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1. Background

Much of the history of labor migration for foreign employment from Nepal was characterized by the outflow to India, at least up to the mid-1980s. Nepal and India share a tremendously long border that is completely open — no documentation or approval is required to cross the border from either side. Subsequently, new destinations emerged with the intensification of globalization and the boom in the oil industry that started in the Middle East in the 1970s. The demand for workers in Middle East countries created massive opportunities which work as pull factor for migrant workers.

In Nepal, Majority of Migrant Workers goes to abroad for making their living standard high, as Nepal is not being able to create a skillful job opportunities to their youths and it is estimated that around 1500-1800 youths are leaving Nepal for foreign employment which driven as push factor. To manage the migration sector, Government of Nepal came up with the promulgation of the Foreign Employment Act, 1985. The Act specified the countries (published in Nepal Gazette) to which Nepali citizen can migrate for labor and have also opened avenues for the private sector to facilitate foreign employment.

A historical turn in the migratory pattern came with the restoration of democracy in Nepal in 1990. The democratically elected Government in 1992 embarked on a journey of economic liberalization and made official moves to a market economy, which also encourage out – migration. The liberalization on mobility as well as the economy after the 1990’s coupled with the rapidly increasing labor demand in the Middle East country gradually increased the number of migrants travelling beyond India.

The international demand for Nepali labor is huge. As many as 1.2 million jobs were available in 27 countries, according to the pre-approval issued by the Department of Foreign Employment in 2014/15.

The surge in the outflow of labor migrants in recent years, especially to Gulf Cooperation Council (GCC) countries and to Malaysia, appears frequently in migration. According to the data on labor permits issued, men accounted for the bulk of the labor migrants over the past years, at 94.4 percent and 5.6 percent were women.

1 Labor migration for employment, a status report on 2013/14, Ministry of Labor and Employment, accessed on Dec 28th 2017
2 Labour Migration for Employment, A status report for Nepal, 2014/2015
3 Nepal Labour Market Update, ILO Country Office for Nepal, January 2017
1.1 Socio-Economic Context of Migration

In today’s increasingly interconnected world, more people than ever live abroad, with around 244 million people living outside their home countries in 2015. The global migration stock grew twice as fast as the previous decade and in absolute terms, the number of international migrants has risen by over 49 million people since 2000.4

Migration from Nepal is not a new phenomenon, but it has been on the increase in recent years, with the majority of flows consisting of low-skilled migrants moving to Malaysia or the Middle East for temporary work contracts in fields such as Construction, Security Guards, Driver, Mason and Domestic Work. One of the more celebrated positive consequences of migration abroad is the level of workers’ income remitted to the country.

Nepal is heavily dependent on this remittance inflow, with money sent home representing almost a third of the gross domestic product.6 By far, the remittance inflow exceeds other financial inflows, such as foreign direct investment and net official development assistance.

1.2 Migration Situation of Nepal

Migration is a natural process and there are many pull and push factors for the cause behind it. In Nepal, out of many reason to migrate recent massive earthquake on (26th April, 2015) factor have been added as a push factor for migration from Nepal. Although, Nepal has been witnessing phenomenal migration holding a long history behind, movements for establishment of rights of migrant workers and their families do not hold a notable record. Almost half of Nepali households have at least one member working abroad or have a returnee and the trend continues to grow higher.7

The number of permits issued by the Department of Foreign Employment (DoFE) is steadily increasing since 2009 to current fiscal year. More than 5,036,653 Nepalis have issued labor permits till fiscal year 2073/74 and two thirds of them are in Gulf Countries and Malaysia. However, the

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7 Early findings of the Nepal Living Standards Survey-III released in August 2011 by Central Bureau of Statistics (CBS) revealed that in the year 2010/11, the percentage of all households receiving remittances in Nepal was 55.8 percent.
8 This data only reflects the total number of labor permits issued by the government of Nepal. The current government database cannot filter the migrant workers who are going for foreign employment again. The data does not capture the Nepali migrant workers going to India for work or those migrant workers who have used irregular channels to migrate.
numbers do not include emigration or migration to India (where a permit is not necessary and borders are open), which is the most popular and easily accessible destination for Nepali workers.

As number of Nepali youths leaving the country increases, there have been numerous impacts over social, economic, cultural dimensions especially related with those changes brought by or due to remittances. Remittance has proven to be one of the significant international financial flows in recent years. While Nepali migrant workers continue to fill the labor gaps especially in Gulf Cooperation Council (GCC) countries and Malaysia, Nepal has become one of the 5th highest receivers of remittance\(^9\), from South Asia the second largest recipient of remittance is absolute among Least Developed Countries (LDCs) after Bangladesh and ranked 23\(^{rd}\) among all countries. This figure in remittance is in similar standing in the context of Nepal, contributing around 32.1% of GDP.\(^10\) Among 110 officially open destinations for Nepali workers, GCC countries along with Malaysia have been prominent destinations for Nepali migrant workers.

As per the effect of foreign employment and remittance grow in Nepal, there have been some initiatives taken from the government side to uphold the gains from the foreign labor migration as 29 diplomatic missions were established and in 10 countries labor attaché were appointed.

Despite this, majority of migrant workers from Nepal are employed relatively in lower-end jobs and informal sectors. More than 80 percent of Nepalese workers are employed in difficult, dirty and dangerous (3D) works; consequently are more prone to various forms of ill treatments in the entire migration circle.

Similarly, foreign employment of Nepali nationals has not only become backbone for the country’s economy but also a source of lucrative business for a number of recruitment agencies. Typically this would relate to the wages they would receive, the type of the work they will do and the number of hours they are contracted to work each day. Beside this, most of the recruitment agencies work through a channel of local sub agents or intermediaries, who become trustworthy to local youths, thus the vulnerability of being victim of fraudulent agencies rises.

In addition to this, lack of knowledge in the process of labor migration and redress mechanism among youths makes the problem complex.

\(^9\) Ibid.

to greater extent. Most of them lack education and information about the recruitment procedure, and the financial means to contract recruitment agencies. Lack of proper and adequate knowledge and awareness about the migration process, destination countries and the work, employers, working conditions etc. migrant workers trigger higher chances of labor exploitation and other human rights violation leading to hindrances in access to justice. Lack of access to justice among the migrant workers and lack of reintegration program has also resulted in elevating the complexities. With regard to social cost, most Nepali men migrate to Malaysia and GCC Countries in unskilled, low-paid and unprotected jobs. Due to such reason, Women undergo through the hardship of being apart without the assurance of being able to improve the quality of their life. In the absence of the men, wives take on additional responsibilities such as labour work, farming jobs otherwise performed by men, and selling products in the market. Women also have to carry the sole responsibility for children and the elderly. Women who leave the house for work are often looked at with suspicion by their relatives and neighbors, and blamed of infidelity. And those who do not work, are accused of squandering money. ¹¹

Women returnee migrant find it difficult to reintegrate upon her return as she is often the subject of gossip and ridicule. The social stigma attached to women returnee migrant is so widespread that these preconceived notions make it difficult for women to live happily in their communities.

Similarly, there is also lack of proper mechanism at local level to tackle migration and development issues in a coordinated approach.

Though, some positive initiatives have been taken by government towards safe migration through legislation like Foreign Employment Act, 2007, Foreign Employment Regulation and Migration Policy, 2012 including institutional measures like Ministry of Labor and Employment (MoLE), Department of Foreign Employment (DoFE), Foreign Employment Tribunal (FET), Foreign Employment Promotion Board (FEPB) and Labor Attaché’.

Despite these institutional mechanisms, legislation and policies and an increase in migrant workers opting to go abroad via regular channels, there are still gaps in the implementation of such legislation and policies. These gaps have hampered the rights and safety of migrants. The cases of labour migrants suffering from abuses, exploitation and financial distress are frequent and impinge on their rights and well-being.

2. Key Actors of Labor Migration Sector in Nepal

Brief descriptions of some key actors (government as well as non-government agencies) working in labor migration sector in Nepal are presented below.

2.1 Government Agencies

The list of government agencies that are related with the Labor Migration sector in Nepal are,

(a) The Ministry of Labor and Employment

The Ministry of Labor and Employment is the apex body that governs labor administration and management in Nepal. It is responsible for the promotion of safe, dignified and decent foreign employment and serves to create an enabling environment for relations among employers, workers and other stakeholders.

The Ministry is mandated with responsibility for policy formulation, including regulating foreign employment as defined in labor-related legislation and take the lead role in the formulation, implementation, coordination, monitoring and evaluation of policies, plans and programs related to foreign labor migration and employment.

(b) The Department of Foreign Employment

The Department of Foreign Employment (DoFE) is established to promote safe and dignified foreign employment, including registration, regulating to operations of the recruiting agencies and other business (such as orientation training, health insurance etc) offering related services to ensure they conduct fair and decent practices.

Similarly, the Department regulates labor permit system, including the issuance of, renewal and revocation of a license to operate recruitment agencies and agents, investigates workers’ complaints against agencies or agents and initiates prosecution if the investigation warrants, controls fraud in regard to foreign employment by confirming that jobs advertised are legitimate and decent, maintains a database of details from complaints made and cases resolved regarding foreign employment. The DoFE, which receives complaints of violations of the Foreign Employment Act (FEA) 2007\textsuperscript{12}, conducts investigations, makes

\textsuperscript{12} People Forum filed a PIL for the implementation of Foreign Employment Act 2064 demanding to issue the order of Mandamus or other orders necessary in the name of respondent .The Writ petitioner has requested to decentralize the investigation mechanism and related process to the region or district level of the country, to establish benches and assure representation of parties by lawyer for those cases that is to be heard and decided by Department of Foreign Employment, to promptly follow the summary procedure to Foreign Employment cases and to work for bringing perpetrator of foreign employment offences within the legal boundaries. Similarly, People Forum has also filed a PIL case regarding judicial authority given to Department was inconsistent with the constitutional provisions. In this PIL Supreme Court of Nepal has issued a directive order against defendant.
orders in respect to certain offenses (specially related to compensation) under the act and imposes penalties.

(c) The Foreign Employment Promotion Board

The Foreign Employment Promotion Board (FEPB) is the key organization of Government of Nepal, responsible for making safe, managed and descent foreign employment. It ensures social protection and welfare of migrant workers by undertaking various functions and duties like, conducting studies of international labor markets and exploring new destinations, management of the foreign employment welfare fund, providing scholarship to children of labor migrants who die within the contract period, rescue of victim from destination country, rehabilitation and reintegration, providing financial support and compensation to distress migrant workers and members of their family.

(d) The Foreign Employment Tribunal

The Foreign Employment Tribunal (FET) is established under the Foreign Employment Act, 2007. It is a judicial body consisting of three members: chaired by the Judge of the High Court, a case-trying officer of the Labor Court and the gazette first class officer from the judicial service.

The foreign employment cases filed in the Tribunal are tried and settled in accordance with the Summary Procedures Act, 1972. The Tribunal receives serious cases, where punishment is imprisonment, prosecuted the Department of Foreign Employment.

(e) National Human Rights Commission

National Human Rights Commission (NHRC) is an autonomous, independent and constitutional body established in 2000 A.D. under the Human Rights Commission Act, 1997. The Commission can conduct inquiries and investigations, on its own or upon a petition or complaint files to it on violation of human rights and abetment there on, and carelessness and negligence in the prevention of violations of the human rights by any person, organization or authority concerned. The Commission can visit and observe any authority, jail or any organization under the Government of Nepal and to submit necessary recommendations to it on the reform to be made on the functions, procedures and physical facilities which may be made necessary for such an organization for the protection of human rights.

The Commission is also responsible to undertake or cause to be undertaken research in the field of human rights, and evaluate the existing human rights situation of the country. It may publicize and propagate human rights education among the various sections of society through various
seminars, symposia, conferences and also build consciousness and awareness about the guarantees bestowed by law for the protection of human rights. Importantly, NHRC is playing a vital and effective role to protect the rights of migrant workers in Country of Destination\textsuperscript{13} and also investigate and refer the human right violation cases of migrant workers. In addition, there is a general power to carry out such activities, as the Commission may deem necessary and appropriate for the enforcement, promotion and protection of human rights.

(f) Ministry of Foreign Affairs

Ministry of Foreign Affairs mainly worked with formulation, implementation, monitoring and evaluation of foreign policy, plan and programs of Nepal, build relation with foreign nations, representation of Nepal in foreign countries, passport and visa to be issued in abroad, diplomatic privileges and immunities, foreign diplomatic mission in Nepal, negotiation and agreement at diplomatic level and provides training to Labor Attaches, who have to work under the Nepali embassy in the destination countries. All Nepali embassies are line agencies under the Ministry of Foreign Affairs. Ministry of Foreign Affairs has following roles, responsibility and function.

1. Labor Attaché

Section 68 of the Foreign Employment Act 2007 states about the appointment of a labor attaché in destination countries where 5,000\textsuperscript{14} or more Nepali migrant workers are based. The functions, duties and powers of the labor attaché is to provide information to the Government about the condition of labor, employment and immigration where Nepali migrants are working and the steps taken by that country for the protection of the rights of migrant workers, assist in resolving any dispute between workers and businesses involved in sending foreign labor migrants. Similarly, another important function of Labor Attachés is to make necessary arrangements for rescuing any Nepali worker who has been deemed helpless in the course of foreign employment, manage the repatriation arrangements of the body of any deceased migrant worker and provide welfare-protecting information to migrant workers.

\textsuperscript{13} NHRC has concluded MoU with Human Right Commission of Qatar and South Korea

\textsuperscript{14} People Forum has filed a PIL case in Supreme Court of Nepal in 2008 regarding implementation of legal provisions relating to appointment of Labor Attaché, establishment of Safe Home for women migrant workers and establishment of Foreign Employment Tribunal. The Supreme Court has ordered the Government to appoint Labor Attaché for a country where five thousand or more workers have been sent for foreign employment as mentioned in Foreign Employment Act 2064. Additionally, the Supreme Court has also ordered to remain active for establishing the safe homes for the women workers who have gone for foreign employment.
workers and discourage them to do any other work than set forth in their work contract.

II. Department of Consular Services

The department of consular services under the Ministry of Foreign Affairs, was established to execute the activities like providing legal support for needy migrant workers at destination, initiate the process of compensation and insurance amount to victims, rescue the stranded workers, and repatriate the dead body by coordinating with the Nepali embassies of destination countries.

2.2 Non-Government Agencies

Complementing the work of government agencies, there are a number of non-government agencies working in the sector of migration. They have been doing various works for safe and orderly migration of Nepali workers.

(a) Civil Society Organizations

Civil society is the “third sector” of society, along with government and business. In Nepal, there are several Civil Society Organizations working in the sector of foreign employment especially on the promotion and protection of migrant rights at the national, regional and international levels.

The Civil Society organizations have been providing various services to migrant workers and their families. While providing free legal and paralegal service and advocacy are the most visible forms of services they provide.

They have also been working for the empowerment of migrant workers, their rehabilitation and reintegration into society, especially targeting those who have faced problems abroad by generating awareness through radio, TV and newspaper, establishing Information Centre, and through policy advocacy.

However, many of these face chronic shortage of trained human resources to effectively address the many issues of migrant workers. Limited resources also affect the coverage provided by these organizations in grassroots level. Further, since migrants also face problems both within and outside the country and since the reach of these organizations is limited outside the country, the efficacy of their interventions is also limited.
(b) Development Partners

A number of international actors play a vital role in both the dialogue concerning foreign labor migration, and in funding and implementing projects relating to foreign labor migration. In this regard, International Labor Organization (ILO), International Organization for Migration (IOM), UNWomen, Governance Facility, Nepal (GF) World Bank, European Union and Swiss Agency for Development and Corporation are notably active in labor migration sector especially in awareness building, rescue of workers, legal aid service, policy research and policy advocacy in Nepal. In line with this, recently Kathmandu Migration Group (KMG) is formed as a group of international partners supporting the Government of Nepal on mainstreaming migration into development strategies, network which is used as a platform to discuss on recent development in labor migration.

(c) Recruitment Agencies and Agents

Recruiting agencies are the formally registered companies that have received a formal license from Department of Foreign Employment to employ an individual in labor receiving countries. These agencies manage a number of tasks during the process of recruiting and sending migrants abroad, including mediating contract proceedings, getting labor approval and making travel and accommodation arrangements.

After receiving the license, agents function in association with manpower agencies in order to carry out the process of recruitment of potential labor migrants. Some estimates have placed the number of agents between 20,000 and 80,000 operating all across towns, villages and districts in Nepal. They even operate in those areas where official agencies are not able to reach. The majority of the agents do not have legal status and they are not registered or regulated. The official website of DoFE shows that there are a total of 754 manpower agencies, 117 pre-departure orientation centers, 281 health centers for medical checkup and 693 licensed agents registered in Nepal.

3. Legal & Policy Framework on Labor Migration

Increasing vulnerability and ratio of affected migrant community in the destination country and the country of origin and rising mobility of migrant workers in dire need of job and income have pursued deeper

concern over them. Depressing situation and increasing reporting of the cases regarding migrant workers from the destination country require proper intervention. Therefore, Laws relating to foreign employment are required in order to make foreign employment safe, managed and decent and protect the rights and interests of the workers who go for foreign employment. Some positive initiatives have been taken by the government towards safe migration through enactment of laws relating to foreign employment, including institutional measures with the related steps in the field of the labor migration. Access to Justice aims to ensure fair and just remedy for violation of one’s rights and also refers not only to the courts, but also to civil and administrative processes, such as immigration review or state compensation funds, which the migrant workers and member of their families can better access.

3.1 Domestic Instruments

In the course, foreign labor migration is governed by national, bilateral and international laws, regulations and policy. Some of the key national legal arrangements are mentioned below:

(a) Constitution of Nepal

Constitution of Nepal (2015) has enshrined right to employment, right to mobility, right to labour under the fundamental rights which is equally important to migrant workers. For the proper regulation and safer migration, Constitution of Nepal, for the first time has included the provision regarding labor migration under the chapter ‘Policies of State’ and Article 51 (i) states that state shall pursue the policy regarding labor and employment to regulate and manage the sector in order to make foreign employment free from exploitation, safe and systematic and to guarantee employment and rights of the labors.

(b) Foreign Employment Act, 2007

The Act was designed to address new issues brought by the rapid growth in foreign labor migration and its pattern. For the first time, the Act has removed gender discrimination with respect to foreign employment by providing equal right to women on foreign employment. More importantly, special reservation on foreign employment has been proposed to the women, Dalits, indigenous people and ethnic groups, deprived people affected by natural disaster and people living in remote areas. Similarly, it makes mandatory provision for labour approval to conduct orientation training, obtain health checkup, and a signed contract between the Recruitment Agencies and migrant workers. It has made mandatory to procure insurance of worker prior to sending
in foreign employment and has also made provision of compensation in case of fraud by recruiting agencies and unauthorized person. There are three other clauses included in the Act which are equally important: One, is the provision of “foreign employment welfare fund” which is directed to the worker and their families as well as it also focused on the rescue and reintegration process. Another is monitoring and investigation system for ensuring the control of malpractices, cheating and bribery of workers by the agents or employment agencies. Finally, there is a provision of “Foreign Employment Tribunal” to deal with cases focused on rights of migrants and promotion of foreign employment.

(c) Foreign Employment Policy, 2012

The Foreign Employment Policy introduced in 2012 responds to issues in the migration cycle that had not been addressed previously. The policy is vocal about the safety and protection of workers as its upmost priority, including intuitional provisions for monitoring. It acknowledges the increasing number of female migrant workers, especially for domestic work and the care industry (care of children, elderly and those who need assistance in living) and the importance of remittances in the development of migrant workers and their families and society as a whole. It also attempts to facilitate labor migration with the following strategies:

➢ To identify and promote employment opportunities at international market.
➢ To develop skilled human resources having competitive capacity for maximize benefits from foreign employment.
➢ To create each step of foreign employment simple, transparent, reliable, organized and safe.
➢ To address concerns of female workers on labor market and ensure their rights in overall migration cycle.
➢ To ensure good governance on foreign employment management.
➢ To mobilize local, national and international resources for foreign employment management and also promote collaborative efforts through increasing sectorial partnership.
➢ To mobilize remittance on human development and productive sector as much as possible.

Moreover, it seeks to make optimal use of migrant worker’s remittances by establishing financial channels for them to borrow money for their initial migration costs at fair interest rates so they do not begin their migration cycle overwhelmed with debt that consumes their earnings.
(d) **Foreign Employment Regulation, 2008**

It sets out rules concerning selection of institution or worker, provisions relating to license, prior approval and selection of workers, training, board, tribunal, and other miscellaneous rules. It has made mandatory to any worker who goes for foreign employment shall, prior to going for foreign employment, pay to the Fund such amount as may be specified by the Government of Nepal and the fund is used for following purpose:

- For Educational development of the families of the workers who have gone for foreign employment and those who have come back from foreign employment,
- For assistance in medical treatment of the families of the workers who have gone for foreign employment,
- For the reimbursement of the fees paid by the women who have been selected for foreign employment to obtain the orientation training,
- For the establishment and operation of child care centers for proper protection of the children of the women workers who have gone for foreign employment,
- For launching various programs for the interest of the workers and their families,
- For launching public awareness programs about foreign employment,
- For running day-to-day activities of the Board.

(e) **Domestic Workers Guideline, 2015**

Government of Nepal has endorsed Domestic Workers Guideline, 2015 to send Domestic Service Workers in destination countries. The guideline is expected to address the problems by holding employers and local recruiting agencies in destination country responsible for migrant workers welfare. According to the guideline “The employer shall ensure protection against all forms of violence and exploitation of domestic worker.” The guideline has ensured many rights to domestic workers and some of the major features of this guideline are;

- Compulsory bilateral agreement in sending migrant domestic workers,
- Ensure free of cost recruitment for domestic workers,
- Provisions for rescue and repatriation in certain conditions,
- Bank account of migrant domestic workers is made compulsory in Nepal and destination country and ensures salary deposit in bank account,
- Set age limit of 24 years to work as migrant women domestic workers,
Provision for standard employment contract for domestic workers,
Provision for demand certified by Embassy,
Ensure 24 hours life insurance to domestic workers against any kind of death.

(f) **Local Government Operation Act, 2074**

Local Government Operation Act, 2074 is an act promulgated to execute the rights provided to the local level as per the constitution and to maintain public participation, transparency and accountability by promoting coordination, cooperation and coexistence between Federal, Provincial and local level. The function, right and duties of Municipality and Rural Municipality under this act states that Municipality and Rural Municipality shall maintain the record of unemployed people and the people who have gone to foreign employment, Safe migration and managed it properly. It also says to operate the financial literacy and skillful training to those who plan to go for foreign employment and social reunification of returnees. Similarly, another responsibility of Municipality and Rural Municipality is to utilize the skill, knowledge and entrepreneurship obtained from foreign employment.

(g) **Human Trafficking and Transportation (Control) Act 2064**

Human Trafficking and Transportation Control Act 2064 was enacted to control Human Trafficking and Transportation and to protect and rehabilitate such victims. Under this act, selling or purchasing a person for any purpose, use someone in prostitution, extract human organ in contrary to law, is regarded as Human Trafficking. Whereas, if anyone takes a person out of the country for purpose of buying and selling, take anyone from his/her home, place of residence or through enticement, inducement, misinformation, forgery, tricks, coercion, abduction, hostage, allurement, influence, threat, abuse of power and by means of inducement, fear, threat or coercion to the guardian or custodian or take to any place within Nepal or abroad or handover him/her to somebody else for the prostitution and exploitation is regarded as Human transportation.

(h) **Non-Resident Nepali Act, 2008**

“Non-resident Nepali” means a foreign citizen of Nepali origin and this term also includes a Nepali citizen residing abroad for at least two years by doing any profession, occupation, business and employment. Non Resident Nepali Act, 2008 is a piece of legislation implemented to motivate the Non-Resident Nepalis to take part in development
activity of Nepal.\textsuperscript{19} The constitution of Nepal provides provisions by which members of the diaspora can be granted non-resident citizenship status (in cases where they have relinquished their citizenship by moving abroad), and seeks to facilitate the investment and running of businesses within Nepal from abroad by members of the diaspora.

(i) 1950 Indo-Nepal Treaty

India and Nepal entered into a friendship treaty in 1950 AD which was signed by the officials of both the states on 31 July 1950 in Kathmandu. Articles 6 and 7 of the Indo-Nepal Friendship Treaty of 1950 are particularly relevant in the case of employment, ownership and participation in industrial and economic development. Article 6 states that the citizens of each country will be provided national treatment by either of the states. In other words, citizens of Nepal and India shall be considered as national citizens in both the countries. The article also provides equal participation for the citizens of either countries in industrial and economic development. Similarly, Article 7 grants the same privileges to nationals of one country in the territory of other regarding residence, ownership of property and participation in trade and commerce, and movement.

3.2 International and Regional Instruments

Following are some of the important international human rights instruments related with rights of labor migrants.

(a) Human Rights Conventions

In 1948, Universal Declaration of Human Rights (UDHR)\textsuperscript{20} was enforced by all member nations under the United Nations. Afterwards, different human rights conventions, mentioned below were drafted which guarantee various rights equally applicable for migrant workers as an individual.

\textsuperscript{19} \url{https://en.wikipedia.org/wiki/Non_Resident_Nepali}, accessed on 12th January, 2018

\textsuperscript{20} The UDHR prohibits anyone to be held in servitude, slavery or slave trade and allows freedom to peaceful assembly and association; right to work, freedom to choose employment and protection against unemployment; right to equal pay for equal work; right to form and join trade unions for the protection of interests; right to leisure, limitation of working hours and provision of paid holidays.
i) International convention on civil and political Rights, 1966


iii) Convention on Elimination of all Forms of Discrimination against Women, 1979


v) International Convention on Elimination of all forms of Racial Discrimination, 1965

vi) Convention against Torture and Other Cruel Inhumane Degrading Treatment, 1987


21 The ICCPR calls for state parties to prohibit slave trade and ensure that no one is held under slavery or servitude or required to perform forced or compulsory labour. The Covenant also has provisions for the right to liberty of movement, freedom to choose residence within the territory of the state and the right to leave a country, including one’s own. Further, the ICCPR also specifies that all criminally charged persons are equal before the courts or tribunals and are entitled to equal protection before the law without discrimination. It also recognises the right to peaceful assembly, freedom of association with others, including the right to form and join trade unions.

22 The ICESCR outlines provisions on the right to work and to freely choose and accept work in order to earn a living. Signatories to this Covenant are also called upon to ensure just and favorable conditions of work, social security, fair wages, equal remuneration and safe and healthy working conditions along with rest and leisure. State parties are also entrusted with ensuring the right of everyone to form trade unions and join the trade union of their choice, the right of trade unions to function freely without any objection and to strike but in conformity with the laws of the country. In addition, the Covenant also calls on signatory states to recognise the right of everyone to an adequate standard of living.

23 State parties to CEDAW are entrusted to take all appropriate measures to eliminate discrimination against women in the field of employment to ensure the same rights to men and women on the basis of equality. More specifically, Article 11 of the Convention recognises the right of women to work as an inalienable right of all human beings; to the same employment opportunities in matters of employment; to free choice of profession and employment, the right to promotion, job security and all the benefits and conditions of service and the right to receive vocational training and retraining; to equal remuneration, including benefits, and to equal treatment in respect of work of equal value as well as equality of treatment in the evaluation of the quality of work; to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work as well as the right to paid leave; and to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

24 The CRC also recognises the right of the child to be protected from economic exploitation and from performing work that is likely to interfere with the child’s education or is hazardous or harmful to the child’s health or physical, mental, spiritual, moral or social development. Therefore, it also asks member countries to take appropriate measures to provide for a minimum age; minimum wages for admission to employment; appropriate regulation of the hours and conditions of employment; and appropriate penalties and sanctions.

25 Signatories to the ICERD agree to prohibit and eliminate all forms of racial discrimination. Member countries agree to ‘guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law in the enjoyment of the right to freedom of peaceful assembly and association, the right to work, to free choice of employment, to just and favourable conditions of work, to equal pay for equal work, to just and favourable remuneration, the right to form and join trade unions, etc’. Similarly, the Convention encourages state parties to review policies and amend or repeal laws and regulations which create or perpetuate racial discrimination. Further, the ICERD also requires the signatories to ‘encourage integrationist or multiracial organisations and movements and other means of bridging gaps between races, as well as discourage anything which tends to promote racial division’.
These international instruments set moral standards for member states to abide by and serve the promotion of migrant rights. They hold more significance today when international migration has become such an essential feature of globalization. The welfare of labor migrants is a significant and sensitive issue for the international community, and these conventions are major policy tools used to address the rights of migrant workers. In many regards, they also provide the basis for the formulation of national, bilateral or regional instruments related to labor migration.

The International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966 and the International Covenant on Civil and Political Rights (ICCPR), 1966, are by far the most important international human rights conventions as they provide normative standards and outline the fundamental rights to all human beings, and, by extension to migrant workers as well. Similarly, the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), 1979; the Convention on the Rights of the Child (CRC), 1989; and the Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 1966, specify the rights of women, children and migrants while also prohibiting discrimination on the basis of race.

(b) Specific Conventions related to Labor Migration

Nepal is party to some of the major UN Conventions and has also ratified 11 ILO Conventions till date. But of the three instruments that relate directly to labor migration – ICMW, ILO C97 and the ILO C143 – neither Nepal nor many of the major destination countries hosting Nepali workers (India, Qatar, Saudi Arabia, the United Arab Emirates, Lebanon, Jordan, Kuwait, Malaysia, Japan or South Korea) has ratified them. Some of the International Convention that stipulate various rights for the protection of migrant workers are briefly described below,

i) International Convention on the Protection of the Rights of all migrant workers and members of their families (ICMW), 1990:

The ICMW represents the most comprehensive treaty relevant to the welfare of migrant workers. Under this Convention, signatory countries must ensure the rights of migrant workers and their families without discrimination, including discrimination on the basis of sex, language, religion, race, ethnicity, and nationality. The Convention offers freedom for migrants to leave and enter at any time, without falling subject to torture or inhumane treatment. The convention forbids forced labor, offers
freedom of thought, conscience and religion, and equal rights before the law, courts and tribunals. The convention establishes that migrant workers are to receive equal treatment, on as per with nationals, on matters of remuneration, hours of work, over time, rest, leave, health facilities, termination of contract, and social security. Fundamentally, the convention calls for these rights to be available to all migrant workers, including irregular migrants and their families. The major silent feature of this convention are as follows;

- Codification of rights (accumulate all the scattered Human rights provisions into one)
- Sets obligation to sending and receiving countries
- Sets standards for documented and undocumented migrant workers
- Provides equal treatment between national and non-national, undocumented and documented migrant workers
- Discourage the employment of migrant workers in irregular and undocumented situation

Since 1939, International Labor Organization (ILO) has been working for the protection of migrant workers. ILO has enacted 178 different conventions for the protection of rights of workers which are equally applicable to migrant workers. ILO adopted following conventions which are basically applicable for all migrant workers.

ii) **ILO Convention 189 Domestic Workers Convention, 2011**

Under the convention members are to provide adequate protection for migrant workers recruited or placed in their territory by private employment agencies. This includes laws and regulations which provide penalties for those agencies engaged in fraudulent practices and abuses. It includes legislation protecting workers in terms of their right to freedom of association, collective bargaining, minimum wages, appropriate working time and conditions, social security benefits, access to training, occupational health and safety, compensation in case of occupational accidents or diseases, or in case of insolvency, and maternity and parental protection and benefits.
iii) **CEDAW General Recommendation no. 26 Women migrant workers, 2008:**

The General Recommendation recognizes the potential vulnerability caused by gender discrimination and recommends states apply principles of human rights and gender equality to the case of women migrants. It calls for the ending of practice such as discriminatory bans on the out migration of female migrant laborers. It calls for education and training of female labor migrants, the provision of health services, and legal and administrative assistance to migrant workers, and calls for the adoption of appropriate regulations and monitoring systems for the protection of female migrant workers. It calls for bilateral agreements and sharing of information and best practice between countries of destination and origin. Article 6 calls for states to implement all appropriate measures necessary for suppressing “*all forms of traffic in women and exploitation of prostitution of women*”. It sets an obligation to country of origin and destination to adopt common responsibilities to formulate comprehensive gender-sensitive and rights-based policies through the involvement of women migrant workers and relevant non-government organization and basing them on research, data collection and analysis.

iv) **ILO Convention 97: Migration for Employment Convention (revised), 1949**

Under the convention every member state is to treat migrants in no less favorable terms than its nationals without discrimination in terms of sex, race, religion or nationality, in matters relating to remuneration, working hours, overtime, leave, accommodation, social security, legal provisions, etc.

v) **ILO Convention 143: Migrant Workers (Supplementary Provisions) Convention, 1975**

The convention requires member states to respect basic human rights of all migrant workers. Under the convention, migrants are to gain equality of treatment and opportunity in matter of employment, social security, trade union engagement, cultural rights and freedoms. The convention, permits states to adopt measures to ‘*suppress the clandestine movements of migrants for employment and illegal employment of migrants*’. Under the convention, states are to cooperate and exchange
information on such clandestine movement of migrants and their illegal employment. In particular, the convention calls for the prosecution of traffickers.

vi) **ILO Convention 181: On Private employment agencies, 1997**

Under the convention members are to provide adequate protection for migrant workers recruited or placed in their territory by private employment agencies. This includes laws and regulations which provide penalties for those agencies engaged in fraudulent practices and abuses. It includes legislation protecting workers in terms of their right to freedom of association, collective bargaining, minimum wages, appropriate working time and conditions, social security benefits, access to training, occupational health and safety, compensation in case of occupational accidents or diseases, or in case of insolvency, and maternity and parental protection and benefits. Similarly, in article 7 of this convention it states that Private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers.

(c) **SAARC**

The South Asian Association for Regional Co-operation (SAARC) is an organization of South Asian nations, which was established on 8 December 1985 when the government of Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka formally adopted its charter providing for the promotion of economic and social progress, cultural development within the South Asia region and also for friendship and cooperation with other developing countries.

SAARC has expressed its commitment to promoting the welfare of the people of South Asia and strengthening cooperation among member states in international forums on matters of common interest. International labor migration is an area of tremendous relevance and shared concern for SAARC members and one in which critical protection gaps could best be addressed through a regional approach.

SAARC was in stressed to adopt plan and policy on labour migration because this is the region which shares considerable migrant population being mostly as labour sending countries. Beside that SAARC member state have ratified numbers of human rights conventions and made commitment for safe, orderly and regular migration in regional and international platforms.²⁶

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²⁶ Other regional organization such as ASIAN has made numbers of initiatives including ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, and ASEAN consensus for Cooperation on Immigration Matters and some
With the reference above, 18th summit has adopted agenda no 21 on labour migration and states that member states have agreed to collaborate and cooperate on safe, orderly and responsible management of labour migration from South Asia to ensure safety, security and wellbeing of their migrant workers in the destination countries outside the region. This regional protection initiative significantly enhance the living and working conditions of workers in low-paid sectors from Nepal, India, Pakistan, Sri Lanka and Bangladesh, who routinely face violations of international labor standards and human rights law in the six Gulf states.

After such initiatives in order to realize the commitment enshrined in the 18th SAARC Declaration to ensure the safety, security and wellbeing of migrant workers in the destination countries outside the region as a chair of the SAARC Government of Nepal has prepared and shared with member states the SAARC Plan of Action on Labour Migration. Then in coordination with SAARC secretariat Nepal government has organized Consultative Workshop on SAARC Plan of Action for Cooperation on Matters Related to Migration on 3-4 May 2016, Kathmandu, Nepal. The workshop has agreed on SAARC Plan of Action on Labour Migration and seeks to achieve the objectives, to set up an institutional mechanism at the regional level that would facilitate collaboration and cooperation on management of key labour migration issues at the SAARC level, to facilitate the development of a ‘SAARC Declaration on Labour Migration and identify priority thematic areas for regional cooperation with the mandate of workshop.

Currently, Government of Nepal has drafted the SAARC Declaration on Labor Migration and shared with member states for their inputs and some of the states have already provided with their feedback and inputs which was compiled by SAARC Secretariat and will be presented in upcoming SAARC Summit for its adoption.28

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27 The workshop has agreed to establish SAARCLabour Ministerial Forum, SAARC Technical Committee to deal with labour migration issue. Technical Committee is responsible for the implementation; coordination and monitoring of the programmes in their respective areas of cooperation. Technical Committees are involved in formulation of programmes and preparation of projects. They also coordinate the implementation of sectoral programmes and assess the implementation regularly. The workshop also agreed to facilitate the development of SAARC declaration on labour migration and mandated to Nepal government to initiate zero draft of the declaration. Nepal government has prepared it and shared it with member’s states for their inputs through SAARC secretariat.

28 People Forum after organizing a meeting on SAARC initiative on labour migration has submitted a report to UN, office of Prime Minister, SAARC Secretariat and concerned line agencies.
3.3 Nepal Bilateral Agreements/MOUs

With the expansion and mounting complexity of labour migration, the international community requires new tools to govern it, in addition to the international instruments developed over the last few decades.29 Given the magnitude of migration in the region, it is a phenomenon that cannot be ignored and governments have been working to develop frameworks in order to tackle various issues associated with migration. Government of Nepal has adopted various policy measures and strategies to give migrants a legal basis to defend their rights in foreign countries. Some of these include Bilateral Agreements30 and Memorandum of Understandings (MoUs) in case of labor migration. BLAs are agreements between two States which describe in detail the specific responsibilities of, and actions to be taken by each of the parties, with a view to accomplishing their goals. BAs create legally binding rights and obligations MoUs are, however, not legally binding on the signatory parties than agreements which are more specific, action-oriented, more formal and binding. The Government of Nepal has also signed instruments to regulate labor migration with seven major destination countries namely, BLAs with Qatar and Jordan, MoUs with Bahrain, Japan, The United Arab Emirates (UAE), and G2G with Israel and South Korea. These deal with systematizing recruitment procedures, contracts, accommodation and other facilities to the workers; identification of mechanism for settlement of disputes; etc.

4. Program Intervention for Safe Migration

The government of Nepal as well as non-government organizations, and/or in partnership with each other, has initiated intervention for safe migration in Nepal. Following are some of the intervention currently on going in Nepal.

4.1 Government

The Safer Migration Project (SaMi) started in July 201131. The project is an initiative of the Government of Nepal and the Government of Switzerland. The activities are implemented by the Ministry of Labor and Employment and HELVETAS Swiss Intercooperation Nepal. SaMi project currently operates in 19 districts32 of Nepal including Kathmandu.

30 People Forum also filed a writpetition demanding to issue the order of Mandamus or other orders necessary to the respondent. The writ has requested to the court to issue order to the government to open the countries of foreign employment only after conducting studies or exploring of international labor market and making bilateral labor agreement and to sign bilateral agreement with those countries where already workers has been sent.
32 Dhading, Dhanusha, Ramechhap, Sindhupalchowk, Kaski, Mahottari, Sarlahi, Saptari, Nawalparasi, Nuwakot, Sunsari, Jhapa, Siraha, Kailali, Sindhuli, Udayapur, Khotang, Gorkha and Morang
The project provides potential migrant workers with accurate and relevant information on safer migration so that they can make an informed decision to protect themselves from fraud, exploitation and trafficking. In addition, the project provides free of cost skills training to the potential migrants. It also seeks to provide legal and paralegal services to migrants who have been cheated. The project also provides psychosocial counseling to families left behind and financial literacy classes to returnees and families left behind. At the same time, the project also aims at improving the implementation of the Foreign Employment Act for the better protection of migrant workers.

4.2 Non-Government Organizations

There are various non-government organization working in Nepal in the sector of labor migration. A returnee based organizations that advocates the protection and promotion of migrant workers’ rights at the national, regional and international levels. Similarly, there are also organizations working to ensure women migrant workers’ rights through the process of counseling, advocacy and empowerment caters to women to ensure women's rights by addressing issues of safe migration and human trafficking. Other organizations work on a wide range of issues, raising awareness among those seeking foreign employment by running migrant centers, providing employment-oriented training and creating employment and livelihood opportunities for the youth in Nepal. Further, research based organizations conduct research on issues related to migration.

4.3 People Forum

People Forum for Human Right (People Forum) is a Non-Governmental Organization (NGO) established for the protection of human rights and promotion of rule of law in Nepal. Since its establishment in 2003, it has been working to provide free legal aid service, advocacy and lobbying for policy reformation and generating awareness at the community level through training, workshops and interaction programs. It has been conducting different types of programs in the field of migration. It has also been working on research based policy advocacy campaign since 10 years.

People Forum has unique experience in the field of legal aid, legal empowerment and policy advocacy, particularly in the issue of migration. Since 2005, People Forum has built strategy to focus its intervention on migration and has been providing free legal aid services to migrant workers. Until November 2017, People Forum has provided free legal
aid services to 17,224 victims of foreign employment through its Central Legal Aid Clinic. Moreover, a total of more than 521159845 have been returned to the migrant workers and their families as a compensation from the Legal Aid Clinic.

**Following are some of the achievements of People Forum:**

1) **Incorporation of Article 51 (i) in the Constitution:** People Forum after massive advocacy and lobby with members of Constitutional Assembly resulted in incorporating rights of migrant’s in the Constitution.

2) **Amendment of Foreign Employment Regulation:** People Forum has continuously been working in collaboration with Foreign Employment Promotion Board and regularly organizing advocacy workshops in contemporary issues of labour migration with line agencies. As a result of such advocacy programs and collaboration and coordination with those concerned agencies People Forum became able to contribute for amendment of regulation.

3) **Law amendment proposal to the Government of Nepal:** People Forum has been working for the right based reformation of Foreign Employment Act, 2007. From the beginning of such advocacy PF has created Civil Society Alliance (working for same cause) and prepared amendment proposal incorporating international best practices and standards. After finalization of the proposal, it has been submitted to Ministry of Labour and Employment on 1st June, 2017. Most of the reformation agendas proposed by People Forum has been addressed and incorporated in the Government Proposal.

4) **Scholarship Scheme for Children of Migrant Workers:** Foreign Employment Promotion Board has been providing scholarship to the children of migrant workers those who are deceased and facing fatal injuries. To this appreciative initiatives, People Forum has developed a guideline after conducting research for providing this scholarship to FEPB. After such contribution made by People Forum, the children of migrants are being facilitated and supported to get education.

5) **Guideline for Providing Legal Assistance in Destination:** Foreign Employment Promotion Board has formulated policy to provide financial support for legal assistance in destination country to support the cases of distress and destitute migrant workers,
where People Forum has made contribution while drafting guideline for providing legal assistance.

6) Media Articles: For effective advocacy and lobby People Forum has been publishing several media articles in context of labor migration through national and local newspaper which directly contributed in generating awareness among migrant community as well to stakeholders and also to the extend to reform certain policies.

7) Awareness/ Orientation Programs regarding Safe and Orderly Migration: For making migration process safe, managed and decent, so far People Forum has been organizing awareness and orientation program from ground level by utilizing bottom to top approach covering 22 districts to the aspirant and returnees migrant workers and members of their families, media personnel, stakeholders and service providers.

8) Appointment of Labor Attaches: People Forum has filed a PIL in Supreme Court of Nepal in 2008 regarding implementation of legal provisions relating to appointment of LabourAttaché including establishment of safe home for women migrant workers and establishment of Foreign Employment Tribunal. After Supreme Court order, Government of Nepal has appointed labourattaché in 10 different destination Countries.

9) Public Interest Litigation cases filed at the Supreme Court: People Forum has also expertise knowledge on PIL and till date it has filed more than 6 PIL in the context of labour migration issues as well as protecting rights of prisoners.

5. Victimization in Labor Migration

Since its establishment, People Forum has been working to provide free legal aid service to the migrant workers and their families. People Forum has been supported by Safer Migration Project (SaMI), HELVETAS Swiss Inter cooperation Nepal33 and Governance Facility, Nepal34. As part of this, Legal Aid Clinic of People Forum works in close coordination with Department of Foreign Employment, Foreign Employment Tribunal and Foreign Employment Promotion Board. The data presented below is

33 Since 2011 People Forum has been providing free legal aid service from its central legal aid center supported by Safer Migration (SaMI), HELVETAS Swiss Inter cooperation Nepal. Most of the case received in central office were referred from SaMi information centers.

34 Since 2015 the cases from 5 project district were referred in central office supported by GF, Nepal. Beside this, under this project, the advocacy and interaction program has been organized for protecting and promoting rights of migrant workers.
based on the total number of cases registered in Legal Aid Clinic. The study is about 1466 Victims and their families who came at People Forum for Legal Support during 1st November, 2016 to 31st October 2017. The presented below include study of victims intake forms of People Forum’s Free Legal Aid Centre. However, due to difference in years, the data presented below is not compared with the yearly data of DoFE.

5.1 Labor Permits Issued by Department of Foreign Employment

The table below shows the total number of labor permit issued by DoFE in the fiscal year 2073/74 B.S.

**Table 1: Labor Permit Issued by DoFE**

<table>
<thead>
<tr>
<th>S/N</th>
<th>Fiscal Year</th>
<th>Male</th>
<th>Female</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Number</td>
<td>Per cent</td>
<td>Number</td>
</tr>
<tr>
<td>1</td>
<td>2073/74 B.S.</td>
<td>608147</td>
<td>95.05</td>
<td>31671</td>
</tr>
<tr>
<td>2</td>
<td>2072/73 B.S.</td>
<td>399406</td>
<td>95.39</td>
<td>19307</td>
</tr>
</tbody>
</table>

**Source: DoFE, FY 2073/74**

While the number of people migrating for work has increased over the years, the number of complaints registered in DoFE has also increased significantly.

**Table 2: Total Case registered at DoFE**

<table>
<thead>
<tr>
<th>S / N</th>
<th>Fiscal Year</th>
<th>Individual Case</th>
<th>Institutional case</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2073/74</td>
<td>931</td>
<td>1452</td>
<td>2383</td>
</tr>
<tr>
<td>2</td>
<td>2072/73</td>
<td>704</td>
<td>1468</td>
<td>2172</td>
</tr>
</tbody>
</table>

**Table 3: Total cases initiated by Legal Aid Clinic, People Forum**

<table>
<thead>
<tr>
<th>S / N</th>
<th>Fiscal year</th>
<th>Total cases registered</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2073/74</td>
<td>1466</td>
</tr>
</tbody>
</table>

There were a total of 1466 victims assisted by People Forum. However, it has to be well noted that the data presented below does not cover the issues of labor migration in general, but it mainly focuses on socio economic and remedial aspects of the victims who came to the Legal Aid Clinic run by People Forum.

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35 1st November, 2016 to 31st October 2017. Total 2383 complaints were registered in DoFE during 16th July 2016 to 15th July 2017 (Fiscal year 2073/74).
5.2 Channels of Exploitation

The DoFE registers cases in two categories; i) institutional (that includes recruiting agencies, registered agents), and ii) Individual (illegal agents). Out of the total cases registered at People Forum’s Legal Aid Clinic, 58.59 percent of the victims registered complaints against institutions. The data can also be matched with the trends of DoFE on victimization through institutions.

*Figure 1: Channel of Exploitation*

When People Forum started providing free legal aid service to labor migrants since 2011, the rate of exploitation by individual was 70% and exploitation by institution was 30%. However, the present data shows that the trend of exploitation has reversed over the course of time. This shows that the channel of exploitation through institutions have gradually increased over the last few years. One of the causes of increase in exploitation by institutions could be people are more aware on legal procedures on foreign employment and as well as proper monitoring mechanism of government on the Recruitment Agencies.
5.3 Age of victims

The bar graph below represents the percentage of different age groups of victims obtaining free legal aid service provided by People Forum. The data shows that people below 35 years of age constitute the highest percentage (71.14 %) who came to seek legal aid service.

Figure 2: Age of Victims

However, it has to be noted that 0.89 percent of the people did not provide their age because of the reasons such as the victims themselves are unknown about their age and are not able to produce documents as well.

5.4 Gender of Victims

Although mostly men are involved in labor migration in Nepal, this trend is changing recently and large number of female workers also goes abroad for foreign employment either as domestic workers or to work as laborers. However, most of the males are engaged in outdoor and labor jobs while females primarily work as house maids. Out of the total cases received by People Forum in the year 2016/17, maximum were male victims, constituting 87.45 percent, while rest were females.
Although the ratio of female victims is comparatively low to that of males, it must be noted that this might be because females mostly work as domestic workers, which is not effectively regulated and are largely unreported. Since women work within households, the legal framework of destination country relating to domestic workers, also limits women workers to their basic rights. Therefore, women workers are powerless when it comes to reporting the abuses and discrimination faced at work abroad.

5.5 Ethnicity of the victims

The very fact and composition ratio of victims can be substantiated with the overall number of people from among different ethnic communities who go abroad as migrant workers. The ethnic composition of the victims in the redress process of the labor migration is presented in pie chart below with the highest number of victims are Brahmin/Chhetri, followed by Janajatis, Madeshis, Dalits and Muslims respectively.

36 Only 4.95% of female have issued labour permit in a fiscal year 2073/74.
5.6. Origin of victims (Province-wise)

The Constitution of Nepal has divided the pre-existing districts of Nepal into 7 Province as per the federal restructuring of the state. The chart below shows the Province from which victim of foreign employment came to legal aid clinic. In the 2016/17, People Forum provided legal aid service to the victims from 72 districts of Nepal, which include people from all the Provinces. The highest number of victims came from Tarai region including Kathmandu and only 1 each victim came from each districts namely, Humla, Bajura, Achham, Dadeldhura and Kalikot. However, out of all the 77 districts, People Forum did not receive any cases from Dolpa, Bajang and Manang districts. Also, some people who came to People Forum have not provided the name of their district because reasons such as confidentiality.

37 Sarlahi district (with total of 112 victims), Morang (66), Nawalparasi (65), Jhapa and Makwanpur (62 each), Chitwan (61), Sunsari (52), Saptari (45) and Kathmandu (40)
The data shows that highest percent of victims who came to People Forum are from Province 1, 2 and 3 comprising 22.71 percent, 20.67 percent and 26.53 percent respectively. Likewise the percent of victims from province 4 and 5 stands almost the same, comprising approximately 11 percent each. The data shows that less number of people from provinces 6 and 7 constituting 7.37 percent, tend to come for complaint compared to people from other provinces. This might be due to the centralized structure for complaint mechanism that people from provinces 6 and 7 are not able to come to Kathmandu valley that lies in Province 3 for the complaint. The data and figure can be adjudged with most labor sending province since the province that’s end higher numbers of workers abroad, the number of victimization also accounts accordingly.

5.7 Nature of Cases

Migrant workers have been victimized in different type of harms. The maximum number of complained that were registered in People Forum, was fraud by local brokers, recruitment agencies and agents comprising 74.69 percent. Moreover, 31.72 percent of people who had gone abroad had also returned back to Nepal as a result of different work and salary than that was mentioned in their contract before leaving, had made a claim for compensation. Secondly, 16.51 percent of the people who have come to the legal aid clinic of People Forum have filed a case to rescue their relatives from abroad. Some of the most pertinent issues for rescue are people not getting work and accommodation, low wage and salary withheld among others. Similarly, about 4 percent of people
have filed a complaint at People Forum’s Legal Aid Clinic whose passport have been withheld by recruiting agencies and/or agents promising to send them abroad. Likewise, Migrant workers have to be compulsorily examined prior departure and at destination county. However, many of them are found medically unfit in the destination country and send back to Nepal within contract period. Due to social status, their skill, lack of proficiency in language and undocumented status make the victims more vulnerable for exploitation.

**Figure 6: Nature of Cases**

Considering these factors, Foreign Employment Act 2064 provides compensation in case of breach of contract in destination countries. Victims have to file a suit against Manpower Company in a DoFE as per section 36\(^\text{38}\) and 55\(^\text{39}\) of Foreign Employment Act, 2064 in case of breach of contract. Furthermore, problems of victim who come for financial support (1.43 percent) include physical assault, left in transit, death, work place accident etc.

\(^{38}\) Section 36, of Foreign Employment Act 2007: If any employer institution does not provide employment in accordance with the terms prescribed in the agreement, the worker or his or her agent may make a complaint, along with evidence, with the Department for compensation.

\(^{39}\) Section 55, of Foreign employment act 2007: Punishment to be imposed in the event of doing or causing to be done act contrary to contract: If any licensee, after making a contract with any worker for work in a company, engages the worker in work for remuneration or facilities lower that or in another company for a work of such nature as is different than that specified in the contract or does not engage the worker in the work for which the worker has been sent for foreign employment but engages the worker in another work or engages the worker in work for remuneration and facilities less than the remuneration and facilities offered previously, the Department shall punish such licensee with a fine of one hundred thousand rupees and require the licensee to pay the shortfall amount of such remuneration and facilities.
5.8 Total Claimed and Compensation Amount at Department of Foreign Employment

The table below provides the data about the total amount claimed by the victims and actual compensation provided to victim in fiscal year 2073/74 B.S. at the Department of Foreign Employment.

**Table 4: Claimed and Compensation Amount at Department of Foreign Employment**

<table>
<thead>
<tr>
<th>S N</th>
<th>Fiscal Year</th>
<th>Claimed Amount (NPR)</th>
<th>Compensation Amount</th>
<th>Total Compensation Provided (NPR)</th>
<th>Compensation Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Individual</td>
<td>Institutional</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>2073/74</td>
<td>757,841,804</td>
<td>321,776,686</td>
<td>436,065,118</td>
<td>159,417,808</td>
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<tr>
<td>2</td>
<td>2072/73</td>
<td>695,096,502</td>
<td>4,803,956</td>
<td>55,638,525</td>
<td>103,678,085</td>
</tr>
<tr>
<td>3</td>
<td>2071/2072</td>
<td>733,905,803</td>
<td>77,483,000</td>
<td>46,026,900</td>
<td>12,35,09,900</td>
</tr>
</tbody>
</table>

**Source:** DoFE 2073/74

As per the provision of Foreign Employment Act, 2064 DoFE has mandate to investigate and prosecute cases related to foreign employment. Similarly, the jurisdiction of DoFE has been extended with regard to the issue of compensation too. Although Foreign Employment Act, 2064 has authorized DoFE to provide compensation, it has very low ratio (in average 21%) of record of compensation provided to sufferers. Its shows that rate of compensation provided by DoFE has been increasing in recent fiscal years. Legislation provides DoFE with quasi-judicial authority aiming to provide fast, expert and accessible service to sufferers. Above table indicates that DoFE has not been successful to meet such expectation. However, further study is necessary for the in-depth analysis as DoFE does not have mandate to provide compensation to all complaints filed in DoFE. For serious cases with imprisonment and compensation, after doing necessary investigation DoFE needs to file charged Sheet in Foreign Employment Tribunal (FET). FET has mandate to provide compensation over on those cases.

5.9. Foreign Employment Promotion Board

Foreign Employment Promotion Board currently provides financial Support to family of deceased if labor migrant obtaining labor permit die within their contract period at a rate of NPR. 7,00,000. The following data of total amount provided to family of the deceased was based on previous policy which was NPR. 3,00,000. Similarly the board also
provides financial support to the victim of grievous hurt according to nature of hurt and their medical condition.

**Table 5: Number of cases in Foreign Employment Promotion Board**

<table>
<thead>
<tr>
<th>S/N</th>
<th>Financial Support to</th>
<th>Number of Victims</th>
<th>Total compensation provided (NPR)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Family of deceased</td>
<td>755</td>
<td>22,87,60,000</td>
</tr>
<tr>
<td>2</td>
<td>Grievous hurt</td>
<td>206</td>
<td>3,06,50,350</td>
</tr>
</tbody>
</table>

**Source:** FEPB Yearly report 2073/74

In addition, In Fiscal year 2073/74, total of 1250 40 students family member of the deceased migrant workers were provided with scholarship by the board. The annual scholarship was provided at the rate of NPR. 8,000 per person for primary level and at the rate of NPR.12,000 for secondary level. Further, FEPB has provided a total amount of NPR. 55,00,000 to various Nepali embassies in various destination countries to provide legal support to migrant workers who are in prison.

**5.10 Cases at Foreign Employment Tribunal**

The Act establishes a three-member Foreign Employment Tribunal for the purpose of ‘trying and settling cases other than those punishable by the Department’. The total number of cases in FET in the fiscal year 2073/74 B.S. including both individual and institutional, is 562 cases.

**Table 6: Number of cases in Foreign Employment Tribunal**

<table>
<thead>
<tr>
<th>S/N</th>
<th>Fiscal year</th>
<th>Total case registered</th>
<th>Total case decided</th>
<th>Per cent</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2073/74</td>
<td>562 (previous + new)</td>
<td>204</td>
<td>36.29</td>
</tr>
<tr>
<td>2</td>
<td>2072/73</td>
<td>436 (previous + new)</td>
<td>185</td>
<td>42.43</td>
</tr>
</tbody>
</table>

**Source:** FET, FY 2073/74

**5.11. Cases at Supreme Court**

The Supreme Court of Nepal has the mandate to review appeal on the judgment of Foreign Employment Tribunal. The table below indicates only to the appeal made by Foreign Employment Tribunal cases to Supreme Court.

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40 Annual Report, Foreign Employment Promotion Board, 2017
### Table 7: Foreign Employment Cases at Supreme Court

<table>
<thead>
<tr>
<th>S/N</th>
<th>Fiscal Year</th>
<th>Convicted by Foreign Employment Tribunal</th>
<th>Acquitted by Foreign Employment Tribunal</th>
<th>Supreme Court Review</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Ruled cases</td>
<td>Reviewed cases</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>2073/74</td>
<td>1</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>2</td>
<td>From 2067 to 2073</td>
<td>8</td>
<td>2</td>
<td>2</td>
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</table>

**Source:** Supreme Court Nepal, 2073/74

In the fiscal year 2073/74 B.S. the Supreme Court of Nepal has ruled all the 24 cases which shows that the Foreign Employment Tribunal is in track to promote and protect the rights of Nepali migrant workers.

### 6. Major Challenges in Labor Migration

Trend of migration for foreign employment is ascending each year and this has become a means of livelihood for Nepali youth population. Besides the huge migrated labour population and their significant contribution of remittance in economy, migration process is not safe in Nepal. There is widespread cheating along with violation of migrant workers’ rights in the entire migration cycles; and this resulted owing to a number of institutional factors and government’s substandard capacity to enable safer journey for migrant workers. Day by day the centralized Government’s service delivery mechanism is becoming more corrupt and remained unaccountable toward fulfilling/ensuring migrants’ rights.

Nepal, so far, has neither ratified ICMW nor concluded much needed formal agreement with labor receiving countries. Instead, Nepal has concluded bilateral agreement only with Qatar and Jordan which have posed Nepali migrant workers in the condition of vulnerability. The main challenges migrant workers from Nepal are facing due to inadequate legal provision in law to address the problems faced by migrant workers. The Foreign Employment Act does not adequately regulate the recruitment industry. Even the existing legal provisions are not implemented properly. Majority of Migrant workers are unaware about the legal rights and process of redress. This lack of knowledge acts as the challenges as the migrant workers are likely to be more vulnerable to abuse/exploitation.

Similarly, unfair recruitment process is another challenges faced my migrant workers. Every recruitment agency doesn’t follow the governmental standard of working and charging the service fees contrary to the clear terms and regulation guided by Foreign Employment Act 2007 and
other similar laws and provisions. Most of the recruitment agencies work through a channel of local sub-agents, who become trustworthy to local youths, thus the vulnerability of being victim of fraudulent agencies rises.

The free-visa, free-ticket scheme announced by the government in June 2015 requires employers to bear the expenses associated with the visa and round-trip air ticket and allowed recruitment agencies to charge a maximum of NRs 10,000 in case the employer refused to pay the service charge. However, migrant workers still have to pay for insurance, medical check-up, and pre-departure orientation training, and contribute to the Migrant Welfare Fund, all of which cost the Nrs. 70000 and more than that which creates hurdles in implementing this policy.

Moreover, there is unbalanced power relation between Migrant workers and RA. Most of the Recruitment Agencies in Nepal possess a high ranking position. Similarly, they are well equipped with economic and other necessary resources whereas the innocent migrant workers as far behind from all those facts.

In addition, Migrant Workers suffers from social Stigma. Especially Female migrants often face unique challenges in general in Nepal, various questions are raised on their character which leads female migrant workers into more vulnerable conditions.

Migrant workers have dissatisfaction towards redress mechanisms. The main reason behind this dissatisfaction is the lengthy bureaucratic procedure that takes place in the court and quasi-judicial bodies to solve the case and the behavior that the governmental bodies and institution shows towards the victim.

The redress mechanisms that specialize in foreign employment and the agencies that administer them are located in Kathmandu. For example, all licensed recruitment agencies, as well as DoFE, Foreign Employment Tribunal, the Foreign Employment Promotion Board, and the private insurers are located in Kathmandu. Centralization, and the associated distance of many workers from redress mechanisms, creates significant barriers to access for Nepali labor migrants, including time, travel expenses, and awareness.

There is lack of coordination among the institutions responsible for assisting victims. There is also lack of case referral mechanisms toreferrer cases relating to human trafficking and labor migration.

Another major challenge is inadequate laws in the destination countries to protect the rights of Nepalese migrant workers. Laws of some countries has cover labor but domestic workers falls under the exception of such
laws. Lack of legal aid services in the destination countries to provide legal services to the victims.

Weak role of Diplomatic agencies as they do not adequately support migrant workers in destination countries. They don’t have adequate resources, training and influence to genuinely assist workers when their rights are violated. Lack of Bilateral Agreement between country of origin and destination country is another challenge in the process of labor migration.

Further, Access to justice for the Nepali migrant workers in the country of origin and destination countries is another strong challenge. Most of the migrant workers working abroad are unaware about the existing mechanisms on claiming for the justice to the mistreatment they suffer. Interventions from Government of Nepal to promote the migrant rights at the destination countries through its bilateral and multi-lateral proceedings are insufficient to realize the goal for better condition of Nepali migrant workers. The diplomatic missions in the destination countries are under resourced to cover the large population of Nepalis, which in turn deprive many Nepalis from access to justice.

7. Conclusion

In order to make the labor migration safe, orderly and well managed, the Foreign Employment Act 2007 was enacted. However, the act has not been implemented properly. Moreover, the act is also not in favor of the migrant workers. Due to the lack of proper enforcement of law, lack of accessible and efficient law enforcement mechanisms, the victims are not getting adequate as well as timely justice. In this regard, the current existing Foreign Employment Act, 2007 need to be changed to address all the exploitation and vulnerabilities faced by migrant workers in the country of origin and destination. Nepali Embassies abroad are also unable to provide full phase services to Nepalis working abroad which is largely the reason why access to justice for Nepali workers is very low and there are, on average, four dead bodies of Nepali workers returning every day from abroad. Likewise, the protection of Nepali workers is also affected primarily due to unequal labor agreement because those who are providing the work have the upper hand while making the contract.

41 Currently there are 110 countries open to employment for Nepali people, but only 29 of them have Nepali embassies, only 10 of these countries have labor attaches, 4 have safe houses for migrant workers and Nepal is able to conduct bilateral agreements with only 7 countries.
The centric nature of the current institutional arrangement has been a major hurdle in protecting rights of migrant workers and dissemination of information to migrants. Individuals, particularly from outside the Kathmandu Valley, are unable to access accurate and adequate information prior to making the decision to migrate. Therefore, if the Government of Nepal is able to decentralize the mechanism to file complaints in local levels, this will be one of the most effective approaches to protect the rights and interest of migrant workers and their families. At the national level, separate departments have been established to oversee foreign labour migration, and non-government organizations working on migration have made significant contributions as well in highlighting issues of concern to migrants. For providing real justice to the migrant workers and making easy accessible of all those mechanism to migrant workers there is need of decentralization of such arrangements.

A top priority for the Government of Nepal should be to encourage migrants to go to countries where human rights provisions are better through concluding bilateral agreements. For instance, the government needs to take immediate action to repatriate stranded workers irrespective of their legal status in the destination countries.

In addition, restructuring of the state has created an opportunity to address labour migration issues from minute level as there will be three tier of government from bottom to top approaches and as per the Local Government operation Act, 2017 it has delegated the power to look after foreign employment issues for safer migration from rural and municipal level which approached for positive initiative for paving a way to promote safer, decent and managed migration process from Nepal and also Government of Nepal is homeworking to amend existing Foreign Employment Act for addressing all the contemporary challenges faced by migrant workers in country of origin and destination.
Annexes

Annex I: Case Stories

Soniya (Named Changed) in Dilemma

Born in one of the remote villages of Solukhumbu district, Soniya, a twenty-two year old girl, got an opportunity to study in Kathmandu Valley. In her family, she has father, mother and two brothers with normal economic background. After completing school leaving certificate she joined her higher secondary school where she voluntarily dropped out after failing grade 12. Her bad days began being unemployment.

She came to know from her aunt about one of her relative sisters who went for foreign employment in Cyprus through the recruitment agency named Alliance. She went to the agency to know about the work and procedures for foreign labor employment. The agent named Ashok Karki motivated her, illustrating the salary and benefits of working there. She had to pay four lakh rupees wherein the first instalment prior to visa confirmation she was only one lakh rupees. Without thinking anything, she decided to go for foreign employment where she would be working as a house maid.

When she signed the contract, the terms indicated 8 hour work with cleaning of the house once a week. However, the actual scenario did not match with the contract. She was compelled to work for 16 hours in a day and looking after 2 children of her employer.

Unexpected behavior by her employer and experiencing total ups and down in her life she called her local agent and shared her problems. She cried and requested to change her job since it did not match with the contract she had signed. However, the agent denied illustrating that until 3 months there will be no any consideration for changing the job.

Again, unfortunate events continued when she was taken to Israel by her employer from Cyprus to visit her employer’s mother. She again had to burn the toil of her sweat pleasing her employer working all day and night. One evening she managed to go to meet a Nepali friend. However, she couldn’t return back on time. When she came back she was battered and mistreated by her employer. After facing all the injustice, she called back to the agent and finally the agent agreed to take her back to Cyprus. The agent told her that a women named Alata will receive her in the airport. After getting back to Cyprus, Alata took her to a room where she was detained for 15 days. Soniya was only given food to eat and when Soniya requested Alata to contact the manpower back in Nepal, they told Alata to keep her there. On the 15th day, an old man came to the room and she was notified that he was also going to sleep in the same room. In the
evening, when Soniya was about to go to sleep, Alata, in sign language, asked her to kiss that old person and left the room. She resented and went to the kitchen. She thought the old man must have left but her expectation went on vain when she went back to room the old man was naked waving 20 Euro and asking to cooperate for sexual relationship. Soniya screamed, shouted and again ran back from there. Recalling that horrifying situation she said with tears full eyes “For a moment I thought of giving up life as a better option than living this hell life”.
That whole night she could not sleep and stayed in the lobby. Next day she called back to the agent stating all the circumstances and requested for a ticket to come back to Nepal. Despite all this, the agency did not do anything and she finally called her mother who was in Nepal. Her mother managed air tickets and rescued Soniya from such pathetic situation. After coming back Soniya went to the recruitment agency and asked for compensation including the salary she did not receive. She was promised to get eight thousand rupees back.

**Annex II: Conventions ratified by Nepal**

<table>
<thead>
<tr>
<th>List of laws/Policies related to Migrant Workers</th>
<th>List of Institution Mechanisms Dealing with Labor Migration</th>
<th>List of Human Rights Treaties ratified by Nepal</th>
</tr>
</thead>
<tbody>
<tr>
<td>II. Foreign Employment Regulation, 2064</td>
<td>II. Department of Foreign Employment</td>
<td>II. International Covenant on Civil and Political Rights (14th May 1991)</td>
</tr>
<tr>
<td>III. Foreign employment Policy, 2068</td>
<td>III. Foreign Employment Promotion Board</td>
<td>III. International Convention on the Elimination of all forms of Racial Discrimination (30th January, 1971)</td>
</tr>
<tr>
<td>IV. Domestic Workers Directive, 2072</td>
<td>IV. Foreign Employment Tribunal</td>
<td>IV. Convention on Elimination of All Forms of Discrimination against Women (22nd April, 1991)</td>
</tr>
<tr>
<td></td>
<td>V. Consular Department, Ministry of Foreign Affairs</td>
<td>V. United Nations Convention against Transnational Organized Crime (23rd December, 2011)</td>
</tr>
<tr>
<td></td>
<td>VI. Labor Attaché</td>
<td>VI. Convention on the Rights of the Child (14th September 1990)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>VII. Convention concerning Forced or Compulsory Labor (3rd January 2002)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>VIII. Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990 (Not Ratified yet)</td>
</tr>
</tbody>
</table>
### Annex III: Diplomatic Missions of Nepal

<table>
<thead>
<tr>
<th>S/N</th>
<th>Country</th>
<th>S/N</th>
<th>Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Australia</td>
<td>16</td>
<td>Myanmar</td>
</tr>
<tr>
<td>2</td>
<td>Bangladesh</td>
<td>17</td>
<td>Norway</td>
</tr>
<tr>
<td>3</td>
<td>Brazil</td>
<td>18</td>
<td>Pakistan</td>
</tr>
<tr>
<td>4</td>
<td>China</td>
<td>19</td>
<td>Qatar</td>
</tr>
<tr>
<td>5</td>
<td>Denmark</td>
<td>20</td>
<td>Republic of Korea</td>
</tr>
<tr>
<td>6</td>
<td>DPR Korea</td>
<td>21</td>
<td>Russian Federation</td>
</tr>
<tr>
<td>7</td>
<td>Egypt</td>
<td>22</td>
<td>SAARC</td>
</tr>
<tr>
<td>8</td>
<td>European Union</td>
<td>23</td>
<td>Saudi Arabia</td>
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<td>9</td>
<td>Finland</td>
<td>24</td>
<td>Sri Lanka</td>
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<tr>
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<td>French Republic</td>
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### Annex IV: Name list of Labor Attaché according to country

<table>
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<tr>
<th>S/N</th>
<th>Labor Attaché</th>
<th>Country</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>Dilliram Banstola</td>
<td>South Korea</td>
</tr>
<tr>
<td>2</td>
<td>Badri Kumar Karki</td>
<td>Malaysia</td>
</tr>
<tr>
<td>3</td>
<td>Motiram Bhusal</td>
<td>UAE</td>
</tr>
<tr>
<td>4</td>
<td>Krishna Kumari Gauli</td>
<td>Oman</td>
</tr>
<tr>
<td>5</td>
<td>Gyanendra Sharma</td>
<td>Kuwait</td>
</tr>
<tr>
<td>6</td>
<td>Raju Kunwar</td>
<td>Saudi Arabia</td>
</tr>
</tbody>
</table>

### Annex V: List of Countries open for Foreign Employment
List of countries opened by GoN for Foreign Employment through recruiting agencies

<table>
<thead>
<tr>
<th></th>
<th></th>
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<th></th>
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* temporarily blocked by GoN
FREE LEGAL AID CENTRES OF
PEOPLE FORUM FOR HUMAN RIGHTS
(PEOPLE FORUM)

1. Free Legal Aid Centre
   Buddhanagar, Kathmandu
   Contact No: 01-4787226

2. Free Legal Aid Centre
   Chandragadhi, Jhapa
   Contact No: 023-456598

3. Free Legal Aid Centre
   Biratnagar, Morang
   Contact No: 021-521469

4. Free Legal Aid Centre
   Bharatpur, Chitwan
   Contact No: 056-520879

5. Free Legal Aid Centre
   Pokhara, Kaski
   Contact No: 061-462559

6. Free Legal Aid Centre
   Banke, Nepalgunj
   Contact No: 081-520426

Web Based Free Legal Advice for Migrant Workers
www.peopleforum.org.np