and shelter systems currently in place, and to streamline processes for acquiring citizenship for the children.

- **CHILDREN OF HOUSEMAIDS:** Many children of female migrant domestic workers that stay in Nepal grow up without their mothers. Not enough research has been carried out on this important topic, so there is a lack of concrete data. However, anecdotal evidence from Nepalese media sources suggests that such children underperform academically. More research is needed on this topic and other topics pertaining to the children left behind by mothers who migrate.
- **SELF EMPLOYMENT AND RE-INTEGRATION:** Re-integration for rescued women is another very important area. The Nepalese government has not yet started any regular re-integration programs except one pilot program by FEPB and UN Women. Such re-integration programs must include job training and information about employment opportunities at home. Otherwise, many rescued women will seek to return abroad.

## Chapter X

# Conclusion and Way Forward

Due to lack of quality employment opportunities within Nepal, large numbers of Nepalese youth migrate to foreign countries in search of work every day. Women who migrate are among the most vulnerable to abuse because many come from rural backgrounds and lack information and skills before departing. Female domestic workers are especially at risk due to the nature of their work in private households and because of the lack of appropriate legal protections for informal sector workers in destination countries.

At the same time, the Nepalese government has not taken appropriate steps to address the problems faced by this most vulnerable group of migrant workers. Often, policy for domestic workers is lumped with policy for other migrants who face different sets of problems. When the Nepalese government has specifically addressed female migrant domestic workers, it has done so in response to public outcry at highly-publicized cases of abuse such as the mysterious death of Kani Sherpa in Kuwait in 1998. The responses, such as bans on female domestic employment in the Gulf, have been ad-hoc in nature and their practical effects are not fully considered at the out-set. Unfortunately, the measures have mostly proven to be counterproductive. Thus, there is a need for separate, well-planned policies to address problems faced by female migrant domestic workers.

There is also a need for the Nepalese government to be more proactive on the international front. Migrant workers, and female migrant domestic workers in particular, face increased risk of exploitation in any country without an MoU or labour agreement with the Nepalese government. Thus, there is a separate need to advocate for MoUs with countries where Nepalese female domestic workers are employed, and with countries that may become new destinations. A standard monthly contact for domestic workers should be one of the clauses of such MoUs. Especially if Nepal can provide better-skilled domestic workers, many countries would be interested in signing MoUs with the Nepalese government because there is a shortage of these workers in the Gulf and many other countries. Thus, providing skills trainings can be part of the strategy to attract countries to sign MoUs with the Nepalese government.

Furthermore, as long as Nepal cannot provide sufficient employment within the country, the Foreign Employment Promotion Board (FEPB) should craft a package for potential female migrants that provides information for making informed choices about whether to work in Nepal or abroad, as well as skills training, orientation, facilitation of passport application procedures, insurance, access to finance in the regional centres, and training in the language of destination countries. This package should be subsidized at least in the beginning, until it becomes popular. Use of communications technology should also be included in the training, so that domestic workers can contact their peers or Nepalese



embassies in case of trafficking or other abuse. More than 70 percent of the Nepalese population now have mobile phones, which can be better utilized for rescue and other purposes, such as dissemination of information to reduce migration costs.

Another strategy would be to search for new markets (such as in Europe and North America) for Nepalese domestic workers, since salaries and benefits may be higher and women's vulnerability may be less in other countries outside the Gulf.

For rescued domestic workers, there is a need for more opportunities for employment or entrepreneurship in Nepal so that they do not have to return again for work abroad. Although a few pilot programs have been implemented in this regard, more attention to this issue would be beneficial.

Finally, if housemaids are well-trained in appropriate job skills and in the destination country's language before they migrate, they would be able to find better-paid employment, and in the long run the demand for Nepalese domestic workers would increase. Even more important, by opening the door to better employment opportunities, women's vulnerability to abusive and exploitative work situations would decrease. Providing appropriate skills and training would thus be more effective at improving the situation of female migrant domestic workers than any age bar or ban on women's employment abroad.

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# Annex 1 Foreign Employment Act, 2064 (2007)

## Date of Authentication and Publication

2064-05-19 (September 5, 2007)

## Act number 18 of the year 2064 (2007)

### An Act Made to Amend and Consolidate Laws Relating to Foreign Employment

**Preamble:** Whereas, it is expedient to amend and consolidate laws relating to foreign employment in order to make foreign employment business safe, managed and decent and protect the rights and interests of the workers who go for foreign employment and the foreign employment entrepreneurs, while promoting that business; Now, therefore, be it enacted by the Legislature-Parliament.

## Chapter-1

### Preliminary

**1. Short title, extension and commencement:** (1) This Act may be called "Foreign Employment Act, 2064 (2007)". (2) It shall extend throughout Nepal and also apply to one who stays outside Nepal and commits any act contrary to this Act. (3) This Act shall into force immediately.

**2. Definitions:** Unless the subject or context otherwise requires in this Act,-

- (a) "Foreign employment" means employment which a worker gets abroad.
- (b) "Worker" means a citizen of Nepal who gets in foreign employment.
- (c) "Foreign employment business" means a business carried on to provide employment to citizen of Nepal in abroad.
- (d) "Department" means the Department of Foreign Employment.
- (e) "Institution" means an institution established under the prevailing Companies Act to carry on the foreign employment business.
- (f) "License" means a license granted under Section 11 to carry on the foreign employment business.
- (g) "Licensee" means an institution having obtained license pursuant to Section 11.
- (h) "Service charge" means a sum of money charged by a foreign employment entrepreneur for sending a worker abroad.

- (i) "Executive Director" means the Executive Director as referred to in Section 41.
- (j) "Employer institution" means an abroad based institution providing a worker with employment in abroad.
- (k) "Board" means the Foreign Employment Promotion Board constituted pursuant to Section 38.
- (l) "Labor Attaché" means the labor attaché appointed pursuant to Section 68, and this term also includes an officer employee, in an abroad-based diplomatic mission, entrusted with the responsibility for the promotion of the interests of Nepalese workers.
- (m) "Prescribed" or "As prescribed" means prescribed or as prescribed in the Rules framed under this Act.

## Chapter-2

# Provisions Relating Foreign Employment

### 3. Specification of countries for carrying on foreign employment business:

- (1) The Government of Nepal shall, by a notification in the Nepal Gazette, specify countries for carrying on the foreign employment business.
- (2) Out of the countries specified pursuant to Sub-section (1), the Government of Nepal may prohibit the carrying on of the foreign employment business in any country and suspend such business for a certain period.

**4. Power to make bilateral agreement:** The Government of Nepal may make abilateral labor agreement with a foreign country where the citizens of Nepal have gone or may go for foreign employment.

### 5. Selection of institution:

- (1) If any foreign country or employer institution makes a request to the Government of Nepal to select and send workers, the Government of Nepal may select any licensee institution through open competition and send workers through such institution.
- (2) The Department shall demand additional cash deposit or bank guarantee from the institution selected pursuant to Sub-section (1).
- (3) The grounds and procedures for the selection of institution pursuant to Sub-section (1) shall be as prescribed.

### 6. Power to send workers by making a treaty or an agreement:

- (1) Notwithstanding anything contained elsewhere in this Act, the Government of Nepal may make a treaty or an agreement with the government of a country having diplomatic relations with Nepal and send workers to such country through any office, institution of the Government of Nepal or any institution fully owned by the Government of Nepal.

(2) There shall be a steering committee as follows for formulating policies and making other arrangements required to make systematic, competitive and transparent the procedures to be followed while sending workers by the Government of Nepal pursuant to Sub-section (1):-

- (a) Minister or Minister of State for Labor and Transport Management -Chairperson
- (b) Secretary, Ministry of Labor and Transport Management -Member
- (c) Representative (Joint Secretary level), Ministry of Finance -Member
- (d) Representative (Joint Secretary level), Ministry of Industries, Commerce and Supplies -Member
- (e) Representative (Joint Secretary level), Ministry of Home Affairs -Member
- (f) Representative (Joint Secretary level), Ministry of Foreign Affairs -Member
- (g) Executive Director -Member
- (h) Woman representative, National Women Commission -Member
- (i) One representative from each recognized trade union federation -Member
- (j) One representative of foreign entrepreneurs' associations -Member
- (k) Director General, Department -Member

## Secretary

(3) The steering committee referred to in Sub-section (2) may, as required, invite any native or foreign expert in the field of foreign employment as an observer to its meeting.

(4) The steering committee referred to in Sub-section (2) shall manage its procedures on its own.

(5) The selection of persons required as workers to be sent pursuant to this Section shall be made from amongst the persons who have fulfilled the prescribed standards and procedures on the basis of impartiality and transparency.

(6) It shall be the obligation of the Government of Nepal to solve a problem, if any, arising for any worker going on foreign employment pursuant to this Section.

**7. Prohibition on sending a minor for employment:** Any minor who has not completed eighteen years of age shall not be sent for foreign employment.

**8. Prohibition on gender discrimination:** No gender discrimination shall be made while sending workers for foreign employment pursuant to this Act. Provided that where an employer institution makes a demand for either male or female workers, nothing shall prevent the sending of workers for foreign employment according to that demand.

**9. To provide special facility and reservation:**(1) The Government of Nepal may provide special facility to the women, Dalit, indigenous nationalities, oppressed, victims of

natural calamities and people of remote areas who go for foreign employment.

(2) In sending workers for foreign employment, any institution shall provide reservation to the women, Dalit, indigenous nationalities, oppressed class, backward area and class and people of remote areas in the number as prescribed by the Government of Nepal.

### Chapter-3

## Provisions Relating to License

**10. Prohibition on carrying on foreign employment business without license:** No one shall carry on the foreign employment business without obtaining a license pursuant to this Act.

**11. Provisions relating to license:** (1) An institution intending to carry on the foreign employment business shall make an application to the Department for the license setting out the details as prescribed.

(2) If, upon making necessary inquiry into an application made pursuant to Sub-section (1), it appears appropriate to grant the license to such institution to carry on the foreign employment business, the Department shall grant the license, upon collecting the license fees as prescribed and a sum of three million rupees in cash or seven hundred thousand rupees in cash and a bank guarantee of the remaining two million three hundred thousand rupees as a deposit.

**Explanation:** For the purposes of this Act, the term "bank guarantee" means a bank guarantee so issued by the bank specified by the Department that cash payment is made by the bank as and when so demanded by the Department.

(3) The institutions having obtained license prior to the commencement of this Act shall make deposit as referred to in Sub-section (2) within one year from the date of commencement of this Act.

(4) If, after the license has been obtained by furnishing the deposit pursuant to Sub-section (2), the deposit appears to be insufficient in proportion to the transactions of the licensee, the Department shall issue an order to furnish additional deposit, as required.

(5) The Department may accept a bank guarantee for the additional deposit to be furnished pursuant to Sub-section (4).

(6) If, on inquiring into the application pursuant to Sub-section (2), it appears that the license cannot be granted, the Department shall give information thereof, accompanied by the reason, to the applicant within seven days of the decision not to grant the license.

(7) The applicant who is not satisfied with the decision made by the Department pursuant to Sub-section (6) may make an appeal to the Government of Nepal within thirty-five days after the date of receipt of such information and a decision made by the Government in relation to the appeal shall be final.

**12. Period and renewal of license:** (1) Except where the license is canceled pursuant to Section 13, the license shall remain valid for up to one financial year. The period of such license shall expire at the end of that financial year despite the fact that the license has



been issued on any date whatsoever.

(2) A licensee who intends to get the license renewed may get the license renewed by furnishing the details and fees as prescribed within the prescribed time in each financial year.

(3) Notwithstanding anything contained in Sub-section (1) or (2), any licensee may get the license renewed for three financial years by paying the renewal fees for three financial years at the same time.

**13. Revocation of license:** (1) If a licensee fails to get renewed within the period referred to in Section 12, such license shall be revoked. (2) If a licensee does any of the following acts, the Department may revoke the license obtained by the licensee:-

(a) Obtaining the license by submitting fake documents or details,

(b) Failing to furnish cash deposit within the period referred to in Sub-section (3) of Section 11,

(c) Failing to furnish additional deposit pursuant to the order issued under Sub-section (4) of Section 11,

(d) Failing to reimburse the deposit pursuant to Sub-section (3) of Section 35,

(e) Doing any act contrary to this Act or the rules framed under this Act.

(3) Prior to revoking the license pursuant to Sub-section (2), the Department shall provide the concerned licensee with an opportunity for defense.

(4) The licensee, who is not satisfied with the decision made to revoke the license pursuant to this Section, may make an appeal to the Government of Nepal within thirty-five days of the date of receipt of information of the decision to revoke the license the decision made by the Government of Nepal in relation to the appeal shall be final.

**14. Prohibition on transfer of or change in ownership or liability:** Notwithstanding anything contained in the prevailing laws, no licensee shall, without approval of the Department, transfer or change the ownership or liability of the institution.

#### Chapter-4

### Provisions Relating to Prior Approval and Selection of Workers

**15. Prior approval to be obtained:** (1) A licensee shall make an application setting out the following details, based on the agreement or understanding made with an employer institution, to the Department for prior approval to send workers for foreign employment:-

(a) Name and address of the employer institution and country where workers are to be sent,

(b) Type of foreign employment,

(c) Type and number of workers,

- (d) Salary, facilities and leave to be obtained by workers,
- (e) working days and time to be done by the works .
- (f) Original copy of the demand letter and authority certified by the authentic body or diplomatic mission or labor attaché or chamber of commerce or notary public of the country where workers go for foreign employment,
- (g) A copy of the contract to be made between the employer institution and workers,
- (h) A copy of the contract to be made between the licensee and workers,
- (i) Other matters as prescribed.

(2) If, on inquiring into the application made pursuant to Sub-section (1), the demand of the licensee appears appropriate, the Department shall, no later than four days after the date of application, give prior approval to start action to send Nepalese workers for foreign employment.

(3) Notwithstanding anything contained in Sub-section (2), the Department shall not give prior approval to select workers under any of the following conditions:-

- (a) The terms and conditions of service and facilities are not satisfactory in proportion to the qualification of the worker demanded by the employer institution,
- (b) The proposed foreign employment seems to be of such nature as to have adverse effect on the dignity, prestige or health of workers,
- (c) It appears inappropriate from security perspective,
- (d) There exist other conditions as prescribed.

(4) If a decision is made not to give prior approval pursuant to Subsection

(3), information thereof, accompanied by the reason for the same, shall be given to the applicant.

**16. Publication of advertisement:** (1) On receipt of approval pursuant to Section 15, the licensee shall publish an advertisement in a daily newspaper of national circulation to be published in the Nepali language, setting out the details as prescribed and giving the time-limit of at least seven days, for the selection of the workers.

(2) The concerned licensee shall post a notice of advertisement published pursuant to Sub-section (1) on the notice-board of its office and submit a copy of that notice to the Department on the same day.

(3) After the publication of advertisement pursuant to Sub-section (1), a person who intends to go for foreign employment shall make an application, accompanied by the prescribed details, to the licensee.

**17. List to be prepared after selecting workers:** (1) Upon receipt of an application pursuant to Sub-section (3) of Section 15, the licensee shall select workers on the grounds of qualification and experience of applicants and other matters as prescribed, according to the nature of work demanded . The licensee shall prepare a list of selected persons,

post such list on the notice board of the office of the licensee and submit a copy thereof to the Department.

(2) If a complaint is made by any person or the Department itself receives an information in any manner that any irregularity has been made in the preparation of workers list pursuant to Sub-section (1), the Department may immediately make necessary inquiry thereinto; and if, in making such inquiry, it appears that any irregularity has been made as mentioned in the complaint or petition, the Department shall give order to immediately stop all acts relating to the selection of workers.

**18. Approval required to take passports to the abroad:** If a licensee has to take passports of those persons who have been selected for foreign employment pursuant to Section 17 outside Nepal for visas, approval of the Department has to be obtained.

19. Provisions relating to labor permission sticker: (1) After receiving visas of workers selected pursuant to Section 17 and before sending such workers for foreign employment, the licensee shall make a submission, accompanied by the following details, to the Department for labor permission sticker:-

(a) In the event that skill-oriented training is required for any work, a certificate of such training and a certificate of orientation training,

(b) Health certificate,

(c) Insurance certificate,

(d) Contract made between the licensee and the worker,

(e) Contract made between the employer institution and the worker,

(f) A receipt or bank voucher of amount paid by the worker to the licensee,

(g) Other matters as prescribed.

(2) If, in examining the details submitted pursuant to Sub-section (1), the details are found to be in conformity with the details submitted pursuant to Section 15, the Department shall affix the labor permission sticker on the passport of such worker.

(3) If the information provided pursuant to Sub-section (1) is found to be inconsistent with the details submitted pursuant to Section 15, the Department may prevent the licensee from sending workers for foreign employment, and the information, accompanied by the reason for such prevention, shall be given to the licensee.

**20. To send for foreign employment:** (1) upon giving information pursuant to Section 19, the licensee shall send the concerned worker for foreign employment within the specified period to enter into the concerned country, if any, and within three months if such period is not specified.

(2) In the event of failure to send a worker for foreign employment within the time-limit as referred to in Sub-section (1), the concerned licensee shall return the amount received from the concerned worker, as well as an interest on that amount at the rate of twenty percent per annum, to the concerned worker within thirty days.

(3) If, after having obtained a visa, any worker refuses or is not able to go for foreign employment, the licensee shall, in returning the amount to the worker, return the remaining amount to be set after deducting the visa fee only. Provided that if the worker refuses to go by the reason of any terms different than those advertised by obtaining prior approval, the visa fee shall not be deducted.

**21. To go for foreign employment on personal basis:** (1) If any person intends to go abroad for foreign employment on personal basis, such person shall make an application, setting out the following matters, to the Department for approval:-

- (a) Country intended to be visited for employment,
- (b) Nature of work to be done abroad,
- (c) Letter of approval granted by the employer institution,
- (d) Agreement clearly mentioning the terms and facilities of employment,
- (e) Certificate showing that orientation training has been taken,
- (f) Health certificate.

(2) If, in making necessary inquiry on receipt of the application referred to in Sub-section (1), the request of the applicant appears to be appropriate, the Department shall give permission to the applicant to go abroad for employment, and in so giving permission, the Department shall require the applicant to submit an insurance certificate.

(3) Notwithstanding anything contained in this Section, no licensee shall send workers on personal basis.

**22. Native airport to be used:**

(1) While sending workers for foreign employment, the licensee shall so send them that they use native airport.

(2) Where workers have to be sent by using any foreign airport showing reasons such as non-availability of air tickets for sending workers by using the native airport pursuant to Sub-section (1), approval of the Department has to be obtained.

(3) While going outside Nepal to use the foreign airport by obtaining approval of the Department pursuant to Sub-section (2), registration, as prescribed, has to be made with the immigration office of the departure point.

**23. Power to specify minimum remuneration:** The Government of Nepal may, by a notification in the Nepal Gazette, specify the minimum remuneration to be received by workers who go for foreign employment.

**24. Service charge and promotional costs:** (1) The Government of Nepal may, in relation to any specific country or company, specify the upper limit of amount, including the service fee and promotional costs that the institution can collect from each worker.

(2) After the licensee has given information that visa has been received from the concerned country for a worker selected for foreign employment, the worker shall

deposit the amount as referred to in the contract with the office or in the bank account of the licensee.

(3) In the event that amount is deposited with the office of the licensee pursuant to Sub-section (2), a receipt thereof shall be given to the worker.

**Explanation:** For the purposes of this Section, "promotional costs" means the visa fee chargeable for sending a worker for employment and miscellaneous expenses made within and outside the country, in the course of receiving the quota of workers.

**25. Foreign employment contract to be made:** (1) Prior to the departure of a worker for foreign employment, a contract shall be made between the employer institution or its agent and the worker and the licensee and the worker on the terms and conditions of employment, terms and conditions to be observed by both parties and remuneration to be received by the worker, after getting the worker to clearly understand such terms and conditions and provisions of remuneration.

(2) The licensee shall translate the contract referred to in Sub-section (1) into the Nepali language and submit two copies thereof to the Department and the Department shall certify copies of such contract, retain one copy thereof in the Department and provide the other copy to the worker.

**26. Insurance to be procured:** (1) The licensee shall, prior to sending a worker for foreign employment, procure insurance of at least five hundred thousand rupees with validity for the term of contract so that such worker can claim damages for death or mutilation, if such worker who has gone for foreign employment pursuant to this Act dies from any cause at any time or gets mutilated.

(2) Even a person who goes for foreign employment personally pursuant to Section 21 shall, prior to going for foreign employment, shall make insurance equivalent to the amount set forth in Sub-section (1).

(3) Other provisions relating to insurance shall be as prescribed.

## Chapter-5

# Provisions Relating to Classification of Training and Workers

**27. Training to be taken:** Any worker who goes for foreign employment shall, prior to going for foreign employment, take orientation training, as prescribed, from the institution having obtained permission from the Department pursuant to Section 28.

**28. Provisions relating to institution running orientation training:** (1) An institution intending to provide orientation training to workers who go for foreign employment shall make an application to the Department for permission to run such orientation training.

(2) The Department shall submit the application received pursuant to Sub-section (1) to the Board.

(3) If, in making necessary inquiry into the application received pursuant to Sub-section (2), the infrastructures, human resources as well as other means and resources of the institution providing the orientation training appear adequate, the Board shall write to the Department to provide license to the applicant to run the orientation training to be given to workers who go for foreign employment.

(4) If so written to provide the license pursuant to Sub-section (3), the Department shall provide the applicant with the license to run the orientation training by collecting the deposit and license fees, as prescribed.

(5) If any institution which is running the training after having obtained permission at the time of commencement of this Act meets the criteria and terms as referred to in this Section, the Department shall make renewal.

(6) Provisions relating to the renewal of license provided to any institution to run the orientation training pursuant to this Section and the renewal fees shall be as prescribed.

**29. Fixation of curriculum and standard of orientation training:** The Board shall determine the curriculum and standard of the orientation training to be provided by the institution running the orientation training which has obtained license pursuant to Section 28.

**30. Skill-oriented training to be taken:** A worker going for foreign employment to do any work requiring any skill-oriented training shall obtain such training from an institution recognized by the Government of Nepal.

**Explanation:** For the purposes of this Section, "institution recognized by the Government of Nepal" means the Council for Technical Education and Vocational Training and any other institution which has been established under the prevailing law to provide similar training and affiliated with that Council.

**31. Classification of workers:** The Government of Nepal may, by a notification in the Nepal Gazette, specify the provisions relating to the classification of workers who go for foreign employment and the skill-oriented training to be taken according to the classification.

## Chapter-6

### Provisions Relating to Foreign Employment Welfare Fund

**32. Establishment of foreign employment welfare fund:** (1) A foreign employment welfare fund shall be established under the Board for the social security and welfare of the workers who have gone for foreign employment and returned from foreign employment and their families.

(2) The following amounts shall be credited to the fund referred to in Sub-section (1):-

(a) Amounts deposited as prescribed by the workers prior to going for foreign employment,

(b) Interest amount earned by mobilizing, as prescribed, the deposits furnished pursuant to Sub-section (2) of Section 11,

(c) Amount received by way of license fees and license renewal fees,

(d) Fees for license to be provided to the institutions running training pursuant to Section 28 and the license renewal fees,

(e) Amounts received by the fund from time to time from the institutions related with the foreign employment business,

(f) Grants and assistance received from any native or foreign persons or bodies.

(3) Prior to receiving assistance from any foreign person or body pursuant to clause (f) of Sub-section (2), approval of the Government of Nepal shall be obtained.

**Explanation:** For the purposes of this Act, the term "family" means the husband or wife, son, daughter or mother, father and her father-in-law and mother-in-law, in the case of a female worker, whom the worker who has gone for foreign employment and returned from foreign employment has to maintain and subsist on his or her own.

**33. Use and operation of foreign employment welfare fund:** (1) The foreign employment welfare fund shall be used for the following purposes:-

(a) Providing skill-oriented training to the workers going for foreign employment,

(b) Repatriating workers to Nepal due to mutilation or reason referred to in Sub-section (1) of Section 75, providing compensation to workers and providing financial assistance to the workers who have so come back or their families,

(c) Launching employment-oriented programs for the workers who have come back from foreign employment,

(d) Where a worker who has gone abroad for foreign employment dies there and his or her dead body is not attended by any one, bringing the dead body to Nepal and providing financial assistance to his or her family,

(e) Carrying out acts relating to foreign employment promotion,

(f) Carrying out other acts as prescribed.

(2) Other provisions relating to the operation of the foreign employment welfare fund shall be as prescribed.

## Chapter-7

# Provisions Relating to Monitoring and Inquiry

### 34. Monitoring:

(1) The Department shall monitor and inspect, from time to time, the office of the licensee in relation to whether this Act or the rules framed under this Act or direction given under this Act have been observed or not and for this purpose, it may inspect the records and other relevant documents maintained by the licensee.

(2) It shall be the duty of the licensee to provide such details and records as demanded at the time of making monitoring or inspection pursuant to Sub-section (1).

**35. Inquiry:**

(1) In cases where a complaint is made by a worker that the employer institution has not fulfilled the contractual obligation or the licensee has not taken necessary and appropriate action to get fulfilled the terms and conditions set forth in the contract, the Department may make, or cause to be made, necessary inquiry thereinto.

(2) If, upon an inquiry made pursuant to Sub-section (1), it appears necessary to bring the concerned worker back to Nepal, the Department shall order the licensee to provide such amount as is needed to bring the worker back to Nepal.

(3) In the event of failure to provide such amount in pursuance of the order issued by the Department pursuant to Sub-section (2), such worker shall be brought back to Nepal by spending the deposit furnished by the licensee pursuant to Section 11. Where the deposit is so spent, a notice shall be given to the concerned licensee to reimburse the amount as soon as possible, and the licensee shall reimburse that amount into the deposit no later than fifteen days of the receipt of such notice.

(4) If the expenses required to bring the worker back to Nepal cannot be met from the deposit furnished pursuant to Section 11, the licensee shall pay such shortfall amount within the time-limit specified by the Department and in the event of failure to make payment within such time-limit, the amount shall be realized as if it were a governmental due.

**36. Complaint for compensation:**

(1) If any employer institution does not provide employment in accordance with the terms prescribed in the agreement, the worker or his or her agent may make a complaint, along with evidence, with the Department for compensation.

(2) If, in making necessary inquiry into the complaint made pursuant to Sub-section (1), the contents seem to be reasonable, the Department may give an order to the licensee to provide compensation for all expenses incurred in going for foreign employment.

**37. Power to give direction:**

(1) The Government of Nepal may, from time to time, give necessary direction to any licensee in relation to foreign employment.

(2) It shall be the duty of the concerned licensee to observe the direction given pursuant to Sub-section (1).

**Chapter-8****Constitution, Functions, Duties and Powers of Board****38. Formation of Board:**

(1) A Foreign Employment Promotion Board shall be constituted as follows, also for the purpose of carrying out acts required to promote the foreign employment business and make this business safe, systematic and decent and protect the rights and interests of workers going for foreign employment and the foreign employment entrepreneurs.



- (a) Minister/Minister of State for Labor and Transport Management Ministry of Agriculture and Cooperatives -Chairperson
  - (b) Minister of State/Assistant Minister for Labor and Transport Management -Vicechairperson
  - (c) Member, National Planning (responsible for the concerned sector) -Member
  - (d) Secretary, Ministry of Labor and Transport Management -Member
  - (e) Secretary or Gazetted First Class level representative designated by him or her, Ministry of Home Affairs -Member
  - (f) Secretary or Gazetted First Class level representative designated by him or her, Ministry of Foreign Affairs -Member
  - (g) Secretary or Gazetted First Class level representative designated by him or her, Ministry of Finance -Member
  - (h) Secretary or Gazetted First Class level representative designated by him or her, Ministry of Law, Justice and Parliamentary Affairs -Member
  - (i) Secretary or Gazetted First Class level representative designated by him or her, Ministry of Women, Children and Social Welfare -Member
  - (j) Director General, Department -Member
  - (k) Representative (equivalent to First Class, Nepal Rastra Bank -Member
  - (l) Two persons including one woman nominated by the Government from amongst foreign employment experts -Member
  - (m) Two persons consisting of the chairperson of the foreign employment entrepreneurs' association and one woman representative nominated by that association -Member
  - (n) Two persons consisting of one woman nominated by the Government of Nepal from amongst the operators of skill-oriented and orientation trainings on foreign employment -Member
  - (o) One person nominated by the Government of Nepal from amongst the doctors, who have passed at least MBBS, of a health institute recognized pursuant to Section 72 -Member
  - (p) Chairpersons of four recognized trade union federations designated by the Government of Nepal or four persons consisting of one nominated by each such federation -Member
  - (q) Representative, Federation of Nepal Chamber -Member of Commerce and Industry
  - (r) Representative, Council for Technical Education and Vocational Training -Member
  - (s) Executive Director -Member Secretary
- (2) Tenure of office the members nominated by the Government of Nepal pursuant to Sub-section (1) shall be of two years.

### 39. Functions, duties and powers of the Board:

The functions, duties and powers of the Board, in addition to its functions, duties and powers set forth elsewhere in this Act, shall be as follows:-

- (a) To do, or cause to be done, studies of international labor market and explore, or cause to be explored, new international labor market,
- (b) To collect, process and publish information for the promotion of foreign employment,
- (c) To mobilize, or cause to be mobilized, the Foreign Employment Welfare Fund,
- (d) To do, or cause to be done, acts required for the protection of interests of the workers who have gone for foreign employment,
- (e) To formulate, implement, monitor and evaluate programs to utilize the skills, capital of, and technology learnt by, the workers who have come back from abroad and use the same for the national interests,
- (f) To do necessary acts in relation to labor agreements to be entered into with various countries,
- (g) To prescribe qualifications for the registration of institutions providing foreign employment orientation trainings,
- (h) To formulate and approve curricula of foreign employment orientation trainings,
- (i) To formulate such short-term and long-term policies as required to be pursued to make the foreign employment business safe, systematic and decent and in relation to the protection of the rights and interests of the foreign employment entrepreneurs and submit such policies to the Government of Nepal,
- (j) To carry out a comprehensive study on the implementation of the Foreign Employment Act and give suggestions to the Government of Nepal,
- (k) If it appears necessary to review the laws relating to foreign employment, to review the same and give suggestions to the Government for necessary improvements,
- (l) To give advice to the Government of Nepal in relation to the fixation of the service charges and promotional costs,
- (m) To give advice to the Government of Nepal to make necessary arrangements on importing earnings made by Nepalese workers abroad into Nepal in a simple and easy manner,
- (n) If it is found that any person has done or taken any act or action contrary to the laws relating to foreign employment, to write to the concerned body for necessary action,
- (o) To monitor the institutions licensed to operate the foreign employment business,
- (p) To monitor, or cause to be monitored, the institutions having obtained license or permission to provide orientation trainings and skill-oriented trainings,
- (q) If, in carrying out or causing to be carried out monitoring, it is found that any person

has done any act in contrary to this Act or the rules framed under this Act, to write to the concerned body for necessary action,

(r) To submit to the Government of Nepal an annual report of the activities carried out by it,

(s) To do, or cause to be done, other acts as prescribed.

#### **40. Meetings and decisions of the Board:**

(1) Meeting of the Board shall be held as required.

(2) The meeting of the Board shall be held at such place, time and date as may be specified by the chairperson.

(3) The presence of more than fifty percent out of the total number of members of the Board shall be deemed to constitute a quorum for a meeting of the Board.

(4) The meeting of the Board shall be presided over by the chairperson of the Board, by the vice-chairperson in the absence of the chairperson, and by the member selected by the members present at the meeting from amongst themselves, in the absence of even the vice-chairperson.

(5) A majority opinion shall prevail at the meeting of the Board. In the event of a tie, the person presiding over the meeting shall exercise the casting vote.

(6) The decisions of the Board shall be authenticated by the member secretary.

(7) The Board may invite any relevant expert or office-bearer as an observer at its meeting.

(8) Other procedures relating to the meeting of the Board shall be as determined by the Board itself.

(9) The chairperson and member of the Board shall, for having participated in the meeting of the Board, receive such meeting allowance as prescribed by the Government of Nepal.

#### **41. Appointment, functions, duties and powers of Executive Director:**

(1) The Government of Nepal shall appoint one Executive Director through open competition, as prescribed, from amongst the persons who have possessed the prescribed qualification and are not involved in the foreign employment business, to carry out day-to-day business of the Board, as its administrative chief.

(2) Notwithstanding anything contained in Sub-section (1), until the office of the Executive Director is filled up, the Government of Nepal may designate any officer employee of at least Gazetted First Class to act as the Executive Director for a maximum period of three months.

(3) The tenure of office of the Executive Director shall be of four years.

(4) The provisions relating to the remuneration, terms of service and facilities of the Executive Director shall be as prescribed.

(5) The functions, duties and powers of the Executive Director shall be as follows:-

(a) To implement, or cause to be implemented, the decisions of the Board,

(b) To perform such other functions as prescribed.

**42. Secretariat of the Board:** (1)The Board shall have a separate secretariat of its own.

(2) The Executive Director shall be the chief of the secretariat.

(3) The Government of Nepal shall provide necessary employees for the secretariat of the Board.

## Chapter-9

# Offense and Punishment

**43. Punishment to be imposed in the event of carrying on foreign employment business without license:**

If any person carries on the foreign employment business in contrary to Section 10 or collects any amount with intent to engage a person in foreign employment or sends a person abroad by giving false assurance or lures a person to be engaged in foreign employment, the amount so received and an amount to be set by fifty percent of that amount shall be recovered from that person as compensation and the expenses incurred by that other person in going to and coming from abroad shall also be realized and that person shall be punished with a fine of three hundred thousand rupees to five hundred thousand rupees and with imprisonment for a term of three years to seven years. In the event that such person has not yet sent that person abroad, half the punishment shall be imposed.

**44. Punishment to be imposed in the event of sending workers by licensee without obtaining permission:**

If any licensee sends any worker abroad without obtaining permission from the Department or collects any amount by giving false assurance or showing enticement that the licensee would engage any person in foreign employment but does not send that person abroad, the amount so collected and an amount to be set by fifty percent of that amount shall be recovered from that licensee, and such licensee shall be punished with a fine of three hundred thousand rupees to five hundred thousand rupees and with imprisonment for a term of three years to seven years; and the license of such licensee shall also be revoked.

**45. Punishment to be imposed in the event of sending minors for foreign employment:**

If any licensee sends any minor for foreign employment in contravention of Section 7, the licensee shall be punished with a fine of three hundred thousand rupees to five hundred thousand rupees and with imprisonment for a term of three years to seven years.

**46. Punishment to be imposed in the event of sending workers to countries not opened by Government:**

If any licensee sends any worker to any country which has not been opened by the Government of Nepal for foreign employment or obtains a visa from any country which has been opened but sends any worker to a country which has not been opened, the licensee so sending a worker shall be punished with a fine of three hundred thousand rupees to seven hundred thousand rupees and with imprisonment for a term of three years to five years. In case the licensee has collected any amount for sending the worker but has not yet sent the worker, the licensee shall be subject to half the punishment.

**47. Punishment to be imposed in the event of concealing or altering document or report:**

(1) If any licensee knowingly conceals any document or report required to be maintained under this Act or the Rules framed under this Act or alters any matter therein or makes any false contents or causes any one to prepare false details, such licensee shall be punished with a fine of one hundred thousand rupees to three hundred thousand rupees and with imprisonment for a term of six months to one year.

(2) If any licensee who has been punished pursuant to Sub-section (1) is held to have repeated the offense, such licensee shall be subject to two-fold punishment, and the license obtained by such licensee shall be revoked.

**48. Punishment to be imposed in the event of opening branch office without permission:**

If any licensee opens a branch office without obtaining permission of the Department, the Department may issue an order to punish the licensee with a fine at the rate of two hundred thousand rupees for each branch and close that office.

**49. Punishment to be imposed in the event of failure to publish advertisement:**

(1) If any licensee fails to publish an advertisement pursuant to Section 16 or publishes an advertisement without obtaining permission of the Department, the Department shall punish such licensee with a fine of fifty thousand rupees and cancel such an advertisement.

(2) If any licensee fails to set out such details in an advertisement as required to be set out as per the permission received pursuant to Section 15, the Department shall cause that licensee to correct and republish the advertisement.

**50. Punishment to be imposed in the event of failure to publish selection list:**

If any licensee fails to publish a selection list of workers pursuant to Section 17 or publishes it but fails to give information thereof to the Department, the Department may punish such licensee with a fine of fifty thousand rupees and order to republish the selection list.

**51. Punishment to be imposed in the event of refusal to return amount or provide compensation:**

(1) If any licensee fails to return the amount set forth in Sub-section (2) of Section 20 within the time set forth in that sub-section or refuses to provide compensation referred to in Sub-section (2) of Section 36, the Department may get such amount or compensation returned or provided to the concerned worker from the cash deposit made by that licensee pursuant to Section 11, punish such licensee with a fine of one hundred thousand rupees and revoke the license.

(2) If the amount or compensation is to be returned or provided pursuant to Sub-section (1) and the cash deposit made by the licensee pursuant to Section 11 is not sufficient to cover such amount or compensation, the Department shall give a time-limit of sixty days to the licensee to pay the shortfall amount and if the licensee fails to pay the amount within that time limit, the amount shall be realized from the assets of the licensee.

**52. Punishment to be imposed in the event of sending worker by licensee on personal basis:**

If any licensee sends any worker on personal basis in contravention of Sub-section (3) of Section 21, such licensee shall be punished with a fine of one hundred thousand rupees to three hundred thousand rupees or with revocations of license or with both punishments.

**53. Punishment to be imposed in the event of collecting visa fees, service charges and promotional costs in excess:**

If any licensee collects visa fees where free visa has been received or collects fees or costs in excess of the fees or costs as prescribed, the Department shall require the licensee to return such fees not to be charged or such excess fees or costs to the concerned person and punish such licensee with a fine of one hundred thousand rupees.

**54. Punishment to be imposed in the event of failure to observe order or direction:**

Except as otherwise provided for in this Chapter, the Department may warn for the first instance any licensee who fails to observe this Act and the rules, orders or directions framed or issued under this Act, punish such licensee with a fine of fifty thousand rupees for the second instance and with a fine of one hundred thousand rupees, along with revocation of license, for the third instance of the same offense.

**55. Punishment to be imposed in the event of doing or causing to be done act contrary to contract:**

If any licensee, after making a contract with any worker for work in a company, engages the worker in work for remuneration or facilities lower than that or in another company for a work of such nature as is different than that specified in the contract or does not engage the worker in the work for which the worker has been sent for foreign employment but engages the worker in another work or engages the worker in work for remuneration and facilities less than the remuneration and facilities offered previously, the Department shall punish such licensee with a fine of one hundred thousand rupees and require the licensee to pay the shortfall amount of such remuneration and facilities.

**56. Punishment to be imposed on accomplice:**

A person who is an accomplice in any offense referred to in this Act or aids and abets the commission of such offense shall be subject to half the punishment to be imposed in the case of that offense.

**57. Punishment to person who acts as chief:**

If any firm, company, institution or licensee commits any offense punishable under this Chapter and the officebearer or employee who has committed such offense is identified, then such office-bearer or employee shall, and if such office-bearer or employee cannot

be identified, the person who has acted as the chief of such firm, company or institution at the time of commission of the offense shall, be subject to punishment.

**58. No license be re-issued:**

After the license of any licensee has been revoked pursuant to this Chapter, no license shall be re-issued to the same institution and operator.

**59. Opportunity for defense:**

Prior to revoking the license pursuant to this Chapter, the concerned licensee shall be provided with an opportunity for defense.

## Chapter-10

# Investigation and Inquiry

**60. Limitation for complaint:**

Except in cases of the offenses punishable under Sections 43, 44, 45, 46 and 47, no complaint shall be entertained if it is not made within one year from the date of commission of any other offense punishable under this Act. Provided that this Section shall not be deemed to bar the making of a complaint by a worker, who has gone for foreign employment, within one year after the date of his or her arrival in Nepal.

**61. Investigation and inquiry of offense relating to foreign employment:**

(1) If the Department receives information directly or indirectly upon a complaint made by any person or in any other manner that any offense has been or is going to be committed in contravention of this Act or the rules framed under this Act, the Department may designate any officer of at least Gazetted Third Class as the investigation officer for the investigation of and inquiry into such offense.

(2) In making investigation of and inquiry into any offense pursuant to Sub-section (1), the investigation officer shall have the same powers as the police have under the prevailing laws, which include powers to arrest the person involved in the offense, search any place in relation to the offense, take custody of documents or other things related with the offense, record depositions and execute recognizance deeds.

(3) In making investigation of and inquiry into any offense pursuant to Sub-section (2), the investigation officer may get the accused to make deposition, and in the event that the immediately available evidences constitute sufficient grounds to show the accused as offender, get the accused to appear on the appointed dates, assigning the reasons for the same, release the accused on bail or guarantee or detain the accused, with the permission of the case trying authority, if the accused fails to furnish such bail or guarantee or detain the accused, with the permission of the case trying authority, for a maximum period of thirty days, not exceeding seven days at a time.

(4) In filing a case in his or her name after making investigation of and inquiry into pursuant to this Section, the investigation officer shall get advice of the government attorney.

(5) It shall be the duty of all the concerned including the police to provide necessary assistance to the investigation officer in the investigation and inquiry under this Section.

(6) The investigation officer investigating of and inquiring into an offense relating to foreign employment pursuant to this Section may, if there are appropriate and adequate reasons in the course of investigation, submit a report, accompanied by the appropriate and adequate reasons, to the Department for the suspension of the license of any licensee.

(7) The Department may, based on the report referred to in Subsection (6), suspend the license of such licensee for a maximum period of six months.

**62. Power to arrest:**

(1) Where any person has committed an offense referred to in Section 43 of this Act, the police employee may, if he or she considers that the person could abscond if that person is not arrested immediately, may arrest such person without warrant.

(2) The person arrested pursuant to Sub-section (1) shall be produced before the case trying authority within twenty four hours excluding the time required for journey.

## Chapter-11

# Trial and Settlement of Cases

**63. To be state cases:** The cases under this Act shall be state cases.

**64. Provisions relating to Foreign Employment Tribunal:** (1) For originally trying and settling cases other than those punishable by the Department as mentioned in this Act, the Government of Nepal shall, by a notification in the Nepal Gazette, constitute a three-member Foreign Employment Tribunal, under the chairpersonship of the Judge of Appellate Court, comprising the case trying authority of the Labor Court and the First Class Officer of Judicial Service recommended by the Judicial Service Commission.

(2) The tenure of the chairperson and members of the Foreign Employment Tribunal shall be of four years.

(3) The terms and conditions of service and facilities of the chairperson and members of the Foreign Employment Tribunal shall be as prescribed.

(4) The Foreign Employment Tribunal shall exercise its jurisdiction as prescribed.

(5) Pending the constitution of the Tribunal as referred to in this Section, the acts and action to be done and taken by the Foreign Employment Tribunal pursuant to this Act shall be done and taken by the concerned District Court.

(6) The Government of Nepal shall provide such employees as may be required for the Foreign Employment Tribunal.

**65. Procedures of cases:** The cases to be filed under this Act shall be tried and settled in accordance with the Summary Procedures Act, 2028 (1971).

**66. Appeal:** (1) A party who is not satisfied with a decision made by the Department



pursuant to this Act may make an appeal to the Government of Nepal within thirty-five days from the date of such decision.

(2) A party who is not satisfied with a decision made by the Foreign Employment Tribunal pursuant to this Act may make an appeal to the Supreme Court within thirty-five days from the date of such decision.

## Chapter-12

# Miscellaneous

### 67. Foreign Employment Department:

There shall be a Foreign Employment Department under the Ministry of Labor and Transport Management to carry out functions relating to foreign employment.

### 68. Appointment of Labor Attache:

(1) The Government of Nepal shall appoint at least Gazetted officer as the Labor Attaché for a country where five thousand or more workers have been sent for foreign employment.

(2) The functions, duties and powers of the Labor Attaché shall be as follows:-

(a) To give information to the Government of Nepal about the condition of labor and employment, factual information about immigration of the country where Nepalese workers are working and steps taken by that country for the protection of labor and international human rights and interests of workers,

(b) If there arises any dispute between a worker, employer institution or licensee, to assist in the resolution of such dispute,

(c) To make necessary arrangements for bringing back to Nepal any worker who has been helpless in the course of foreign employment,

(d) If any work corresponding to the skills of the Nepalese worker is available in the concerned country, to provide information thereon to the Government of Nepal,

(e) To take initiation in sending back the dead body of any worker, who has been a victim of natural calamity or who has died due to any cause, to Nepal with the assistance of the concerned country or employer institution,

(f) To make efforts to make a bilateral agreement at the governmental level for the supply of workers from Nepal,

(g) To provide necessary consultancy to workers, and discourage them to do any work other than that set forth in the agreement,

(h) To supervise any activity that may affect the workers, and (i) To perform such other functions as prescribed by the Government of Nepal from time to time.

(3) If both diplomatic mission and Labor Attaché are in any foreign country, the Labor Attaché shall have the obligation to perform the functions and duties set forth in Sub-section (1).

**69. Repatriation of income of workers:**

(1) Saving amounts earned by the Nepalese workers who have gone for foreign employment shall be repatriated to Nepal through a bank or an institution licensed to provide banking service.

(2) Notwithstanding anything contained in Sub-section (1), any worker may carry with him or her the saving amount earned by him or her in the course of foreign employment when he or she comes back to Nepal.

(3) If any Nepalese worker repatriates the earning, earned by him or her abroad within the period set forth in the agreement, to Nepal through a bank or an institution licensed to provide banking service, the facility as prescribed shall be provided to such worker.

**70. Prohibition on issuance of license:**

Notwithstanding anything contained elsewhere in this Act, if a person who has been punished by the court for any offense under this Act is a manager or director of any company and a period of five years has not elapsed after the service of such punishment, license shall not be issued to such institution.

**71. Power of Government of Nepal to reward:**

(1) On recommendation of the Board, the Government of Nepal may, each year, make reward, along with a letter of appreciation, to one excellent licensee, on the basis of prescribed criteria.

(2) Other provisions on making reward to the licensee shall be as prescribed.

**72. Provisions relating to health check up:**

(1) A worker who goes for foreign employment shall, prior to going abroad, get his or her health checked up by a health institution having obtained permission from the Government of Nepal.

(2) If a person who has gone for foreign employment after having undergone health check up pursuant to Sub-section (1) is compelled to return to Nepal because of a false health check up report given knowingly or recklessly or maliciously, the institution which has given such false health check up report shall bear the expenses incurred in going for foreign employment and returning to Nepal.

(3) There shall be an expert committee as prescribed to make decision whether a false health check up report has been given or not pursuant to Subsection (2).

**73. Provision of Labor Desk:**

(1) The Government of Nepal shall establish a Labor Desk at the international airport and other place, as required, in order to examine whether workers proceeding for foreign employment are going for such employment in accordance with this Act or not.

(2) The Labor Desk referred to in Sub-section (1) shall examine whether the workers have the labor permit, orientation certificate, receipt or voucher of payment of money as well as necessary documents.

(3) The Labor Desk referred to in Sub-section (1) shall send a report, accompanied by the

records of workers who have gone for foreign employment, to the Ministry each week.

**74. Provisions relating to opening of branch and appointment of agent:**

(1) A licensee may open its branch or appoint its agent in a country where it has sent workers by obtaining permission, as prescribed, from the Department.

(2) A licensee may open its branch or appoint its agent within Nepal by obtaining permission, as prescribed, from the Department.

(3) In appointing an agent pursuant to Sub-section (1) or (2), deposit as prescribed shall be furnished and the licensee itself shall be responsible for any acts and actions done and taken by such an agent.

**75. Provisions on sending workers back to Nepal:**

(1) Where any worker becomes helpless by the reason that the worker has not got such facilities as set forth in the contract and such worker has to return to Nepal, the concerned licensee shall arrange for the returning of such worker to Nepal.

(2) Where Nepalese workers have to be immediately brought back to Nepal due to a war, epidemic, natural calamity in the country where such workers are engaged in employment, the Government of Nepal shall make arrangements for repatriating such workers through the diplomatic mission or Labor Attaché.

**76. Returning to Nepal after expiry of term of visa:**

(1) A worker who has gone for foreign employment pursuant to this Act shall return to Nepal after the expiry of the term of visa issued by the concerned country.

(2) It shall be the obligation of the licensee to get a worker, who does not return to Nepal pursuant to Sub-section (1), to return to Nepal, with the assistance of the Department.

(3) The Government of Nepal may restrict the worker who has been so got returned to go abroad for three years after the worker has been got returned to Nepal pursuant to Sub-section (2).

**77. Provision of facilities to licensee:**

The facilities, as prescribed, shall be provided to the licensee while doing transaction of foreign currency in the course of carrying on the foreign employment business.

**78. To make public details relating to licensee:**

(1) The Department shall, from time to time, make public through various newspapers or its website details including the name, address, telephone number of the institution which has obtained license pursuant to this Act, details of agent or branch, if any, it has appointed or opened and the term of its license.

(2) Where any licensee is being subject to investigation for an offense referred to in this Act or the license of any licensee has been revoked, such details shall also be updated while making public the details pursuant to Subsection (1).

**79. Provisions relating to activities of Department:**

(1) The Department shall submit a monthly report of the activities which it has carried out

pursuant to this Act to the Ministry of Labor and Transport Management, Government of Nepal.

(2) The Ministry may, from time to time, give necessary direction to the Department in relation to the activities to be carried out pursuant to this Act.

**80. Record and report:**

(1) A licensee shall maintain, as prescribed, the records of workers sent for foreign employment. The Department may, at any time, inspect, procure and examine such records.

(2) Each licensee shall submit an annual report setting out the prescribed details to the Department within thirty days after the expiry of each financial year.

**81. Delegation of powers:**

(1) The Government of Nepal may, by a notification in the Nepal Gazette, delegate any powers conferred to it under this Act to any governmental body or authority.

(2) The Board may delegate any powers conferred to it under this Act to the Executive Director.

**82. Power to remove difficulties:**

If there arises any difficulty with the implementation of the objectives of this Act, the Government of Nepal may, by a notification in the Nepal Gazette, issue necessary orders for the removal of such difficulty.

**83. Saving of acts done in good faith:**

No governmental employee shall be personally liable in relation to any act done in good faith in exercise of the powers conferred by this Act.

**84. Prevalence of Act:**

The matters contained in this Act shall be governed by this Act, and the other matters shall be governed by the prevailing Nepal laws.

**85. Powers to frame Rules:**

The Government of Nepal may frame necessary Rules for the attainment of the objectives of this Act.

**86. Repeal and saving:**

(1) The Foreign Employment Act, 2042 (1985) is hereby repealed.

(2) All acts done and actions taken pursuant to the Foreign Employment Act, 2042 (1985) shall be deemed to have been done and taken under this Act.

**87. Transfer of cases:**

The cases which have been investigated and inquired by the Department under the Foreign Employment Act, 2042 (1985) and filed with the District Court at the time of commencement of this Act shall be transferred to the Tribunal referred to in Section 64 after the constitution of that Tribunal.

## Notes

<sup>1</sup>Adhikari, J. & Gurung, G. 2009. Migration, Security, and Livelihoods: A Case Study of Migration Between Nepal and India.

<sup>2</sup>Seddon, David; Adhikari, Jagannath; Gurung, Ganesh. 2001. The New Lahures: Foreign Employment and Remittance Economy of Nepal, Kathmandu

<sup>3</sup>Kansakar, Vidya Bir Singh. 1982. Emigration, Remittances and Rural Development. CEDA, Tribhuvan University, Nepal, p. 21

<sup>4</sup>Kansakar, Vidya Bir Singh. 2003. International Migration and Citizenship in Nepal, Population Monograph of Nepal. Kathmandu: CBS, p. 85-121

<sup>5</sup>NIDS, Nepal Migration Year Book 2009

<sup>6</sup>NIDS, Nepal Migration Year Book 2010

<sup>7</sup>Nepal Migration Yearbook 2010. Nepal Institute for Development Studies (NIDS). Ed. Dr. Anita Ghirmire, Ashok Rajbanshi, et al. Kathmandu, Nepal: 2011. And [www.pourakhi.org.np](http://www.pourakhi.org.np)

<sup>8</sup>NIDS, Nepal Migration Yearbook 2010

<sup>9</sup>"Nepal: Briefing to the UN Committee on the Elimination of All Forms of Discrimination Against Women." Amnesty International, KavLa'Oved, and POURAKHI. Amnesty International Publications, London: 2011.

<sup>10</sup>"Trafficking in Women and Children in Nepal, National Report: 2009-2010 Office of Special Rapporteur on Trafficking in Women and Children (ORST). National Human Rights Commission (NHRC).Lalitpur, Nepal: 2011.

<sup>11</sup>"False Promises: Exploitation and Forced Labour of Nepalese Migrant Workers". Amnesty International. London: 2011. (47, 67)

<sup>12</sup>Sanghera, Jyoti and Ratna Kapur. "Trafficking in Nepal: Policy Analysis – An Assessment of Laws and Policies for the Prevention and Control of Trafficking in Nepal. Horizons, The Asia Foundation, and The Population Council. Nepal: 2000.

<sup>13</sup>False Promises (2011) (98)

<sup>14</sup>Bhadra, Chandra. "International Labour Migration of Nepalese Women: The Impact of their Remittances on Poverty Reduction." Asia-Pacific Research and Training Network on Trade, Working Paper Series: Tribhuvan University. Sept 2007 <[www.artnetontrade.org](http://www.artnetontrade.org)>

<sup>15</sup>Conversations with these two experts also help to fill some other gaps the literature reviewed in this paper.

<sup>16</sup>Interviews with Helen Sherpa and Dr. Meena Poudel

<sup>17</sup>Sijapati, Bandita, Amrita Limbu, and Manisha Khadka. Trafficking and Forced Labour in Nepal: A Review of the Literature. Centre for the Study of Labour and Mobility.

Kathmandu, Nepal: 2011.

<sup>18</sup>“Prevention of Trafficking and the Care of Trafficked Persons: In the Contexts of an Emerging HIV/AIDS epidemic in Nepal.” Ed. Patricia Roberts. Horizons, The Asia Foundation, and The Population Council. Nepal: 2001. (8); Sanghera, Jyoti and Ratna Kapur (2000); “Status and Situational Analysis of Human trafficking in Cross-border Districts of Bihar” ATSEC Bihar, IMPACT. N.D. [http://www.atsecbihar.org/publications/impact\\_report.pdf](http://www.atsecbihar.org/publications/impact_report.pdf); Acharya, Meena, et. al. “Status and Dimensions of Trafficking within Nepalese Context.” Institute of Integrated Development Studies (IIDS) and United Nations Development Fund of Women (UNIFEM). Kathmandu, Nepal: 2004).

<sup>19</sup> Ibid, Sijapati, Bandita, Amrita Limbu, and Manisha Khadka (2011); Acharya, Mina et.al. (2004)

<sup>20</sup> Evans, Catrin and Pankaja Bhattarai. “Trafficking in Nepal: Intervention Models.” Horizons, The Asia Foundation, and The Population Council. Nepal: 2000.

<sup>22</sup> NIDS Migration Yearbook 2010 (17)

<sup>23</sup> Sijapati, Bandita, Amrita Limbu, and Manisha Khadka (2011)

<sup>24</sup> Kaspar, Heidi. I am the Household Head Now!: Gender Aspects of Out-Migration for Labour in Nepal. Nepal Institute for Development Studies (NIDS). Kathmandu, Nepal: 2005.; NHRC Report 2010

<sup>30</sup> US TIP Report (2011) documented anecdotal evidence suggesting that traffickers use ties to politicians, business persons, state officials, police, customs officials, and border police to facilitate trafficking.

<sup>31</sup> Dr. Meena Poudel, Helen Sherpa

<sup>32</sup> Acharya et. al. (2004)

<sup>33</sup> Acharya, Meena, et. al. (2004)

<sup>34</sup> False Promises (2011)

<sup>35</sup> False Promises (2011)

<sup>36</sup> Sijapati, Bandita, Amrita Limbu, and Manisha Khadka (2011) (17)

<sup>37</sup> Sanghera, Jyoti and Ratna Kapur (2000)

<sup>38</sup> HMG Nepal, “Foreign Employment Act.” 1985.

<sup>39</sup> Gurung, Ganesh. “An Overview Paper on Overseas Employment in Nepal.” Decent Work for all Women and Men in Nepal. International Labour Organisation, Nepal: 2004. (20)

<sup>40</sup> False Promises (2011)

<sup>41</sup> Evans, Catrin and Pankaja Bhattarai. “Trafficking in Nepal: Intervention Models.” Horizons, The Asia Foundation, and The Population Council. Nepal: 2000. (9)

<sup>42</sup> False Promises (2011)

<sup>43</sup> “Nepal: Briefing to the UN Committee on the Elimination of All Forms of Discrimination Against Women.” Amnesty International, KavLa’Oved, and Pourakhi. Amnesty International Publications, London: 2011.

<sup>44</sup> False Promises (2011)

<sup>45</sup> Ibid

<sup>46</sup> Debt is one of the ways that migrants are entrapped by employment agencies and effectively pushed into forced labour or other exploitative conditions (False Promises (2011))

<sup>47</sup> False Promises (2011)

<sup>48</sup> False Promises (2011)

<sup>49</sup> [www.pourakhi.org.np](http://www.pourakhi.org.np)

<sup>50</sup> NIDS and UNIFEM Chapter 4 “Nepali Women and Foreign Labour Migration” 2006.

<sup>51</sup> NIDS, “Qualitative Research on Experiences of Nealese Women Migrants to Gulf States,” 2012.

<sup>52</sup> “The law penalizes individuals between 500 riyals (\$133) and 1,000 riyals (\$267) for bringing foreigners into the country to work in any service, including domestic service, without following the required procedures and obtaining a permit.” (Country Reports on Human Rights Practices for 2012, [www.state.gov](http://www.state.gov))

<sup>53</sup> Due to the shift from Arabic to Asian migrant workers after the 1990-91 Gulf war, in 2010 almost three-fourths of the migrant workers were Asian.

<sup>54</sup> U.S. Department of State, Country Reports on Human Rights Practices for 2012, (<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>)

<sup>55</sup> HRW (Human Right Watch), Saudi Arabia Report 2013, (<http://www.hrw.org/world-report/2013/country-chapters/saudi-arabia>)

<sup>56</sup> U.S. Department of State, Country Reports on Human Rights Practices for 2012, (<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>)

<sup>57</sup> Migrant Forum in Asia, Reform of the Kafala (Sponsorship) System, pg. 2

<sup>58</sup> HRW (Human Right Watch) Kuwait Report 2012, (<http://www.hrw.org/world-report/2013/country-chapters/kuwait>)

<sup>59</sup> HRW (Human Rights Watch), UAE Report 2013, (<http://www.hrw.org/world-report/2013/country-chapters/united-arab-emirates>)

<sup>60</sup> U.S. Department of State, Country Reports on Human Rights Practices for 2012, (<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>)

<sup>61</sup> Please see annex

<sup>62</sup> According to the Department of Foreign Employment, Government of Nepal

## BIOGRAPHY

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Dr. Gurung a resident of Akrang Syangja, is a former member of the National Planning Commission of Nepal Government. He was also Vice Chairperson of the Social Welfare Council (apex body of I/NGOs of Nepal), Consultant to Ministry of Labour and Employment, and Chairperson of CARAM Asia (Secretariat based in Kuala Lumpur, Malaysia). As a consultant in World Bank, Asian Development Bank, UNDP, DFID and many I/NGOS in Nepal, he travelled all the 75 districts of Nepal.

He was a Visiting Fellow at Harvard University, USA and Yonneyama Fellow in Japan.

He did his PhD from University of Lucknow, India in sociology and presently, he is associated with Nepal Institute of Development Studies (NIDS).

Beside his articles in national and international journals/newspapers, he has authored / co-authored following books:

- School building construction in Nepal (1992)
- The new LAHURE (2001)
- Rethinking civil society role in sustainable development (2001)
- An overview on overseas employment in Nepal (2004)
- Nepali women and foreign labour migration (2006)
- Nepalko bhumi sudar auta nasakiyeko aandolan (2007) in Nepali language
- Migration, security and livelihoods (2009)
- Foreign employment remittance and its contribution (2010)
- Garibi ra bhumi sudar (2010) in Nepali language
- Remittance in Nepal a gender perspective (2011)
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- Nepali women in the middle east (2013)