



Policy Brief

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Situation of Decent Work of Nepali Migrant Workers in Country of Destination Wage Protection and Occupational Safety and Health

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Background

Labour migration is a reality in today's globalised world with individuals diversifying their livelihood and moving across borders in search of decent work and better wages. Migrant workers contribute significantly to the development of countries of origin and destination.

International instruments such as the Sustainable Development Goals 2030, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW), the Global Compact for Migration (GCM), and various ILO conventions and standards have recognised the importance of decent work for all, particularly migrant workers. However, protection of migrant workers and ensuring decent work for them continues to be a universal challenge despite persistent efforts by both countries of origin and destination. Migrant workers, including Nepali migrant workers, continue to face decent work deficits¹ in the form of wage theft, poor working and living conditions, lack of access to social protection and justice mechanisms, discrimination and abuse, lack of occupational safety and health measures, denial of freedom of association and assembly, and other workers' rights and labour rights violations.² Often, migrant workers are deceived in the recruitment process and those who migrate through irregular pathways and end up in irregular situations in destination countries are at increased risk of abuse and exploitation.

Drawing on the findings of the study 'Unscrupulous Recruitment and Precarious Employment of Nepali Migrant Workers' conducted by Centre for the Study of

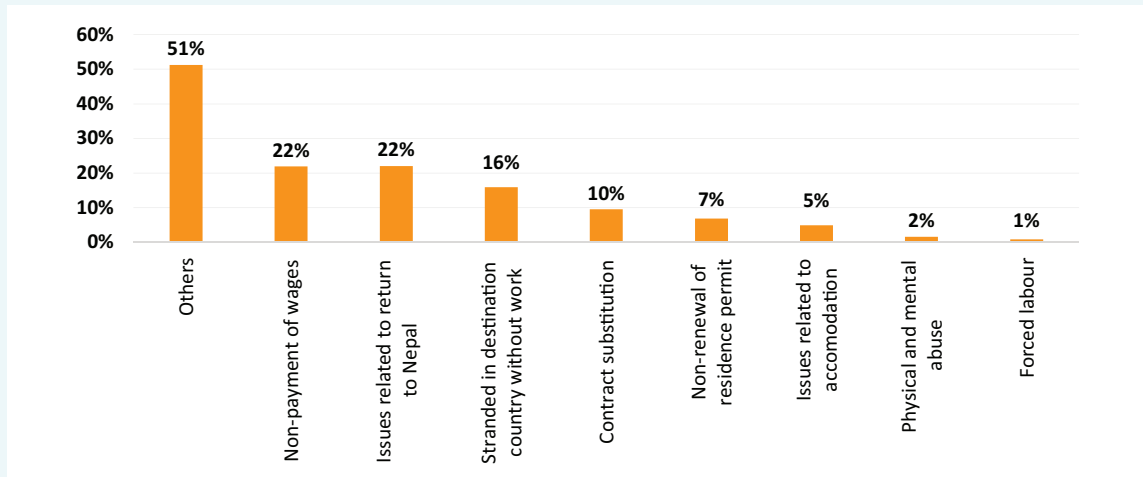
Labour and Mobility (CESLAM) in coordination with Pravasi Nepali Coordination Committee (PNCC), this brief presents the situation of work of Nepali migrant workers in terms of their experiences and challenges related to wage and employment contract, and their occupational safety and health at work. The study is based on data gathered by PNCC during registration of grievances by migrant workers at the organisation, comprising a total of 15,340 cases since 2014.

Nepali Migrant Workers' Situation of Work in Destination Countries

Contract substitution, wage theft and forced labour

Malpractices such as contract substitution whereby a worker is subjected to work under different terms and conditions of employment from what they signed up for prior to migration is a common issue faced by many Nepali migrant workers. This primarily includes getting a different salary/wage and/or job than what was originally promised to the migrant workers. Around 10 per cent of cases registered under 'contract related issues' were of contract substitution (Figure 1) and 16 per cent were related to migrant workers being stranded in the country of destination (CoD) without work. The issue of migrant workers being stranded in the destination countries without work was further exacerbated by the COVID-19 pandemic: the effect of the pandemic on the economies of the host countries resulted in many migrant workers losing their jobs, and thus, becoming stranded in the destination country.³ That the employment contract received

Figure 1: Types of contract-related issues faced by Nepali migrant workers



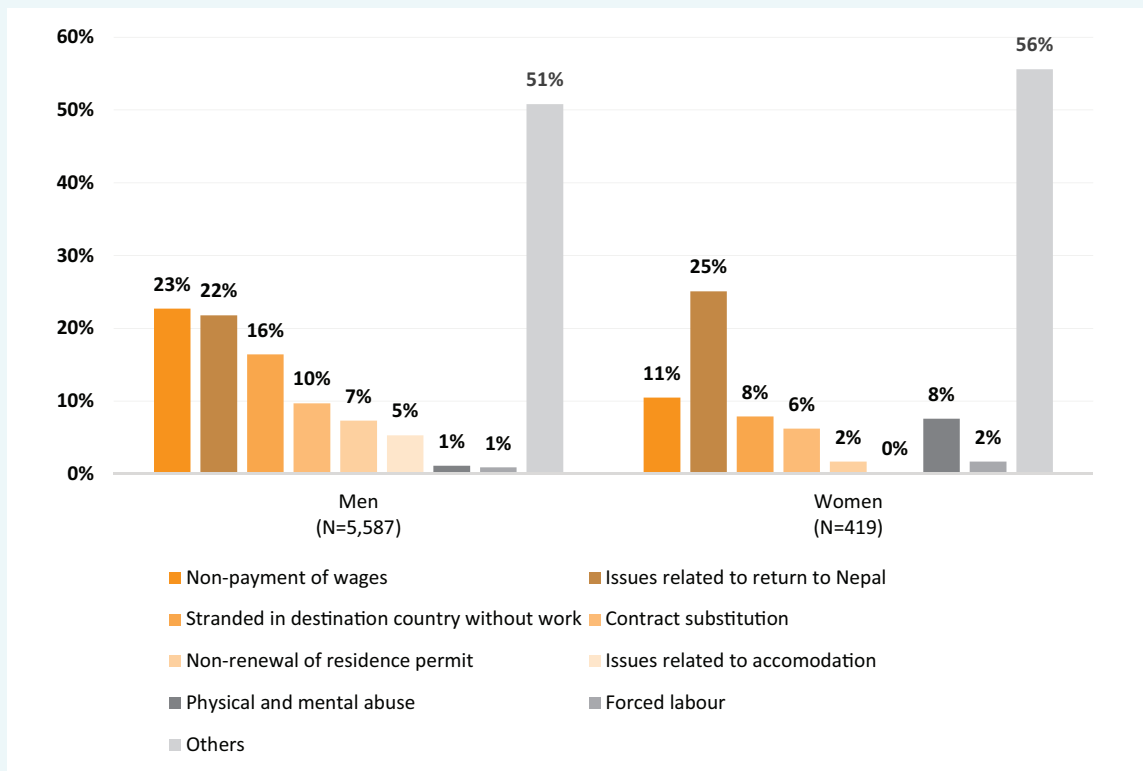
Multiple responses; N=6,276

during the recruitment process is consistent with the actual situation of work in the destination country is one of the most basic tenets of a fair recruitment practice, mentioned in most of the Bilateral labour Agreements (BLAs) and Memorandum of

Understandings (MoUs) signed by Nepal. However, the findings elucidate that compliance remains poor.

Nepali migrant workers also suffer from

Figure 2: Types of contract-related issues faced by Nepali migrant workers by sex



Note: Multiple responses

wage protection issues such as total or partial non-payment of wages, delayed payment of wages, wages below the minimum wage or the contractually agreed rate, and non-payment of overtime wages and benefits, among others. Data shows that Nepali migrant workers have suffered from non-payment of wages, physical and mental abuse and forced labour in the CoDs (Figure 2).⁴

The respondents (22 per cent) also faced issues related to their return to Nepal, with a slightly higher proportion of women migrant workers facing problems in this regard (Figure 2). The reasons for return included not getting the promised job and salary, not getting work in the destination country, being undocumented, family issues, physical and mental abuse, and wage theft, among others. Some migrant workers were also not allowed to return by their employers even when the former had legitimate reasons, revealing how migrant

workers' right to return home freely is still being violated.⁵ Not being able to return home is a form of forced labour.⁶

In terms of destination country, a higher proportion of migrant workers faced issues related to return in Jordan, Kuwait, Malaysia, and the United Arab Emirates (UAE) (Table 1). The proportion of Nepali migrant workers facing non-payment of wage was higher for Oman, Qatar and Saudi Arabia.

Besides multilateral conventions, bilateral labour migration agreements (BLMAs)—which encapsulate the particular situational exigencies between countries⁷—can be effective mechanisms to ensure decent work for migrant workers. However, the BLMAs signed by Nepal with various destination countries adopt very little from the principles of decent work. The concept of decent work has not been enunciated in an authoritative manner in any of the

Table 1: Types of contract-related issues faced by Nepali migrant workers disaggregated by destination country

Contract-related issue	Malaysia	Saudi Arabia	UAE	Oman	Qatar	Bahrain	Kuwait	Jordan	Others
Non-payment of wages	2.2	30.7	11.3	23.4	34.0	6.3	3.9	0.0	5.7
Issues related to return to Nepal	20.8	22.6	35.0	21.3	14.6	12.5	27.9	40.0	18.2
Stranded in destination country without work	2.6	26.4	27.1	2.1	8.8	6.3	4.5	6.7	13.6
Contract substitution	9.9	14.6	10.6	8.5	3.8	6.3	3.9	6.7	4.5
Non-renewal of residence permit	5.5	9.1	1.1	0.0	9.8	0.0	0.0	0.0	0.0
Issues related to accommodation	0.3	13.0	3.4	14.9	0.4	0.0	1.1	0.0	0.0
Physical and mental abuse	0.3	2.1	0.3	8.5	1.6	0.0	5.0	20.0	3.4
Forced labour	1.1	0.9	1.4	0.0	0.5	0.0	1.1	3.3	2.3
Others	60.9	42.6	43.8	59.6	56.5	81.3	60.9	36.7	58.0
Total %	103.5	162.1	134.0	138.3	130.1	112.5	108.4	113.3	105.7
Total number	1,195	1,998	943	47	1,780	16	179	30	88

Multiple responses.

BLMAs, but the components of the same have been placed under the jurisdiction of the destination country. As such, the destination countries have the prerogative of defining decent work, with many destination countries mentioning the treatment of Nepali migrant workers will be equal to that of other foreign workers – as opposed to equal status with nationals.⁸ Nepal’s BLMAs with CoDs, however, do have provisions requiring the work contract to include detailed descriptions of wages and benefits, accommodation, terms and conditions of employment and repatriation.⁹ However, as evident from the findings discussed above as well as in numerous other studies focused on Nepal’s labour migration regime, migrant workers continue to suffer from significant violations of their rights, thus increasing the social and financial costs of labour migration.

Occupational safety and health of migrant workers

Data shows that a significant number of Nepalis have died due to natural causes, suicide, traffic accidents and workplace

accidents (Figure 3); the prevalence of suicide is significantly higher among women migrant workers than men. Women migrant workers are victims of sexual abuse at a disproportionate rate and thus become more prone to mental health issues, leading even to suicide.

There is also a stark increase in the numbers of deaths for 2020 and 2021, the COVID-19 years. This concomitant increase in the number of ‘natural deaths’ with the start of the pandemic may likely indicate deaths caused by COVID-19. The implications of death cases registered at PNCC include, among other things, a need to repatriate the body to Nepal, the procession of the last rites in the CoD if required, the claiming of insurance by the families of the deceased, and issues associated with the inability to do the above-mentioned things due to various reasons. The irregular nature of the migration of the deceased or the expiration of the labour permit and thus the eventually-deemed irregularity of the migration were the primary reasons behind families of the deceased being unable to access repatriation services provided

Figure 3: Cause of death of migrant workers by sex

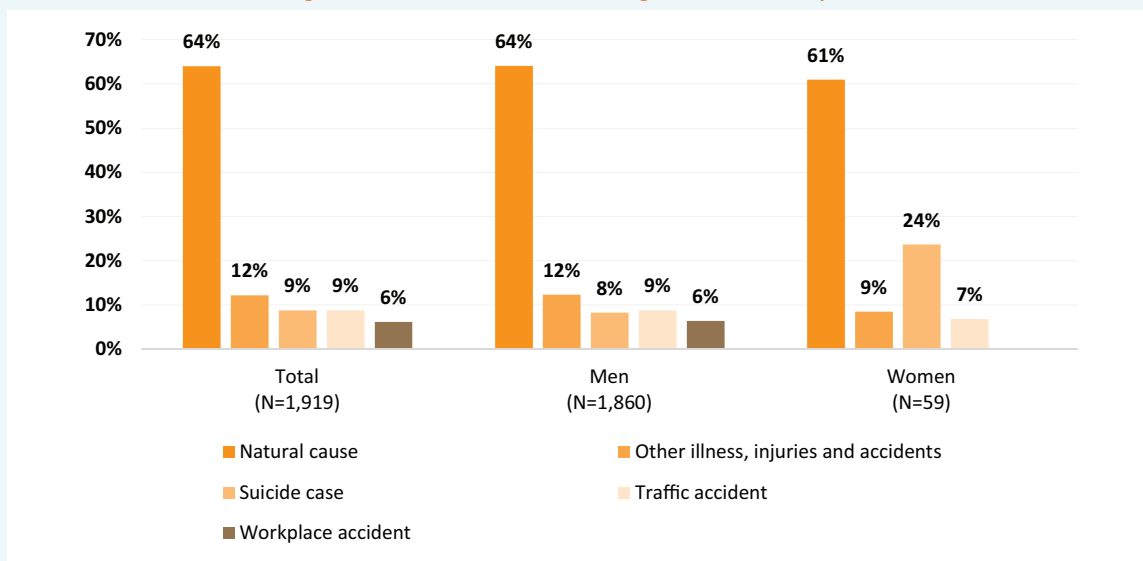


Table 2: Causes of death by year

Cause of death	2014	2015	2016	2017	2018	2019	2020	2021	2022
Natural death	76	144	184	118	102	67	242	283	13
Other illnesses, injuries and accidents leading to death	7	2	14	23	52	40	51	36	9
Suicide	6	6	11	28	20	9	38	43	8
Traffic accident	8	12	20	18	32	19	12	38	9
Workplace accident	4	9	15	22	22	23	5	16	3
Total number	101	173	244	209	228	158	348	416	42

Table 3: Causes of death by country of destination (in per cent)

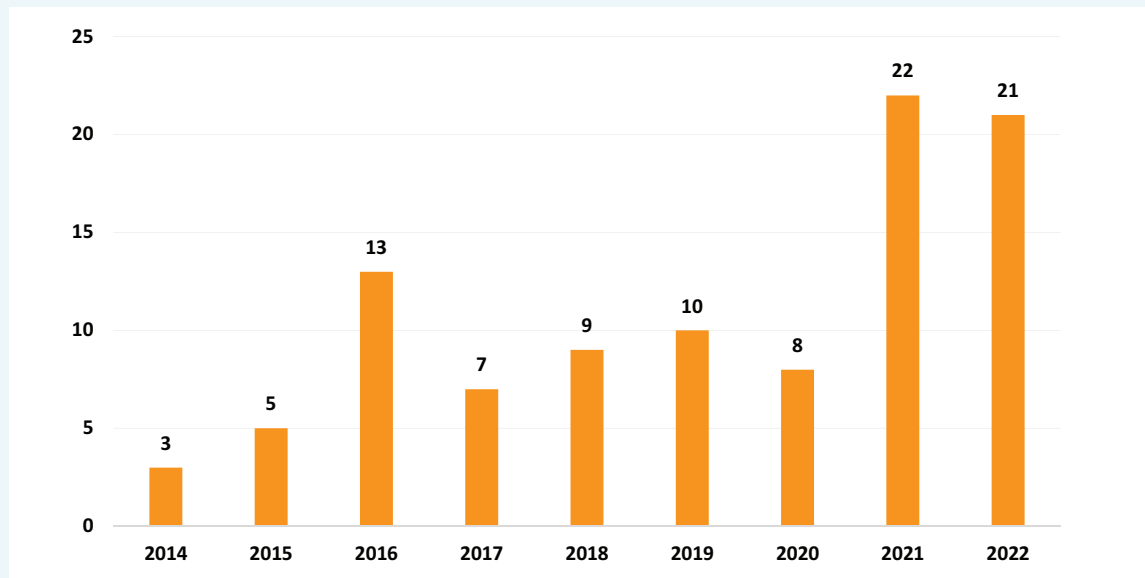
Cause of death	Malaysia	Saudi Arabia	UAE	Oman	Qatar	Bahrain	Kuwait	Jordan	Others
Natural causes	76.9	53.5	62.6	50.0	58.1	83.3	68.9	33.3	55.6
Other illnesses, injuries and accidents leading to death	4.2	13.9	19.4	10.0	20.5	16.7	17.6	0.0	25.0
Suicide	7.9	8.9	8.4	20.0	9.7	0.0	5.4	66.7	16.7
Traffic accident	5.7	14.8	7.7	10.0	6.0	0.0	2.7	0.0	2.8
Workplace accident	5.4	8.9	1.9	10.0	5.7	0.0	5.4	0.0	0.0
Total %	100	100	100	100	100	100	100	100	100
Total number	687	641	155	10	298	12	74	6	36

by the government thus, requiring support from PNCC. Disaggregated data on the death of migrant workers by CoD show that traffic accidents were one of the major causes of death in Saudi Arabia (Table 3). The cases of mental health problems have also gone up in the wake of the COVID-19 pandemic since 2020. The two recent years, 2021 and 2022, are the years when more than 20 such cases were reported (Figure 4). As the pandemic posed various challenges for migrant workers, this could have led to mental health issues.

It remains a challenge for the Government of Nepal (GoN) to ameliorate the current work situation of migrant workers. The

Nepali government enjoys no legal authority in the destination countries and its diplomatic missions have restricted mandates although they provide migrant workers with support in times of distress in principle. This means labour agreements are the crucial conduits through which the Nepali government can hold CoDs accountable for upholding fair practices and seek reparations for transgressions by employers. But, in this regard, it remains telling that most of the labour agreements signed by Nepal with destination countries are MoUs, which are not legally binding, as opposed to BLAs which entail legal enforcement.

Figure 4: Number of mental health related cases registered at PNCC



Way Forward

Based on the findings and discussion, the following recommendations are salient:

Amendment, revision, formulation and effective implementation of laws and policies

- The GoN needs to negotiate with destination countries to sign BLAs instead of MoUs as far as possible given the legally enforceable nature of the former. Although MoUs may also elucidate the overall objectives of the agreement and the guiding principles, their lack of legal enforceability can provide loopholes for non-compliance by the signatories.
- It is necessary for the government of Nepal to negotiate with CoDs in order to develop BLMAs that align with the criteria mandated by multilateral forums such as GCM, the Colombo Process, the Abu Dhabi Dialogue, among others. In this regard, the GoN needs to put forward stipulations such as the treatment

of migrant workers on an equal basis with citizens of the destination country and the incorporation of the components of decent work explicitly in the agreements.

- Except for the BLA signed with Jordan, a gendered approach has not been taken into account in the other labour agreements signed by Nepal and thus, these fail to cater to women migrant workers and the particular distresses they face. As such, women face increased vulnerability in the country of destination, thus leading the Nepali government to resort to blanket bans, that restrict the fundamental rights of citizens, when concluding labour agreements with the destination country could yield productive reforms. Thus, adopting a gendered approach in all of the BLMAs is necessary to ensure the unique challenges faced by women migrant workers are addressed.

In particular, specific domestic work-related clauses need to be inserted in the BLMAs in addition to those aimed at ensuring safe workspaces and living conditions, protection of the rights of migrant workers and mechanisms for punishment for abusive employers as well as provisions for monitoring from both sides—Nepali diplomatic missions and the government bodies of CoDs.

- The documentation status of migrant workers is crucial in order for them to avail of the benefits provided by GoN as well as the destination country. However, due to unforeseen and uncontrollable circumstances, many migrant workers become undocumented in the CoD and are unable to access the services provided by the GoN, such as those provided through the FEWF, despite having made the initial contribution to the fund while obtaining the labour permit. Thus, GoN needs to introduce mechanisms to formalise such migrant workers so they can avail of benefits from such funds. The clause to formalise such migrant workers can be inserted in the BLMAs signed with destination countries so that the cooperation needed from the CoDs for the formalisation process is also secured.
- The GoN should, through BLMAs, require CoDs to share information on detained Nepalis through its police authorities on a more regular basis. Also, proper implementation of the provision that confers employers in CoDs with the legal obligation to report on absconding Nepali migrant workers to the immigration department of their country or the Nepali diplomatic mission should be ensured.
- Similarly, Nepal's BLMAs with the CoDs (for instance, those with Qatar, South Korea and the UAE) have a provision of

instituting a joint working group/committee with the delegates from both parties to ensure the proper implementation and monitoring of the agreement and providing recommendations for amendments if and as required. In this regard, the GoN should proactively engage with the representatives from the host country prioritising Nepal's major concerns, issues and agendas for the rightful implementation (or amendment) of the agreement so as to maximise the welfare of Nepali migrant workers. More specifically, Nepal should prioritise and raise issues concerning the safety and social security of Nepalis workers in the CoD.

- A major distress factor reported by the respondents was being stranded in the destination country without work. In such a situation, migrant workers can be rendered extremely vulnerable. A cause as well as an exacerbating factor of this predicament is the need for migrant workers in many destination countries to obtain exit visas (called exit memos in Malaysia) before they are able to return to the country of origin. Such a requirement is an infringement of migrant workers' right to mobility and return and makes them further vulnerable to forced labour, and prolongs their stay in the destination countries without work, forcing them to exhaust their savings, or worse, take loans to survive. The government of Nepal needs to discuss and negotiate with CoDs to eliminate this practice.
- The staff placed in diplomatic missions of Nepal, in many circumstances, remain unaware of the policy changes or changes in the information management systems in Nepal. Thus, these changes should be properly communicated to them so they can make the necessary updates in the destination countries.

Ensuring access to justice of migrant workers

- Issues such as non-payment of wages, contract substitution, wage theft and occupational safety and health of migrant workers need to be effectively monitored. The diplomatic missions of Nepal need to be provided with greater resources so they can visit the work sites more frequently, inspect and monitor the workplace and converse with the migrant workers.
- Migrant workers have continued to face distress in CoDs despite the existing legal instruments such as the BLMAs. In this regard, the complaints registration mechanism under diplomatic missions needs to be made more comprehensive. To promote accessibility and transparency, the diplomatic missions need to make data on the complaints received and recorded available online in the consular section of their websites and link it to FEIMS. Further, the data needs to be reviewed and analysed regularly not only to capture the trends, but also to refurbish the services provided by the diplomatic missions and support evidence-based policy making.
- Services of diplomatic missions in geographically large countries such as Saudi Arabia and Malaysia should be provided on a digital platform so that migrant workers employed in remote areas do not have to travel to the capital city in order to access them.
- The GoN should provide adequate funds to diplomatic missions so they can support needy and vulnerable migrant workers, particularly in case of emergencies. This fund should also be made available for undocumented migrant workers.
- Funds should be made available for diplomatic missions to hire Public Relations

(PR) officers and lawyers proficient in the CoD's language so that they can help the missions to provide critical services including legal assistance to Nepali migrant workers in CoDs, engaging and negotiating with employers, and coordinating with authorities. In order to ensure that undocumented migrant workers can benefit from the FEWF and the Social Security Fund (SSF) in case of distress, serious efforts should be made to enrol them in the funds using digital means or through diplomatic missions.

Ensuring welfare and social security of migrant workers

- Governments of both the countries of origin and destination should develop a wage protection system for migrant workers irrespective of their migratory and legal status. The role of social partners, primarily workers' and employers' organisations is crucial in developing and implementing the wage protection system for migrant workers. The government should engage in social dialogue and consultation when designing such systems.
- Consultation and cooperation between the governments of Nepal and destination countries is important in efforts to address the issues related to wage protection, forced labour and occupational safety and health of migrant workers irrespective of their legal status.
- Migrant workers should be incorporated in the national social protection responses of the country of destination. It is necessary that agreements similar to the memorandum of collaboration signed with the Malaysian government that allows Nepali migrant workers to enrol in the Malaysian Social Security Organisation (SOCSSO) are

signed with other CoDs. For this, advocacy by international organisations such as the ILO and IOM as well as Civil Society Organisations (CSOs) and trade unions will be vital. Further, the government of Nepal as well as CSOs and trade unions should advocate to ensure migrant workers have access to affordable healthcare and safe working and living conditions in line with labour and safety standards.

- The government of Nepal and the destination country should conduct human rights due diligence by identifying, preventing, mitigating and addressing the adverse human rights impacts faced by migrant workers. A transitional justice mechanism should be developed to address the grievances, claims and labour disputes of migrant workers in line with the provisions in the UN Guiding Principles for Business and Human Rights. CSOs and trade unions should continue their advocacy for establishing a transitional justice system for migrant workers.
- The GoN should initiate work with companies that are part of the Responsible Business Alliance (RBA), as they are more responsive to adopting fair and ethical recruitment, safe working conditions and labour rights protection.
- The employers in destination countries should also be made accountable for proper diagnosis and treatment of Nepali migrant workers who develop health issues. The practice of providing painkillers for ailments, as is revealed through anecdotal evidence, should be stopped.
- Many migrant workers are dying in the host country due to various causes such as cardiac arrest, overworking/long working hours, congested living con-

ditions, heat stress and so on. In many cases, death due to such causes have been categorised by the employer as death from 'natural causes'. Such incidents clearly call for particular attention to the safety and health of migrant workers. To mitigate such incidents, the responsible authorities in Nepal should increase awareness of the same and provide effective training to migrant workers during the pre-departure orientation training (PDOT) combined with proactive re-orientation by the Nepali diplomatic mission once the migrant workers reach the CoDs. Analogously, in cooperation with the host country authorities, Nepali diplomatic missions can also play a proactive role in ensuring that migrant workers are provided the rightful compensation, insurance and social protection from the employers. While there is contention on the cause of death of Nepali migrant workers, currently, there is no protocol for conducting post-mortem in Nepal thus, deeming the cause of death as reported by the employer. For this, it is important for the GoN to introduce clauses in the BLMAs in order to ensure the correct cause of death of migrant workers is determined after a thorough medical examination. The current reporting on deaths, which shows a high number of 'natural' deaths, is most likely incorrect.

Active multi-stakeholder engagement and social dialogue

- It is crucial that the GoN and its diplomatic missions actively engage with and mobilise support from I/NGOs, NHRIs and diaspora associations in providing various support to Nepali migrant workers in CODs, particularly in times of crisis, disaster and conflict.

- Social partners can also play a crucial role in monitoring the situation of wage protection and occupational safety and health of migrant workers. CSOs and trade unions can help to monitor whether migrant workers are receiving wages as agreed upon or according to the minimum standards of the country of destination. They can also support migrant workers facing wage issues through engagement with employer organisations and employers in the host country. They can also provide support through documentation and dissemination of best practices and lessons learnt in regard to the occupational safety and health of migrant workers at regional and international platforms.

Evidence and knowledge generation and management

- Administrative databases of CSOs and trade unions generated while providing support and assistance to migrant workers, such as the one maintained by PNCC,

have the potential to support evidence-based policy and complement existing data collected by different government agencies such as the National Statistics Office and the Department of Foreign Employment. The GoN should recognise the unique opportunity such administrative data provide and make use of them to inform policy decisions. CSOs and trade unions should also increase their administrative data sharing.

Information dissemination and awareness raising

- Awareness-raising programmes need to be conducted for migrant workers in order to make them aware of the perils of irregularity and of changing employers without following proper procedures as well as warn them against the false allure of money often shown by agents which rarely become reality.

Endnotes

- 1 A work, to be decent, should provide fair income, guarantee job security and safe working conditions, includes social protection for workers and their families, accords equal opportunities and treatment, offers prospects for personal development and social integration, allows workers freedom to organise and express their concerns. https://international-partnerships.ec.europa.eu/policies/sustainable-growth-and-jobs/employment-and-decent-work_en.
- 2 ILO, *Fair Recruitment and Access to Justice for Migrant Workers* (Geneva: ILO, 2022); International Labour Organization, *ILO Global Estimates on International Migrant Workers: Results and Methodology* (Geneva: ILO, 2021).
- 3 For similar findings, see Jeevan Baniya and Sadikshya Bhattarai, *Analysis Report of Recruitment Reviews from Nepali Migrant Workers* (Kathmandu: General Federation of Nepalese Trade Unions, 2022).
- 4 See also Sadikshya Bhattarai, Jeevan Baniya, Dogendra Tumsa and Nilima Rai, *Return, Wage Theft and Access to Justice of Nepali Migrant Workers* (Kathmandu: CESLAM/SARTUC/ITUC_NAC, 2022); Sadikshya Bhattarai, Jeevan Baniya and Dogendra Tumsa, *Impact of COVID-19 on Nepali Migrant Workers* (Kathmandu: CESLAM and PNCC, 2022).
- 5 Baniya and Bhattarai, *Analysis Report of Recruitment Reviews from Migrant Workers*.
- 6 ILO, *ILO Indicators of Forced Labour* (Geneva: ILO), https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf.
- 7 John Gerard Ruggie, 'Multilateralism: The Anatomy of an Institution', *International Organization* 46, no. 3 (1992): 561-598.
- 8 Jordan and Mauritius are two countries where equal treatment with nationals is mentioned.
- 9 MoLESS, *Nepal Labour Migration Report 2022* (Kathmandu: MoLESS, 2022).



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