

THE FIVE CORRIDORS PROJECT - CORRIDORS 2 AND 3

Nepal to Kuwait and Qatar: Fair recruitment in review

JULY 2021



ABOUT THIS DOCUMENT

The Five Corridors Project is an initiative led by FairSquare Projects, which aims to identify key measures that governments can take to ensure that migrant workers can migrate safely and with dignity. FairSquare Projects is a non-profit human rights organisation that tailors rigorous research with communication and advocacy work to promote systemic change. The Five Corridors Project is supported by Open Society Foundations, Humanity United and Porticus. The organisations that funded this project played no role in the design or execution of the research, and our conclusions and recommendations may not necessarily reflect the viewpoints of Humanity United, OSF or Porticus.

fairsq.org

Design by www.NickPurserDesign.com

Cover photograph: Visa applicants at a Migration Resource Center in Kathmandu, Nepal, 2015. © ILO

Assessment against the Five Corridors indicators:

3. Bilateral labour arrangements

- 3.1** Are the agreements publicly accessible in relevant languages? Are migrant worker organizations aware of them? _____ 59
- 3.2** Does the government prioritise fair recruitment in the negotiating and drafting of bilateral agreements, including involving social partners and basing its position on evaluations of existing recruitment practices? _____ 60
- 3.3** Do bilateral agreements incorporate relevant internationally recognised human rights and labour standards? _____ 63
- 3.4** Do bilateral agreements contain specific mechanisms on fair recruitment for example on consular protection, collaboration on enforcement, and coordination on closing regulatory gaps? _____ 65
- 3.5** Are there effective measures - that meaningfully involve social partners - to implement and review bilateral agreements, including oversight mechanisms? _____ 66

3. Bilateral labour arrangements

“Migrants are rarely given a space to participate [and] civil society advocates and trade unions are also excluded from these important conversations [about bilateral agreements], making it less likely that rights-based language will be strong and integrated in the text. In fact, migrant workers and civil society are often unaware of the movement of bilateral talks.” 2019 STUDY BY NEPALI NGO PEOPLE FORUM

Summary

Nepal has pursued new bilateral agreements on labour migration with vigour in recent years, concluding new agreements with stronger language on fair recruitment than in previous deals. Their new agreements, which come in the form of non-binding Memorandums of Understanding (MOU), include language on the protection of workers’ rights and have a strong focus on either eliminating recruitment fees or limiting them to those specified under Nepali law, known as the “Free Ticket, Free Visa” policy. Earlier MOUs were highly standardised and relied largely on destination state legislation. The Nepali government invested considerable time and political capital in the negotiating of these recent agreements, particularly the 2018 Malaysia MOU, which was inked against the backdrop of a ban on Nepali worker departures to Malaysia. This agreement, which includes specific provisions on the obligations of employers to bear recruitment costs - including travel expenses, insurance, medical expenses, work permit/ labour card fees and service fees - is now seen as a model for Nepal’s other agreements. The tighter restrictions it imposed on recruiters appears to have caused a backlash from the Nepali recruitment industry and appears to have contributed to the removal of a Labour Minister. The government does not share details of MOU implementation with stakeholders including unions and civil society, and as such it is difficult to assess what impact they have had, if any. The joint committees established under each agreement are opaque and meet sporadically, making it unclear what they achieve and raising concerns about whether there are effective mechanisms to drive and monitor these agreements. Nepal has been attempting to conclude a new agreement with

Qatar, to replace the largely insubstantial 2005 and 2008 agreements, but Qatar’s decision to press ahead with the Qatar Visa Center in Nepal without agreeing a new bilateral framework to guide this collaboration suggests that Qatar does not place high value on these agreements, and underscores Nepal’s lack of leverage over wealthier destination states. In March 2021 Nepali media reported that the government of Qatar had initiated the recruitment of 11,000 Nepali workers to be deployed in Qatar’s police force in the run-up to Qatar 2022 World Cup, without any agreement in place with the Nepali government in place. Qatar eventually agreed to postpone recruitment after the plans caused concerns in Nepal.

Qatar has more than 40 bilateral labour agreements, which appear to follow a standardised model. Mainly negotiated in the 2000s and early 2010s, these agreements are primarily aimed at securing and broadening the country’s sources of migrant labour, and ensuring its control over immigration. The agreements include language that allows Qatar to repatriate any number of migrant workers “if their presence in the State of Qatar becomes contrary to public interest or the national security of the State”. Provisions relating to recruitment in agreements that are available rely largely on Qatari legislation and attached model contracts for workers, which have not been made public. While Qatar has in the past touted its bilateral agreements as evidence of its commitment to labour rights, it has reduced this emphasis since embarking on its technical cooperation programme with the ILO, suggesting that it has come to consider that reform of its domestic legislation and institutions is more relevant to ensuring fair recruitment and employment for workers than relying on bilateral agreements.

Kuwait's bilateral agreements - which are not proactively publicised by the government - appear to play a minor role in Kuwait's regulation of migrant labour, with the exception of the bilateral agreement and standard contract negotiated with the Philippines between 2018 and 2020. The strong position adopted by the Philippines in the context of two murders of domestic workers in 2018 and 2019, combined with its leverage as a result of the high demand for Filipino workers, resulted in the

Kuwaiti government agreeing to an MOU which goes beyond its legislation, requiring it to set up a 24/7 hotline and to disqualify employers with records of violating the rights of Filipino workers from recruiting again. Kuwait is prioritising new MOUs with East African countries, including Ethiopia, seemingly with the desire to ensure it has a range of origin states it can rely on for the recruitment of domestic workers. Kuwait does not have a bilateral agreement on labour with Nepal.

Recommendations to the Governments of Nepal, Kuwait and Qatar for all future negotiations on bilateral agreements:

- Commit to sign binding agreements that are public and commit both countries to protect workers' fundamental human rights and labour rights throughout the duration of their recruitment, employment and return. These agreements should explicitly bind both states to enforce the 'employer pays' principle in relation to recruitment fees.
- Invite ILO experts, worker organisations and civil society to provide expert input into negotiations.
- Establish and implement meaningful oversight and dispute resolution mechanisms that include participation of key stakeholders including worker organisations.

3.1 Are the agreements publicly accessible in relevant languages? Are migrant worker organizations aware of them?

Nepal

The Nepali government has signed bilateral labour agreements with a range of destination countries

including Qatar, the UAE, South Korea, Israel, Bahrain, Japan, Jordan, Malaysia and Mauritius.²⁹⁹

The government has begun to publish some of these agreements on the Nepalese language pages of the MOLESS website, though its practices in this regard are inconsistent: only the Mauritius, UAE and Malaysia agreements are available.³⁰⁰

The Nepali embassy in Qatar's website does not include a copy of the Nepal-Qatar labour agreement nor does the Nepali Ministry of Foreign Affairs' page on Nepal-Qatar bilateral relations.³⁰¹ Nevertheless, this and other agreements are available in English on the website of the Centre for the Study of Labour and Mobility (CESLAM), uploaded with permission of the government, as these agreements are considered public documents.³⁰² A MOLESS representative told us that "we cannot make [bilateral agreements] publicly available unless we have the consent of the other party...Even though the public does not know what is in the BLA, it is not a problem".³⁰³ This suggests there may be other agreements which are not publicly available.

The National Network for Safer Migration told us that "even if the workers get access to such agreements, it is very technical and is in English. What the workers are looking for is simple language and information addressing their rights."³⁰⁴

Kuwait

According to the IOM, Kuwait has signed "a wide range of Memorandums of Understanding (MOUs) with Asian

299. Some of these can be viewed at CESLAM, "[Bilateral agreements](#)"

300. MoLESS, "[Bilateral labour agreements](#)"

301. Minister of Foreign Affairs, "[Nepal-Qatar Relations](#)"

302. CESLAM, "[Bilateral agreements](#)"

303. Official, Ministry of Labour, Employment and Social Security, interview, 8 January 2020.

304. Nilambar Badal, Policy and Campaign Coordinator at National Network for Safer Migration (NNSM), interview, 13 December 2019.

countries”.³⁰⁵ While some of these agreements are technically public, they are difficult to find and not shared proactively by the government through its key responsible departments. Those agreements which are publicly accessible are generally published by origin states or hosted by third parties such as research bodies or international organisations.

The Indian government has published the 2007 Kuwait-India MOU.³⁰⁶ The Philippines has shared copies of two Kuwait-Philippines labour agreements, from 2012 and 2018, on its website.³⁰⁷ A third Philippines - Kuwait agreement from 1997 is on the ILO website, alongside an agreement with Egypt from the same year, sourced from Kuwait’s official gazette.³⁰⁸ Seven agreements, including some of those listed above, are available on a different ILO site.³⁰⁹ The official gazette is in Arabic only and requires a Kuwaiti ID card to access.³¹⁰

Nepal and Kuwait do not have an agreement on labour migration.

Qatar

In 2017 Qatar told the ILO it had concluded 36 bilateral labour agreements and five MOUs with 36 origin states.³¹¹ While some of these agreements are technically made public, they are held in different locations, difficult to find and not shared proactively by the government through its key responsible departments. Additionally, the standard employment contracts appended to Qatar’s bilateral agreements are not publicly available.

We could not find any bilateral agreements hosted on the ADLSA website. The Gulf Labor, Markets and Migration Programme has retrieved 14 agreements, relating to 13 countries, from the official gazette. These

include two agreements with Nepal, the 2005 and its 2008 additional protocol.³¹² We found seven agreements are found using an Arabic language search in the official Al-Meezan gazette for “Treaties / labour”.³¹³ Seven agreements were available on the ILO website,³¹⁴ with 13 available on a different ILO site.³¹⁵ There was overlap in agreements available on these various sites. A senior official at ADLSA told us that he could email copies of new bilateral agreements to experts.³¹⁶

3.2 Does the government prioritise fair recruitment in the negotiating and drafting of bilateral agreements, including involving social partners and basing its position on evaluations of existing recruitment practices?

Nepal

The 2007 FEA empowers the Government of Nepal to sign bilateral labour agreements with countries of destination for Nepali migrant workers, but makes no mention of what the goals of such agreements should be.³¹⁷ The Nepali government told us that it pursues bilateral labour agreements with the protection of workers among its key goals.

A senior official at the Ministry of Law, Justice and Parliamentary Affairs said the government’s key negotiating aims were ensuring a minimum wage, zero cost migration (excluding the costs of travelling to Kathmandu and securing a passport), basic health and safety standards, legal assistance and for remedy for workers in distress, and the specific needs of women migrant workers. He told us that origin governments

305. IOM, “[Migration Governance Overview: The State of Kuwait](#)”, (May 2008).

306. [Memorandum of Understanding on Labour, Employment and Manpower Development between the Government of Kuwait and the Government of the Republic of India](#), (2007).

307. [Agreement on Employment of domestic workers between the Government of the Republic of Philippines and the Government of the State of Kuwait](#), (11 May 2018).

308. [Memorandum of Understanding on Labour, Employment and Manpower Development between the Government of Kuwait and the Government of the Republic of India](#), (1997).

309. AP migration, “[Database of MOUs/BLAs and Standard Employment Contracts](#)”

310. Access to the official Gazette [here](#).

311. ILO, “[Complaint concerning non-observance by Qatar of the Forced Labour Convention, 1930 \(No. 29\), and the Labour Inspection Convention, 1947 \(No. 81\), made by delegates to the 103rd Session \(2014\) of the International Labour Conference under article 26 of the ILO Constitution, GB.331/INS/13\(Rev.\)](#)”, (31 October 2017).

312. GLMM, “[Qatar - Bilateral Agreements](#)”

313. Al Meezan, “[Bilateral agreements](#)”

314. ILO, “[Bilateral labour arrangements \(BLAs\) on labour migration](#)”

315. “AP migration, “[Country profile: Qatar](#)”

316. Meeting at ADLSA, December 2019.

317. [Foreign Employment Act, 2007](#), Section 4, (2007).

such as Nepal have bargaining leverage with destination countries, and said that the Nepali government has “been vocal in addressing the concerns of Nepali workers in bilateral negotiations with the destination countries”.³¹⁸ Indeed in its 2020 Labour Migration Report, MOLESS celebrated “remarkable progress with the signing or renewal of labour agreements with Jordan, Japan, Malaysia, Mauritius and the UAE that include strong worker-centric provisions including employer pays principle, equal pay for equal work and no cost access to justice, among others”.³¹⁹ Some of these agreements have been recognised by Nepali migration experts as “much more progressive” than previous deals.³²⁰ That said, an expert close to the Nepal-Jordan MOU negotiation process, which the government has hailed for its contribution to protecting labour rights,³²¹ told us that in their view neither Jordan nor Nepal prioritised worker rights through the negotiation process.³²² One expert commented that the agreement “is the most normatively compliant MOU [for Nepal], because the ILO had a strong hand steering that.”³²³ However, in subsequent agreements, the ILO’s recommendations have not always been taken into consideration.³²⁴

The senior official at the Ministry of Law, Justice and Parliamentary Affairs told us that negotiations with Malaysia, in which Nepal proposed that workers receive a commission of one month’s salary as an incentive, were a good example of Nepal prioritising human rights in negotiations. The government of Malaysia initially rejected this suggestion, claiming it would be too onerous for their employers but eventually agreed on the provision of half a month’s salary being mandated. The then Labour Minister who negotiated the deal in 2018 spoke publicly about the need to safeguard rights in the agreement and to cut out exploitative recruitment: “we had to work hard to iron out the details. There was a lot of money going to the pockets

of middlemen in both countries for levees, visa fees, medical tests.”³²⁵

The Nepal-Malaysia negotiations were prompted by investigations exposing cross-corridor corruption involving government officials and systematic exploitation of migrant workers by fraudulent middlemen or brokers.³²⁶ The agreement was welcomed by Nepali media, who noted the precedent it could set: “perhaps by being complacent and not raising our demands clearly, we are missing out on even low hanging fruit that destination countries are readily willing to address.”³²⁷ However, in late 2019 the Minister who led the negotiations was removed from post, with media speculation that he had been unseated as a result of his efforts to protect migrant workers: “his strong stance against unscrupulous recruiters cost him his job”.³²⁸ In the 2020 Migration Report published by MOLESS, new agreements with Kuwait, Oman, Saudi Arabia, and Qatar were said to be in “ongoing discussions”.³²⁹ It was not clear if the government would continue to push for the inclusion of measures on fair recruitment in these discussions.

Negotiations are generally conducted without the involvement of social partners, according to a MOLESS official.³³⁰ Social partners are barely involved, a technical specialist told us, with the ILO the only organisation to be invited as a third-party observer in negotiations.³³¹ Civil society representatives told us that bilateral agreements are not made public until signed and CSOs are not offered a role in this regard.³³² Migrant Forum has noted that in Asia, “migrants are rarely given a space to participate [and] civil society advocates and trade unions are also excluded from these important conversations, making it less likely that rights-based language will be strong and integrated in the text. In fact, migrant workers and civil society are often unaware of the movement of bilateral talks.”³³³

318. Senior official, Ministry of Law Justice and Parliamentary Affairs, interview, 8 January 2020.

319. MoLESS, “Labour Migration Report 2020”, (2020).

320. The Kathmandu Post, “He was one of the few ministers who delivered. Then the prime minister sacked him.”, (25 November 2019).

321. The Kathmandu Post, “Nepal, Jordan sign labour agreement”, (18 October 2017).

322. Expert close to the Nepal-Jordan MOU negotiation process, remote interview, September 2020.

323. Dr Angela Sherwood, interview, August 2020.

324. ILO Nepal representative, interview, 21 October 2020.

325. The Nepali Times, “Nepal and Malaysia rewrite rules for migrant labour”, (15 September 2019).

326. The Nepali Times, “Kleptocrats of Kathmandu and Kuala Lumpur”, (20 July 2018).

327. The Nepali Times, “Bargaining Power”, (16 November 2018).

328. The Nepali Times, “Reducing labour pain”, (27 September 2017).

329. MOLESS, “Nepal Labour Migration report 2020”, (2020): 5

330. Senior official, Ministry of Labour, Employment and Social Security, interview, 8 January 2020.

331. Representative, ILO, Kathmandu, interview, 3 January 2020.

332. Nilambar Badal, Policy and Campaign Coordinator at National Network for Safer Migration (NNSM), interview, 13 December 2019.

333. Migrant Forum Asia, “Bilateral agreements and memoranda of understanding for the promotion and protection of the rights of migrant workers and members of their families”, (2014): 5

Kuwait

Kuwait has engaged in MOU negotiations in recent years with regard to domestic worker recruitment, in the context of incidents that have resulted in origin states imposing bans on migration. There is no indication that the Kuwaiti authorities have raised fair recruitment and migration: rather this depends on the interest of the origin state in pushing for the inclusion of such measures. A 2015 ILO study has argued generally that in the Gulf region MOUs have tended to be “less guided by provisions in international instruments than in other regions”.³³⁴

Negotiations with the Philippines concluded with a MOU in 2018, and a standard employment contract in 2020, after the Philippines imposed a ban due to the discovery of a murdered domestic worker in a freezer, more than a year after her disappearance. Relations were strained, with a representative of Al-Durra, the state recruitment agency for domestic workers, telling us that the Philippines suspended recruitment for “no reason”.³³⁵ Kuwait rejected a proposal by the Philippines to allow domestic workers to sue employers from outside Kuwait.³³⁶ As negotiations were finalised, Filipino officials told media outlets that during negotiations Kuwait wanted to exclude from the agreement terms relating to the depositing of workers’ passports with the Philippines embassy rather than with employers, but “finally they agreed.”³³⁷

After a two year standoff, India dropped a key demand of Kuwait in 2017 for employers to provide a bank guarantee in order to recruit an Indian domestic worker - to be used in the event that the employer did not pay wages or otherwise abused workers. Kuwait had rejected this measure, on the basis that protection under its domestic law was sufficient, and the recruitment of Indian workers was halted. The Indian ambassador said “the measure was withdrawn primarily because it was not acceptable for Kuwait and because it was proven to be ineffective.”³³⁸ Meanwhile, in negotiations in 2020 with

Ethiopia, a country Kuwait turned to in order to meet the demand for domestic workers after the Philippines ban (termed a “crisis” in the Kuwaiti media),³³⁹ key Kuwaiti requirements for the MOU were reported by the media to include conditions that workers must display “efficiency, previous training and proficiency in speaking the English language” with no public mention of fair recruitment.³⁴⁰

The Kuwait Trade Union Federation told us that they have not been involved in bilateral negotiations with origin states. Business community spokespeople offer their opinions on bilateral negotiations in the media on an-hoc basis, and have sometimes even initiated their own bilateral discussions with private sector counterparts in origin countries, suggesting they are eager to influence negotiations but do not currently have a clear process to participate in.³⁴¹

Qatar

Where Qatar has pursued MOUs on labour migration - reasonably rare in recent years, since it has agreements in place with all key origin states - it tended to do so as a means to ensure its control over immigration or to diversify its sources of migrant labour. Human rights and fair recruitment have played a relatively minor role in this process.

Qatar first signed bilateral agreements with origin states in the 1980s. When in the 2000s it negotiated a series of new agreements and additional protocols, officials at the US embassy were skeptical that the agreements were designed to protect rights: “the agreements appear to reinforce GOQ [Government of Qatar] control over the workforce and ensure continued Qatari access to cheap labor from abroad.”³⁴² In its 2008 additional protocol with Nepal, Qatar reserved the right to “repatriate any number of Nepalese workers if their presence in the State of Qatar becomes contrary to public interest or the national security of the State”.³⁴³ In the early 2010s

334. ILO, “Bilateral agreements and memoranda of understanding on migration of low skilled workers: a review”, 2015: 18

335. Senior representative of Al-Durra, remote interview, February 2020.

336. Al Qabas, 25) «اتفاقية العمالة الفلسطينية ترفض «فخ» لاحتوائها بنوداً تعرّض المواطنين للمقاضاة في كل دول العالم! الكويت ترفض» November 2019)

337. Arab News, “Philippines, Kuwait agree on migrant labor protection pact”, (18 March 2018).

338. Gulf News, “India drops bank guarantee clause for Kuwait domestic helpers”, (5 September 2017).

339. Arab Times Online, “Philippines domestic workers to cost KD 990 as set by MoCI”, (20 June 2018).

340. Gulf News, “Kuwait shifts to Ethiopia for domestic workers after Philippines row”, (22 January 2020).

341. Arab Times Online, “Ethiopia ready to enter Kuwait labor market after gap of 4 years”, (24 March 2018).

342. Wikileaks, “Qatar’s bilateral agreements - all pomp and no circumstance”, (4 February 2008).

343. Additional protocol to the Agreement on the Regulation of the employment of Nepalese Manpower signed on 21 March 2005 between the Governments of Nepal and the State of Qatar (the Agreement), (20 January 2010).

Qatar sought new agreements in order to broaden the numbers of origin states for domestic workers, particularly as the Philippines began to assert more strongly its demands for a \$400 a month wage.³⁴⁴

ADLSA officials told us that negotiations for MOUs follow a relatively standard format, with an emphasis on negotiating over an agreed minimum wage and establishing a template employment contract.³⁴⁵ This suggests the government prefers to avoid more bespoke negotiations. A 2015 ILO study argues that in the Gulf region MOUs have tended to be “less guided by provisions in international instruments than in other regions”.³⁴⁶

Qatar does not have trade unions who could play a meaningful role in negotiations. There is no recent evidence to assess the involvement or otherwise of business representation.

3.3 Do bilateral agreements incorporate relevant internationally recognised human rights and labour standards?

Nepal

Nepal’s older MOUs include very little in the way of human and labour rights commitments and protections. In recent years this situation has begun to change, with recent agreements including new objectives on worker protection and more specific provisions designed to prevent exploitation.

The Nepali NGO People Forum, in a 2019 review of bilateral agreements and MOUs, criticised the general failure of such agreements to reflect, or even mention, relevant international treaties, including core human rights treaties which have been ratified by the government of Nepal in order to protect the basic rights

to the workers for their safety, social security and access to redress mechanisms.³⁴⁷ This is particularly relevant to agreements from the 2000s. The Nepal-Bahrain, Nepal-UAE and Nepal-South Korea MOUs, all agreed in 2007 and 2008, define their purpose as maintaining friendly and cooperative relations in the field of manpower, rather than being framed around internationally recognised human rights and labour standards. There are few specific safeguards for workers in these agreements beyond the requirement that a contract is signed between the worker and employer, specifying terms and conditions.³⁴⁸

The 2005 Nepal-Qatar agreement aims simply to “organize Nepalese manpower employment in the State of Qatar”³⁴⁹ and the goal of the 2008 additional protocol is “mutual cooperation in the best interests of their citizens”.³⁵⁰ The 2005 agreement references an “appended model contract” to be concluded in Arabic, Nepali and English, though this is not publicly available. It confirms the employer’s obligation to provide the worker’s accommodation and medical treatment, in line with Qatari law. Both parties also commit that they “shall work with the proper jurisdiction in order to prevent trafficking of persons and forced labour in Qatar and Nepal. Article 6 states that, “the employer shall bear all travel expenses of the workers from the Kingdom of Nepal to the place of work in the State of Qatar upon entering the service for the first time as well as the expenses of the return passage”. There is no mention of recruitment fees, which is problematic given the discrepancies between Nepali and Qatari laws in this regard.

As detailed in 3.2, the government has given greater priority to worker protection in recent MOUs and has highlighted how these new agreements are “worker-centric” agreements.³⁵¹ The 2017 Nepal-Jordan agreement recognizes the international commitments of both parties on human rights and labour rights and sets an objective of actively promoting international

344. Gulf Times, [Qatar to recruit maids from five new countries](#), (28 April 2013).

345. Meeting with ADLSA official, December 2019

346. ILO, [“Bilateral agreements and memoranda of understanding on migration of low skilled workers: a review”](#), 2015: 18

347. People Forum, [“Study on Nepal bilateral labour agreement”](#), (2019).

348. [Memorandum of Understanding between the Government of Nepal and the Government of United Arab Emirates in the field of manpower \(2007\) and Memorandum of Understanding in the areas of Labour and Occupational Training between the Government of Nepal and The Government of the Kingdom of Bahrain](#), (2008).

349. [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](#), (2005).

350. [Additional protocol to the agreement on the regulation of the employment of Nepalese manpower signed on 21 March 2005 between the governments of the state of Qatar and Nepal](#), (2005).

351. MOLESS, [“Nepal Labour Migration Report 2020”](#) (2020): xvi.

labour standards of rights at work, encouraging decent work opportunities and enhancing social protection.³⁵² The 2018 Nepal-Malaysia MOU also has as one of its core objectives the protection of “the rights of both Workers and Employers”,³⁵³ a goal also included in the 2019 Nepal-Mauritius MOU.³⁵⁴ The 2019 Nepal-UAE MOU aims among other things to “establish a framework for the recruitment, employment and repatriation of the worker and protection of the rights of both the worker and the Employer”, with both parties agreeing to “regulate the recruitment, employment and repatriation of the Worker in accordance with the principles of transparency, ethical recruitment, fairness and mutual benefits”.³⁵⁵ A journalist specialising in migration commented that, “ILO conventions and other relevant laws are being considered... this was not prevalent in MOUs before. The perfect example is the MOUs with Malaysia, UAE and Mauritius.”³⁵⁶

These high-level commitments in Nepal’s newer agreements with Jordan, Malaysia, Mauritius and UAE flow down into specific provisions that are not found in the earlier agreements concluded with Qatar, UAE and Bahrain. In particular they include specific provisions on the obligations of employers to bear recruitment costs - including travel expenses, insurance, medical expenses, work permit/ labour card fees and service fees. Bespoke model contracts have been attached to the public versions of these MOUs.³⁵⁷ In the MOU with Mauritius, Nepali workers must be paid no less than the national minimum wage as applied to Mauritian nationals.³⁵⁸ Discussions with Qatar over a revision to the 2005 MOU, to introduce “zero cost recruitment”, faltered in late 2019.³⁵⁹

Kuwait

Kuwait’s available bilateral agreements do not generally refer to human or labour rights protections. The 2007

MOU with India, for example, simply specifies that a contract must be signed between the worker and employer, specifying terms and conditions, with a brief mention of cooperation for “the protection and the welfare of workers who are not covered under the labour law”, an apparent reference to domestic workers.³⁶⁰ Nepal and Kuwait do not have a bilateral agreement on labour, nor any MOU.

Kuwait’s 2018 agreement with the Philippines on domestic workers is something of an exception, being grounded in the “shared desire of [the two countries] to ensure the rights of Filipino domestic workers”. The agreement includes detailed commitments on the part of the Kuwaiti government to ensure employers meet their obligations to workers, including not retaining passports, providing a 24/7 telephone hotline and strictly enforcing wage commitments, which are to be made by bank transfer.³⁶¹ After lengthy negotiations, conducted against the backdrop of a Filipino ban on domestic workers going to Kuwait and with the Filipino side using its leverage to push the Kuwaitis hard, an accompanying standard employment contract was signed in February 2020,³⁶² based on a version originally proposed in 2018.³⁶³

Qatar

Qatar is party to at least 36 bilateral labour agreements and five MOUs.³⁶⁴ Those available do not generally reference protection of workers’ rights, international human rights or labour standards, in line with their general objectives to foster “cooperation” on the movement of manpower, though some - such as the 2005 Nepal-Qatar agreement - include references to the prevention of human trafficking.

352. [General agreement in the field of Manpower between the Government of the Hashemite Kingdom of Jordan and the Government of Nepal](#), (2017)

353. [Memorandum of Understanding between the Government of Nepal and the Government of Malaysia on the recruitment, employment and repatriation of workers](#), (2018).

354. [Memorandum of Understanding between the Government of Nepal and the Government of the Republic of Mauritius on the recruitment, and employment of workers from Nepal](#), (2019).

355. [Memorandum of Understanding between the Government of Nepal and the Government of United Arab Emirates in the field of manpower](#), (2019).

356. Gopal Sangrola, journalist and migration specialist, interview, 14 January 2020.

357. CESLAM, “[Bilateral Arrangements](#)”

358. [Memorandum of Understanding between the Government of Nepal and the Government of the Republic of Mauritius on the recruitment, and employment of workers from Nepal](#), (2019).

359. The Kathmandu Post, “[A year after Qatar’s offer of zero cost jobs to Nepalis, there is no substantial progress](#)”, (8 December 2019).

360. [Memorandum of Understanding on Labour, Employment and Manpower Development between the Government of the State of Kuwait and the Government of the Republic of India](#), (2007).

361. [Agreement on employment of domestic workers between the Government of the Republic of the Philippines and the Government of the State of Kuwait](#), (2018).

362. CNN, “[PH, Kuwait seal ‘harmonized’ template contract for OFWs](#)”, (5 February 2020).

363. Philippines Overseas Employment Administration, “[Memorandum circular no 10](#)”, (19 June 2018).

364. ILO, “[Complaint concerning non-observance by Qatar of the Forced Labour Convention, 1930 \(No. 29\), and the Labour Inspection Convention, 1947 \(No. 81\), made by delegates to the 103rd Session \(2014\) of the International Labour Conference under article 26 of the ILO Constitution](#)”, GB.331/INS/13(Rev.),(31 October 2017).

These agreements generally include a standardised model employment contract. In its report for the Qatari government in 2014, the law firm DLA Piper noted that “current Model Contracts negotiated in the Bilateral Treaties with States of Origin are intended to be legally binding in Qatar, but there are some concerns around the enforceability of these contracts.”³⁶⁵ We have not been able to obtain any examples of this model contract. According to a 2014 report by the UN Special Rapporteur on the rights of migrant workers, the model contract “provides for some regulation of the work, including the contract period, travel expenses, wages, accommodation, medical care and annual leave ... but does not provide any details concerning a description of the work to be performed or the working conditions.”³⁶⁶

It is not clear that any of these standards go beyond what is already specified in Qatari law. DLA Piper recommended strengthening the model contract, noting that “the [current] Model Contracts do not stipulate a specific standard that must be met” with regard to minimum living and working standards.³⁶⁷ Qatar has recently language to model contracts to specify that workers should not pay recruitment fees. A 2015 ILO report noted that Qatar has been a pioneer in appending model contracts to bilateral agreements, but points out that “there is hardly any evidence on their usefulness.”³⁶⁸

3.4 Do bilateral agreements contain specific mechanisms on fair recruitment for example on consular protection, collaboration on enforcement, and coordination on closing regulatory gaps?

Nepal

As with negotiations and the provisions of agreements, collaborative mechanisms to protect workers’ rights feature more prominently in recent agreements than older ones, though many remain general in nature

rather than specific. Agreements dating to the 2000s, for example the Nepal-Qatar 2005 agreement, generally rely on dispute settlement between workers and employers in the destination country, and potentially labour courts.³⁶⁹ The agreement does not establish any mechanism for ensuring that employers bear all travel expenses.

A senior official at the Ministry of Law, Justice and Parliamentary Affairs told us that recent years had seen progress on mechanisms to enforce labour standards through bilateral agreements.³⁷⁰ MOUs negotiated by Nepal since 2017 have indeed included a greater range of provisions to try to enforce worker rights in the recruitment process. These include model contracts that do not simply replicate the destination country’s laws (noted in 3.3), exchanging updated information on the status and standing of recruitment agencies operating in either jurisdiction, specific provisions regarding female migrant workers, and in the case of Malaysia and Mauritius, a requirement that employers collect workers from the airport within 6 hours of their arrival. The Nepal-Malaysia MOU also provides for a “special pass” (a temporary pass which is issued by the Immigration Department to allow foreign nationals to extend their stay in Malaysia) for workers who have made complaints.³⁷¹

Kuwait

Aside from its 2018 MOU on domestic workers with Philippines on domestic workers, Kuwait’s publicly available MOUs do not include specific mechanisms to enforce worker rights, relying largely on Kuwaiti domestic law and mechanisms. The Philippines MOU in contrast includes measures such as the disqualification of employers who have records of violating the rights of Filipino workers, the agreement by both parties that passports are the property of the Philippines government, the establishment by Kuwait of a 24/7 assistance hotline, and the requirement that employers set up bank accounts for workers’ wages to be paid into.³⁷²

365. DLA Piper, “Migrant labour in the construction section in the State of Qatar”, (May 2014).

366. UN Human Rights Council, “Report of the Special Rapporteur on the human rights of migrants, François Crépeau”, A/HRC/26/35/Add.1, (23 April 2014): 16.

367. DLA Piper, “Migrant labour in the construction section in the State of Qatar”, (May 2014).

368. ILO, “Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A Review”, (2015): 42

369. Agreement between the His Majesty’s Government of Nepal and the Government of the State of Qatar, concerning Nepalese manpower employment in the State of Qatar, (2015).

370. Senior official, Ministry of Law Justice and Parliamentary Affairs, interview, 8 January 2020.

371. CESLAM, “Bilateral Arrangements”

372. Philippines Overseas Employment Administration, Agreement on employment of domestic workers between the Government of the Republic of the Philippines and the Government of the State of Kuwait, (2018).

Qatar

Publicly available MOUs and agreements do not include specific mechanisms to enforce worker rights, relying largely on Qatari domestic law and mechanisms. Appended model contracts, as noted in 3.3, seem to largely reflect requirements of Qatari labour law. It is notable that Qatar's most striking efforts to cooperate with origin states to improve its regulation of recruitment processes for migrant workers, the establishment of Qatar Visa Centers in Nepal, Sri Lanka, Bangladesh, India, Philippines and Pakistan (see section 6.4) has taken place outside any formal MOU process. One expert suggested that Qatar may see little clear benefit to bilateral agreements, particularly if origin states such as Nepal and Philippines are increasingly seeking to negotiate more specific enforcement measures in such instruments.³⁷³

3.5 Are there effective measures - that meaningfully involve social partners - to implement and review bilateral agreements, including oversight mechanisms?

Nepal

Nepal's 2005 agreement with Qatar contains standard language requiring the formation of a joint working committee of the two governments to meet at least once every two years, coordinating implementation, settling any difficulties and reviewing and amending as may be necessary.³⁷⁴ The recently negotiated MOUs with Jordan and Malaysia require a similar process.³⁷⁵ The UAE MOU additionally assigns the joint committee with the much more specific responsibility to "agree on the recruitment process and itemize and identify all of the costs associated with the recruitment and employment of Nepali workers in the United Arab Emirates."³⁷⁶ As

well as the standard objectives, the Mauritius Joint Working Group has responsibility for determining insurance coverage amount and other key items related to recruitment, employment and repatriation, and reviewing them periodically as needed.³⁷⁷

There is potential for committees to have positive impacts, in particular when tasked with making specific decisions, for example around recruitment fees. However, the extent to which these committees meet in practice, and the impact they have when they do meet, is unclear. A government official stressed the effort that the key ministries (Foreign Affairs, Labour, Justice) went to in order to make these committees meaningful, and mentioned that they collaborated closely with the relevant Nepali labour attachés on these.³⁷⁸ But in Nepal, there is little transparency about these committees and stakeholders are unconvinced about their impact. The 2019 People's Forum study notes that decisions of these committees are not available, suggesting that "these meeting[s] never happen as mentioned in BLA and MoU." Accentuating this issue, none of these committees or groups requires the involvement of stakeholders including social partners.³⁷⁹

A former policy advisor to MOLESS said that it was unclear whether members of the Nepal-Qatar joint committee were meeting on a regular basis but questioned the usefulness of the mechanism in the absence of clear implementation provisions in the agreement itself: "If you look at the agreement with Qatar, it is more like a moral agreement, it's very generic, and whether you have the agreement in place or not, it does not really make a difference to migrant workers. When the implementation of the agreement is questionable, then the role of the joint working committee is also questionable."³⁸⁰ By contrast, according to the former advisor, government to government mechanisms include well-designed and structured programmes defining specific quotas of migrant workers per sectors, making the implementation of these agreements much easier.

373. Dr Angela Sherwood, remote interview, August 2020.

374. *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* hosted by CESLAM, (2005): 4.

375. *General Agreement in the Field of Manpower between the Government of the Hashemite Kingdom of Jordan and the Government of Nepal*, Article 18 Joint Committee, signed on 18 October 2017 and *Memorandum of Understanding between the Government of Nepal and the Government of Malaysia on the recruitment, employment and repatriation of the workers*, Article 10 Joint Working Group, signed on 29 October 2018.

376. *Memorandum of Understanding between the Government of Nepal and the Government of United Arab Emirates in the recruitment, employment and repatriation of workers*, Article 7(c) Joint Committee, signed on 14 June 2019..

377. *Memorandum of Understanding between the Government of Nepal and the Government of the Republic of Mauritius on the recruitment and employment of workers from Nepal*, Article 10 Joint Working Group, signed on 11 June 2019.

378. Senior official, Ministry of Law Justice and Parliamentary Affairs, interview, 8 January 2020.

379. People's Forum, "*Study on Nepal bilateral labour agreement*", (2019)

380. Upasana Khadka, Journalist, remote interview, 2 November 2020, .

Kuwait

Kuwait's bilateral agreements include standardised language requiring the formation of joint committees to coordinate implementation, settle issues arising and review and amend agreements as necessary. In the case of the Philippines it is clear that the joint committees have been very active, particularly in relation to the negotiation of a standard employment contract.³⁸¹ However, more broadly there is little evidence of such committees playing an important role in Kuwait's regulation of migrant labour.

There is no evidence that social partners are involved in the activities of joint committees.

Qatar

Qatar's bilateral agreements include standardised language requiring the formation of joint committees to coordinate implementation, settle issues arising and review and amend agreements as necessary. Its 2008 additional protocol with Nepal noted that the committee would specifically discuss the strategic management of labour migration: "employment opportunities [and] development plans in the State of Qatar, projected employment opportunities thereunder for particular

labour categories or skills, [and] the availability of the desire of Nepalese citizens to make use of them."³⁸²

In his 2014 report the UN Special Rapporteur for Migrants' Rights stated that such meetings did not take place regularly with all sending States.³⁸³ This is perhaps not surprising given the large number of origin states that have agreements with Qatar. Meetings do evidently take place at least with significant origin states, albeit far less regularly than specified in the agreements. The third Nepal-Qatar joint committee since 2005 took place in 2019, after meetings in 2013 and 2016.³⁸⁴ The fourth meeting of the Philippines-Qatar committee met in 2019,³⁸⁵ while the 5th Bangladesh-Qatar committee meeting was in 2020.³⁸⁶ Little detail is generally shared about discussions, making it difficult to assess whether any significant decisions are taken through them. The irregular nature of such meetings suggests Qatar does not see them as critical mechanisms for labour enforcement. For example, it is not clear that the 2016 meeting of the Nepal-Qatar joint committee had any input into decisions around the Qatar Visa Center in Nepal, which was opened in 2019.

Qatar does not have trade unions who could play a meaningful role in such bodies. There is no recent evidence to assess the involvement or otherwise of business representation.

381. Department of Foreign Affairs, "First PH - Kuwait Joint Committee Meeting Discusses Standard Contract for Domestic Workers", (11 February 2020).

382. Additional protocol to the agreement on the regulation of the employment of Nepalese manpower signed on 21 March 2005 between the governments of the state of Qatar and Nepal, (2005).

383. UN Human Rights Council, "Report of the Special Rapporteur on the human rights of migrants, François Crépeau", A/HRC/26/35/Add.1, (23 April 2014): 16.

384. Embassy of Nepal in Doha, "Bilateral relations: Nepal-Qatar Relations", (July 2019).

385. Qatar Tribune, "Qatar-Philippines joint committee meet concludes", (21 February 2019).

386. Gulf Times, "My stint in Qatar as Bangladesh ambassador will remain memorable", (6 August 2020).

Supported by Open Society Foundations, Humanity United and Porticus

Produced by FairSquare

**OPEN SOCIETY
FOUNDATIONS**



fairsq.org