



POLICY ADVOCACY EFFORTS AND OUTCOMES FOR RIGHTS OF MIGRANT WORKERS IMPACTED BY COVID-19



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1. BACKGROUND:

Owing to inadequate employment opportunities within the country, 56,77,026 Nepalese had obtained labour permits for foreign employment through formal channels by July 2020.¹ According to Department of Foreign Employment's statistics, 30% of such Nepali migrant workers went to Malaysia, 26% to Qatar, 21% to Saudi Arabia, 13% to United Arab Emirates, 4% to Kuwait, with the remaining 6% migrating to other countries for work². The COVID-19 pandemic, beginning December 2019, has created adverse impact in all aspects of people's lives world over. According to leading Nepali newspaper, 46,578 migrant workers have been infected by COVID-19 in destination countries, causing 293 deaths as of November 2020.³ The lockdowns and travel restrictions instituted in response to the pandemic have exacerbated the vulnerabilities of migrant workers by manifold; with lockdowns in destination countries resulting in a crisis situation for more than 400,000⁴ Nepali migrant workers. Challenges ranging from job losses, income losses, wage theft, discriminatory ill-treatment, stigmatization as COVID spreaders, health hazards, lack of access to adequate quarantine facility, obstructed mobility, visa and residence permit expiry, labour permit expiry, and being stranded debilitated the Nepali migrant workers in various destination countries.

During the initial phase of the pandemic, Nepal - despite being a party to core human rights conventions like International Covenant on Civil and Political Rights (ICCPR) 1966⁵ - failed to take any steps, let alone fulfil its obligations towards rescuing, repatriating, compensating and re-integrating its migrant workers stranded in destination countries. Such executive inaction was lambasted by Nepali migrant workers, civil society, and media, as the Nepali government is constitutionally and statutorily obligated⁶ under the Foreign Employment Act 2007 to repatriate migrant workers affected by a pandemic, and reintegrate the repatriated migrant workers under the Local Government Operation Act 2017. Despite the existence of legal and institutional frameworks, and funds to rescue, repatriate and re-integrate such migrant workers in crisis, there were undue delays from the Nepali government.

People Forum for Human Rights (People Forum), established in 2003 A.D., has been specifically intervening in the sector of labour migration since 2005 A.D., through the provision of free legal aid services, public interest litigation, advocacy for policy reformation, capacity development, and awareness generation at various levels. As continued advocacy effort, People Forum employed advocacy efforts during the lockdown period and beyond, to catalyse governmental accountability and support government in formulating new policies, procedures and programs necessiated by the COVID-19 context.

2. OBJECTIVE OF THIS REPORT:

The objective of this report is to inform on the policy advocacy efforts led by People Forum for Human Rights (People Forum) during the lockdown period and beyond (April 2020 – November 2020), and document their

¹ Data combined from Labor Approval Statistics (till 2018/2019) recorded in *Nepal Labour Migration Report 2020*, Ministry of Labor, Employment and Social Security and Department of Foreign Employment's (2019/2020) annual report.

² FEMIS, www.dofe.gov.np, 20 September 2020.

³ Ratopati Online, Nov 22 2020, <https://www.ratopati.com/>.

⁴ *South Asia Scrambles to Bring Home Crisis-Hit Migrant Workers*, (May 19, 2020), <https://thehimalayantimes.com/world/south-asia-scrambles-to-bring-home-crisis-hit-migrant-workers/>

⁵ Article 12 of the ICCPR ensures that everyone shall have freedom of movement. It includes leaving the country and returning to the country of origin.

⁶ THE CONSTITUTION OF NEPAL (2015), Art. 16: Freedom of Movement; Foreign Employment Act 2007, Section 75 obligates the government to repatriate migrant workers affected by a pandemic or war. Section 33 stipulates that the repatriation cost should be borne from the Foreign Employment Welfare Fund.

outcomes towards reforming Nepal's law, policy and programs geared towards alleviating the adversities created by COVID-19 on migrant worker's rights.

3. PEOPLE FORUM'S INITIATIVES FOR PROTECTION OF MIGRANT WORKER'S RIGHTS:

In such context, People Forum for Human Rights (People Forum)⁷ - a professional organization of lawyers fighting for migrant worker's rights – carried out various initiatives to increase the Nepali government's accountability towards migrant worker's plight.

A. Public Interest Litigation:

After rampant government inaction despite the multifaceted advocacy efforts, a writ petition⁸ was filed by People Forum on **15th April 2020**. The writ sought to obligate the Nepali government to implement immediate and effective measures for repatriation of migrant workers, to provide medical services at par with the WHO standard and to prepare a status report on the health of Nepali workers stranded in various labour destination countries⁹, in accordance with Section 75(2) and Section 33 of the Foreign Employment Act, 2007¹⁰. Additionally, People Forum sought to compel the government to make arrangements for recovering the workers' unpaid salaries and benefits from their employers; provide compensation from the Foreign Employment Welfare Fund¹¹ to those workers who have returned before the end of their contract period; and formulate reintegration programmes and budgeted schemes targeting the returnee workers, to prepare for the looming unemployment crisis in the country. The Supreme Court issued an interim order on **April 16th 2020** responding to the remedies sought in the writ petition.

Following the first interim order, the Nepali government formulated an order on repatriation of migrant workers called the **'Order to Facilitate the Return of Nepali Nationals Stranded Due to COVID 19, 2020'**. While the guideline was a welcome milestone in many aspects, the guideline's Section 7(c) unfairly burdened the already victimized migrant workers by requiring the labourers to bear the return-fare themselves. This provision was against Section 32, and 33 of Foreign Employment Act, 2064. Thus, People Forum, through another writ petition, advocated to oblige government to primarily negotiate with the employers of the stranded workers and the governments of host countries to arrange for return travel cost of migrant workers. In event of the employer or host country's denial, the writ sought the cost to be borne by the Nepali government from the Foreign Employment Welfare Fund contributed to by all migrant workers. In response, the Supreme Court issued its second interim order on **June 16th 2020**.

B. Policy Paper: 'Civil Society Policy Paper on Repatriation and Reintegration of Migrant Workers in the Context of COVID 19'

To catalyse civil society action on supporting individual and collective governmental action at the federal, provincial and local level; and eliciting collective contribution of NHRC (National Human Rights Commission), civil society and private sector – a policy paper charting recommendations for repatriation and re-integration of migrant workers for upholding of migrant rights was drafted in **May 2020**. The policy paper - drafted based on study of best practices of other countries of origin; and virtual consultations with

⁷ People Forum, established in 2003 A.D., has been specifically intervening in the sector of labour migration since 2005 A.D. It is an organization of lawyers working for the rights of migrant workers through the provision of free legal aid services, public interest litigation, advocacy for policy reformation, capacity development, and awareness generation at various levels. As part of the Safer Migration Project (SaMi) implemented in collaboration with the Ministry of Labor, Employment and Social Security and Swiss Interco-operation Nepal; we have provided free legal aid service to 21,335 migrant workers as of July 2020, with victims receiving a collective compensation amount of N.Rs 80,69,33,880.

⁸ *Advocate Shom Luitel, Narendra Prasad Khanal, and Sudip Devkota on behalf of People Forum V. Council of Ministers et al*, Writ no. 076-WO-0940 filed on 2077-1-3.

⁹ Chandan Kumar Mandal, *Migrant Rights Groups Slam Government Plan to Charge Migrant Workers for Their Repatriation*; <https://kathmandupost.com/national/2020/06/04/migrant-rights-groups-slam-government-plan-to-charge-migrant-workers-for-their-repatriation>, June 4, 2020, (Accessed January 1 2020).

¹⁰ Section 75(2) of the Act requires if there is an epidemic, war or national disaster in a country where Nepalis are working, the Government of Nepal must "take necessary steps to bring such workers back home," and Section 33 of the Act requires that such repatriation costs should be paid for by the Foreign Employment Welfare Fund.

¹¹ The Fund was introduced in the Foreign Employment Act, 2007 and is comprised of contributions from migrant workers themselves. The introduction of the Fund was widely supported widely by civil society, trade unions and recruitment agencies.

international networks, institutions, and stakeholders¹² - was submitted to all relevant governmental agencies (particularly Ministry of Labour Employment and Social Security - MOLESS)¹³ on 14th May 2020. The encapsulated recommendations were concerned management of employment of migrant workers, worker health in country of destination and origin, repatriation, compensation and re-integration of workers, with highlights listed as follows:

- To prepare a comprehensive status report on migrant workers in destination countries through the embassies therein, including key data on documented and undocumented status, gender, age, job and contract status, health status and medical needs (particularly related to COVID-19 infection of workers) special categories of migrant workers like (disability, pregnancy, sickness, jailed, hospitalized, deceased), organizations supporting workers abroad etc.
- To facilitate and better manage the employment of migrant workers in destination countries by various measures such as: convening meeting of the Joint Technical Committee under the Nepali Labour Agreements and monitoring the actions of the employers regarding unpaid leave, deduction of salary, and layoffs; and to take initiatives for the welfare of migrant workers.
- To take initiative to provide relief (unemployment allowance¹⁴ or relief for suspension of employment or social security) from the destination country to those who have temporarily lost their jobs due to COVID
- To take initiative for the establishment of transitional justice¹⁵ mechanisms with the jurisdiction of hearing the issues of wage of returnee migrant workers and cases of dismissal; and initiatives for release¹⁶ of Nepali migrant workers from jail, and amnesty for undocumented migrant workers.
- To provide access to non-discriminatory¹⁷ and free health treatment¹⁸ to Corona infected migrant workers in destination countries, monitor standards of quarantine facilities, and ensure regular communication with families, employers, embassy through apps, messaging and 24 hour hotline services.
- To take diplomatic initiative for the non-discriminatory, voluntary, humane and free repatriation of stranded migrant workers from the destination countries; as well as deceased migrant workers bodies.
- To mobilize the Foreign Employment Welfare Fund towards compensating the Nepali migrant workers who have returned prior to their contract period, and provision relief for migrant workers returning from India; and formulate necessary long term funds, procedures, and criteria for the same.
- To facilitate re-integration of returnee migrants through budget disbursement and integrated programs on employment opportunities, skilling, and low-interest loans amongst others, at the federal and local levels; as well as facilitating the option of re-employment in the destination country parallelly.
- To establish inter-stakeholder taskforces in collaboration with NHRC, Civil society organizations, labour experts, trade unions, private sector and media for conducting and monitoring repatriation and reintegration of migrant workers

¹² International and regional level stakeholders like Migrant Forum Asia(MFA), Lawyers Beyond Border(LBB), International Lawyers Assisting Workers (ILAW), Global Labor Justice(GLJ), and Open Society Foundation(OSF)

¹³ Ministry of Labour, Employment and Social Security; Office of the Prime Minister and Council of Ministers; Industry, Commerce, Labour and Consumer Welfare Committee; COVID-19 Crisis Management Centre; Ministry of Foreign Affairs; and National Human Rights Commission

¹⁴ On 28 March 2020, Portugal initiated a special measure enabling undocumented people with pending residence applications to access public services and social security benefits on the same level as nationals, until at least 1 July 2020:<https://www.reuters.com/article/us-health-Coronavirus-portugal/portugal-to-treat-migrants-as-residents-during-Coronavirus-crisis-idUSKBN21F0N7>

¹⁵ A Large Civil Society and Global Trade Unions Coalition Launch a Call for an Urgent Justice Mechanism for Repatriated Migrant workers, 1 June, 2020, MFA

¹⁶Belgium has released detained undocumented migrants during the pandemic:<https://www.demorgen.be/nieuws/300-mensen-zonder-papieren-vrijgelaten-Coronavirus-zet-dvz-onder-druk~bf3d626d/>

¹⁷ Ireland's Minister of Health confirmed that undocumented migrants would be able to access healthcare and social services, "...as the Minister for Health I want to provide an assurance to those people that the health service will treat them with dignity and with absolute privacy and patient confidentiality, as will their social work system, during this time of emergency. We want people to come forward to be tested." <https://www.oireachtas.ie/en/debates/debate/seanad/2020-03-20/8/?highlight%5B0%5D=undocumented>, <https://twitter.com/MigrantRightsIr/status/1241070050796281859>

¹⁸ The New York State Department of Health announced that all low-income immigrants, regardless of immigration status, would have access to COVID-19 testing, evaluation and treatment as services covered by the Emergency Medicaid program: <https://www.nyc.org/2020/03/advocates-applaud-new-yorks-move-to-ensure-undocumented-new-yorkers-can-access-emergency-medicaid-coverage-for-covid-19-testing-evaluation-and-treatment/>

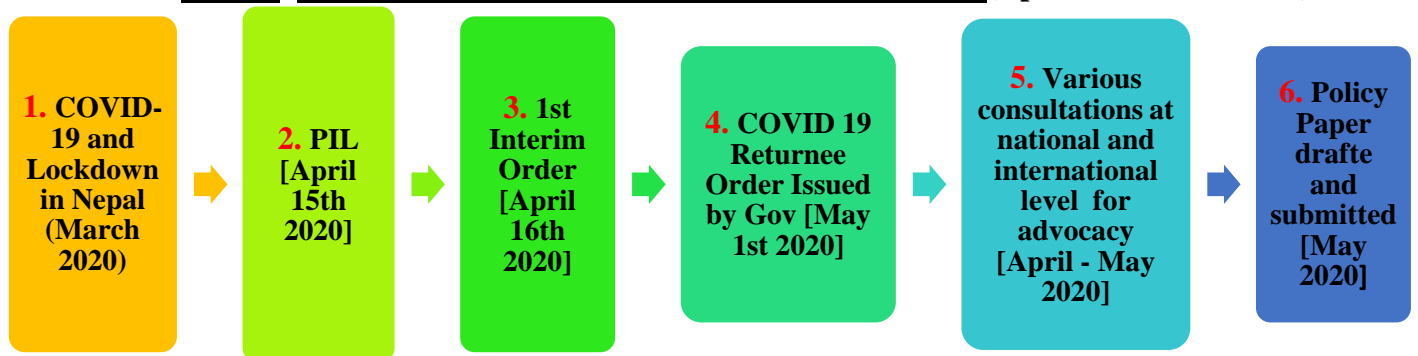
- To call for collaboration between NHRC, private sectors and civil society for the provision of emergency assistance, legal counselling, psycho-social counselling and health counselling to migrant workers; and advocate for legally remedying human rights violations of migrant workers

C. Advocacy Efforts:

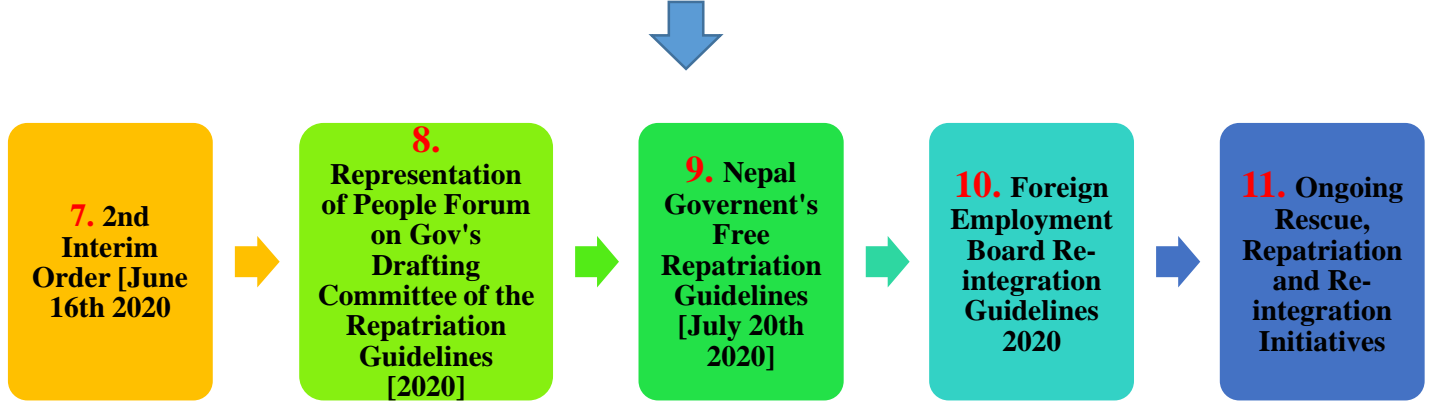
National Level: People Forum accelerated its multi-faceted advocacy efforts from April 2020 to mobilize all concerned towards reforming Nepal government’s policies, programs and response mechanisms towards migrant worker’s urgent needs; and to inform civil society on the progress of the international campaign on transitional justice mechanism against wage theft. To begin with, an expansive interaction program was organized in Kathmandu on 4th May 2020 between civil society organizations, networks, journalists, researchers, and legal practitioners working on the issue of rescue, repatriation, and reintegration of migrant workers. Furthermore, interaction programs were organized with the provincial-level agencies, representatives of Migrant Resource Centers and employees of the Safer Migration (SaMI) project, Samriddhi project and Diyo project, whereby a collective of 217 stakeholders across 47 districts were engaged. Later on, People Forum organized¹⁹ six virtual advocacy programs garnering 252 participants representing key line ministries (MOLESS and MOFA) and local government, labour experts and advocates, labour counsellors from embassies, CSOs, journalists, trade unions, development partners, Migrant Resource Centers (MRCs), migrant workers and survivors²⁰. Collectively, over **500 stakeholders across 7 provinces and 47 districts** were engaged at the national level. As a key advocacy component, media mobilization was heavily accelerated to highlight migrant worker’s plight and urgency for prompt action from the government. Daily **Public Service Announcement (PSA)** on migrant worker’s rights in relation to COVID was disseminated through radio reaching more than **one million** people. Such media engagement led to 80% of legal aid inquiries received by People Forum during this period. A comprehensive report on **‘Role of Media in Foreign Employment on COVID-19’** and numerous media articles were published in support with IREX, to complement civil society’s advocacy efforts. Parallely, informational leaflets were distributed through the MRCs in 39 districts and People Forum’s central legal aid clinic.

Regional and International Level: Furthermore, feedback and insights from representatives of regional and international level stakeholders like Migrant Forum Asia(MFA), Lawyers Beyond Border(LBB), International Lawyers Assisting Workers (ILAW), Global Labour Justice(GLJ), and Open Society Foundation were collected through online interactions, and integrated into the civil society policy paper. The policy paper has supported the formulation and implementation of the government’s current **Guideline on ‘Repatriation of Stranded Nepali Workers in the Course of Foreign Employment Due to COVID-19 2020’**, resulting in successful repatriation of 156,000 migrant workers as of November 2020.

FIGURE: TIMELINE OF PEOPLE FORUM’S ADVOCACY EFFORTS (April 2020 – Nov 2020)



¹⁹ The programs were organized as part of the ‘Advocacy for Migrant Rights During COVID 19’ project implemented from July 15th to November 15th 2020 supported by IREX.



D. Legal Aid and Counselling:

886 migrant workers in destination countries (namely UAE, Saudi Arabia, Qatar, Kuwait and Malaysia) were provided with legal aid services by People Forum during the lockdown period (March 2020 – November 2020), and beyond, through co-ordination with respective embassies, journalists, Non-Resident Nepali Association, and international organizations. The majority of the complaints by migrant workers in this period were concerning air-ticket reimbursement, wage theft, calls for rescue and repatriation, and fraud.

4. NEPAL GOVERNMENT’S RESPONSES TO PEOPLE FORUM’S ADVOCACY EFFORTS:

A. Supreme Court’s Interim Order of April 16th 2020 [Section 75 of FEA 2064]:

In response to People Forum’s writ petition, the Supreme Court issued an interim order in April 2020, in the name of the Government to rescue the Nepali migrant workers in vulnerable situation abroad; in accordance with terms and condition of regulation and control. The apex court further required the government to ensure that migrant worker’s health is protected according to WHO standards while abroad, and promptly prepare a report on their health status of the migrant Nepali workers in different countries hit by the COVID-19 pandemic.²¹

B. Nepal Government’s ‘Order to Facilitate the Return of Nepali Nationals Stranded Due to COVID 19, 2020’:

As response to Supreme Court’s first interim order, the Nepal Government formulated the above order, colloquially known as the COVID 19 returnee order, to facilitate the safe return of Nepali citizens stranded in various countries. Along with repatriation, the order obligated the government to set up quarantine facilities for returnees, medical check-up and care in line with the WHO standards.

C. Supreme Court Interim Order of June 15th 2020 [Section 33 of FEA 2064]:

The Supreme Court (SC), in June 15th 2020, ordered the government to rescue Nepali migrant workers stranded abroad who are not able to afford the return fare on their own free of cost, by mobilising the 'Foreign Employment Welfare Fund' on the basis of their nature of work and income level, highlighting Section 33 of the Act.²² The writ petition and its achievements were covered by leading media partners²³ nationally and internationally.

D. Nepal Government’s Guideline on ‘Repatriation of Stranded Nepali Workers in the Course of Foreign Employment Due to COVID-19 2020’:

²¹ *Supreme Court Issue Interim Order To Rescue Migrant Workers At Risk*, NEW SPOTLIGHT ONLINE, <https://www.spotlightnepal.com/2020/04/17/supreme-court-issue-interim-order-rescue-migrant-workers-risk/>, April 17, 2020, (Accessed January 1 2020).

²² *Rescue The Migrant Workers Free Of Cost: Supreme Court*, NEW SPOTLIGHT ONLINE, <https://www.spotlightnepal.com/2020/06/17/rescue-migrant-workers-free-cost-supreme-court/>, June 17, 2020, April 17, 2020, (Accessed January 1 2020).

²³ *How Nepal's Supreme Court Upheld Dignity of Migrant Workers Without Diluting COVID Fight*; <https://thewire.in/law/nepal-supreme-court-migrant-workers/>; April 28, 2020; *Q&A with Advocate Shom Luitel about the Supreme Court of Nepal’s Order to Repatriate Migrant Workers*, <https://globallaborjustice.org/qa-with-advocate-shom-luitel-about-the-supreme-court-of-nepals-order-to-repatriate-migrant-workers/>; Gopal Sharma, *Nepal's top court orders rescue of migrant workers stranded abroad*, April 17, 2020, <https://www.reuters.com/article/us-health-coronavirus-nepal-migrants-trf-idUSKBN21Z2DO> (Accessed January 1st, 2020)

Following the Supreme Court interim order, the government formulated a new directive entitled Guidelines for Repatriation of Stranded Nepali Workers in the Course of Foreign Employment Due to COVID-19 2020. The guidelines incorporated the recommendations from People Forum as People Forum representatives were present in the guideline's drafting committee.²⁴ The guidelines provisioned that workers who haven't received air tickets and other expenses from their host country, employer, or recruiting agencies to return home, shall be entitled to financial support from the government.²⁵ The guideline further set the process of such financial compensation, stipulating that the free repatriation process shall begin after stranded workers file an application with Nepali missions abroad. The embassy is to then inform the recruiting agency concerned to check their status. If the worker concerned has not received his/her salary, facilities and air ticket from the employer as per their contract, Nepali missions abroad shall take the initiative to get them such facilities. After ensuring that a worker did not receive air tickets and other expenses from the host government, employer or the recruiting agency or the Foreign Employment Board shall sponsor his/ her flight to Nepal.²⁶ The directive, under Section 8, has provisioned for returnee workers to file claims for reimbursement of the flight ticket costs borne by them.

E. Research Studies and Task-Forces:

Following the first and second interim orders of Supreme Court, Nepal Government has completed various research initiatives, namely, *Study on the Situation of Migrant Workers Abroad and the Impact of COVID-19 on their Employment* by Ministry of Foreign Affairs; and the *Study on the Long-Term Impact of COVID-19 on Foreign Employment*. Furthermore, the National Planning Commission's Task Force on Crisis Management has been formulated under the convenorship of Director-General of the Department of Foreign Employment; the Multi-Stakeholder Task Force on Foreign Employment and Impact of COVID-19 has been formulated under the National Human Rights Commission²⁷. The Foreign Employment Board (FEB) has also formulated its migrant worker's rescue action plan.

F. Repatriation Activities: A number of Nepali migrant workers have been successfully repatriated, with repatriation data coming in from various sources. According to Nepal Government's COVID-19 Crisis Management Centre (CCMC) **1,42,807**²⁸ Nepali migrant workers have been repatriated to Nepal from 60 countries as of Feb 2021.

G. Reimbursement Activities: According to the spokesperson for the Department of Foreign Employment, primary Nepali governmental authority overseeing the matter, and People Forum's database, **139** returnees have applied to the department asking for airfare reimbursement, till Feb 2021.²⁹

H. Re-integration Activities: As one of the advocacy actors in the field, People Forum also contributed in the ongoing re-integration policy and programs targeted towards migrant workers returning due to COVID-19. The Nepal government's three-fold mechanism, namely; the foreign employment and re-integration mandate of the 753 local level governments, the 1 million soft loan programs³⁰ and other low interest credit schemes in place; and the employment opportunities via the Prime Minister's Employment Program (PMEP)³¹ have received heightened attention over the past year. Co-ordinators under PMEP have been appointed in all 753 municipalities who also run the Employment Service Centers (ESCs) in said municipalities. The budget for the fiscal year (2077/2078) has prioritized employment generation as a central focus and doubled the PMEP allocation to Rs 11.60 billion with the purpose of creating 200,000 jobs³² in response to the economic challenges brought by the unprecedented reverse migration. The FEB has finalised a reintegration

²⁴ Advocate Shom Luitel represented in drafting committee of guideline formed by Nepal Government (MOLESS).

²⁵<https://kathmandupost.com/national/2020/07/24/implementation-of-guidelines-to-repatriate-stranded-workers-fraught-with-challenges>, (Accessed January 1st, 2020).

²⁶ *Id.*

²⁷ People Forum is also one of the members of the above mentioned task forces.

²⁸ Data sourced from *Covid-19 Crisis Management Centre (CCMC)'s report of 2077/10/29*, <https://ccmc.gov.np/index.html>; <https://thehimalayantimes.com/business/government-begins-collecting-data-of-returnee-migrants/>, November 25, 2020 (Accessed January 1st, 2020).

²⁹Data sourced from DOFE's complaints and grievance handling department.

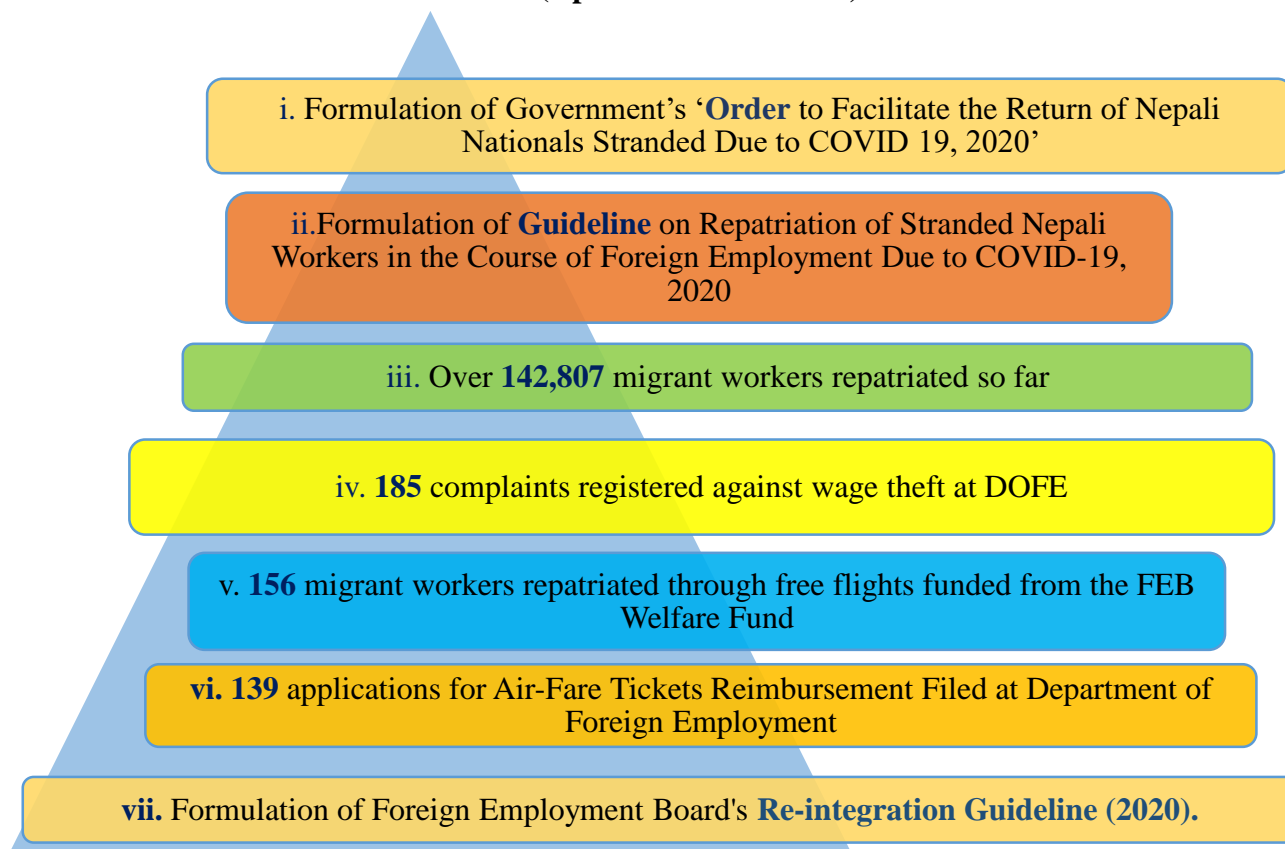
³⁰ Upasana Khadka, *Nepal Plans to Reintegrate Returning Workers*, July 15, 2020, <https://www.nepalitimes.com/latest/nepal-plans-to-reintegrate-returning-workers/>

³¹ *Id.*

³² *Id.*

program for returnees to be implemented in co-ordination with the local governments, with funds channelled from the welfare fund.³³ According to the Ministry of Federal Affairs and General Administration (MoFAGA), since approximately 90 per cent³⁴ of the returnee migrant workers have lost their jobs due to the pandemic; the local governments have started collecting data of returnees and their employable skillsets since late Nov 2020, to arrange employment for them domestically.

FIGURE³⁵: VISUAL REPRESENTATION OF OUTCOMES OF ADVOCACY EFFORTS
(April 2020 – Dec 2020)



³³ *Id.*

³⁴ <https://thehimalayantimes.com/business/government-begins-collecting-data-of-returnee-migrants/>, November 25, 2020 (Accessed January 1st, 2020).

³⁵(iii) Data sourced from Covid-19 Crisis Management Centre (CCMC)'s report of 2077/10/29, <https://ccmc.gov.np/index.html>. (iv) and (vi) Data sourced from DOFE's complaints and grievance handling department; and Data sourced from SaMI's database from July 2020 to Feb 2021 (v) Data sourced from FEB spokesperson. Note: Amongst the 185 complaints against wage theft registered at DOFE, 157 were supported by People Forum's Legal Aid Clinic.