

# Nepal's Diplomatic Efforts to Protect the Rights of Nepali Migrant Workers in the Gulf Cooperation Council (GCC) Countries during the COVID-19 Pandemic: Lessons for the Future

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## Abstract

*Labor migration in Nepal largely consists of 'blue-collar' workers traveling to foreign countries, especially the Gulf Region, for employment. In spite of domestic as well as international legal mechanisms guaranteeing their safety, their stay in these countries has met with issues of gross human rights violations. This spectacle escalated further during the COVID-19 pandemic. Among the different ways the Nepal Government approached to deal with this matter, this paper concerns the diplomatic approach. It examines the pre-existing as well as ad hoc diplomatic tools that were at the disposal of and utilized by the Nepali state during the first months of the COVID-19 pandemic to make the GCC countries more accountable towards the issues of Nepali migrant workers. It comments on the performance of such tools and concludes by making recommendations for a more proactive diplomacy to address the issues of migrant workers in times of crises.*

**Keywords:** labor migration, migrant workers, diplomacy, diplomatic tools, COVID-19 pandemic, ad hoc tools

## Introduction to the labor migration in Nepal:

The Nepali State has a long history of outflow of its population to foreign lands for employment. Such migration specifically began about 200 years ago with the practice of recruitment of Nepali people in British India.<sup>1</sup>

At present, the Nepal government (hereinafter, "Government") has approved 110

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<sup>1</sup> National Human Rights Commission Nepal, 'NHRC-Nepal on the Rights of the Migrant Workers: An Overview', October 2012, available at [http://www.nhrconepal.org/nhrc\\_new/doc/newsletter/Rights%20Migrant%20Workers.pdf](http://www.nhrconepal.org/nhrc_new/doc/newsletter/Rights%20Migrant%20Workers.pdf), accessed on 3 July 2021.

countries for migration through recruitment agencies.<sup>2</sup> The Department of Foreign Employment has issued 4 million labor approvals since 2008/09<sup>3</sup> and now, the migrant labor in Gulf Cooperation Council (GCC) is a household phrase across the country. Among those 110 countries, the GCC, which include Saudi Arabia, Qatar, UAE, Kuwait, Oman and Bahrain, have been the top destinations for Nepalese migrant workers.<sup>4</sup>

Between 2008 and 2017, GCC countries received 56.54% of the total number of Nepalese migrant workers.<sup>5</sup> In 2018/19 alone, these countries received 87.8% of the total number of Nepalese migrant workers.<sup>6</sup> Among them, 31.8% were in Qatar, 26.5% in UAE, 19.5% in Saudi Arabia, 6.8% in Kuwait, 2.0% in Bahrain and 1.2% in Oman.<sup>7</sup>

Nepal's economy heavily relies on the remittance sent by national migrant workers working in foreign lands. In 2020 alone, the remittance sent by such migrant workers accounted for 24.1%, almost a quarter, of Nepal's GDP.<sup>8</sup> Additionally, this remittance also meets the family expenses of 55.8% of Nepal's total households.<sup>9</sup>

Owing to the involvement of question of rights of Nepali people as well as their economic well-being, the labor migration to the GCC, therefore, involves national interest<sup>10</sup> of the Nepali state. In this regard, there are national as well as international legal instruments that oblige Nepal to be responsible towards the issues of human rights of migrant workers in all situations, even a pandemic. These obligations include, but are not limited to, the Constitution of Nepal<sup>11</sup>, Foreign Employment Act 2007<sup>12</sup>, Infectious Disease Act 1964<sup>13</sup>, Universal Declaration on Human Rights<sup>14</sup>, International Covenant on Economic, Social and Cultural Rights<sup>15</sup> and International Covenant on Cultural and Political Rights<sup>16</sup>.

<sup>2</sup> 'Nepal Labor Migration Report 2020', *Ministry of Labor, Employment and Social Security*, 2020, Kathmandu, p. 31, available at <https://moless.gov.np/wp-content/uploads/2020/03/Migration-Report-2020-English.pdf>, accessed on 9 September 2021.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid, p. 33.

<sup>5</sup> Labor Migration for Employment: A Status Report for Nepal: 2015/2016-2016/2017', *Ministry of Labor and Employment*, 25 February 2018, p.10, available at <https://asiafoundation.org/wp-content/uploads/2018/05/Nepal-Labor-Migration-status-report-2015-16-to-2016-17.pdf>, accessed on 9 September 2021.

<sup>6</sup> Labor Report 2020 (n 2), p. 33.

<sup>7</sup> Ibid.

<sup>8</sup> 'Personal remittances, received (% of GDP)', *The World Bank*, available at <https://data.worldbank.org/indicator/BX.TRF.PWKR.DT.GD.ZS>, accessed on 9 September 2021.

<sup>9</sup> Labor Report 2020 (n 2), p. 113.

<sup>10</sup> *Nepalko Sambidhan* (Constitution of Nepal) 2015, art. 5.

<sup>11</sup> Constitution (n 10), arts. 16(1), 18(3), 35(1) & 51(i) (5), (6).

<sup>12</sup> *Baideshik Rojgar Ain 2064* (Foreign Employment Act 2007), Nepal, ss. 75(2), 33(1)(b) & 75(1).

<sup>13</sup> *Sangkeramak Rog Ain 2020* (Infectious Disease Act 1964), Nepal, ss. 2(1) & 2(a)(1).

<sup>14</sup> *Universal Declaration of Human Rights*, 10 December 1948, UNGA 217 A (III), arts. 1, 2, 9, 13(2), 19 & 25(2).

<sup>15</sup> *International Covenant on Economic, Social and Cultural Rights*, 3 January 1976, UNTS 993, New York, 16 December 1966, arts. 12(1), 12(2)(c) & 11(1).

<sup>16</sup> *International Covenant on Civil and Political Rights*, 23 March 1976, UNTS 999, New York, 16 December 1966, arts. 12(4), 19(2), 2(1) & 2(3) (b), (c).

## Addressing the issue through diplomacy:

Diplomacy is a significant tool to address the issues concerning the human rights of migrant workers, specifically to hold the countries of destination accountable towards such issues. This contention is not a new thesis and has long been suggested by activists, scholars<sup>17</sup>, and concerned authorities<sup>18</sup>. Since labor migration is a transnational phenomenon, its issues cannot be addressed only at the national level; it should be addressed at bilateral, regional and international levels;<sup>19</sup> thus making diplomacy especially significant in this regard.

Diplomacy involves the use of both pre-existing as well as temporary (*ad hoc*) tools to meet the desired ends of representing and addressing the best interests of a State. Although advancements in technology, increased interconnectedness and other changes of the modern era might have complicated the way diplomacy is conducted and proliferated among the involved actors,<sup>20</sup> at its core, diplomacy will always remain a process to attain a State's best interests. For this purpose, there are certain permanent as well as temporary diplomatic tools at the disposal of a state.

### Permanent tools:

Nepal has permanent institutional mechanisms at its disposal whose functions concern the issues of migrant workers. They include Labor Attaché, Labor Counselor, Embassies (or foreign diplomatic missions) and Agreements. These mechanisms also act as diplomatic tools through which diplomacy aimed at protecting migrant workers can be conducted. It is therefore imperative to assess their role in making the governments of GCC countries accountable towards Nepali migrant workers.

#### 1) Labor Attachés:

Labor attaché(s) is a government official who, as per the Foreign Employment Act 2007, is appointed to such countries where five thousand or more laborers have been sent for foreign employment.<sup>21</sup> Section 68(1) of the same Act provides the functions, duties and powers of labor Attaché. It includes notifying the Government on different matters like the factual situation of migrant workers in respective countries and steps taken by such countries for protecting human rights of the workers; assisting in resolving worker-employer disputes; providing counseling to the workers; supervising activity; arranging

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<sup>17</sup> Keshav Bashyal & Binita Subedi, 'Labor Diplomacy and Migration Governance in Nepal', *Institute of Foreign Affairs, Nepal: Journal of Foreign Affairs*, volume 1:1, January 2021, p. 107; Gaurav Bhattarai & Jeevan Baniya, 'Nepali Migrant Workers Amid COVID-19 in Major Destination Countries: A Human Security Approach', *Tribhuvan University Journal COVID-19 Special Issue*, volume 34, September 2020, p. 123.

<sup>18</sup> 'Commissions' initiatives for the protection of the human rights of Migrant workers', *National Human Rights Commission*, 2018, Lalitpur, p. 85.

<sup>19</sup> 'IOM and Labor Migration', *International Organisation for Migration*, 2008, available at [https://www.iom.int/sites/default/files/our\\_work/ICP/IDM/Labor-Migration-Infosheet-2008.pdf](https://www.iom.int/sites/default/files/our_work/ICP/IDM/Labor-Migration-Infosheet-2008.pdf), accessed on 9 September 2021.

<sup>20</sup> Kishan S. Rana, *21st Century Diplomacy*, The Continuum International Publishing Group, New York, 2011.

<sup>21</sup> Foreign Employment Act (n 12), s. 68(1).

the return of distressed workers; the bodies of those killed in the destination country and so on.

A major difference between labor attachés and other Government officials present in the embassies of respective country of destination is that the former are not necessarily officials of the Ministry of Foreign Affairs and are at least of the level of a Gazetted Officer<sup>22</sup>.

Labor Attachés are present in the embassies of all of the GCC nations, apart from Saudi Arabia, where, including the UAE and Qatar, there is a Labor Counselor.<sup>23</sup> The latter's function is similar to that of the Labor Attaché.

## 2) Embassies:

Embassies are the 'most effective institution of the origin state'<sup>24</sup> for representing such State in a foreign country. Correspondingly, Nepali embassies in the GCC countries (hereinafter, "Embassies" or "Embassy") are the primary mechanisms to oversee issues of Nepali nationals in those countries. Regarding labor migration, their activities include 'services and support in times of distress and grievances, repatriation of the bodies of deceased migrant workers, helping migrant workers receive compensation from an employer and rescuing migrant workers from vulnerable situations.'<sup>25</sup> There are Nepali embassies in all of the GCC countries.

### *Embassies and Labor Attachés in the GCC during COVID-19:*

Like other times, during the first months of the COVID-19 pandemic (hereinafter, "Pandemic"), the Embassies were engaged with issues of migrant workers, except that during the latter, their work was more concerned with repatriating workers stranded in the respective countries and facilitating their departure. To this end, the Embassies had been prioritizing the groups of workers who needed to be repatriated, based on data collected from different mediums, especially social media.<sup>26</sup> Such prioritization was mainly on the basis of vulnerability and documented status.<sup>27</sup> Likewise, the bureaucratic arrangement demanded coordination of the Embassies with different mechanisms back at home like Labor and Foreign Affairs Ministries and the COVID-19 Crisis Management Center (CCMC). The officials in the respective Embassies were also engaged in communicating with the employers to assure safety and hygiene of the migrant workers at the workplace.<sup>28</sup>

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<sup>22</sup> Ibid.

<sup>23</sup> Labor Report 2020 (n 2), p. 86.

<sup>24</sup> Bashyal & Subedi (n 17), p. 111.

<sup>25</sup> 'Labor Migration for Employment A Status Report for Nepal: 2014/2015' *Ministry of Labor and Employment*, p.44, available at [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-kathmandu/documents/publication/wcms\\_500311.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-kathmandu/documents/publication/wcms_500311.pdf), accessed on 9 September 2021.

<sup>26</sup> Based on interviews with Nepali Embassy officials who were deployed in the Embassies during the Pandemic.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

Similarly, the Embassies were also engaged in informal communication with mechanisms and officials of foreign governments seeking accountability and responsiveness on the matters of safety of workers during the Pandemic.<sup>29</sup>

Likewise, as in other times, the Embassies were attending to the complaints of migrant workers through different mediums. Their engagements also concerned monitoring workplaces for a safe environment and providing accommodation as well as logistical support to groups of migrant workers seeking such needs like those who were expelled from their employment or had had their contract expired (undocumented). All of these functions either followed or went hand in hand with the dissemination of information regarding safety protocols during Pandemic to the migrant workers.

The work of the Labor Attaché included counseling the migrant workers, working in proximity with the Embassies, and other works under its mandate.<sup>30</sup>

### 3) Agreements:

Agreements form the legal grounds which can be referred to during diplomatic correspondence. In regard to the GCC countries, Nepal has a binding Bilateral Labor Agreement (BLA) only with Qatar and Bahrain. There have been concluded Memorandum of Understanding (MoU) with Oman and UAE but they are non-binding. There are no agreements of any kind with Saudi Arabia<sup>31</sup> and Kuwait.

### *Ad hoc* tools:

*Ad hoc* tools are the methods of diplomacy other than permanent conduits. This includes high-level diplomatic engagements between states and non-state actors, in matters of protection of rights of either state's citizens in the other's territory.

In the case of Nepal, the only *ad hoc* approach undertaken was diplomatic telephone communication. The then Prime Minister KP Oli held a telephone conversation with Bahrain Prime Minister Khalifa Bin Salman Al Khalifa,<sup>32</sup> UAE's crown prince, Mohamed bin Zayed Al Nahyan,<sup>33</sup> the Deputy Prime Minister of Oman, and with the Prime Minister of Qatar on issues of protection of migrant workers in the respective countries. Likewise, the Foreign Minister of Nepal held a telephonic conversation with

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<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> Nepal and Saudi Arabia had exchanged a draft labor agreement and its protocol with a view to promoting labor relations between the two countries. See 'Report on Nepal's Foreign Affairs (2017-2018)', *Ministry of Foreign Affairs*, August 2018, Kathmandu, p. 72.

<sup>32</sup> 'Amid coronavirus outbreak, PM Oli holds telephone conversation with his Bahrain counterpart on safety of Nepali migrant workers', *Republica*, Kathmandu, 2 September 2020, available at <https://myrepublica.nagariknetwork.com/news/pm-oli-holds-telephone-conversation-with-his-bahrain-counterpart-regarding-security-of-nepali-migrant-laborers-there/>, accessed on 9 September 2021.

<sup>33</sup> 'PM Oli Holds Telephone Conversation with UAE's Crown Prince on Nepalese Migrant Workers', *New Spotlight Online*, Kathmandu, 7 April 2020, available at <https://www.spotlightnepal.com/2020/04/07/pm-oli-holds-telephone-conversation-with-uaes-crown-prince-on-nepalese-migrant-workers/>, accessed on 9 September 2021.

Prince Faisal bin Farhan Al Saud, the foreign minister of Saudi Arabia,<sup>34</sup> wherein he requested them to ‘ensure safety and security of Nepali nationals during this difficult time’<sup>35</sup>.

Although the details of these communications are not public, it is understood that the Government *inter alia* requested the GCC countries ‘not to take any actions against workers whose visa and work contract have expired.’<sup>36</sup>

### Efficacy of the tools:

While the repatriation took place eventually, and the Embassy in Oman was even successful in decreasing the price of tickets that were initially designated by the Government for the return of migrant workers,<sup>37</sup> these facts alone ignore the larger scenario that questions the efficacy of Nepal's diplomatic efforts of ensuring a secured environment to its workers.

Those workers whose contract had ended, company had closed and were removed from employment, absolved from different accusations, denied salary, undocumented, pregnant, and sick, had the urgency to return to Nepal, and thus needed to be rescued.<sup>38</sup> The Embassies, as well as the Government, were rigorously involved in the repatriating function, but owing to different reasons, the repatriation became uncertain for a long time, and it added further complexities.<sup>39</sup> The delayed repatriation gave rise to many other problems like mental distress<sup>40</sup>, loss of income generation source due to expiry of work contract thereby giving rise to incapability of getting proper access to basic facilities like drinking water, food, medical treatment and shelter<sup>41</sup>, and so on.

Although the Embassies deny this,<sup>42</sup> their response has also been criticized for its

<sup>34</sup> MoFA Bulletin, ‘Current Affairs: 13 February-15 July 2020’, *Ministry of Foreign Affairs*, 2020, p.2, available at [https://mofa.gov.np/wp-content/uploads/2020/09/Bulletin-Final\\_Website-Update.pdf](https://mofa.gov.np/wp-content/uploads/2020/09/Bulletin-Final_Website-Update.pdf), accessed on 9 September 2021.

<sup>35</sup> Ibid.

<sup>36</sup> Chandan Kumar Mandal, ‘Government considers bringing back Nepali migrant workers from COVID-19-affected countries’, *The Kathmandu Post*, Kathmandu, 5 May 2020, available at <https://kathmandupost.com/national/2020/05/05/government-considers-bringing-back-nepali-migrant-workers-from-COVID-19-affected-countries>, accessed on 9 September 2021.

<sup>37</sup> Rudra Khadka, ‘*Sarkarko Vanda Dutavasko Byabasthapanma Vada Sasto* (Embassy manages air fee cheaper than the government)’, *Nagarik*, Kathmandu, June 2020, available at <https://nagariknews.nagariknetwork.com/politics/241401-1592099857.html>, accessed on 9 September 2021.

<sup>38</sup> ‘The Rights of Nepali Migrant Workers during COVID-19 Pandemic: A study report by National Human Rights Commission’, *National Human Rights Commission*, 2020, Lalitpur, pp. 34, 36.

<sup>39</sup> Sameer Hashmi, ‘Coronavirus leaves Gulf migrant workers stranded’, *BBC*, 16 May 2020, available at <https://www.bbc.com/news/world-middle-east-52655131>, accessed on 12 July 2021; Upasana Khadka, ‘UAE Warning to Send Back workers, Including Nepalis’, *Nepali Times*, 13 April 2020, available at <https://www.nepalitimes.com/latest/uae-threat-to-send-back-workers-including-nepalis>, accessed on 9 September 2021.

<sup>40</sup> NHRC (n 38), p. 28.

<sup>41</sup> Ibid, pp. xi-1.

<sup>42</sup> Embassy officials’ interview (n 26).

untimely<sup>43</sup>, and even victim-blaming<sup>44</sup> nature. Likewise, the monitoring of the workplace was not done by all Embassies and even in the case of those that did it, the frequency was not regular.<sup>45</sup>

The Government claimed to have received assurances of an exploitation-free and safe environment for the migrant workers from the respective GCC countries during their diplomatic conversations.<sup>46</sup> This can be taken as a commendable approach since many of the interviewed Embassies' officials agreed that such communication had eased their diplomatic function in the respective GCC countries. Likewise, the Embassies also reportedly approached the employers seeking assurance for the same.<sup>47</sup> However, the factual report does not suggest the success of these approaches. This is evident from the reported escalation of the plight of human rights of Nepali migrant workers in GCC during the Pandemic.

Such issues included acts and omissions of the employers resulting in lack of access to information regarding safety from COVID-19 or from information regarding access to services in case of COVID-19 diagnosis;<sup>48</sup> lack of access to safety equipment like sanitizer, mask, gloves;<sup>49</sup> unsafe workplace characterized by crowdedness, poor sanitation<sup>50</sup>, lack of social distance and resuming workplace without safety protocol<sup>51</sup>, lack of access to health services,<sup>52</sup> and a difference in treatment between native migrant workers and Nepali migrant workers for the same matter.<sup>53</sup>

Likewise, the GCC countries were not responsive and accountable vis-a-vis the workers. Cases of loss of employment due to COVID-19 surfaced<sup>54</sup>, which included unfair expulsion without pre-information or consent<sup>55</sup>, unjustifiable deportation<sup>56</sup>, and denial

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<sup>43</sup> NHRC (n 38), p. 22.

<sup>44</sup> Based on an interview with a human rights researcher focusing on migrant workers' rights, Mr. Rameshwar Nepal.

<sup>45</sup> Embassy officials' interview (n 26).

<sup>46</sup> Mandal (n 36).

<sup>47</sup> Embassy officials' interview (n 26).

<sup>48</sup> NHRC (n 38), p. 20.

<sup>49</sup> Ibid.

<sup>50</sup> Rima Kalush, 'In the Gulf, migrant workers bear the brunt of the pandemic', *Aljazeera*, 1 June 2020, available at <https://www.aljazeera.com/opinions/2020/6/1/in-the-gulf-migrant-workers-bear-the-brunt-of-the-pandemic/>, accessed on 12 July 2021.

<sup>51</sup> 'Impact of COVID-19 on Nepali Migrant Workers: Protecting Nepali Migrant Workers during the Health and Economic Crisis', *International Labor Organisation*, 2020, p.4, available at [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-kathmandu/documents/briefingnote/wcms\\_748917.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-kathmandu/documents/briefingnote/wcms_748917.pdf), accessed on 7 August 2021.

<sup>52</sup> Ibid, p. 5; 'ILO warns of COVID-19 migrant 'crisis within a crisis'', *International Labor Organisation*, 24 June 2020, available at [https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_748992/lang-en/index.htm](https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_748992/lang-en/index.htm), accessed on 9 September 2021.

<sup>53</sup> NHRC (n 38), p. 21.

<sup>54</sup> Bhattarai & Baniya (n 17), p.6.

<sup>55</sup> NHRC (n 38), p. 24.

<sup>56</sup> 'Qatar: Migrant workers illegally expelled during COVID-19 pandemic', *Amnesty International*, 15 April 2020, available at <https://www.amnesty.org/en/latest/news/2020/04/qatar-migrant-workers-illegally-expelled-during-COVID19-pandemic/>, accessed on 12 July 2021; NHRC (n), pp. 32-33.

of complete or adequate salary<sup>57</sup>. The latter scenario consequently gave rise to inability of workers to access food and other basic amenities<sup>58</sup>. Besides lack of financial ability for oneself, the undocumented workers, due to their status as such, found themselves in forced and unpaid labor.<sup>59</sup> The COVID-crisis also added to the plight of pregnant workers by obstructing swift access to health services.<sup>60</sup>

Human rights issues permeated among the dead too. With the advent of first lockdown in Nepal in March 2020, the arrival of dead bodies from GCC countries stopped, giving rise to State's obligations<sup>61</sup> of repatriating the bodies. Although the domestic policy of some of the GCC countries like UAE, Saudi Arabia and Kuwait made it impossible to repatriate COVID-19 diagnosed dead bodies and the funerals thereof needed to be carried out in the destination country itself<sup>62</sup>, absence of information regarding the time and date of such funerals also added to the plight of dead workers' families.<sup>63</sup>

### Efforts of other countries:

Remarks cannot be made in any way on the diplomatic efforts of Nepal during the Pandemic without considering the same of other labor-sending countries. In this regard, one may look into the efforts of India and the Philippines, whose citizens populate the GCC like the Nepalese.

Much attention was captured by India's "air bubble diplomacy" during the pandemic, wherein India was concluding and extending bilateral "Air Travel Arrangements" with different countries, including GCC countries other than Saudi Arabia, which 'aimed at restarting commercial passenger services when regular international flights are suspended as a result of the COVID-19 pandemic'.<sup>64</sup> This paved the way for uninterrupted operation of flights with safety protocols even amidst the travel restrictions due to pandemic, thereby making it possible for the repatriation of Indian workers from the GCC in bulk in a short time. The External Affairs Minister of India S. Jaishankar, in his address to the Indian Parliament, *Rajya Sabha*, claimed the air bubble arrangement as being 'the world's biggest repatriation exercise that saw over 4.5 million people return home'.<sup>65</sup>

The Philippines is often considered much successful in migration diplomacy, and

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<sup>57</sup> NHRC (n 38), pp. 26-27.

<sup>58</sup> Ibid, p. 23.

<sup>59</sup> Ibid, p. 27.

<sup>60</sup> Ibid, p. 31.

<sup>61</sup> *Law and Policy Forum for Social Justice & Paurakhi Nepal v. Government of Nepal*, Writ no. 073-WO-0916, 2074 Karthik 30; Act (n 12), s. 68(2)(e).

<sup>62</sup> NHRC (n 38), p. 61.

<sup>63</sup> Ibid, p. 62.

<sup>64</sup> 'About Air Transport Bubbles', Ministry of Civil Aviation, India, available at <https://www.civilaviation.gov.in/en/about-air-transport-bubbles>, accessed on 25 August 2021.

<sup>65</sup> Special Correspondent, 'Government to expand air bubble option with more countries: Jaishankar', *The Hindu*, New Delhi, March 15, 2021, available at <https://www.thehindu.com/news/national/parliament-proceedings-45-million-indians-brought-back-home-during-pandemic-jaishankar/article34074940.ece>, accessed on 25 August 2021.



the same has been said of its diplomacy during the pandemic in GCC nations.<sup>66</sup> The diplomatic missions of the Philippines were reportedly proactively engaged with the employers diplomatically, promptly seeking assurance of the well-being of Filipino migrant workers.<sup>67</sup>

In addition to these countries, other South Asian countries like Sri Lanka, Bangladesh and Pakistan carried out relatively rapid repatriation of their workers from the GCC, and one of the reasons for such success has been referred to the properly maintained database/record system of these countries' workers by the diplomatic missions.<sup>68</sup> This enabled these countries' embassies to rapidly assess, contact, verify and thereafter repatriate the workers back to their country of origin.<sup>69</sup>

### Analysis:

An analysis of Nepal's permanent as well as ad hoc diplomacy during the Pandemic sheds light on some of the major shortcomings permeating these conduits.

#### *Major shortcomings pertaining to Permanent tools:*

In regards to labor agreements, the problem relates to the absence of binding labor agreements with the GCC nations, except with Qatar. Even in regards to the existing Bilateral Labor Agreement with Qatar and non-binding MoUs with other countries, the NHRC attested that there was absence of any provisions in such agreements that endowed special responsibility on the respective countries during times of crisis like the COVID-19.<sup>70</sup>

As for Embassies, although they were repeatedly suggesting the Government to carry out repatriation as soon as possible<sup>71</sup>, and the officials point out to the absence of coordination among Governmental institutions as being the reason for delayed repatriation and other functional failures<sup>72</sup>, this was not found as being the complete truth. In fact, one of the reasons for the delayed repatriation of workers has been attributed to the '[unreliable nature of] data prepared by Nepali missions and Government agencies'<sup>73</sup>. In fact, the estimation of the number of migrant workers to be repatriated was done by the Government in the first place by 'coordinating with Nepali missions', in addition to consultation with experts.<sup>74</sup> But the Nepali missions'

<sup>66</sup> Based on an interview with a human rights lawyer focusing on migration governance with Adv. Anurag Devkota.

<sup>67</sup> Ibid; Embassy officials' interview (n 26).

<sup>68</sup> Nepal (n 44).

<sup>69</sup> Ibid.

<sup>70</sup> NHRC (n 38), p. 72; Owing to the absence of public dissemination of MoUs and BLAs, the analysis of NHRC had to be relied upon.

<sup>71</sup> Ibid, p. 39.

<sup>72</sup> Embassy officials' interview(n 26).

<sup>73</sup> Chandan Kumar Mandal, 'Rights watchdog comes down on government over migrant repatriation', *The Kathmandu Post*, Kathmandu, 14 August 2020, available at <https://tkpo.st/3kHt9yC>, accessed on 9 September 2021.

<sup>74</sup> Chandan Kumar Mandal, 'Thousands of Nepali migrant workers from Persian Gulf and Malaysia expected

method of collecting data of workers for repatriation, i.e. through online media, as well as such data's contradiction with that prepared by human rights organizations raised questions on reliability of the estimated figures.<sup>75</sup> In fact, the Embassy in Saudi Arabia even published a notice acknowledging the fact that the survey form had not been accessible to all because of the absence of a proportion of workers' decent command in technology.<sup>76</sup>

Likewise, the record system of Embassies wherein database of workers employed in the particular GCC country is incomplete, as it lacks the data of undocumented workers working in that country, and also because there is absence of contact information of even the recorded workers.<sup>77</sup> This manifested its ills when workers had to assemble in long lines, sometimes to no avail in order to register their names for repatriation, while other South Asian countries, as mentioned above, had extensive data regarding the same which had eased the repatriation process.<sup>78</sup>

Likewise, most of the interviewed officials of the Embassies talked about an obstruction in their diplomacy, which is a persistent yet less-talked-about problem; and it was that of language barrier. While communication as such is an important function of everyday transactions in human society, and has even been labeled as a significant contributor to human evolution<sup>79</sup>, its relevance in diplomacy is far-reaching<sup>80</sup>. Under the representation function of diplomacy, there lies the essence of communication.<sup>81</sup> Only in a scenario of fluent communication can effective diplomacy be conceived.<sup>82</sup> But like other times, a language barrier permeated the correspondence between officials of Nepali diplomatic missions and the respective employers amidst their verbal correspondence concerning safety of Nepali workers in the workplace amidst the pandemic.<sup>83</sup> Such barrier was characterized by absence of a common language between Nepali diplomats and employers. Although there were interpreters assisting either party with translation, the language barrier obstructed a stiff diplomatic correspondence and stance on the part of Nepal.<sup>84</sup>

Another shortcoming can allude to the long-complained under-resourced condition of

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to return home soon', *The Kathmandu Post*, Kathmandu, 9 May 2020, available at <https://kathmandupost.com/national/2020/05/09/thousands-of-nepali-migrant-workers-from-persian-gulf-and-malaysia-expected-to-return-home-soon>, accessed on 9 September 2021.

<sup>75</sup> Kathmandu Post (n 73).

<sup>76</sup> Based on an interview with an embassy official who was deployed in Nepali embassy of Saudi Arabia during the Pandemic.

<sup>77</sup> Nepal (n 44).

<sup>78</sup> Ibid.

<sup>79</sup> See generally, Yuval Noah Harari, *Sapiens: A Brief History of Humankind*, Vintage, 2011.

<sup>80</sup> Pramod Mishra, 'Kutnitūma Avibyakti Kala' (The art of communication in diplomacy), *Kantipur*, 2020, available at <https://ekantipur.com/opinion/2020/06/23/159288439832915462.html?author=1>, accessed on 18 August 2021.

<sup>81</sup> Ibid.

<sup>82</sup> There can be found historical instances where communication with the global community in major languages have contributed to the success of movements of independence. See generally Katie Trumpener, *Bardic Nationalism*, Princeton University Press, 1997.

<sup>83</sup> Embassy officials' interview (n 26).

<sup>84</sup> Ibid.

diplomatic missions. The Nepali diplomatic missions are reportedly under-resourced in terms of human as well as financial resources, and same was the case of the Embassies during the pandemic.<sup>85</sup> This led to a great level of disproportionality between the population of migrant workers and that of officials employed in the Embassies, which in turn gave rise to the problems like untimely response, inadequate site visits from the Embassies and so on.

While on a positive note the Embassies coordinated with different social welfare organizations to provide logistical support like food and medicines to the stranded migrant workers, not all migrant workers in all of the GCC countries were availed with this benefit.

*Major shortcomings pertaining to ad hoc tools:*

Diplomatic telephone talks were held in the name of ad hoc diplomatic tools, and while this as such is commendable, it was neither effective, as has been shown above, nor adequate, since there were other but unexplored opportunities. In this regard, major lacunae lay in the absence of Nepal's recourse to diplomacy through multilateral channels. The need for diplomacy through bilateral-multilateral collaboration to address the migrant workers' issues has been suggested in relevant literature,<sup>86</sup> and was also suggested to and considered by NHRC Nepal.<sup>87</sup> In this regard, multilateral platforms like the Colombo process, the SAARC could have served as a medium to initiate engagements with 'like-minded migrant-sending countries'<sup>88</sup> and then collectively pressurize the GCC countries for matters concerning migrant workers during the Pandemic. The Colombo Process is a forum of twelve labor-sending Asian countries formed to 'facilitate dialogue and cooperation issues of common interest and concern relating to labor mobility'<sup>89</sup>, which focuses on 'protection of and provision of services to migrant workers'<sup>90</sup>. Nepal was the Chairperson of this forum during the first months of the Pandemic, and therefore even had the chance to call a meeting for it. As for SAARC, in its 18th Summit, the member nations had agreed to 'collaborate and cooperate on safe, orderly and responsible management of labor migration from South Asia to ensure safety, security and wellbeing of their migrant workers in the destination countries outside their region'<sup>91</sup> But none of these mediums were considered by Nepal.

Nepal's unyielding silence also surfaced during the time when Qatar unlawfully deported 400 Nepali migrant workers accusing them of violating the Qatari government-imposed

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<sup>85</sup> Ibid.

<sup>86</sup> Bhattarai & Baniya (n 17), p. 138; Henri Abenis-Macahilo, 'The plight of Nepali migrant workers amid the coronavirus pandemic', *Rights Corridor*, available at <https://rightscorridor.com/the-plight-of-nepali-migrant-workers-amid-the-coronavirus-pandemic/?fbclid=IwAR0unXnZCyTzNFCJZuwXA7yxB36PFHoaBtr3MCZ0HtSL00mOpGngXga2PUc>, accessed on 6 September 2021.

<sup>87</sup> NHRC (n 38), p. 54.

<sup>88</sup> Bhattarai & Baniya (n 17), p. 138.

<sup>89</sup> 'About the Colombo Process', *Colombo Process*, available at <https://www.colomboprocess.org/about-the-colombo-process/>, accessed on 9 September 2021.

<sup>90</sup> 'Colombo Process', *International Organisation for Migration*, available at <https://nepal.iom.int/colombo-process>, accessed on 9 September 2021.

<sup>91</sup> *Katmandu Declaration*, 27 November 2014, 18th SAARC Summit, Kathmandu, art. 21.

measures<sup>92</sup>. The Government did not respond to this incident in any manner.

A frequently invoked scapegoat in matters of Nepal's diplomatic engagement is that of its leveraging power which is considered weak vis-a-vis the GCC countries, which are economically better off than Nepal. While this may be true, history shows Nepal exhibiting a strong diplomatic stance in spite of the asymmetrical leveraging power. In 2018, Nepal had temporarily halted the process of recruitment and sending of its migrant workers to Malaysia following dissent over Malaysia-imposed policies regarding labor migration. The temporary ban was a part of Nepal's diplomacy of ensuring a better working environment for its workers in Malaysia, which yielded on its part as a Memorandum of Understanding on the Recruitment, Employment, and Repatriation of Workers was signed with Malaysia in the same year. This instance has been described as a success of Nepal's proactive diplomacy,<sup>93</sup> despite the odds of unequal leveraging power.

### Lessons for the future:

At the most basic level, the lesson for the crisis as well as non-crisis times of future is to recognize the shortcomings of both permanent as well as ad hoc diplomatic tools that were manifested during the Pandemic and correct them.

Strengthening the permanent tools demands concluding binding labor agreements with more of the GCC countries while revisiting the existing ones to ensure inclusion of clauses that ensure special protection during extra-ordinary times like the COVID-19. Likewise, in regards to foreign diplomatic missions, there is a serious need of revisiting its technical and functional aspects. As for technical aspects, the need of maintaining a more numerically updated and technologically advanced record system of data of migrant workers employed in the respective country is paramount. Similarly, enhancing the functional aspect of the diplomatic missions includes making them sufficiently resourceful in terms of human and financial resources, training the diplomatic officials in matters of human rights and pro-victim attitude during course of duty execution<sup>94</sup>, arranging mechanisms to equip the officials as well as the labor attaché<sup>95</sup> with a working level of command over the native language of the destination country, and so on.

In regards to ad hoc tools, the Pandemic taught us that proactive diplomacy characterized by high-level diplomatic engagements and exploration of available prospects would have been feasible as well as effective. This demands Nepal's understanding that active engagement in multilateral forums like the Colombo Process and the SAARC would serve as the best available diplomatic prospect to lobby for different goals aimed at ensuring a secure environment for the workers. In this regard, one matter to lobby for could be air bubble agreements like that concluded by India to ensure repatriation

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<sup>92</sup> Chandan Kumar Mandal, 'Qatar used coronavirus pandemic as a ruse to expel Nepali migrant workers, Amnesty International says', *The Kathmandu Post*, 16 April 2020, available at <https://kathmandupost.com/national/2020/04/16/qatar-used-coronavirus-pandemic-as-a-ruse-to-expel-nepali-migrant-workers-amnesty-international-says>, accessed on 6 September 2021.

<sup>93</sup> Devkota (n 66).

<sup>94</sup> Nepal (n 44).

<sup>95</sup> Labor Report 2020 (n 2), p. 113.

through commercial flights even in times of crisis.

Although conventionally diplomacy is a ‘negotiation between nations through their representatives’<sup>96</sup>, the rise of non-State actors in the realm of international relations<sup>97</sup> has made it imperative for States to initiate their diplomacy in connection with international/regional organizations too. Therefore, Nepal should also look to coordinate with independent organizations that are working in the migration sector galore and get benefitted from their expertise in matters of, for example, data estimation of the actual number of workers working in the GCC countries.

Another possible diplomatic undertaking could be that of high-level foreign visits. High-level foreign visits are of towering significance when it comes to conducting effective diplomacy for achieving national interests<sup>98</sup>, and this would be more desirable in GCC countries where frequency of such visits hasn’t been high.

The solution however may not be as simple as it seems. It has been suggested that the Gulf countries ‘are seeking to diversify their labor supply by approaching African countries should there be a labor crunch in light of the increasing conditionality put in place by the sending states’<sup>99</sup>. This is where the Nepali stakeholders, especially those concerned with foreign affairs, need to step in, consider and assess the GCC’s political-economic dynamics, and make apparent the grounds on which less costly and more yielding bargains can be made. In this regard, track-two diplomacy involving foreign civil society as well as diaspora would be desirable.

## Conclusion:

*“Nepalis from India are entering without following rules and testing. This too has contributed to the further spread of COVID-19.”*<sup>100</sup>

Made by the then Prime Minister KP Oli in his address to the parliament, this statement came in a pretext of an influx of Nepali migrant workers returning back to Nepal from India during the first months of the COVID-19 pandemic following loss of jobs. Directly or indirectly, the Prime Minister howsoever blamed migrant workers of his nation for causing the rise of COVID-19 cases in Nepal. This victim-blame-game is only a small glimpse of the greater picture of the Nepali state’s interests, as agreed by many<sup>101</sup>, of only ensuring, in the name of migration governance and labor diplomacy,

<sup>96</sup> Bryan A. Garner (ed.), *Black’s Law Dictionary*, available at <https://thelawdictionary.org/diplomacy/>, accessed on 9 September 2021.

<sup>97</sup> Rana (n 20).

<sup>98</sup> Himalayan News Service, ‘Gyawali, Lavrov stress high-level visits’, *The Himalayan Times*, Kathmandu, 26 November 2019, available at <https://thehimalayantimes.com/nepal/gyawali-lavrov-stress-high-level-visits>, accessed on 7 September 2021; ‘Mongolian and Azerbaijani foreign ministers emphasize the significance of high-level visits’, *Ministry of Foreign Affairs of Mongolia Official Website*, available at <http://www.mfa.gov.mn/?p=36293&lang=en>, accessed on 20 March 2020.

<sup>99</sup> Bashyal & Subedi (n 17), p. 115.

<sup>100</sup> Anil Giri, ‘In address to nation, Oli repeats misinformation and provides no concrete plans’, *The Kathmandu Post*, Kathmandu, May 2020, available at <https://kathmandupost.com/national/2020/05/25/in-address-to-nation-oli-repeats-misinformation-and-provides-no-concrete-plans>, accessed on 12 August 2021.

<sup>101</sup> Devkota (n 66); Bhattarai & Baniya (n 17), p. 134.

labor outflow and remittance inflow with no regard to individual migrant workers' rights and dignity. The Pandemic was further plagued by this attitude of the Nepali state, and its correction is the starting point for improving all arrays of governance, including diplomacy. With the report card of a recent test already in hand and an unforeseeable future lying ahead, the time has never been riper for strongly equipping the diplomatic artillery and strengthening a worker-centered diplomacy.

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In Nepal NPR 500/-  
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E-ISSN: 2773-8159



ISSN: 2091-2110

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