

Working Paper III

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Nepali Migration to India

Sanjay Sharma
Deepak Thapa



Centre for the Study of
Labour and Mobility

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I. THE CONTEXT

Human mobility between Nepal and India is a historical as well as contemporary reality, wherein individuals from one country have worked and lived in the other without let or hindrance. But, despite the continuous high levels of movement back and forth, this cross-border travel has generally received scant attention at the state level. There are exceptions when either side tightens state boundaries to suit their respective purposes, but in general the unregulated two-way flow of people across the border continues unabated.

An ever-growing population, scarcity of agricultural lands, and high rates of taxation and interest have forced generations of Nepalis to seek alternative forms of livelihood in what is present-day India.¹ Although the migration of Nepalis to India (and vice versa) is a historical fact, the first recorded instance after the formation of the Nepali state in 1768-69² was the recruitment of Nepalis into the armies of Sikh ruler Ranjit Singh and other hill states of Punjab in Northwestern India in the early years of the 19th century.³ A little later, during the Anglo-Nepal war of 1814-1816, the British signed a treaty in May 1815⁴ that allowed Nepalis to join the British army. Thus, even as the fighting between the two sides continued, the British managed to raise four battalions consisting of Gorkhas (a generic description that included in its fold people from the Kumaon-Garhwal hills who had been subdued by the expanding Gorkha empire, prisoners of war, and those who had surrendered to the British).⁵ Formal recruitment of Nepalis from within the country became possible only after 1885⁶ (while recruitment into the Indian Army began after the end of British rule in India in 1947⁷).

The border between the two countries is an open one, which means that citizens of either country can move freely across the land border without even being recorded.⁸

1 Gurung et al 1983, 187; Regmi 1999, 83-96; Stiller 1976, 73-8.

2 That was when Prithvi Narayan Shah conquered the Nepal (Kathmandu) Valley and is generally accepted as the founding date of the state of Nepal.

3 Bohra and Massey 2009, 623; Gould 1999, 66-7; Sharma 2007, 192; Thieme 2006, 12.

4 See Annex III for the Treaty.

5 There were around 5,000 men in the four battalions, namely, two Nasiri battalions (later, the 1st Gurkha Rifles regiment), Sirmoor battalion (2nd Gurkha Rifles), and Kumaun battalion (3rd Gurkha Rifles) (Gould 1999, 61). See also Khanduri 1997, 279-82.

6 Husain 1970, 243; Mojumdar 1973, 162-3. However, the Nepal government is believed to have sent its men to fight for the British before 1885 as well even though the attitude of the government was to 'positively discourage' the recruitment (Rathaur 2000, 54). It is also argued that the year was 1884 (Gurung et al 1983, 187) and 1886 (New Era 1981, 41) instead of 1885.

7 As per the 1947 agreement among the United Kingdom, India, and Nepal of the total 10 Gurkha regiments, four would go to Britain and the remaining six would stay in India. India subsequently raised an 11th regiment. See Annex IV for the full text of the agreement.

8 The movement of Indians to Nepal is itself a subject of a separate paper and not dealt with here.

Hence, the actual number of Nepalis in India remains unknown, with independent estimates putting it at anywhere between a few hundred thousand⁹ to a few million.¹⁰ Coincidentally, the censuses of 2001 conducted in both countries agree that the number is below 600,000, but disagree wholly on who constitutes that number (see Section 2.2). The difficulty of accurately estimating the number of Nepalis in India is due to a number of reasons, including the high mobility of Nepali workers; prevalence of cross-border marriages; the significant population of Indians with historical roots in Nepal; and the many Nepalis who have managed to gain domiciled status in India without it being recorded in either country.

Given its proximity, India has for long been a major destination for Nepali workers. But over the past couple of decades, the rate of migration to India has decreased with more and more Nepalis seeking employment opportunities elsewhere, especially in the Gulf region and Malaysia. Hence, the focus of attention of the government, civil society actors and the general populace in Nepal has been on labour migration to third countries, and has overshadowed the fact that in terms of sheer numbers, India still draws more Nepalis than any other place and also remains the default choice for Nepali migrants who cannot afford to go anywhere else.¹¹

Various rules and regulations have been formulated to cover migration to non-India destinations and ensure the rights and welfare of labour migrants there, but in the case of those going to India there is no legal framework to protect them. The one document that is considered the bedrock of inter-state relations between the two countries, the Indo-Nepal Treaty of Peace and Friendship 1950, does not even explicitly mention the issue of labour migration although it does recognise the fact of cross-border human mobility.¹²

Traditionally, Nepalis have worked for the Indian state, both as part of its famed Gorkha regiments and the civil service; in the private sector as security guards; as domestic workers; and as manual labourers in mines, tea estates and dairy farms. Recently, there have also been the twin phenomena of a large number of student migrants from Nepal to India and of second-generation Nepali migrants in India taking up various white-collar professions there. Nepalis working in India have been contributing substantially to the subsistence of their families back home. But, it is not only because of remittances that Nepali migration to India is of significance. Various

9 Kollmair et al 2006, 155; World Bank 2011, 101.

10 Seddon, Adhikari and Gurung 2001, 49-51.

11 World Bank 2011.

12 Articles 6 and 7 of the Treaty come closest to mentioning the rights of migrants in general but not specifically of labour migrants. See Annex V for the full text of the treaty. Similarly, the 1947 Tripartite Agreement among the United Kingdom, India and Nepal, which provisioned for Nepalis to serve in the Indian army (along with the British army), is perhaps the one document that deals with Nepalis working in India but its scope is limited to just the seven Gorkha regiments in the Indian army, and is not even meant to cover Nepalis working in other sections of the Indian armed forces.

studies have shown that men practise unsafe sex while working in Indian cities and often become infected with sexually transmitted diseases which they pass on to their partners back home. Similarly, Nepali women and children are trafficked to Indian brothels, circuses and mines. Prospective migrant workers to third countries also use India as a transit point to reach their destinations, in breach of Nepal's laws regulating foreign employment.

This paper provides a summary examination of the Nepal-India migration corridor and highlights some salient features linked to it.

2. NEPALIS IN INDIA

2.1 Open Border

Nepal shares an 1850-km-long border with India to its east, south and west. It is an open border as far as the movement of the citizens of the two countries is concerned. That was not always the case though. Until the Sugauli Treaty of 1816, that ended the Anglo-Nepal War and clearly marked off the territories of Nepal and the English East India Company, there was little sense of an international border.¹³ Following the War, however, the Nepali state placed strict restrictions on Nepalis leaving the country, primarily as a means to prevent its men from being recruited by the British.¹⁴ Although it was never strictly enforced, this form of border control remained in place until 1885 when the British were given permission to begin recruitment within Nepal itself, and the open border system was re-established.¹⁵

At present, thousands of Nepalis cross this border every day and enter India and/or come back to Nepal from the five major transit points (Kakabhitta-Siliguri, Biratnagar-Jogbani, Bhairahawa-Sunauli, Nepalgunj-Rupediya and Dhangadhi-Gauriphanta); 22 trade transit routes;¹⁶ and numerous unguarded border transits. Nationals of both countries can cross this boundary without producing any proof of identity.¹⁷ By the very act of crossing over to India, in principle, Nepalis invoke the same privileges granted to Indian citizens, while the social, cultural and traditional commonalities between the two countries have further made this open border a unique one.

The open border has also confronted both Nepal and India with many challenges. One of the major problems is that there is no record of how many individuals cross the border, where they go, and for what purposes. This perhaps explains the ease with which many top-ranking Maoist leaders from Nepal found sanctuary in India during the armed insurgency (1996-2006).¹⁸ Moreover, many people, mainly women and children, are trafficked from various Nepali districts to Indian brothels, circuses, mines and other high-risk areas.¹⁹ There is also plenty of anecdotal evidence, as

13 Kansakar 2003b.

14 Husain 1970, 240-2.

15 Mojumdar 1973, 162-3.

16 These 22 trade transit points include the earlier mentioned five major ones.

17 There often are occasional interrogations from the security personnel, custom officers, or individuals working to combat trafficking in persons. However, these are not in any way meant to restrict, check or document the cross-border movement of individuals. Air travellers are required to produce a specified form of government-issued ID though.

18 Mishra 2004, 634-42.

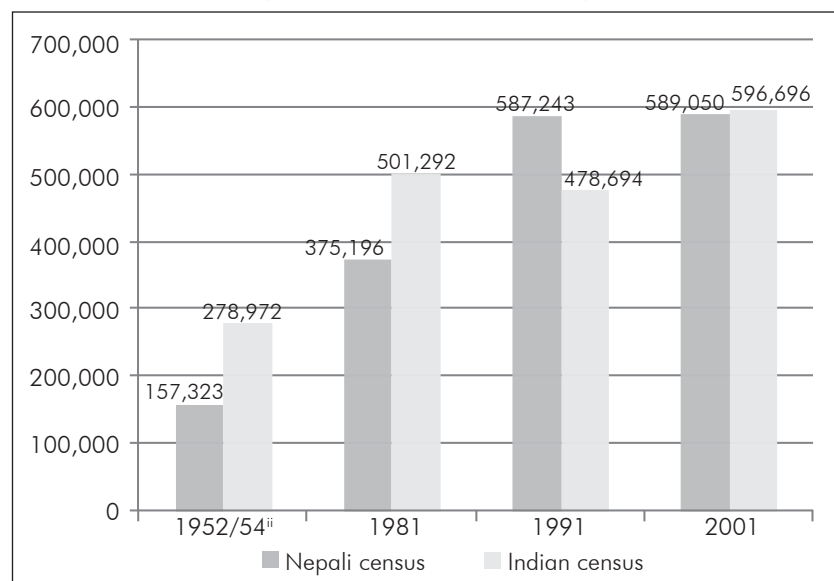
19 Lahiri-Dutt 2008, 225-6.

reported in the media, and also embedded in the everyday vocabulary of areas with high volumes of Nepali migrants to India, that they are harassed by the police and goons alike along the border region and often robbed while returning home. The open border is also highly sensitive from the point of view of security, including the ease with which there is illicit transfer of arms, drugs and money while groups linked to global terrorism also take advantage of it.²⁰

2.2 A Statistical Overview

It is difficult to ascertain the number of Nepalis living in India for a number of reasons but, as outlined earlier, it has mainly to do with the porous nature of the Nepal-India border; cross-border marriages; seasonal migration across the international boundary; and the long history of Nepalis settling permanently in India. Largely unknown is the whereabouts of many Nepalis in India, the sectors they work in, and the conditions they work under. In fact, apart from statistical data in the form of ‘absentee population’ in various surveys, including the census, the Nepali state has largely ignored its migrant population in India. There is no official figure of how many Nepalis cross the border between India and Nepal, or of how many Nepalis work in India and where.

Figure 1: Nepalis in India
(as per the national censuses)ⁱ



ⁱ The detailed data on the number of Nepalis in India as per the 2011 census has not yet been released by both the countries.

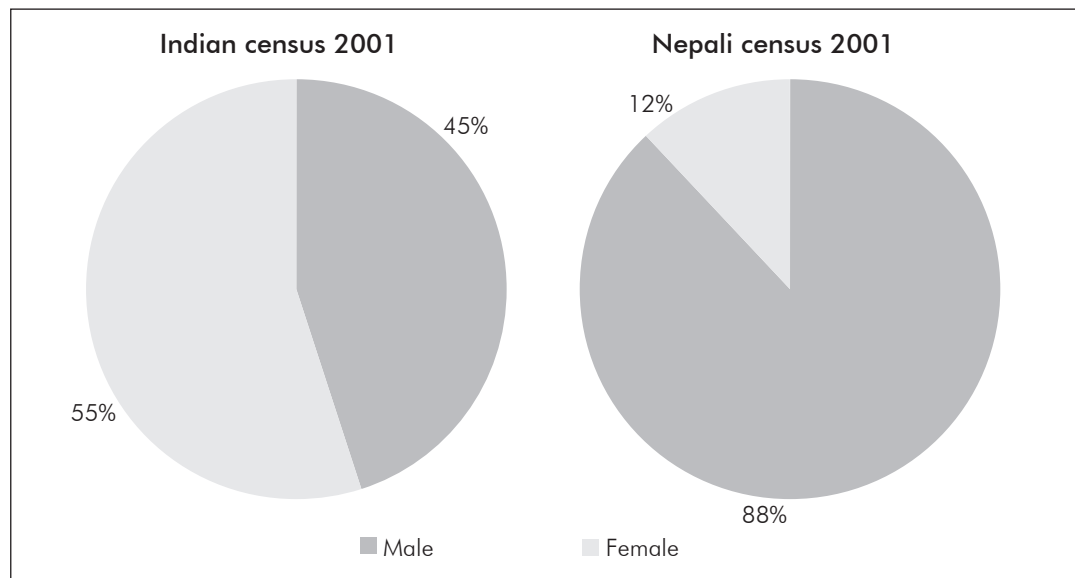
ⁱⁱ The census data was collected in the year 1952/54 in Nepal and in 1951 in India.

Source: Censuses of Nepal and India

Perhaps the only factual indication of the number of Nepalis in India comes from the census data of the two countries, but these have provided widely variant figures over the years. In fact, it is only in the 2001 census that there was any convergence on the numbers, with Nepal identifying a total of 589,050 Nepalis in India,²¹ and India reporting 596,696 (Figure 1).²² Unofficial estimates, however, are higher, ranging from a high of 3 million²³ to 1.4 million²⁴ to a very precise 892,312.²⁵

It is clear that these are no more than guesstimates for even when the Nepali and Indian censuses come close to agreeing with each other, as in 2001, there are discrepancies.²⁶ While the Nepali census affirms the commonly held belief that migration is a male prerogative, the Indian census challenges it. Thus, Nepal's census shows that of the 589,050 Nepali migrants in India, 520,500 (88.3 per cent) were male and only 68,550 (11.7 per cent) female,²⁷ and the Indian census shows more females than males, i.e., of the total 596,696 Nepalis in India, only 270,258 (45.3 per cent) were males and 326,438 (54.7 per cent) were females.²⁸

Figure 2: Gender Breakdown of Nepalis in India



Source: Census of Nepal 2001 and Census of India 2001

21 CBS 2002.

22 www.censusindia.gov.in/Census_Data_2001/Census_Data_Online/Online_Migration/International_Migration_Top_Three_Country.aspx. Accessed 10 April 2013. See Annex I for comparative census data of the two countries since 1951.

23 Seddon, Adhikari and Gurung 2001, 45-51.

24 Neupane 2005.

25 Kollmair et al 2006, 155.

26 See Annex I for gender-based comparative data of the two countries since 1951.

27 CBS 2002.

28 http://www.censusindia.gov.in/Census_Data_2001/Census_Data_Online/Online_Migration/International_Migration_Top_Three_Country.aspx. Accessed 10 April 2013.

The difference in the two censuses indicate that many Nepalis are 'lost in India' in that they are missing in the eyes of both states. Among the reasons for such a divergence in the data could be: the presence of a large number of Nepali women, girls and children in Indian brothels, circuses and mines; cross-border marriages that result in many Nepali women settling in India; seasonal labour migrants who travel frequently across the border; improper definition of who Nepali migrants are and who Indian citizens of Nepali origin are by the Indian census; and migration of whole families to India that do not get recorded in the Nepali census.²⁹

2.3 Seasonal Migration

Seasonal migration is a vital, and unique, aspect of labour migration between Nepal and India. Many rural Nepalis, mostly male, go to India for work during the lean agricultural period and return before the planting season. One study put the number of Nepalis going annually to India for seasonal work at 800,000.³⁰ This form of migration to India has long served to diversify the livelihood base of Nepal's rural economy, particularly in the Far-West. The continuous movement across the border, however, makes it all the more difficult for Nepal to keep track of the exact number of its citizens who have migrated to India. The frequent departure and arrival has also had the unintended consequence of increasing the chances of transmission of HIV and other sexually transmitted diseases (STDs) to partners back home if migrants have indulged in unsafe sex across the border.³¹

2.4 Migration from the Tarai

Migration to India has generally been considered a hill phenomenon. The fact that many people from Nepal's Tarai belt, including a large number of Madhesis, also go to India for work is largely ignored not just in the migration literature but also by the wider populace that erroneously considers migration to be solely a hill-male behaviour. Despite the fact that nearly 30 per cent of Nepali migrants as per the 2001 census were from the Tarai (which, of course, includes people of hill origin living in the Tarai),³² there is a dearth of literature that looks at migration from the Nepal Tarai to India. Because of this faulty understanding of the nature of migration, migrants from the Tarai become invisible to researchers as well as to

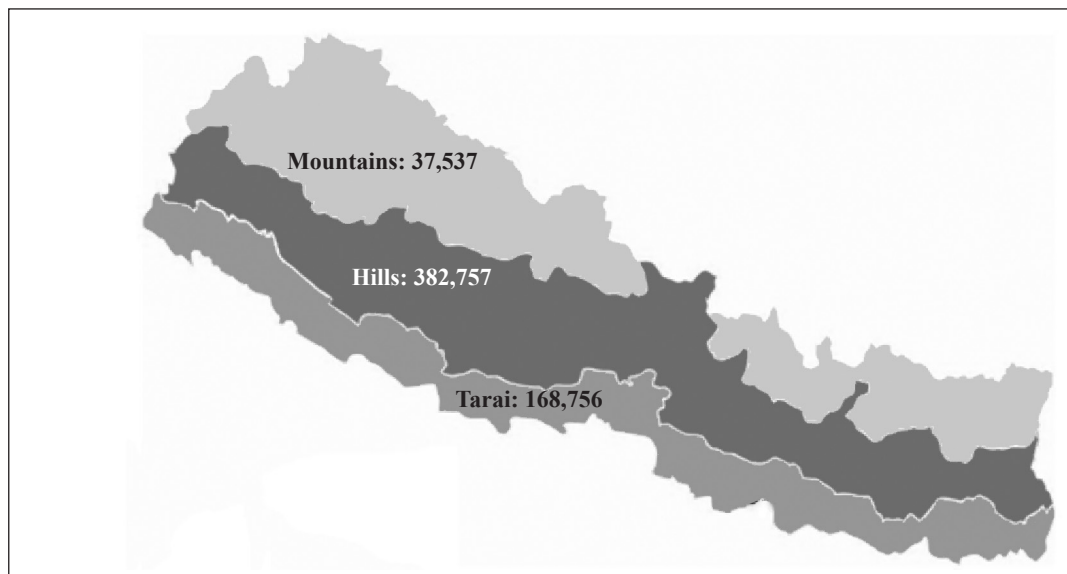
29 See Sharma and Sharma 2011 for a detailed discussion on this.

30 FPAN 2002.

31 Hollema et al 2008, 87-93; Vaidya and Wu 2011.

32 CBS 2002. Of the total 589,050 Nepali absentees in India, 168,756 were from the Tarai region.

Figure 3: Nepal's Absentee Population in India – 2001 Census



Source: Census of Nepal 2001 (Figure extracted from www.ceslam.org/map)

migrant activists in India.³³ To take one example, in the seminal piece by Dixit et al (1997) that consisted of field trips to various parts of India and interviews with a number of individuals, including four officials representing different Nepali migrant associations, not a single person was a Madhesi. It has been argued that one reason why migrants from the Tarai become invisible in India is the cultural and linguistic similarities they share with inhabitants of north India.³⁴ But this alone cannot fully explain why the Madhesi migration experience in India has received sparse attention in existing studies on Nepali migration to India – with the possible but limited exceptions of Hollema et al (2008) and Neupane (2005).

2.5 The Gorkha Connection

Nepalis have served in the Indian army since Indian independence in 1947, following the concurrent apportionment of the then 10 Gurkha regiments between India and Britain. But, there has always been a lack of precise information on the number of Nepalis serving in the Indian armed forces at any given time, and also about those who have retired from Indian military service. Analysing only a few figures that have appeared in the recent past in Indian sources, it is clear that there is a fair amount of variance, with the number of active Gorkhas given as being anywhere from 25,000 to 40,000 (see Box 1).

The one inference that can possibly be drawn from these figures is that the number

33 Interview with Keshav Bashyal, Jawaharlal Nehru University, Delhi, March 2012.

34 Neupane 2005.

Box 1: How many Gorkhas?

As with the number of Nepalis in India, there seems to be uncertainty about how many Nepalis serve in the Indian Army. Consider the Indian sources discussed below and the obvious discrepancies in the figures. In May 2008, an Indo-Asian News Service report mentioned there were nearly 40,000 Nepalis in the Indian Army.ⁱ Then, a year later, a press release from the Indian Embassy in Kathmandu stated that there were more than 40,000 Nepalis serving then in the Indian Army and that more than 100,000 ex-servicemen had settled in Nepal.ⁱⁱ Three years on, in January 2012, *The Hindustan Times* said that nearly 30,000 Nepalis, including 120 officers, were working in the Indian Army, and also that Nepal was home to 79,000 pensioners, 11,000 widows of ex-servicemen and 17,000 retired men from the Assam Rifles.ⁱⁱⁱ In March 2012, just two months afterwards, *The Times of India* reported that over 25,000 men were serving in the seven Gorkha Rifles regiments in the Indian Army; roughly 20,000 more were in the police and paramilitary forces like the Assam Rifles; and that there were more than 80,000 ex-servicemen, 17,000 retirees from the Assam Rifles, and 11,000 widows of the ex-servicemen in Nepal.^{iv}

i www.thaindian.com/newsportal/uncategorized/nepali-gorkhas-may-soon-not-be-a-part-of-the-indian-army-lead-superseding-earlier-story_10047728.html.

ii www.indianembassy.org.np/index2.php?option=press-release&cid=143.

iii www.hindustantimes.com/News-Feed/ColumnsOthers/End-of-the-road-for-Gorkhas-in-Indian-Army/Article1-828992.aspx.

iv http://articles.timesofindia.indiatimes.com/2012-03-20/india/31214331_1_rais-and-limbus-nepal-s-foreign-baburam-bhattarai.

of Nepalis in the Indian Army has been going down over the years although a decrease of some 5000 individuals between January and March 2012 seems hard to believe. These figures perhaps indicate the hard fact that just as it is almost impossible to say with any certainty how many Nepalis there are in India, the same probably holds true for Nepalis in India's Gorkha regiments and other wings of the security forces – a problem further compounded by the reality of Nepali-speaking Indians from regions such as Dehradun, Darjeeling and the Northeast, too, being recruited into the Indian army and given the same appellation as Gorkhas from Nepal.

2.6 Dual Citizenship

Although neither Nepal nor India provides for dual citizenship it is a commonly known fact that many Nepalis living in India hold the citizenship of both countries.³⁵ These Nepalis enjoy the full rights and privileges accorded to Indians, yet, they do

35 Bhattraï 2007.

not completely cut off ties with their place of origin and kin back in Nepal either. The process of gaining an Indian identity begins by acquiring the Indian Ration Card, often by bribing central and state government officials,³⁶ but also by using their social networks. The Card,³⁷ which is required to procure government-subsidised daily food items, allows the bearer to get other documents such as voter's ID, passport and the national identity card that together comprise the major legal documents Indian citizens are entitled to.

2.7 Where Nepalis Work

Nepalis may have begun to migrate to India to serve in the British Indian army, but there were also those who settled in various parts of India, particularly the Northeast, where they worked at dairy farming, timber felling and mining.³⁸ Today, many Nepalis work in the formal sector such as the Indian army or the public and private sectors, and significantly more are engaged in the informal sector. Most of the latter belong to the lowest socio-economic background and, hence, cannot afford to migrate to new frontiers like the Gulf countries and Malaysia.³⁹ Given this long and close association, Nepalis are known for a number of professions in India: as soldiers in the Indian army (*Gorkha*), as security guards (*bahadur/chaukidaar*), as restaurant and domestic workers (*bahadur/kanchha*), and as porters (*coolies*). Many Nepali women and girls can be found in Indian brothels, while both children and adults, and sometimes entire families, work in coal mines, tea estates, timber felling, oil extracting, cattle rearing and dairy farming, primarily in the Northeast.⁴⁰ However, in the absence of a wider and systematic study, even coming up with an educated guess about the number of Nepalis working in these sectors is near impossible.

One downside to the presence of Nepalis in India's informal economy is that it becomes difficult for them to invoke labour rights and other securities guaranteed by the Indian government to all workers.⁴¹ Considering that even Nepalis engaged in the formal sector are generally ignorant of their rights, it is quite unrealistic to expect any

36 Deshpande 2003, 277-8; Peisakhin 2012, 129-49.

37 The Card can be easily acquired by submitting two photographs, an application form attested by a government employee, and proof of residence. <http://jansahayak.gov.in/NewRation.aspx>. Accessed 29 April 2013.

38 Interviews with Nepali migrants in Assam and Delhi, March 2012. See also Gurung 2009; Nath 2006; Sapkota 2009.

39 Ratha and Shaw 2007; World Bank 2011.

40 Devi 2009; Gurung 2009; Gurung et al 1983, 188; Kansakar 1984; New ERA 1981; Passah 2009; Pradhan 2009; Sapkota 2009.

41 Bhattra 2007.

kind of awareness among the other groups.⁴² This leaves Nepali workers vulnerable to various forms of violations – of their rights as well as dignity. For instance, there has on occasion been a lot of hue and cry about the ‘pervasive criminality’ among Nepalis working in India, and, in 1996, the New Delhi police even issued a circular asking Indians not to hire Nepalis as domestic helpers.⁴³ But neither the Nepalis in question here, the domestic workers, nor the larger Nepali community in India were able to mobilise against such prejudices in any meaningful manner.⁴⁴

2.8 Remittances

One of the most defining features of Nepali labour migration to India is the inflow of remittances. Labour migration from Nepal to India is particularly significant because many Nepalis still cannot afford to go to newer destinations, and the remittances they send or bring back plays a major role in raising their families’ income.⁴⁵ In fact, bringing home money and *koselee* (gifts) from India is considered a matter of pride, bravery and masculinity in Nepal.⁴⁶

However, the three Nepal Living Standards Surveys (1995/96, 2003/04 and 2010/11) show that the share of remittances received by households from India has declined over the years: 32.9 per cent of all remittances in 1995/96; 23.2 per cent in 2003/04; and just 11.3 per cent in 2010/11.⁴⁷ This diminishing importance of India is because Nepalis have begun opting for newer and better-paying destinations, but these figures do not really capture the fact that there are still hundreds of thousands of families who depend on earnings from India. In fact, even as the proportion of India-based remittances has gone down, the actual volume remitted has been rising steadily. According to Nepal Rastra Bank, remittances from India was NPR 1355 million in 1991/92 (which was 58.5 per cent of the total). The share of remittances from India had dropped to 12.4 per cent in 2005/06, but in real terms it had gone up considerably to reach NPR 12,100 million (see Annex II).⁴⁸ It should also be reiterated that since individuals from low-income households cannot afford to go to highly remunerative countries paying large sums of money, even a small rise in income that follows from going to India can have significant welfare implications on them.⁴⁹

42 Interviews with Nepali migrants in Assam and Delhi, March 2012. See also Bhattraï 2007; Shukla and Brown 2005.

43 Varma 1997.

44 Bhattraï 2007; Varma 1997.

45 Ratha and Shaw 2007.

46 Pfaff-Czarnecka 1995; Sharma 2007.

47 CBS 2011b, 80.

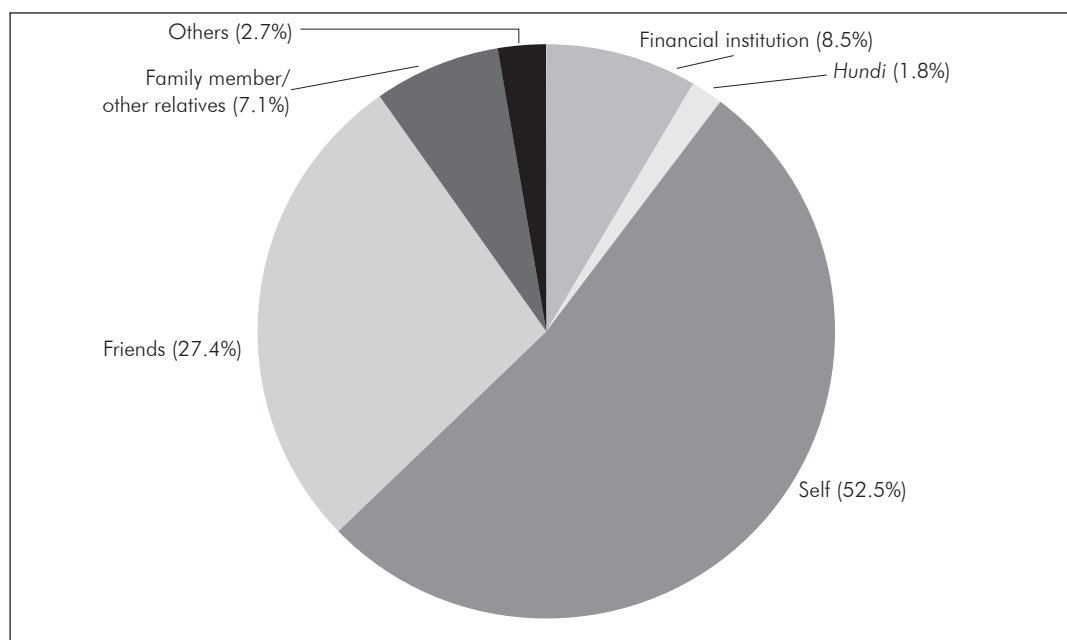
48 NRB 2007, 16.

49 Ratha and Shaw 2007, 2.

A major problem for Nepali workers in India is sending money back home. Formal channels such as commercial banks and money transfer agencies are relatively still very new and few Nepalis make use of them. Seasonal migrants who work only for a fixed duration in India carry their earnings in person while returning home. Even amongst the other types of migrants to India, the preferred mode is to bring the money in person, send it through a returning friend/kin or use *hundi*⁵⁰ (the traditional system of money transfer widely practised in the subcontinent and elsewhere whereby individuals hand over money to an agent in the destination country and who then instructs his/her associates back home to deliver the money to the individual specified by the remitter⁵¹).

A Nepal Rastra Bank (2007) study pointed out that a lack of awareness of the formal mediums, not having the proper identification papers required to send remittances,⁵² limited access to banks, ineffective incentives for remitting through these channels, and complications involved in using formal means, have further discouraged individuals from adopting these forms of remitting money. In fact, results from the Nepal Living Standards Survey 2010/11 show that a mere 8.5 per

Figure 4: Means of Remittances Transfer from India



Source: Nepal Living Standards Survey 2010/11

50 *Hundi* has been declared illegal by the government for some years now.

51 Sijapati and Limbu 2012, 17. See also Martin 2009.

52 India has the compulsory provision requiring remitters to show their identification card or ration card to remit funds (NRB 2007, 21-2). The one form of ID most Nepalis in India are likely to have, the Nepali citizenship card, is quite useless in many parts of India since most of the particulars are given in the Nepali language while one of the essential proofs of identity, the date of birth, is given in the Bikram Sambat calendar, rendering it quite meaningless outside Nepal.

cent use these mediums while carrying back money in person (either by self, friends or relatives) was as high as 87 per cent (Figure 4).⁵³

The widespread use of informal channels to remit money from India has macro-economic implications as well. First, because the funds do not come via formal institutions, a lot of remittances enter Nepal in the form of Indian currency and is in easy circulation throughout the country, and more so in the regions west of Kathmandu. The widespread use of Indian banknotes in the Nepali market invokes two major sensitivities. First, it skews government statistics on remittances entering Nepal,⁵⁴ and, in fact, Nepal Rastra Bank even stopped publishing the amount of remittances received from India after 2005/06.⁵⁵ Second, the circulation of Indian currency within the country results in a decrease in Indian currency reserves of the central bank, making the balance-of-payments situation unstable.⁵⁶

2.9 Unregulated Migration via India

According to Section 22 of the Foreign Employment Act 2007, it is mandatory for any Nepali going abroad for foreign employment to depart only from a Nepali airport. It also requires that every such migrant possess all the documents necessary to go for foreign employment which are provided or approved by the Department of Foreign Employment. However, Nepali migrant workers are regularly found to be using India as a country of transit to head out to a third country, taking advantage of the open border system between the two countries.

There are several reasons for this. First, recruitment agencies are often known to encourage individuals to migrate taking that route since it allows the agencies to get away with not following the Foreign Employment Act 2007, such as publicly announcing vacancies in destination countries, providing insurance to workers, obtaining approvals from the Department of Foreign Employment, and taking complete responsibility for the migrants and compensating them or their families in the event they encounter problems in foreign lands. In most cases, individual migrants agree to leave via India because they are unaware that such migration is considered 'illegal' by the government, and neither do they understand that recruitment agencies are not liable for their safety and well-being as would have been the case if the migrants depart from a Nepali airport.

Second, given the widespread practice of Nepalis going to places banned by the

53 CBS 2011b, 85.

54 NRB, 2007.

55 See Annex II for the year-wise data on remittances received by Nepal and the share of remittances received from India till 2005/06.

56 NRB 2007, 8-10.

government, as was the case with Afghanistan until recently, India has become the obvious route to bypass the government strictures. Even after the ban is lifted, the severe levels of violence in some of these countries means that the Nepali government is quite reluctant to issue labour permits to such destinations. Additionally, despite the non-discriminatory stipulations in the Foreign Employment Act 2007, female migration is severely scrutinised by the government due to various forms of violence against women, primarily in the Gulf countries.⁵⁷ There have been various restrictions placed against female migration. The migration of women to Kuwait, Qatar, Saudi Arabia and the UAE was completely outlawed in 1998, and was allowed only for the 'organised' sector from 2003 onwards. The ban was lifted in 2010, but another was imposed in 2012, prohibiting all women under 30 from going to the aforementioned Gulf countries as domestic workers. Consequently, going to these countries via India seems to be the only alternative and what the workers fail to realise is that such a method of departure can jeopardise their well-being while also limiting their access to justice in both the destination country and Nepal.

Third, some agents are known to issue fake Indian passports to gullible would-be migrants, in which case they prefer to send the workers via India since the Indian authorities are less likely to detect fake Nepali documents.⁵⁸ Agencies are apparently encouraged to adopt such a modus operandi since under Nepal's Passports Act 1967 only those individuals who 'receives or attempts to receive a passport providing false statement or false details' is to be punished.⁵⁹ As a result, the real perpetrator of the crime – the recruitment agency or agent – is presumed innocent while the migrant worker who has been duped into carrying a fake passport takes all the blame. Likewise, underage Nepalis also go abroad for employment, but since the Nepali government requires a person to be at least 18 years old to obtain a passport, these individuals resort to forged papers with the help of agents and recruitment agencies and use Indian airports to depart for third countries for employment.

2.10 Human Trafficking

Trafficking in humans is one of the major problem areas arising out of the free movement of people between Nepal and India. It is believed that every year some 15,000 Nepali women, girls and children are taken to India against their will.⁶⁰ While trafficking in persons has historically been associated with the sale of Nepali women

57 Bajracharya and Sijapati 2012.

58 Interview with Keshav Bashyal, Jawaharlal Nehru University, Delhi, March 2013.

59 See Section 5 of Nepal's Passports Act 1967. The punishment consists of imprisonment for up to one year or a fine of up to five thousand rupees or both.

60 Sijapati, Limbu and Khadka 2011, 7; Deane 2010. See also, Bhattra 2007.

and girls in Indian brothels and of children to Indian circuses, recent trends show adult males being tricked into going to India where their body parts are harvested for transplantation, and of children being forced to work as colliers. Again, the absence of a comprehensive analysis of this issue means that the nature, extent and volume of trafficking of Nepalis to India is largely unknown and existing policy measures to counter it – such as the Human Trafficking and Transportation (Control) Act 2007 of Nepal and Immoral Trafficking Prevention Act 1956 of India – are largely ineffective.

2.11 HIV/AIDS and Other Communicable Diseases

An unintended side effect of labour migration is the transmission of communicable diseases. One of the reasons for the high levels of HIV and STDs amongst the Nepali migrant population in India is believed to be the practice of unsafe sex there and transmission of the virus/disease to partners back home.⁶¹ Moreover, the trafficking of women, girls and children for sex work, and the unprotected sex they are forced into, has further boosted the incidence of HIV and other sexually transmitted diseases among the returnees and their partners in Nepal. It is believed that the HIV prevalence rate in the returnee migrants from India is as high as 2.2 per cent.⁶²

61 Vaidya and Wu 2011.

62 Ibid. There are no accurate statistics on the number of people living with HIV in Nepal. In 2011, the government estimated it to be around 50,000, of whom 27 per cent were labour migrants in general (NCASC 2012). UNICEF, however, suggests that the number could be as high as 100,000 (http://www.unicef.org/infobycountry/nepal_nepal_statistics.html#102).

3. THE LEGAL REGIME

Neither the Nepali nor the Indian government has felt the need to formulate any laws, or enter into any bilateral treaty or agreement to cover the citizens of either country living and working in the other. The 1950 Treaty allows migrants to easily leave one country and exercise full citizenship rights in the other apart from the right to vote. In actual practice, however, Nepali migrants in India face a number of hardships. Even though the Indian government, in principle, is to treat Nepalis in India as citizens of India, the fact remains that Nepali migrants in India are, after all, from a foreign country, and, hence, neither able to fully exercise all the rights and privileges available to citizens of India nor avail those granted to documented immigrants such as other foreigners living on 'Employment Visa' in India. The fact of migration to India and the measures that may be required to protect the rights of Nepali migrant workers there have not received much attention from either government. Instead, it is presumed governed by the 1950 Treaty and left at that even though the Treaty does not deal with migrant workers per se.

3.1 Treaty of Peace and Friendship 1950⁶³

Nepal and India (or, British India prior to 1947) have signed a number of treaties and agreements since 1792.⁶⁴ But it was only the 1950 Treaty that specifically deals with cross-border movement. According to Article 7 of the Treaty, 'The Governments of India and Nepal agree to grant, on a reciprocal basis, to the nationals of one country in the territories of the other the same privileges in the matter of residence, ownership of property, participation in trade and commerce, movement and other privileges of a similar nature'. Similarly, Article 6 of the Treaty states: 'Each Government undertakes, in token of the neighbourly friendship between India and Nepal, to give to the nationals of the other, in its territory, national treatment with regard to participation in industrial and economic development of such territory and to the grant of concessions and contracts relating to such development.' These articles make migration both tacit and ambiguous at the same time as these articles do not deal with how the rights of migrants are to be specifically secured apart from relying on the presumed goodwill of the host country.

The Treaty also formally declared the open nature of the border between the two

63 See Annex V for the full text of the treaty.

64 The 'Treaty of Commerce with Nepal' signed in 1792 is believed to be the first formal treaty signed between Nepal and British India (Upreti 2009, 39-41).

countries, and, as a result, there is no record of the hundreds of thousands of Nepalis who leave Nepal nor of those who enter India. As a country with a population of 1.2 billion, the issue of immigration of a few hundred thousand to a couple of million Nepalis in the least-paid sectors of work may be a non-issue for India. But, for Nepal, however, the fact that an unknown but substantial number of its citizens work in India, the issue of protection of its citizens working in a foreign land should have become crucial.⁶⁵ However, policy initiatives by the Nepali government to address this issue have remained largely absent.

Following a secretarial-level bilateral agreement in October 2005, a pilot attempt was made at the Nepalgunj-Rupediya transit point to document individuals crossing the border and to make identity cards mandatory for crossing the border.⁶⁶ It is believed that this was an attempt to curtail the free cross-border movement of Nepali Maoists, who were then in armed conflict with the Nepali state and labelled 'terrorists' by India. This project was suspended a few months later after the Maoists launched attacks on security posts near the border.⁶⁷

3.2 Agreement among the United Kingdom, India and Nepal 1947⁶⁸

With the end of British rule in India in 1947, the 10 Gurkha⁶⁹ regiments in India were shared between Britain and India, with four going to Britain and six remaining in India.⁷⁰ The agreement, commonly called the Britain-India-Nepal Tripartite Agreement, or the TPA, thus paved the way for India also to directly recruit Nepalis into its army. A large number of Nepalis have served in the Indian army since, and tens of thousands of Nepalis are currently in the Indian Army's Gorkha regiments and other security wings of the Indian government (see also Section 2.5 above).⁷¹

65 Interview with Ministry of Foreign Affairs official who sought anonymity, January 2012.

66 Ibid.

67 Interview with Keshav Bashyal, Jawaharlal Nehru University, Delhi, March 2013. See also, Janak Nepal. 'Rebels Kill 6 Cops', *The Kathmandu Post*, 21 January, 2006.

68 The formal name of the agreement was 'Memorandum of Agreement among the Government of the United Kingdom, the Government of the Dominion of India and the Government of Nepal regarding: Gurkha Soldiers' (Bhasin 1994, 31-7). See Annex IV the full text of the agreement.

69 While the British uses the term 'Gurkha', the Indian Army after 1947 started using 'Gorkha' for soldiers who serve in the six extant regiments and the one raised after independence, the 11th Gorkha Regiment.

70 Bhasin 1994, 31-7; Rathaur 2000, 107-8.

71 <http://www.indianembassy.org.np/index2.php?option=press-release&cid=143>. Accessed 22 April 2013.

3.3 Passports Act 1967

Section 3 of the Passports Act of Nepal states: ‘A Nepali citizen may make a journey abroad only upon receiving a valid passport issued in his/her name...however, it will not be necessary to receive a passport to visit any country if a treaty or agreement concluded between the Government of Nepal and the foreign government does not make possessing passports mandatory.’⁷² The second part of this section covers arrangements such as the 1950 Treaty, a factor that is very important considering that India continues to be the labour destination of choice for many Nepalis from the lower economic strata, and getting travel documents would mean an additional financial burden they can do without. But, on the other hand, since many Nepalis lack identification of any sort those of them who want to safely remit from India through banking channels find that they are unable to do so as they are required to produce an acceptable proof of identity while sending back money.⁷³

3.4 Foreign Employment Acts and Rules

Nepal enacted its first Foreign Employment Act in 1985. The Act was amended thrice – in 1992, 1998 and 2007 – and in 2007 itself, a new Foreign Employment Act was promulgated. Likewise, the Foreign Employment Rules came into force in 1999, and again in 2008 following the 2007 Act. The Foreign Employment Policy 2012 has also been adopted. However, none of these laws or the institutions established by them, namely, the Foreign Employment Promotion Board, the Department of Foreign Employment (DoFE) and the Foreign Employment Tribunal, deals with Nepalis going to India for work.

The notion of ‘foreign employment’ and, to a very large extent, the notion of a ‘foreign’ destination itself is not attached to India. All of these laws fail to acknowledge the fact that a large number of Nepalis go to India as workers and that there is a need to ensure their rights and safety. While migrant workers to other countries are required to have ready all kinds of papers, migrant workers to India do not need any of these documents, and they migrate in all cases through informal channels, using personal or social networks.⁷⁴

The principle enshrined in the Preamble of the Foreign Employment Act 2007,

72 http://mofa.gov.np/uploads/files/document/Passport_Acts_2024_33.pdf. Accessed 7 June 2013.

73 Section 5.2 of Indo-Nepal Remittance Facility Scheme, Procedural Guidelines mentions that the remitter who does not have a bank account in India has to produce Passport/PAN/Driving License/Telephone Bill/certificate of identification issued by employer with details and photograph, etc. For opening a bank account, a person needs an identification card. Either way, some form of identification needs to be produced at some point of time.

74 Pfaff-Czarnecka 1995; Thieme 2006.

‘to make foreign employment business safe, managed and decent, and protect the rights and interests of the workers who go for foreign employment’, presumably is not meant for Nepali migrant workers in India. In fact, India does not even figure in the DoFE’s list of 108 countries officially recognised by the Government of Nepal as possible foreign employment destinations for Nepalis. The 2001 census showed that about 77 per cent of Nepal’s entire absentee population⁷⁵ was in India,⁷⁶ but no attempt was made by Nepali policymakers to recognise the role of Nepali labour migration to India in the national economy and in the daily livelihoods of a significant section of the country’s rural population.

3.5 Policies on Remittance

Despite the long history of migration to India, until very recently, Nepal did not have any clear policy to facilitate or regulate remittances coming from India. It was always possible for Nepalis to send money back home using bank drafts, SWIFT and telegraph transfers, but because the process was quite complicated, it was hardly an option.⁷⁷ The use of ATM cards issued by Indian banks to withdraw money in Nepal has also become more common in recent years but that still requires access to ATMs, which are just too few to be able to service the mainly rural recipients in Nepal. A few money transfer agencies have also recently started transferring money, but Nepalis in India continue to rely on personal networks to send money back home and also seem to be unaware about the new provisions that are now in place.

In 2008, Nepal Rastra Bank and the Reserve Bank of India established a system of one-way transfer of funds from India to Nepal under what is called National Electronic Funds Transfer (NEFT). This system, better known as Indo-Nepal Remittance Facility Scheme, was established with the purpose of controlling the unofficial transfer of remittances entering Nepal and to promote formal banking channels.⁷⁸ Under this system, all commercial banks in India send the remitted funds to a centralised pool maintained by the State Bank of India. This fund is then transferred to Nepal SBI Bank Limited for further transfers to the respective banks in Nepal, including its own branches.⁷⁹ However, due to a number of reasons, including ignorance about the scheme, illiteracy among Nepali migrants,

75 The census of Nepal 2001 defines an absentee as any individual who is absent from the household at the time of enumeration and has gone abroad (Kansakar 2003a).

76 CBS 2002. See also Section 2.7.

77 NRB 2007, 21-3.

78 <http://www.rbi.org.in/scripts/FAQView.aspx?Id=60>. Accessed 5 May 2013.

79 <http://rbidocs.rbi.org.in/rdocs/content/pdfs/84489.pdf>. Accessed 5 May 2013.

few accessible bank facilities back home, and also the lack of understanding of NEFT among the Indian bank staff dealing with Nepali workers who want to send remittances back home, Nepalis have not yet fully embraced this facility.⁸⁰

3.6 International Conventions⁸¹

India has ratified about 50 international conventions for the protection of migrant workers and general labourers, while Nepal is signatory to over 20 such conventions. Both countries have yet to adopt some of the major ones such as the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; and the ILO conventions on migration for employment; on minimum social security standards; on employment injury benefits; on migrant workers; and on working conditions in hotels and restaurants.⁸² However, as signatories to basic human rights accords such as the Universal Declaration of Human Rights; International Covenant on Economic, Social and Cultural Rights; International Covenant on Civil and Political Rights; Convention for the Elimination of All Forms of Discrimination Against Women; and UN Convention on the Rights of the Child, Nepal and India are enjoined upon to recognise basic human, labour and migrants' rights, making, in principle, India a much safer destination for Nepalis than other popular foreign employment destinations such as the Gulf states. India has also signed four of the eight core ILO conventions: on forced labour; abolition of forced labour; equal remuneration; and against discrimination.⁸³ Similarly, other important conventions such as on working hours, right to association, compensation and social security⁸⁴ have also been signed by India.

80 The newspaper source based on interviews with officials of the Reserve Bank of India suggests that the bank staff in India did not know the technical aspects related to the fund transfer. For instance, instead of denoting the central pool account number of the SBI Bank in the format provided, the staff were found using the account number of the remitter. 'Lack of awareness of workers, banks staff discouraging formal transfers', *Republica*, 8 November, 2011.

81 See the list of the conventions in Annex VI.

82 ILO Convention 97 – Migration for Employment Convention (Revised), 1949; ILO Convention 102 – Social Security (Minimum Standards) Convention, 1952; ILO Convention 121 – Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980]; ILO Convention 143 – Migrant Workers (Supplementary Provisions) Convention, 1975; and ILO Convention 172 – Working Conditions (Hotels and Restaurants) Convention, 1991.

83 The eight core conventions are: Forced Labour (No. 29), Freedom of Association and Protection of the Right to Organise (No. 87); Right to Organise and Collective Bargaining (No. 98); Equal Remuneration (No. 100); Abolition of Forced Labour (No. 105); Discrimination (Employment and Occupation) (No. 111); Minimum Age Convention (No. 138); and Elimination of the Worst Forms of Child Labour, (No. 182). Of these, ILO 29, ILO 100, ILO 105 and ILO 111 have been signed by India, while ILO 87, ILO 98, ILO 138, and ILO 182 have not been signed.

84 ILO Convention 1 – Hours of Work (Industry) Convention, 1919; ILO Convention 11 – Right of Association (Agriculture) Convention, 1921; ILO Convention 18 – Workmen's Compensation

As Nepalis work in various sectors in India, accession to these international covenants by both the countries would, in principle, oblige both governments to ensure the rights and safety of the migrant workers. More importantly, since these instruments have been adopted by India, the destination country, it would be bound to ensure the rights, safety and security of immigrants in India. But, as there is no mechanism in either country to invoke these international obligations, they are of little practical use to Nepali workers in India. Finally, there are the added issues of a large number of Nepalis involved in the informal sector not being covered by laws specific to formal professions, and also of those working in the formal sector not being fully aware of their rights and privileges.⁸⁵

(Occupational Diseases) Convention, 1925; and ILO Convention 118 – Equality of Treatment (Social Security) Convention, 1962.

85 Bhattraï 2007.

4. CONCLUSION

The absence of any policy, apart from the 1950 Treaty, to deal with Nepalis in India makes it clear that the Nepali government has largely ignored its citizens working in India. With the recent shift in Nepalis' labour migration to the Gulf region and Malaysia, a lot more attention has been accorded to securing the rights of Nepalis in those destinations. The fact that India remains the cheapest, safest and most accessible destination has been greatly overlooked, and neither has the contribution of Nepalis working in India toward sustaining both the household and the national economies been fully acknowledged by policymakers, scholars and the media alike.

Although Nepal and India share an open and porous border which gives rise to a number of illegal activities in the frontier region, fully controlling or regulating the border is nearly impossible and perhaps not advisable either. As India absorbs many of the rural unemployed Nepalis, that too from the poorest sections of society, controlling the border might add yet another bureaucratic hurdle for migrants who make the border crossing frequently. However, introducing provisions to keep records of individuals who cross the border, providing them with and seeking their identification while crossing the border, and tracing their destination and sector of work in India could be a first step towards protecting them. The reintroduction of the attempt to keep such records, as was carried out in the Nepalgunj-Rupediya transit point in 2005, along all the border transit points could be one vital step in that direction.

As the governments of both the countries do not know the number of Nepalis in India and most of them work without any official documents, issuing identification cards to Nepalis working in India would grant them recognition as well as assist them in safely remitting money back home. One way to do this is for Nepali consulates to be established in some of the major cities of India such as Mumbai, Chennai, Guwahati, Bangalore and Dehradun, to serve the large concentrations of Nepalis in those regions.

The Nepali government has to be more agile in protecting its formidable number of citizens who toil in India. Since they represent the underclass of Nepali migrant labourers, there is all the more reason to help them and not take them for granted.

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ANNEXES

Annex I

Nepali in India: Gender-wise comparison of the Nepali and Indian censuses¹

S.N.	Census Year	Total Number of Migrants	Gender	Number of Migrants by Gender
1.	1952/54 (Nepal) and 1951 (India)	Nepali Census 157,323	Male	137,942 (Nepali census)
				169,155 (Indian census)
		Indian Census 278,972	Female	19,381 (Nepali census)
				109,817 (Indian census)
2.	1981	Nepali Census 375,196	Male	307,946 (Nepali census)
				230,769 (Indian census)
		Indian Census 501,292	Female	67,290 (Nepali census)
				270,523 (Indian census)
3.	1991	Nepali Census 587,243	Male	492,079 (Nepali census)
				203,421 (Indian census)
		Indian Census 478,694	Female	95,164 (Nepali census)
				275,273 (Indian census)
4.	2001	Nepali Census 589,050	Male	520,500 (Nepali census)
				270,258 (Indian census)
		Indian Census 596,696	Female	68,550 (Nepali census)
				326,438 (Indian census)

Source: Censuses of Nepal and India.

1 No comparison is done of the 1961 and 1971 census because Nepal did not disaggregate the absentee population in 1961 in terms of destination country and did not enumerate international emigration at all in 1971. Meanwhile, the 1971 census of India also did not record the total number of Nepalis there (Gurung et al 1983). Further, as Nepal started compiling migration data only from the 1952/54 census onwards, no comparison of censuses before that is presented.

Annex II

Total remittances received by Nepal and share of remittances from India

S.N.	Fiscal Years	Total Remittances (in NPR millions)	Remittances from India (in NPR millions)	% Share of Total Remittances
1.	1990/91	2,128.3	968.7	45.5
2.	1991/92	2,316.5	1,355	58.5
3.	1992/93	2,994.3	1,585.3	52.9
4.	1993/94	3,469.1	1,317.8	38
5.	1994/95	5,063.6	1,779.1	35.1
6.	1995/96	4,283.6	1,977.1	46.2
7.	1996/97	5,595.0	1,828.3	32.7
8.	1997/98	6,987.8	3057.0	43.7
9.	1998/99	10,314.6	4,469.9	43.3
10.	1999/2000	12,662.3	5,136.2	40.6
11.	2000/01	47,216.6	11,795.7	25
12.	2001/02	47,536.3	10,326.2	21.7
13.	2002/03	54,203.3	15,458	28.5
14.	2003/04	58,587.6	12,964.1	22.1
15.	2004/05	65,541.2	10,181.3	15.5
16.	2005/06	97,688.5	12,099.9	12.4

Source: Nepal Rastra Bank, *Bharatbata Nepallai Prapta Hune Bipreshansambandhi Adhyan*, 2007, 16.

Annex III
Agreement Entered into Between Kajee Ummer Sing Thappa and
Major-General David Ochterlony, 15th May 1815

In consideration of the high rank and character of Kajee Ummer Sing Thappa, and of the skill, bravery, and fidelity with which he has defended the country committed to his charge, it is agreed:

1. That Kajee Ummer Sing Thappa, with the troops now in Raujgurh [Malaun], shall march out and retain their arms and accoutrements, the colours of their respective corps, two guns and all private proper, which shall be duly respected and preserved, and every attention and delicacy observed in respect to the Zenana of the Kajee, and very person under his authority.
2. In consideration, also, of the gallant conduct of Kajee Runjore Sing Thappa, it is agreed that he shall likewise march out of the fort of Jeytuck with two hundred men, who are to retain their arms, colours and one gun, with the Bharadars (chief officers) and their followers, about three hundred more in number, unarmed, with his own and their private property, which shall be respected, and the sanctity of the Zenana preserved.
3. Kajee Ummer Sing Thappa and Kajee Runjore Sing Thappa, with their property and followers, are at liberty to proceed by the route of Thaneisur, Hurdwar and Nujeebabad, to join the troops eastward of the river Surjoo (or Kalee), or by whichever route they determine to proceed to that destination. Conveyance shall be provided for the transportation of their property to the confines of the Nepal territory.
4. Kajee Ummer Sing Thappa and Kajee Runjore Sing Thappa shall be at liberty to meet wherever they please.
5. All the troops in the service of Nepaul, with the exception of those granted to the personal honour of the Kajeas, Ummer Sing and Runjore Sing, will be at liberty to enter into the service of the British Government, if it is agreeable to themselves and the British Government choose to accept their services, and those who are not employed will be maintained on a specific allowance by the British Government, till peace is concluded between the two states.
6. Kajee Ummer Sing Thappa, on his part, agrees to leave the fort of Malown, whenever bearers and other conveyance are prepared for his private property.
7. Kajee Ummer Sing Thappa also agrees to send immediate orders for the evacuation and delivery, to persons properly authorised, of the forts of Bhylee (Irkee), Subbatoo, Mornee, Jeytuck, Juggutgurh, Rowaheen, and all other forts and fortresses now held by the Nepaul troops between Jumna and Sutleje rivers. The garrisons of all forts, strong holds etc., shall enjoy their private property unmolested, and the arms and warlike stores in each shall be left in deposit, for the future decision of the Right Honourable the Governor-General; with exception to such among them as are related to Kajee Ummer Sing Thappa by kindred, about eighty-three men, who shall be at liberty to retain their arms and accoutrements.
8. Kajee Ummer Sing Thappa also agrees to send immediate orders to Kajee Bukhtour Sing for the evacuation of the territory of Ghurwall, to deliver over the forts, etc. in that district to the officers of the British Government, and to proceed to Nepaul by

the Kamaon route, with their garrisons, all public property including warlike stores, accompanied by a Chuprassie with pass, on the part of the British Government.

Separate Article. - Kajee Ummer Sing Thappa wishes it to be understood, that he shall give immediate orders for the instant surrender of the distant forts, in the hope that it may lead to an early renewal of the relations of amity which have subsisted between the two states for these sixty years, and by the advice of Bum Sah and the Bharadars of Kamaon.

Source: Coleman, *A Special Corps*, 1999, 214-215.

Annex IV
Memorandum of Agreement among the Government of the United Kingdom,
the Government of the Dominion of India and the Government of Nepal
re: Gurkha Soldiers, Kathmandu, November 9, 1947

1. At a meeting held at Kathmandu on 1st May 1947 between representatives of His Majesty's Government in the United Kingdom; the Government of India and Government of Nepal, His Highness the Prime Minister and Supreme Commander-in-Chief of Nepal, stated that he would welcome the proposals to maintain the Gurkha connection with the armies of the United Kingdom and India on the following basis, 'If the terms and conditions at the final stage do not prove detrimental to the interest or dignity of the Nepalese Government, my Government will be happy to maintain connections with both armies, provided men of the Gurkha regiments are willing so to serve (if they will not be looked upon as distinctly mercenary).'
2. Discussion have taken place in Delhi between representative of His Majesty's Government in the United Kingdom and of the Government of the Dominion of India and the points of agreement are embodied in the memorandum dated 7th November 1947 a copy of which forms Annexure I of this document. Necessary financial adjustments between the two Governments are still under consideration.
3. Further discussion between the representatives of the three Governments have taken place at Kathmandu during which the Government of Nepal have put forward certain pertinent observations on the memorandum of Agreement referred to in the preceding paragraph which are set out in Annexure II. In regard to these points, the representatives of His Majesty's Government in the United Kingdom and of the Government of the Dominion of India have replied as follows:
 - i. *Location of the Recruiting Depots.* The use of the existing depots at Gorakhpur and Ghum has been sought by His Majesty's Government in the United Kingdom for a temporary period only pending establishment of their own depots in Nepal. The wishes of the Government of Nepal have been noted and arrangements for the establishment in India of the Recruiting Depots required to meet the needs of the Gurkha units of the British Army will be settled between the United Kingdom and Indian Governments.
 - ii. Desire of the Government of Nepal that the total number of Gurkha Units to be employed in the armies of the United Kingdom and of India shall be limited and brought down to the peacetime strength of 20 Battalions out of which 8 Battalions be allotted to the British Army.

The representative of His Majesty's Government in the United Kingdom and of the Government of Dominion of India have taken note of the wishes of the Government of Nepal.

The representative of His Majesty's Government in the United Kingdom has explained that the long term planning of British Post-War Army has proceeded on the assumption that the Government of Nepal would be prepared to furnish sufficient men to establish the equivalent of an Infantry Division in South-East Asia and he has received an assurance from the Government of Nepal that a final decision on the question of recruitment of Gurkhas in excess of 8 Battalions at peace-time strength shall be left open until His Majesty's Government in the United Kingdom have had an opportunity of considering the views of the Government of Nepal.

As regards the reduction of the Gurkha Units in the Indian Army, the Government of Nepal have informed the representative of the Government of the Dominion of India that the reduction should not be carried out immediately in view of the existing political situation in India.

- iii. Arrangements for the import of the foreign currency belonging to the Gurkha units of the 8 Battalions serving overseas.

It is noted that the Government of the Dominion of India has agreed to afford all normal facilities in regard to the import of foreign currency belonging to these men (Annexure I, item 10). A reply to the specific point raised in this connection will be sent to the Government of Nepal in due course.

4. The Government of Nepal being generally satisfied in regard to the terms and conditions of employment of Gurkha troops and taking note of the agreement dated 7th November 1947 reached between His Majesty's Government in the United Kingdom and of the Government of Dominion of India hereby signify their agreement to the employment of Gurkha troops in the armies of the United Kingdom and of India.
5. In addition to the observations referred to above the Government of Nepal have put forward certain suggestions connected with the employment of Gurkhas in the armies of the United Kingdom and of India. These suggestions are contained in Annexure III of this document and the views of the two Governments thereon will be communicated to the Government of Nepal in due course.
6. Note has been taken of the desire of His Majesty's Government in United Kingdom that prompt action be taken to ascertain the wishes of the personnel of the 8 Gurkha Battalions concerned as to whether they desire to be transferred for service under the United Kingdom Government. With this object in view a questionnaire and a Memorandum embodying terms and conditions of service have been prepared by the representative of His Majesty's Government in the United Kingdom. These documents are acceptable to the Governments of India and Nepal. They will be issued to the personnel of the eight units concerned as soon as possible, in accordance with the wishes of the Government of Nepal as well as those of the Government of India. It is agreed that their representatives will be present with the eight units while the referendum is being taken.
7. The representatives of the three Governments desire to place on record that their deliberations have been conducted in an atmosphere of cordiality and goodwill and are confident that the friendly relations which have existed in the past will be further cemented as a result of the arrangements which have been agreed for the continued employment of Gurkha soldiers in the armies of the United Kingdom and of India.
8. SIGNED in triplicate at Kathmandu this 9th day of November 1947.

(Sd.)

A.C.B. SYMON

For the Government of the United Kingdom

(Sd.)

DAYA SINGH BEDI

For the Government of the Dominion of India

(Sd.)

PADMA SHAMSHERE JUNG BAHADUR RANA

For the Government of Nepal

Annexure I
Memorandum of Agreement Between the Government of the Dominion of India and
H.M. Government in the United Kingdom

1. That all volunteers from Regular battalions of each of the second, sixth, seventh and tenth Gurkha Rifles, together with personnel of their regimental centres, shall be transferred to H.M. British Army, subject to the negotiation of terms and conditions with the Government of Nepal.
2. That the personal arms and equipment of those units if required by H.M. Government will be issued on payment and removed overseas with the units.
3. That H.M. Government may for the present continue to use the existing recruiting depots at Gorakhpur and Ghum, and that the British and Gurkha military personnel serving in them may wear uniform.
4. That the plans of H.M. Government for recruiting in Nepal up to a possible strength of a Division (say 25,000 men), shall not in any way interfere with recruitment to the Gurkha units in the Indian Army.
5. That Gurkha Officers, recruits, soldiers, ex-soldiers and pensioners of Gurkha units serving H.M. Government, and their dependents, shall be permitted to travel freely between Nepal and an Indian port on their lawful occasions, provided *mufti* is worn in transit through India; the stipulation regarding dress shall not apply to the four Regiments named above during their removal from India.
6. That the normal road and rail transport facilities in India shall be available, at the public rates prevailing from time to time, to all British Officers serving with Gurkhas, Gurkha Officers and their families, Gurkha other ranks and their families and the necessary maintenance stores and baggage of such personnel in the service of H.M. Government; and that such staging facilities as may be required shall be provided at the sense of H.M. Government.
7. That India's postal, money-order and telegraphic services to and from Nepal shall be available to H.M. Government, and Gurkhas serving H.M. Government, at the normal rates prescribed from time to time.
8. That the Government of India shall make available annually to H.M. Government, for the use of Gurkha soldiers, the following quantities of foodstuffs:

Atta	2,200 tons
Ghee	750 tons
Dhal	1,200 tons
Condiment Powder	150 tons

Provided H.M. Government arranges to supply the Government of India with 2,200 tons of wheat in replacement of the atta supplied to them.

9. That the Government of India shall make available to H.M. Government such Indian currency as may be necessary for purposes connected with their employment of Gurkha soldiers, provided that the sterling equivalent thereof shall be credited to the Government of India Sterling Account One.
10. That Gurkha Officers, soldiers, ex-soldiers, pensioners and their dependents shall have the right to send or take Indian money back to Nepal subject only to such Indian

currency regulations of general application as may be in force from time to time; foreign currency imported into India shall be subject to the general Indian currency regulations obtaining from time to time.

11. That the basic rates of pay admissible to Gurkha Officers and soldiers serving H.M. Government shall approximate to those laid down in the present Indian Pay Code, at which rates personnel serving at the recruiting depots in Gorakhpur and Ghum shall be paid: and that a special allowance, to compensate for permanent service overseas and high cost of living, shall in addition be admissible to Gurkha Officers and soldiers serving H.M. Government overseas.
12. After the eight Battalions have been asked to opt for service under H.M., Government of India will try to make up the deficiency caused by those who do not wish to serve with H.M. Government, by asking other soldiers who have completed their existing engagement and who do not wish to continue to serve in the Indian Army Units. If the required number cannot thus be made good the deficiency will be made up by H.M. Government by direct recruitment.

(Sd.)

**For the Government of
the Dominion of India**

(Sd.)

**For His Majesty's Government
in the United Kingdom**

Kathmandu

7th November, 1947

Annexure II

Nepalese Reaction to 'Points of Agreement Between Government of India and H.M.G.'

1. Para (3): It appears that the arrangement of having recruiting depots at Gorakhpur and Ghum for the British Gurkha Regiments has as an after-thought been made of a temporary character. Nepal Government feels that it would definitely be more convenient to all three parties, if the recruiting is carried on for both Indian and British Armies at the present depots or any other places in India.
2. Para (4): In view of our long-standing friendship the Government of Nepal had agreed to raise the strength of the Gurkha Regiments during the period of the last war. But she feels that the continuation of this emergency measure will be too much of a drain on the man-power of the country. So she desires that the total be limited and brought down to the peace-time strength of 20 battalions to be divided in the Indian and British Armies, as already arranged.
3. Para (10): Nepal Government desires that the foreign currency brought by the personnel of the Gurkha Regiments serving abroad be credited to the Nepal Government account in any bank (to be settled afterwards); the Government of Nepal providing Indian currency therefore at the prevailing market rate.

Annexure III

1. In all matters of promotion, welfare and other facilities the Gurkha troops should be treated on the same footing as the other units in the parent army so that the stigma of 'mercenary troops' may for all time be wiped out. These troops should be treated as a link between two friendly countries.
2. The Gurkha troops should be given every facility so that it might be officered by their own men and they should be eligible to commissioned ranks with no restrictions whatsoever to the highest level to which qualified officers may be promoted.
3. The Gurkha troops should not be used against Hindu or any other unarmed mobs.
4. To avoid any clash between the Gurkhas themselves, Gurkha troops should not be used if any contingency of their having to serve in opposite camps arises.
5. To enable us supply better quality men, we request that our following military needs may be met:
 - i. A well-equipped arms and ammunition factory producing all modern small arms and ammunitions.
 - ii. A few Army transport planes.
 - iii. Our requirements of Army Stores and civil supplies could be discussed later on.
6. To establish better liaison between Nepal and the troops, liaison officers would be appointed by the Nepalese Government and would form part of the unit of the Gurkha troops.
7. It is very desirable that the morale of the recruits as well as the armed forces should remain unimpaired. Therefore all activities prejudicial to the interest and security of one party should be prevented in the territories of the other parties.
8. The Government of Nepal reserves the right to withdraw all Gurkha troops in case Nepal is involved in any war.
9. All facilities for the training of Nepalese officers in the military academies of India and British should be provided as and when the Nepal Government wants.
10. As *Khukri* is the religious and national emblem of the Gurkhas forming also a part of the uniform of the Gurkha Army, the carrying of *Khukri* by Gurkhas of all categories must not be banned in territories where the Gurkhas reside.
11. When Gurkha troops go on active service, intimation might be given to the Government of Nepal.
12. The above mentioned points are to be incorporated in a treaty and or agreement to be signed between the parties in due course.

Annex V

Treaty of Peace and Friendship between the Government of India and the Government of Nepal

The Government of India and the Government of Nepal, recognising the ancient ties which have happily existed between the two countries;

Desiring still further to strengthen and develop these ties and to perpetuate peace between the two countries;

Have resolved therefore to enter into a Treaty of Peace and Friendship with each other, and have, for this purpose, appointed as their plenipotentiaries the following persons, namely,

THE GOVERNMENT OF INDIA:

His EXCELLENCY SHRI CHANDRESHWAR PRASAD NARAIN SINGH,
Ambassador of India in Nepal.

THE GOVERNMENT OF NEPAL:

MOHUN SHAMSHER JANG BAHADUR RANA, Maharaja, Prime Minister and
Supreme Commander-in-Chief of Nepal,
who having examined each other's credentials and found them good and in due form have
agreed as follows:—

Article 1

There shall be everlasting peace and friendship between the Government of India and the Government of Nepal. The two Governments agree mutually to acknowledge and respect the complete sovereignty, territorial integrity and independence of each other.

Article 2

The two Governments hereby undertake to inform each other of any serious friction or misunderstanding with any neighbouring State likely to cause any breach in the friendly relations subsisting between the two Governments.

Article 3

In order to establish and maintain the relations referred to in Article 1 the two Governments agree to continue diplomatic relations with each other by means of representatives with such staff as is necessary for the due performance of their functions.

The representatives and such of their staff as may be agreed upon shall enjoy such diplomatic privileges and immunities as are customarily granted by international law on a reciprocal basis: Provided that in no case shall these be less than those granted to persons of a similar status of any other State having diplomatic relations with either Government.

Article 4

The two Governments agree to appoint Consuls-General, Consuls, Vice-Consuls and other consular agents, who shall reside in towns, ports and other places in each other's territory as may be agreed to.

Consuls-General, Consuls, Vice-Consuls and consular agents shall be provided with exequaturs or other valid authorization of their appointment. Such exequatur or authorization

is liable to be withdrawn by the country which issued it, if considered necessary. The reasons for the withdrawal shall be indicated wherever possible.

The persons mentioned above shall enjoy on a reciprocal basis all the rights, privileges, exemptions and immunities that are accorded to persons of corresponding status of any other State.

Article 5

The Government of Nepal shall be free to import, from or through the territory of India, arms, ammunition or warlike material and equipment necessary for the security of Nepal. The procedure for giving effect to this arrangement shall be worked out by the two Governments acting in consultation.

Article 6

Each Government undertakes, in token of the neighbourly friendship between India and Nepal, to give to the nationals of the other, in its territory, national treatment with regard to participation in industrial and economic development of such territory and to the grant of concessions and contracts relating to such development.

Article 7

The Governments of India and Nepal agree to grant, on reciprocal basis, to the nationals of one country in the territories of the other the same privileges in the matter of residence, ownership of property, participation in trade and commerce, movement and other privileges of a similar nature.

Article 8

So far as matters dealt with herein are concerned, this Treaty cancels all previous Treaties, agreements, and engagements entered into on behalf of India between the British Government and the Government of Nepal.

Article 9

This Treaty shall come into force from the date of signature by both Governments.

Article 10

This Treaty shall remain in force until it is terminated by either party by giving one year's notice.

DONE in duplicate at Kathmandu this 31st day of July 1950.

(Signed)
CHANDRESHWAR PRASAD
NARAIN SINGH
For the Government of India

(Signed)
MOHUN SHAMSHER
JANG BAHADUR RANA
For the Government of Nepal

Annex VI
Status of ratification of major international conventions by Nepal and India

S.N.	Conventions	Nepal	India
1.	International Convention on the Rights of All Migrant Workers and Members of their Families, 1990	×	×
2.	International Covenant on Economic, Social and Cultural Rights, 1966	√ 1991a	√ 1979a
3.	Optional Protocol to the International Covenant on Civil and Political Rights, 1966	√ 1991a	×
4.	Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, 1989	√ 1998a	×
5.	International Covenant on Civil and Political Rights, 1966	√ 1991a	√ 1979a
6.	Convention on the Elimination of All Forms of Discrimination Against Women, 1979	√ 1991	√ 1993
7.	Convention on the Elimination of All Forms of Racial Discrimination, 1966	√ 1971a	√ 1968
8.	Convention on the Rights of Child, 1989	√ 1990	√ 1992a
9.	Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1950 (a)	√ 2002a	√ 1953
10.	Final Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1950 (b)	×	√ 1953
11.	Convention relating to the Status of Refugees, 1951	×	×
12.	Protocol Relating to the Status of Refugees, 1967	×	×
13.	Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime, 2000 (b)	×	√ 2011
14.	Convention on the Reduction of Statelessness, 1961	×	×
15.	Convention relating to the Status of Stateless Persons, 1954	×	×
16.	No. 1 – Hours of Work (Industry) Convention, 1919	×	√ 1921
17.	2 – Unemployment Convention, 1919	×	Denounced 1938
18.	4 – Night Work (Women) Convention, 1919 (shelved)	×	√ 1921
19.	5 – Minimum Age (Industry) Convention, 1919	×	√ 1955
20.	6 – Night Work of Young Persons (Industry) Convention, 1919	×	√ 1921
21.	7 – Minimum Age (Sea) Convention, 1920	×	×
22.	8 – Unemployment Indemnity (Shipwreck) Convention, 1920	×	×
23.	9 – Placing of Seamen Convention, 1920	×	×
24.	10 – Minimum Age (Agriculture) Convention, 1921	×	×
25.	11 – Right of Association (Agriculture) Convention, 1921	×	√ 1923
26.	14 – Weekly Rest (Industry) Convention, 1921	√ 1986	√ 1923
27.	15 – Minimum Age (Trimmers and Stokers) Convention, 1921 (shelved)	×	√ 1922
28.	16 – Medical Examination of Young Persons (Sea) Convention, 1921	×	√ 1922
29.	17 – Workmen's Compensation (Accidents) Convention, 1925	×	×
30.	18 – Workmen's Compensation (Occupational Diseases) Convention, 1925	×	√ 1927
31.	19 – Equality of Treatment (Accident Compensation) Convention, 1925	×	√ 1927
32.	21 – Inspection of Emigrants Convention, 1926 (shelved)	×	√ 1928
33.	22 – Seamen's Articles of Agreement Convention, 1926	×	√ 1932
34.	26 – Minimum Wage-Fixing Machinery Convention, 1928	×	√ 1955
35.	27 – Marking of Weight (Packages Transported by Vessels) Convention, 1929	×	√ 1931

S.N.	Conventions	Nepal	India
36.	29 – Forced Labour Convention, 1930	√ 2002	√ 1954
37.	30 – Hours of Work (Commerce and Offices) Convention, 1930	×	×
38.	32 – Protection against Accidents (Dockers) Convention (Revised), 1932	×	√ 1947
39.	41 – Night Work (Women) Convention (Revised), 1934 (shelved)	×	Denounced 1950
40.	42 – Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934	×	√ 1964
41.	45 – Underground Work (Women) Convention, 1935	×	√ 1938
42.	50 – Recruiting of Indigenous Workers Convention, 1936 (shelved)	×	×
43.	52 – Holidays with Pay Convention, 1936	×	×
44.	53 – Officers' Competency Certificates Convention, 1936	×	×
45.	58 – Minimum Age (Sea) Convention (Revised), 1936	×	×
46.	59 – Minimum Age (Industry) Convention (Revised), 1937	×	×
47.	64 – Contracts of Employment (Indigenous Workers) Convention, 1939 (shelved)	×	×
48.	65 – Penal Sanctions (Indigenous Workers) Convention, 1939 (shelved)	×	×
49.	69 – Certification of Ships' Cooks Convention, 1946	×	×
50.	71 – Seafarers' Pensions Convention, 1946	×	×
51.	73 – Medical Examination (Seafarers) Convention, 1946	×	×
52.	74 – Certification of Able Seamen Convention, 1946	×	×
53.	77 – Medical Examination of Young Persons (Industry) Convention, 1946	×	×
54.	78 – Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946	×	×
55.	80 – Final Articles Revision Convention, 1946	×	√ 1947
56.	81 – Labour Inspection Convention, 1947	×	√ 1949
57.	87 – Freedom of Association and Protection of the Right to Organise Convention, 1948	×	×
58.	88 – Employment Service Convention, 1948	×	√ 1959
59.	89 – Night Work (Women) Convention (Revised), 1948	×	√ 1950
60.	90 – Night Work of Young Persons (Industry) Convention (Revised), 1948	×	√ 1950
61.	95 – Protection of Wages Convention, 1949	×	×
62.	96 – Fee-Charging Employment Agencies Convention (Revised), 1949	×	×
63.	97 – Migration for Employment Convention (Revised), 1949	×	×
64.	98 – Right to Organise and Collective Bargaining Convention, 1949	√ 1996	×
65.	100 – Equal Remuneration Convention, 1951	√ 1976	√ 1958
66.	102 – Social Security (Minimum Standards) Convention, 1952	×	×
67.	105 – Abolition of Forced Labour Convention, 1957	√ 2007	√ 2000
68.	106 – Weekly Rest (Commerce and Offices) Convention, 1957	×	×
69.	107 – Indigenous and Tribal Populations Convention, 1957	×	√ 1958
70.	108 – Seafarers' Identity Documents Convention, 1958	×	√ 2005
71.	109 – Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958	×	×
72.	111 – Discrimination (Employment and Occupation) Convention, 1958	√ 1974	√ 1960
73.	115 – Radiation Protection Convention, 1960	×	√ 1975
74.	116 – Final Articles Revision Convention, 1961	×	√ 1962
75.	117 – Social Policy (Basic Aims and Standards) Convention, 1962	×	×
76.	118 – Equality of Treatment (Social Security) Convention, 1962	×	√ 1964
77.	119 – Guarding of Machinery Convention, 1963	×	×

S.N.	Conventions	Nepal	India
78.	120 – Hygiene (Commerce and Offices) Convention, 1964	×	×
79.	121 – Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980]	×	×
80.	122 – Employment Policy Convention, 1964	×	√ 1998
81.	123 – Minimum Age (Underground Work) Convention, 1965	×	√ 1975
82.	124 – Medical Examination of Young Persons (Underground Work) Convention, 1965	×	×
83.	127 – Maximum Weight Convention, 1967	×	√ 2010
84.	131 – Minimum Wage Fixing Convention, 1970	√ 1974	×
85.	133 – Accommodation of Crews (Supplementary Provisions) Convention, 1970	×	×
86.	134 – Prevention of Accidents (Seafarers) Convention, 1970	×	×
87.	135 – Workers’ Representatives Convention, 1971	×	×
88.	136 – Benzene Convention, 1971	×	√ 1991
89.	138 – Minimum Age Convention, 1973	√ 1997	×
90.	139 – Occupational Cancer Convention, 1974	×	×
91.	141 – Rural Workers’ Organisations Convention, 1975	×	√ 1977
92.	142 – Human Resources Development Convention, 1975	×	√ 2009
93.	143 – Migrant Workers (Supplementary Provisions) Convention, 1975	×	×
94.	144 – Tripartite Consultation (International Labour Standards) Convention, 1976	√ 1995	√ 1978
95.	147 – Merchant Shipping (Minimum Standards) Convention, 1976	×	√ 1996
96.	148 – Working Environment (Air Pollution, Noise and Vibration) Convention, 1977	×	×
97.	150 – Labour Administration Convention, 1978	×	×
98.	152 – Occupational Safety and Health (Dock Work) Convention, 1979	×	×
99.	155 – Occupational Safety and Health Convention, 1981	×	×
100.	156 – Workers with Family Responsibilities Convention, 1981	×	×
101.	159 – Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983	×	×
102.	160 – Labour Statistics Convention, 1985	×	√ 1992
103.	162 – Asbestos Convention, 1986	×	×
104.	169 – Indigenous and Tribal Peoples Convention, 1989	√ 2007	×
105.	170 – Chemicals Convention, 1990	×	×
106.	172 – Working Conditions (Hotels and Restaurants) Convention, 1991	×	×
107.	174 – Prevention of Major Industrial Accidents Convention, 1993	×	√ 2008
108.	176 – Safety and Health in Mines Convention, 1995	×	×
109.	181 – Private Employment Agencies Convention, 1997	×	×
110.	182 – Worst Forms of Child Labour Convention, 1999	√ 2002	×
111.	185 – Seafarers’ Identity Documents Convention (Revised), 2003	×	×
112.	187 – Promotional Framework for Occupational Safety and Health Convention, 2006	×	×

Note: ‘√’ indicates ratification and is followed by the year of ratification

‘×’ indicates non-ratification

The Convention denounced after ratification have been mentioned accordingly along with the year.

Source: Sijapati and Limbu, *Governing Migration in Nepal*, 2012, 266-76.

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