

Ensuring respect for protection of the rights of all migrants and promoting legal & orderly labour migration

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*Mr. Chair, moderators, co-panellist
Distinguish delegates!*

It is my immense pleasure to share our view representing trade union community in this August gathering. Considering time limit let me present briefly my view on four parts on the theme:

Brief overview¹

"*We are the global citizens!*" These days the Nepali proudly exchanges such statement citing in every corner of the world one can encounter with Nepali nationals! Considering Nepali's link to business with China (500 BCE), intellectuals claim historical length of Nepali migration. However, many of the history tellers referred 1815; the year Nepal made a pact with British-India, which facilitated Nepali recruitment in Ghurkha Army nearly 200 years back. The continuation of this process has reached now opening up the countries from Afghanistan to Zambia as the destination of labour by the Government of Nepal.

The uniqueness of Nepal is, it is a country of origin along with destination to some of the neighbouring countries as well. Nepal sells its labour to as many as 108 countries and it has opened door for importing labour from neighbouring countries specially India.

Above 1/4th Nepali household is linked up with out-country migration, which shares remittance not less than 23% of GDP.

From agro-based subsistence economy to present day post-peasant nature, Nepal is a transitional economy, where big herd of working force has come out from agriculture searching a new job; however in absence of regular employment in industry as of 20th century's Europe- the large number of workforce is in cross road who generally trapped to precarious job.

¹ *The reference in this speech note is highly influenced by a book entitled- **Governing Labour Migration in Nepal** (An Analysis of Existing policies and institution Mechanisms), written by **Bandita Sijapati & Amrita Limbu**, published by Himal Books and Centre for the Study of Labour and Mobility*

Nepali labour market is largely mismatched; there is scarcity of skilled human resources to run the business as usual, whereas on-an-average 30% (considering all figures indicated as labour under utilization) is unemployed.

Tracking the data of latest 10 month of the ongoing fiscal year, the number of Nepali migrated to various countries for employment is 357, 707! A lowest 25,167 in Oct and highest 41,640 in March-April; which is up by 14% compare to the same period of last year! A rough figure says- every year Nepal welcomes 400,000 job seekers; and this figure is equal to the total number of out-country migration.

Apart from India, official figure says there are around 3 million Nepali Emigrants in various countries with major destinations- Malaysia and GCC countries (big number Qatar, Saudi Arabia). There are 4 categories of destination as –India (for extremely poor); Malaysia & Gulf countries (having petty collateral), South Korea, Singapore, Hong Kong, Israel (educated **plus 2** and above) and Japan/Australia/Europe/North America (middle class and sufficiently educated).

Nepal has forced even to welcome refugees from Tibet, Bhutan and even some of the African countries.

Nepal's labour migration is terribly blurred with human trafficking. Misusing open border with India, the traffickers are using Indian land for this crime. They are creating much trouble providing fake Nepali passport to Indians, Bangladeshi, Pakistani, and Bhutanese Nationals!

Overview of policy and practices

Till to 1985 Nepal didn't have foreign employment policy; in this year an act called **Foreign Employment Act** introduced aiming to control, manage & maintain economic interest, as the first legal document to address the migration of Nepalis beyond India. Entering to democratic helm after 1990, and embracing market-led economic policy, Nepali began to migrate various countries for employment. It encourages policy makers to introduce numbers of legal instruments, some are directly related to foreign employment and some are indirect.

A summary of the instruments can be summarised as following:

Foreign Employment Acts

Other National Instruments

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- Employment Act 1985
 - Foreign Employment (First Amendment) Act 1998
 - Foreign Employment (Second Amendment) Act 1998
 - Foreign Employment Rules 1999
 - Foreign Employment Act 2007
 - Foreign Employment Rules 2008
 - Foreign Employment Policy 2012
 - The Interim Constitution 2007
 - Labour Act 1992 Labour Act 1992
 - National Labour Policy 1999
 - Labour and Employment Policy 2005
 - Trade Union Act 1992
 - Children Act 1992
 - Immigration Act 1992
 - Passports Act 1967
 - Child Labour (Prohibition and Regulation) Act 2000
 - Human Trafficking and Transportation (Control) Act 2007
 - Nepal Citizenship Act 2006
 - Non-Resident Nepali Act 2008
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Overview of the Foreign Employment Act of 2007

Latest one is the Foreign Employment Act 2007; which is made to amend and consolidate laws relating to foreign employment. With involvement of various actors and stakeholders, particularly the trade unions, in many ways, this Act embraces right-based approach.

- **Obligation of the government**- it directs government to resolve any problems
- **Special priorities and reservation**- to women, Dalit, indigenous nationalities, oppressed groups, victim of natural calamities and people of remote areas
- **Prohibition**- minor under age 18 and the women below 30 years in GCC countries (though perhaps with good intention, later tends to discriminatory through gender-perspective)
- **Power to specify remuneration, service charge and promotional cost**- fixes minimum wage, visa fees, miscellaneous expenses made within and outside country.
- **Training**- compulsory pre-departure training through licensed training providing institutions
- **Insurance**- insurance equivalent to at least 500,000 is made mandatory to recruiting agencies
- **Labour Desk**- direct to the Government to establish labour desk at international airport
- **Use of National airport**- to avoid trafficking of women specially
- **Labour Attaché**- the provision to establish labour attaché where 5000 plus Nepalis are employed
- **Foreign employment welfare fund**- a welfare fund establishes under foreign employment promotion board to ensure social security and welfare of workers and their families

- **Foreign employment tribunal**- aiming to settle cases other than punishable by the Department
- **Foreign Employment Promotion Board**- to promote foreign employment making it safe and dignified

Bilateral instruments and regulating Nepal's labour migration

1. **India**- 31 July 1950- treaty
2. **Qatar**- 21 April 2005- Labour Agreement
3. **UAE**- 3 July, 2007- MOU
4. **South Korea**- 23 July, 2007- MOU
5. **Bahrain**- 29 April, 2008- MOU
6. **Japan**-2009- Letter of exchange

Agreement and all MoU has covered recruitment, Contract, remittance, dispute settlement, monitoring & implementation process; however MoU with Korea has added sending fee, advertisement, Korean language, process to selection of job seekers, and preliminary education as well.

Sad part is major chunk of remittance (76%) earned by the migrant labour is used on consumption.

Role of trade unions vis-a-vis GEFONT

GEFONT as one of the leading trade union centres in the country has initially started to address this issue beyond India 1994 onwards. It started by cooperating migrant workers in South Korea, who in those days victim of industrial accident and by the Hundi (illegal money carriers). Our first attempt was to establish formal link with the unions in country of destination, making them convince that we were not the job snatchers! An agreement was made that the MW would be the member of the union concern and act as of the member of union; whereas they seek similar support and solidarity of the in-land member. By establishing GEFONT support group we gear up the process!

In the country, we began our work by asking safe money transfer process through the formal financial channel. At a time when remittance word was unfamiliar in Nepal, GEFONT advocated it – challenged those policy makers who would arguing that was impossible. Asking foreign employment policy and devise possible way to check manipulator we made lobby from field to parliament and planning commission.

Now we can proudly mention our efforts are demonstrating colour. Let me summarise our efforts as following:

- **Korea** - MoU with KCTU, through this MTU is established, which is now working all migrant workers including Nepali. One organizer from GEFONT based in Seoul supported by KCTU is in action
- **Malaysia** - MoU with MTUC, one organizer from GEFONT is working, supported by GUFs specially **BWI, UNI, PSI**. MTUC, GUFs, GEFONT and Indonesian TU has made a MOU to operating SMS Help centre for Nepali and all other migrant workers of different nationalities. Construction sector federations of GEFONT and MTUC have also reached in an Agreement to work in cooperation
- **Hong Kong** - With working relation with HKCTU, there are two workers federations of Nepali migrants in action. They have been working as affiliates of HKCTU- One is federation of Nepali women domestic workers and the other is Nepali construction workers
- **Lebanon**- Agreement among **KAFA** Lebanon, **ASI** London and GEFONT for Nepali domestic migrant workers in practice from 2011 is working
- **GCC country**- GEFONT has made MOU with **KTUF** in Kuwait and **GFBTU** in Bahrain. We are also the part of Qatar campaign with ITUC and GUF.

Through the Multi Actor Coordination cooperation we are witnessing positive result on the issues such as

- To minimize Deception
- Timely and effectively rescue
- Reduction of incidents of Forced labour trap and Bondage trap.
- Minimization of Mental disorders, unexpected deaths due to working and living conditions and suicides

Key message-

- 0 **Implement rights-based and gender-sensitive policies and program ensuring right-** Governments, in consultation with migrants, trade unions, and diverse CBO, should develop and implement rights-based and gender-sensitive policies and program ensuring right to self organisation & collective bargaining, equal pay, access to social security, compensation for work related accidents and injuries, employment opportunities, and promoting equal treatment and non-discrimination. Governments should sign and implement transparent and accessible bilateral agreements that build on international standards for the protection of the rights of all migrant workers, with strict monitoring and implementation mechanisms of the same. Such bilateral agreements should include provisions for the portability of pensions and the full range of social protection mechanisms.
- 0 **Focus to promote Decent work Agenda** - The H LD must focus on promoting decent work for migrant and local workers alike. This is the only way to create shared prosperity, reduce inequalities, and dampen xenophobia. The decent work

agenda must underpin all migration policies and programmes. It should be made part of employment contract.

- o **Labour inspection and Monitoring** system is needed in order to make agreement legally eligible to challenge at the Courts of both countries.. It will be helpful making recruitment system transparent and ethical binding with agreed code of conduct. It will further address the issue of detention and standard migrants, aiming to find out an alternative to this! The HLD must give UN organisations, especially the ILO and OHCHR, key roles in the governance architecture and place migration debates, policies and programs within the UN Framework. The GFMD should be put under the ambit of the UN so it is more accountable and transparent, and adheres to and builds on the existing human rights frameworks and obligations.

Thank you!

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