

# Migration, Refugee and Conflict

Week 6 – Labour Migration Governance in Nepal

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# Why ?

- Labour Migration Governance is an important aspect to focus as it incorporates diverse processes and actors involvement in governing labour migration.
- The Global migration governance focuses international migration as the trans-boundary issue and the problems is cross border. This is because the issue of migration is a world issue connecting each other.
- Both national and international actors are a part of labour migration governance.
- Nepal sends a large number of labor migrants to Gulf Corporation Council(GCC) and Malaysia.
- The remittances sent by the labor migrants has a huge contribution in countries economy.
- Nepal Labour Migration Report 2022 developed by Ministry of Labour, Employment and Social Security(MoLESS) has categorized labour migration governance into eight diverse facets.

Labor Migration Governance in Nepal can be categorized to

1. Institutional Arrangements
2. Regulation of Private Entities
3. Strengthening of Foreign Employment-Related Services
4. Laws and Policies for Protection and Welfare of Migrant Workers
5. Policy Changes In Major Countries of Destination
6. Labour Migration Agreements
7. Nepal's Engagement in Regional and International Processes and Forums
8. Immigration into Nepal

# 1. Institutional Arrangements

- The Constitution of Nepal 2015 has introduced three-tier government in Nepal.
- It consists of federal, provincial and local governments.
- All three governments has its certain mandates.
- Federal government makes and enforces policies and bilateral agreements related to migration for foreign employment.
- The provincial and local governments formulate and implement policies and plans related to safe migrations, skills and reintegration. In addition, the records and registration of migrants and returnees fall on their work mandate.

# Government Institutions

## A. Ministry of Labour, Employment and Social Security(MoLESS)

- It is a top body of labour migration governance.
- It has the responsibility to manage and conduct day to day regulatory activities.
- These includes; monitoring of private sector those are involved in recruitment processes,labour approval issuing, handling the grievances of migrants and coordination in case of any issues such as repatriation.
- The main role it has is to make labor migration safe, respectful and well-managed.
- Furthermore, it also proceeds with creating employment opportunity in the country by utilizing knowledge, skills and remittances gained from foreign employment.

# Various Units under MoLESS

1. Employment Management Division: formulating laws and policies relating to foreign labour migration.
2. Foreign Employment Management Section: implements laws, policy and standards on foreign employment, engages in labour diplomacy and provides support to make foreign employment safe, decent and well-managed.
3. Employment Coordination and Information Section: It formulates and implement strategies to utilize skills of the returnee migrants. Also, it coordinates with agencies and sectors related.
4. Skill Development and Training Section: Focuses on preparing skilled human resources.

## 1. Department of Foreign Employment (DoFE):

- It manages and regulates labor migration
- Formulates and implements policies relating to foreign employment
- Keeps track of labor migration data
- Disseminates information
- Provides license to recruitment agencies & private sector institutions.
- Monitors them
- Focuses on recruitment process & practices
- Conducts researches to identify employment opportunities and new destinations
- Settles grievances

- DoFE has complaints registration and investigation section that investigates all complaints received.
- The complaint against recruitment agencies are dealt by DoFE. However, the complaints not resolved are forwarded to Foreign Employment Tribunal(FET).
- It also has an authority to impose penalties if necessary and accordingly refer cases to the police or FET.

## 2. Foreign Employment Board:

- Focuses on welfare of migrant workers.
- It also has Foreign Employment Welfare Fund (FEWF)
- Welfare includes providing financial support to migrant workers and their families in cases such as death, injuries, repatriation of migrant workers & dead bodies, providing scholarships to the children of deceased migrant workers.
- Also conducts social & economic reintegration programs for returnee migrant workers.
- Research studies are carried out along with curricula related to pre-departure orientations.
- Focuses on awareness ; both publishing and broadcasting.

### 3. Foreign Employment Tribunal (FET):

- It is a judicial body to look after the cases of foreign employment.
- It focuses on those case not dealing with DoFE.

### 4 Vocational and Skill Development Training Centre and SaMi:

- Vocational and Skill Development Training Centre (VSDTC) and SaMi programme through Migrant Resource Centres (MRCs)
- Provides various skills development trainings.

### 5. Migrant Resource Centres:

- Provides services such as counselling, financial literacy training, legal support, pshychosocial support, pre-departure vocational skills training etc.

## 6. Employment Information Centres (EICs):

- Established to provide information relating to opportunities at home and abroad on skilled workers available.
- Basically, focuses on collecting data on job demands locally and posting on their websites. There are 7 EICs at present under seven provinces of Nepal

## 7. Labour and Employment Offices:

- All 7 provinces of Nepal has this office to provide services to workers working inside Nepal
- These offices are responsible to issue and renew labour approvals.
- There are 11 Labour and Employment offices

## 8. Employment Service Centres (ESCs):

- Are established under the Prime Minister Employment Program (PMEP) of MoLESS.
- It is established at all 753 local levels to collect data on unemployed persons, to identify employment opportunities and provide information on the availability of workers to employers and provide other services related to employment.

## B. Ministry of Foreign Affairs:

- Responsible for protecting the rights, interests and security of Nepalese, including migrant workers living abroad.
- Diplomatic missions in countries of destination provide support to migrant workers using diverse approaches as per the situational demands.
- MoLESS also appoints Labour attaché and labor counsellors to the countries with 5000 or more Nepali migrant workers.
- Also, government appoints a woman labour attaché in countries where there are 1000 or more women migrant workers.

- Labor attachés in 7 countries of destinations: Bahrain, Kuwait, Malaysia, Oman, Qatar, Saudi Arabia (Jeddah) and the United Arab Emirates (UAE).
- Labour counsellors are in 5 countries: South Korea, the UAE, Qatar, Saudi Arabia (Riyadh) and Malaysia.
- Their responsibilities is to assist in issues related to migrant workers ; which basically includes dispute resolutions, providing counselling and many other relevant support.
- Department of Passport under MoFA focuses on the renew and reapply for the passports.
- Department of Consular Services at the destination has a main role of assistance; it includes search and rescue works, repatriation of dead bodies, grievances handling , document related issues and other relevant specific issues.

### C. Department of Immigration:

- This department is under the Ministry of Home Affairs (MoHA).
- It tracks the entry and exit of travel.
- Focuses on security in consideration to cross-border crimes and trafficking in persons.
- It records data on returnee migrant workers at Tribhuvan International Airport.

#### D. Council for Technical Education and Vocational Training (CTEVT)

- The government body that supports in skills development of migrant workers and returnees for their income enhancements.
- It has offices in all seven provinces of Nepal.

#### E. Provincial Ministries with Responsibilities on Labour Migration

- Koshi : Ministry of Industry, Labour and Employment
- Madhesh: Ministry of Social Development
- Bagmati: Ministry of Labour, Employment and Social Security
- Gandaki: Ministry of Education, Culture, Science, Technology and Social Development & Ministry of Tourism, industry, Commerce and Supplies

- Lumbini: Ministry of Labour, Employment and Transportation Management.
- Karnali: Ministry of Social Development
- Sudurpaschim: Ministry of Social Development.

#### F. Local Governments: The Local Government Operation Act (LGOA)

- Collects and records data of employed/unemployed local individuals and migrant workers.
- Financial literacy and skills development training for people proceeding for foreign employment.
- Social reintegration of returnee migrant workers.
- The knowledge and skills gained by returnee migrant workers are prioritized.

## G. Coordination Mechanism and Committees:

- These includes ; Foreign Employment Steering (Directive) Committee, Planning Programme and Budget Formulation Committee & Expert Committee.

## H. Other Regulatory Mechanisms

### 1. Nepal Rastra Bank:

- It is the central bank having a regulatory role on all financial and monetary matters.
- It manages and regulates remittances industry.
- It increases migrant workers to remit through formal means avoiding “*hundi*”.
- It also coordinates with government bodies.

## 2. Parliamentary Committees

- There is a parliamentary committee on Industry, Commerce, Labour and Consumer Interest
- It provides guidance and direction to government on labour migration.
- This committee discusses on parliamentary bills related to labour migration.
- There is also the parliamentary committee on International Relations
- It is International Relations and Labour Committee.

### 3. National Human Rights Commission (NHRC)

- Works in protecting rights of Nepali migrant workers and recommends government.
- NHRC cooperates with national human rights institutions of different countries.
- Signed MoU with NHRC of South Korea in 2010, NHRI of Qatar in 2015 and HRC of Malaysia in 2019 for protecting migrant workers in destination.
- Commission formed a multi-stakeholder task force to assist the government in dealing with migrant workers problem during COVID-19 (safe repatriation).

## 4. Decisions of Supreme Court and Declarations in regards to Labour Migration

- The petitions against the verdict of FET on labor migration related cases can be filed in Supreme Court and its verdict becomes final.
- Writ petitions are the methods adopted by activists, civil society, human rights lawyers and other bodies.
- The interim order, directive and show cause order have been given.
- Example: migrant workers right to vote, repatriation of migrant workers affected by COVID-19

## 2. Regulation of Private Entities

### A. Private recruitment agencies:

- The labour approval from DoFE to legalize migration process is important as this includes them in governments welfare schemes., Two ways to obtain labour approvals to proceed for foreign employment; on an individual basis / through recruitment agencies.
- These agencies need to be licensed by DoFE under Foreign Employment Act 2007.
- There is also a provision related to punishment for recruitment agencies in case of fraudulent activities and deception of migrant workers.
- In addition they have to renew their license every fiscal year and criterias also have been developed for their cancellations.
- To obtain labour approval recruitment agencies are required to submit documents to DoFE .
- They are monitored by DoFE

# Documents includes

- Certificate of training (if work requires skills training)
- Certificate of pre-departure orientation training
- Certificate of sound health
- Certificate of insurance
- Contract between the recruitment agency and the worker
- Contract between employment providing institution and worker
- Receipt or bank voucher of the amount the worker paid to the recruitment agency

## B. Health Institutions

- Obtaining health certificate from government approved medical institution prior to labour approval. Government of Nepal has 222 registered health institutions for health check-ups
- The Country of destination also sometimes takes initiatives regarding medical check-up . Example: Qatar Visa Centre established by Government of Qatar in Nepal facilitates the process of migration to Qatar. It provides health check-up to those workers going to Qatar. Also it requires additional health check-ups from registered health institutions by Government of Nepal.

### C. Pre-departure Orientation Training Centres:

- Pre-departure training is compulsory to obtain labour approval.
- These centres has to receive permission from DoFE to get registered by fulfilling certain criteria's.
- The pre-orientation training focuses on the laws, and country specific language,cultures,rules regulations. Moreover also talks about the security of workers making them aware.

### D. Insurance Companies

- Migrant workers proceeding for employment needs to have their insurance valid for the term of their employment contract and an additional 6 months ( 3 months before departure and 3 months after expiry of labour approval) ; NPR 1 million that is USD 8200.

## E. Involvement of Non-State Actors

- Engagement and roles of non-state actors is very important.
- non-governmental organisations, civil society organisations, human rights organizations, international non-governmental organizations have an important role to empower migrant workers and protect and promote their rights.
- Moreover, Non-Resident Nepali Association (NRNA) in the countries of destination has an immense role.
- Furthermore, trade unions, workers associations and diaspora organization also have been working towards protecting and promoting rights of migrant workers.
- Academia also has a role in disseminating labor-migration related knowledge for evidence based policy formulations.
- Role of national and international media is pivotal.

# 3.Strengthening of Foreign Employment Related Services

- Government of Nepal has taken various measures in improving foreign-employment related services by prioritizing use of information and communication technology (ICT).

## A. Progressing in Digital Governance

- Technology is a priority in contemporary world. For decent work practice technology plays an important role. This further ensures effectiveness and efficiency. Sustainable Development Goals, Global Compact on Migration also emphasizes on use of technology.
- Nepal is improving migration governance by the use of digitalization.
- The government agency has developed work plan for use of information technology.
- Foreign Employment Information Management System, Foreign Employment Welfare Information Management System. From March 2022 Government began issuing e-stickers accessible on phones and emails making and easy immigration.
- The complaints and grievances can be registered through electronic means.
- Online issuances of labor approvals is developed.
- Online application for new Labour approvals and renewals.

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## B. Governing on Human Trafficking and Smuggling

- Ministry of Women, Children and Senior Citizens (MoWCSC) is working to combat human trafficking and is also involved in rescue and repatriation.
- Anti-Human Trafficking Bureau under Nepal Police investigates and prevents cases on human trafficking.
- MoU signed between DoFE and Nepal Police to make foreign employment sector more organized, dignified and exploitation free by preventing human trafficking.

## Regulating Remittance

- Avoiding informal mechanism of remittance
- Developed policy to encourage Nepalese to send money through formal channels (Nepal Rastra Banks Monetary Policy 2021/2022) an additional interest rate of 1 % is paid on remittance deposits.
- Bilateral agreements to formalize remittance.

# 4. Laws and Policies

## Main Laws and Policies

- Foreign Employment Act,2007
- Foreign Employment Rules.2008
- Foreign Employment Policy,2012
- Fifteen Five-year plan of Nepal (2019/2020-2023/24)

## Other New Developments

- The Directive on the Management of Sending Domestic Workers for Foreign Employment, 2015
- The Foreign Employment Management Service Delivery Working Procedure 2022
- Directive Related to Process of Obtaining and Individual Labour approval for Foreign Employment, 2012

- Directive for the Rescue and Repatriation of Nepali Migrant Workers Stranded due to COVID-19,2020
- The Disaster Victim Rescue and Relief (7<sup>th</sup> amendment)Criteria,2020
- Skills are recognized and promoted
- The access to justice is ensured. The alternative dispute resolution (ADR) mechanisms are used.
- Several directives have been developed.ex: Legal Defence of Nepali Workers in Foreign Employment,2019

# 5. Policy changes

- The policy changes in major destination countries of destination also impacts Labour migration and the rights of migrant workers.
- Their concern focuses in diverse issues as such as prioritizing their own nationals over migrant workers, policies on employment permits and visas, policies on decent work, policies in concern to domestic workers, caregivers and women migrant workers, pandemic induced changes,
- These policy changes focuses on issue of migrant workers security,welfare,fair recruitment mechanisms, decent work practice and many more.

# 6. Labour Migration Agreements

1. Government to Government model (G2G) includes Israel, Japan and South Korea.
2. Agreements in which the Employment process managed through private recruitment agencies includes Bahrain, Jordan, Malaysia, Mauritius, Qatar and the UAE.
  - These agreements are a base towards viewing labour rights as human rights.
  - In addition , Nepal also has been involved in joint working committees and bilateral consultation mechanisms focusing on migrants issues and rights.

# 7. Engaging in Regional and International Processes and Forums

- Global Compact on Migration (GCM)
- Abu Dhabi Dialogue(ADD)
- Colombo Process (CP)
- South Asian Association for Regional Cooperation (SAARC) 2014 Declaration on Migration
- SDG

- GCM: To facilitate fair and ethical recruitment and safeguard conditions that ensure decent work.
- SDGs : promote sustainable and inclusive economic growth, full and productive employment and decent work for all and reduce inequalities within and among countries.

Target 8.5= By 2030, achieve full and productive employment and decent work for all women and men, including for young people and persons with disabilities and equal pay for work of equal value.

Target 10.7= facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies.

- CP: focuses on ethical recruitment practices, remittance safety and its efficient approaches, empowerment and awareness via pre-departure trainings
- SAARC focused on regional cooperation on migration via knowledge building and information exchange.

# 8. Immigration into Nepal

- Focuses on admission, residence and departure of foreign nationals in Nepal.
- Act, rules and procedures regarding immigration is developed that focuses on obligations and rights of immigrant workers.
- Department of Immigration (DOI) also has a data centre and a provision of biometrics.

# Necessity to Focus on

## Data records and data management

- Example: Data of Nepali migrants without labour approvals (irregular channels) bordering India. Migrating in tourist visas.
- The Foreign Employment Information Management System does not cover data of labor migration from Nepal to India.
- This FEIMS does not provide information on repeated labour approvals.
- The skill related information is not accurate ( Skill based on demand letter vs workers actual occupation)
- The returnee migrant workers skill and data are not incorporated for those returning from India proceeding without labour approvals.
- The Foreign Employment Welfare Information Management System (FEWIMS) also has no accurate data. Similar is the case with FET and DoFE.

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