

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:

5. Machinery to implement and enforce legislative and regulatory regimes

- 5.1** Does government ensure that ministries and departments, agencies and other public institutions that oversee recruitment and business practices cooperate closely and are aware of and observe human rights obligations when fulfilling their respective mandates? _____ 84
- 5.2** Is there an effective and sufficiently resourced labour inspectorate, empowered and trained to investigate and intervene at all stages of the recruitment process for all workers and all enterprises, and to monitor and evaluate the operations of all labour recruiters? _____ 87
- 5.3** Are the criminal investigative and prosecuting bodies trained and resourced to investigate and prosecute criminal activity related to fraudulent recruitment? _____ 91
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5. Machinery to implement and enforce legislative and regulatory regimes

“After the BBC documentary, the public prosecution issued a statement that if a person would pay to transfer the visa of a domestic worker, this would be considered a crime punishable by seven years [in prison]. This was a very positive step, although we don’t know whether it is being implemented. But no one did anything until the documentary.”

REPRESENTATIVE OF KUWAIT’S SOCIAL WORK SOCIETY

Summary

In 2020 Nepal’s labour ministry called for a “reduction in misalignments” between different parts of the government, acknowledging that inter-agency coordination is a key priority and challenge. There are clear examples where poor coordination - for example the signing of significant bilateral MOUs without making plans to establish diplomatic missions - is likely to directly impact migrant workers. Domestically, the Department of Foreign Employment’s (DOFE) investigation capacity and skills have been the subject of concern for several years and appear out of step with the scale of the abuses identified in Nepal’s recruitment industry. A 2020 MOU between DOFE and the police may help; until recently migrant workers could not bring recruitment cases to the police unless they amounted to trafficking, and for all other cases workers had to file complaints with the understaffed DOFE in Kathmandu. This should allow police to carry out preliminary investigations based on worker complaints and to fully investigate unregistered recruiters, referring only agency cases to DOFE. DOFE’s regulatory and investigative role has been severely undermined by corruption, which can have a direct impact on worker outcomes. Numerous senior officials have been arrested for accepting bribes to remove recruitment agencies from government blacklists.

Kuwait’s sponsorship system tends to undermine labour protections. Domestic workers, for example, can be charged with “absconding”, which violates the country’s immigration law, when they seek to leave employers who violate their obligations under the 2015 domestic workers law. Labour inspections

have increased in intensity in recent years, though in many cases these merely involve visits to offices to check paperwork, without engaging with migrant workers. Kuwait has increased its capacities to inspect agencies recruiting domestic workers. The government’s commitment to inspections and penalties may in part respond to external scrutiny. In 2017, for example, there was a dramatic spike in inspection activity the year a UN Trafficking expert visited the country. Generally, Kuwaiti authorities treat labour violations as administrative infractions, rather than criminal investigations and procedures, relying on arbitration, fines, and “blacklisting”. Anti-corruption in relation to the recruitment of migrants has moved up the government’s agenda in recent years, with investigations uncovering corrupt recruitment practices by officials, linked to human trafficking offences. There is some scepticism about the government’s commitment to tackling such practices, with authorities still wary of publicly pursuing cases against high-ranking officials.

Migrant workers have been affected by lack of coordination between ministries in Qatar. Labour protections, which are managed by ADLSA, are often undermined by parallel immigration and residence laws – notably the sponsorship system – which are administered by the Ministry of Interior. Since 2018, there has been some improvement in interagency cooperation attendant with the labour reform process. Qatar has also worked in conjunction with the ILO to upgrade its inspectorate, but there remains a tendency among inspectors not to engage directly with workers during inspection visits, in part because of language barriers. Where employers

or recruiters violate rights, Qatar generally opts to sanction offenders with fines and “blacklisting”. ADLSA lacks strong enforcement powers in relation to violations of the labour law, while the Ministry of Interior rarely uses its powers to investigate labour trafficking. Nevertheless there has been an increase in the number of companies referred for

prosecution, with 2,500 violations referred to the Public Prosecutor in 2019. There is little information available about the enforcement of anti-corruption measures to punish individuals accepting bribes or “kickbacks” from origin country recruitment agencies in exchange for demand letters.

Recommendations to the Government of Nepal:

- Pending the adoption of a zero-cost migration model, fully enforce penalties against recruitment agencies charging fees above the legal limit, in accordance with relevant provisions of the FEA.
- Significantly increase the Department of Foreign Employment’s investigative capacity, by increasing staffing and ensuring that all staff undergo rigorous training.
- Ensure that the signing of the 2020 DOFE-Nepali police MOU is followed up with increased coordination between DOFE and law enforcement authorities and greater involvement by the police in tackling recruitment fraud and abuse
- Increase resources devoted to investigating and prosecuting corruption in DOFE; hold accountable any official accused of demanding or accepting illegal payments for access to government migration programmes, including through referring them to law enforcement agencies, and make information publicly available, on at least an annual basis, on the number and nature of such cases identified.

Recommendations to the Government of Kuwait:

- Continue strengthening the capacity of the labour inspectorate and ensure that it has the necessary resources as well as linguistic and investigatory

skills to conduct private interviews with workers during visits and identify cases of serious abuses beyond the non-payment of wages, including in relation to recruitment practices.

- Significantly reform the Public Authority for Manpower’s monitoring of recruitment agencies to ensure it accurately assesses and transparently reports on private employment institutions’ efforts to ensure worker protection, including fee payment and responsiveness to worker grievances.
- Institute labour inspections of private residences hiring domestic workers - including unannounced visits.
- Undertake proactive investigations (and where there is sufficient evidence, criminal prosecutions) into corrupt recruitment practices on the part of employers and recruiters, and human trafficking.

Recommendations to the Government of Qatar:

- Continue strengthening the capacity of the ADLSA labour inspectorate and ensure that it has the necessary resources as well as linguistic and investigatory skills to conduct private interviews with workers during visits and identify cases of serious abuses beyond the non-payment of wages, including in relation to recruitment practices and ensuring that employer, rather than workers, are paying the costs of recruitment.

- **Enhance ADLSA monitoring of recruitment agencies to ensure it accurately assesses and transparently reports on private employment institutions' efforts to ensure worker protection, including fee payment and responsiveness to worker grievances.**
- **Institute labour inspections of private residences hiring domestic workers - including unannounced visits.**
- **Undertake proactive investigations (and where there is sufficient evidence, criminal prosecutions) into corrupt recruitment practices on the part of employers and recruiters, and human trafficking.**

5.1 Does government ensure that ministries and departments, agencies and other public institutions that oversee recruitment and business practices cooperate closely and are aware of and observe human rights obligations when fulfilling their respective mandates?

Nepal

The Ministry of Labour Employment and Social Security (MOLESS) has acknowledged that inter-agency coordination is a key priority and that government agencies do not always have the same interests. In a 2020 report it called for a “reduction in misalignments” and said that “coordination challenges can suppress the magnitude of the potential gains of foreign employment”.⁴⁷² There are clear examples where poor coordination - for example the signing of significant bilateral MOUs without making plans to establish diplomatic missions - is likely to directly impact migrant workers.

The Foreign Employment Act (FEA) established the Department of Foreign Employment (DOFE) in 2008.

DOFE's stated goals are to make labour migration “more secure, managed and decent and to protect rights of migrant workers”.⁴⁷³ DOFE is the key institution in facilitating and regulating foreign employment in Nepal, and is responsible for: developing policy to implement the FEA and its regulations; regulating recruitment agencies, including the issuance, renewal and revocation of a license needed to operate; registering complaints related to foreign employment; investigating and prosecuting cases registered in the Department; coordinating in providing compensation to migrant workers; and supporting in the rescue of migrant workers from destination countries.⁴⁷⁴ Chaired by the Labour Minister, the cross-agency Foreign Employment Board has the objective of ensuring the social protection and welfare of migrant workers. The Board includes representatives from various units in the MOLESS and DOFE.⁴⁷⁵ It was previously known as the Foreign Employment Promotion Board, and the change of title points to a recognition that its role should not be limited to the promotion of labour migration.

According to a senior official at the Ministry of Law, Justice and Parliamentary Affairs, there is close cooperation between his ministry, MOLESS, the Ministry of Foreign Affairs and labour attachés on specific issues affecting the recruitment and employment of migrant workers, such as the negotiation of BLAs.⁴⁷⁶ However, there appears to be an absence of formal coordination between these ministries and technical committees, made even more challenging following Nepal's transition from a unitary state to a decentralized federal system in 2018.⁴⁷⁷

In an effort to promote greater coherence between the various ministries and departments involved in overseas employment policy and regulation, the Nepali authorities have launched two major initiatives since 2018. The first is the Foreign Employment Information Management System (FEIMS), an integrated software to monitor and share data regarding outbound and returnee migrant workers, employers and recruitment agencies, which seeks to address the mismanagement of services and provide a speedier and more effective update on the migration process.⁴⁷⁸ The second

472. MOLESS, *Nepal Labour Migration Report 2020*, (March 2020): 49-50

473. DoFE, *Introduction*

474. MOLESS, “*Labour Migration for Employment: A Status Report for Nepal: 2015/2016 – 2016/2017*”, (25 February 2018): 47.

475. *Foreign Employment Act, 2007*, Section 38.

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

477. Nepal embarked on a reform process towards a federal structure following the adoption of the 2015 Constitution. IOM, “*Migration Governance Snapshot: Federal Democratic Republic of Nepal*”, (August 2018): 4.

478. Senior official, Department of Foreign Employment (DOFE), interview, 15 January 2020.

is an agreement signed between DOFE and Nepal Police to facilitate workers' access to more effective grievance mechanisms at a local level and to improve accountability for abuse committed against migrant workers.⁴⁷⁹ The effectiveness of these two measures is yet to be assessed.

A MOLESS official told researchers that despite attempts to improve cross-agency coherence in the drafting and application of laws and policies overseeing recruitment and business practices, in practice cooperation and harmonization is very low.⁴⁸⁰ A Foreign Employment Coordination Committee was established to deliver the FEP through a national action strategy, but MOLESS acknowledges that no review of the Policy was ever carried out in 2017 as mandated, and that a quick review found implementation was "inadequate".⁴⁸¹ The policy is currently being revised.

MOLESS has identified several agencies where inter-agency cooperation should be enhanced and where a lack of cooperation could directly impact migrant worker outcomes. The agencies they have identified include the Ministry of Foreign Affairs (MOFA), with regard to consular protection overseas (Nepal has no missions in countries where it has signed significant and meaningful MOUs such as Jordan and Mauritius), the Department of Immigration, where recording of data on returnee migrants is said to be in "its nascent stages", and between the many different Migrant Resource Centers located around the country. Nepal's new federal governance structures are a challenge for coordination; MOLESS has mooted the creation of a National Migrants Resource Centre to assist in integration with local authorities.

Cooperation over law enforcement has traditionally been a significant problem and has undermined the efforts of migrant workers to hold exploitative actors in the recruitment process accountable (see 5.3). In December 2019, DOFE announced it was seeking to formalise closer cooperation with the police and immigration authorities to address this gap.⁴⁸² One researcher and advocate pointed to the need for the

government to better engage agencies not normally seen as critical to migrant rights: "There is a general trend of agencies collecting large and illegal amounts from workers and providing false receipts. This leads to tax evasion ... The IRA [Inland Revenue Administration] has not made efforts to regularize the agencies from a tax evasion perspective. These multi-approach regulatory mechanisms are important to regulate the agencies."⁴⁸³

Kuwait

A 2018 IOM review of Kuwait's migration governance profile noted the absence of a formal inter-ministerial body to promote horizontal policy coherence between ministries and departments overseeing migration processes but said that "ad-hoc ministerial committees and coordination mechanisms on migration take place".⁴⁸⁴

PAM, which was established in 2013 under the Labour Ministry, has primary responsibility for labour practices and protections. As Human Rights Watch noted in 2020, the sponsorship system tends to undermine these labour protections: "Many domestic workers have not been able to claim their rights under the new [2015 domestic workers] law, in part because of the kafala system under which they cannot leave or change employers without their employer's consent. If they flee their employer, they can be arrested for "absconding."⁴⁸⁵ Domestic workers are specifically affected by inconsistencies in the division of responsibilities between ministries: unlike all other workers, who only have to approach PAM, domestic workers must get permission to transfer sponsorship from the Ministry of Interior. However in 2019, in a positive development, domestic workers were able to bring grievances to the newly-created Domestic Workers' Department at the Public Authority for Manpower.⁴⁸⁶

In 2016, the UN Special Rapporteur on Trafficking noted that "coordination within and across concerned authorities, service providers and CSOs is at present

479. The Kathmandu Post, "Nepal starts maintaining data on returning migrant workers", (31 January 2020).

480. Interview with official, Ministry of Labour, Employment and Social Security, 8 January 2020

481. MOLESS, *Nepal Labour Migration Report 2020*, (March 2020): 51.

482. The Kathmandu Post, "Department of Foreign Employment seeks support of other government agencies for overseas job frauds", (9 December 2019).

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

484. IOM, "Migration Governance Overview: The State of Kuwait", (May 2018): 4.

485. Human Rights Watch, "Kuwait Events of 2019"

486. ILO, "Kuwait Regulatory Framework Governing Migrant Workers", (November 2019).

incoherent as a result of lack of a permanent Inter-Ministerial committee/ structure to combat trafficking”.⁴⁸⁷ Perhaps responding to such concerns, a national referral mechanism was established in 2018 that aimed to improve intergovernmental coordination, provide training for judicial and prosecutorial personnel, and expedite criminal charges in forced labour cases.⁴⁸⁸ The mechanism is overseen by the Permanent National Committee for the Implementation of the National Strategy for the Prevention of Trafficking, which is chaired by the Ministry of Justice and includes representatives from the Ministries of Interior, Economic Affairs, Health, Education, Awqaf and Islamic Affairs and Information. According to a foreign diplomat, the Committee does not meet very often, and as a result, there is a lack of coordinated response to human trafficking, and the various ministries “tend to work in siloes”.⁴⁸⁹

Although interviewees agreed that the Ministry of Interior is particularly active in leading anti-human trafficking efforts, they also pointed to a lack of standard operating procedures and an internal fragmentation, leading to a siloed response, and the absence of information sharing between various departments. One UN worker highlighted that the impact of this fragmentation was particularly evident during the government amnesty programme, launched following the outbreak of COVID-19 in April 2020, to allow migrant workers who had overstayed their visas to leave Kuwait without paying a fine: “We have trained a lot of officers over the years on how to identify victims of trafficking or on referrals to services for migrants but none of them were on the ground at the amnesty shelters. The people on the ground were not working with a mindset of identifying potential victims, and a lot of the processes were not followed.”⁴⁹⁰

Qatar

Labour protections in Qatar are undermined by immigration and residence laws.

The two main Ministries in Qatar that have responsibility

with respect to the fair recruitment of migrant workers are ADLSA, which deals with management of the labour market, worker rights and the operations of recruitment agencies, and the Ministry of Interior, which manages visas, immigration and residence procedures. Historically elements of the sponsorship law managed by the Ministry of Interior undermined labour regulations managed by ADLSA and produced negative outcomes for migrant workers, given the range of powers that they awarded to employers. As the UN Special Rapporteur on the rights of migrant workers put it in 2014, “the kafala (sponsorship) system enables unscrupulous employers to exploit employees”.⁴⁹¹ Reforms to Law No 21 of 2015, “the Sponsorship Law” - which sits under the purview of the Ministry of Interior - to remove the exit permit for most classes of migrant workers, and the no-objection-certificate, which enables migrant workers to change employers, have taken place between 2018 and 2020 go a long way to remove (in law) the immigration laws’ capacity to undermine labour protections.⁴⁹² One aspect of the sponsorship system that remains and which undermines labour protections is the “absconding” charge. HRW has documented how employers can lay vexatious charges to stop worker from lodging grievances.⁴⁹³

The Technical Cooperation programme between the Government of Qatar and the ILO is led by ADLSA. ADLSA has increasingly sought to involve the Ministry of Interior in events relating to migrant workers, despite reforms which have reduced its role.⁴⁹⁴ Additionally ADLSA has involved the Chamber of Commerce in fair recruitment activities.⁴⁹⁵ In September 2020, ADLSA, the ILO and the Chamber of Commerce launched a fair recruitment toolkit designed for the hospitality sector in Qatar.⁴⁹⁶ Responding to a 2018 recommendation by the ILO’s Committee of Experts, ADLSA launched a National Policy for Labour Inspection, to “reaffirm the role of Labour Inspection as a core Government service”. To achieve this goal, the Ministry says it will work closely with other state bodies, such as the Ministry of Interior, the Ministry

487. UN Human Rights Council, “Preliminary findings on the visit to Kuwait by Maria Grazia Giammarinaro, Special Rapporteur on trafficking in persons, especially women and children - 4-8 September”, (14 September 2016).

488. US Department of State, “2020 Trafficking in Persons Report: Kuwait”, (2020).

489. Remote interview with foreign diplomat in Kuwait, 5 November 2020.

490. Remote interview with official at UN agency, October 2020.

491. 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).

492. Law No. 21 of 2015 regulating the entry and exit of expatriates and their residence, (27 October 2015).

493. Human Rights Watch, “How can we work without wages?”, (24 August 2020)

494. ILO, “International best practices on domestic workers discussed in Qatar”, (18 September 2018).

495. ILO, “Public sector clients pledge action to foster fair recruitment”, (21 May 2019).

496. ILO, “New guidance tool supports fair recruitment and employment in Qatar hospitality sector”, (17 September 2020).

of Justice, the Authority of Planning and Statistics, as well as the National Committee for Combating Human trafficking.⁴⁹⁷

5.2 Is there an effective and sufficiently resourced labour inspectorate, empowered and trained to investigate and intervene at all stages of the recruitment process for all workers and all enterprises, and to monitor and evaluate the operations of all labour recruiters?

Nepal

DOFE's investigation capacity and skills have been the subject of significant concern for several years and appear out of step with the scale of the problems identified in Nepal's recruitment industry. In 2018 the UN Special Rapporteur on Human Rights of Migrant Workers urged the government "as a matter of priority to monitor recruitment agencies more effectively".⁴⁹⁸

The FEA authorizes DOFE-appointed investigation officers, in the department's Complaint Registration and Investigation Section, with some of the same powers as the Nepali police. They are therefore bestowed with the powers to arrest any person involved in a recruitment-related offense, to conduct a search of any location in relation to the offense, and to seize documents or other evidence of an FEA offense.⁴⁹⁹ The structure of recruitment monitoring and investigating is outlined in FEA (section 61), the Implementing Rules, the Companies Act (Section 121), and the 2019 Guidelines for the Mobilization of a Rapid Response Team, which were issued with the objective of monitoring recruitment agencies and to ensure the effective control of fraudulent activities.⁵⁰⁰

A former DOFE investigating officer told us that DOFE officials conduct "regular" raids targeting recruitment agencies. In all of these operations, at least one official from the DOFE Investigation Officers is present.⁵⁰¹ The National Network for Safer Migration (NNSM) told us that DOFE officers' workloads are overwhelming due to insufficient human resources and persistent personnel change at the department. This is a longstanding complaint: a 2012 National Human Rights Commission Report attributed DOFE's inconsistent completion of investigations to under-staffing. In 2019 the same institution found, "the pressure of work seemed to be excessive in DOFE. The official in DOFE said that the investigation officers have lots of work pressure due to complaints/grievances received daily in the Department".⁵⁰² Other analysts agreed: "The number of raids or monitoring done by DOFE is minimum to nil. There are only 4 case hearing officers at DOFE, who do not have enough capacity to regulate and investigate the multi-faceted illegal activities of recruitment agencies".⁵⁰³ A 2017 ILO report agreed that, "the authorities mount occasional raids of illegal recruiters but these tend to address numerically only a tiny fragment of the problem".⁵⁰⁴ In 2019, MOLESS allowed DOFE to carry out raids on agencies on Saturdays and other public holidays, which had not been permitted before.⁵⁰⁵

The NNSM told us that in addition to under-resourcing there are also skills gaps in the inspectorate: "there are not enough and not adequate skills, knowledge and capital. Issues-based training for government officials is really lacking."⁵⁰⁶ A former investigation officer acknowledged that he received no specialized training during his tenure at DOFE: "the Investigation Officers at the Commission for Investigation Abuse of Authority (CIAA) are regularly invited for trainings but this is not the case for investigation officers working at DOFE."⁵⁰⁷ The NHRC also found that "there is no adequate training (including refresher training) on investigation or labour rights and human rights to the staff working in the department responsible for managing workers' migration. This means that the work of the Department might not be effective and worker friendly."⁵⁰⁸

497. Ministry of Administrative Development, Labour and Social Affairs (ADLSA) of the State of Qatar, "Labour Inspection Policy – State of Qatar", (2020).

498. UN Human Rights Council, "Report of the Special Rapporteur on the human rights of migrants on his mission to Nepal", A/HRC/38/41/Add.1, (30 April 2018).

499. Foreign Employment Act, 2007, Section 61, Investigation and inquiry of offense relating to foreign employment (2007).

500. MOLESS, Nepal Labour Migration Report 2020, (2020): 91

501. Former Investigation Officer, Department of Foreign Employment, interview, 29 December 2019.

502. NHRC Nepal, "Human Rights Newsletter Nepali, 2075 Chaitra Issue", (22 April 2019): 37-38.

503. Rameshwar Nepal, Equidem Research & Consulting, interview, 3 January 2020.

504. ILO, "The Migrant Recruitment Industry: Profitability and unethical business practices in Nepal, Paraguay and Kenya", (2017): 7.

505. myRepublica, "DoFE steps up raids on rogue recruiters with new rule", (5 August 2019).

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

507. Former Investigation Officer, Department of Foreign Employment, interview, 29 December 2019.

508. myRepublica, "DoFE steps up raids on rogue recruiters with new rule", (5 August 2019).

At a higher level, the NHRC has argued that given that migrant worker remittances generate a third of the country's GDP, the bodies tasked to support these workers should be better resourced: "The Nepal government allocates less than 0.5 percent of its annual budget to the Ministry of Labour, Employment and Social Security, which has the responsibility to manage, monitor and regularize the foreign employment sector along with the national employment sector and social security as well."⁵⁰⁹

Kuwait

Labour inspections have increased in intensity in recent years, though in many cases these merely involve visits to offices to check paperwork, without engaging with migrant workers. Kuwait has increased its capacities to inspect recruitment agencies, most of which only recruit domestic workers, but inspections of private residences where migrant workers are employed remain extremely rare.

Kuwait has signed and ratified the ILO Labour Inspection Convention, and has established a Labour Inspection Management division within the PAM. By law, labour inspectors have access to "establishments" during official working hours in order to inspect their records and can request information related to workers.⁵¹⁰ Inspectors from PAM have the right to search workplaces and examine their records, documents and premises periodically to ensure compliance with the law. Those who deny inspectors entry can be given a fine of up to KWD1,000 (USD 3,270) and a prison sentence of up to six months.⁵¹¹ Labour inspectors are empowered to cite employers for violations which can be submitted to the competent court in order to impose penalties.⁵¹² This can include additional fines of up to KWD200 (USD 664) for each employee whose rights were violated in any of the ways specified in the Labour Law.⁵¹³

According to the US State Department, in 2019, PAM "conducted and/or participated in more than 50,300 inspections to ensure labor and residency laws were fully implemented by employers; these inspections resulted in roughly 5,000 citations and fines against violating companies".⁵¹⁴ However, there seems to be an emphasis on quantity over quality, and there are concerns that PAM's labour inspectorate is significantly understaffed and underfinanced. According to a foreign diplomat in Kuwait: "We are talking about a handful of people doing inspections for the whole country".⁵¹⁵ One private contractor told us that PAM inspectors review the employment and payment records of migrants, as well as contracts, once every 1-3 months, but that inspectors rarely visit the actual worksite or speak to workers.⁵¹⁶ Language capacity is also a major impediment: labour inspectors generally only speak Arabic and cannot communicate with Nepali and other South Asian migrant workers - a concern noted by the Kuwait Society for Human Rights in relation to the PAM Labour Relations Department.⁵¹⁷ One interviewee said that some inspections are seemingly conducted as a result of bribery and corruption, as "rival companies or individuals will pay inspectors money to go and check on them and give them fines."⁵¹⁸

Since 2019, PAM has also been responsible for investigating domestic workers' employers and recruitment agencies and initiating investigations in relation to domestic workers. The 2015 Domestic Workers Law gives its inspectors the right to search any establishment recruiting domestic workers and to examine its records, documents and premises.⁵¹⁹ In November 2017 the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) expressed its concern about the lack of labour inspection mechanisms coupled with weak penalties imposed on labour recruitment agencies for abusive practices.⁵²⁰ The following year, the government reported carrying out 17,560 inspections of domestic worker recruitment agencies and residences, referring more

509. NHRC, "Research Report on The Situation of the Rights of Migrant Workers Recruitment Practices and Access to Justice of Migrant Workers", (November 2019): 135

510. *Private Sector Labour Law*, Article 134.

511. *Private Sector Labour Law*, Article 140.

512. ILO, "Labour Inspection in Arab States: Progress and Challenges", (2014): 18.

513. *Private Sector Labour Law*, Article 141

514. US Department of State, "2020 Trafficking in Persons Report: Kuwait", (2020).

515. Remote interview with foreign diplomat in Kuwait, 5 November 2020.

516. Remote interview with private contractor in Kuwait, 2 May 2020

517. Kuwait Society for Human Rights, "Migrant workers in Kuwait between law redress and abuses", (2018).

518. Geoffrey Martin, Kuwait-based economist and labour markets expert, remote interview, 23 July 2020.

519. *Law on Employment of Domestic Workers*, Article 44, 2015.

520. Committee on the Elimination of Discrimination against Women, *Concluding observations on the fifth periodic report of Kuwait*, (22 November 2017).

than 440 cases for criminal investigations following trafficking screenings, and blacklisting 500 employers, with 82 recruitment agencies permanently shut down for domestic labour law contraventions. All these figures represented around a 1000% increase on the figures reported the previous year,⁵²¹ and the following year saw the numbers fall again. In 2019 PAM reported carrying out 80 inspections of domestic worker recruitment firms.⁵²²

However, inspections in private homes where domestic workers both work and reside remain largely off-limits and require a search warrant given that no one may enter any home “without the permission of their occupants except in the circumstances and manner specified by law”.⁵²³ As a result, they tend to occur only in exceptional cases when there is “some level of consent or the police feel that there is a credible threat because a domestic worker is at risk”.⁵²⁴ Social Work Society (SWS), an NGO which provides legal aid and other support services to migrant workers told us that it has been advocating for a system of periodic meetings to ensure that domestic workers meet inspectors at PAM’s offices while respecting privacy rights under the Constitution. The government has yet to respond to its recommendations.⁵²⁵ The reluctance to break societal norms, and the lack of inspections, has led some community groups to take direct action and rescue domestic workers from their employers in cases of alleged abuse, by helping them leave their employer’s house and taking them to the police or the relevant embassy before employers can file an absconding case.⁵²⁶

Qatar

Following considerable international focus on the capacity and skills of the labour inspection department,

Qatar has, with the support of the ILO, been upgrading the country’s labour inspectorate. Nevertheless it remains the case that the vast majority of issues being flagged during inspections relate to non-payment of wages, which are identified not through inspections but through the electronic Wage Protection System. Concerns remain about the tendency of inspectors not to engage directly with workers during inspection visits. In part this relates to language barriers, with a relatively small portion of inspectors able to speak to workers in their own languages.

ADLSA is responsible for ensuring employers uphold the Labour Law and other labour-related ministerial decrees.⁵²⁷ Each company should receive an inspection visit every year,⁵²⁸ and it is prohibited for them to receive prior notice in advance under any circumstance.⁵²⁹ A Forced Labour complaint brought against Qatar before the ILO’s Governing Body in 2014 alleged that Qatar’s labour inspectorate capacity was insufficient: “the inspectorate is miniscule compared to the task, and is unable to speak the languages of most workers. Inspectors have little power to enforce findings and fines are far from dissuasive or in some cases non-existent”.⁵³⁰ Since entering into partnership with the ILO, ADLSA has developed a detailed labour inspection policy and strategy (published in 2019), improved language capacity and provided specialised training.⁵³¹ It also established a Strategic Unit in the Labour Inspection Department and carried out “a comprehensive assessment of the labour inspection system”.⁵³²

In 2013, Qatar’s Labour inspectorate comprised 150 inspectors, of which only six were women, and 33 operated under the domain of Occupational Safety and Health.⁵³³ Since the complaint was lodged, the capacity of the inspectorate has been significantly strengthened, and in 2019, it comprised 270 labour

521. US Department of State, “2018 Trafficking in Persons Report: Kuwait,” (2018). The previous year’s figures were 1,806 inspections, 39 referrals, none blacklisted, and 90 permanent closures, respectively.

522. US Department of State, “2020 Trafficking in Persons Report: Kuwait,” (2020)

523. Constitution of Kuwait, Article 38 (unofficial English translation).

524. Remote interview with foreign diplomat in Kuwait, 5 November 2020.

525. Representative, Social Work Society, remote interview, 27 October 2020.

526. Civil society activist in Kuwait, remote interview, October 2020.

527. Qatar Labour Law, Article 136, (2004).

528. Decree 13 of 2005 of the Minister of Civil Service and Housing Affairs, Article 16.

529. Decree 13 of 2005 of the Minister of Civil Service and Housing Affairs, Section 7.

530. 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.326/INS/8 (Rev), (17 March 2016): 6.

531. Ministry of Administrative Development, Labour and Social Affairs of the State of Qatar, “Labour Inspection Policy – State of Qatar” (2020).

532. ILO, “Annual progress report on the technical cooperation programme agreed between the Government of Qatar and the ILO”, GB.337/INS/5, (7 October 2019): 2.

533. ILO, “Labour Inspection in Arab States: Progress and Challenges”, (2014): 28

inspectors, including 58 women – all of them Qatari nationals – dedicated to the monitoring of working conditions, compliance with OSH standards, the payment of wages and occupational accidents, and 100 of whom spoke both Arabic and English. The work of the inspectors was supported by 12 interpreters who are able to “facilitate communication in multiple languages with migrant workers as required.”⁵³⁴ ADLSA’s Recruitment Department has its own inspectors who monitor the activities of recruitment agencies and focus on licenses.⁵³⁵

The 2019 ILO assessment of the labour inspection system deemed the number of inspectors to be “adequate in relation to the geography of the country,” but noted that its expansion in recent years led to “gaps in capacity and experience”. It recommended the prioritisation of inspectors’ capacity-building and recruitment of additional interpreters and their training in labour inspection and interviewing techniques.⁵³⁶

In October 2019 the ILO Doha office launched a “major training programme designed to enhance the capacity of the Labour Inspection Department.”⁵³⁷ The Labour Inspection Policy, published in 2019, stresses the importance of “evidence-based strategic inspections” and states that inspections will be “predominantly proactive and based on risk analysis in targeted priority sectors, types of labour protection legislation, or particular occupational hazards.” Under the policy, inspectors are required to follow “clear guidelines that inform their actions, including through the definition of criteria when immediate action is required.”⁵³⁸ This is a welcome step since, according to a 2019 assessment by ILO and ADLSA, the inspectorate was not taking advantage of the wealth of information it had access to, including violations detected by the Wage Protection System and complaints directly filed with the Labour Relations Department, primarily due to a lack of an efficient information management system connecting different databases.⁵³⁹

In 2018 the Government of Qatar conducted 27,771 inspections between January and September 2018 (13,855 labour inspections and 13,916 OSH inspections). 3,475 warnings were issued to remedy a violation and 1,235 infringement reports were issued. 70% of inspections found no violations, and another 10 per cent resulted in the provision of “guidance and advice”. Most inspections were proactive and unannounced (22,410), and 2,119 follow-up inspections were undertaken.⁵⁴⁰ However, inspectors acknowledge that they sometimes give employers prior notice to enable them to gather documentation and request information about the worksite.⁵⁴¹

While the increase in the number of inspections is welcome, there is concern that inspectors overly focus on the numbers of visits conducted at the expense of the quality of services provided. Indeed, as noted by the ILO and ADLSA, performance appraisal for inspectors is currently based solely on the number of visit reports, and does not take into account the detection, reporting and remedy of violations, thus potentially encouraging “ ‘tick-the-box’ interventions that sidestep any analysis of possible root causes or defective management.”⁵⁴²

A researcher specialising in migrant workers’ rights in the Gulf told us they continued to have serious concerns about the quality of inspections because of their experience that “they just go to the worksite, speak to the supervisor, they rarely ever go to accommodation. Even when workers file a complaint, they don’t go [to talk to workers]. They don’t have language skills to speak to most of the workers.”⁵⁴³ In 2018, HRW raised concerns that under the 2017 domestic worker law, workplace inspections, including of homes where domestic workers are employed, are not explicitly required under the law and has called on Qatar to ensure that such systems cover domestic workers.⁵⁴⁴

534. ILO, “[Assessment of the Qatar Labour Inspection System](#)”, (2019): 5.

535. Ministry of Administrative Development, Labour and Social Affairs (ADLSA) and ILO, “[Assessment Of The Qatar Labour Inspection System](#)”, (2019): 5

536. ILO, “[Assessment of the Qatar Labour Inspection System](#)”, (2019): 5.

537. ILO, “[Comprehensive training programme for all labour inspectors underway in Qatar](#)”, (6 October 2019).

538. Ministry of Administrative Development, Labour and Social Affairs of the State of Qatar, “[Labour Inspection Policy – State of Qatar](#)” (2020).

539. ILO, “[Assessment of the Qatar Labour Inspection System](#)”, (2019): 4.

540. ILO, “[Assessment of the Qatar Labour Inspection System](#)”, (2019): 4.

541. ILO, “[Assessment of the Qatar Labour Inspection System](#)”, (2019): 9

542. ILO, “[Assessment of the Qatar Labour Inspection System](#)”, (2019): 7, 9

543. Remote interview with GCC labour specialist, 7 July 2020.

544. Human Rights Watch, “[Domestic Workers’ Rights in Qatar](#)”, (26 June 2018).

5.3 Are the criminal investigative and prosecuting bodies trained and resourced to investigate and prosecute criminal activity related to fraudulent recruitment?

Nepal

DOFE investigating officers have been granted law-enforcement powers in relation to recruitment-related offenses. They have powers to arrest any person involved in a recruitment-related offense, to conduct a search of any location in relation to the offense, and to seize documents or other evidence of an FEA offense.⁵⁴⁵

At the same time, the Nepali police have no authority to intervene in recruitment-related issues. Police commanders told Amnesty that “under the Foreign Employment Act they had no authority to investigate or register cases occurring in the context of foreign employment. Instead, their practice was to advise any complainant to travel to Kathmandu and file their grievance with the complaints branch at the DOFE.”⁵⁴⁶

Migrant workers have reported to multiple research studies their frustration on discovering that the police in their local area could not assist them. Police have until recently only been able to assist workers directly if the cases were classified as trafficking under the Human Trafficking and Transportation (Control) Act (HTTCA), 2007, which would fall under their jurisdiction, but few labour cases are classified as trafficking cases due to DOFE’s wide-ranging authority to regulate recruitment processes and enforce the FEA.⁵⁴⁷ For example, in 2016, the Kathmandu Metropolitan Police Crime Division told Amnesty International that it had referred 184 of 186 complaints registered against recruitment agents and agencies at its office to DOFE for further investigation, despite their potential for criminal prosecution under HTTCA provisions.⁵⁴⁸

This trend has remained largely unchanged since then, with the 2020 US State Department Trafficking in Persons report noting that throughout 2019 the

Nepali authorities continued “to misidentify the majority of transnational labor trafficking cases as labor violations and resolved them administratively...in lieu of criminal investigation, with inadequate sentences for perpetrators.” The report expressed concern that the government keeps ignoring legal experts’ recommendation that prosecutors could pursue cases against recruitment agents under both the HTTCA and the 2007 FEA for transnational labour trafficking and foreign employment fraud, respectively. It further noted with that DOFE failed to refer any labour complaints it received to police to pursue for criminal prosecution, and that DOFE officials “continued to advise abused migrant workers to register complaints under the 2007 FEA rather than notify police”⁵⁴⁹

A former DOFE investigating officer told us that concerns about this division of responsibilities, which observers have argued prevents the police from playing a positive role in enforcing the law, were overplayed; he told us that DOFE investigation officers can formally write to a local police office to seek assistance, and “this is typically forthcoming”. He told us that DOFE has also been known to request a Red Notice request be made by Nepali police to their Interpol counterpoints in relation to recruitment related fugitives.⁵⁵⁰ DOFE has nonetheless taken steps to address this restrictive division of roles, negotiating an MOU with the police. A DOFE official said: “There are times when the department alone cannot gather enough evidence while pursuing a case or collecting evidence against the perpetrators...For such cases, we can take the support of mainly the Nepal Police and other concerned agencies for a smooth and rapid investigation.”⁵⁵¹ In January 2020, DOFE and the police signed a Memorandum Of Understanding, which officials hoped would reduce cases of fraud by half.⁵⁵² A Nepal police presentation we have seen highlighted the manpower shortages that have restricted DOFE’s ability to proceed with cases under the FEA. Under the MOU, the police are able to carry out preliminary investigations, and if the cases are filed against unregistered individuals, they will have the authority to investigate. Cases related to registered recruitment

545. *Foreign Employment Act, 2007*, Section 61.

546. Amnesty International, “*Turning People into Profits*”, (2017): 45

547. US Department of State, “*2020 Trafficking in Persons Report: Kuwait*”, (2020).

548. Amnesty International, “*Turning People into Profits*”, (2017): 62.

549. US Department of State, “*2020 Trafficking in Persons Report: Nepal*”, (2020).

550. Interview with former Investigation Officer, Department of Foreign Employment, 29 December 2019.

551. The Kathmandu Post, “*Department of Foreign Employment seeks support of other government agencies for overseas job frauds*”, (9 December 2019).

552. The Kathmandu Post, “*Foreign employment department swings into action against fraud cases*”, (25 November 2019).

agencies will be transferred to DOFE for further actions.⁵⁵³ In principle this MOU could have the potential to help address shortcomings in the investigation and prosecution of cases under the FEA, and to start to bridge the gap between the enforcement of employment and trafficking offences.

Kuwait

Generally, Kuwaiti authorities treat labour violations as administrative infractions, rather than criminal investigations and procedures. Officials commonly rely on arbitration, the issuance of administrative fines, and the “blacklisting” or closure of recruitment firms involved in violations of the 2010 Labour Law or 2015 Domestic Workers law. The US State department has called the Government of Kuwait’s administrative approach to labour abuse, including in the recruitment process, an “inadequate deterrent”.⁵⁵⁴ The Special Rapporteur on Trafficking’s 2018 Kuwait report identified “the capacity of government authorities, law enforcement agencies, judicial authorities and labour inspectors to identify cases of trafficking in persons” as a “critical area of concern.”⁵⁵⁵ There is little publicly available information on the prosecution of recruitment agencies. Kuwait’s Domestic Worker Department told Migrant-Rights.Org that 86 recruitment agencies violated the 2015 Domestic Worker law in 2017, resulting in 79 licenses of domestic worker recruitment agencies being revoked, and seven offices temporarily suspended. However, it was unclear if any criminal prosecutions were brought against staff in these agencies.⁵⁵⁶

The government has nevertheless been increasing the use of its specialized trafficking unit, the Ministry of Interior’s Residency Affairs Investigative Unit, to initiate more criminal investigations, including against Kuwaiti officials, and to conduct anti-human trafficking training courses.⁵⁵⁷

The unit works closely with the Ministry of Justice and the Public Prosecutor’s Office and has been increasing

the number of prosecutions of forced labour or human trafficking cases over the past two years, rather than simply treating them as administrative infractions. Despite these positive steps, anecdotal evidence suggests that the number of prosecutions remains low compared to the scale of abuse. It appears also that the authorities continue to treat labour abuses in isolation from the kafala system, failing to recognise that the entire framework governing labour migration is conducive to human trafficking.⁵⁵⁸

According to a lawyer who works on labour abuse cases involving migrant workers, the Ministry of Interior’s unit is not sufficiently staffed or well-resourced to conduct thorough and effective investigations into recruitment-related cases, although it does cooperate with civil society. The lawyer told us that although she files many cases under the human-trafficking law, once they reach the public prosecution, they are often classified as sexual or physical abuse, preventing lawyers and CSOs from challenging the widespread issue of illegal “visa trading” (see 1.4 and 5.4).⁵⁵⁹

It appears that a recent increase in investigations was in part prompted by an undercover BBC Arabic documentary released in October 2019, which exposed how employers were using social media and internet applications to transfer domestic workers informally and without their consent, whereby they were being effectively sold by one sponsor to another.⁵⁶⁰ A representative of the Social Work Society explained: “After the BBC documentary, the public prosecution issued a statement that if a person would pay to transfer the visa of a domestic worker, this would be considered a crime punishable by seven years [in prison]. This was a very positive step, although we don’t know whether it is being implemented. But no one did anything until the documentary.” They added that the authorities now act swiftly whenever they receive complaints regarding new online posts advertising the sale of domestic workers: “We filed a complaint to [PAM’s] Domestic Workers Department, relating to two or three [recruitment] agencies that posted announcements on social media

553. On file with FairSquare.

554. US Department of State, “2018 Trafficking in Persons Report: Kuwait,” (2018).

555. Maria Grazia Giammarinaro, “Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children, on her mission to Kuwait”, A/HRC/35/37/Add.1, (2017).

556. Migrant-Rights.org, “Lived Experience Of Migrant Women: Qatar, Bahrain, and Kuwait”, (2019): 25-26.

557. US Department of State, “2018 Trafficking in Persons Report: Kuwait,” (2018).

558. Remote interview with foreign diplomat in Kuwait, 5 November 2020.

559. Kuwaiti lawyer working on labour abuse cases, remote interview, October 2020.

560. BBC, “Slave markets found on Instagram and other apps”, (31 October 2019).

about the sale of domestic workers. They called these agencies into the department and gave them a warning and forced them to close the social media accounts.”⁵⁶¹

Qatar

Where employers or recruiters are adjudged to have violated workers’ legal rights, the Qatari authorities’ preferred approach has tended to be to: transfer employer sponsorship so that the migrant can continue to work in Qatar for another employer, mandate back payment of wages (if detected by the Wage Protection System), fine employers, and “blacklist” the companies involved. This approach is partly driven by institutional factors: ADLSA, which leads on labour practices, lacks strong enforcement powers, while the Ministry of Interior, focuses its resources on sex trafficking over labour trafficking.

The US State Department noted in 2019 that “ADLSA’s enforcement efforts [are] dependent on the [Public Prosecutor’s Office], as it lacks the formal authority to issue fines or other stringent penalties”.⁵⁶² ADLSA has the power to place companies with non-compliances on a prohibition list or “blacklist”, meaning they will not be granted new work permits and are prohibited from engaging in transactions with the Ministry of Labour and the Ministry of the Interior. In 2017, the last year for which data is available, infringement reports were only drafted for 1.2 % of cases where inspectors identified violations.⁵⁶³ Its willingness to involve the criminal justice system has increased, however, with the US State Department noting in 2020 that 2,500 violations were referred to the Public Prosecutor in the previous year, the highest figure ever.⁵⁶⁴

However, despite efforts to strengthen collaboration between the labour inspection department and judicial authorities, to date, inspectors do not have any information about any potential penalties imposed by the judiciary following their referral of cases. A 2019

ILO report into the Qatari labour inspection system cites inspectors who claim that this “undermines their authority, especially if they subsequently interact with the same company, not knowing whether or not a sanction had been imposed further to their earlier efforts.”⁵⁶⁵

A Doha-based migration expert raised the concern that imposing penalties on employers can lead to adverse consequences for workers, undermining the operations of the company and resulting in workers losing their jobs. In such circumstances, migrants are responsible for finding new jobs, which may be challenging given restrictions on nationalities in the visa quota system.⁵⁶⁶

Qatar’s 2011 anti-trafficking law provides for up to seven years’ imprisonment and a fine of up to 250,000 QAR (USD 68,680) for offenses involving adult male victims, and up to 15 years’ imprisonment and a fine of up to 300,000 QAR (USD 82,420) for offenses involving an adult female or child victim. Directors of private companies whose employees commit trafficking faced up to five years’ imprisonment and a fine of up to 200,000 QAR (USD 54,950).⁵⁶⁷ Despite this law being in place and an absence of any obvious resource constraints, trafficking investigations are very rare. According to the US State Department, while “one prosecutor within the PPO specialized in trafficking crimes, and the government continued to build up its newly established, dedicated police and prosecution units”, the authorities investigated one trafficking case in 2019.⁵⁶⁸

Qatar’s Sponsorship Law, Law 21. of 2015 criminalizes the confiscation of workers’ passports by a sponsor, punishable by a maximum fine of 25,000 Qatari riyal (\$6,870). There were 43 prosecutions for this crime reported by the government in 2018, though it did not report any the following year.⁵⁶⁹ Even the 2018 figure seems very low given how widespread the practice is. A survey of migrant workers published in 2013 found that 90% of migrant workers’ employers held their passports,⁵⁷⁰ while a 2020 Human Rights Watch report

561. Representative, Social Work Society, remote interview, 27 October 2020.

562. US Department of State, “2019 Trafficking in Persons report: Qatar”, (2019).

563. ILO, *Observation (CEACR) - adopted 2017, published 107th ILC session*, (2018).

564. US Department of State, “2020 Trafficking in Persons Report: Qatar”, (2020).

565. ILO, “Assessment of the Qatar Labour Inspection System”, (2019): 13.

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

567. *Law No. 15 of 2011 concerning combating Human Trafficking*, (2011).

568. US Department of State, “2020 Trafficking in Persons Report: Qatar”, (2020).

569. US Department of State, “2020 Trafficking in Persons Report: Qatar”, (2020).

570. Andrew Gardner, Silvia Pessoa, Abdoulaye Diop, Kaltham Al-Ghanim, Kien Le Trung & Laura Harkness “A Portrait of Low-Income Migrants in Contemporary Qatar”, *Journal of Arabian Studies*, (2013) 3:1, 1-17

into abuses against workers in Qatar called on the government to “enforce the prohibition on confiscation of workers’ passports, including by consistently issuing sanctions against employers for confiscating passports”.⁵⁷¹

5.4 Does the government have effective anti-corruption measures (including legislation and evidence of enforcement) that addresses and tackles the risk of corruption on the part of public sector officials, recruiters and employers involved in the regulation of the recruitment sector?

Nepal

DOFE has a well-established reputation as a high-risk institution for corruption, with numerous senior officials having been arrested for accepting bribes to remove recruitment agencies from government blacklists.

The 2002 Prevention of Corruption Act criminalizes corruption, bribery, money laundering, abuse of office and facilitation payments in the public and private sectors.⁵⁷² However, the GAN Integrity report notes that, “implementation and enforcement is inadequate, leaving the levels of corruption in the country unchallenged”.⁵⁷³ A 2020 Bertelsmann study found that, “corruption among government officials concerning the distribution of permits and approvals...continues to be a problem. For those who lack connections in high places, bribes are often the only way to win access to public services or accomplish even ordinary activities”.⁵⁷⁴

Corrupt practices in the recruitment sectors clearly lead to negative outcomes for migrant workers. A 2016 Verité study concluded that “corruption in Nepal is a root cause

of forced labor”.⁵⁷⁵ There have been repeated corruption scandals at the DOFE.⁵⁷⁶ In December 2017, the CIAA filed a corruption case at the special court against the then Director General of DOFE along with two other staff from the same office against the charge of taking bribes from recruitment agencies to remove them from a government blacklist, after they had been prohibited from mobilising workers due to complaints from 43 workers left stranded in the UAE.⁵⁷⁷ One civil society organisation told us that they were aware of a cases where DOFE had ignored request from a Nepali embassy to blacklist a series of recruitment agencies: “almost everyone who works in the division is corrupt”.⁵⁷⁸ In 2014 another DOFE head was arrested, in this instance for approving work permits for 172 workers destined for Qatar and UAE.⁵⁷⁹

Workers told us they had to pay bribes to secure jobs. A 40-year-old man from Eastern Nepal told us that the job he was suited to in Qatar was not included in the demand letter provided by the employer in Qatar:

“If the demand letter does not specify the job, it is very difficult to get the labour permit. So I applied for the labour permit in the position of foreman and I paid additional money to the agent to make the “settings” (bribe) in the labour office. The agent also arranged all the settings in the airport as well, so it was easy for me.”⁵⁸⁰

The CIAA is responsible for investigating public officials suspected of corrupt practices. A 2020 report on the rule of law in Nepal found that “regulations and bodies that exist to ensure transparency have largely been ineffective to date.” The report made a partial exception for the CIAA which it says, after being plagued by understaffing, “has, of late, made some progress.”⁵⁸¹ A former investigating officer at DOFE told us that more measures had been introduced to reduce corruption within the department: “the CIAA considers DOFE as one of the bribery prone areas and keeps its eyes on it.”⁵⁸²

571. Human Rights Watch, “How can we work without wages?”, (24 August 2020)

572. [Prevention of Corruption Act, 2059 \(2002 AD\)](#)

573. Gan Integrity, “Nepal Corruption Report”, (July 2020).

574. BTI, “Nepal Country Report 2020”, (2020).

575. Verité, “Labor Brokerage and Trafficking of Nepali Migrant Workers”, (2016): 83

576. myRepublica, “Arrests show extent of corruption in Nepal’s “most corrupt” govt office”, (17 December 2017).

577. The Kathmandu Post, “CIAA drags ex-DoFE chief to court”, (20 December 2017).

578. Interview with Nepali civil society organisation (name withheld), January 2020

579. The Kathmandu Post, “DoFE Director among 9 held for irregularities”, (19 March 2014).

580. Remote interview with migrant worker in Qatar, 14 August 2020

581. BTI, “Nepal Country Report 2020”, (2020).

582. Former Investigation Officer, Department of Foreign Employment, interview, 29 December 2019.

CIAA's annual report notes that it identified the following practices at DOFE: preparing fake demand letters and contracts for workers; collaboration with recruitment agencies to charge fees exceeding the legal limit; and taking bribes and providing unnecessary complications to service seekers.⁵⁸³

Kuwait

Anti-corruption in relation to the recruitment of migrants has gained increasing prominence in the government's agenda, with corrupt practices by officials being linked to human trafficking investigations.

The Penal Law 31/1970 criminalizes corruption in Kuwait, covering passive and active bribery, attempted corruption, extortion, money laundering and abuse of office; the law does not criminalize bribing a foreign official.⁵⁸⁴ In addition, the Commissions Disclosure Law (No.25/1996) requires any entity working on any supply, purchase or public works government contract to disclose the payment of a commission.⁵⁸⁵ The 2016 Anti-corruption Public Authority Law, which established 'Nazaha' and which applies to all state institutions, outlines the procedures that public officials must follow when receiving evidence of bribery, and includes safeguards for protecting whistleblowers reporting corruption and bribery as well as members of their families. In addition, the law encourages members of the public to report corruption to Nazaha.⁵⁸⁶ However, implementation of Kuwait's legal framework on corruption is lacking, according to a former senior official of the Anti-Corruption Public Authority ("Nazaha").⁵⁸⁷

The 2019 US State Department Trafficking in Persons report for Kuwait stated that "some government officials allegedly sold work permits to illegal recruiters or even directly to migrant workers, potentially facilitating trafficking; the government did not report efforts to prosecute and convict officials complicit in trafficking or trafficking-related offenses".⁵⁸⁸ Section 6 of article 2 of

Kuwait's 2013 anti-human trafficking law increases the minimum sentence of 15 years in prison for those found guilty of human trafficking to a life sentence if they are state officials who have used their positions to facilitate the crime.⁵⁸⁹

In recent years, authorities have publicised a series of high-profile cases involving officials and human trafficking offences. In 2018, police arrested a Syrian businessman, who was found to have sold visas to nearly 3,000 Egyptian, Bangladeshi and Pakistani workers under false promises at the cost of about KWD1,500-3000 (USD 4900 - 9800) each. Many of the workers were arrested during the investigation. Official sources told the media at the time that the businessman had used his connections to the government to obtain the contracts and such a large number of visas, and that the absence of inspections had allowed him to recruit so many migrant workers via three shell companies.⁵⁹⁰

Tackling corruption and trafficking emerged as a priority after the outbreak of Covid-19 when Kuwait's lockdown revealed the scale of illegal trading of thousands of visas to migrant workers, who had arrived in Kuwait under the false promises of employment and were subsequently forced to work on the black market. These migrant workers' plight came to public attention when they lost their income as a result of the shutdown of the economy, and Kuwaiti nationals became more aware of their specific vulnerability to Covid-19 due to living conditions that made social distancing impossible. According to a Kuwait-based labour markets expert, "expatriates were blamed for being unsanitary and unhygienic and getting the virus that spread to the Kuwaiti population... But then, of course, visa dealers were also to blame, for bringing them in the first place. So there's huge, huge pressure to crack down on residency dealers."⁵⁹¹

In June 2020, the Prime Minister said, "we will not stay silent nor keep our hands crossed regarding human trafficking and money laundering, and we will not accept these issues be associated with the State of Kuwait,

583. CIAA, *Annual Report*, (2019/20).

584. National Security Law No. 31/1970 amending dispositions of the Penal Code (16/1960), Articles 35-42

585. ASAR - Al Ruwayeh & Partners, "Middle East Anti-bribery and corruption regulation legal guide 2018", Herbert Smith Freehills, (2018): 23.

586. Law No.2 of 2016, on Establishing Kuwait Anti-Corruption Authority and the Provision of Disclosure of Assets and Liabilities, (2016); ASAR - Al Ruwayeh & Partners, "Middle East Anti-bribery and corruption regulation legal guide 2018", Herbert Smith Freehills, (2018): 23.

587. Remote interview with former senior official of 'Nazaha', 1 May 2020

588. US Department of State, "2019 Trafficking in Persons Report: Kuwait", (2019).

589. Law No. 91 of 2013 Combating Trafficking in Persons and Smuggling of Migrants, Section 6, Article 2, 2013

590. Alnaba, "1" أكبر قضية أجتار بالبشر في تاريخ الكويت" (November 2018).

591. Geoffrey Martin, Kuwait-based economist and labour markets expert, interview, 23 July 2020.

no matter how influential this person is.”⁵⁹² That same month, the Interior Minister announced that Kuwait had arrested a Bangladeshi MP who had worked with Kuwaiti officials to procure visas, in order to sell them to thousands of workers at prices ranging from KD1,500 to KD 2,000 per visa.⁵⁹³ He was arrested on charges of bribery, human trafficking and money laundering. According to media reports, 12 other individuals were being investigated in the same case,⁵⁹⁴ including two members of the Kuwaiti parliament and Major General Sheikh Mazen Al Jarrah, Assistant Under-Secretary at the Ministry of Interior, who was arrested in July 2020 on charges of bribery.⁵⁹⁵ In parallel, the Minister of Interior announced the investigation of 282 cases of illegal “visa trading” involving a total of 417 companies.

Some interviewees were sceptical of the authorities’ commitment to tackling corrupt practices in the recruitment of migrant workers. A representative of the Kuwait Society for Lawyers told us, “There is no serious will to solve the problem. They are just in it to improve their image,”⁵⁹⁶ while an official in an oversight body admitted that “There is no real political will to really go after the high-ranking officials inside the MOI or the PAM because this issue is not a priority for us.”⁵⁹⁷

The Kuwaiti authorities often stress that human trafficking related corruption is not just Kuwait’s problem, but rather an issue that must be tackled in countries of origin as workers are being sent for foreign employment illegally. According to a foreign diplomat, the publicity around the Bangladeshi MP has been used by the authorities “to perpetuate the narrative that it is the push rather than the pull factor [that leads to corruption] and that it is an issue involving non-Kuwaitis.” He also noted that while arrests of officials are often reported in the media, any subsequent information on the progress of investigations is rarely publicised: “If the case goes away, you certainly won’t see anything in the press about it.”⁵⁹⁸

Qatar

Studies by Verité and the Qatar Foundation have found that origin country recruitment agencies routinely transfer money for kickbacks and other fraudulent payments to companies in Qatar, in exchange for demand letters or block visa approvals.⁵⁹⁹ These costs are in most cases passed on to workers, in the form of illegal recruitment fees paid in the country of origin. A Human Resources specialist told us: “It is impossible to get statistics on this, of course, since no one is investigating each and every HR department and releasing these documents, but some of my clients (employers) do this”.⁶⁰⁰ Interviewees have told us that such payments usually take place at middle management level and within HR departments.⁶⁰¹

Professor Ray Jureidini, an expert on labour migration in Qatar, told us that the flexibility in the tendering process in Qatar fosters corruption. According to Jureidini, companies are not required to provide the details of recruitment costs in the tendering document, and do not budget for them in order to keep costs low and make their bids more competitive.⁶⁰² Introducing measures forcing companies to budget for recruitment costs as part of major bids could go a long way in preventing corruption and encouraging ethical recruitment, according to a representative of FSI Worldwide, an ethical recruitment firm.⁶⁰³

Article 146 of the 2004 Penal Code provides for penalties of up to three years in prison and/or a fine up to 15,000 Qatari riyals (US\$4000), for employees who accept money without their employer’s knowledge to either take an action relating to their duties, or fail to take an action.⁶⁰⁴ A bribe is not expressly defined under the Penal Code.⁶⁰⁵ In 2014, DLA Piper recommended in their review for the government that it should introduce additional anti-corruption legislation to “give the State

592. Arabian Business, “Kuwait PM vows nobody is immune from corruption investigations”, (4 June 2020)

593. Albawaba, “Kuwait Investigates Largest Human Trafficking Racket Aided by ‘Local Officials’”, (15 June 2020).

594. The Daily Star, “Human trafficking, money laundering: Kuwait court bins MP Papul’s plea for release”, (18 September 2020).

595. Gulf News, “Bangladesh MP corruption scandal: Kuwait arrests major general”, (11 July 2020).

596. Kuwait Society for Lawyers, remote interview, May 2020.

597. Oversight Official, Government of Kuwait, remote interview, May 2020.

598. Remote interview with foreign diplomat in Kuwait, 5 November 2020.

599. See Verité, “An Exploratory Study on the Role of Corruption in International Labor Migration”, (January 2016).

600. Former HR specialist at a construction company in Qatar, remote interview, July 2020.

601. FSI representatives, remote interview, 20 October 2020; Professor Ray Jureidini, interview, 27 July 2020.

602. Professor Ray Jureidini, interview, 27 July 2020.

603. FSI Worldwide representative, interview, 20 October 2020.

604. [Penal Code \(Act No. 11 of 2004\)](#)

605. DLA Piper, “Qatar - Global bribery offenses guide”, (4 December 2019).

of Qatar jurisdiction over improper conduct occurring overseas but which has an effect in Qatar.”⁶⁰⁶

Data about enforcement is not public, and there is no information about proactive investigations into such payments. Corruption in the recruitment process and the sale of demand letters has tended to be viewed by the Qatari authorities as a foreign concern, rather than involving Qatar nationals in positions of authority, whether within the private or public sector. In 2014, a Ministry of Interior official told a Doha event on human rights that “no Qatari had so far been convicted of visa trade and those who did so were mostly the expatriate partner, or official in charge of such affairs”.⁶⁰⁷ However, a labour migration expert told us that prosecutions in corruption-related cases, though not widespread, tend to occur “behind closed doors” in order to protect Qatar’s international standing:

“People get fined, get imprisoned, but it’s not made public. Why? It’s about the reputation of, maybe a citizen, reputation of a company, whether it’s a local or a foreign company, and reputation of the country... So if they find it, they’ll deal with it privately. Also, while there

*are these laws, there’s also a culture of not shaming.”*⁶⁰⁸

The authorities have generally adopted a tough stance on “visa trading” - when companies or people connected to them sell demand letters to recruiters for non-existent jobs - because it results in workers becoming undocumented.⁶⁰⁹ Undocumented workers, who are particularly vulnerable to abuse, have generally been perceived as a social and security challenge for the state.⁶¹⁰ Some experts have however questioned why demand letters are issued by the authorities to companies which turn out to be using fake papers, or have no job order to justify their request for a large amount of visas. One researcher on migrant rights in Qatar said: “Why are you allocating visas to subcontractors or companies that do not have job orders? On what basis have you given this small manpower supply company this visa quota for 100 or 150 visas?”⁶¹¹ As noted in section 1, the operations of the Permanent Committee for Recruitment are opaque. That said, employers we spoke to said that while they found the block visa process highly frustrating and non-transparent, they were adamant that they did not know of cases of companies bribing officials to secure their demand letters.⁶¹²

606. DLA Piper, “[Migrant labour in the construction sector in the State of Qatar](#)”, (July 2018).

607. Gulf Times, [Expats blamed for visa trade](#), (21 August 2014).

608. Professor Ray Jureidini, interview, 27 July 2020.

609. See for example The Peninsula, [“Two arrested for setting up fake firms and selling visas”](#), (20 March 2018).

610. See for example The Peninsula, [“Runaway worker cases must be reported in 14 days: Mol”](#), (02 May 2017).

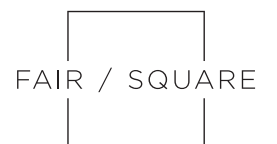
611. GCC labour specialist, remote interview, 7 July 2020.

612. Remote interviews with a contractor and a company owner, July 2020.

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