



TURNING PEOPLE INTO PROFITS

ABUSIVE RECRUITMENT, TRAFFICKING AND FORCED
LABOUR OF NEPALI MIGRANT WORKERS

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NEPAL'S FREE VISA, FREE TICKET POLICY TIMELINE PROTESTS, DELAYS AND LACK OF IMPACT

8 JULY 2015

The Free Visa, Free Ticket Policy becomes effective

The then Labour Minister Tek Bahadur Gurung introduces the policy – by Ministerial directive – requiring foreign employers from Malaysia and six Gulf states to cover the cost of migrant workers' visas and airfare. The policy drastically reduces the service fees that recruitment agencies can charge migrants to NPR 10,000 (US \$96). Migrants are still required to pay for their pre-departure services, such as medical, insurance, and orientation.



JANUARY 2016

100 DAY PLAN

The Ministry of Labour and Employment announces a 100-day plan, promising new measures to implement the Free Visa, Free Ticket Policy.

The Labour ministry states its intention to establish a desk at the ministry to monitor compliance with the Free Visa, Free Ticket Policy and resolve issues with implementation. This measure, like others proposed, has never been implemented.

AUGUST – DECEMBER 2015

Concern over poor enforcement of the Free Visa, Free Ticket Policy.

Nepali newspapers and civil society organisations find that migrant workers are still paying for recruitment. Civil society groups later hand over petitions calling upon the government to strongly enforce the new regulation on recruitment fees.

27 JULY 2015

Strike ends after Ministry of Labour and Employment and Recruitment Agencies sign 31-point agreement.

Recruitment agencies resume their services after the Labour Ministry accepts 31 of 35 demands made by recruitment businesses. These concessions, which include more leverage over policymaking and greater involvement of recruitment agency associations in monitoring recruitment businesses, threaten to further undermine transparency and accountability in the recruitment process.



9 – 27 JULY 2015

Recruitment agencies launch indefinite strike, protesting the Free Visa, Free Ticket Policy.

The strike, aiming to block the policy, brings recruitment processes to a halt as agents stop providing services to migrants. An estimated 30,000 labour migrants in the process of going abroad are affected by the shutdown in services. NAFEA president, Bimal Prasad Dhakal also files a writ with the Patan Appellate Court in Kathmandu challenging the policy on legal and procedural grounds. The court decides against this writ and upholds the policy.





6 – 26 MARCH 2016

Recruitment agencies launch second strike, demanding an end to police raids and immediate revision of the Free Visa, Free Ticket Policy's fee cap of NPR 10,000 (US \$96).

The shutdown in recruitment services again obstructs labour-sending processes. An estimated 50,000 prospective migrants are unable to obtain labour permits or fly out for foreign employment. The strike ends on 31 March 2016 after new talks and agreements are reached between the Ministry of Labour and Employment and recruitment agencies. The government states in the media it will uphold the Free Visa, Free Ticket Policy, but will consider increasing the service charge that recruitment agencies can collect from migrants.



**FREE VISA,
FREE TICKET
POLICY???**

AUGUST 2016

New Minister of Labour and Employment signals that government may revise Free Visa, Free Ticket Policy.

Recruitment agencies routinely claim that the Free Visa, Free Ticket policy affects the demand for Nepali migrant workers, and is contributing to a decline in remittances and economic development. Media reports that the Minister of Labour and Employment states his concern with the policy, during a meeting with NAFEA, based on its potential to curtail the flow of migrant worker remittances.

24 FEBRUARY 2016

Police raid the offices of 17 recruitment agencies after receiving complaints of deceiving and overcharging migrants, arresting 8 heads of agencies.

Police cite lack of compliance with the Free Visa, Free Ticket Policy as one of the reasons for the raid. Recruitment agencies strongly condemn the police operation, telling the media that only Department of Foreign Employment has the authority and jurisdiction to enforce the Foreign Employment Act.



13 JUNE 2016

Ministry of Labour and Employment claims in an annual review that the Free Visa, Free Ticket Policy is a major achievement of the Ministry.

The report states that through the implementation of this policy, the government has reduced the "economic burden and chances of vulnerability to fraud among workers." That same month, Nepal's Parliamentary Committee on International Relations and Labour issues a directive to the Labour and Employment Minister, instructing him to effectively implement the Free Visa, Free Ticket Policy. Migrant workers continue to report to civil society groups that recruitment agencies are refusing to comply with the policy.

MAY 2017

High fees still charged to migrants.

Nearly two years after the introduction of the Free Visa, Free Ticket Policy, civil society groups interviewed by Amnesty International state that migrant workers continue to pay high fees for their recruitment and receive inaccurate recruitment receipts for fees paid to recruitment agents and agencies.



GLOSSARY

CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women	ICESCR	International Covenant of Economic, Social and Cultural Rights
CESCR	Committee on Economic, Social and Cultural Rights	ICCPR	International Covenant on Civil and Political Rights
CESLAM*	Centre for Labour and Mobility	HRB*	Institute for Human Rights and Business
CIAA	Commission for the Investigation of Abuse of Authority	ILO	International Labour Convention
CIETT	Confederation of Private Employment Agencies	IRD	Internal Revenue Department
CPN*	Communist Party of Nepal	MOFA	Ministry of Foreign Affairs
DOFE	Department of Foreign Employment	MOLE	Ministry of Labour and Employment
DOI	Department of Immigration	MTUC	Malaysia Trade Union Congress
FEA	Foreign Employment Act 2007	NAFEA	Nepal Association of Foreign Employment Agencies
FEPB	Foreign Employment Promotion Board	NEFEMA	Nepal Foreign Employment Medical Association
FER	Foreign Employment Rules 2008	NHRC	Nepal's National Human Rights Commission
FET	Foreign Employment Tribunal	NLSS	Nepal Living Standards Survey
FIEMS	Foreign Employment Information Management System	NPR	Nepali Rupees
GAMCA	Gulf Cooperation Council Approved Medical Centres Association	NVIVO	Research software
GCC	Gulf Cooperation Council	ODI*	Overseas Development Institute
GIZ*	Gesellschaft für Internationale Zusammenarbeit	USD	United States Dollar
HTTCA	Human Trafficking and Transportation Control Act 2007		

*in a footnote



1. EXECUTIVE SUMMARY

“Nothing is free in migration. Desperate people are paying huge sums of money – sometimes over USD 1,933 (NPR, 200,000) – just to find jobs overseas. Once they pay it, no one is interested in what happens to them after they leave. The attitude of recruiters is about buying and selling people. And our people end up being abused, because the government does not prevent them from being traded like cattle. Migrant workers should not be bought and sold [on the market]. They should have control over their own lives.”

Former Migrant Worker from Saptari district¹

When Suresh, aged 39, first considered leaving his village in Saptari district for a foreign job, he hoped it might be a life-changing experience that would set him and his family up for a more secure financial future. His first step was to contact an agent in his village who knew about job opportunities abroad. The agent had good news. He could offer him work in a Malaysian glove making factory. Pay would be relatively high, at RM 1800 (USD 420) per month, and conditions would be good, with one day off every week, safe working conditions and clean accommodation. Ultimately, the agent said, this would give Suresh the chance to save enough money to buy land for his family.

But this chance would cost: Suresh had to pay the village agent, as well as the Kathmandu recruitment agency who would finalise the deal, upfront. To get his job, Suresh borrowed NPR 250,000 (USD 2,416) from a local moneylender, at an annual interest rate of 36%. Although the recruitment fee was enormous (and illegal), Suresh’s agent and the Kathmandu agency assured him that he would be able to quickly pay off the debt once he started earning in Malaysia. The reality was very different. At the glove making factory, Suresh was unpaid for months on end, and when he was paid, his employer made a number of unexplained deductions from his salary. Suresh could not leave and get a new job, because his passport had been taken away, and his employer refused to end his contract or even allow him to leave the factory. In desperation, Suresh turned to his recruitment agency for help. They did not return his calls.

Instead of making money, when Suresh finally returned to Nepal in 2015 he had accumulated a staggering debt of NPR 550,000 (USD 5,317). In June 2016, when he was interviewed by Amnesty International, Suresh was making a meagre USD 50 to 100 per month working in his village. He had sold both his house and land just to keep up with loan repayments, but still owed USD 5,000 to his moneylender. If he could not find a better paid job, it would take Suresh decades to pay off his migration debts.²

Suresh’s case is not uncommon. In 2011, Amnesty International exposed widespread deception and exploitative behaviour on the part of private recruitment agencies and agents in Nepal, raising serious concerns over the failure of the Nepali government to enforce its laws and provide routes for redress

1 Amnesty International interview with NB in Kathmandu, on 2 July 2016.

2 Amnesty Interview with LB in Saptari district, on 19 June 2016.

for migrant workers who had been victims of fraudulent and deceptive recruitment. Facing scrutiny domestically and internationally, the Nepali government has since introduced various policies with the stated goal of protecting migrant workers. It has received some praise internationally for its efforts to minimise recruitment fees and improve recruitment transparency through new information management systems.

Yet, this report provides fresh evidence that the entrenched patterns that give rise to cases like Suresh's remain ultimately unaddressed and that government reforms are still failing to tackle the root causes of abuse. Little progress has been made in holding to account private actors and businesses that exploit migrant workers. Migrants remain at risk of crippling indebtedness, forced labour, and various forms of exploitation throughout the migration process. Despite a flagship "Free Visa, Free Ticket" government policy to end the phenomenon, significant numbers of labour migrants continue to pay excessive fees to secure jobs and are given fraudulent receipts to undermine their ability to demonstrate that they paid such costs. Nepali workers are further disadvantaged by the limited assistance they receive from Nepali embassies while they are overseas, even when they have been victims of deceptive recruitment and labour exploitation.

This report is based on five research trips undertaken over a 14-month period in Nepal and Malaysia, one of the main destination countries for Nepali migrant workers. In Nepal, researchers interviewed 127 Nepali migrant workers from eight districts, 17 of whom had not yet migrated for work and 110 who had returned. 108 of the 110 returnee migrant workers had left Nepal and come back between 2011 and 2016. Amnesty International also interviewed people involved in the recruitment industry, speaking to 22 private recruitment agencies based in Kathmandu as well as four village-level agents. Researchers sought the views of government officials, interviewing 18 district officials, 11 national officials and representatives of the Nepal Embassy in Malaysia. Researchers interviewed some of these people more than once, and some of the information sought for this report was obtained through written communication with the Department of Foreign Employment (DoFE) and the Foreign Employment Promotion Board (FEBP). Finally, the organization sought the perspective of Nepali journalists, migrants' rights groups, Nepali and Malaysian trade union groups, UN migration experts, and international donors.

MIGRANT WORKERS AS DISPOSABLE COMMODITIES

In the absence of decent work and income-generating opportunities at home, millions of Nepali citizens have turned to the global economy for employment. In 2015-2016, over 400,000 Nepali men and women left the country to join the millions of Nepali migrants already working in over 100 destination countries. In fact, the government has issued labour approval permits (which allow migrant workers to travel overseas for work) to 4 million Nepali citizens over the last 20 years, a number that is equivalent to around 14% of the country's total population. These figures only include officially recorded migration by the government, and leave out the hundreds of thousands of Nepalis travelling by land to work in India. This trend of out-migration is only expected to increase, even though it entails huge personal sacrifices for workers and their families.

Nepali families are increasingly dependent on the earnings of migrant labourers due to lack of access to jobs with liveable wages at home. Overseas remittances contribute a 30% share of Nepal's Gross Domestic Product (GDP), making it one of the top remittance economies in the world in terms of share of GDP. But there is a stark imbalance between the investment labour migrants make to Nepal's economy, and the government's investment in the safety, rights, dignity, and long-term welfare of labour migrants. A shockingly low proportion of the state's national budget – less than 1% – is allocated

annually to government departments mandated to protect labour migrants. Even though migrant workers contributed USD 6.1 billion in remittances last year, the government itself allocated less than USD 1 million to the DoFE, which is the main body regulating labour migration and providing services to migrants.

Abroad, Nepali migrants are also treated as undervalued and disposable commodities, undermining their ability to exercise fundamental human and labour rights. In Malaysia, the Gulf and elsewhere, cheap Nepali labour contributes to the growth of key economic sectors, such as construction, manufacturing, security, and services. But in return, Nepalis and other migrant workers, typically receive two to three-year work contracts with few enforceable rights. Nepali workers that researchers spoke to had frequently struggled to collect their full wages on time, despite their painstaking labour and few days of rest. Some businesses have accumulated enormous profits from such abuse and exploitation of Nepali workers and other migrant worker populations.

BEARING THE BURDEN OF RECRUITMENT ABUSE

Lacking direct access to foreign employers and job opportunities, aspiring migrant workers in Nepal are dependent on layers of private recruitment agents and agencies to provide them with key information about legitimate foreign job opportunities, how to obtain travel and work permits, and other necessary information associated with overseas employment. Poor government oversight over labour intermediaries and recruitment chains has opened up innumerable possibilities for fraud, extortion, and exploitation of people desperate for work.

Nepal's recruitment system thrives off the desperation of people seeking employment, which allows recruiters to set the price for recruitment and send abroad those who can pay. "There is no fixed [recruitment] price. We are all paying different amounts," commented Bimal, a former migrant, "If we complain about the price, the agent says: 'do you want to go abroad or not?' That is the end of the conversation." Once migrants have handed over money to recruitment agents, they immediately lose control over fundamental recruitment decisions and processes that follow.

Aspiring job seekers that spoke to Amnesty International reported paying, on average, USD 1,346 (NPR 137,000) to recruitment agents and agencies for their jobs abroad. This is USD 549 more than the legal limit prior to 2015, when most of these workers went abroad. On some occasions, recruitment agents charged migrant workers as much as three or four times the legal limit. Since recruiters typically demand that migrants pay fees upfront before they migrate, almost half of returned migrants had resorted to taking out high-interest loans in order to pay exorbitant fees for recruitment.

Researchers found that profitmaking was only one reason recruiters extracted high fees from migrants. The practice also keeps customers in destination countries happy. "Recruitment [fees] must be high", explained one recruitment agency head, "otherwise people will change their minds, run away to an 'easier' job, and the employer will ask us to compensate him for a lost worker." Such views underpin business practices that treat migrants as labour commodities rather than human beings.

When workers enter exploitative relationships with recruiters, they are often told they will easily pay off recruitment debts. For many workers that spoke to Amnesty International, paying back their loan took longer than they had been led to expect. It took some migrant workers half or more of their time abroad paying off recruitment debts. Amnesty International interviewed 13 migrants who were in dire financial straits after selling land, houses, and other assets, as a result of recruitment abuse and heavy debts accumulated.

Recruiters do not only charge migrant workers high fees. They also subject them to other abusive and exploitative practices which, particularly in combination with high fees and debt, put them at serious risk of human trafficking and forced labour. Almost all migrant workers interviewed for this report had been subject to some form of rights abuse in addition to overcharging, which included:

- deception about the nature and terms of their foreign jobs;
- confiscation of their passports;
- delayed or cancelled departure without return of recruitment fees; and
- refusal to give accurate documentation such as work contracts and receipts.

Companies have a responsibility to respect human rights and take concrete steps to ensure that they are doing so. In many cases documented by Amnesty International, there is little evidence that recruitment agencies took steps to ensure they were not causing or contributing to human trafficking or forced labour as a result of their business activities and relationships. Amnesty International identified 64 cases in which Nepali workers found themselves trapped in forced labour situations after accepting jobs offered to them by recruitment agencies. Amnesty International also found evidence of direct recruiter involvement in labour trafficking of 22 migrants.

Local agents and recruitment agents in Nepal are able to deceive and exploit migrants without significant fear of being caught or punished. Last year, DoFE – which holds an effective monopoly over the regulation of recruitment, with the police prevented from playing a significant role – conducted only 120 monitoring visits of Nepal’s 754 recruitment agencies, even though these agencies sent more than 400,000 migrant workers abroad. A tiny fraction of these agencies -- 11% -- were fined for recruitment abuses defined under Nepali law despite repeated evidence from civil society groups that recruitment abuses are happening on a daily basis. Agencies paid USD 13,318 between them – equal to about the recruitment fees paid by 10-15 migrant workers – in fines as a result of their business misconduct. Migrant workers filed over 2,000 cases against recruitment agencies last year, but just four recruitment agencies were referred to the Foreign Employment Tribunal for prosecution.

Nepal’s weak compliance regime has a profound impact on migrants, which is exacerbated by the difficulty of getting compensation when they are exploited. Over the last four years, Nepali migrants have submitted claims for over USD 35.1 million in compensation for financial losses and harms suffered by recruitment agencies, but received less than 20% of that figure in actual pay-outs. Legal aid providers say that most migrant workers’ cases registered at the DoFE suffer from a lack of evidence, usually because recruitment agents and agencies ensure there is no paper trail – such as receipts or contracts – to provide proof of their abuse.

Government failure to ensure accountability has created a business environment that does not encourage a more ethical recruitment model. “People are getting into the business to make quick money,” said one Nepali activist, “without ensuring that the rights of the people being recruited and sent are being respected.” Recruitment agencies are quick to deflect criticism away from themselves to village-level agents and those overseas. Agencies point the finger at local agents for illegally overcharging migrants or providing misinformation about jobs at the first stage of their recruitment. Local agents, in turn, say that recruitment agencies are only interested in how quickly they are able to recruit workers for their overseas clients. Most agencies also claim that because there is intense competition for jobs in growth economies in the Gulf and Southeast Asia, human resource managers and labour supply companies based in destination countries ask for the payment of “commissions” (also referred to as “kickbacks”) before deciding which agency will receive their business. One recruitment agency director told researchers: “I have two options: to pay kickbacks for demand letters and compensate my losses by charging workers, or to leave the business because the operating cost is too high.”

ABANDONED ABROAD: DOUBLE VICTIMISATION AND VULNERABILITY TO “REPATRIATION BROKERAGE”

According to the Foreign Employment Act, Nepali recruitment agencies are required to pay for the repatriation of workers whose terms of employment are found to be different to those stipulated in the original contract. However, Amnesty International did not identify a single case in which a recruitment agency had acted on its obligation to workers who experienced these circumstances.

Migrant workers are doubly victimised when they have been channelled into exploitive working conditions, and abandoned by their recruitment agencies and the government. Within destination countries, restrictive immigration laws, punitive policing, and other obstacles to reporting abuses prevent Nepali migrants from seeking help from law enforcement or immigration authorities or submitting claims of labour rights abuse to labour courts. While struggling to earn or borrow money in order to return to Nepal, exploited workers further faced threats of arrest, detention, and prosecution for immigration offences. Several undocumented workers told researchers how they were forced to seek out informal “repatriation agents”, who charged high fees in order to facilitate their journey home. On top of recruitment fees, migrants reported paying an additional USD 609 to USD 4,000 to these “repatriation agents” for a range of services, including organising new travel documents and legal permits to exit their destination countries, purchasing flight tickets, arranging payment of immigration fines, and agents’ service fees.

CHALLENGING NEPAL’S EXPLOITATIVE RECRUITMENT MODEL

With such enormous numbers of people migrating for work, Nepalis are increasingly calling for government intervention to curtail abuses that happen so frequently during migration processes.

Nepal’s “Free Visa, Free Ticket” Policy, which took effect in July 2015, is supposed to drastically curtail the amount that recruitment agents and agencies can charge workers. The Policy requires foreign employers who wish to recruit Nepali workers to pay for their airline tickets and visa processing costs; the Policy also lowers what recruitment agencies can charge workers in service fees. The Policy applies to the recruitment of workers to the seven main destination countries that receive Nepali workers. The Ministry of Labour and Employment (MoLE) introduced this Policy following public pressure to address the widespread problem of excessive fees and unsustainable debts.

On its own, the “Free Visa, Free Ticket” Policy will not end the exploitation of Nepali migrant workers. However, if implemented properly, it could play an important role in reducing vulnerability to abuse and give migrant workers more control over their migration decisions, as a first step towards full zero-cost recruitment. However, Amnesty International’s evaluation of the implementation of the Policy finds that the Nepal government has failed to effectively monitor or enforce it. None of the workers the researchers spoke to who were seeking to migrate after the Policy’s introduction had been able to find a recruitment agent or agency that would comply with the “Free Visa, Free Ticket” Policy. Nepali recruitment agencies openly told researchers that they did not respect the policy due to its perceived negative consequences on their businesses. Nepal’s main recruitment association, NAFEA, continues to oppose the Policy and has organised several industry-wide strikes and shutdown of recruitment businesses sending labourers abroad. These strikes have called for the Policy to be cancelled unless the Nepal government signs new labour agreements with each destination country clearly stating their acceptance of the provision.

Even though the “Free Visa, Free Ticket” Policy remains in place, Amnesty International finds that the government has not devoted sufficient resources and focus to make this a workable policy, especially when it comes to ensuring recruiter compliance with it. Indeed, researchers were concerned that several government officials expressed reservations about the Policy because of its perceived negative

impact on the recruitment sector's profitability and Nepal's overall competitiveness on the labour market. The government has not tried to seriously address the recruitment industry's resistance, but instead shows signs of simply retreating from the Policy.

It is important to recognise that the Government of Nepal and Nepali-based private recruitment agents and businesses are only some of the actors with responsibilities for the protection of migrant workers. Governments, recruiters, and foreign employers in destination countries receiving Nepali migrant workers must also protect Nepali labourers and all other migrant workers from serious and systematic abuses of their rights. While this report focuses on Nepal's responsibilities to its citizens, other human rights investigations conducted by Amnesty International in destination countries such as Qatar and Malaysia, have also highlighted the significant gaps in protection that exist for Nepali and other migrant workers during their employment, and the ways in which national laws and practice facilitate exploitation and abuse by employers.

This context further emphasises the need for the Nepal government and its recruitment industry to ensure that Nepali workers do not begin their migration in debt bondage and at high risk of further exploitation. It also highlights the fact that for policies such as the "Free Visa, Free Ticket" Policy to work more effectively, it will be necessary to ensure that destination countries commit to enforcing the provision outside of Nepal. The Nepali government must take concrete steps to negotiate new or revise existing labour agreements with all seven destination countries where the Policy applies. The countries of destination, for their part, must work with the Nepali government to implement this Policy and enforce it within their jurisdictions.

Amnesty International urges the Nepali authorities to create an environment where the rights of migrant workers are respected and protected, and where its people can migrate for work without facing serious threats of debt bondage, labour trafficking and forced labour. Key steps forward include:

Reduce the vulnerability of migrant workers to forced labour and other abuses by fully committing to a zero-cost recruitment system:

- As a first step, invest fully in the implementation the "Free Visa, Free Ticket" Policy and enforce penalties against recruitment agencies that collect visa fees, services charges and promotional costs in excess of the maximum amount established by the government, under Article 53 of the Foreign Employment Act.
- Require recruitment agencies to include accurate and fully itemised receipts in the application paperwork submitted for work permits, and ensure that migrant workers are able to access these itemised receipts within online platforms.
- Negotiate with destination countries to put in place procedures for ensuring that foreign employers follow Nepal's "Free Visa, Free Ticket" Policy, which requires employers to pay for airline ticket and visa costs of migrant workers working in their businesses.
- Develop a transparent and accessible system that allows migrant workers to make payments online to recruitment agencies and other services purchased prior to departure.
- Harmonise the government framework for regulating recruitment agencies and other migration-related businesses -- such as medical clinics, travel agencies, and insurance companies -- so that high migration costs and exploitation of migrant workers can be dealt with more effectively.
- Issue a circular from the Ministry of Labour and Employment requesting the assistance of district police and local authorities in the monitoring of labour recruitment chains.

For more recommendations, see Chapter 8.

2. METHODOLOGY

Between February 2016 and May 2017, Amnesty International carried out three visits to Nepal as part of its investigation into the human rights situation for Nepali migrant workers. Researchers also visited Malaysia in November 2016 and April 2017, which is one of the main countries of destination for Nepali migrant workers.

In Nepal, which was the primary site of the research, Amnesty International interviewed 205 individuals comprising a diverse range of backgrounds and roles in the migration process. This included: 17 prospective and 110 returned migrants who had worked abroad during the last five years; local migrant rights' activists and service providers; 18 local and 11 national government officials; four local brokers and 19 private recruitment agencies; local journalists focusing on themes of labour recruitment and foreign employment; UN migration experts; and international donors funding initiatives to assist and protect Nepali migrant workers.

Prior to conducting the research, Amnesty International identified eight districts across Nepal to carry out in-depth interviews with returned and prospective migrant workers. Shown on the map overleaf, the districts were: Kailali, Gorkha, Dhanusha, Saptari, Jhapa, Rupandehi, Dang, and Kathmandu. The districts were chosen based on geographic location, numbers of documented migrant workers, and reports of recruitment abuses and human trafficking of migrant workers.

Amnesty International selected interviewees from a variety of localities and social backgrounds. Variables such as age, gender, caste, and ethnicity were factored into the selection of participants for focus group discussions and individual interviews, in order to ensure a high number and diversity of interviewees. Researchers used research software (NVIVO) to ensure rigorous data analysis of the interviews conducted.

The majority of the 127 migrant workers shared their stories with Amnesty International through focus group discussions, which were limited to 6-12 participants and structured by gender. Around one-third of the focus group discussions were held with women, while two-thirds were held with men in an effort to maintain broad consistency with national figures that show higher prevalence of men undertaking foreign employment.

Out of these 127 migrant workers, 47 were selected for in-depth interviews (16 women) in order to collect more detailed information. These interviews lasted between 1.5 and two hours. Many interviewees provided documents to Amnesty International including: their case files that they had registered with local NGOs or the Department of Foreign Employments (DoFE) Complaints Division; police reports; local newspaper articles reporting on fraud or other abuse; work contracts; receipts of recruitment fees paid; flight itineraries; business cards and letterheads from recruitment agencies accused of abusive practices; photos and videos; and screen shots of labour permits and visas confirmed by the DoFE's SMS service for migrant workers. In most cases, researchers found that the testimonies of migrant workers on human and labour rights abuses were consistent with the findings of local and international human rights organizations.



Adapted from a UN map. This map indicates the general locations of areas and boundaries, and should not be treated as an authoritative description of the area or interpreted as Amnesty International's view on questions of borders or disputed areas.

Of the 110 returned migrants interviewed, a quarter had experienced foreign employment more than once, and several were in the process of migrating a third or even fourth time. Researchers specifically sought out individuals who had migrated in recent years; 108 of 110 of the returned workers had left after 2011 and come back before 2016. For those workers who provided information on their country of destination, the majority (36) migrated to Malaysia, others went to: Qatar (17); Saudi Arabia (17); United Arab Emirates (11); Kuwait (6); Lebanon (2); Iraq (3); Bahrain (1); and Tajikistan (1).

Researchers also interviewed eleven government officials from the following government departments and ministries in Kathmandu: the Ministry of Labour and Foreign Employment, the Department of Foreign Affairs, the Ministry of Foreign Affairs, the Foreign Employment Promotion Board, the National Human Rights Commission, the Foreign Employment Tribunal, the Department of Immigration, the Department of Consular Affairs, the Kathmandu Metropolitan Crime Division, and the Attorney General's Office. Across the eight selected districts, Amnesty International met 18 local authorities, many of whom were Chief District Officers, district attorneys, district police commanders, and district judges.

Amnesty International sent a list of questions to the Department of Foreign Employment and Foreign Employment Promotion Board in February 2017, seeking information about the implementation of key policies relating to migrant workers. In March 2017, both departments provided responses to these questions, which have been taken into account in the report's findings and conclusions.

Amnesty International interviewed four local brokers and 22 private recruitment agencies, which are referred to in Nepal as "manpower" agencies. In some of these cases, Amnesty International requested an interview because the recruitment agency had been accused by a migrant worker of abuse and/or exploitation. Additionally, Amnesty International spoke with representatives of the Nepal Association of Foreign Employment Agencies (NAFEA) in February and July 2016, and again in May 2017.

Researchers also interviewed a range of other individuals and organizations in Nepal involved in processes related to labour recruitment and foreign employment, including journalists, trade union representatives, local lawyers, human rights activists, local organisations who provided information on human rights abuses and access to justice and compensation, and representatives of the Embassy of Malaysia.

In Malaysia, Amnesty International interviewed ten migrant rights' activists, two trade union members, one labour supply company receiving Nepali workers, and Nepal Embassy officials. Researchers also visited the accommodation of a group of Nepali workers.

In order to protect those providing information for this report, all names of migrant workers and have been changed. This is also the case for other respondents who provided information on the basis of their anonymity.

Amnesty International would like to thank everyone who contributed to this report, in particular migrant workers who shared their stories, as well as the local migrants' rights activists, organisations and journalists who gave substantial amounts of time to share information on the struggle of workers to navigate complex migration processes and have their human rights respected. In particular, the Organisation would like to thank Pranika Koyu, Roshan Sedhai, and Jebli Shrestha for their contribution to the research. Amnesty International is also grateful to the Government of Nepal for meeting with researchers on several occasions and taking the time to respond to the organization's multiple requests for information.

3. THE SEARCH FOR WORK

HOW UNDERDEVELOPMENT DRIVES PRECARIOUS MIGRATION



“No one is forced to go abroad... but when a person doesn’t have options for livelihoods or to make a living, then a person is forced to go by their own nature [as a human being]. In other words, if you don’t have money, a job, land for farming, what are you to do but to go abroad to make money? Let’s say our economy is based on remittances.”

District Police Officer, Kailali district

Jobs are few and in demand in Nepal, especially for young people. Steady population growth has seen a surge in young entrants into the labour market, who face particular difficulty in finding employment.³ Studies show that nearly 20% of young people (aged 15-29) are unemployed, while 92% of those working are in situations of informal employment.⁴ Even when people do find work, wage levels in Nepal are some of the lowest in the region.⁵ Nepal ranks 146 out of 188 countries on the Human Development Index, lagging behind most South Asian countries. An estimated 25.2% of Nepal’s population live below the poverty line – this figure would be even higher than it is, were it not for the country’s mass labour migration phenomenon in recent decades.⁶

In the last *Nepal Living Standards Survey* (NLSS) 2010/2011, 53% of households reported they had at least one “absentee” family member—meaning that at least one individual considered a member of the household was living elsewhere in the country or abroad.⁷ Between 2006 and 2014, there was a 144% increase in the number of foreign labour permits issued by the Nepal’s Department of Foreign Employment (DoFE). Nepali migrants in India are not included in these figures and are estimated to number around 700,000.⁸ Some studies predict that by 2020, Nepal’s migrant workforce – located outside the country’s borders – could reach a staggering 4.4 million people.⁹

3 Deutsche Gesellschaft fur Internationale Zusammenarbeit (GIZ) and International Labour Organization, “Analysis of Labour Market and Migration Trends in Nepal”, Deutsche Gesellschaft fur Internationale Zusammenarbeit (GIZ) and International Labour Organization, 2015, available at: http://www.ilo.org/kathmandu/whatwedo/publications/WCMS_407963/lang--en/index.htm

4 International Labour Organization (ILO), “School-to-work transition survey”, ILO, December 2016, available at: http://www.ilo.org/wcmsp5/groups/public/---ed_emp/documents/publication/wcms_537754.pdf

5 ILO, “Global Wage Report 2014/2015”, ILO, December 2015, available at: http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms_325219.pdf

6 Asian Development Bank, “Poverty in Nepal,” Basic Statistics, Asia Development Bank, 2016, available at: <https://www.adb.org/countries/nepal/poverty>

7 The NLSS defines “absentee” as an “individual who is considered by the household as one of its members but who is excluded from the survey’s definition of household membership because of his/her prolonged absence (being away from the household for more than 6 months out of the last 12 months, or being expected to be away for more than 6 months).” The definition pertains to individuals either within the country or abroad. See Government of Nepal, “Nepal Living Standards Survey 2010-2011”, *NLSS Third*, Government of Nepal, 2012, p.32.

8 Sharma and Thapa, “Taken For Granted: Nepali Migration to India,” Centre for the Study of Labour and Mobility, 2013, p.4.

9 Deutsche Gesellschaft fur Internationale Zusammenarbeit (GIZ) and International Labour Organization, “Analysis of Labour Market and Migration Trends in Nepal”, Deutsche Gesellschaft fur Internationale Zusammenarbeit (GIZ) and International Labour Organization, 2015, available at: http://www.ilo.org/kathmandu/whatwedo/publications/WCMS_407963/lang--en/index.htm

Year	Number of Labour Permits Issued (DoFE) ¹⁰
2011-12	384,665
2012-13	450,889
2013-14	519,638
2014-15	499,620
2015-16	418,713



The Legal Status of the Right to Work in Nepal

Nepal is a party to the International Covenant of Economic, Social and Cultural Rights (ICESCR), which outlines the obligation of state authorities to take appropriate steps to safeguard and achieve the full realization of the right to work (Articles 6 and 7).

According to the Covenant, the right to work “includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts.” Protection of this right also entails preventing third parties – including businesses – from depriving people of their right to work. Furthermore, Article 7 of the Covenant defines the enjoyment of just and favourable conditions of work to include “a decent living for themselves and their families in accordance with the provisions of the present Covenant.”

Nepal’s Constitution (2015) recognises the right to work as a fundamental right by stating that “every citizen shall have the right to employment” (Article 33). Article 34, on rights regarding labour, further outlines the right of every worker to “appropriate remuneration, facilities, and contribution-based social security.” Article 11 of the Constitution ensures the equal rights of men and women in all economic, social and cultural spheres, as set forth in the Covenant.

During its periodic reporting to the Committee on Economic, Social and Cultural Rights (CESCR), Nepal has responded to some CESCR recommendations to strengthen the protection and promotion of the right to work. Examples include Nepal’s enactment of the Foreign Employment Act (2007) and the Human Trafficking and Transportation (Control) Act 2007, as well as the establishment of a national minimum wage in 2008.¹¹ The CESCR, nevertheless, has expressed concern with the lack of implementation of Nepal’s laws and policies concerning economic, social, and cultural rights, and in relation the right to work. It has urged the Nepal government to ratify a number of key International Labour Organisation (ILO) and UN Conventions, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.¹²

10 Government of Nepal, “Labour Migration for Employment: A Status Report for Nepal 2014/2015”, Government of Nepal, 13 June 2016, p.7.

11 Third Periodic Report Submitted by State Parties under Articles 16 and 17 of the Covenant, UN Doc. E/C.12/NPL/3, paras 94 and Annex I.

12 Concluding Observations on the Third Periodic Report of Nepal, UN Doc. E/C.12/NPL/CO/3, 12 December 2014, paras 5-7 and 30.

3.1 FOREIGN EMPLOYMENT “CHOICES” AND RISKS

Recent studies indicate that large-scale migration of Nepali workers to other countries has yielded some benefits to the country in terms of increasing per capita income and addressing household poverty.¹³ However, individual migrant workers are routinely unable to enjoy key elements of the right to work, particularly adequate remuneration, safe and healthy working conditions, and rest, leisure and reasonable limitation of working hours.¹⁴

This is partly because many labour receiving countries that recruit Nepali workers have poor records in enforcing international labour standards and safeguarding basic labour rights. In recent years, international scrutiny of Qatar’s construction industry, in the run-up to the 2022 World Cup,¹⁵ has revealed the abuse of migrant workers’ labour rights, while the high number of migrant worker deaths in the Gulf States and elsewhere has also provoked domestic concern, with the Nepali media placing particular focus on Malaysia in early 2017.¹⁶

Additionally, due to lack of government investment in their skills, over 75% of Nepal’s migrant workforce go abroad as low-skilled labourers. Low-skilled jobs generally mean low wages, temporary work contracts, and doing so-called “3D” jobs: dirty, dangerous and degrading. In the global 'race to the bottom' for cheap labour, Nepali workers continue to be some of the lowest paid workers, in comparison to other countries in the region where governments have been more successful in fixing minimum wages for their nationals after negotiation with foreign governments and employers.¹⁷

Most migrant workers interviewed told researchers that the lack of work at home meant they had no viable option but to migrate for work. Only 10 of 127 migrant workers interviewed stated they had exercised real choice in their decision to undertake foreign employment. The remaining 117 interviewees, both prospective and returnee migrants, said their migration was motivated by economic insecurity and/or the lack of work (unemployment or under-employment).



Young men, in particular, sought foreign employment to provide for basic needs of their immediate and extended families. A number of these workers said they needed to work abroad in order to pay education expenses for their school-aged children and siblings. One group of migrant workers said they lacked political connections and so could not get jobs in their villages, prompting them to search for foreign jobs. The research also identified several male heads of households in areas affected by the 2015 earthquake, such as Gorkha district, who had not received house reconstruction assistance and sought to migrate in order to rebuild their homes..

13 The World Bank, “Country Profile: Nepal”, World Bank, 2016, available at: <http://data.worldbank.org/country/nepal>. See also Nepal Rastra Bank, “Impact Evaluation of Remittances: A Case Study of Dhanusha District”, Banking Development and Research Unit, Janakpur, Nepal Rasta Bank, available at: http://nrb.org.np/red/publications/study_reports/Study_Reports--Impact_Evaluation_of_Remittances-A_Case_Study_of_Dhanusha_District.pdf.

14 See Article 7 of the International Covenant on Economic, Social and Cultural Rights, opened for signature 19 December 1966, 993 UNTS 3 (entered into force 3 January 1976); International Covenant on Civil and Political Rights (ICCPR), opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

15 Amnesty International, “The Ugly Side to a Beautiful Game: Exploitation of Migration Workers at a 2022 World Cup Construction Site”, Index number: MDE 22/3548/2016, 20 March 2016, available at: <https://www.amnesty.org/en/documents/mde22/3548/2016/en/>

16 Sendai, R. “More than One Nepalis Die in Malaysia Every Day”, Kathmandu Post, 20 January 2017, available at: <http://kathmandupost.ekantipur.com/news/2017-01-20/more-than-one-nepalis-die-in-malaysia-every-day.html>.

17 Sijapathi and Limbu, “Governing Labour Migration in Nepal: An Analysis of Existing Policies and Institutional Mechanisms”, Centre for the Study of Labour and Mobility, 2012, p.39.

In Gorkha district, male migrants particularly mentioned their lack of access to land as a strong factor in their migration decision-making. One migrant explained:

“Family land plots are diminishing because families will have three to four sons, and they must subdivide their plot of land between them. Smaller size land plots are insufficient for growing food and providing money to survive. We would not even think of leaving Nepal if we had land. If I stay here, I will only earn NPR 6,000 [USD 57] from two to three months of agricultural production on my small piece of land. But if I go abroad, I believe I will have the potential to earn over NPR 25,000 [USD 239 – or four times the local salary] for the same period of work.”¹⁸

Female migrant workers cited gender relations, prohibiting access to work, and family financial pressures as key factors in their migration decision-making. In some instances, the women interviewed did not have male siblings and occupied the position as the eldest child in the family. By migrating, they assumed responsibility for fulfilling the family’s basic needs. In other examples, women told Amnesty they had sought foreign employment after their husbands had returned home exploited, indebted and empty handed from their migration. In these cases, the women went abroad to pay off the recruitment debts of their husbands who had been deceived about the salaries they would earn abroad.¹⁹

Women interviewed consistently described migration as a hard choice with significant consequences on family life. Surya, a 33-year-old mother and former domestic worker in Kuwait, explained her migration was a series of trade-offs between family/community life and economic stability:

“The government does not understand what a painful choice it is for women to go abroad for work. Women leave families, or their children who are as little as one-year-old. They [the government] should try to understand that we are only going because of the lack of opportunities. If employment problems were addressed, we would not have to make hard choices to go abroad and work in such slavery.”²⁰

Similar to Surya, most interviewees stated their preference to stay and work in Nepal, irrespective of their gender. Some returnees, for instance, stressed that if even if they made 50 to 100 dollars less than the average monthly wage earned abroad (approximately USD 200 to USD 300), they would choose to stay in Nepal rather than work abroad.

18 Amnesty International interview with RK in Gorkha district, on 17 June 2016. Such statements on lack of land and income generating opportunities were consistent with the testimonies of ten other interviewees who were interviewed in Gorkha district between 17 and 18 June 2016.

19 Amnesty International interview with women’s group in Jhapa district, on 26 June 2016.

20 Amnesty International interview with ST in Kailali district, on 13 June 2016.

4. THE DANGEROUSLY HIGH PRICE OF GETTING A JOB OVERSEAS

“Poor people are paying so much money to go abroad because they cannot find a job. When something goes wrong, they blame themselves. But in reality, they are the ones making hard choices about leaving their families. People are killing themselves working foreign jobs because they need money to survive.”

Migrant Worker, Jhapa district

Many Nepali workers seeking to work abroad end up paying large sums of money for a range of services and unspecified charges associated with labour migration. In the South Asia region, Nepali migrant workers are known for bearing some of the highest costs to migrate.²¹ The excessive and often illegal fees charged to migrants by different actors within Nepal’s booming “migration industry” – a vast and poorly regulated network of labour brokers and migration-related businesses – are exploitative and leave migrant workers at a high risk of human rights abuse. High, unpredictable and upfront costs extracted from migrant workers systematically drive their vulnerability to debt bondage, labour trafficking and forced labour.

This chapter discusses the dynamics of Nepal’s migration industry and the profit-driven circumstances that have led to the regular abuse and exploitation of Nepali workers. Researchers found that nearly two-thirds of 110 returnee migrant workers interviewed had paid recruitment fees that were far higher than the government-imposed limits. In some cases, fees represented three to four times what workers were meant to pay in service charges to recruiters.

Because migrant workers have to pay such high recruitment fees up-front, as well as a number of other hidden costs associated with recruitment processes, they usually cannot afford these fees from their existing financial resources. The result is that most have no option but to take out loans if they want to migrate. Loans are frequently provided at very high rates of interest by village moneylenders, recruiters, relatives or other acquaintances.²²



21 IOM, “Mapping of Private Sector Entities Engaged in Migration Related Initiatives”, IOM 2014, p.35. Both Sri Lanka and Pakistan are evidenced to have lower recruitment fees, while Bangladeshi migrants pay similar amounts to Nepali migrants or more. See Dovelyn Aguinas, “Regulating Private Recruitment in the Asia-Middle East Labour Migration Corridor”, IOM and Migration Policy Initiative, August 2012, p.3.

22 Sijapati, B., Lama, A., Baniya, J., Rinck, J., Jha, K., and Gurung, A., “Labour Migration and the Remittance Economy”, Asia Foundation and Centre for Labour and Mobility (CESLAM), March 2017, available at: <http://asiafoundation.org/publication/labour-migration-remittance-economy/>

Large recruitment fees and debts have an enormous and well-documented potential to create conditions of debt bondage for Nepali workers. There is an urgent need for the Nepal government to address industry malpractices related to the extraction of high fees from migrants, in accordance with its obligations in international and domestic law.

4.1 HOW NEPAL'S "MIGRATION INDUSTRY" OPERATES

The scale of migration from Nepal has led to the formation of a vast and layered industry of recruiters and businesses that facilitate access to job opportunities. Between 2008 and 2015, over 80% of Nepali labour migrants used the services of private recruitment agencies to obtain labour permits.²³ Migrant workers pay recruitment agencies an estimated USD 260 million per year for their services and for other costs incurred during the recruitment process.²⁴ The Department of Foreign Employment (DoFE), which sits administratively under the Ministry of Labour and Employment (MoLE), is the main agency responsible for government functions related to foreign employment.

Currently, there are 754 recruitment agencies in Nepal that have been licensed by the Department of Foreign Employment. Licensed agencies are authorised to receive demand letters from foreign employers, recruit and select migrant labourers, and send labourers abroad according to the regulations and administrative procedures outlined in Nepal's 2007 Foreign Employment Act (FEA) and 2008 Foreign Employment Rules. Outside these 754 licensed recruitment agencies, Nepali police told researchers they believe there are several hundred, unlicensed agencies and "consultancies" involved in illegally recruiting and sending migrant workers abroad.²⁵

All Kathmandu-based recruitment agencies rely on local agents ("sub-agents" or "brokers") to recruit workers from remote and urban areas outside the capital. This is partly due to legal restrictions on recruitment agencies from opening branch agencies in district areas,²⁶ in place as part of a government drive to centralise recruitment services and regulate the industry from Kathmandu. Recruitment agencies also depend on village-level agents because they are known or related to people in the villages and therefore likely to be seen by migrants as trustworthy brokers. Local recruiters attract potential migrants by showing they possess knowledge about job and recruitment processes, or by demonstrating their ability to link people to foreign employment.

The recruitment industry's reliance on local agents has perpetuated an opaque system of labour recruitment with chains of accountability that are difficult to pursue. The government has licensed 705 local agents operating in district areas, a number dwarfed by the up to 80,000 unlicensed local agents estimated to be operating in the districts.²⁷ As well as working with agencies in Kathmandu, some of these unlicensed agents also independently recruit and send workers, particularly female migrant workers, directly to foreign employers. Without much oversight at the village level, such agents easily circumvent regulations around legal migration processes that are meant to protect migrant workers.²⁸

23 Government of Nepal, "Labour Migration for Employment: A Status Report for Nepal 2014/2015", Government of Nepal, 13 June 2016, p.17. A total of 2,723, 587 permits were issued. The government also directly administers an Employment Permit System with the government of South Korea, but for only 33,960 individuals over the same period.

24 Jones and Basnett, "Foreign Employment and Inclusive Growth in Nepal", Overseas Development Institute (ODI), June 2013, p.8 available at: <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/8447.pdf>

25 Amnesty International interview with Sarbendra Khanal, Chief of the Metropolitan Police Crime Division, on 29 June 2016.

26 Article 48 of the FEA.

27 Taylor-Nicholson, Paoletti, Sijapathi, and Farenblum, "Labour Migration Agents: Regulation, Accountability, and Alternatives," Policy Brief No. 5, Centre for the Study of Labour and Mobility, June 2014, available at: <http://www.ceslam.org/docs/publicationManagement/CESLAM%20Policy%20Brief%205.pdf>

28 Taylor-Nicholson, Paoletti, Sijapathi, and Farenblum, "Labour Migration Agents: Regulation, Accountability, and Alternatives," Policy Brief No. 5, Centre for the Study of Labour and Mobility, June 2014, available at: <http://www.ceslam.org/docs/publicationManagement/CESLAM%20Policy%20Brief%205.pdf>

Because of the way that the industry is structured and regulated, prospective workers may come into contact with five or six local agents and agencies during the recruitment process.²⁹ Larger recruitment agencies in Kathmandu may also outsource their recruitment functions to smaller recruitment businesses, especially when they need to quickly respond to demands for workers. This multi-layered and opaque system generates high fees, with each intermediary extracting their own fees and service charges from migrant workers.

Beyond recruiters, other private actors and businesses are involved in providing pre-departure services – such as medical examinations, insurance, pre-departure orientation and skills training – to migrant workers. These other migration businesses, less visible than recruiters, add to workers' fee burdens. Workers also pay significant amounts in transportation costs, going back and forth to Kathmandu repeatedly to check on the status of their visas, undertake medical examinations, provide documents to recruiters, and complete other necessary steps that can only be done in the capital. Hundreds of thousands of jobs have been created in Nepal via the expansion of these migration-related industries.³⁰ Unlike the recruitment sector, there is less clarity on which government department and ministry is responsible for regulation of pre-departure services. The cost of these services is also increasing over time, due in part to new destination country demands and the outsourcing of certain services. For example, Malaysia has recently introduced a more technologically advanced system for pre-departure medical screening, which is positive, but this has also led to an increase in the cost of migrant workers' medical exams.

4.2 NEPALI LAWS REGULATING RECRUITMENT FEES

Nepal's domestic legislation on recruitment contains various provisions to specifically monitor and regulate the overcharging workers by recruitment agencies, and allows migrant workers who have been charged excessive recruitment fees by recruitment agencies to submit a complaint for compensation.

First, the 2007 FEA gives the MoLE the power to specify the upper limit that can be charged to a migrant worker for recruitment agency service fees and promotional costs.³¹ The Government of Nepal has periodically exercised this power, to reduce fees charged to workers. Until mid- 2015, recruitment agencies could legally collect up to NPR 80,000 (USD 775) from workers departing to Malaysia and NPR 70,000 (USD 677) for worker departing to Gulf Cooperation Council (GCC) countries, which in both cases was inclusive of air ticket and visa processing costs.³²

Recently, driven by external and public awareness of the recruitment agency practice of double-charging migrant workers for ticket and visa costs that had already been paid by foreign employers, the Ministry of Labour and Employment took further policy measures. The government's "Free Visa, Free Ticket" Policy, introduced in July 2015, now requires foreign employers to pay for air tickets and visa processing costs, and has also drastically reduced the amount that recruitment agencies can legally charge migrant workers in service and promotional fees. This limit is now set at NPR 10,000 (USD 96). The implementation of this Policy is discussed in more detail in the following chapter.

29 Amnesty International interview with Kathmandu Post journalists in Kathmandu, on 28 June 2016.

30 IOM, "Mapping of Private Sector Entities Engaged in Migration Related Initiatives", IOM 2014, p.4.

31 Article 24 of the FEA.

32 Saudi Arabia, Kuwait, United Arab Emirates, Qatar, Bahrain, and Oman.

The FEA authorises the Ministry to impose administrative sanctions on a recruitment agency that exceeds the government-imposed upper limit on recruitment fees, or charges visa fees to prospective workers when a visa has already been paid for by the foreign employer (i.e. “double charging”). In these instances, the recruitment agency must return the fees charged in excess to the migrant worker, and also must pay a relatively low fine of NPR 100,000 (USD 968) to the DoFE.³³ The law does not require recruitment agencies to refund a migrant worker for interest payments that he or she may have paid on account of taking out a loan in order to cover high recruitment fees. Therefore, the compensation that a migrant worker is entitled to under the law is likely to be lower than the actual sum paid by the worker.

The Foreign Employment Act explicitly requires that recruitment agencies provide the DoFE with a receipt for recruitment fees paid by the worker. Without this, the agency will be unable to obtain a labour permission sticker (labour permit) and the worker will be unable to migrate -- these stickers are attached to workers’ passport and are examined by officials at Kathmandu airport before workers travel. The Act also prohibits a recruitment agency from providing a migrant worker with fraudulent documentation and provides for fines between NPR 100,000 and 300,000 (USD 968 to 2,905). Under the law, an agency may also face imprisonment for six months to one year for this offence.³⁴

4.3 UNFREE RECRUITMENT: DAILY OVERCHARGING OF ASPIRING MIGRANT WORKERS

In 2011, Amnesty International’s investigation into migrant workers in Nepal found that migrant workers paid on average 101,208 NPR (USD 1,420) in recruitment fees – between NPR 20,000 and NPR 30,000 (USD 187 to USD 281) higher than the amount that could be legally collected from workers according to the government-imposed limit at the time.³⁵ 73% of migrant workers interviewed in 2011 had paid above the legal maximum. Researchers found that migrant workers seldom knew what they were paying for, or were easily charged for services not provided because of the failure of recruitment agencies to provide itemised receipts for services rendered. On many occasions, migrant workers were issued receipts that stated an amount lower than they had actually paid – a practice that is expressly prohibited by the Foreign Employment Act under Article 47.³⁶ In its 2011 investigation, Amnesty International identified only one worker who had received compensation for their payment of illegally high fees.

Five years on, Amnesty International finds that the pattern of behaviour among recruitment agents and agencies has remain unchanged, in terms of:

- payment of excessive fees by migrant workers;
- lack of transparency of what is being paid for and to whom;
- denial of accurate documentation (receipts) for fees paid; and
- lack of redress (compensation) for payment of excess fees.



33 Article 53 of the FEA. See also a previous 12-month study by Verite on Nepal’s labour recruitment industry, which found that many of Nepal’s recruitment agencies send approximately 50-60 workers per month, and earn between USD 170-225 per worker sent abroad. Verite, “Labour Brokerage and Trafficking of Nepali Migrant Workers”, 2012, p.32, available at: https://www.verite.org/wp-content/uploads/2016/11/Humanity-United-Nepal-Trafficking-Report-Final_1.pdf

34 Article 47 of the Act authorises punishment for “any licensed agency that knowingly conceals any document or report required to be maintained under the Act or the Rules framed under the Act, or alters any matter therein or makes any false contents or causes any one to prepare false details.”

35 Based on the US Dollar to Nepali Rupee in 2011 when the report was published.

36 Information provided in Amnesty International, “False Promises: Exploitation and Forced Labour of Nepalese Migrant Workers”, Index number: ASA 31/007/2011, 2011, Chapter 6, p.27-33.

This time, researchers found 68 migrant workers who had paid higher than the government imposed limit for their recruitment fee³⁷ – comprising 81% of the total workers who provided detailed information about their recruitment fees. The average recruitment fee paid by these migrant workers was NPR 137,600 (USD 1,346). This amount is consistent with rates discovered by Amnesty International in 2011 and the findings of other reports.³⁸

This overcharging is significant because it puts migrant workers in a situation of extreme vulnerability to debt bondage and other abuses prior to their departure from Nepal. Conservatively estimated, the above-mentioned recruitment fees average of NPR 137,600 (USD 1,346) may represent five to six full months of a migrant workers' monthly salary for the two to three- year period that he or she is abroad —*if* the worker has received the minimum wage set by the government.³⁹ However, many migrant workers interviewed by Amnesty International received less than this minimum wages: in such cases, recruitment fee charges could total at least nine full months of salary, or 25-36% of the total wages earned while abroad. The financial burden of recruitment fees is further exacerbated when a migrant worker must also repay loans taken out to cover their recruitment fees. Most recruiters demand payment upfront before workers have departed, which increases the total amount of fees, given the need to take out a (usually very high interest) loan (explored below).

Although these costs are high, some migrants said they paid them because they felt they had no other choice, given the lack of job opportunities at home. While some understood that they were paying fees much higher than government prescribed limits, others were completely unaware of government restrictions on fees.

In most cases, migrants said they had no control or bargaining power to lower the fee. Sana – a 26-year old former domestic worker in the United Arab Emirates – complained that even after the price was initially fixed, it was later doubled by her recruitment agents without explanation:

“I paid NPR 90,000 (USD 872) in recruitment fees. Initially, they [recruitment agency] told me that the fee would be NPR 35,000 (USD 339). But just before my visa arrived, they changed their mind about the fees. They told me that the hike in price was because they had switched my job [from domestic work] to working in a beauty parlour. There was no explanation to me on what was being provided in the fee.”⁴⁰

Ultimately, Sana discovered that the explanation her recruiters had used to extract more money from her was not true, and she was placed as a domestic worker. Even though Sana was disturbed by her recruiters' deception, she explained that she was never in a position to withdraw from the process because she had paid part of the fee upfront, taken out a loan, and raised the expectations of her family. Nearly all migrant workers provided similar explanations of how sheer desperation for work prevented them from effectively negotiating with local agents – who essentially function as gatekeepers to potential jobs. Many migrants said that these agents threatened to select someone else for the job placement if they refused to pay the money asked of them.

37 This includes migrant workers who paid some of their recruitment fee and had the rest deducted directly from their monthly salaries.

38 Verite, “Labour Brokerage and Trafficking of Nepali Migrant Workers”, 2012, p.68, available at: https://www.verite.org/wp-content/uploads/2016/11/Humanity-United-Nepal-Trafficking-Report-Final_1.pdf

39 Under Article 23 of the Foreign Employment Act, the Nepal Government may “specify the minimum remuneration to be received by workers who go for foreign employment”. The minimum monthly salary for an unskilled worker is QAR 900 in Qatar (NPR 26,322), RM 900 in Malaysia (NPR 22,882), and AED 800 (NPR 23,913) in United Arab Emirates.

40 Amnesty International interview with SP in Kailali district, on 13 June 2016.

Migrant workers told researchers they had no way of finding out if their employers in the country of destination had in fact paid for any of the items or services charged to them by recruitment agencies – such as visas and tickets which some foreign employers are supposed to pay, under the laws of destinations countries. For example, the law in Qatar prohibits Qatari employers or placement agencies from charging fees – which are to be borne by Qatari employers -- to migrant workers.⁴¹ Yet Nepali media investigations indicate that both Qatari placement agencies and Nepali recruitment agencies continue to extract these costs from workers.⁴²

Confusion over the actual costs for fees and services prevents migrant workers from effectively defending themselves against exploitation. For example, four male villagers living in Nepal's Terai region were aware of government-set recruitment fee limits but told researchers that their local agent was nevertheless able to apparently manipulate them with misinformation about the government policy, by telling them – incorrectly – that government limits on recruitment fees *only applied to recruitment agency service charges* and did not include the cost of the visa and ticket. These men ended up paying fees for their air tickets and visas because they were misled by their agent, and also because they feared that by not bending to the agent's demands, the agent might abandon them later on if they encountered a problem while they were abroad.⁴³

Migrant workers reported they repeatedly gave money to agents and recruitment agencies throughout the recruitment process – and sometimes the same agent would come back more than once.⁴⁴ Bavesh, a 25-year old man from Gorkha district, was recruited by a local agent to work in an acupuncture hospital in China. Bavesh initially paid NPR 150,000 (USD 1,453) to the agent, which included a flight and visa costs, a medical check-up, job training, and fees for accommodation and food in Kathmandu whilst undertaking the training. Soon after, however, another local agent had become involved and began to demand that Bavesh give him additional NPR 500,000 (USD 4,845) in fees for job training, which until then had never been mentioned:

“Their story kept changing each time I asked for more clarity on the cost and type of training I would receive.”

Unable to pay this huge sum of money, Bavesh eventually walked away from his potential job abroad. In doing so, he lost NPR 100,000 (USD 969).⁴⁵

Under Article 43 of the Foreign Employment Act, Bavesh was entitled to repayment of all fees paid, plus 50% extra as compensation from the agent. Under the law, the agent may also be prosecuted and subject to a punishment of three to seven years in prison, in addition to receiving a fine of NPR 300,000 to 500,000 (USD 2,907 to USD 4,845). However, because Bavesh's agent had refused to provide him with any documentation of the money exchanged between them, Bavesh did not feel confident to submit his complaint to the DoFE.

In most instances where Amnesty International documented excessive and illegal charges paid by migrant workers, their recruiters either refused to provide them with receipts or provided them with fraudulent receipts stating that they had paid lesser amounts than what was actually given to recruiters.⁴⁶

41 Article 33 of 2004 Labour Law of Qatar states that: “The person who is licensed to recruit workers from abroad for others shall be prohibited from doing the following: (1) to receive from the worker any sums representing recruitment fees or expenses or any other costs. (2) To carry out in the office any other business other than the recruitment of workers from abroad for others.”

42 Kharel, H., Ayub, M. and Sijapati, B., “Free Visa, Free Ticket,” Kathmandu Post, 2 May 2016, available at: <http://kathmandupost.ekantipur.com/news/2016-05-02/free-visa-free-ticket.html>

43 Amnesty International interview with SP in Kailali district, on 13 June 2016.

44 Amnesty International focus group discussions in Gorkha district, on 18 June 2016. A number of individual interviews also repeated this experience.

45 Amnesty International interview with BR in Gorkha district, on 18 June 2016.

46 Denial of accurate documentation and receipts is discussed further in section 4.7.

4.4 WHY AGENCIES SAY THEY OVERCHARGE MIGRANTS

While personal enrichment may be an important driver of overcharging of migrant workers, agents and agencies also told Amnesty International that their business models rely on this practice.

Some agencies said that the proliferation of agencies and intermediaries had created intense market competition. As a result, recruiters were incentivised to pass on travel and visa costs to migrant workers in order to offer lower hiring costs to foreign employers, who did not wish to pay these costs and had the option of seeking cheaper labour from other recruitment agencies or even other labour-sending countries, such as Bangladesh, Myanmar, and Cambodia.

Nepali recruitment agencies mentioned they paid “commissions,” or bribes, to destination-country human resource managers or labour outsourcing companies to attract business to their particular agency. Four Nepali recruitment agencies independently told Amnesty International that they had paid, or were aware of others in the business paying, between USD 359 to USD 900 per migrant worker as a commission to foreign labour supply companies, in exchange for their selection for recruitment contracts.⁴⁷ The payment of commissions by Nepali recruitment businesses was also confirmed by a Malaysian labour supply consultant who recruited from Nepali companies for foreign employers in Malaysia.⁴⁸ Nepali recruitment businesses said they were unable to absorb these “unavoidable” costs of doing business in the recruitment industry, and thus shifted these costs into the recruitment fees to be paid by the migrants they recruited.⁴⁹ Usually, recruiters blamed overseas agents and employers in destination countries for inflating recruitment fees and creating a “risky” business environment. One Nepali recruiter blamed multinational companies for their failure to address this issue:

“Big global companies are claiming to be free in their recruitment. But they are not doing their due diligence. If they are really concerned about zero-fee recruitment they would audit their supply chains. They would come to Nepal and inquire about their supply chain and find out which individuals are selling demand letters and visas. They would investigate what happened to the money that was meant to pay for workers’ tickets. But absolutely no one is following the money.”

Despite shifting some of the blame onto companies outside Nepal, recruitment agencies also admitted that overcharging migrants produces certain benefits for them from a business perspective, given that their business reputations rely on the performance and discipline of the workers that they send to foreign employers. Two recruitment agencies described instances in which foreign employers had demanded compensation from their business because the Nepali workers sent by them had left the workplace without their employer’s permission. The payment of high fees, they argued, help to prevent this eventuality. On this subject, one recruiter expressed his positive view on the role of recruitment fees in restricting migrant workers’ freedom of movement:



⁴⁷ Interview with two recruitment agencies in Kathmandu on 4 July 2016, one recruitment agency on 3 May 2017, and one recruitment agency on 4 May 2017.

⁴⁸ Interview with Malaysian labour supply consultant, on 24 April 2017.

⁴⁹ Interview with two recruitment agencies in Kathmandu, on 4 July 2016.

“If workers run away, a company loses its investment... If they do not have to pay money for their jobs, then they will think they are going abroad on a vacation. They will think they can just come back to Nepal whenever they like.”⁵⁰

This recruiter’s statement articulates what Amnesty International found to be a common perception within the industry. The implications of such views is that migrant workers are essentially treated as products of labour with market value, rather than human beings with rights and individual agency to decide the conditions of their own labour. Ultimately this gives rise to some of the worst and most exploitative practices in Nepal’s recruitment industry, leaving many in conditions of debt bondage.

4.5 DEBT BONDAGE

The excessive, and in many instances, illegal charges that are demanded for job placements result in vast sums of money being extracted upfront from prospective migrant workers, who are usually asked to pay their recruitment fees early in the process and are given a small window of time to collect the funds to finance their migration. For example, one migrant worker told researchers his agent gave him less than 24 hours to produce the money for his recruitment fee, telling the man that he would otherwise risk losing his position to “the 5,000 other candidates willing to go abroad in the district.”⁵¹

The pressure on prospective migrants to pay high recruitment fees immediately and upfront, or else risk losing the jobs offered to them, creates new circumstances of indebtedness and vulnerability to the conditions of debt bondage. Given that most migrant workers go abroad because of their lack of jobs at home, few have the savings to cover these costs, nor the assets and property that would allow them to borrow money from banks or similar financial institutions.⁵²

Consequently, the only option for many aspiring migrants is to borrow from within the informal economy, from village moneylenders, or their recruitment agents, who provide loans at often exorbitant rates of interest. 51 returnee migrant workers told Amnesty International that they had paid rates of interest between 15 and 50% on loans they had received from individual moneylenders in their village (the most common range was between 24-36%). Such predatory lending contravenes the *Muluki Ain* (General Code) which limits interest rates for loans to 10%.⁵³

Even though predatory moneylenders cannot legally enforce these types of loans taken out at exorbitant rates,⁵⁴ strong social pressure at the village level is generally a sufficient enforcement mechanism. Three migrant workers, returning from 2013 to 2015, recounted how they avoided returning to their village until they had enough money to pay back the loan, fearing threats and reprisals.⁵⁵ In another illustrative case, a migrant worker who returned in 2016 told researchers that the nephew of his moneylender had migrated alongside him and subsequently acted as the “eyes” of his uncle to ensure money was sent every month to repay the loan.

50 Amnesty International interview with recruitment agency in Kathmandu, on 4 July 2016.

51 Amnesty International interview with PN, on 18 June 2016.

52 Sijapati, B., Lama, A., Baniya, J., Rinck, J., Jha, K., and Gurung, A., “Labour Migration and the Remittance Economy”, Asia Foundation and Centre for Labour and Mobility (CESLAM), March 2017, available at: <http://asiafoundation.org/publication/labour-migration-remittance-economy/>

53 *Muluki Ain* (General Code), 2019 (1963), Chapter 17, no.6, p.268, available at: <http://www.lawcommission.gov.np/en/documents/2015/08/muluki-ain-general-code-2020.pdf>

54 *Muluki Ain* (General Code), 2019 (1963), Chapter 17, no.6, p.268, available at: <http://www.lawcommission.gov.np/en/documents/2015/08/muluki-ain-general-code-2020.pdf>

55 Amnesty International interviews in Gorkha district, on 18 June 2016.

NEPAL'S OBLIGATIONS TO PROTECT WORKERS FROM DEBT BONDAGE

Nepal has acceded to the Supplementary Convention on the Abolition of Slavery, Slave Trade and Practices Similar to Slavery, which requires Nepal to take practical, legislative, and other measures to bring about progressively the end of slave-like institutions and practices, including debt bondage.⁵⁶ Article 1(a) of the Supplementary Convention defines debt bondage as: “the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined.”⁵⁷

In the context of foreign employment, abusive and deceptive recruitment practices may cause and facilitate debt bondage. Migrant workers may enter the condition of debt bondage when excessive and hidden fees are imposed upon them by recruitment agents and agencies, and when misleading information about their wages and working conditions incentivise them to take out loans – which they believe they will be able to repay within a short and reasonable timeframe.⁵⁸ Migrant workers become more vulnerable to forced labour, and other forms of labour and human rights abuse, when they are trapped in situations of debt bondage, especially when they have shouldered an upfront recruitment fee, taken out high-interest loans, and received less remuneration than expected to liquidate their debt.

Manipulation of Recruitment Debts by Agents

When migrant workers take out such loans to cover the excessive fees charged by recruiters, this dramatically (and in most cases irreversibly) changes the balance of power between them and the actors organising their labour migration, putting them at heightened risk of exploitation.

Once recruitment fees have been paid, migrant workers are even more vulnerable to abusive recruitment practices through the various administrative stages of the process – such as receiving visas and work contracts – because of their indebtedness to village-level moneylenders or recruiters. The manipulation of debts by recruiters curtails the ability that migrant workers have to assert their rights under the law, as they feel compelled to migrate in order to pay high debts. Researchers found that recruiting agencies are well aware of workers' limited options at this stage.

Anjay, a 28-year old man from Kailali district, took out a loan of NPR 235,000 (USD 2,277) to pay for a recruitment fee that his agent demanded within 10 days of agreeing to the job placement. The figure demanded of Anjay represents nearly twice the government-imposed limit on recruitment fees. After paying this fee and taking out a loan at a 30% rate of interest to cover half of the fee, Anjay had to wait for more than a year for his visa and ticket from his recruitment agency, even though the agency had told him that his visa had arrived. The agent's behaviour violated the Foreign Employment Act.⁵⁹

56 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, in force 30 April 1957, accessed at: <http://www.ohchr.org/Documents/ProfessionalInterest/slaverytrade.pdf>

57 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, in force 30 April 1957, accessed at: <http://www.ohchr.org/Documents/ProfessionalInterest/slaverytrade.pdf>

58 United Nations, General Assembly, Report of the Special Rapporteur on Contemporary forms of Slavery, including its Causes and Consequences, A/HRC/33/46 (4 July 2016), available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/142/67/PDF/G1614267.pdf?OpenElement>

59 According to Article 20 of the FEA.

But Anjay felt he could not challenge his delayed departure or seek the services of a different recruitment agency, because he had paid the recruitment fee in advance and accrued such a high recruitment debt that he had to migrate urgently in order to start paying. When Anjay's visa and ticket finally arrived and he was leaving the country, he found that his contract stated different terms and conditions of his work than originally promised, but was in no position to challenge this:

“I only received my work contract in the Kathmandu airport – one hour before my flight. When I noticed that the salary in the contract was 25% lower than the promised salary by my recruitment agency, I did not complain. At this point, I felt that I simply had to “make peace” with what had happened to me, and go abroad in order to pay off my loan.”⁶⁰

Anjay later told Amnesty International that when he arrived in Malaysia he was further exploited by arbitrary deductions made from his salary by his employer, which were also not mentioned in the contract that he had signed. Still, it was Anjay's loan that prevented him from taking action against any of these abuses. Anjay felt compelled to stay and work in order to repay the village moneylender and ensure that he and his family were not further indebted by his migration.

Ashish told researchers that his local agent was also his moneylender. When Ashish returned early from his job abroad in Malaysia and accused his agent of arranging him a job with lower wages than promised, the agent reciprocated by raising the rate of interest on his monthly loan repayments. The agent then proceeded to follow Ashish to public meeting places in his village and routinely harass him in front of the other villagers, as a means of coercing him to pay the hiked rate of interest on his loan.⁶¹

Researchers found eight cases in which recruiters offered to pay the recruitment fees of migrant workers, in exchange for deductions directly from their wages. Seven of these cases involved female domestic workers. In these cases, agents deceived workers as to the real amount that would be deducted from their monthly wages. Four of these migrants never saw any money for the labour that they performed, and told Amnesty International that Nepali recruitment agents and other employment agencies took their entire monthly salary for the duration of their time abroad as a payment for their job placement. They returned to Nepal without having earned any money at all, having worked for upwards of two years. This form of debt bondage left the women without any money to seek help or escape exploitative working environments.

60 Amnesty International interview with AP in Kailali district, on 13 June 2016.

61 Amnesty International interview with HC in Kailali district, on 13 June 2016.

Dolma, one such domestic worker, spent almost two years trapped in debt bondage in Kuwait while working for a household that forced her to work long hours and subjected her to routine physical abuse. Dolma explained:

“I actually cannot tell you what money from Kuwait looks like: I never received any money in hand for my work. After I arrived in Kuwait, I received a phone call from my agent in Nepal, who told me that I still owed him for my job and travel. He never mentioned this before I left, and on top of this he had said it would be easy work – my only task would be to take care of the household’s children. Instead, I was required to perform housework from 6 am until midnight, and my employer often beat me badly. I was locked up at night and never allowed to make phone calls. I was only sent home because I started to go mad, and the family then called up the employment office and told them to send me back to Nepal.”⁶²



Dolma’s account of her experience is consistent with research by Amnesty International and others on abuse and exploitation of domestic workers in the Gulf States.⁶³

Physical and Emotional Toll of Long-term Debt

Large debts consume a significant share of migrant workers’ earnings from foreign employment and may have long-term consequences. Migrant workers who are victims of illegal salary deductions and unpaid wages are particularly at risk of long-term indebtedness.

Most migrant workers interviewed for this report were able to pay off their migration debts within two years of working abroad for contracts of between two and three years. However, their total earnings were significantly eroded by recruitment fees and loan repayments.

Pragas – who migrated to Malaysia in 2014 – paid a total of NPR 250,000 (USD 1,405) to migrate. This consisted of a recruitment fee of NPR 145,000 (USD 1,405), significantly above the then government-imposed limit, and NPR 105,000 (USD 1,017) in interest on the loan that he took out to cover this recruitment fee. When Pragas arrived in Malaysia, he found out he would earn only USD 170 per month because USD 30 was being deducted monthly to pay for Malaysia’s migrant worker levy (“tax”).⁶⁴ Pragas’ recruitment agency had promised him that he would receive overtime hours and corresponding pay to compensate for the monthly levy payment; this, however, did not happen. As a result, over the course of Pragas’ two-year work contract, the equivalent of 14 months (or 58%) of his total earnings went to pay off recruitment debts including the excessive recruitment fee and the extortionate interest charges.

62 Amnesty International interview with DR in Rupandehi district, on 19 July 2016.

63 See for example Human Rights Watch, “Walls at Every Turn: Exploitation of Migrant Domestic Workers Through Kuwait’s Sponsorship System”, 2010, or Amnesty International, “My Sleep is My Break’: Exploitation of Migrant Domestic Workers in Qatar”, Index number: MDE 22/004/2014, 2014.

64 Since 1992 the Malaysian government has imposed an annual levy on the employment of foreign workers, which operates as a de facto income tax. From 2009-2013, the Malaysian government shifted the burden of levy payments to foreign employers. However, in 2013, the Malaysian government again allowed its employers to deduct levy payments from the monthly salaries of migrant workers. For more information see the following report: International Labour Organisation (ILO), “Review of Labour Migration Policy in Malaysia”, ILO, 2016, p.19.

Amnesty International identified 13 migrant workers who returned to Nepal having been unable to repay their debts during their time working abroad. These workers took an additional 3 months to 3 years to repay their migration debts after their return. Three had to sell their land or house in order to manage.

Debt burdens impacted upon the human rights of migrant workers in other ways. Male migrant workers, for example, often complained that recruitment debts compelled them take on more overtime at their jobs, even though they were already working 12 hours a day for six days a week, with severe implications for their health.

For example, Bijay, a former security guard who returned to Nepal in 2015, explained how the pressure of recruitment debt had significant consequences on his physical and mental health. For two straight years in Malaysia, Bijay forced himself to work seven days a week for 14 hours a day in an attempt to save enough to repay his loan. Given that 86% of his monthly salary went towards repaying this debt, Bijay only saved NPR 3,000 to 4,000 (USD 29-38) per month and sent most of this money home for his family's consumption. As a consequence of these brutal working conditions, Bijay returned to Nepal with chronic back pain and prolonged lower-limb muscle fatigue because of the long hours he spent each day working as a security guard on his feet. He continued to experience pain as a result, two years later when interviewed.

4.6 MIGRANT WORKERS NOT ISSUED RECRUITMENT FEE RECEIPTS

Recruitment agencies are required by law to submit a receipt of the amount paid by workers before the agency can receive a labour permit for the worker. Furthermore, the FEA provides for the punishment of any recruitment agency that “knowingly conceals any document or report” that is required under the Act, which includes migrant worker receipts for recruitment fees and contracts.

Nepal's regulatory framework also contains certain provisions to monitor and prevent recruitment agencies from failure to provide migrant workers with accurate documentation, including receipts. The DoFE has the authority to perform “time to time” monitoring visits of recruitment agencies in order to inspect their documentation and compliance with the Act. Migrant workers are also required to present receipts of their recruitment fees to a labour desk at the Kathmandu Tribhuvan International Airport. The desk examines the documents of migrant workers prior to their departure and is meant to combat the issuance of fraudulent receipts and other documents.⁶⁵

Despite these legal provisions, most migrant workers interviewed by Amnesty International had either not been issued receipts by their recruitment agency, or were victims of document fraud – meaning their receipts did not accurately reflect the amount paid by the worker. In fact, only three of 110 returned migrant workers had received a receipt that represented the true amount that had been paid to their recruitment agency. The remaining migrant workers either were denied a receipt for their recruitment fees, or were provided a receipt that was less than the amount paid to local agents and recruitment agencies.

65 Paoletti, et. al. *Migrant Workers' Access to Justice at Home: Nepal*, Open Society Foundation, 2015, p.154.

Kumar, a migrant worker who was interviewed within a group of eight migrant workers, explained that he and the other men recruited had paid more than NPR 100,000 (USD 969) each for their recruitment fees. Kumar explained the struggle of trying to obtain a receipt:

“In the beginning, when we asked for a receipt, the agent said “don’t you trust me?” and did not give us a response. So we never tried to bargain again ... Our agent even refused to show us the manpower [recruitment] company’s office in Kathmandu. We think this is because it was the agent who overcharged us, and if we had been able to contact the manpower company directly, then this would have been revealed.”⁶⁶

A number of workers told Amnesty International that because several sub-agents were involved in their recruitment, it was difficult to understand who was responsible for overcharging them and what services that they had paid for.⁶⁷ As in Kumar’s case, recruitment agents may even deliberately withhold information from migrant workers about the actors and businesses involved in sending them abroad, which allows each agent to increase their cut of the fees charged to workers. Without a paper trail showing the exchange of money between migrants and different labour brokers, all labour brokers benefit from a situation in which chains of accountability are difficult or impossible to establish.

Where receipts are issued, they often significantly understate the actual amount that has been paid, in order to appear compliant with government limits. In one unusual case, Suman, who migrated to Malaysia in 2014, was actually able to show researchers both his recruitment receipts and bank transaction he had made to the recruitment agency. The two documents, which had similar dates, show the discrepancy between what was written on the recruitment receipt -- NPR 80,000 (USD 775) – and what Suman actually paid to the recruitment agency, which was NPR 160,000 (USD 1,550), or double the amount. NPR 80,000 matches the government limit for fees which was in place at the time of Suman’s recruitment.

Cash/Cheque Deposit Slip
EVEREST BANK LIMITED
Consistent, Strong & Dependable
A/C No. 00000000000000000000
Account Holder's Name: Suman Kumar
Amount: NPR 160,000
Date: 2073/05/14
Signature: Suman Kumar

PO Box 19, New Bhaneshwar
Kathmandu, Nepal
CASH RECEIPT
Date: 2073/05/14
80,000 Rupees only
Approved by

Suman explained that he had been willing to pay such a high amount without receiving an accurate receipt, because he believed that the investment was worth it for the job he was expecting. The agency had promised him work in a car manufacturing company in Malaysia, and he therefore expected to receive a salary that would easily cover his high recruitment costs. He proceeded to take out a loan of NPR 250,000 (USD 2,422) to pay for the agency fee. However, he did not end up receiving the job or salary promised by the recruitment agency and earned USD 70 less per month than what he was

66 Amnesty International interview with HR in Phinam, Nepal on 18 June 2016.

67 Amnesty International interview with RS in Gorkha district, on 18 June 2016.

expecting.⁶⁸ Additionally, Suman was not provided full-time working hours at the company where he worked, which meant that he went long periods of time in Malaysia without being paid.

Eventually Suman returned home penniless and decided to make a complaint directly to his recruitment agency. The agency threatened Suman and told him his documentation was not sufficient to prove he had been a victim of overcharging. Suman said that after a long and heated conversation, the agency managed to convince him that he would never win his case. Suman accepted compensation in the amount of NPR 40,000 (USD 387) from the agency, which meant that he recovered only 25% of the recruitment fee he had paid. Suman has since sold his land to pay for his recruitment debts and is currently looking for a job in Qatar in order to pay off his remaining loan.

The finding that Nepali migrant workers are systematically denied accurate receipts is consistent with other research. People's Forum for Human Rights, a well-respected legal aid Nepali NGO, conducted a study in 2015 with a random sample of 510 cases registered by migrant workers at the DoFE. The study found that recruitment receipts had not been provided to the overcharged workers in the majority of these cases. It also identified that fraudulent receipts – or underreporting the level of fees charged -- had been issued by recruitment agencies to migrant workers in 25% of the 510 cases examined.⁶⁹

4.7 FAILURE TO PUNISH RECRUITMENT AGENTS AND PROVIDE REDRESS FOR EXPLOITING MIGRANTS

In addition to the testimonies of migrant workers who had been overcharged by recruiters, Amnesty International also spoke to 22 recruitment agencies about the fees they charge workers. 20 of these firms said that they were not respecting the current government limit of NPR 10,000 for workers' recruitment fees.

However, although it is clear that recruitment agencies systematically abuse migrant workers by overcharging them, thus contributing to their conditions of debt bondage, the enforcement of the relevant provisions in the Foreign Employment Act that should prevent this practice is poor. Amnesty International finds that there is no effective deterrent against overcharging. Recruitment agents and agencies are able to extract high fees with impunity because of the lack of systems in place to monitor the exchange of money between recruiters and migrants, as well as the failure to punish routine violators of the law.

The DoFE's monitoring unit told Amnesty International in a March 2017 letter that it did not find any cases of fraud or overcharging during its monitoring visits in Kathmandu between 2015 and 2016.⁷⁰ This is an alarmingly weak response to an endemic problem in the industry and suggests a persistent failure of the government to tackle predatory behaviour in the recruitment industry.

Furthermore, migrant workers struggle to receive adequate compensation for excessive fees charged by recruitment agencies because of the DoFE's centralised complaint system in Kathmandu, the lack of clear guidelines on claims processes in the FEA, and the way that cases are treated administratively by the DoFE. Under the FEA, the DoFE has the power to adjudicate cases of excess fees.⁷¹ In practice, DoFE officials frequently respond to migrant worker complaints on overcharging by facilitating

68 Amnesty International Interview with SK in Dhanusha district, on 17 June 2016.

69 People's Forum for Human Rights, "Assessment on Status of Foreign Employment Victims in Formal Complaint Mechanisms", People's Forum for Human Rights, 2015.

70 Information received from the DoFE on 9 March 2017. The DoFE also gave a limited number of agencies who had been fined for unspecified violations of the FEA (explored later on).

71 Articles 48-51 and 53-55 of the Foreign Employment Act. See also Paoletti, et. al. "Migrant Workers' Access to Justice at Home: Nepal", Open Society Foundation, 2015, p.96-103.

negotiations between migrant workers and their recruitment agencies – hoping to quickly resolve cases and reach a settlement amount for compensation. Informal negotiations of this kind significantly increase the risk that migrant workers will be subjected to coercion. Previous studies have also highlighted that mediation processes increase the risk of corruption between government officials and recruitment agencies.⁷²

Migrant workers who tried to file cases for overcharging complained to Amnesty International that they did not receive appropriate and adequate access to compensation within these administrative proceedings at the DoFE. Some have also complained about the lack of impartiality in these proceedings.

Baj, a migrant worker who returned in 2015, said that after he had submitted a complaint of overcharging and deception about his wages the DoFE called up the head of his recruitment agency, and then called Baj to the DoFE office for a meeting with the DoFE and the recruitment agency. At one point in the discussion, DoFE officials left the room upon the insistence of the recruitment agency, at which point Baj's recruiter began to intimidate him and coerce him into settling the case. Baj told researchers that the head of the recruitment agency told Baj that he should accept a settlement payment of USD 290 – a sum much lower than the USD 1,124 he was claiming – or he would receive nothing from the agency. In the end, Baj reluctantly accepted the lower payment. The case against the recruitment agency was dropped.

Baj told Amnesty International that he accepted this amount because he did not have the financial means to stay in Kathmandu and further pursue his case through the DoFE, and because he feared his recruitment agency might hire a local criminal gang to threaten him or attack him. But even after accepting this settlement, Baj never received compensation from the agency. As a result of Baj's experience at the DoFE, he did not think it was worthwhile trying to have the written agreement legally enforced using the judicial process.⁷³

Lack of documentation, such as receipts, also severely impedes the ability of migrant workers to seek justice and compensation for recruitment overcharging or fraud. All government authorities interviewed for this research consider recruitment receipts a necessary piece of documentary evidence to show that money exchanged hands between the worker and the agent. Receipts also establish that a worker has in fact been sent by a particular agent or agencies.⁷⁴ Without such proof, migrant workers such as Suman (see above) are easily dissuaded from filing a case. Some NGOs advise migrant workers without receipts or work contracts that they have little prospect of winning their case.⁷⁵



72 Paoletti, et. al. "Migrant Workers' Access to Justice at Home: Nepal", Open Society Foundation, 2015, p.103-104.

73 Amnesty Interview with RY in Saptari district, on 17 June 2017.

74 Paoletti, et. al. "Migrant Workers' Access to Justice at Home: Nepal", Open Society Foundation, 2015, p.162.

75 Amnesty International Interview with SK in Dhanusha district, on 17 June 2016.

Almost all government officials interviewed by Amnesty International recognised that failure to provide migrant workers with accurate recruitment receipts was a prevalent abusive practice. The district attorney in Gorkha district said DoFE officials were unfairly placing the burden on workers to produce documentation of their abuse, especially when recruitment agencies so often avoided providing receipts to workers:

“We need to go beyond the receipt as sole proof in these cases of cheating and fraud. There is other circumstantial evidence available in these cases and more investigation by the authorities is required to produce evidence beyond simply the receipt. Also, the burden of proof has to be with the accused, not the accuser.”

The DoFE appears not to use evidence it already has access to, to adjudicate cases brought by migrant workers. Since recruitment receipts must be submitted for every migrant worker before they are issued with their labour permit, there is presumably a receipt on file at the DoFE. Recruitment agencies are also required to maintain accurate records of each worker that they send for foreign employment. The DoFE monitors or investigators could more thoroughly cross-check this documentation on file with the bank deposits of recruitment agencies into their business accounts, or with the bank transactions of migrant workers.

The Foreign Employment Promotion Board (FEBP), which is mandated to promote foreign employment and protect migrant workers’ rights, told Amnesty International that the government had considered instituting an online banking system to make the exchange of money between recruiters and migrants more transparent, but that some government officials believed that recruiters could still demand under-the-table money from migrants because of their sheer desperation to migrate.⁷⁶ This concern demonstrates that there is no single regulatory measure or technological system that can replace the critical need for proactive and well-resourced monitoring and investigation of abusive recruitment businesses.

76 Amnesty International interview with the Foreign Employment Promotion Board in Kathmandu, on 3 May 2017.

HIDDEN COSTS: MEDICAL, INSURANCE AND TRAVEL COSTS

Before a recruitment agency can place a worker abroad, the worker must provide proof they have, among others things, had a medical examination and purchased private insurance. There is no requirement under Nepali law that these costs are to be borne by recruitment agencies or by foreign employers. Thus, such costs are usually passed onto migrant workers and must be paid upfront before they depart, adding to the debt burden. Exacerbating this, workers also incur significant costs going to and from Kathmandu to arrange their recruitment.

Medical Examinations

Pre-departure medical examinations are mandatory for all Nepali migrant workers. These examinations are meant to evaluate the health status of migrant workers and provide them with the medical clearance necessary for travel and employment abroad. The widely endorsed 2012 Dhaka Principles for International Dignity have made clear that migrant workers should not be responsible for bearing costs of pre-departure medical checks, but the costs of these examinations are routinely passed onto Nepali migrant workers.⁷⁷

The government and private associations of medical institutions periodically review and set the cost of pre-departure medical exams. The Nepal Foreign Employment Medical Association (NeFEMA)⁷⁸ has frequently recommended that the government should increase these costs. The government of Nepal last increased the fee for medical exams in February 2015, from NPR 2,625 to NPR 2,940 (USD 25 to USD 28) for male migrants and NPR 2,900 to NPR 3,100 (USD 28 to USD 30) for female migrants.⁷⁹

Amnesty International found several examples of migrant workers who had paid much higher costs for their medical exam than the legal limit. Surya, a migrant worker from Gorkha district, paid four times higher than the legal limit at a medical clinic in Kathmandu that he had been explicitly told to go to by his recruitment agency.⁸⁰

Migrant workers may also face higher costs for medical examinations as a result of destination country regulations imposed on Nepal. Some Gulf States only accept medical examinations for Nepali workers that have been conducted at one of 12 medical centres authorised by the GCC Approved Medical Centres Association (GAMCA).⁸¹ These centres charge up to NPR 5,500 (USD 53) for medical examinations at GAMCA facilities, double the limit for other medical centres in Nepal.⁸² The cost of these services has also increased by more than 50% since

77 Institute for Human Rights and Business (IHRB), "The Dhaka Principles for Migration with Dignity: Guidelines". IHRB, 2012, available at: <http://supply-chain.unglobalcompact.org/site/article/141>

78 The Nepal Foreign Employment Medical Association (NeFEMA) is an association of foreign employment health checkup centers who send workers abroad for work. Similar to NAFEA, NeFEMA lobbies the government on health related policies for foreign employment. The NeFEMA website can be accessed at: <http://nefema.org.np/web/aboutus.php>

79 Kathmandu Post, Govt raises medical fees for migrant workers, Kathmandu Post, 8 February 2015, Accessed at: <http://kathmandupost.ekantipur.com/news/2015-02-08/govt-raises-medical-fees-for-migrant-workers.html>

80 Amnesty International interview with BR in Gorkha district, Nepal on 18 June 2016.

81 Paoletti, et. al. "Migrant Workers' Access to Justice at Home: Nepal", Open Society Foundation, 2015, p.55. Interview with three Nepali journalists in Jhapa district, on 25 June 2016.

82 Interview with recruitment agency in Kathmandu, on 5 July 2016. This information was also provided in the Kathmandu Post, "Ending Monopoly of Pre-Flight Service Firms Suggested", Kathmandu Post, 18 October 2016, available at: <http://kathmandupost.ekantipur.com/news/2016-10-18/ending-monopoly-of-pre-flight-service-firms-suggested.html>

2012.⁸³ Recently, Malaysia has since introduced a similar system, which has increased fees from NPR 2,625 (USD 25) to NPR 7,700 (USD 74).⁸⁴

There are clear benefits to improving the current quality of pre-departure medical examinations and having a roster of reliable medical clinics to provide them. However, for aspiring workers who lack access to jobs and income, higher, upfront fees of pre-departure services quickly add up and also contribute to the heavy debt burden assumed by migrants before they leave Nepal.

Insurance Costs

Migrant workers are required to purchase private insurance to cover them for the period of their employment contract. This is meant to ensure that migrant workers have insurance coverage in the case of death, permanent disability or partial disability. This is vitally important. However, workers are at risk of being over-charged when purchasing coverage.

The government first recognised that there is a risk of exploitation in the insurance market in 2011, fixing the premium rate between NPR 1,825 and NPR 5,000 (USD 17 to USD 48) for a two-year policy for Gulf countries and Malaysia.⁸⁵ However, since then the premium rate for insurance has increased nearly twofold. Migrant workers are now meant to pay between NPR 3,424 and NPR 9,570 (USD 33 to USD 92).⁸⁶ As the price of a single premium payment that workers pay upfront has increased, the government has also incrementally raised the standard of coverage they receive.⁸⁷ Stronger insurance coverage is clearly welcome for workers, but there has been little attention to the impact of these added costs on migrant workers.

Travel Costs

Migrant workers accumulate additional, upfront costs because of the need to travel back and forth to Kathmandu. Workers told researchers they had to travel to Kathmandu to interview for job placements at recruitment agencies, to complete medical exams, to attend pre-departure orientation or to follow-up on the status of their migration.

In some cases, migrant workers would travel from their village to the capital, only to be told that their departure had been delayed.⁸⁸ Pravina was told by the recruitment agency that her departure to Malaysia was imminent, only to have to wait for 19 days in the capital. These additional travel costs -- including hotels, food, and transport -- add to the heavy burden assumed to obtain jobs. For the 110 migrant workers interviewed, these costs, which are usually not factored into total costs paid by migrants, ranged from NPR 30,000 to NPR 100,000 (USD 290 to USD 969).

83 Centre for the Study of Labour and Mobility, "NAFEA Warns to Not Send Workers to Saudi Arabia, Centre for the Study of Labour and Mobility", 12 January 2012, available at: <http://ceslam.org/index.php?pageName=newsDetail&nid=1626>

84 Kathmandu Post, "Nepali Workers Caught in Malaysia's 'Unfair' System", Kathmandu Post, 19 September 2016, available at: <http://kathmandupost.ekantipur.com/news/2016-09-19/nepali-workers-caught-in-malaysias-unfair-system.html>

85 Centre for Labour and Mobility, "Govt fixes rates for foreign employment insurance", Centre for Labour and Mobility, 17 October 2011, available at: <http://ceslam.org/index.php?pageName=newsDetail&nid=1168>

86 Information received by the Insurance Regulatory Authority of Nepal on 20 October 2016. Migrant workers with job placements in higher income countries, such as South Korea, Israel, and Japan pay higher insurance premiums, between NPR 5438 and NPR 15,660 based on the normal five-year visa issued by these countries.

87 Roshan Sedhai, "PM Announces to Double Insurance Coverage of Migrant Workers", Kathmandu Post, 24 January 2017.

88 Amnesty International interviews with: BP in Kathmandu, on 26 July 2016; PY in Dhanusha district, on 18 July 2016; II in Jhapa district, on 25 June 2016.

FEES CHARGED TO NEPALI MIGRANT WORKERS

1. AVERAGE RECRUITMENT FEE IN THE REPORT

Average recruitment fee paid by migrants is

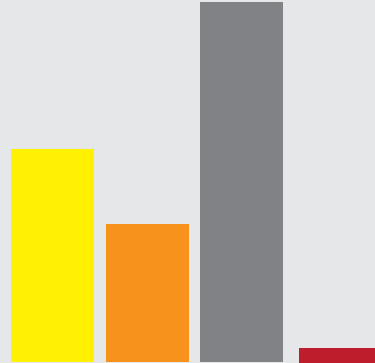
NPR 137,600 (US \$1,346)

Range of recruitment fees found in the report between

NPR 90,000 (US \$872) and **NPR 235,000 (US \$2,277)**

Free Visa Free Ticket Policy set new limit to

NPR 10,000 (US \$96) in July 2015



2. OTHER MANDATORY PRE-DEPARTURE SERVICES

MEDICAL EXAMINATION

STANDARDISED FEE



NPR 2,940
Male migrants



NPR 3,100
Female migrants

Medical exams for workers recruited to Malaysia have increased from **NPR 2,625 (US\$25)** to **NPR 7,700 (US\$74)**

Workers recruited to work in Saudi Arabia, Bahrain and Oman pay up to **NPR 5,500 (US \$53)** for examinations at GCC Approved Medical facilities

MIGRANT WORKER INSURANCE

NPR 3,424 (US \$33) to **NPR 9,570 (US \$92)** limits set by Nepal's Insurance Board and Foreign Employment Promotion Board

COSTS ASSOCIATED WITH CENTRALISED PRE-DEPARTURE SERVICES IN KATHMANDU



Additional travel costs, hotels, food and transport – ranged between **NPR 30,000 to NPR 100,000 (US \$281 to \$937)**

FEES EXPLOITED MIGRANTS PAY TO REPATRIATION AGENTS TO FACILITATE THEIR JOURNEY HOME:

Costs mentioned in the report: **NPR 90,000 (US \$872)**; other workers paid between **US\$ 609 to US \$ 4,000**



5. NEPAL'S "FREE VISA, FREE TICKET" POLICY

"Before migrants go abroad, they are paying almost a year of their wages upfront [for their recruitment]. If you think about that, people are working without saving any money... The Government is implementing this ["Free Visa, Free Ticket"] Policy because migrants are paying huge amounts to go abroad and they are still cheated. They are not able to get the work or the pay that was promised to them."

Tek Bahadur Gurung, Former Labour Minister who initiated the 'Free Visa, Free Ticket' Policy speaking on the *Nagarik* News Show on 16 July 2016.⁸⁹

"Due to this ["Free Visa, Free Ticket"] Policy we are losing job opportunities for migrant workers. We have discussed this system with various foreign companies. Many [foreign employers] are refusing to support the system and have told us that they are not able to implement this Policy. They have told us that they cannot provide money for the visa and air ticket [of migrant workers]. They have also stated that they are looking to take migrants from other destination countries. It is having a serious effect and the chance that destination countries will take migrants from other countries is very high."

Bimal Dhakal, President of the Nepal Association of Foreign Employment Agencies (NAFEA) speaking on the *Nagarik* News Show on 16 July 2016.

In July 2015, the Labour Minister Tek Bahadur Gurung introduced an innovative "Free Visa, Free Ticket" Policy, which requires that foreign employers from Nepal's seven main destination countries (Malaysia and the six Gulf States of the GCC) cover the cost of workers' visa processing and return-trip air tickets. The Policy drastically reduces the amount that recruitment agencies can charge migrant workers in service fees.

Whereas the government formerly allowed recruitment agencies to charge migrant workers between NPR 70,000 to NPR 80,000 (USD 677 to USD 775) in fees, these agencies are now only allowed to collect a maximum of NPR 10,000 (USD 96) in service fees from migrant workers, and only when foreign employers have not already paid a recruitment agency's service charge. The government has

⁸⁹ Bimal Gautem, *Nagarik* Show #13: Tek Bahadur Gurung and Bimal Dhakal, available at: <https://www.youtube.com/watch?v=IOCHHbhAcgw>



since claimed that it is implementing the Policy, with the Ministry of Labour and Employment's (MoLE) 2014/2015 annual report listing it as a major achievement which has reduced the "economic burden and chances of vulnerability to fraud among workers."⁹⁰

Nepal's recruitment sector has vigorously opposed the Policy since its introduction, arguing that it undercuts its ability to conduct business with foreign employers who refuse to abide by the Policy's measures.

While the Policy has major shortcomings in its scope that this report explores, it is nevertheless a welcome step forward in principle. However, this report finds that the Policy's impact has not so far been as significant as the government maintains, due to gaps in its implementation. Worryingly, many government officials told Amnesty International they had reservations about the Policy because of its perceived negative impact on the recruitment sector's profitability and Nepal's overall competitiveness on the labour market. The government has not tried to seriously counteract the recruitment industry claims, but instead shows disturbing signs of simply retreating from the Policy.

Amnesty International is calling on the government to develop a well-resourced implementation plan for the "Free Visa, Free Ticket" Policy, and take urgent steps to more effectively monitor and enforce it, as a first step towards implementing zero-cost recruitment for migrant workers.

The Application of International Labour and Human Rights Law and Principles to Recruitment Fees

Owing to the well-evidenced link between recruitment processes that generate high levels of indebtedness and labour and human rights abuse, reducing costs for workers has become a critical aspect of recruitment reform globally. The *Dhaka Principles*, which are derived from core ILO standards and the UN Guiding Principles on Business and Human Rights,⁹¹ list a ban on fees charged to migrant workers as one of 12 core human rights principles that responsible businesses should implement in order to enhance respect for the rights of migrant workers. The former UN Special Rapporteur on the Human Rights of Migrants in 2015 identified "Effectively Banning Recruitment Fees" as one of seven elements required for a country's transition to an ethical labour recruitment model.⁹² More recently, the ILO Governing Body has also developed fair recruitment principles and guidelines for governments and businesses that include a provision on reducing fees for migrant workers.

90 Ministry of Labour and Employment, "Labour Migration for Employment: A Status Report for Nepal (2014/2015)", Government of Nepal, 13 June 2016, p.36.

91 See the Dhaka Principles available at: <http://www.dhaka-principles.org>.

92 UN Report of the Special Rapporteur on the human rights of migrants, A/70/310, 11 August 2015, Section IV, Paragraphs 45-54, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/251/38/PDF/N1525138.pdf>

In addition to identifying high costs as a mechanism of coercion in the migration process, international bodies have generally recognised that recruitment fees, fraudulent business activities, and political corruption are highly interlinked in globalised labour sending systems.⁹³

The ILO and other international labour rights organisations recommend that labour sending and receiving countries establish a “zero-cost recruitment system.”⁹⁴ Such a system would eliminate the payment of fees to recruitment agencies, while foreign employers would pay for all costs associated with the recruitment and placement of workers.⁹⁵ This includes the costs of labour migrants’ flight tickets, work visas and other costs associated with travel.

Proponents of no-fee recruitment generally advocate for government bans on all fees charged to migrant workers, and for implementation to occur simultaneously at international and regional levels to prevent competitive labour market structures from undermining implementation.⁹⁶ Internationally, it is further acknowledged that the zero cost migration systems can only be successful with strong accountability mechanisms, oversight and enforcement by both governments and the private sector.⁹⁷ . The implementation of Nepal’s “Free Visa, Free Ticket” Policy has fallen short of most of these recommendations on recruitment fee reform.

5.1 BACKGROUND TO THE “FREE VISA, FREE TICKET” POLICY

On July 6, 2015 former Labour Minister, Tek Bahadur Gurung,⁹⁸ used his powers under Article 24 of the Foreign Employment Act⁹⁹ to issue a ministerial directive which introduced a “Free Visa, Free Ticket” Policy, imposing lower fees and tighter regulation over two main aspects of recruitment:

- It requires **foreign employers** in Malaysia and six GCC countries -- Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates -- to cover all expenses associated with visa processing and also pay round-trip flight tickets for migrant workers. These countries receive 85% of Nepali labour migrants.¹⁰⁰

93 Ray Jureidini, “Ways Forward in Recruitment of Low-Skilled Migrant Workers in the Asia-Arab States Corridor, ILO White Paper”, International Labour Organization, 2016. See also: UN Report of the Special Rapporteur on the human rights of migrants, A/70/310, 11 August 2015, Section III, Paragraph 35, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/251/38/PDF/N1525138.pdf>

94 UN Report of the Special Rapporteur on the human rights of migrants, A/70/310, 11 August 2015, Section IV, Paragraphs 50-51, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/251/38/PDF/N1525138.pdf>

95 Ray Jureidini, “Ways Forward in Recruitment of Low-Skilled Migrant Workers in the Asia-Arab States Corridor, ILO White Paper”, International Labour Organization, 2016.

96 UN Report of the Special Rapporteur on the human rights of migrants, A/70/310, 11 August 2015, Section IV, Paragraphs 50-51, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/251/38/PDF/N1525138.pdf>

97 Ray Jureidini, “Ways Forward in Recruitment of Low-Skilled Migrant Workers in the Asia-Arab States Corridor, ILO White Paper”, International Labour Organization, 2016.

98 Tek Bahadur Gurung is a member of the Nepali Congress party and assumed the post of the Minister for Labour and Employment of Nepal under the Nepali Congress-led government on 25 February 2014.

99 Article 24 of the Foreign Employment Act guarantees the right of the Government of Nepal to determine service fees and promotional costs that can be collected from migrant workers in the context of foreign employment. In 2003, the Ministry of Labour and Employment established the service fee that could be collected from migrant workers at NPR 80,000 for workers going to Malaysia, and NPR 70,000 for workers sent to Gulf countries.

100 Ministry of Labour and Employment, “Labour Migration for Employment: A Status Report for Nepal (2014/2015)”, Government of Nepal, 13 June 2016, p. 9.

- It recalibrates the **charge** that recruitment agencies can extract from migrant workers to a maximum NPR 10,000 (USD 96). This charge is only legal if foreign employers refuse to pay it themselves and provide an official letter verifying that this is the case.¹⁰¹ Recruitment agencies must provide a receipt as proof that selected job applicants have paid no more than NPR 10,000.¹⁰²

The new regulation required that labour demand letters submitted to the Department of Foreign Employment (DOFE) would only receive approval on the basis that these letters stated the willingness of the foreign employer to pay visa and round-trip flight ticket costs.¹⁰³ Foreign employers were required to deposit money for these costs in a bank account authorised by the Bank of Nepal, and recruitment agencies were required to record this deposit in their ledger account.¹⁰⁴ These regulations gave a role to the DoFE to regulate recruitment fees at the stage of pre-labour demand approval, and also introduced greater transparency in the financial flows between recruiters and employers.

One key shortcoming of the original Policy is that it did not require foreign employers to cover all fees and costs associated with obtaining foreign employment. The Policy leaves untouched other fees paid by migrant workers for pre-departure services, such as medical exams and insurance costs, and also allows recruitment agencies to still charge a service fee to migrants, albeit a much lower rate than before. That workers must still pay some fees means that the initiative does not qualify as a “zero cost” recruitment policy as recommended by the ILO and UN bodies.¹⁰⁵ As such, the Policy does not address the commonly reported problems of misinformation and non-transparency in the exchange of money between recruiter and migrant worker, and between the migrant workers and other pre-departure businesses. This means that workers still risk being misled about the genuine legal limits and still can be asked to pay more than the cost of these services. Another major deficiency of the Policy is that it only applies to seven destination countries, even though Nepal sends labour to more than 100 countries worldwide.

5.2 WEAK POLICY IMPLEMENTATION AND ENFORCEMENT

Although it is imperfect in design, the “Free Visa, Free Ticket” Policy would nevertheless be a step forward if it was implemented, in terms of significantly reducing migration costs and the number of migrants leaving Nepal as bonded labour. However, Amnesty International has identified shortcomings in the implementation of the “Free Visa, Free Ticket” Policy, in particular: information dissemination, monitoring, enforcement and redress.

101 Government of Nepal, “Free Visa Free Ticket in Foreign Employment: Implementation and Reality”, copy of PowerPoint presentation by Uma Kanta Paudel, Director of the DoFE, obtained by Amnesty International on 10 June 2016.

102 Government of Nepal, “Free Visa Free Ticket in Foreign Employment: Implementation and Reality”, copy of PowerPoint presentation by Uma Kanta Paudel, Director of the DoFE, obtained by Amnesty International on 10 June 2016. Citing a 9 Point Ministerial Directive.

103 Government of Nepal, “Notice on Sending Nepalese Workers for Foreign Employment at Minimum Cost”, Government of Nepal, 6 July 2015. This is also outlined in the following document: Government of Nepal, “Free Visa Free Ticket in Foreign Employment: Implementation and Reality”, copy of PowerPoint presentation by Uma Kanta Paudel, Director of DoFE obtained by Amnesty International on 10 June 2016.

104 Government of Nepal, “Notice on Sending Nepalese Workers for Foreign Employment at Minimum Cost”, Government of Nepal, 6 July 2015. Point 5

105 ILO Convention No.181 (1997) states in Article 7 that ‘Private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers.’ See also the UN Report of the Special Rapporteur on the human rights of migrants, A/70/310, 11 August 2015, Section IV, Paragraphs 50-51, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/251/38/PDF/N1525138.pdf>

Lack of Information Dissemination on Policy Provisions

In line with its mandate, the Foreign Employment Promotion Board (FEPB) has been charged with disseminating information on the Policy to district government officials and the wider public. Yet an FEPB Director admitted to researchers that the Board had not been consulted prior to the development of the Policy, and thus her office could not provide detailed information about their efforts to disseminate the Policy to a wide network of district officials or the wider public.¹⁰⁶ The Director also expressed scepticism that the Policy could even be implemented, given no prior agreement from the main migrant receiving governments and foreign employers to comply with the provisions on fees.¹⁰⁷ This was a surprising statement, since such provisions already exist in MoUs signed between Nepal and Qatar (the second biggest destination country for Nepali migrants), which already commits Qatari employers to paying for air tickets and visa processing costs.¹⁰⁸ These statements not only reflect a lack of involvement of the FEPB in the design of the Policy, but also the lack of an active and robust policy to ensure that all migrant workers are aware and supported to take advantage of the Policy's provisions.

Failure to Establish Effective Mechanism to Monitor and Address Non-Compliance

Conversations with multiple government entities indicate a failure on the part of the Labour Ministry to overcome known structural weaknesses in regulatory enforcement, and establish and resource special mechanisms to ensure this Policy's success. As one example, the MoLE stated its intention in January 2016 to establish "a desk at the ministerial level to monitor implementation and to conduct dispute resolution for new cases."¹⁰⁹ This specific measure was never implemented, and as far as Amnesty International is aware there are no plans in place to establish such a desk to monitor compliance or deal with cases.¹¹⁰ The result has been that migrant workers are largely unable to report recruitment agency non-compliance with government limits on recruitment fees, especially in the districts. For the most part, they are only able to report cases of overcharging after they have happened.¹¹¹

Failure to Monitor Agencies' Compliance with the "Free Visa, Free Ticket" Policy

The "Free Visa, Free Ticket" Policy does not address the government's lack of robust screening of recruitment businesses, such as monitoring of record-keeping, workplace practices, or financial and banking transactions. It does not tackle the layered nature of the recruitment industry and the deficiencies in monitoring of local agents and recruitment agencies.

106 Meeting with the Foreign Employment Board in Kathmandu, on 4 July 2016.

107 Meeting with the Foreign Employment Board in Kathmandu, on 4 July 2016.

108 Agreement between His Majesty's Government of Nepal and The Government of the State of Qatar Concerning Nepalese Manpower Employment in the State of Qatar, 21 March 2005, available at: <http://ceslam.org/mediastorage/files/Agreement%20between%20the%20Government%20of%20Nepal%20and%20the%20Government%20of%20the%20State%20of%20Qatar.pdf>

109 Government of Nepal, "Ministry of Labour and Employment 30-Point, 100 Day Plan", Government of Nepal, January 2016, Point 16. This plan was provided to Amnesty International by the Ministry of Labour and Employment in February 2016.

110 This information was provided to Amnesty International during a meeting with the Secretary of the Ministry of Labour and Employment, Bishnu Prasad Lamsal, in Kathmandu, Nepal on 4 July 2016, and again during a meeting with Director of the DoFE, Suharshan Prasad Pudasaini, on 29 June 2016.

111 Interview with PNCC in Kathmandu, on 16 June 2016.

Barring the establishment of an inter-agency monitoring committee that discusses recruitment policy and reform measures,¹¹² DoFE and MoLE government officials told Amnesty International that no special mechanisms were created for specifically monitoring the “Free Visa, Free Ticket” Policy implementation or enforcing its provisions. The monitoring of the Policy has thus relied on prior methods that are known to be ineffective and largely rely on self-reporting by agencies or workers. This includes:

- **Regular DoFE monitoring visits of recruitment agencies.** MoLE officials have told Amnesty International that government resources are limited for monitoring recruitment business practices, especially their record-keeping.¹¹³ In May 2017, the FEBP told Amnesty International that the DoFE had recently sent a letter to all recruitment agencies asking them to self-report how many workers they have sent abroad according to the provisions laid out in the “Free Visa, Free Ticket” Policy.¹¹⁴ This information was confirmed by the Labour Ministry.¹¹⁵ Relying on recruitment agencies to self-report their failure to comply with government policy does not constitute an effective monitoring system.
- **Review of recruitment receipts and questioning of migrant workers by immigration officials at the airport, immediately prior to their departure.** This heavy reliance on self-reporting by migrant workers fails to take into account how commonplace the provision of fraudulent receipts is within Nepal’s recruitment sector, and circumstances of indebtedness that heavily disincentivise migrants from reporting recruitment abuse at the airport. Receipts are often an unreliable source of evidence because workers desperate for job placements have little choice but to accept receipts for whatever amount their recruitment agency chooses. Furthermore, by interacting with migrant workers only at the airport, the government is relying on workers to report recruitment abuse at a stage when they are already indebted and under duress to migrate, and may even face reprisals by agents who have taken them to the airport.

Even though there are active migrants’ networks across Nepal who have the most timely and critical information on agencies’ circumvention of the Policy, there is no evidence that the government has sought their active participation in monitoring of the new Policy. Since July 2015, migrants’ rights advocates have repeatedly asked the government to improve the Policy’s monitoring and accountability mechanisms, including putting in place a complaints system that is accessible in local areas so that workers can easily complain and benefit from investigations and immediate action.¹¹⁶ But these calls have until now not been heeded.

112 The monitoring committee included officials from the DoFE, Ministry of Labour and Employment, Foreign Employment Promotion Board, Ministry of Foreign Affairs, Department of Immigration, in addition to the Superintendent of Police. Government of Nepal, “Free Visa Free Ticket in Foreign Employment: Implementation and Reality”, copy of PowerPoint presentation by Uma Kanta Paudel, Director of the DoFE, obtained by Amnesty International on 10 June 2016.

113 This information was provided to Amnesty International during a meeting with the Secretary of the Ministry of Labour and Employment, Bishnu Prasad Lamsal, in Kathmandu, on 5 July 2016, and again during a meeting with Director of the DoFE, Suharshan Prasad Pudasaini on 29 June 2016.

114 Amnesty International interview with FEBP in Kathmandu, on 3 May 2017.

115 Amnesty International interview with the Ministry of Labour and Employment in Kathmandu, on 5 May 2017.

116 Interview with PNCC in Kathmandu, on 16 June 2016.

Lack of Government Planning and Coordination

Nepal's political instability is another obstacle to policy enforcement. Since the introduction of the "Free Visa, Free Ticket" Policy, Nepal has had three different Labour Ministers.¹¹⁷ While the "Free Visa, Free Ticket" Policy has so far outlasted the several changes in political authority, there are lingering questions over political ownership of the Policy after the departure of former MoLE Minister Tek Bahadur Gurung, who has been accused by successive administrations of initiating a populist and unworkable policy. One official told Amnesty International:



***"There is no predictability in the system... without stable, administrative leadership no-one assuming authority knows how long they will stay in the job. Thus, no one in power develops an actual plan for implementation. And without a plan, the national government is not going to allocate more resources to the MoLE or DoFE."*¹¹⁸**

Additionally, though government officials across different departments have generally supported the premise of reducing migration costs, those outside the Labour ministry said that the implementation of the "Free Visa, Free Ticket" Policy was the sole responsibility of the DoFE and MoLE. This lack of inter-ministerial coordination undermines enforcement and monitoring of migration-related policies.

Government rhetoric on the Policy's enforcement also differs from the practices found during Amnesty International's investigation. In April 2016, then-Labour Minister Deepak Bohara told the BBC that migrant workers may directly file their complaints of overcharging with district-level authorities.¹¹⁹ The FEPB also told Amnesty International that district officials should participate in monitoring local actors' adherence to the Policy. Yet researchers found considerable evidence that contradicts these government assertions.

Amnesty International separately asked 18 district officials in June 2016 to explain what, if any, role they had in implementation and monitoring of the "Free Ticket, Free Visa" Policy. None of these officials were aware of their responsibility for monitoring this or any government regulation pertaining to foreign employment, which they believed was the exclusive role of the DoFE.¹²⁰ Five district police commanders interviewed in Kailali, Jhapa, Gorkha, Saptari, and Dhanusha also told Amnesty International they had not received or filed any specific complaint from a prospective migrant or returnee relating to a violation of the government regulation on recruitment fees, including the "Free Visa, Free Ticket" Policy. These police commanders also stated that under the Foreign Employment Act they had no authority to investigate or register cases occurring in the context of foreign employment. Instead, their practice was to advise any complainant to travel to Kathmandu and file their grievance with the complaints branch at the DoFE.

As far as Amnesty International is aware, no ministry has issued a circular to clarify the role and authority of district-level officials in the implementation and monitoring of the "Free Visa, Free Ticket" Policy. Government officials told researchers that such a circular had been discussed but never

117 Minister Tek Bahadur Gurung was replaced by Deepak Bohara near the end of 2015, who subsequently acted as the Minister of Labour and Employment until August 2016. At the time of publication, Surya Man Gurung held the position of Minister of Labour and Employment under a new CPN (Centre Maoist) government.

118 Amnesty international interview with MoLE officials on 3 May 2017.

119 British Broadcasting Company Nepal, Sajha Sawal, "Free Visa and Free Ticket for Migrant Workers", Episode 438, 11 April 2016. In this episode, BBC reporter Sajha Sawal and members of the audience ask questions related to the "free visa, free ticket" policy to former Minister Deepak Bohara and NAFEA President Mr. Bimal Dhakal, therefore providing a record of their statements on the status of the policy's implementation.

120 Interviews with district officials in Kailali, Dhanusha, Jhapa, Gorkha, and Saptari from 11 June – 28 June 2016.

disseminated, and at the time of writing, no formal decision had been reached to give district officials more authority in monitoring recruitment processes.¹²¹ Without local-level enforcement, prospective migrant workers are effectively denied access to mechanisms of prevention that might protect them from deceptive and fraudulent practices at the beginning of the recruitment process.

Government Awareness of Lack of Effective Implementation

Government representatives from the MoLE and DoFE, the FEPB, the Foreign Employment Tribunal, the Department of Immigration and the National Human Rights Commission all told Amnesty International that they were aware the “Free Visa, Free Ticket” Policy had not been effectively implemented.¹²² They also clearly knew that migrant workers usually receive fraudulent receipts of NPR 10,000 (USD 96) from recruitment businesses charging them far higher amounts. These officials also said that they knew that recruitment agencies continued to pay “commissions” to foreign brokers and employers for labour demands, and passed these fees to the migrant workers that they recruited.

Parliamentary oversight committees have also recognised the MoLE and DoFE’s failure to enforce the “Free Visa, Free Ticket” Policy and the implications for this on migrant workers. In July 2016, the Parliamentary Committee on International Relations and Labour issued a directive to the Labour and Employment Minister, Deepak Bohara, to effectively implement the Policy. It also directed the government to enforce sections of the Foreign Employment Act pertaining to contract substitution, and to improve transparency of the recruitment sector by requiring recruitment agencies to receive payments for recruitment fees through bank accounts.¹²³



121 Amnesty International meetings with MoLE officials, on 5 July 2016 and 5 May 2017.

122 Amnesty International meetings with the following Nepal Government officials: the Secretary of the Ministry of Labour and Employment, Bishnu Prasad Lamsal in Kathmandu, on 5 July 2016; Director of the DoFE, Suharshan Prasad Pudasaini on 29 June 2016; Director of the Foreign Employment Promotion Board Nirmala Thapa in Kathmandu, on 4 July 2016; Director General of Department of Immigration, Kedar Neupane, in Kathmandu, on 3 July 2016; and the Chairperson of the National Human Rights Commission, the Honourable Anup Raj Sharma in Kathmandu, on 3 July 2016.

123 Setopati, 'House Panel Directs Govt to Implement 'Free Visa, Free Ticket,' Setopati, 13 June 2016, available at: <http://setopati.net/business/14722/House-panel-directs-govt-to-implement-'Free-Visa,-Free-Ticket/>

5.3 RECRUITMENT INDUSTRY RESISTANCE TO THE “FREE VISA, FREE TICKET” POLICY

Given that the “Free Visa, Free Ticket” Policy has come into effect through a ministerial directive, and is not enshrined in law, the recruitment industry has routinely applied pressure on MoLE to rescind the Policy, which they perceive to work against industry interests. The day before the Policy took effect, recruitment agencies held a sit-in protest at the office of the DoFE and demanded the establishment of a high-level commission to study the proposed Policy.¹²⁴ NAFEA president, Bimal Prasad Dhakal, also filed a writ with the Patan Appellate Court in Kathmandu challenging the Policy on legal and procedural grounds.¹²⁵ The appellate court decided against this writ and upheld the Labour Ministry’s power to enforce the provision without a change in law.¹²⁶

NAFEA has organised a number of industry-wide strikes aimed to shut down labour recruitment from Nepal with the aim of ending the “Free Visa, Free Ticket” Policy, unless labour agreements are signed with destination countries, clearing stating the Policy’s provision. These strikes have been successful in slowing government implementation of the Policy and promoting industry rhetoric that the Policy is completely unworkable and should be scrapped.

During the first recruitment industry strike in July 2015, NAFEA presented a protest letter to MoLE with a list of 35 demands. The MoLE agreed to 31 out of 35 demands,¹²⁷ including:

- **Joint monitoring** of recruitment agencies by the government and a representative of recruitment agencies.
- The **removal of conditions** in the Policy that required recruitment agencies to provide proof that employers had covered the costs of migrant worker tickets, visa processing charges and service charges when obtaining DoFE *pre-approval* to recruit workers (as opposed to only providing such proof at the final stage of recruitment).
- **Formation of a joint NAFEA-Government Taskforce** to review the Foreign Employment Act and its implementation, on the basis that that some legal regulations lack clarity in their application by the DoFE. The areas of focus for the joint task force are: pre-orientation training requirements; employment contracts; management of local agents; and domestic workers.

MoLE representatives and NAFEA acknowledge the existence of this signed agreement, but deny that its provisions were ever implemented.¹²⁸ Even if this is the case, the government’s initial agreement to these conditions is highly concerning, implying government willingness to make serious concessions to the industry, especially in areas where government independence, impartiality and transparency is vital for the effective protection of workers’ rights. Such compromises also point to the substantial leverage of recruitment businesses over government policymaking, which risks excluding migrant worker representatives from key decision-making processes.

124 The Himalayan Times, “Free Visa, Free Ticket Row,” Himalayan Times, 9 July 2015, available at: <http://thehimalayantimes.com/business/free-visa-and-ticket-row/>

125 Government of Nepal, “Free Visa Free Ticket in Foreign Employment: Implementation and Reality”, Copy of PowerPoint presentation given by Uma Kanta Paudel, Director of the DoFE and provided to Amnesty International on 10 June 2016.

126 Government of Nepal, “Free Visa Free Ticket in Foreign Employment: Implementation and Reality”, Copy of PowerPoint presentation given by Uma Kanta Paudel, Director of the DoFE and provided to Amnesty International on 10 June 2016.

127 These are outlined in an agreement letter signed between the two parties on 24 July 2015, which was obtained by Amnesty International during its June-July 2016 research.

128 Amnesty International interview with NAFEA representatives in Kathmandu, on 3 May 2017 and Ministry of Labour and Employment, on 5 May 2017.

DoFE and MoLE officials have repeatedly told Amnesty International that NAFEA representatives and the government were still in the process of negotiating recruitment fee limits, as the government is sympathetic to recruitment actors and their concerns about the negative impacts of the “Free Visa, Free Ticket” Policy on their business.¹²⁹ Yet, while the government is reluctant to invest in a policy rejected by businesses, it is equally reluctant to abandon a policy widely supported by the general public. One DoFE official said:

“The manpower [recruitment] agencies are still complaining about the “Free Visa, Free Ticket” Policy and say they can charge too little. We should determine a reasonable price for migrant workers to pay. Since we haven’t been able to regulate this provision properly, we are constantly at risk of being dragged into controversy. The main problem is that NPR 10,000 [USD 96] is not sufficient to run an office of a manpower agency, and this unrealistic Policy is affecting the payment of taxes by these institutions who now misrepresent their income. There is a lot of informal money under the table. Yet, if we increase the service charge recruitment agencies can collect, say to NPR 25,000 [USD 242], we will be criticised by the media.”

In the media, the government has taken the public’s side in towing a hard line against agencies and maintaining commitment to the Policy.¹³⁰ Behind closed doors, the government is slow to put reforms into action without the recruitment industry’s support.

Recruitment Agencies Resist or Ignore Policy

During interviews with 22 recruitment agencies, Amnesty International found that many agencies did not find the “Free Visa, Free Ticket” Policy legitimate and were not inclined to respect its provisions. Only two of the 22 recruitment agencies interviewed said high recruitment fees were a problem that the government should try to address.

Most recruitment agencies simply insisted that the Policy was impractical for businesses and that fees charged to workers were being determined by the market, irrespective of the government’s feeble attempt to regulate recruitment costs. Six agencies blamed the government for imposing an industry-wide policy without obtaining prior agreement of recruitment agencies, or conducting a thorough analysis of the costs involved in running a recruitment business.¹³¹ Others stated that the Policy did not take into account that foreign employers did not respect the Policy and would search elsewhere for cheaper labour.



129 Amnesty International interview with DoFE Director Sudharsan Prasad Pudasini, on 29 June 2016.

130 Pushpa Raj Acharya, “Government will not reverse the ‘free visa, free ticket’ provision”, Himalaya Times, 25 April 2016, available at: <https://thehimalayantimes.com/business/government-will-not-reverse-the-free-visa-free-ticket-provision-deepak-bohara/>

131 Amnesty International interview with recruitment agencies in Kathmandu, on 5 and 6 July 2016.

One recruitment agency who did not wish to be identified put it bluntly:

“The government doesn’t understand the process and the way we get demands from the destination country. Recruitment agencies are using our own resources to market, make connections, and pay various fees in order to get demands for Nepal and send its people for work... Some multinational companies might pay the recruitment costs or have ethical recruitment policies. But most of the small and medium companies that I recruit for will not pay for the ticket, visa processing cost, immigration fee, medical exam, or even the service charges of the placement agency that they are using to recruit workers more easily. This is far too much for my agency to cover. The workers must pay it.”¹³²

Recruitment agencies also criticized the government’s Policy for telling recruitment agencies that they can only charge migrants NPR 10,000 (USD 96) for recruitment but not taking action to reduce other fees such as, visa processing costs for Malaysia, which increased fivefold from NPR 700 (USD 6) to NPR 3,900 (USD 38) between 2013 and 2016.¹³³ Recently obtained visa receipts for Malaysia show that this cost has risen again in 2017 to NPR 6,700 (USD 65).

The government’s short-sighted approach to recruitment fee reform has encouraged recruiters’ claims that the “Free Visa, Free Ticket” Policy is both impractical and expensive, and will jeopardise Nepal’s long-term economic interests. While it is valid for agencies to point out factors which may make implementation of the Policy challenging, the reality is that Nepal’s recruitment associations and businesses have spent far more time obstructing the Policy than trying to find solutions to these challenges.

Recruiters have demonstrated little interest in changing the country’s model of exploitative recruitment. Researchers found no evidence to suggest that recruiters have, for example, made efforts to reach out to employers interested in banning recruitment fees, or participated in ethical recruitment initiatives. Without a doubt, the “Free Visa, Free Ticket” Policy would benefit from stronger bilateral agreements with destination countries that stipulate provisions on fees that foreign employers must follow. But recruitment agencies cannot place all responsibility on the government: they must also carry out their own human rights due diligence to ensure that they respect the human rights of workers using their services. In reality, the recruitment sector has made no concerted effort to reduce the burden of fees on workers; it has instead used its resources to try to block such efforts.

132 Amnesty International interview with recruitment agency, on 21 July 2016.

133 Kathmandu Post, “Officials put through wringer over VLN Nepal,” Kathmandu Post, 23 February 2016, available at: <http://kathmandupost.ekantipur.com/news/2016-02-23/officials-put-through-wringer-over-vln-nepal.html>

5.4 THE IMPACT OF POOR IMPLEMENTATION ON THE PROTECTION OF WORKERS

“All agencies I spoke to told me that the “Free Visa, Free Ticket” Policy is only there in name and on paper, but it is not the reality.”¹³⁴

Most interviewed workers told Amnesty International that they had heard about the “Free Visa, Free Ticket” Policy, usually through the media, and were desperate to access lower cost migration. Some migrants had made an attempt to access an agency that respected the Policy but reported that they were unable to find any. This had the effect of increasing their migration costs.

A group of eight male prospective migrant workers told Amnesty International that they journeyed to Kathmandu and had paid NPR 450 (USD 4.36) each day for a week in their unsuccessful search for a recruitment agency that would respect the “Free Visa, Free Ticket” Policy – which surpassed their daily income in the village and also cost them in terms of time away from work.

Devi, a returnee who was in the process of re-migrating, said:

“I had gone to Qatar once and returned after working there for four years. I am in the process of going again, so I am in Kathmandu making the rounds of manpower agencies. I believe I have gone to at least 40-50 manpower agencies. The government is saying NPR 10,000 (USD 96) – but in reality it [recruitment fee] is more like NPR 150,000 to NPR 200,000 (USD 1,453 to USD 1,936).”¹³⁵

Migrants also reported that they had visited several recruitment agencies and were repeatedly told that the Policy did not exist. For instance, Nirmal, who lost his house during Nepal's April 25, 2015 earthquake, travelled to Kathmandu and spent 16 days searching for a recruitment agency that would send him for work abroad for only NPR 10,000. Nirmal told researchers he went to 30 different recruitment agencies but they all told him they could not send him abroad unless he paid for his ticket and the visa.

In the absence of effective enforcement of this Policy, NGOs have nonetheless been encouraging migrant workers to use information about the Policy in their negotiations with recruitment agencies.¹³⁶ Still, NGOs had only recorded a few cases where migrants had been able to negotiate reductions in the fees demanded by referring to the Policy.¹³⁷ Amnesty International is aware of just one instance in which five migrant workers managed to collectively bargain and pay only NPR 10,000 to be sent abroad for work.¹³⁸

134 Amnesty International interview with GN in Gorkha district, on 16 June 2016.

135 Amnesty International interview with DS in Rupandehi district, on 22 July 2016.

136 Amnesty International interview with Sami Project in Kathmandu, on 16 February 2016.

137 This is based on interviews with local organisations in the districts of Kailali, Gorkha, Dhanusha, Jhapa, Saptari between 11-27 June.

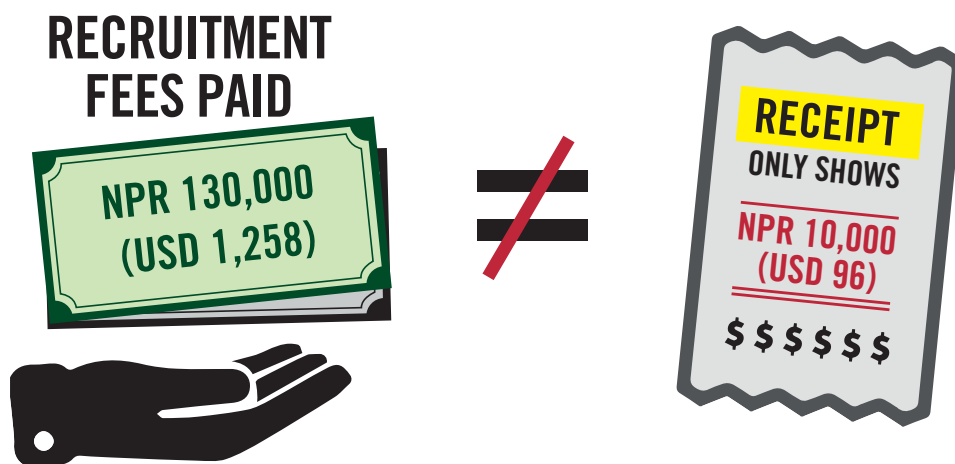
138 Amnesty International interview with Sami Project in Kailali district, on 15 June 2016.

5.5 NEGATIVE IMPACT OF THE “FREE VISA, FREE TICKET” POLICY ON ACCESS TO JUSTICE AND COMPENSATION

A significant and unforeseen consequence of the failings in the implementation of the government’s Policy is the impact on access to justice and compensation for migrant workers. Though migrant workers are still paying fees far above the cap, they are now receiving false receipts from recruitment agencies for only the prescribed amount they are supposed to pay of NPR 10,000 – whereas in the past they may have received false receipts for the formerly prescribed cap of NPR 70,000 (GCC countries) and NPR 80,000 (Malaysia).

This is likely to lead to substantially lower compensation awards in complaints about fraudulent recruitment or extraction of excess fees – complaints that migrant workers often file after they have realised they have been deceived about jobs, salaries, and other terms and conditions related to their foreign employment.¹³⁹ When workers do not have documents proving the discrepancy between what they originally consented to and what they received in the destination country, they may only be able to receive compensation for excessive fees taken by recruiters.¹⁴⁰

By way of example, prior to the Policy’s implementation, Ram received a receipt for NPR 70,000 (USD 677) from his recruitment agency even though he had paid NPR 130,000 (USD 1,258) in recruitment fees for a job placement in a Malaysian factory. Later on, based on this receipt, Ram was able to claim USD 677 in compensation for excess fees charged to him. This was obviously significantly less than he had actually paid. However, had Ram received a receipt after 2015, he may only have been able to claim USD 96 in compensation.¹⁴¹



139 This observation has been made by NGOs supporting migrant workers to register cases with the DoFE. Five such NGOs raised this observation and concern during research visits conducted by with Amnesty International in February 2016 and June-July 2016.

140 From 2015 to 2016, the Nepal media has consistently reported this issue. See also Kharel, H., Ayub, M. and Sijapati, B., “Free Visa, Free Ticket,” Kathmandu Post, 2 May 2016, available at: <http://kathmandupost.ekantipur.com/news/2016-05-02/free-visa-free-ticket.html>

141 Amnesty International interview with DS in Gorkha district, on 18 June 2016.

6. DECEPTIVE AND COERCIVE RECRUITMENT PRACTICES FACILITATING TRAFFICKING AND FORCED LABOUR

“My agent said to me: ‘Come on, just stay and do the work. Everyone is doing it, people who have gone with you are doing it – so why are you finding it difficult?’”

Former Migrant Worker in Malaysia, whose recruitment agent refused to help him return to Nepal, when his employer denied him permission to leave in order to care for his dying mother

In addition to extracting high recruitment fees from migrant workers, and inducing their indebtedness before departure, recruitment agents and agencies use other deceptive and coercive practices that compel migrants to work in situations that abuse their human and labour rights. This chapter demonstrates the role of recruitment agencies in facilitating labour trafficking and forced labour.

In 90% of the cases documented by Amnesty International, migrant workers had been subject to some form of deception about the terms and conditions of their foreign employment. False promises about salaries and working conditions were usually coupled with other mechanisms of coercion applied by recruitment agencies that restricted migrant workers’ freedom of movement and compelled them to perform labour that they did not originally consent to. The principle mechanisms of coercion applied by recruitment agents and agencies were:

- confiscating migrant workers’ passports during recruitment processes;
- refusing to provide migrant workers contracts, or providing these contracts only at the very point of departure; and
- reporting migrant workers’ calls for help to the foreign employers accused of abusing and exploiting them.

In some cases, migrants subjected to forced labour became trapped in vicious cycles of debt bondage and labour exploitation, meaning that they repeatedly migrated under coerced circumstances in order to pay off debts from the previous migration.

Furthermore, 20% of returned migrant workers interviewed by Amnesty International had left their employers and as a result lost their legal right to remain in the country, thus becoming undocumented whilst attempting to escape forced labour conditions. As a result, these workers also were at risk of immigration detention and subject to exploitation by a marketplace of agents offering safe return home. Rather than recognise the link between deceptive recruitment, labour exploitation, and undocumented migration status, authorities on both sides of the border have instead blamed victims of recruitment and labour rights abuse for violating immigration laws and regulations.

Nepal's Obligations to Protect Migrant Workers from Conditions of Forced Labour and Human Trafficking

The Government of Nepal has various obligations under international and domestic law to ensure that Nepali workers going abroad for employment are not subject to the conditions of human trafficking, and forced labour. The Government's obligations relating to debt bondage have been discussed above in Chapter 3.

Forced Labour

The International Covenant on Civil and Political Rights (ICCPR) pertains to the protection of migrant workers' rights before they leave Nepal. Under Article 8 of the Covenant, the authorities of Nepal have a duty to ensure that no one is held in slavery, servitude, or required to perform forced or compulsory labour.¹⁴² The ICCPR also obligates Nepal to provide access to justice to persons whose rights have been abused, and in particular, to ensure an effective remedy is provided and enforced.¹⁴³

Additionally, Article 12 of the ICCPR guarantees certain rights to freedom of movement. In the context of migration, rights to freedom of movement must be protected in order to ensure Nepali citizens are not deprived of their right to leave or enter their own country, especially after their departure for work abroad.¹⁴⁴

Nepal is also party to International Labour Organisation (ILO) Convention No. 29, concerning Forced or Compulsory Labour (Forced Labour Convention), meaning that it has assumed obligations to suppress and punish all forms of forced labour.¹⁴⁵ Article 2.1 of the Convention No. 29 defines forced labour as 'all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.' ILO Supervisory bodies have made it clear that 'menace of a penalty' may entail a loss of rights and privileges, and does not necessarily mean the threat of penal sanctions.¹⁴⁶ The two main characteristics that define forced labour are therefore (a) the **involuntary nature** of the work assumed by the worker and (b) the **coercion** that is applied to the worker in order to undertake the work or service.¹⁴⁷ In line with Convention No. 29, ILO Supervisory bodies have further identified key elements of forced labour, in addition to the multiple ways that workers may enter forced labour situations. The withholding of wages, which may contribute to forced labour conditions, is also a violation of fundamental human rights according to Article 7 (a) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

142 Article 8 of the International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49, available at: <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

143 See Article 2 of the International Covenant on Civil and Political Rights.

144 Ibid, Article 12.

145 See Articles 4, 23, 24, and 25 of the Forced Labour Convention, which impose obligations to completely suppress all forms of forced labour, including by creating and enforcing criminal prohibitions.

146 ILO, "A Global Alliance Against Forced Labour", 2005, p.5 available at: http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_081882.pdf

147 ILO, "Hard to see, Harder to Count", p.13 available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182096.pdf

Trafficking in Persons

The international crime of trafficking in persons is also closely linked to forced labour. According to the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, which Nepal has yet to ratify, trafficking in purposes involves three constituent elements: (1) an act (recruitment, transportation, transfer, harbouring or receipt of persons); (2) using means, such as force, deception, coercion and/or threat in order to have control over a person; (3) for the purpose of exploitation.¹⁴⁸ In accordance with this definition, forced labour, slavery and slave-like practices are all intended forms of exploitation that constitute trafficking in persons, given the presence of the other two elements in the definition.

ILO guidelines for law enforcement agencies outline the possible overlap between recruitment processes and labour trafficking state:

***“There are various forms of abuse and exploitation that can be committed by recruiters and auxiliaries, which, even if this particular actor in the chain has no intention of putting the migrant in forced labour, make the migrant vulnerable to it. These abuses are also useful indicators of trafficking. They include charging exorbitant fees for visas and other travel documents, processing and providing fake travel documents without informing the migrant who is to use them, recruitment for non-existent jobs as well as misrepresenting the job and work conditions... There is also the provision of a loan that is hard to pay back (particularly since the interest on the loan and the amount of the loan itself tend to be falsely inflated, though the migrant is not usually aware of this), leaving the person in debt to the recruiter and leading to situations of debt bondage and forced labour.”*¹⁴⁹**

Four UN treaty body committees have stressed the weakness in Nepal's legal and policy framework on trafficking in persons: the Committee on the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the Committee on the Rights of the Child, the Committee on the International Covenant on Civil and Political Rights, and the Committee on Economic, Social and Cultural Rights (ESCR).¹⁵⁰ Owing to the risk of labour trafficking in labour hiring processes, Nepal is strongly urged to ratify the UN Protocol on trafficking.¹⁵¹

148 Article 3 of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (provides the following definition: “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”

149 ILO, “Human Trafficking and Forced Labour Exploitation: Guidelines for Legislation and Law Enforcement”, 2005, p.32, available at: http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_081999.pdf

150 National Human Rights Commission, “Trafficking in Persons National Report 2013-2015”, National Human Rights Commission, March 2016, p.3-4.

151 Nepal has also not ratified the UN Convention on the Rights of All Migrant Workers and Members of their Families (1990), nor the ILO Private Employment Agencies Convention (No.181). Both of these conventions include provisions that are instrumental to the protection of migrant workers' rights and the prevention of trafficking in persons and forced labour. Nepal is also not party to other ILO treaties that address the human rights of migrant workers, including the ILO Domestic Workers Convention 2011 (C. 189), ILO Migration for Employment Convention (Revised) 1949 (C. 97), and the ILO Migrant Workers (Supplementary Provisions) Convention 1975 (C. 143). See the ILO website on conventions not ratified: http://www.ilo.org/dyn/normlex/en/f?p=1000:11210:0::NO:11210:P11210_COUNTRY_ID:103197

6.1 DECEPTION OVER JOBS, SALARIES AND WORKING CONDITIONS INCLUDING CONTRACT SUBSTITUTION

Recruitment by means of deception is a key element in the international crimes of human trafficking and forced labour. For the migrant workers interviewed for this report, heavy recruitment debts frequently compelled deceived migrants to stay and perform their jobs despite receiving lower salaries or working in undesirable conditions contrary to those that were originally promised.

Moreover, deception interferes with the financial calculations and planning of migrant workers, who are lured into believing that they will be able to repay recruitment debts in a short and reasonable timeframe. Deceived migrant workers told Amnesty International they had expected to be able to pay off their migration-related loans within a few months, which would allow them to use their savings to start a local business upon their return. Many migrant workers said they had intended to go abroad *only once* in order to kick-start a business and establish financial security within Nepal. Instead, many of the misled workers became dependent on long-term foreign employment because they wouldn't be able to pay off their debts with the lower salaries.

Deception during labour recruitment processes is usually dealt with by Nepal's Foreign Employment Act and not the criminal justice system, even though the *Muluki Ain* (general code) has a chapter on "Cheating" and there is also specific human trafficking legislation (the HTTCA), which defines the act of "human transportation" as:

"To take anyone from his/her home, place of residence or from a person by any means such as 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 and keep him/her into ones custody or take to any place within Nepal or abroad or handover him/her to somebody else for the purpose of prostitution and exploitation."¹⁵²

There would be clear advantages to using trafficking legislation instead of the 2007 Foreign Employment Act to address deceptive recruitment that constitutes labour trafficking.

First, the police have the authority to investigate trafficking cases, and these cases can also be heard in district courts. Second, the HTTCA also treats deceptive recruitment -- as defined above -- as a criminal offence that attracts a punishment of seven to ten years.¹⁵³ In the FEA, similar offences are not only restricted in their definition of "enticement," but they attract a lighter sentence of three to seven years. For example, a licensed recruitment agency is only guilty of "giving false assurances or showing enticement" in the instance that money has been taken from workers for recruitment, but the agency fails to send the worker for foreign employment.¹⁵⁴ Recruitment agencies must only pay a fine of NPR 100,000 (USD 968) and compensate workers when they have sent workers for foreign employment that is different than what has been specified in their contracts, or when their salaries and working conditions are different than what was "offered previously."¹⁵⁵

152 Article 4 of the HTTCA.

153 Section 15(l)(g) of the HTTCA.

154 Article 44 of the FEA.

155 Article 55 of the FEA.

Deception Related to Salaries, Jobs and Employers

The main form of deception workers reported to Amnesty International related to salaries. Of the returned migrants interviewed, 100 of 110 said that the payment they received in the destination country was a lower salary than what had been promised either by verbal or written agreement.¹⁵⁶ Of the remaining 10 who did not report deception, seven had nonetheless received less than the minimum remuneration set by the Nepali government for the country they had worked in. These findings, suggesting a systematic pattern of deception within Nepal's recruitment industry, are substantiated by other studies. A legal analysis conducted by the People's Forum for Human Rights, a Nepali NGO, found that 60% of 510 complaints registered at the Department of Foreign Employment (DoFE) between 2014-15 involved migrant workers who returned to Nepal because they had failed to receive the salary and facilities that had been promised in their contract.¹⁵⁷

A number of migrant workers were also deceived about the nature of their work. On some occasions, migrants only discovered on arrival that they had been sent to work on temporary and hourly contracts via a labour supply company rather than on monthly contracts with a designated foreign employer. This means that migrant workers suffered losses in associated benefits such as medical expenses and sick leave.

Dinesh, a worker who returned in May 2016, told Amnesty International that his medical care was not covered for the 27 days he was ill with dengue fever in Malaysia. When Dinesh asked to be compensated for his medical expenses and sick leave he was told that he was a "contract worker," and not a "full time" worker, and was not eligible for medical coverage by the company while he was in Malaysia. Dinesh provided Amnesty International his original contract, which stipulated employment by only one employer for a monthly salary of RM 1200 (USD 280). The contract also included medical coverage.



In another case, Krishna was sent to work in Qatar as a plumber but was given false information about his employer. Krishna explained the implications of this deception:

"I went to work as a plumber but the company they had told me was not the same. This company was like a supplier, and we had to consistently give interviews to new employers because the supplier was always changing our workplace. If you failed the interview, the supply company would deduct something from your salary."¹⁵⁸

In addition to salaries, Nepali workers were also deceived about the nature of their jobs, their location of work, working hours, living conditions, and the length of contracts. Rajeev, a 24-year old former migrant worker, told Amnesty International that his recruitment agency had offered him a job placement in a plastic bag manufacturing company with a salary of SAR 1200 (USD 320) a month. Despite signing a contract to this effect, Rajeev was instead taken to a construction company when he arrived in Saudi Arabia, and told to sign another contract for only SAR 416 (USD 110), around a third of the figure he had based his decision to migrate on. Rajeev returned to Nepal after only 1.5 months because of the difference in salary and type of work he had consented to. When he returned, Rajeev felt too indebted

156 Where possible, researchers examined work contracts and payment slips as well as taking testimonies from workers of their experiences. When this was not possible because the relevant documentation did not exist, researchers also interviewed their family members and analysed the contents of case files that had been registered with NGOs.

157 People's Forum for Human Rights, Assessment on Status of Foreign Employment Victims in Formal Complaint Mechanisms, People's Forum for Human Rights, 2015.

158 Amnesty Interview with BT in Rupandehi, on 18 July 2016.

to file a case with the DoFE and await the adjudication of his case, which he was advised could take years. Instead, he settled his case directly with his recruitment agency, receiving only one quarter of the sum he had paid for his job placement and leaving him with heavy debts.¹⁵⁹ Rajeev was reluctantly looking for another foreign job at the time of his interview with Amnesty International because he had been unable to pay off his recruitment debt during his time abroad.

Amnesty International found evidence of cases where recruitment agents gave migrant workers fake or forged documents for either travel or foreign employment, which put them at risk of labour exploitation and criminalisation under destination-country immigration laws. In eight cases, migrant workers were aware prior to departure that they were in possession of false documents. In three such cases, Amnesty International considers that the migrant workers were victims of so-called “visa trading,” a deceptive recruitment practice that entails recruiting a migrant for a particular job or sector of work, but later directing the migrant into another job because the visa has been “sold” to another recruitment agency or employer.¹⁶⁰ In three other instances, migrant workers arrived in Malaysia only to discover that they had been provided work visas that had been forged by their employers, which may occur when the employer is either unable or unwilling to obtain legal work permits from the government. In two other cases, recruitment agencies promised migrant workers they would receive their legal working visas on arrival, but such visas were never obtained for them, meaning they spent the duration of their time abroad as undocumented workers.

Vijay explained the impact of unknowingly being provided a fake work visa to Malaysia by his recruitment agency:

“Agents say they have a job, which you agree to and give your passport, and then you get placed in another job! When you arrive, the work, salary are not what you were told. But it is not easy to return, or even to fight against these conditions while you are there. The rules and regulations prevent it...the company had taken my passport and I had no money to pay the immigration fine of RM 400 (USD 93) for not having a legal work visa.”¹⁶¹

Researchers also found that women were particularly at risk of deception about the legality of their travel documents and work permits. Nepali government age-restrictions on female labour migration¹⁶² has often meant that women who do not meet the age criteria set by the government rely on their recruiters to obtain their travel documents and organise their travel out of the country.

Sita was 17 years old – 13 years younger than the age restriction set by the government at that time – when her recruitment agent misled her into believing that she would earn NPR 500,000 (USD 4,841) as a domestic worker in Saudi Arabia family over the course of two years. Her recruiter obtained a passport for Sita and organised her travel across Nepal’s open border with India. Before her departure from the New Delhi airport, Sita was given another person’s passport which she was to use to travel.

Despite learning that she was supposed to travel on another person’s passport, Sita felt compelled to travel because she did not have any money to leave the airport and make her way back to Nepal. When Sita arrived in Saudi Arabia she was subject to routine beatings by her employer, and she was paid

¹⁵⁹ Amnesty International interview with RM in Jhapa district, on 25 June 2016.

¹⁶⁰ Omar Al-Ubaydli, “The Economics of Migrant Workers in the GCC”, The Arab Gulf States Institute, 2015, available at: <http://www.agsiw.org/the-economics-of-migrant-workers-in-the-gcc/>

¹⁶¹ Amnesty International interview with BT in Rupandehi district, on 26 July 2016.

¹⁶² International Labour Organisation (ILO), “No Easy Restricts on Exit: Migration Bans Affecting Women from Nepal”, 2015, available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_428686.pdf

much less than she had been promised. After working for 8 months, Sita escaped from her employer. However, before she could make it to the Nepal embassy she was arrested by Saudi police and detained for 20 months on immigration offences because she did not have a legal work visa and was in possession of a fake passport. Sita's testimony suggests that she was subjected to human trafficking.

6.2 COERCIVE MEANS USED TO ENTICE WORKERS ABROAD OR RESTRICT THEIR FREEDOM OF MOVEMENT

Retaining Passports

To stay profitable, recruitment agencies must demonstrate that they can guarantee a steady supply of workers from rural areas. In the districts, agents also compete with each other to source migrant workers and receive commission for the number of migrants they recruit and refer to agencies. This dynamic drives a host of deceptive and coercive tactics used to secure demand and prevent migrants from pursuing labour migration with another broker or agency.

Researchers found that the confiscation of migrant workers' passports at the onset of the recruitment process was a common mechanism of coercion. This malpractice restricted aspiring migrants' right to freedom of movement and often violates the Foreign Employment Act (FEA).¹⁶³

Nearly half of the interviewees told Amnesty International that their passports had been taken by recruitment agencies early on in the recruitment process and were not released to them until days before their departure – which in the most extreme cases could constitute more than a year. Migrant workers were frequently misinformed by their agents that, to enable them to process labour permits and travel visas, they must relinquish their passports to recruitment agencies for periods of time that were longer than legal or necessary. One migrant worker told researchers:

“The agent is nice only until he gets your passport. After he has it, he is more powerful. We will do whatever he says, we will go wherever he asks us to go... you will have a problem [with the recruitment agency] if you decide that you don't want to go anymore.”¹⁶⁴

Confiscation of passports also allows recruitment agents or agencies to extort indebted migrants for more money during the recruitment process because of the migrant's desperation to obtain foreign work. Researchers also found cases in which recruitment agencies illegally imposed financial penalties on migrant workers who pursued the return of their passports and tried to walk away from foreign job placements offered by the recruitment agency. Five migrant workers who demanded their passports back told Amnesty International that had to pay between NPR 15,000 and NPR 30,000 (USD 145 to USD 290) to get hold of them. According to these migrant workers, the recruitment agencies claimed that the fee for their passports was reimbursement for the investments and efforts they had already made to link the workers to job placements. This contravenes Article 20 of the FEA.



163 Articles 18 and 20 of the FEA.

164 Amnesty International interview with RS in Kathmandu, on 25 July 2016.

OUT OF

110

RETURNEE MIGRANT
WORKERS

ONLY 42 WERE PROVIDED A
WORK CONTRACT
BY THEIR RECRUITMENT AGENCY

Failing to Provide Written Contracts or Explain Contents

Another means of coercion used by recruitment agencies was to provide work contracts only a few days or even hours before departure, undermining legal provisions that both the recruitment agency and foreign employer must provide written contracts which can only be agreed once the migrant worker clearly understands the terms and conditions.

Within the sample of 110 returnee migrant workers, only 42 were provided a work contract by their recruitment agency. In only four cases did migrant workers arrive in their destination country and find that the work was similar to that described by agents or written into their contracts. In 27 cases, migrants claimed that their work contracts stated different terms than what they received in their places of employment. In the remaining 11 cases, the workers did not know if their work contracts matched the terms and conditions of their work abroad because they were unable to read or their contracts were written in a language that they did not understand. Only two of these individuals were provided their contract more than one week before departure.

For the vast majority of the migrant workers, recruitment agencies only provided work contracts on the day of or the day before departure, often at the airport or in the taxi on the way to the airport. Furthermore, 13 migrant workers told Amnesty that they were required to sign a new contract once they arrived at their place of work.

Workers who only see their work contracts shortly before leaving have almost no opportunity to challenge the terms, or to change their minds about migrating – they have already committed funds and taken on significant debts, handed over their passports and have raised the expectations of their families about the prospects of their migration.

6.3 LABOUR TRAFFICKING

Amnesty International found evidence of suspected labour trafficking in 22 of the 110 cases of returned migrant workers who we interviewed (12 male and 10 female). In all these cases, the migrant workers reported that they had been recruited by local brokers and recruitment agencies; intentionally deceived and misled about their work abroad; and exploited as cheap or unpaid labour. These individuals had been trafficked to Malaysia, Qatar, Saudi Arabia, United Arab Emirates, Kuwait, Lebanon, Uzbekistan, and Iraq. In 3 of the 22 cases, the victims had been trafficked by relatives who were acting as agents.

In most cases, victims had not reported their cases to police. Female trafficking victims who had been lured abroad by promises of decent work did not report their cases to the police either because subsequently they had become aware that they had gone abroad through undocumented channels and/or because fear of social stigma and discrimination prevented them from approaching police.

Male trafficking victims were often dissuaded from reporting their cases to the police because they were overly focused on paying off their debt rather than taking their cases to the authorities. Some

trafficked male migrants were referred to the DoFE by the police, and did not pursue their cases further because of their lack of financial means to travel to Kathmandu, or because they had received threats from recruitment companies involved in trafficking them abroad. Devi refrained from reporting his case to the police or DoFE for the following reason:

“I don’t trust the police or DoFE. They will just try to make you negotiate with the agent or agency – and it will be a waste of time. The kind of ‘justice’ that I want is that everyone knows about these agents, so that no one is sent abroad by them. But the government is not providing any protection to workers, and is not regulating agents and what they are doing.”¹⁶⁵

Either because of lack of information or lack of trust in government assistance, none of the trafficked victims had appealed to the Foreign Employment Welfare Fund either. The Foreign Employment Promotion Board (FEBP) told Amnesty International that the Welfare Fund is not generally used to provide assistance to victims of labour trafficking and is instead used primarily for migrant workers “stranded” in the destination country.¹⁶⁶

Migrant workers who were subjected to trafficking were also overcharged. Half had paid recruitment fees upfront that were above the government prescribed limit and the rest had deductions made from their monthly wages which meant that ultimately, they paid above the legal limits.

Most of the migrant workers who had been subjected to trafficking told researchers that they only discovered that their recruitment agent or agency had been involved in their forced labour situation when they tried to call the agent or agency responsible for sending them abroad, and realised that the agency was already aware of their situation and refused to help them. Thus, the intent to traffic them had been made clear.

Trafficking victims described how their employers in the destination countries had subjected to them to coercive practices that often indicate forced labour, including: physical threats, psychological abuse, and confiscation of identity documents. All 22 suspected victims of trafficking had received far less than the salaries they were promised, and were directly threatened and prevented from leaving their workplace. In three extreme cases, victims were unpaid for the entire duration of their employment.

In 2012, Rajit, a 34-year old father of three, was promised a job in a Malaysian restaurant, and his labour permit and travel was organised by a local agent in his district and a Kathmandu-based recruitment agency. However, when Rajit arrived at Kuala Lumpur airport he was picked up not by the restaurant owner, but by a labour supply company that took away his passport, mobile phone, and other belongings. The labour supply company refused to supply Rajit with a legal work visa, despite his repeated requests. Instead, the company rotated him against his will to several Malaysian companies in order to avoid the Malaysian authorities detecting his irregular status. Rajit was also paid USD 30 per month below Malaysia’s minimum wage. After three months, Rajit decided to run away after police raided a nearby company for suspected undocumented migrants, which made him fear he would be arrested and detained. As his agency had trafficked him to the labour supply company, Rajit was only able to get home by paying USD 375 to a local agent. Back home, Rajit was forced to sell his land in order to pay the outstanding loan of NPR 105,000 (USD 1,016) that he had taken to pay his recruitment fee and migration expenses.¹⁶⁷

165 Amnesty International interview with DS in Gorkha district, on 19 June 2017.

166 Amnesty International interview with Foreign Employment Promotion Board, on 5 July 2016.

167 Amnesty International interview with RG in Rupandehi district, on 18 July 2017.

Only a few of the trafficked victims were able to access the Embassy of Nepal. This did not always lead to beneficial results for migrant workers. As a case in point, Hari, a migrant worker who had returned from Malaysia in 2014, told researchers that the embassy failed to protect him and the recruitment agency was able to pressure him back into work:

“The company did not pay us for three months. We escaped and found the embassy of Nepal. When we were processing our documents, ready to leave, a representative of our recruitment agency just showed up in the embassy. We met him and finally agreed to keep working, provided that we would get the promised salary and official work visa. The recruitment agent asked us to go back to the company, but we refused. We did not want to return to this employer. So the recruitment agent transferred us to another company in Malaysia. We received the right salary this time, but the company never issued an official work visa. Police were cracking down on migrants without work visas. Because we were illegal, we ran away from this company. The company would not give us back our passports. Finally, I paid NPR 90,000 (USD 871) to an agent to help me return home.”¹⁶⁸

Trafficking of Women for Labour Exploitation

Since the 1990s, Nepal has passed several restrictions on female migration that prevent women from using the same migration routes as men. At present, there is an age ban that restricts the migration of women under the age of 24 for foreign employment, which was recently lowered from the age of 30. These restrictions on the right to freedom of movement have resulted in many women using alternative, irregular migration channels, which often puts them in the hands of labour traffickers. The restrictions also create gender-specific barriers to justice mechanisms and compensation at the DoFE.

Nine of the 10 female migrant workers that researchers interviewed were younger than the government age restriction at the time of their migration, and they relied on relatives or a local agent to arrange their migration through India as a result of the age ban. These women were later exploited in Gulf countries and Malaysia.

Rana’s experience offers a textbook case of labour trafficking of Nepali domestic workers. Rana’s recruitment agency organised her transfer in 2010 to a Malaysian woman in Kuala Lumpur, who took away her documents and mobile phone upon arrival and placed her as a domestic worker in a Malaysian home. Rana was initially told that the first six months of her salary¹⁶⁹ would be directly transferred from her employer to her recruitment agency in Nepal because she did not have the funds to pay the fee upfront. However, she was not paid any salary for the rest of her 2-year contract, after which she was sent home. Rana was required to be available for work at all hours of the day without designated hours or days for rest. On most days, she worked from 6 a.m. until midnight. She was further prevented from leaving her employer’s house unaccompanied, which made it difficult for her to escape her situation and/or try and seek help. Rana returned to Nepal after two years of forced labour, without having earned a single rupee. She has never received any compensation or justice under Nepali law.

Amnesty International interviews with district and national authorities confirm that, especially at the district level, the linkage between labour migration and human trafficking is not well recognised or addressed. The Nepali authorities tend to heavily associate the crime of human trafficking with

¹⁶⁸ Amnesty International interview with HS in Rupandehi district, on 22 July 2016.

¹⁶⁹ The sum of this amount was RM 3200 (or USD 876 based on the currency conversion rate in 2010 when this money was paid).

sexual exploitation, or as a crime that mainly affects women and children. It is difficult to determine the extent to which police have identified and registered labour trafficking cases because law enforcement and criminal justice records do not disaggregate between labour and sex trafficking. Nepal's National Human Rights Commission (NHRC) report for 2013-2015 raised specific concerns about the government's poor enforcement of laws pertaining to the nexus between foreign employment and human trafficking, and also claimed that Nepal has remained on Tier 2 of the U.S. Trafficking in Persons list for five years "mainly because it cannot fully protect its migrant workers from slipping into forced labour situations."¹⁷⁰

Exacerbating the government's weak approach to labour trafficking is the overall poor enforcement of trafficking legislation. While the NHRC estimates 8,000-9,000 Nepali citizens are victims of human trafficking each year, only a small fraction of trafficking cases are registered by the police for further investigation and prosecution.¹⁷¹ Criminal proceedings are also lengthy and conviction rates are less than 60%.¹⁷²

Amnesty International is not aware of any cases in which licensed labour recruitment agencies or agents have been investigated for labour trafficking under the HTTCA. Migrant workers who are victims of debt bondage and fraudulent and deceptive recruitment practices are typically told by district police and other authorities to register their cases with the DoFE under Nepal's Foreign Employment Act.¹⁷³ Even when police departments have become more involved in foreign employment cases, they still refer these cases to the DoFE because of their lack of jurisdiction under the law. For example, the Kathmandu Metropolitan Police Crime Division told Amnesty International it had referred 184 of 186 complaints registered against recruitment agents and agencies at its office to the DoFE for further investigation, some of which may have been revealed to amount to labour trafficking under HTTCA provisions.¹⁷⁴

At the DoFE, migrant workers are encouraged to settle their complaints through negotiations with recruiters for compensation and few cases are forwarded to the Foreign Employment Tribunal for criminal prosecutions.¹⁷⁵ The diversion of migrant worker cases through the FEA effectively prevents the criminal prosecution of trafficking for the purposes of labour exploitation. This in turn facilitates impunity for perpetrators.

170 National Human Rights Commission (NHRC), "Trafficking in Persons: National Report 2013-15", National Human Rights Commission, March 2016, p. xv.

171 This conclusion was reached by the two authoritative reports on human trafficking in Nepal. These are: U.S. State Department, "2016 Trafficking in Persons Report", U.S. State Department, June 2016, p.282 and National Human Rights Commission (NHRC), "Trafficking in Persons: National Report 2013-15", National Human Rights Commission, March 2016.

172 National Human Rights Commission (NHRC), "Trafficking in Persons: National Report 2013-15", National Human Rights Commission, March 2016, p.xvii.

173 Interviews with district officials in Kailali, Dhanusha, Jhapa, Gorkha, and Saptari from 11 June – 28 June 2016. Migrant workers interviewed in these districts also reported that they were instructed to file their cases at the DoFE.

174 Amnesty International interview with Kathmandu Metropolitan Police Division in Kathmandu, on 28 June 2016.

175 U.S. State Department, "2016 Trafficking in Persons Report", U.S. State Department, June 2016, p.282.

6.4 FORCED LABOUR

Forced labour is closely associated with human trafficking. The International Labour Organisation (ILO) Convention (ILO) 29 defines “forced or compulsory” labour as “all work or service which is extracted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”¹⁷⁶ Based on the Convention, the ILO has further developed a common set of criteria to assess what constitutes forced labour, which are based on two elements: *involuntariness* and *penalty or menace of a penalty*.¹⁷⁷ The following indicators can be used to identify forced labour in practice:

Involuntariness (Lack of Consent to Work)	Actual Presence or Threat of a Penalty
<ul style="list-style-type: none"> • Restriction of Freedom of Movement • Physical Confinement in Work Location • Psychological Compulsion • Induced Indebtedness (by falsification of accounts, reduced value of goods or services produced) • Deception or false promises about types and terms of work • Withholding and non-payment of wages • Confiscation of identity documents 	<ul style="list-style-type: none"> • Physical or sexual violence • Financial penalties (such as non-payment of wages) • Loss of rights or privileges • Denunciation to authorities and deportation • Dismissal from current employment or exclusion from future employment • Deprivation of food, shelter or other necessities

There is little aggregated data in Nepal to show the scale of forced labour experienced by Nepali migrant workers. Some government officials interviewed by Amnesty International conceded that Nepali migrant workers were vulnerable to the conditions of forced labour within the main countries of destination. Nevertheless, these government officials did not fully understand their obligations to victims of forced labour under international law, instead believing that labour rights violations occurring outside Nepal’s jurisdiction was only the responsibility of destination countries to prevent and remedy.¹⁷⁸ They also did not recognise the relationship between recruitment offences and forced labour circumstances, or their role in protecting their citizens from unethical and criminal conduct of recruitment businesses that placed migrants in situations of serious human and labour rights abuse.

NGOs providing rescue and repatriation services to victims of forced labour report that migrants whose work is extracted by means of deception, coercion, violence and other penalties face significant barriers in accessing justice or receiving compensation from employers in destination countries.¹⁷⁹ This is consistent with Amnesty International’s research in Qatar and Malaysia, two of the largest destination countries for Nepali workers.

176 As stated in Article 2.2 of the Convention, an exception is made with regard to military service for work of a purely military character, normal civic obligations, work as a consequence of a conviction on in a court of law and carried out under the control of a public authority, work in emergency situations such as wars or other calamities, and minor communal services.

177 ILO, *Hard to see, Harder to Count*, p.13 available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182096.pdf

178 Amnesty International interview with Foreign Employment Tribunal in Kathmandu, on 3 July 2016.

179 Amnesty International, “Trapped: The Exploitation of Migrant Workers in Malaysia”, Index number: ASA 28/002/2010, 24 March 2010.

The testimonies of 110 returnees and other documentation supporting their stories of recruitment and employment were closely examined according to ILO indicators of forced labour. In assessing their conditions against these ILO indicators, Amnesty International found evidence of 64 workers who were subjected to forced labour.

Figure 6.2 lists the number of cases identified during this research for each ILO indicator of involuntariness and presence or threat of penalty.

Figure 6.2: Number of Cases Per ILO Indicator of Forced Labour

Involuntariness	Number of Cases Identified	Actual Presence or Threat of a Penalty	Number of Cases Identified
Restriction of Freedom of Movement	110 migrant workers	Physical or sexual violence	22 migrant workers
Confiscation of identity documents	110 migrant workers	Financial penalties (e.g. non-payment of wages)	17 migrant workers
Deception or false promises about types and terms of work	100 migrant workers	Loss of rights or privileges	4 migrant workers
Physical Confinement in Work Location	18 migrant workers	Denunciation to authorities/ deportation	12 migrant workers
Psychological Compulsion	18 migrant workers	Dismissal from current employment or exclusion from future	1 migrant worker
Induced Indebtedness	51 migrant workers	Deprivation of food, shelter or other necessities	8 migrant workers
Withholding and non-payment of wages	17 migrant workers		

Actual Presence or Threat of Penalty

The menace of a penalty can take different forms depending on the context. Domestic workers were the most likely to mention they had faced routine physical abuse by the men and women for whom they worked. Men, in contrast, often mentioned they became victims of physical abuse when they tried to leave their workplaces as a result of unpaid wages or another problem in the workplace.

Some migrant workers said that they were punished by employers because they had been sent to work in jobs for which they did not have the necessary skills. Amira, a 24-year old woman from Dhanusha district, was sent for work at a factory in Malaysia. When she arrived, she realised that she could not perform her job in the factory assembly line because it entailed reading written instructions for each piece of jewellery that needed to be assembled – and Amira was illiterate. Amira approached her employer, explained her situation, and made a request to leave. The factory supervisor refused to let her leave, and she soon realised that others who had asked to leave were locked in their rooms at night.¹⁸⁰ Amira was only allowed to leave after two years when her work visa for Malaysia expired.

One group of 7 migrant workers told Amnesty International that they were lured by the promise of high wages – RM 1700 – 1800 per month or twice the minimum wage for migrant workers in Malaysia. Their recruitment agency had reassured them that this workplace was honest and decent by connecting them with a migrant worker in the same company. But Dipson, a 28-year old man with eleven dependents, described the circumstances that the workers faced when they reached Malaysia:

“We barely spent 30-40 minutes in the company that was promised. From there, another vehicle came and took us to a construction site. At the site, there were no safety measures. During my second day at work, a Bangladeshi worker fell down from the 45-storey building under construction...and burst like an egg! We feared this would be our fate. The company told me that if you want to be let go, you have to pay us RM 800 (USD 187) compensation for your visa and buy your own ticket home. When we kept complaining, the company did many things to us...like get men to threaten us and ask the police to arrest us.”¹⁸¹

Despite these threats, Dipson and his fellow migrant workers continued to raise their safety concerns with the company. Apparently as punishment, their employer had them arrested on charges that were never explained to the men and they had to pay bribes to the police for their release. Eventually, Dipson paid RM 800 (USD 187) — more than a full month’s salary — to enable his safe departure from the construction company and to return home to Nepal. Dipson said that he had unsuccessfully sought assistance from the Embassy of Nepal in Malaysia to negotiate for his release from the company, so that he would not have to pay.

Out of the 64 forced labour cases, researchers found only one instance where a Nepali embassy had arranged financial assistance and helped the individual leave.

180 Amnesty International interview with FU in Dhanusha district, on 20 June 2016.

181 Amnesty International interview with DT in Rupandehi district, on 22 July 2016.

6.5 THE DIFFICULTY OF LEAVING A JOB: CONFISCATION OF PASSPORTS AND EMPLOYER-TIED VISAS IN DESTINATION COUNTRIES

In addition to debt burdens, employers use the retention of passports and visa restrictions which tie the migrant worker to the employer, to force migrants to stay and perform their jobs no matter the circumstances they encounter.

All 110 migrant workers interviewed said that employers took away their passports by demanding them immediately upon their arrival. In all cases the migrant worker's work visa was tied to their employer, which prevented them leaving and seeking other jobs even if they were paid less than promised, faced illegal deductions from their salaries, or faced other abuse by their employers. In most major destination countries receiving Nepali migrant workers, approval or permission of the original employer is required before any migrant worker can move jobs within the country. In Qatar and Saudi Arabia, major destination countries for Nepali workers, migrant workers require their employers' permission simply to exit the country.

Twenty-six of the 64 interviewed migrant workers who had been subject to forced labour told Amnesty International that they eventually decided to take the risk and leave their workplaces. This was usually because their wages were unpaid and workers urgently needed to repay debts. In some cases, migrant workers were performing construction jobs and serious concerns for their safety prompted their decision to leave workplaces without permission. All 26 workers left without their passports which were held by the employers, significantly heightening their exposure to arrest and detention.

Most of these workers decided to return home immediately because they were too afraid of arrest to search for new employment or to work without a legal work visa. However, in five of the 26 cases, the workers decided to leave their original workplaces and find work elsewhere as undocumented workers, to pay off migration debts.

Farshid told Amnesty International that he had arrived in Qatar as part of a group of 60 Nepali workers, all of whom quickly discovered that their salary was less than had been promised by the recruitment agency. Their employer in Qatar frequently did not pay their wages on time and the workers struggled to get the back pay that was owed to them. Farshid decided to first appeal to the Embassy of Nepal in Qatar for help. When he did not receive any assistance, he decided to run away from the Qatari company because he felt he could no longer work without being paid.

“There were many of us who had sold our land, house and were very much in debt. Some did not want to leave and were willing to stay and work, even if they earned much less than what they were supposed to. Only 7 out of the 60 workers decided to go to the Embassy. When I tried to come to the Embassy after the first day, the staff member had switched his phone off. I realized that this problem would never be solved, and I had a big loan at home, so I decided to run away from the company. I worked in construction and then as a gardener, anything that I could get.”¹⁸²

¹⁸² Amnesty International interview with FM in Gorkha district, on 21 June 2016.

Farshid went on to discuss the abuse and hardship he faced as an undocumented worker:

“While undocumented, I had to sleep in various barren buildings to hide from police. After that, I met a man who paid me QAR 60 (USD 16.5) a day. Eventually I was arrested and detained for one month before being deported. When I got to Nepal, I didn’t have a single penny to get home. My wife took out another loan and sent NPR 10,000 so that I could buy nice clothes, so that the villagers would not think badly of me. I was so ashamed to return home emptyhanded. I had debt that I hadn’t cleared, so I waited until 10pm at night to sneak into to the village.”¹⁸³

6.6 ABANDONED ABROAD: EXPLOITED WORKERS STRUGGLING TO RETURN HOME

Under the Foreign Employment Act, recruitment agencies have an obligation to bring workers back to Nepal if they encounter specific problems.¹⁸⁴ Last year, the DoFE issued 418,713 foreign labour permits to migrant workers going abroad for foreign employment. Yet, the DoFE’s Rescue and Complaint Unit informed Amnesty International that it had recorded only 56 instances in which recruitment agencies had helped migrant workers return home during this financial year.¹⁸⁵ This number represents 0.0001% of the total number of migrant workers sent abroad during the same time period. While it is possible that some recruitment agencies may have assisted workers and not reported this to the government, this number nevertheless provides a strong indicator of how rarely recruiters provide repatriation assistance to migrant workers trapped in exploitative working conditions.

In 110 cases Amnesty International documented, researchers failed to find one case in which a Nepali recruitment agency had repatriated a migrant worker who had requested assistance after they discovered that the terms and conditions of their work were different than promised. Usually, workers reported that agencies refused to take their calls, or taunted them to try and prove they had been sent by the agency. One recruitment agency told Amnesty International that when migrant workers called asking to be brought home, the agency called the Nepali police and asked them to intervene with the workers to persuade them to stay and work.

In Malaysia, as well as some other destination countries, Amnesty International found that an informal marketplace of local private actors had emerged to meet the demand for return by Nepali workers whose rights had been abused by both their recruitment agencies and their foreign employers.¹⁸⁶ Migrant workers who had been subjected to forced labour told Amnesty International that they turned to this marketplace after not getting effective assistance from either their recruitment agencies or the Nepali Embassy. Some workers claimed that embassy staff were unresponsive to request for repatriation assistance, with some feeling that the staff were overwhelmed by the numbers seeking such help.

183 Amnesty International interview with FM in Gorkha district, on 21 June 2016.

184 Article 75 of Act states “Where any worker becomes helpless by the reason that the worker has not got such facilities as set forth in the contract and such the worker has to return to Nepal, the concerned licensee shall arrange for the returning of such worker.”

185 DoFE information provided through written communication, on 9 March 2017.

186 Several studies have suggested that a variety of actors and services arise around the facilitation of migration across international borders. The concept of the “rescue industry” has been developed in the work of Thomas Gammeltoft-Hanesen and Ninna Nyberg Sorensen, “The Migration Industry and the Commercialization of International Migration”, Routledge, 2013, p.4-7.

Adnesh paid NPR 180,000 (USD 1,743) for his recruitment fee and had to take out a loan with 25% annual interest. It took his recruitment agency more than one year to arrange his departure, during which they held his passport, preventing him shifting to another agency. Adnesh discovered when he arrived in Malaysia that his salary was less than what was promised. Although his company often deducted unexplained fees from his wages, and often delayed payment, Adnesh stayed on and worked because of his debt burden. When his mother became severely ill in Nepal, however, Adnesh felt it was finally time to leave. His company refused to allow him to leave or return his passport and told Adnesh he was required to stay and work until the end of his three-year contract.

Adnesh called his recruitment agency – who refused to help him. He then called his local agent, an acquaintance in his village. According to Adnesh, his recruitment agent told him:

“Come on brother, just stay and do the work. Everyone is doing it, people who have gone with you are doing it – so why are you finding it difficult?”

Adnesh approached the labour attaché at the Embassy of Nepal in Malaysia. He told Amnesty International that the embassy encouraged him to stay and work out the problem with his company rather than leave. At this point Adnesh decided to seek the services of a Nepali agent, who was running a hotel next to the Embassy, to arrange his documentation and transportation home. The agent liaised with the Embassy of Nepal to obtain a travel document to enable him to return to Nepal.

Many migrant workers interviewed gave similar testimony. When they did not have their identity documents or the legal documentation necessary to leave destination countries, assistance was often not forthcoming from their recruitment agencies or Nepali embassies.¹⁸⁷ This meant the migrant workers had to pay informal agents set up in Nepali restaurants and in areas near embassies to obtain travel documents that would enable their departure without the threat of financial penalties, arrest and detention.

Some migrant workers said they found themselves again exploited by the informal economy, with “rescue” agents charging workers high fees and also defrauding workers by absconding with their payments. Some migrant workers told Amnesty International that they had encountered Nepali agents in host countries who preyed upon their desperation to return home and took up to USD 600 in service fees before disappearing. Migrant workers could not report this type of fraud because of their lack of legal status or proof of the transaction.

Kiritsh sought the services of a Nepali agent to return home because his employer held his passport and he had got no assistance from the Nepali embassy. Kiritsh said he paid RM 3,000 (USD 914) but did not realise he was being provided fake travel documents, which led to his arrest at Kuala Lumpur airport by immigration authorities when he tried to exit the country:

“The police took me to court three times, and every time they took me out I had to pay money. The court then sent me to jail for 14 days. After 14 days, I was sent to a camp [detention centre] until I could arrange RM 1200 (USD 365) for the ticket to return home.”

¹⁸⁷ Nepal's Ambassador to Malaysia told Amnesty on 15 November 2016 that the embassy was given insufficient funds to deal with the high volume of workers requiring assistance.

Kiritsh remained in the detention centre for three months. Others faced similar patterns of re-victimization. Twenty two of the 110 returnees told Amnesty International that they had become trapped in their countries of destination, as a result of deception or other abuse of their labour rights, and were unable to receive repatriation support from embassies. They had paid between USD 609 and USD 4000 to Nepali agents in host countries in exchange for assistance to return home. These fees covered flight tickets, travel documents and agents' charges. Some workers said that the additional financial burden was such that families needed to take out new loans at high interest rates.

6.7 RE-MIGRATION AFTER EXPLOITATION

Foreign employment may – when it is successful – result in remittances and a better economic situation for migrant workers and their families, but for some workers it can open up a cycle of indebtedness and vulnerability to abuse and exploitation. Whereas many migrant workers aspire to save enough to start a small business in Nepal after one stint of working abroad, studies estimate that 37% of former migrants are prone to re-migrate within twelve months of their return.¹⁸⁸ Circumstances that compelled their earlier migration may not have changed, and in many cases it is the need to repay debts incurred during the migration process that drives the return. Migrant workers may better understand the deceptive and coercive tactics used by agencies to recruit workers, but their vulnerability to abuse is exacerbated by conditions of debt bondage from their previous migration.

Gopah, a migrant worker from Gorkha district, confirmed this reality for some workers:

“I had decided never to go abroad again because I was deceived. But, I have a huge loan from the last time I migrated, and it increases day-by-day because of the interest. This is painful for me. So even though I do not want to go abroad again, I am thinking that maybe I will go to pay off my loan.”¹⁸⁹



188 IOM, “Mapping of Private Sector Entities Engaged in Migration Related Initiatives”, IOM, 2014.

189 Amnesty International interview with GN in Gorkha district, on 22 June 2016.

6.8 THE LINK BETWEEN DECEPTIVE RECRUITMENT, FORCED LABOUR, AND IRREGULAR STATUS

Prabir's story is a classic case of deceptive recruitment, which shapes pathways to forced labour and other human rights abuses. Prabir, a male migrant worker and father of three children, faced exploitation during two separate jobs in Malaysia.

Prabir first migrated in 2010. Unable to make a living as a vegetable farmer in Nepal, Prabir paid NPR 110,000 (USD 1,065) to a recruitment agency in Kathmandu in exchange for organising his employment in Malaysia. Three years later, Prabir returned to Nepal after his employer failed to give him a long promised salary raise, which had been motivating him to work longer in the company.

After Prabir's return he was unable to start a business in order to stay with his family, leading him to re-migrate within a year of his return. During Prabir's second migration experience, he used a recruitment agency he was referred to by a nephew he trusted. This time, Prabir was overcharged NPR 140,000 (USD 1,300) for his ticket, visa and recruitment agency service fee. In addition to this, he unexpectedly had to pay another RM 2000 (USD 475) to the Malaysian labour supply company that picked him up from the airport and organised his employment in a Malaysian security company.

Prabir's passport was immediately taken away and he was not paid the salary he was promised before his departure. For 15 months, Prabir was inconsistently paid between RM 483 and RM 533 (USD 114 – 126) per month as a result of unforeseen deductions by his employer. At this monthly rate, Prabir's salary was far below the RM 900 (USD 210) minimum wage for migrant workers in Malaysia. He was also not paid on a regular monthly basis, making it impossible to budget for his living expenses or send money home.

Prabir described his exploitation in the following manner:

“They would just cut the salary for various reasons and tell us that it was because we were not doing our work properly. If we were caught looking at the floor they would claim we were sleeping. If we looked to the other side, he [the supervisor] would say we were thinking about something else and not the work.”

One day Prabir and his fellow workers were told that 62% of their salary that month would be deducted from their monthly wage. When he complained, Prabir's work supervisor at the security company told him not to “flex his muscles” against the company. Prabir's supervisor then threatened him further, warning him that he regularly travelled to Nepal to visit recruitment agencies. Prabir told researchers he wanted to approach the Malaysian labour supply company for help, but was afraid of the Nepali staff there and their connection to his recruitment agency in Nepal.

Eventually, Prabir ran away to work as an undocumented security guard with regular pay for five months. However, Prabir could not overcome the fear of living as an undocumented worker. As soon as he collected enough money to pay off his recruitment debt and loan, Prabir contacted the Embassy of Nepal for assistance to return. At the time that Prabir spoke with Amnesty International, he was already in the process of re-migration for a third time despite his experiences of deception, abuse and labour exploitation.¹⁹⁰ He felt that without access to employment in Nepal, he was still dependent on foreign jobs.

190 Amnesty International Interview with PP in Kathmandu, on 26 July 2016.

7. PERSISTENT FAILURES TO PROTECT LABOUR MIGRANTS



‘There is a complete lack of monitoring by the government here. There are so many intermediaries and loopholes in the process, that no new policy – such as the “Free Visa, Free Ticket” Policy -- will ever work until the government starts regulating the whole chain. So many costs are being passed onto workers without effective regulation at the local level.’¹⁹¹

Journalist from Jhapa district

The serious and systematic human rights abuses documented in this report demonstrate that the Nepal government is failing to comply with its duty to protect labour migrants at home and abroad. The Nepal government must take all appropriate measures to protect labour migrants from conditions of debt bondage, trafficking and forced labour and related abuses. This chapter discusses the government failures to adequately discharge its responsibilities to its citizens seeking and undertaking jobs abroad.

Although this chapter focuses on systemic weaknesses in the protection of migrants’ rights, Amnesty International notes and welcomes some positive changes to the Nepal government’s policy and practice since 2011. These include, *inter alia*:

- **Developing a Foreign Employment Policy (2012)**, setting a goal to “ensure safe, organised, respectable and reliable foreign employment.”
- **Putting in place new labour directives, manuals and guidelines** on domestic workers, medical examinations, and orientation training.
- **Establishing new technologies to enhance the transparency of recruitment processes (2016-2017)**, including the development of an **SMS system** for migrant workers to check the status and details of their recruitment, and a **Foreign Employment Information Management System (FEIMS)** for Department of Foreign Employment (DoFE) officials to receive foreign employment paperwork from recruitment agencies and process labour permits online.
- **Increasing migrant worker insurance coverage (2016-2017)**, so that families of deceased migrant workers receive higher amounts of compensation.

¹⁹¹ Amnesty International interview with journalists in Jhapa district, on 26 June 2016.

These achievements aside, Amnesty International's concern is the minimal progress in the government's monitoring, inquiry, investigation, and the punishment of recruitment agencies and agents. While the government's policies often incorporate international standards on the protection of migrant workers' rights, Amnesty International finds that many policies represent commitments on paper without any real political will to implement them. For this reason, the status quo remains unchallenged.

For example, Nepal has made progress in the development of new technologies to monitor recruitment actors and processes. Even though these technologies improve transparencies, the data being collected by new information management systems are not being used to seriously tackle widespread lack of accountability in the recruitment industry. Despite repeated studies on the accessibility and quality of justice for migrant workers, redress mechanisms remain poor and migrant workers receive only a tiny fraction of the compensation that they are due. Finally, weak enforcement of laws and policies, recruiter access and influence over government, and patterns of departmental resource allocation strongly suggests that government's priority is to facilitate the interests of the recruitment industry and foreign employers. This has come at the expense of regulating and supervising private sector actors to ensure that the rights of migrants are better protected.

7.1 REGULATING RECRUITMENT: NEPALI LAW AND PRACTICE

Many of Nepal's international obligations and responsibilities to migrant workers are reflected in its domestic legislation, including its Constitution; the Foreign Employment Act (FEA); the Human Trafficking and Transportation (Control) Act (HTTCA); the *Muluki Ain* (General Code of Nepal); and other pieces of legislation that are applicable to the regulation of recruitment and foreign employment.

Nepal's 2007 Foreign Employment Act and 2008 Foreign Employment Rules together constitute the principal legal framework that regulates the recruitment of migrant workers for foreign employment. Most legal cases involving migrant workers are brought under Nepal's FEA and not its civil code or criminal legislation on trafficking.¹⁹² Even though there is overlap between offences under trafficking legislation and the criminal code, and offences under the FEA, abuses of migrants' rights occurring in the context of foreign employment are generally dealt with by Nepal's DoFE, and therefore not investigated by police or dealt with by the criminal justice system. As the FEA does not explicitly address serious crimes such as human trafficking and forced labour, this means that investigation and prosecution for these crimes – which would potentially deter recruitment agencies from exploiting workers if it was seen as a genuine risk – is incredibly rare. Amnesty International is not aware of any recent prosecutions of recruitment agencies under Nepal's trafficking legislation.

192 According to Nepal's *Muluki Ain*, when a specific body of law have been developed to regulate a particular issue, such as foreign employment, cases should be dealt with by that body of law instead of the *Muluki Ain*. *Muluki Ain* (General Code), 2019 (1963), Part 1, no. 4, p.4, available at: <http://www.lawcommission.gov.np/en/documents/2015/08/muluki-ain-general-code-2020.pdf>

The Foreign Employment Act offers some legal protections to migrant workers, some of which should attract fines or penal sanctions if they are violated. Key provisions include:

Type of Offense	Offences Defined Under the Foreign Employment Act	Legal Penalty for the violator	Compensation owed to Migrant Worker by violator
Delayed departure of migrant worker	Article 20: "...the licensee shall send the concerned worker for foreign employment within the period, if any, specified for entering into the concerned country and within three months if such period is not specified. "	None	The full amount taken from the worker, with interest on that amount at the rate of 20% per annum within thirty days (after the period of time as expired).
Sending workers abroad without a license or by making false promises	Article 43: Any person who " carries out a foreign employment business " without a license , or collects any amount with the intent of engaging another person in foreign employment, or sends a person abroad for employment "by giving false assurance or showing enticement."	NPR 300,000-500,000 fine; 3-7 years imprisonment	The full amount taken from the migrant worker, plus an additional 50% of the amount taken. The violator must bear the expenses incurred during travel to or from the country of destination.
Sending a worker without DoFE permission	Article 44: Any licensee that sends a worker "without receiving permission" from the DoFE, or engages a person in foreign employment by giving false assurance or showing enticement.	NPR 300,000-500,000 fine; 3-7 years imprisonment	The full amount taken from the migrant worker, plus an additional 50% of the amount taken.
Sending a minor (under 18 years) for work abroad	Article 45: Any licensee that sends a minor for foreign employment.	NPR 300,000-500,000 fine; 3-7 years imprisonment	No compensation awarded.
Sending a worker to country not approved by the government	Article 46: Any licensee agency that obtains a visa or sends a worker to any country that has not be approved by the Government for foreign employment.	NPR 300,000-500,000 fine; 3-7 years imprisonment. If the worker has not yet departed, the non-compliant agency is subject to half of the punishment.	No compensation awarded.

Type of Offense	Offences Defined Under the Foreign Employment Act	Legal Penalty for the violator	Compensation owed to Migrant Worker by violator
Providing false or fraudulent documentation	Article 47: Any licensee that “knowingly conceals any document or report required to be maintained under the Act, or the rules framed under the Act,” or alters any matter or “makes any false contents or causes any one to prepare false details.”	A fine of NPR 100,000 – 300,000; 6 months – 1 year imprisonment. Any agency found in violation of this provision twice faces revocation of their license and double the penalty listed above.	No compensation awarded.
Operating a branch office without permission.	Article 48: Any licensee that “opens a branch office without obtaining permission of the Department.”	A fine of NPR 200,000 per each unauthorised branch and closure of such branches	No compensation awarded.
Failure to publish job positions, or publishing job positions without permission.	Article 49: Any licensee agency that “fails to publish an advertisement” prior to the recruitment of workers, or publishes an advertisement without first obtaining permission of the Department.	A fine of NPR 50,000 and cancellation of the advertisement. If any licensee fails to set out such details in an advertisement as required to be set out as per the permission, the licensee must correct and republish the advertisement.	No compensation awarded.
Failure to provide compensation	Article 51: Any licensee that refuses to return the amount taken from the worker and pay compensation to workers whose rights have been violated in Section 20 (delayed departure) and Section 36 (fraud and deception).	A fine of NPR 100,000. License revoked.	The DoFE may get such amount or compensation returned or provided to the concerned worker from the cash deposit made by that licensee pursuant to Section 11 of the act. If the licensee fails to pay the amount due within 60 days, the compensation can also be paid from the assets of the licensee.

Type of Offense	Offences Defined Under the Foreign Employment Act	Legal Penalty for the violator	Compensation owed to Migrant Worker by violator
Sending workers without engaging in the formal process	Article 52: Any licensee that sends workers on a personal basis.	NPR 100,000 – NPR 300,000. License may also be revoked.	
Overcharging migrants	Article 53: Any licensee that collects visa fees, service charges and promotional costs in excess.	A fine of NPR 100,000	Fees charged in excess are to be returned
Deceptive recruitment with regards to type or terms of work offered	Article 55: “Any licensee, after making a contract with any worker for work in a company, engages the worker in work for remuneration or facilities lower than 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 for remuneration and facilities less than ...offered previously.”	A fine of NPR 100,000	Shortfall in the amount of remuneration or facilities for work that should have been provided according to the contract

However, weak regulatory measures and selective application of the laws that govern labour migration have allowed recruitment agents and agencies to evade accountability for their harmful business practices.

7.2 RESOURCES ALLOCATED TO THE PROTECTION OF MIGRANTS' RIGHTS

Globally, Nepal is the third-largest recipient of remittances.¹⁹³ In FY 2016, Nepal received a staggering USD 6.3 billion in remittances—comprising 1/3 of its GDP.¹⁹⁴ Mass labour migration also contributes to state revenue in other ways, including the taxation of “migration” businesses, the collection of annual licensing fees and fines from recruitment agencies, and the collection of fees for issuing passports and labour permits (costs usually borne by migrant workers).

This revenue generated from labour migration, however, far outweighs actual government spending on the protection of migrant workers and regulation of recruitment and foreign employment processes. Despite enormous remittance flows into the country, the Nepali government, on average, has only allocated around less than 1% of the national budget to the Ministry of Labour and Employment (MoLE), which regulates recruitment and foreign employment processes.¹⁹⁵

In addition, the DoFE – the main regulatory body responsible for licensing, monitoring, investigation, and punishment of non-criminal offences of the FEA – had a budget of only NPR 98,384, 000 last year, which is just under USD 1 million. According to the DoFE, 134 DoFE officials are engaged in work related to processing labour permits and facilitating the departure of migrant workers, but there are only 3-4 DoFE official who monitor recruitment agencies to ensure their business activities comply with the law and do not harm workers.¹⁹⁶

Additionally, there are only 3-4 DoFE officials responsible for conducting investigations of migrant workers' claims of fraud, overcharging, or other violations of the Foreign Employment Act. The 6-8 DoFE officials responsible for monitoring and investigation of recruitment agencies are further impeded from conducting their work because they are not provided with a dedicated vehicle for monitoring or investigation of recruitment agencies.¹⁹⁷ There are 754 recruitment agencies, currently sending over 400,000 migrant workers overseas every year. For 2015-2016, this meant there were roughly 94 agencies and 52,339 migrating workers for each DoFE monitoring official, not including the thousands of local agents.

DoFE officials told Amnesty International that they had conducted 120 monitoring visits from June 2015 to June 2016 of the 754 recruitment agencies in Kathmandu, but did not clarify if this number included monitoring of a single agency more than once. This implies that *at least* 84% of recruitment businesses did not receive a monitoring visit in the year following the introduction of the “Free Visa, Free Ticket” Policy. The DoFE could not provide the exact number of cases of monitoring that led to further investigation.

This level of resourcing is dramatically out of touch with the scale of the abuse affecting migrant workers. The government should increase its resourcing for the monitoring and investigation of recruitment agencies, and should consider other ways of bolstering resources, such as giving district police more authority to monitor and investigate recruitment activities.

Government data collection is also inadequate. Nepali embassies do not keep consolidated data on human and labour rights abuses experienced by migrant workers during their foreign employment, nor

193 World Bank, Migration and Development Brief No. 23, World Bank, 2014.

194 Asian Development Bank, “Macroeconomic Update Nepal, Volume 4 no. 2, Asian Development Bank”, 2 August 2016, p.19, available at: <https://www.adb.org/sites/default/files/institutional-document/191526/macroeconomic-update-nepal-aug-2016.pdf>

195 Bandita Sijapathi, “Migration and Development,” *Kathmandu Post*, 4 March 2016, available at: <http://kathmandupost.ekantipur.com/news/2016-03-04/migration-and-development.html>

196 Information provided to Amnesty International by DoFE on 9 March 2017.

197 Information provided to Amnesty International by DoFE on 9 March 2017.

is this data aggregated between embassies in the main destination countries. Data recorded on migrant worker deaths and injuries is also incomplete because the cause of such incidents is not well-recorded in destination countries or in Nepal. These gaps in the collection of protection-related data obstruct a more precise understanding of the extent of recruitment and labour rights abuses.

7.3 FAILURE TO EFFECTIVELY REGULATE LOCAL AGENTS

Nepal's regulatory framework for registration of local agents remains weak and highly ineffective. There are many factors disincentivising recruitment agencies from registering the local agents that recruit for them. A recruitment agency must pay an extra NPR 200,000 (USD 1,936) to the DoFE as a deposit for registering an agent, and is prohibited from registering more than one. Although the Foreign Employment Act prohibits unregistered local agents from carrying out recruitment activities, there are no legal sanctions for recruitment agencies who use unregistered agents.¹⁹⁸

Effective registration and monitoring of local agents is a critical aspect of reducing abuses against migrant workers and holding perpetrators accountable. However, neither the MoLE nor DoFE have made the registration of local agents a priority. The DoFE in fact stopped registering local agents in 2015, and conducted only 15 recruitment monitoring visits outside Kathmandu in that same year. In 2016, the DoFE did not undertake any district-level monitoring visits.¹⁹⁹ Lack of DoFE monitoring, coupled with a lack of police involvement in monitoring and handling complaints of workers, amounts to a substantial regulatory gap over the day-to-day recruitment that happens at the local level. Journalists in Jhapa district told Amnesty International:

'There is a complete lack of monitoring by the government here. There are so many intermediaries and loopholes in the process, that no new policy – such as the "Free Visa, Free Ticket" Policy -- will ever work until the government starts regulating the whole chain. So many costs are being passed onto workers without effective regulation at the local level.'²⁰⁰

In May 2017, MoLE officials told Amnesty International that some government decision-makers were considering regulatory measures to completely eliminate local agents from the recruitment process. According to one MoLE official: "job positions should be advertised in the local newspaper according to the official regulation, so there is really no need to have local agents."²⁰¹ Yet, the MoLE official also admitted that recruitment agencies were against removing local agents from recruitment processes because local agents can recruit and deliver labourer quickly to them.

In theory, removing local agents from supply chains could reduce the incidence of fraud, overcharging, and deception. It is nonetheless short-sighted to expect that the current way of doing recruitment can change simply by asserting that a regulation already exists on paper, without having a well thought-out and well-resourced policy to achieve such an objective. It appears – similar to other government initiatives – that there has been little forward thinking about how the government will ensure recruiter compliance, especially given the DoFE's minimal human and financial resources for monitoring recruitment chains.

198 Taylor-Nicholson, Paoletti, Sijapathi, and Farenblum, "Labour Migration Agents: Regulation, Accountability, and Alternatives," Policy Brief No. 5, Centre for the Study of Labour and Mobility, June 2014, available at: <http://www.ceslam.org/docs/publicationManagement/CESLAM%20Policy%20Brief%205.pdf>

199 Information received in written communication from DoFE on 9 March 2017.

200 Amnesty International interview with journalists in Jhapa district, on 26 June 2016.

201 Amnesty International interview with Labour Secretary Laxman Prasad Mainali, on 5 May 2017.

Rather than restricting the role of local agents, Amnesty International would instead recommend that the government significantly increases resources for ensuring recruiter compliance with the law. This could entail giving clear authority to district police to monitor and investigate local agents.

7.4 RESTRICTIONS ON INVOLVEMENT OF THE POLICE

The Foreign Employment Act gives sweeping powers to the DoFE to carry out most of the functions related to managing foreign employment, including monitoring recruitment business activities investigating and charging recruitment agencies for violations of the FEA, and referring serious cases for prosecution at the Foreign Employment Tribunal (FET).

The DoFE's wide-ranging authority to regulate recruitment processes has the effect of limiting the role of police in enforcing the FEA or investigating recruitment agency involvement in criminal activity. Researchers found that by giving the DoFE the primary responsibility to regulate the conduct of recruitment businesses, many district police officers had become indifferent or disempowered to deal with routine recruitment abuse occurring within their jurisdiction. As one district police officer put it:

“There are special systems and procedures for manpower companies. Sure, I’ve heard about people not getting the salary they were promised, or forced to work overtime with no pay. But foreign employment issues are not the responsibility of police – we deal with theft, murder, and rape. These problems are like “white collar” crimes. And even if we did decide to go “out of the box” and investigate these matters, the recruitment agencies would get angry with us and say it is not our role to investigate.”²⁰²

There is some evidence that police have been actively discouraged by the Department of Foreign Employment and Ministry of Labour and Employment from investigating the criminal conduct of recruitment agencies, especially their involvement in labour trafficking.²⁰³ This is best illustrated by the government’s response to the Kathmandu Metropolitan Crime Division’s decision to investigate and arrest the heads of 17 recruitment agencies in February 2016 on criminal offences of fraud and human trafficking. According to the police, these raids were conducted after months of surveillance and evidence gathering, and based on the complaints of individual migrant workers who had been overcharged, deceived, and exploited during their employment abroad.²⁰⁴ Twelve people were arrested, with eight remanded in police custody and four referred to the Department of Labour for further investigation.²⁰⁵ Some of these cases have been referred to the criminal justice system on the offence of forgery under the *Muluki Ain*.

Police action did not provoke a positive response from the government or recruitment agencies. One week later, NAFEA launched a strike requiring all recruiting agencies to halt sending workers abroad and demanding an immediate end to police raids on the grounds that they had no authority to conduct such actions under the FEA.²⁰⁶ Talks were immediately scheduled between the Minister of Labour and Employment and NAFEA to reach an agreement on police raids, which put an end of the

202 Amnesty International interview with district police in Kailali district, on 13 June 2016.

203 Amnesty International interview with Metropolitan Police Crime Division, on 28 June 2016.

204 Amnesty International interview with the Metropolitan Police Crime Division in Kathmandu, on 28 June 2016.

205 Kathmandu Post, “Manpower agencies protest against ‘uninformed raids,’” Kathmandu Post, 26 February 2016, available at: <http://kathmandupost.ekantipur.com/news/2016-02-26/manpower-agencies-protest-against-uninformed-raids.html>

206 Kathmandu Post, “NAFEA Asks Recruitment Agencies to Uphold Strike”, 15 March 2016, available at: <http://kathmandupost.ekantipur.com/news/2016-03-15/nafea-asks-agencies-to-uphold-strike.html>

industry's strike.²⁰⁷ There have been no raids on recruitment agencies by police since February 2016, and the police commander responsible for conducting the raids has since been shifted to another police department. Government officials have maintained to Amnesty International that coordination with police is important, but told researchers "overcharging migrants is not police business and the police should not have intervened on the DoFE territory."²⁰⁸



Nepal's civil society has heavily criticized the DoFE's effective monopoly of power in regulating the recruitment business sector. Amnesty International is concerned with restrictions on the ability of police to investigate criminal activity occurring during the labour recruitment process, as this clearly undermines the protection of migrant workers' rights.

7.5 FAILURE TO HOLD RECRUITMENT AGENCIES ACCOUNTABLE AND PROVIDE REDRESS

Nepal's migrant population is paying a heavy price for the government's extremely weak monitoring system and failure to proactively investigate recruitment businesses and agents and hold them to account. Between 2012 and 2016, migrants submitted claims for a staggering USD 35.1 million in compensation from recruitment agents and agencies for financial losses and harms they had suffered from the recruitment sector.²⁰⁹ Migrant workers have registered more than 8,016 cases against their recruitment agencies and 3,163 against individual brokers over this same timeframe.²¹⁰

Despite the high volume of complainants, the government has not made substantial improvements to the access and quality of justice for migrant workers. Migrant workers still must travel to the DoFE in Kathmandu to submit cases and await lengthy judicial proceedings to have their cases resolved. Recruitment agencies are generally able to evade fines, and even legal sanctions, through a justice system that incentivises the settlement of cases, rather than investigation and referral to the Foreign Employment Tribunal.

Last year, only four recruitment agencies were referred to the FET for prosecution, while 85 recruitment agencies were fined by the DoFE for an amount between NPR 50,000 and NPR 100,000 (USD 484 to 968).²¹¹ This amount is exceptionally low when taking into account that most studies – including this report – show migrant workers paying above NPR 100,000 (USD 968) for their recruitment fees. Furthermore, a comparison of what migrant workers have *claimed* last year in compensation with what recruitment agencies *paid* in compensation and fines helps illustrate the clear lack of deterrence for recruitment abuse. Whereas migrants claimed USD 6.7 million in compensation last year, recruitment agencies paid fines of only USD 13,318 to the DoFE, and were ordered to pay compensation of USD 1 million to workers, just 14% of what the workers had claimed.²¹²

207 The Himalayan, "Manpower Agencies to Resume Partial Operations from Today", 31 March 2016, available at <https://thehimalayantimes.com/business/nepal-manpower-firms-to-resume-operations-partially/>

208 Amnesty International interview with DoFE Director Sudharsan Prasad Pudasini, on 29 June 2016.

209 Government of Nepal, "Labour Migration for Employment: A Status Report for Nepal 2014/2015", Government of Nepal, 13 June 2016, p.23-25.

210 Government of Nepal, "Labour Migration for Employment: A Status Report for Nepal 2014/2015", Government of Nepal, 13 June 2016, p.23-25.

211 Information provided through written communication by the DoFE, on 9 March 2017.

212 Information provided through written communication by the DoFE, on 9 March 2017.

7.6 RESTRICTED USE OF THE GOVERNMENT'S MIGRANT WORKER WELFARE FUND

The government has established a Migrant Worker Welfare Fund that is managed by the Foreign Employment Promotion Board. The fund collects between USD 3 to 5 million in mandatory contributions from workers annually, and currently has a surplus of approximately USD 37.2 million (NPR 3.85 billion).²¹³ The bulk of expenditures from the Welfare Fund are being used to compensate the families of deceased migrant workers and those who have been injured during foreign employment. In 2016-2017, USD 4.26 million was used from the fund for these purposes.²¹⁴

Nepali civil society and media have nevertheless complained that the Welfare Fund has been insufficiently used to address other problems that migrant workers face. Researchers found that government officials were reluctant to use the fund for repatriation of migrant workers who had been deceived about their working conditions by their recruitment agencies, and/or were victims of labour exploitation during foreign employment. The Nepal Ambassador to Malaysia told Amnesty International that there was limited funding available to repatriate workers suffering from debt bondage and labour rights abuse. Yet, he said that the Nepal government was hesitant to use the fund for repatriation because this may encourage agencies to continue their bad practices:

“If the government uses the Welfare Fund for this purpose, it is ultimately cleaning up a problem created by recruitment agencies.”²¹⁵

There is a visible human rights impact from the limited use of the Migrant Worker Welfare Fund, especially for migrant workers who are trapped in abusive employment situations and lack the resources to return home, or are forced to accrue additional debt in order to fund their own repatriation. It is essential that the government makes more effective use of this fund to protect migrant workers' rights, as well as ensure that recruitment agencies fulfil their obligations under the law to repatriate workers when they fail to receive the working conditions that were promised.

7.7 WEAK OVERSEAS MONITORING AND EMBASSY PROTECTION OF MIGRANTS

Labour attaches from Nepal's embassies have a critical role to play in the protection of migrant workers while they are abroad. They are responsible for resolving disputes between migrant workers and foreign employers and for aiding victimised workers or those in situations of distress to return home. Nepali labour attaches can also help prevent human and labour rights abuses from occurring in the first place, given their role to attest labour demands from foreign employers. In theory, they should channel their observations about abusive recruiters and foreign employers to the Ministry of Foreign Affairs, MoLE and DoFE, and advise the government on which recruitment agencies and foreign employers should be further investigated or placed on government lists of blacklisted businesses.

Yet, researchers found evidence that embassies and labour attaches have not played a proactive role in protecting workers from exploitative working situations or preventing abusive businesses from recruiting Nepali workers. Only 57 foreign employers anywhere in the world were blacklisted in 2015

213 Information provided by the Foreign Employment Promotion Board on 9 March 2017. See also Khabar, “Five-member parliamentary panel to probe misuse of funds meant for Nepali migrant workers” Khabar, 10 August 2016, available at: <http://english.onlinekhabar.com/2016/08/10/383556#sthash.nJoJydoh.dpuf>

214 Information received by written communication with the FEBP, on 9 March 2017.

215 Amnesty International interview with Niranjana Man Singh Basnyat in Kuala Lumpur, Malaysia, on 15 November 2016.

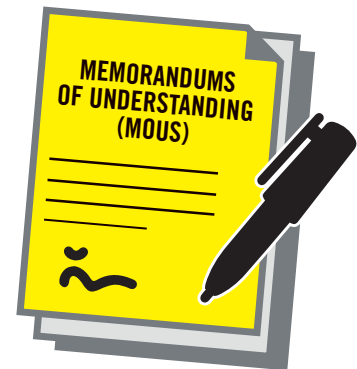
by the Government of Nepal, even though thousands of workers reported labour rights abuses to either the government or NGOs operating in Nepal or destination countries.²¹⁶ Demonstrating how small this number is in terms of actual number of foreign employers abusing workers, the Malaysia Trade Union Congress (MTUC) alone provided evidence of 97 cases of labour rights abuse of Nepali workers by different Malaysian employers last year.²¹⁷

Financial and human resource constraints also limit the embassy's ability to protect migrant workers abroad. Nepal has only placed one labour attaché in each of its six embassies in the destination countries, with the exception of its embassy in Malaysia which has two labour attaches. Thus, in most instances, there is only one labour attaché to deal with migrant worker concerns in countries that have hundreds of thousands of Nepali migrant workers.

Finally, a significant concern is the Nepal government's failure to comply with its responsibility to assist its citizens who are undocumented workers, and whose lack of documentation may be the result of deceptive recruitment and/or labour trafficking (as outlined in this report). Government officials from MoLE, DoFE, and the Ministry of Foreign Affairs all told Amnesty International that migrant workers who had not left Nepal through legal migration channels were not entitled to the same assistance as migrant workers who had received labour permits from the DoFE. This runs counter to Nepal's positive obligations – under international human rights law – to all its nationals who are abroad, and fails to take into account that the irregular status of undocumented workers may also be the result of deceptive and abusive recruitment and employment practices.

Bilateral Labour Agreements

Nepal has signed labour agreements or memorandums of understanding (MoUs) with only some countries receiving its migrant workers, including: Qatar, United Arab Emirates, South Korea, Bahrain, and Japan.²¹⁸ Such agreements could potentially play an important role in protecting workers' rights. However, there are flaws in these agreements, which undermine their effectiveness and prevent their implementation. For example, they do not clearly state the human and labour rights of migrant workers and the justice and redress mechanisms that are available to them. They also do not specify provisions for joint monitoring of recruitment processes. And since the introduction of the "Free Visa, Free Ticket" Policy, the government has also not re-negotiated these agreements to make explicit mention of the new requirements for foreign employers to pay ticket and visa processing costs. Nepal's Foreign Ministry should prioritize the renegotiation of these agreements in its bilateral relations with these destination countries, seeking in particular to develop workable and transparent joint implementation plans.



216 DoFE, "List of Foreign Employers Blocked for Conducting Foreign Employment in Nepal", 25 November 2015.

217 Amnesty International interview with the Malaysia Trade Union Congress (MTUC) in Kuala Lumpur, Malaysia, on 16 November 2016.

218 Sijapathi and Limbu, "Governing Labour Migration in Nepal: An Analysis of Existing Policies and Institutional Mechanisms", Centre for the Study of Labour and Mobility, 2012.

8. CONCLUSIONS AND RECOMMENDATIONS

Amnesty International's research has documented considerable numbers of Nepali migrant workers who have been trafficked and subject to the conditions of debt bondage and forced labour. It has also found strong evidence --through testimonies, documentary proof and conversations with recruitment actors -- that recruitment agencies are routinely extracting high sums of money from migrant workers and sending them abroad for exploitation, in conditions that sometimes amount to forced labour, through the manipulation of recruitment debts, confiscation of identity documents, and deprivation of work contracts and receipts. Nepali migrant workers are subject to a range of other human rights abuses during their time abroad, and when they return and attempt to seek a legal remedy for harms experienced within the recruitment process.

The Nepal government has failed to take adequate action to enforce its domestic legislation that is meant to protect migrant workers from labour trafficking and exploitation. Even though significant numbers of Nepali workers go abroad for work, labour recruitment processes remain poorly monitored and regulated. Legal and institutional fragmentation also poses a major challenge to mitigating systemic abuse and exploitation of migrant workers. Limited police involvement in registering and investigating cases of deceptive recruitment and labour trafficking severely limits migrant workers' access to justice.

Amnesty International urges the Nepal authorities to take immediate measures to end the circumstances of debt bondage and forced labour that are created when the rights of migrant workers are not respected. The government must strive for a more humane labour recruitment system that treats migrant workers as human beings, and addresses the business practices that are turning migrants into commodities bought and sold on the labour market.

In order to build a stronger regime for recruitment compliance with the law, the government must first reform the 2007 Foreign Employment Act (FEA) and address the regulatory gaps that foster impunity in the recruitment sector. So far, the government's lengthy process for review and reform the FEA has failed to produce a new law. Among other changes, reforms should clearly stipulate police authority to investigate recruitment conduct under Nepal's trafficking legislation, and refer relevant cases for prosecution at district courts. Finally, the government must take concrete steps to develop a workable "Free Visa, Free Ticket" Policy. The Policy requires a phased plan for implementation, including measures that create the right incentives for recruitment agencies to move toward a recruitment model where employers, not workers, pay fees involved in the recruitment of foreign labourers.

It is clearly not only the Nepali government who must act to protect Nepali migrant workers. Destination countries have obligations to protect migrant workers from forced labour and other forms of exploitation and abuse. This means carrying out genuine reforms to laws, policies and practice and effectively enforcing labour laws that should prevent abuse of migrant workers by employers. Nepal should take immediate steps to strengthen the scope and enforcement of its bilateral agreements with destination countries.

8.1 RECOMMENDATIONS

Recommendations to the Government of Nepal:

- 1. Reduce the vulnerability of migrant workers to forced labour and other abuses by fully committing to a zero-cost recruitment system;**
 - As a first step, invest fully in the implementation the “Free Visa, Free Ticket” Policy and enforce penalties against recruitment agencies that collect visa fees, services charges and promotional costs in excess of the maximum amount established by the government, under Article 53 of the Foreign Employment Act.
 - Require recruitment agencies to include accurate and fully itemised receipts in the application paperwork submitted for work permits, and ensure that migrant workers are able to access these itemised receipts within online platforms.
 - Negotiate with destination countries to put in place procedures for ensuring that foreign employers follow Nepal’s “Free Visa, Free Ticket” Policy, which requires employers to pay for airline ticket and visa costs of migrant workers working in their businesses.
 - Develop a transparent and accessible system that allows migrant workers to make payments online to recruitment agencies and other services purchased prior to departure.
 - Harmonize the government framework for regulating recruitment agencies and other migration-related businesses -- such as medical clinics, travel agencies, and insurance companies -- so that high migration costs and exploitation of migrant workers can be dealt with more effectively.
 - Issue a circular from the Ministry of Labour and Employment requesting the assistance of district police and local authorities in the monitoring of labour recruitment chains.

- 2. Ensure that current provisions of the Foreign Employment Act are fully implemented and that recruitment agencies that fail to comply with these responsibilities face adequate punishments. In particular, the Government should seek to strengthen its enforcement of the following provisions of the Foreign Employment Act:**
 - Article 53 that regulates overcharging of migrant workers.
 - Article 25 that requires recruitment agencies to provide migrant workers with a written copy of their contracts in Nepali, in advance of their arrival in Kathmandu.
 - Articles 55 and 47 that require recruitment agencies to provide migrant workers with employment in accordance with their contracts and prohibit recruitment agencies from providing workers with false, misleading or substituted contracts, or concealing or altering documents.
 - Articles 43 and 44 that regulate fraudulent and deceptive recruitment.
 - Article 75 (1) that requires recruitment agencies to repatriate workers who have not received the terms and conditions that have been promised to them.

- 3. Consider making amendments to the 2007 Foreign Employment Act, which is currently in the process of reform, that:**
 - Clearly define the legal obligations of recruitment businesses with respect to the rights of migrant workers, and establish penalties for non-compliance of recruitment businesses;
 - Establish joint liability between recruitment agencies and local agents, ensuring that recruitment agencies are held accountable for job information provided to workers by the local agents that they use, irrespective of a local agent’s official registration with that agency.

- Establish joint liability between recruitment agencies and foreign employers for labour trafficking, and forced labour, and for other violations of the Foreign Employment Act, especially when it can be demonstrated that recruitment agencies have not exercised due diligence in ensuring the rights of workers will be respected by foreign employers, or when recruitment agencies have previously received complaints from workers with regard to a particular foreign employer, but have still continued to recruit and send workers to that employer regardless of their knowledge of abuse.
- Establish fines and penalties for any individual who confiscates and refuses to return the passport of prospective migrant worker who has given his or her passport with the expectation of receiving a valid work permit for a specific job placement, when the mandatory three-month time period for retaining passports has lapsed, as stipulated under the Foreign Employment Act.
- Recognise and fully specify a right to redress for migrant workers whose rights have been abused in Nepal or the country of destination, including the right to receive compensation corresponding with the amount specified in the Foreign Employment Act;
- Raise the amount of compensation available to migrant workers based on a reassessment of common violations of the Act and the financial consequences endured by migrant workers on account of recruitment misinformation and abuse.

4. Establish effective deterrents for recruitment abuse against migrant workers:

- Improve mechanisms of collaboration and data sharing between Department of Foreign Employment investigators and the Nepal police, at the national and district levels, ensuring that recruitment abuses are adequately investigated and that cases are referred for prosecution according to the full range of sanctions available under the Foreign Employment Act.
- Consider ways that migrant workers can receive financial support or an early form of compensation from local agents and recruitment agencies while their cases are being investigated and referred for prosecution at the Foreign Employment Tribunal.
- Decentralise existing complaints procedures so that migrant workers are able to file complaints at the district or regional level, and do not have to bear additional costs in accessing justice and redress mechanism that are centralised in Kathmandu.

5. Recommence the registration of local agents and consider ways to involve local district authorities in the process.

6. Improve Migrant Worker Access to the Migrant Worker Welfare Fund:

- Expand the use of the Welfare Fund for repatriation and provision of financial assistance to victims of labour trafficking and forced labour, using Article 33 (b) of the Foreign Employment Act which specifies that the Welfare Fund may be used for migrant workers who have not received the facilities promised to them by recruitment agencies.
- Consider mechanisms in which recruitment agencies, who are in violation of Article 75 (1) of the Foreign Employment Act, are required to make deposits into the Welfare Fund as a method of recovering government funds that have been used to repatriate victims of deceptive recruitment.
- Consider using a portion of recruitment agency licensing fees and fines paid for violations of the Foreign Employment Act for protection activities, including skills training and income generating activities, especially targeting abused migrant workers who have accumulated high debts.
- Decentralise claims processes so that migrant workers can register their claims with the Welfare Fund at the district level, for example in government offices that issue passports to migrant workers.

- 7. Strengthen domestic and cross-border monitoring of local agencies, recruitment businesses and foreign employers:**
 - Develop a National Action Plan on recruitment monitoring that clearly defines specific roles and objectives for different government ministries and district government officials.
 - Increase the number of labour attaches and strengthen their role in monitoring recruitment practices and forced labour, and ensure that abusive recruitment agencies or employers that are detected by labour attaches are further investigated and added to government blacklists.
- 8. Ensure that the revised Foreign Employment Act ensures that all migrant workers, regardless of whether they migrated through official routes, have access to existing complaints mechanisms and can seek redress if they were trafficked and/or forced to work under exploitative terms or conditions, and that they and their families have access to the Welfare Fund for compensation for injuries or deaths while abroad.**
- 9. Apply a rights-based approach to the use and development of new technologies for labour migration governance, such as the Foreign Employment Information Management System (FEIMS), ensuring that online platforms are not only used to facilitate labour migration, but also support transparency and accountability in the recruitment sector.**
- 10. Develop a recruitment rating system, based on the number of complaints and sanctions applied per agency and other indicators, that will enhance transparency and allow employers to recruit from Nepali businesses that comply with ethical recruitment principles and standards.**

International Organisations and Donors

1. Support the government to adopt and enforce a zero-cost recruitment system wherein employers bear the costs associated with the recruitment of migrant workers.
2. Consider mechanisms to enhance the role of civil society in recruitment monitoring, especially through more systematic information sharing between civil society actors in Nepal and key destination countries.
3. Strengthen training for Nepali workers and their families on documentation of human and labour rights abuses.
4. Enhance training for the police and Department of Foreign Employment on special investigation methods and techniques to combat recruitment abuses, labour trafficking and forced labour, and facilitate opportunities for stronger international cooperation to assist and protect migrant workers.
5. Sustain advocacy toward the government for the revision of the Foreign Employment Act in line with international human rights standards.
6. Support the Nepali government to develop a recruitment rating system that will enhance transparency and allow employers to recruit from Nepali businesses that comply with ethical recruitment principles and standards.
7. Advocate for greater transparency and government accountability in the drafting of laws and policies on recruitment and labour migration, and for independent monitoring of the recruitment and migration-related businesses.
8. Support the government to increase access to legal aid for migrant workers.

South Asian Countries of Origin for Migrant Workers

1. Finalise and collectively implement the South Asian Association of Regional Cooperation (SAARC) “Declaration on Labour Migration” (Agenda 21) to develop common standards on labour migration that include clear commitments to zero-cost recruitment and to the protection of migrant workers from human trafficking and forced labour.

Destination Countries

1. Sign and enforce bilateral labour agreements with Nepal that stipulate that employers must pay for migrant workers’ recruitment costs.
2. Ensure migration policies that raise fees for pre-departure services do not contribute to the vulnerability and exploitation of migrant workers, namely by ensuring that employers bear these additional costs of recruitment.
3. Ensure that laws, policies and practice relating to the recruitment and employment of migrant workers are compliant with international labour and human rights law and standards and do not facilitate or permit exploitation or abuse.
4. Consider measures that incentivise employers who can demonstrate that they are recruiting from businesses in Nepal and elsewhere who respect the human rights of migrant workers, and that workers are arriving for work without debts.


Foreign Employers and Multinational companies


1. Commit to paying recruitment fees and related pre-departure cost for migrant worker: regularly audit recruitment agencies, and the local agents that they use to recruit workers, to ensure workers are not paying recruitment costs.
2. Carry out human rights due diligence of suppliers and subcontractors that employ Nepali and other migrant workers, putting in place policies and processes to prevent, mitigate and address the risk of migrant workers paying high recruitment fees and being exposed to exploitation as a result of business relationships.
3. Support the Nepali government to develop a recruitment rating system that will enhance transparency and allow employers to recruit from Nepali businesses that comply with ethical recruitment principles and standards.



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TURNING PEOPLE INTO PROFITS

ABUSIVE RECRUITMENT, TRAFFICKING AND FORCED LABOUR OF NEPALI MIGRANT WORKERS

In the absence of decent work opportunities at home, millions of Nepali citizens have turned to the global economy for employment. With more than 400,000 people leaving every year for jobs abroad, migration is a key source of income for the country. But although wages sent home by Nepali migrant workers make up almost a third of the country's GDP, a shockingly low proportion of the Nepal government's budget – less than one percent – is allocated annually to government departments mandated to protect the rights of labour migrants. Poor government oversight over the recruitment of Nepali workers for foreign employment have opened up countless possibilities for fraud, extortion, trafficking, and exploitation of people desperate for work.

This report provides fresh evidence that despite recently-introduced government reforms, entrenched patterns of abuse of Nepali migrant workers remain unaddressed. During recruitment processes, local agents and recruitment agents in Nepal are still able to deceive and exploit migrants without significant fear of being caught or punished. New government policies meant to improve the protection of migrant workers' rights, and drastically reduce what recruitment businesses can charge workers, have not been adequately resourced, monitored, or enforced. Migrants remain at risk of crippling indebtedness, forced labour, and various forms of exploitation throughout the migration process.

The report makes recommendations for the Government of Nepal, governments of destination countries and businesses to ensure that migrant workers are treated with respect and dignity, and that their migration experiences are not marked by deception, indebtedness and coercion.