

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.

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

# Assessment against the Five Corridors indicators:

## 4. Licensing, registration and certification schemes

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## 4. Licensing, registration and certification schemes

*“The international recruitment industry in Nepal flourishes from non-compliance with the law, making the costs higher and the business more challenging for those who do comply with the law. Those who invest in better practices find themselves having to offer higher prices to overseas clients.”* 2017 ILO REPORT

### Summary

Most overseas migration from Nepal, including to the Gulf, is facilitated by private recruitment agencies. Nepal has a complex and highly centralized licensing operation, and recently introduced measures to improve transparency. Most licensed recruitment agencies are headquartered in Kathmandu - there are only branch offices outside the capital in four of Nepal's 75 districts. The concentration of agencies in the capital and other major cities, as well as Nepal's mountainous and rugged terrain, which makes travel difficult, means both licensed agencies and aspiring migrants across Nepal use the services of intermediaries, in the form of individual local 'agents', 'sub-agents' and 'brokers', the vast majority of whom are unlicensed. The government has recently banned agencies from using sub-agents, requiring them to establish branch offices instead, but in practice, these informal, unregistered local actors remain deeply embedded in Nepal's recruitment processes. These intermediaries are often fundamental to Nepali workers' decisions to migrate. They often deceive prospective migrant workers over the terms and conditions of employment abroad and negotiate recruitment fee payments. Despite this, many migrants trust unlicensed agents in their communities more than they trust licensed agencies in Kathmandu. Elements of Nepal's licensing system that prioritise the mobilisation of large numbers of workers for foreign jobs make it difficult for ethical business models of recruitment to thrive.

Kuwait does not have a specific private sector recruitment industry licensing and certification scheme, except in relation to domestic workers, where the regulations have been strengthened since 2015 in response to international concerns about abuse of migrant workers and domestic concerns about agencies exploiting Kuwait employers, including with high fees. There are no explicit fair recruitment requirements imposed on recruiters as part of the licensing process. There is no transparent process for monitoring the legal status and practice of recruitment agencies, and CSOs have as a result tried to encourage recruitment agencies to self-certify as ethical.

Qatar's recruitment agency licensing system covers recruitment for all kinds of work though there are few requirements specified in relation to fair recruitment. The licensing system does not address the specific role of labour supply or "manpower" companies, which - working with partner recruitment agencies - recruit workers, sponsor their visas as employers and subcontract their workforce onto construction and other worksites temporarily to help other companies with short-time labour shortages. Some non-legal standards developed by major parastatal contractors apply more comprehensive authorisation processes than the existing state licensing scheme for recruitment agencies. At the time of writing, there was no publicly available register of recruitment agencies in Qatar where workers and others could verify the legitimacy of agencies and placement offers.

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## Recommendations to the Philippine government:

- Institute an ethical recruitment framework into licensing and regulatory machinery such that prospective or existing recruitment agencies need to demonstrate compliance with ethical recruitment principles, and for this compliance to be verified and audited by an independent third-party; consider the introduction of incentives for agencies who can genuinely demonstrate due diligence, commitment to zero-fee recruitment and a duty of care for migrant workers.
- Introduce legislation to make licensed labour recruiters liable for the actions of any unlicensed partners and intermediaries in Nepal.
- Remove regulations that require agencies to secure jobs for a minimum number of workers each year.
- Make public the reasons for the blacklisting and suspension of recruitment agencies, and on the numbers and outcomes of inspections of each agency.
- Permanently ban from directing, owning or being employed by recruitment agencies any individual found to have offered bribes or other form of illegal benefit to government officials in connection with labour recruitment.

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## Recommendations to the Government of Kuwait:

- Institute an ethical recruitment framework into licensing and regulatory machinery such that prospective or existing recruitment agencies - covering all recruitment of migrant workers to Kuwait, including domestic workers and others employees in private households - need to demonstrate compliance with ethical recruitment principles, and for this compliance to be verified and audited by an independent third-party; consider the introduction of incentives for agencies who can genuinely demonstrate due diligence, commitment to zero-fee recruitment and a duty of care for migrant workers.

- Make public the reasons for blacklisting and suspension of recruitment agencies, and on the numbers and outcomes of inspections of each agency. Coordinate pro-actively with country of origin embassies to share information about abusive employers and to ban employers and recruiters (local and overseas) from hiring or recruiting in future if they have been found to have abused migrant workers.
- Consider the introduction of special licensing requirements for “labour supply companies”, given the high risk workers employed by such firms can be exposed to, and their close involvement in the recruitment process.
- Amend the law to hold employers and recruitment agents jointly liable for actions of third party intermediaries, including outside Kuwait, in connection to the recruitment of migrant workers.
- Permanently ban from directing, owning or being employed by recruitment agencies any individual found to have offered or accepted bribes, “kickbacks” or other form of illegal benefit in connection with visa allocation and labour recruitment.

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## Recommendations to the Government of Qatar:

- Institute, through amendments to Ministerial Decision 18 of 2005, an ethical recruitment framework into licensing and regulatory machinery such that prospective or existing recruitment agencies need to demonstrate compliance with ethical recruitment principles, and for this compliance to be verified and audited by an independent third-party; consider the introduction of incentives for agencies who can genuinely demonstrate due diligence, commitment to zero-fee recruitment and a duty of care for migrant workers.
- Make public the reasons for blacklisting and suspension of recruitment agencies, and on the numbers and outcomes of inspections of each agency. Coordinate pro-actively with country

of origin embassies to share information about abusive employers and to ban employers and recruiters (local and overseas) from hiring or recruiting in future if they have been found to have abused migrant workers.

- Consider the introduction of special licensing requirements for “labour supply companies”, given the high risk workers employed by such firms can be exposed to, and their close involvement in the recruitment process.
- Amend the law to hold employers and recruitment agents jointly liable for actions of third party intermediaries, including outside Qatar, in connection to the recruitment of migrant workers.
- Permanently ban from directing, owning or being employed by recruitment agencies any individual found to have offered or accepted bribes, “kickbacks” or other form of illegal benefit in connection with visa allocation and labour recruitment.

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#### 4.1 Is the system comprehensive? Does it apply to recruitment for all kinds of work?

##### Nepal

Nepal has a complex and highly centralized licensing operation for recruitment agencies. The central involvement of informal, unregistered local actors, upon whom licensed recruitment agents in Kathmandu rely, means that the system cannot be regarded as comprehensive given that many integral actors operate outside of the licensing scheme.

Nepalis require labour approval from DOFE to migrate overseas for work. It is not mandatory to use a recruitment agent to secure work abroad - labour approvals can also be obtained individually. This type of recruitment accounts for approximately 10% of total

labour approvals issued by the DOFE, equivalent to 9000 workers per year.<sup>387</sup>

Most overseas migration from Nepal, including to the Gulf, is facilitated by private recruitment agencies operating under Nepal’s licensing, registration and certification schemes derived from the 2007 FEA,<sup>388</sup> its 2008 implementing rules (FER),<sup>389</sup> and subsequent amendments. Since 2012, when the Nepali authorities introduced new regulations to regularize the securing of individual labour permit approvals, the number of labour permits issued to individuals applying on their own decreased significantly.<sup>390</sup> As of September 2020 there were 954 agencies licensed by DOFE to operate foreign employment businesses, of which 833 were active, 21 were inactive and 100 had been blocked (or blacklisted).<sup>391</sup> Under Section 10 and 11 of the FEA, recruiting agencies must obtain a licence from DOFE before they can place Nepali workers in overseas jobs, making it illegal to place workers overseas without this licence.

Recruitment agencies are private entities which must be registered at the Company Registrar’s Office under Nepal’s “Companies Act”, and they must obtain a licence to recruit for overseas work from the DOFE.<sup>392</sup> In order to secure a licence, recruitment agencies have to submit a business plan, evidence that the agency director has at least two years of experience in foreign employment, and pay a NPR 3,000,000 (25, 550 USD) deposit and a NPR 20,000 (165 USD) licence fee. As of 2019, agencies had to facilitate labour migration for at least 100 workers a year in order to maintain their licence. Any failure to do so for two consecutive years automatically results in the cancellation of their licence.<sup>393</sup> This requirement was waived in 2020 during the Covid-19 pandemic.<sup>394</sup>

Deposits must also be lodged with DOFE according to the intended number of workers the agency intends to send abroad annually. These were increased dramatically in 2019 following an amendment to the FEA, which aimed to reduce the number of agencies. To send up to 3000 workers abroad per year, a cash deposit of 5 million NPR (41,780 USD) is required in addition to

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387. MOLESS, “Nepal Labour Migration Report 2020”, (2020): 22 and 26.

388. Foreign Employment Act, 2007

389. Foreign Employment Rules, 2008

390. Department of Foreign Employment, “Labour Migration for Employment A Status Report for Nepal: 2013/2014”, (2014): 20.

391. DoFE, “Recruitment Agency”

392. Foreign Employment Rules, 2008, Rule 6(1) (f).

393. 2019 amendment to the 2007 Foreign Employment Act. See MOLESS, “Nepal Labour Migration Report 2020”, (2020): 52 a

394. Nepali Times, “Brokers going for broke, Nepal government and fairer recruiters need to join forces for post-pandemic foreign employment revamp”, (20 July 2020).

a 15 million NPR (125,335 USD) bank guarantee. To send between 3000 - 5000 workers a deposit of 10 million NPR (83,573 USD) is expected as well as a 30 million NPR (250,720) bank guarantee, and to send more than 5000 workers annually recruitment agencies must provide a deposit of 20 million NPR (167,146 USD) in addition to a 40 million NPR (334,314 USD) bank guarantee.<sup>395</sup> The recruitment agency is required to disclose to DOFE details of the type of foreign employment, the number of workers they deploy, as well as details of workers' salaries, working hours and annual leave and a range of other details as prescribed in the FEA. The 2008 Rules require prospective licensees to demonstrate they have not been convicted of any criminal offense "involving moral turpitude," nor been the director of an agency whose license was cancelled.

Most licensed recruitment agencies are headquartered in Kathmandu. While the FEA allows them to open branch offices outside the capital with DOFE permission, the licensing of regional branches has effectively been halted since 2012 due to openings of branch offices by recruitment agencies without the necessary approvals. A 2014 OSF report recorded only 47 branch offices belonging to 35 recruitment agencies had been approved,<sup>396</sup> while the 2020 MOLESS Labour Migration report listed only 38 branch offices belonging to 24 recruitment agencies in operation.<sup>397</sup> The federal government is now encouraging agencies to open branches in more provinces.<sup>398</sup>

The concentration of recruitment agents in Kathmandu and other major cities means both licensed agencies and aspiring migrants across Nepal, particularly in remote villages, use the services of intermediaries in the form of individual local 'agents', 'sub-agents' and 'brokers', the vast majority of whom are unlicensed.<sup>399</sup> More often than not, these intermediaries are a migrant's first point of contact in the labour migration process and most likely the person arranging travel documents and providing administrative and logistical

support.<sup>400</sup> They can include respected members of the community such as teachers or political party representatives, or neighbours, relatives and acquaintances.<sup>401</sup> Workers repeatedly described to us how these intermediaries were fundamental to their decisions to migrate, explaining their terms and conditions and negotiating recruitment fee payments.<sup>402</sup> Despite widespread deception and often higher fees than those charged by agencies, many migrants prefer to deal with sub-agents because of the ease of access and their personal connections to these actors.<sup>403</sup> A Nepal-based recruitment expert told us that sub-agents and unlicensed brokers can "insert themselves into the recruitment chain very effectively", noting that the DOFE requirement that all overseas vacancies be published in the newspapers gives unlicensed agents leverage with job-seekers in rural locations who are unable to access newspaper advertisements themselves.<sup>404</sup>

Whilst recognising that many sub-agents often resorted to fraud and deception, a recruitment agent told us that agencies do not always have the financial resources to open branch offices, and that they would likely pass any additional administrative costs onto workers. He also said that agencies would continue to rely on sub-agents for their knowledge of, and access to, communities to find potential recruits, and that regularising the status of sub-agents would have been far more beneficial for both the recruitment agency and migrant workers themselves:

*"Sub-agents were people that the community had trusted. If something goes wrong, they know where to go and who to catch. These communities trusted sub-agents more than manpower agencies, so some [sub-agents] were taking advantage of this situation. But as a solution, we've been proposing to the government to regulate sub-agents by providing them independent licenses and getting them registered with the District Administration Office.*

395. Foreign Employment Act (new amendment), Section 10 and 11, and Foreign Employment Rules, Rule 6. See MOLESS, "Nepal Labour Migration Report 2020", (2020): 52.

396. Sarah Paoletti, Eleanor Taylor-Nicholson, Bandita Sijapati and Bassina Farbenblum, "Migrant Workers' Access to Justice at Home: Nepal", Open Society Foundation, (2014): 53-55.

397. MOLESS, Nepal Labour Migration Report 2020, Table 6, (March 2020): 48

398. The Kathmandu Post, Recruiting agencies and foreign employment bodies resolve conflicting issues, 19 February 2021

399. Verité, "Labor Brokerage and Trafficking of Nepali Migrant Workers", (November 2016): 29.

400. ILO and GiZ, "Analysis of Labour Market and Migration Trends in Nepal", (2015): 66 (check latest file in Nepali here.)

401. Migrant Forum in Asia and CIMS Kerala, "A documentary on the role of sub-agents in the recruitment of migrant workers".

402. Interviews between November 2019 - September 2020 with Nepali migrant workers.

403. Migrant Forum in Asia and CIMS Kerala, "A documentary on the role of sub-agents in the recruitment of migrant workers".

404. Written comments from Andy Hall, May 2021

*It would then be the government and not the manpower agencies that would need to hold sub-agents accountable for any misdeeds. Instead, the government evaded its responsibility and added an extra burden on manpower agencies.*<sup>405</sup>

Until 2019, the 2007 FEA and the accompanying 2008 FER allowed licensed recruitment agencies to register up to ten sub-agents each, while requiring sub-agents to only register with one agency. The recruitment agency was liable for any actions by the agent, who were required to be able to read and write Nepali fluently, be able to “explain foreign employment related matters to others,” and have no criminal history.<sup>406</sup> However, following a 2019 amendment to the FEA, which sought to regulate the licensing scheme further, recruitment agencies are no longer allowed to hire sub-agents and instead must establish branch offices.<sup>407</sup> According to Section 43, unregistered actors involved in overseas labour recruitment can face fines ranging from 300,000 (USD 2,500) to 500,000 (USD 4,300) Nepalese rupees and a jail term of between three and seven years.<sup>408</sup>

However, the FEA does not provide for sanctions for private recruitment agencies that use unregistered agents or sub-agents. The cost associated with formal registration and the absence of any real deterrent for the use of unregistered agents in part explains why there were very few local agents registered with DOFE by recruitment agencies. Nepal’s licensing and registration scheme only recognises 954 authorised private recruiters, whereas an ILO study estimated that there were approximately 50,000 unregistered agents active in Nepal’s recruitment industry in 2017.<sup>409</sup> According to a 2019 Nepal National Human Rights Committee report, unlicensed agents continue to operate freely despite the reform of the FEA; their number is estimated at about 60,000.<sup>410</sup> Recruitment agencies interviewed in 2014 for an OSF report all said they worked with between 20 and 50 individual agents at any one time.<sup>411</sup>

## Kuwait

Kuwait does not have a specific private sector recruitment industry licensing and certification scheme, except in relation to domestic workers.<sup>412</sup> This reflects the fact that recruitment agencies are commonly used for the recruitment of domestic workers. Migrants working in other areas of the private sector are typically recruited directly by companies’ human resources departments in collaboration with agencies in countries of origin.<sup>413</sup>

The 2015 Domestic Worker Law outlines a number of conditions that have to be met for the issuance or renewal of a license. License-holders must be Kuwaiti nationals with a history of good conduct and good reputation. No criteria are provided other than not having been convicted of a felony or a crime involving a “breach of integrity or honour”, for which they have not been pardoned. Prospective licensees must submit a letter of guarantee from a local bank. The amount of the guarantee is determined by the Minister of Interior. Employment of domestic workers without a state license is explicitly outlawed by Article 3. Recruiters who work without a license can face criminal penalties of up to three years in prison and a fine of KWD10,000 (USD 33,195), according to article 48. Repeat offenders can face six years in prison and a KWD20,000 (USD 66,391) fine. Recruitment licenses can be revoked for up to three months if the employer is found guilty of subcontracting to work in another home or deceiving workers during the recruitment process, and permanently suspended if they repeat the offence.

Other employers have to secure permission to recruit a certain number of workers from the Public Authority for Manpower (PAM), before applying for work permits. In order to recruit foreign workers for the private sector, companies must secure an annual approval from PAM for the number of workers they will recruit. PAM can reject the request, or part-approve it, if an employers’ plans are considered to be inconsistent with their needs

405. Kumud Khanal, Fusion International Private Limited and Co-founder of Ethics Practitioners Association of Nepal (EPAN), remote interview, 27 November 2020.

406. Foreign Employment Act, Section 74(2), 2007; Foreign Employment Rules, s48, 2008. IOM, “Recruitment monitoring and migrant welfare assistance. What works?”, (2015): 49-50.

407. MOLESS, “Nepal Labour Migration Report 2020”, (2020): 52.

408. Foreign Employment Act, 2007, Article 43, Chapter 9, 2007.

409. ILO, “The Migrant Recruitment Industry: Profitability and unethical business practices in Nepal, Paraguay and Kenya” (2017): 3

410. National Human Rights Commission, *Research-Report on The Situation of the Rights of Migrant Workers*, (2019): 82.

411. Sarah Paoletti, Eleanor Taylor-Nicholson, Bandita Sijapati and Bassina Farbenblum, “Migrant Workers’ access to justice at home: Nepal”, Open Society Foundations, (2014): 54-55.

412. Building Responsibly, DLA Piper and ILO, *Labor Law Factsheet: Kuwait*, (August 2019): 1.2.

413. Interviews with NGOs, IOM and diplomatic missions in Kuwait, October-November 2020.



based on the size of their operations or businesses. Once their manpower request has been approved, employers are required to obtain a license from the Ministry of Interior in order to recruit migrant workers, and provide evidence that a Kuwaiti worker could not do the job.<sup>414</sup>

The enhanced regulation for domestic worker recruitment agencies may in part reflect disquiet on the part of Kuwaiti employers that agencies exploit them and charge exorbitant and unreasonable fees. An ILO study on the attitudes of employers found that “there was consensus that the agencies needed to be regulated”.<sup>415</sup>

## Qatar

Qatar’s recruitment agency licensing system covers recruitment for all kinds of work, but there are few requirements specified in relation to fair recruitment, and the licensing regime does not specifically address the risks related to labour supply companies, which (working with partner recruitment agents) recruit, employ and subcontract migrant workers. Some non-legal standards developed by parastatal entities apply more comprehensive authorisation processes than the state licensing scheme for recruitment agencies.

ADLSA is responsible for the administration of recruitment agencies and its Permanent Recruitment Committee provides the final approval for applications. The committee also conducts periodic inspections of recruitment agencies and is responsible for investigating complaints.<sup>416</sup>

Ministerial Decision No. 8 of 2005 specifies that an applicant for a license to recruit foreign workers must be a Qatari citizen, have a physical office and a full-time manager, and they must provide a bank guarantee of 250,000 Qatari Riyals (USD 68,662) to the Ministry of Labour. Applicants with criminal convictions are disqualified unless they have been “rehabilitated”.<sup>417</sup> The

law includes a series of procedural templates, including a licence application form and a model contract for employers.<sup>418</sup>

The Ministry can revoke a recruitment agency’s licence if the license-holder fails to comply with any of the conditions required to obtain the licence, receives any money or other form of remuneration from a foreign worker in return for their recruitment, presents false information or documentation, or is responsible for “habitual violation of contracts” with employers.<sup>419</sup> In 2015 the government reported that it had cancelled 15 agency licences out of 282 in the previous year, mainly for providing incorrect information, not complying with requirements, violating the labour law or failing to correct mistakes after receiving warnings.<sup>420</sup> Enforcement actions publicly highlighted by the authorities include cases of domestic worker recruitment agencies who have failed to honour agreements with employers.<sup>421</sup>

The licensing framework does not specifically address the activities of so-called “labour supply” or “manpower” companies, which directly recruit workers and sponsor their visas as employers, and then subcontract their workforce onto construction and other worksites temporarily to help other companies with short-time labour shortages. These companies generally have a “recruitment arm” - a licensed agency that brings workers into the country. Temporary work in the construction sector generally carries a heightened risk of labour exploitation. Some Qatari employers told us they prefer where possible to source workers this way, particularly for roles which do not require specialist skills. One construction manager told us that for a major hotel project, “we got the less skilled workers from a local agent in Qatar, whom we paid by the day, and got the more skilled workers directly from Nepal through an agent there.”<sup>422</sup> A 2014 Qatar Foundation study found that the use of these labour supply agencies “increases the costs of migration and migration recruitment because they are another layer of middlemen taking commissions between the recruitment agency in

414. Government of Kuwait, *Ministerial Decision No. 200 of 2011 Regulating Employment in the Private Sector*

415. ILO, *Employers' perspectives towards domestic workers in Kuwait A qualitative study on attitudes, working conditions and the employment relationship*, (2015): 3.4.1

416. Government of Qatar, Ministry of Administrative Development, Labour and Social Affairs, “*Annual Report*”, (2016): 24.

417. *Ministerial Decision No. 8 of 2005 Regarding the Conditions and Procedures for Obtaining a License to Recruit Foreign Workers for Others*, Article 2.

418. *Ministerial Decision No. 8 of 2005 Regarding the Conditions and Procedures for Obtaining a License to Recruit Foreign Workers for Others*, Annex.

419. *Ministerial Decision No. 8 of 2005 Regarding the Conditions and Procedures for Obtaining a License to Recruit Foreign Workers for Others*, Article 14.

420. The Peninsula, “*Licences of 15 manpower agencies cancelled*”, (16 October 2015).

421. Gulf Times, *Ministry cancels licences of two recruitment agencies*, (22 June 2016).

422. Remote interview with contractor involved in the construction of a hotel in Doha, July 2020.

the sending country and the ultimate employer in Qatar”.<sup>423</sup> The owner of a retail services company that uses labour supply companies in Qatar told us he did so because it is cheaper than recruiting directly from overseas. In relation to due diligence on the recruitment of workers he subcontracted, he told us: “we monitor their work to make sure they are bringing us the right people for the jobs we need done, and that they are sticking to our agreed schedule. That is it.”<sup>424</sup> Neither labour supply companies nor their partner recruitment agencies are subjected to any specific or additional regulatory scrutiny, despite the known risks to those employed by them. Similarly, trading companies, which are often established by both Qatari and foreign nationals to procure work visas that they then sell directly to migrants as “free visas” (see section 1.5), are not subjected to any additional scrutiny than other companies, even though one expert told us that, “they effectively act as recruitment agencies or their intermediaries.”<sup>425</sup>

In 2014 international law firm DLA Piper, in a government-commissioned report into allegations of migrant worker abuses, recommended that the government introduce “a comprehensive vetting process” for recruitment agency licensing, require agents to provide ethical recruitment certification in respect of any foreign recruitment agent or broker used,<sup>426</sup> and to blacklist foreign (as well as domestic) recruitment agents found to engage in unethical practices.<sup>427</sup> In 2021, the government informed us in a written response that 29 agencies had had their licences removed for violating the laws, without providing further details.

Some contractual standards developed by major parastatal entities apply more comprehensive authorisation processes than the existing state licensing scheme for recruitment agencies. The Qatar Foundation’s (QF) Worker Welfare Standards include a requirement for due diligence before a recruitment agency can be authorized to supply workers to QF contractors and sub-contractors. QF contractors and sub-contractors are only permitted to use the services

of a recruitment agency which is registered and licensed by the competent authority of the jurisdiction in which the agency operates and that does not charge workers any recruitment and processing fees or placement fees.<sup>428</sup> The prohibition on the payment of recruitment or placement fees is understood to cover the payment of charges to both local and overseas agencies, which goes further than the wording of Qatari law (which focuses on payments within Qatar).<sup>429</sup> Furthermore, QF’s Standards expect all contracts with local and overseas agencies to have explicit contractual stipulations prohibiting the prohibition of payment of recruitment and processing fees, and all costs to be listed in the contracts, in order to secure approval to supply workers to QF projects.<sup>430</sup> The Supreme Committee for Delivery and Legacy has put in place similar requirements for contractors operating on its projects.<sup>431</sup>

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## 4.2 Is the licensing / registration system transparent and accessible? Can workers and other interested parties use this system to verify the legitimacy of recruitment agencies and placement offers?

### *Nepal*

The scale of informality in the overseas labour recruitment industry in Nepal presents a major obstacle to transparency. The vast majority of local agents and brokers are neither licensed nor registered, although Nepal has invested in the establishment of information systems to digitize and centralise a number of labour recruitment processes involving licensed recruitment agencies.

On the DOFE website it is possible to search a licensed recruitment agencies database to find the details of active, inactive, suspended and blacklisted (or “blocked”) recruitment agencies.<sup>432</sup> Some blacklisted agency entries include the name of the proprietor, as

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423. Professor Ray Jureidini, “Migrant Labour Recruitment to Qatar: Report for Qatar Foundation Migrant Worker Welfare Initiative”, Qatar Foundation, (2014): 62.

424. Remote interview with owner of retail service company, July 2020.

425. Professor Ray Jureidini, written comments, October 2020.

426. DLA Piper, *Migrant Labour In The Construction Sector In The State Of Qatar*, (May 2014): 41.

427. DLA Piper, *Migrant Labour In The Construction Sector In The State Of Qatar*, (May 2014): 41.

428. Qatar Foundation, *Mandatory Standards of Migrant Workers’ Welfare for Contractors & Sub-Contractors*, (20 April 2013): 11.2.1.

429. Qatar Foundation, *Mandatory Standards of Migrant Workers’ Welfare for Contractors & Sub-Contractors*, (20 April 2013): 11.2.3.

430. Qatar Foundation, *Mandatory Standards of Migrant Workers’ Welfare for Contractors & Sub-Contractors*, (20 April 2013): 11.2.4.

431. *Supreme Committee for Delivery & Legacy’s Workers’ Welfare Standards*, (2018): 16-17

432. Government of Nepal, DOFE, *Recruitment Agency Database*

well as the office address and contact number. However, some entries are incomplete, and there is no further information regarding the quality of the operation and services provided, nor the reason for their blacklisting.

In September 2018 the Nepali government launched the Foreign Employment Information Management System (FEIMS), an integrated migration management system (see 5.1). The online system and mobile phone app is a centralized database for departing, overseas and returning Nepali migrant workers via which they can access all migration departments and services. MOLESS stated in its 2020 report that “by bringing all migration-related stakeholders to the same platform ... FEIMS has increased transparency, efficiency and effectiveness of the related services including minimizing potential ill-practices”.<sup>433</sup> Labour migration experts and CSOs interviewed for this report said that the FEIMS was an effective and much-needed initiative, which is likely to increase transparency in the licensing system and migration process, although they expressed concern that it is not accessible to the many migrant workers who lack digital literacy skills and may not speak Nepali.

## Kuwait

There is no transparent process for monitoring the legal status and practice of recruitment agencies, nor a publicly available database of licensed agencies. An interviewee working with the UN estimated that the number surpasses 120.<sup>434</sup> The government provides sporadic information about recruitment agency malpractice. An Arab Times report from February 2020 highlighted a PAM campaign in which stickers were posted on the offices of recruitment agents which had been suspended as a result of malpractice.<sup>435</sup>

To address this gap, Migrant-Rights.Org prepared a 2019 guide for prospective employers of domestic workers

in which people planning to hire a domestic worker are encouraged to seek the advice of local embassies “for more information for trusted agencies and the legal process of hiring a domestic worker through them”, or to visit the Department of Domestic Labour in Kuwait if in doubt about a particular agency and its practices.<sup>436</sup> Similarly, civil society organisation Project 189 established a project ‘Social Accountability for Recruitment Agencies’ aiming to encourage domestic worker recruitment agencies in Kuwait to attain the SA8000® social regulation standard.<sup>437</sup>

## Qatar

The relevant laws, Ministerial Decisions and model licensing application forms are easily accessible on the ADLSA website.<sup>438</sup> These include the forms to register as a recruitment agency<sup>439</sup> and to renew a license,<sup>440</sup> and a standard contract between employers and recruitment agencies.<sup>441</sup>

At the time of writing in June 2021 there was no central register of recruitment agencies in Qatar where workers and others can verify the legitimacy of agencies and placement offers and no requirement for any such register in law. The government occasionally reports on enforcement actions relating to recruitment agencies. For example, in May 2020 the English-language newspaper The Peninsula reported that ADLSA had cancelled the licence of Distinction Manpower Recruitment because it had not honoured labour contracts with clients and had issued labour contracts without the Ministry’s authentication.<sup>442</sup> In 2012 it was reported that the government graded domestic worker recruitment agencies into grades A, B and C. However, the criteria by which the agencies were rated and the names of the PRAs were never published and there has been no further update to this announcement.<sup>443</sup> A labour specialist based in Doha confirmed that this grading system appears to effectively be defunct.<sup>444</sup>

433. MOLESS, “Nepal Labour Migration Report 2020”, (2020): 55

434. Remote interview with UN agency representative, 12 October 2020.

435. Arab Times Online, *Domestic labor offices must abide by Law No. 68/2015 to avoid temporary closure*, Arab Times Online, (2 February 2020).

436. Migrant-Rights.org and Project Bridges, *Your Guide to Employing a Migrant Domestic Worker in Kuwait*, (March 2019): 3.

437. Project-189, *SARA – Social Accountability for Recruitment Agencies*.

438. Government of Qatar, “E-Services & E-Forms”.

439. Government of Qatar, “Application for a Recruitment License of Expatriate Workers for a Third Party”.

440. Government of Qatar, “Application for Renewal of Replacement of – Damaged - Lost License for Recruitment of Expatriate Workers for Third Party”.

441. Government of Qatar, “Contract of recruiting workers from abroad for a third party”.

442. The Peninsula, “Ministry cancels license of manpower recruitment agency for violations”, (18 May 2020).

443. IOM, “Recruitment Monitoring & Migrant Welfare Assistance: What Works?”, (2015): 76.

444. Remote interview with Doha-based labour specialist (name withheld), September 2020.

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### 4.3 Are worker and recruiter organisations consulted on the design and implementation of these schemes?

#### Nepal

A MOLESS representative told us that the government consults with recruitment agents and regards them as key stakeholders. He said that, “we cannot address all of their concerns, but we do hear from them as well”. He did not mention consultation with worker groups or trade unions but said that “policies are largely drafted keeping [the] public’s welfare in mind”.<sup>445</sup>

A representative of EPAN, a Kathmandu recruitment agency specialising in ethical recruitment, told us that “agencies are not consulted during these [licensing] discussions,” that NGOs and INGOs had more influence, and that the government merely invites agencies to discuss new laws after drafts are completed, then claims this was consultation.<sup>446</sup> A representative from the National Network for Safer Migration agreed that the government consulted poorly on the licensing and registration scheme with the private recruitment industry, pointing to arbitrary amendments as evidence of a lack of meaningful consultation between the government and the recruitment industry, and said that this resulted in opaque lobbying by agency organisations, that in turn generated media criticism.<sup>447</sup>

According to an ILO official, the authorities did not conduct sufficient stakeholder consultations, nor did they test the likely impact of their policies prior to introducing the 2019 amendment to the FEA, which cancelled recruitment agencies’ ability to hire sub-agents, and introduced new licensing requirements by increasing the deposit that agencies must pay and a minimum number of workers they must send for foreign employment every year.<sup>448</sup>

A CESLAM representative told us that some select trade unions have been heavily involved in domestic

policy-making processes, but that there is a growing grievance amongst migrant groups, CSOs, and networks that they are not consulted in either policy design or implementation activities.<sup>449</sup> A lawyer at People Forum told us that the government consults CSOs as a formality but “is not actually taking their opinion into account”.<sup>450</sup>

#### Kuwait

Kuwait has an active and sometimes outspoken trade organisation representing domestic worker recruitment agencies, and a national trade union federation which contributed to the drafting of the 2015 domestic worker law that established licensing systems for agencies.

The Kuwait Union of Domestic Labor Offices (KUDLO), the trade organisation for recruiters in Kuwait, regularly comments publicly on regulation, including making calls on the government to reduce regulatory and financial burdens on recruitment agencies.<sup>451</sup> Its formal role in consultations over laws and policies is unclear. A representative of the Al-Durra public-private recruitment agency, established by the government, told us it was heavily involved in discussions about capping fees charged by domestic worker agencies, which Al Durra and the government believed were too high for employers.<sup>452</sup>

The Kuwait Trade Union Federation (KTUF), which does not allow migrant workers to join unless their company has a union, was involved in submitting drafts of the 2015 domestic workers law that established an agency licensing system, but a KTUF representative told us that there is no ongoing formal dialogue available to the KTUF to propose improvements to the recruitment licensing system.<sup>453</sup>

#### Qatar

Qatar’s licensing scheme has not been amended since 2005. Local recruitment agencies participating in ethical

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445. Interview with senior official at Ministry of Labour, Employment and Social Security, Kathmandu, 8 January 2020.

446. Kumud Khanal, Fusion International Private Limited and Co-founder of Ethics Practitioners Association of Nepal (EPAN), remote interview, 9 June 2020.

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

448. ILO official in Nepal, remote interview, 21 October 2020.

449. Dr Jeevan Baniya, Assistant Director of Centre for the Study of Labour and Mobility at Social Science, remote interview, 8 June 2020.

450. Krishna Neupane, People’s Forum, remote interview, 5 June 2020.

451. See for example Arab Times Online, “[Union slams MoCI decision to ‘cut’ maid’s recruitment cost](#)”, (7 February 2021)

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

453. Interview with General Secretary of the Kuwait Trade Union Federation, December 2019.

recruitment pilots have been invited to participate in Chamber of Commerce and ADLSA arranged events about business and migration in recent years, but there is no indication that these discussions have directly addressed licensing schemes.<sup>454</sup>

Civil society in Qatar is tightly controlled and usually government affiliated. For example, all board members of the Qatar Charity are former public officials.<sup>455</sup> No trade unions exist in Qatar, and if they did migrant workers would be legally prohibited from joining as members. Therefore the only avenue for worker group input on licensing schemes would be via international worker groups and organisations. However, recruitment agency licensing reform has not yet featured in the ILO technical cooperation partnership with the Qatari government.<sup>456</sup>

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#### 4.4 Does the government put in place measures that incentivise ethical recruitment practices?

##### Nepal

The government has stated as part of collaboration programmes with the IOM that it is committed to work with civil society, the private sector and the international community to promote ethical recruitment.<sup>457</sup> It has participated in a pilot programme of the IOM's IRIS ethical recruitment certification scheme,<sup>458</sup> and has attempted to tighten regulation, including through a demand attestation process described in more detail in section 6.4. Despite this, the reality is that recruitment agencies do not currently have any strong incentives to operate ethically in Nepal. Ethical business models are undermined by a combination of poor government enforcement (see section 5) and regulations that incentivize companies to prioritise the number of workers they recruit for work, rather than their conditions. This is all in a context in which Nepali

workers overwhelmingly migrate to a small number of states where employers and recruiters generally expect not to pay appropriate professional service fees (see 6.1).

One migrant labour expert based in Kathmandu told us that the government's "weak monitoring mechanism impedes fair and ethical recruitment processes", arguing that DOFE does not have enough capacity to regulate and investigate illegal activities by agencies.<sup>459</sup> This impunity disincentivises recruiters from complying with laws and regulations that may add to their costs. A 2017 ILO report found that "the international recruitment industry in Nepal flourishes from non-compliance with the law, making the costs higher and the business more challenging for those who do comply with the law. Those who invest in better practices find themselves having to offer higher prices to overseas clients."<sup>460</sup>

Recruiters and labour migration experts told us that the government requirement that agencies mobilise at least 100 workers per year, or lose their license, serves as a clear disincentive to ethical recruitment, and makes it impossible for agencies to focus on work with employers to ensure the fair treatment of a smaller number of workers. Agencies whose licences are cancelled for not finding work for enough workers cannot recover their deposit for three years, which increases the pressure on them to meet this 100 worker target. "This is in a way stimulating human trafficking," one agency told us, "Agencies will take any demands and send workers to any categories of job without any inquiries, or further scrutiny."<sup>461</sup> As the ILO said in a 2017 study "international recruitment in Nepal is a high-volume, low margin and exploitative business".<sup>462</sup> An ILO official told us that the huge increase in the sums of money that agencies now have to make in deposits (see 4.1) failed to consider the potential impact of this new licencing requirement:

*"The main aim was to decrease the number of agencies, and the amendment achieved this reduction. But it failed to consider how*

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454. Qatar Chamber, "Qatar Chamber hosts seminar to raise awareness on Visa Centres", (2 October 2018); Qatar Chamber, "Labour Law Reforms in Qatar: Challenges and Opportunities for Business", (17-18 October 2018); Qatar Chamber, "Business and migration: Strengthening dialogue between the private sector and governments", (1 October 2019).

455. Qatar Charity, "Board of Directors"

456. ILO, "Annual progress report on the technical cooperation programme agreed between the Government of Qatar and the ILO", GB.340/INS/11, (9 October 2020)

457. IOM, "Ethical Recruitment Can Protect Rights of Nepali Migrant Workers", (25 October 2019).

458. IOM, "Iris Pilot Testing"

459. Interview with Rameshwar Nepal, Equidem Research & Consulting, 3 January 2020.

460. ILO, "The Migrant Recruitment Industry: Profitability and unethical business practices in Nepal, Paraguay and Kenya", (2017): 29

461. Kumud Khanal, Fusion International Private Limited and Co-founder of Ethics Practitioners Association of Nepal (EPAN), remote interview, 9 June 2020.

462. ILO, "The Migrant Recruitment Industry: Profitability and unethical business practices in Nepal, Paraguay and Kenya", (2017): 29

*agencies would fulfil this requirement and most importantly, if they take loans to fulfil this, in the long run who will take the brunt? So in a way, this can be seen as a hindrance to ethical recruitment. Our concern is that this cost will be passed on to migrant workers in order to reimburse it.”<sup>463</sup>*

In July 2020 in the midst of the Covid-19 pandemic, which hugely stifled demand for new migrant worker contracts, the government waived the 100 worker rule. According to a senior DOFE official quoted in the Nepali Times, unless it had taken this step the licenses of 536 of the 854 registered recruiters would have been scrapped.<sup>464</sup>

The fact that the vast majority of Nepal’s migrant workers go to a small number of countries with weak and exploitative labour systems further disincentivises ethical behaviour. As one journalist specialising in labour put it in a 2020 analysis of the industry, “recruiters are embroiled in fierce, unhealthy competition among themselves as they vie for the limited jobs in common destinations”.<sup>465</sup> This is exacerbated by stiff competition from other origin states. The ILO found in 2017 that Nepali agencies had to use unethical practices to win such contracts: “Interviewees reported also paying bribes to clients (placement agencies and employers). This occurs when there are several recruitment firms in Nepal competing for the same job order and recruiters must “bid” to “win” the contract. In effect, this is a bribe paid to companies, and those that pay the most are granted the contract. Firms in Nepal reported recovering the amounts paid out in this way through charging additional recruitment fees to recruits.”<sup>466</sup>

Katherine Jones, an academic specializing in recruitment, conducted an IOM study of the regulatory frameworks of Colombo process governments and noted that they are predominantly based on penalising businesses which do not comply. However almost no incentives for fair recruitment are provided within national legal and policy frameworks for private

recruitment agencies to either comply or to “go beyond compliance” and adopt ethical practices.<sup>467</sup>

## Kuwait

There are no obvious incentives for recruiters and employers to operate ethically in Kuwait. It is not illegal for agencies to charge workers recruitment fees, meaning that any company deciding to take steps to eliminate fees would place itself at a commercial disadvantage.

Kuwait’s 2018-2020 Decent Work Programme with the ILO included an objective for “pursuing demonstration effect of fair recruitment corridors” by establishing two pilot studies to effectively make the business case for ethical recruitment, “generat[ing] important demonstration effects supporting the case for enhanced governance of foreign labour internally.”<sup>468</sup> There is as yet no information available on the progress of these two pilot studies.

## Qatar

There are multiple ethical recruitment initiatives in Qatar, though these are predominantly parastatal / private sector initiatives linked to high-profile projects such as the 2022 World Cup (see 6.1) or pilot projects under the ADLSA/ILO partnership.

In 2018 NYU Stern partnered with the ILO Qatar office and a number of major state-owned government contractors to evaluate the impacts of incorporating migrant labour costs into construction and engineering project bidding processes. The pilot study concluded that fair recruitment, if factored into initial project budgets, cost less than 1% of project bids.<sup>469</sup> The ILO has also conducted an ethical recruitment pilot with QDVC and ethical recruiters based in Qatar (STS Qatar) and Bangladesh (Bonanza Recruitment).<sup>470</sup> As there is no requirement from the government to include recruitment costs in contracting chains, such pilot

463. ILO Nepal official, remote interview, 21 October 2020.

464. Nepali Times, “Brokers going for broke, Nepal government and fairer recruiters need to join forces for post-pandemic foreign employment revamp”, (20 July 2020).

465. Nepali Times, “Brokers going for broke, Nepal government and fairer recruiters need to join forces for post-pandemic foreign employment revamp”, (20 July 2020).

466. ILO, “The Migrant Recruitment Industry: Profitability and unethical business practices in Nepal, Paraguay and Kenya”, (2017).

467. IOM, “Recruitment monitoring and migrant welfare assistance. What works?”, (2015): 8.

468. ILO, “The Kuwait Decent Work Country Programme (2018-2020)”, (2018).

469. NYU Stern Center for Business and Human Rights, “Less than One Percent: Low-Cost Responsible Recruitment in Qatar’s Construction Sector”, (2019).

470. BWI-VINCI-QDVC, “Joint Audit Report 8-9 January 2019 Doha, Qatar”, (2019).

projects are may be - at present - uncompetitive. It remains standard practice in the industry for recruitment costs for low-paid workers to be excluded from project bids, and ethical recruiters in Qatar therefore need to rely on clients being willing to pay extra.

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#### **4.5 Are employers and recruiters jointly-liable/accountable for respecting workers' rights in the legislative and regulatory regime governing recruitment?**

##### *Nepal*

To the best of our knowledge, Nepal does not have any joint-liability requirement in its legislation.

##### *Kuwait*

The law does not provide for joint-liability for employers and recruitment agencies. A Kuwaiti official told us Kuwait had no interest in cross-corridor cooperation to enable joint-liability for employers and recruiters.<sup>471</sup>

##### *Qatar*

To the best of our knowledge, there no mention of joint liability in legislation.

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471. Interview with Kuwaiti official, December 2019.

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